

**THE HIGH COURT OF TRIPURA
AGARTALA**

W. P.(C) No.147 of 2008

Sri Makhan Lal Das,
son of late Kshetra Mohan Das,
resident of Dhaleswar Road No.10,
P.O. Dhaleswar,
P.S. East Agartala,
Agartala, West Tripura

.....**Petitioner**

- Vs -

1. The State of Tripura,
represented by the Commissioner & Secretary,
to the Government of Tripura,
GA (P & T) Department,
Agartala, West Tripura
2. The Principal Secretary,
Department of Finance,
Government of Tripura,
Agartala, West Tripura
3. The Deputy Secretary,
Department of Finance,
Government of Tripura,
Agartala, West Tripura
4. Accountant General (A & E),
Agartala, West Tripura

.....**Respondents**

**B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the petitioner	: Mr. S. Deb, Sr. Advocate Mr. S. C. Das, Advocate
For the respondent Nos.1, 2 & 3	: Ms. A. S. Lodh, Addl. GA
For the respondent No. 4	: Mr. P. K. Biswas, ASGI
Date of hearing and Delivery Judgment and order	: 26.02.2015
Whether fit for reporting	: YES / NO

Judgment and Order (Oral)

Heard Mr. S. Deb, learned senior counsel assisted by
Mr. S. C. Das, learned counsel appearing for the petitioner as well
as Ms. A. S. Lodh, learned Addl. GA appearing for the respondent

Nos.1, 2 & 3 and Mr. P. K. Biswas, learned ASGI appearing for the respondent No. 4.

02. By means of this writ petition, the petitioner has challenged the order dated 07.05.2005, Annexure-P/5 to the writ petition and the notification dated 16.11.2005, Annexure-P/6 to the writ petition, whereby a sