

# HIGH COURT OF TRIPURA

## AGARTALA

### WP(C) No.361 of 2025

**Sri Tapan Kumar Karmakar,**

S/o Late Sadhan Chandra Karmakar, Resident of Madhya Laxmibill, Beside Bishalgarh Municipality Council Office, P.O & P.S. – Bishalgarh, District – Sepahijala, Pin – 799102.

.....**Petitioner(s);**

**– V e r s u s –**

**1. The State of Tripura,**

Represented by its Principal Secretary, Public Works Department (R&B), Government of Tripura, P.O. – Secretariat, P.S. – New Capital Complex, District – West Tripura, Pin-799010.

**2. The Chief Engineer,**

Public Works Department (R&B), Government of Tripura, P.O. – Secretariat, P.S. – New Capital Complex, District – West Tripura, PIN-799010.

**3. The Executive Engineer,**

Bishalgarh Division, Public Works Department (R&B), Government of Tripura, Gakulnagar, P.O. & P.S. Bishalgarh, District – Sepahijala, Pin-799102.

**4. The Accountant General (A&E),**

Tripura, Near Circuit House, P.O. Kunjaban, P.S. New Capital Complex, District – West Tripura, Pin-799006.

**5. The Senior Accounts Officer,**

Office of the Accountant General (A&E), Tripura, Near Circuit House, P.O. – Kunjaban, P.S. New Capital Complex, District – West Tripura, Pin-799006.

.....**Respondent(s);**

**Along with**

### WP(C) No.467 of 2025

**Sri Santanu Bhattacharjee,**

S/o Late P.C. Bhattacharjee, Resident of Old Kalibari Lane, Krishna Nagar, P.O. Agartala, P.S. West Agartala, District-West Tripura, Pin-799001.

.....**Petitioner(s);**

**– V e r s u s –**

**1. The State of Tripura,**

Represented by its Principal Secretary, Public Works Department, DWS9, Government of Tripura, P.O. – Secretariat, P.S. – New Capital Complex, District – West Tripura, Pin-799010.

**2. The Chief Engineer,**

Public Works Department (DWS), Government of Tripura, P.O. – Secretariat, P.S. – New Capital Complex, District – West Tripura, PIN-799010

**3. The Drawing & Disbursing Officer & Head of Office,**

Office of the Chief Engineer, Public Works Department (DWS), Government of Tripura, P.O. – Secretariat, P.S. – New Capital Complex, District – West Tripura, PIN-799010.

- 4. The Accountant General (A&E),**  
Tripura, Near Circuit House, P.O. Kunjaban, P.S. New Capital Complex, District – West Tripura, Pin-799006.
- 5. The Senior Accounts Officer,**  
Office of the Accountant General (A&E), Tripura, Near Circuit House, P.O. – Kunjaban, P.S. New Capital Complex, District – West Tripura, Pin-799006.

.....Respondent(s);

|                                                     |                                                                                                                                                                                        |     |    |  |   |
|-----------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|----|--|---|
| For the Petitioner(s)                               | : Mr. Arijit Bhaumik, Advocate,<br>Ms. Ishpa Chakma, Advocate.                                                                                                                         |     |    |  |   |
| For the Respondent(s)                               | : Mr. M. Debbarma, Addl. G.A.<br>[In WP(C) No.361/2025],<br>Mr. D. Sarma, Addl. G.A.<br>[In WP(C) No.467/2025],<br>Mr. D. Bhattacharya, Sr. Advocate,<br>Mr. A. Chakrabarti, Advocate. |     |    |  |   |
| Date of hearing and delivery<br>of Judgment & Order | : 23.03.2026                                                                                                                                                                           |     |    |  |   |
| Whether fit for reporting                           | : <table><tr><td>YES</td><td>NO</td></tr><tr><td></td><td>√</td></tr></table>                                                                                                          | YES | NO |  | √ |
| YES                                                 | NO                                                                                                                                                                                     |     |    |  |   |
|                                                     | √                                                                                                                                                                                      |     |    |  |   |

**HON’BLE MR. JUSTICE S. DATTA PURKAYASTHA**  
**JUDGMENT & ORDER (ORAL)**

Heard learned counsel of both sides.

Both the petitions were heard together and are being disposed of by this common judgment & order as identical facts and laws are involved in both the petitions.

**[2]** In WP(C) No.361 of 2025, the petitioner joined to the post of ‘Tracer’ under the Public Works Department (R&B), Government of Tripura on 01.06.1990 in the pay scale of Rs.970-2400 plus other allowances as admissible. The petitioner completed ten years of his service without promotion on 01.06.2000, and accordingly, he was extended the benefit of CAS-I with effect from 01.06.2000. However, there was practically no financial benefit provided to him as at that time his basic pay was equal to the next higher grade. On 14.09.2009, the Finance Department, Government

of Tripura issued one memorandum (Annexure-2) wherein it was reflected that few cases were noticed where the employee got the benefit of higher pay scale/ higher grade pay scale under CAS during the period 01.01.1999 to 31.12.2005 but without any change in the basic pay and even without any change of DNI for the reason that at the relevant time scale slab of lower pay scale and higher pay scale / higher grade pay scale became exactly equal and the date of increment and date of CAS also fall on the same date. In these cases, while clarifying the confusion whether such cases would be treated as consumption of ACP for determining eligibility for providing future benefit under ACP, it was observed that as the basic pay of the employee on the concerned date had not been changed at the time of such CAS movement and also under the process, DNI also had not been changed, it would not be counted as consumption of ACP while determining eligibility for future ACP. The said clarification was later on withdrawn by another memorandum dated 16.01.2012 (Annexure-5). However, it was also mentioned that the past cases where ACP-I had been granted to any employee in such cases needed not be re-opened. This clarification is also uniformly applicable in cases of movement under CAS from other pre-revised lower scales to higher pre-revised pay scales under the TSCS (RP) Rules, 1999. Therefore, the benefit of ACP-I which was extended to the present petitioner was protected. The petitioner went on retirement on 31.01.2025 from the said post without any promotion.

**[3]** The petitioner, during his career, got the CAS-II on 01.06.2007 on completion of seven years of service from the date of said CAS-I and the benefit of 3<sup>rd</sup> ACP was extended to him with effect from 01.06.2015 on completion of further eight years of service. But after he went on retirement

while calculating his pensionary benefits, the office of the Accountant General noted alleged anomaly in his pay fixation mentioning said notification dated 16.01.2012 (Annexure-5) and according to them, his 1<sup>st</sup> ACP, 2<sup>nd</sup> ACP and 3<sup>rd</sup> MACP ought to have been calculated from 01.01.2006, 01.01.2013 and 01.01.2021 respectively. Accordingly they reduced his last basic pay to Rs.58,800/- from Rs.64,500/-. They also kept 1/4<sup>th</sup> of DCRG withheld. His pensionary benefits was released treating his last basic pay to be Rs.58,800/-.

[4] In WP(C) No. 467 of 2025, the petitioner joined to the post of Lower Division Clerk (for short, LDC) on 23.08.1990 under the Public Works Department (DWS), Government of Tripura, similarly with pay scale of Rs.970-2400/- plus other allowances as admissible. On completion of ten years of his service without any promotion, he was given the benefit of CAS-I with effect from 25.08.2000, 2<sup>nd</sup> ACP with effect from 25.08.2007 and finally 3<sup>rd</sup> ACP with effect from 25.08.2015. He went on retirement on 31.03.2022. However, while determining his pensionary benefits, the office of the Accountant General based on said circular provided his 1<sup>st</sup> ACP with effect from 01.01.2006, 2<sup>nd</sup> ACP with effect from 01.01.2013 and 3<sup>rd</sup> ACP with effect from 01.01.2021 and reduced his last pay to Rs.53,800/- from Rs.57,300/-. Similarly his 1/4<sup>th</sup> of DCRG was also withheld. His pensionary benefits was also released treating his last basic pay to be Rs.53,800/-. Regarding reduction of basic pay and withholdment of such DCRG, both the writ petitions are filed.

[5] During hearing, learned counsel, Mr. Arijit Bhaumik, submits that identical matter is already decided by this Court in case of **Sri Sukanta Gupta versus the State of Tripura and others [WP(C) No.50 of 2019]**

decided on 11.07.2019 which was also upheld by the Division Bench of this Court on appeal vide judgment dated 25.11.2022 passed in WA No.37 of 2020 in between **Sri Sukanta Gupta versus the State of Tripura and others** by dismissing the appeal. Learned counsel, therefore, prays for allowing both the writ petitions in the line of judgment passed in said WP(C) No.50 of 2019.

[6] Learned senior counsel, Mr. D. Bhattacharya, representing the office of the Accountant General and learned Additional Government Advocate, Mr. M. Debbarma, representing the respondents-State in WP(C) No.361 of 2025 as well as learned Additional Government Advocate, Mr. D. Sarma, representing the respondents-State in WP(C) No.467 of 2025 submit that the fixation of pay of the petitioners were changed based on the said notification dated 16.01.2012 [Annexure-5 of WP(C) No.361 of 2025] as the benefit extended by notification dated 14.09.2009 [Annexure-2 of WP(C) No.361 of 2025] was withdrawn by the State. They also submit that in WP(C) No.50/2019, the present petitioners were not a party, and therefore, the petitioners cannot take benefit of said judgment. However, all the learned counsel agree to the point that in the matter of interpretation of the rules, whatever is decided in the said case, they are not contending anything against it because the said judgment has reached the finality between the parties of that case.

[7] This Court has considered the submissions of both sides and also has gone through the relevant materials placed in the record. It appears from the said judgment passed in WP(C) No.50 of 2019 that the petitioner in said case was appointed on 07.11.1992 as LDC and he retired from service on 31.01.2018 from the said post without getting any promotion. Learned

Writ Court took note of sub-Rule 7 of Rule 10 of the ROP Rules, 2009 regarding extending benefit of one advance increment for fixation of pay of employees as per the Rules, 2009 and of sub-Rule 8 of Rule 10 of the ROP Rules, 2009 which further clarified that the government employees who had got the benefit of CAS under TSCS (Revised Pay) Rules, 1999 between the period 01.01.1999 to 31.12.2005 moving to the promotion scale without having benefit of FR 22(I)(a)(1) but got/would get functional promotion in the same pre-revised pay scale or to the revised pay structure corresponding to the same pre-revised pay scale after coming over to the revised pay scale, and held that they would be entitled to get the benefit of one increment under revised structure at the time of functional promotion in the same pay scale and finally observed as follows:

“[18] Therefore, it is declared that the petitioner was not entitled to the benefit of the said increment in view of the memorandum dated 16.01.2012. But, at the same time, the analogy as extended by the respondent No. 5, the Accountant General (A&E) Tripura, is not acceptable to this court. Their observation exudes pedantic view for existence of the rules which provide the regulation of pay. Sub Rule 1 of Rule 10 is so unambiguous that it cannot be applied in other manner, as indicated by this court. However, for dispelling any sort of confusion, it is stated that the petitioner was entitled to CAS-1 after 10 years of service even if they did not generate any financial benefit but after 17 years of service petitioner was entitled to the second ACP which was granted in favour of the petitioner and similarly the petitioner was entitled to the third ACP on completion of 25 years of service in the manner as stated above. Therefore, there is no illegality in release and consumption of those ACPs as released in favour of the petitioner. Therefore, from the pay of the petitioner only that increment which was released by the office order 08.09.2010 is liable to be deducted but this court in view of State of Punjab Vs. Rafiq Masih reported in (2014) 8 SCC 883, where the apex court has categorically stated that if any amount is released at the time of fixation of pay in favour of any employee, if such mistake is not corrected within five years from the date of such

release for category of employees particularly for those who are borne in the Group-III & IV, that shall be recovered from them.

[19] In view of that the principle of law as laid by the apex court, the respondents are directed not to recover any amount from the petitioner the amount that has been received by him in excess for release of one increment. However, the respondents are given liberty to determine the last pay in view of the observation made hereinabove within a period of two months from the day when a copy of this order shall be placed by the petitioner and release all other retiral benefits within three months therefrom without fail.”

[8] The Court in said writ petition clearly observed that petitioner in said case was entitled to CAS-I after 10 years of service even if it did not generate any financial benefit and then after 17 years of service he was entitled to the second ACP and similarly on completion of 25 years of service he was entitled to third ACP. Therefore, there is no illegality in computation of those ACPs as released in favour of the petitioners earlier. It is stated in both the writ petitions that in view of the memorandum dated 14.09.2009, already benefit of one increment was provided to both the petitioners w.e.f. 01.01.2006. However, as indicated earlier, the coordinate Bench of this Court in view of law laid down by the Apex Court in **State of Punjab versus Rafiq Mashi [(2014) 8 SCC 883]** observed in said case that no recovery of any excess amount paid due to granting of said one increment to the said petitioner cannot be recovered but the respondents were given liberty to correct the last pay of the said petitioner accordingly. The Division Bench in said WA No.37 of 2020 also similarly observed that respondents would not recover any amount from the petitioner that had been received by him in excess, for release of pension, however, they would be at liberty to determine the pension according to the last pay of the petitioner after excluding the benefit accrued out of one increment in view of the office order

dated 08.09.2010. Learned counsel, Mr. Bhoumik, submits that though the benefit of one increment which was released to the present petitioners from 01.01.2006, is liable to be withdrawn but no recovery can be made from the petitioners for that purpose rather their last pay may be corrected accordingly.

[9] As the benefit provided to the petitioners as per notification dated 14.09.2009 was protected in the subsequent notification dated 16.01.2012 and also the matter is already covered by above said two decisions of this Court and said judgments have also reached the finality and are binding on the parties, these writ petitions are accordingly disposed of with direction that the benefits of three CAS/ACP as were granted by the State-respondents will remain un-altered without giving any effect to the proposal of the office of Accountant General for changing of the dates of their 1<sup>st</sup> ACP, 2<sup>nd</sup> ACP and 3<sup>rd</sup> MACP to 01.01.2006, 01.01.2013 and 01.01.2021 respectively. However, while fixing the last pay of the petitioners, the benefit as was provided to them under one increment on 01.01.2006 may be withdrawn. It is also directed that no recovery would be made from any of the petitioners regarding excess payment made due to granting benefit of said increment from 01.01.2006 in view of law laid down by Supreme Court in case of **Rafiq Mashi (supra)**. The respondents are given liberty to regularize the matter of fixation of last pay of the petitioners for determination of pensionary benefits of the petitioners, within two months from the date of receipt of copy of this order. Arrear, if any, shall be paid to the petitioners within that period along with interest at the rate of 7% per annum from the respective dates when the same fell due. Similarly, rest amount of DCRG also shall be released within that period of two months to

the petitioners with similar rate of interest subject to any adjustment required to be made after final fixation of their last pay.

With such observations and directions, the instant writ petitions are disposed of. Pending application(s), if any, also stands disposed of.

**JUDGE**

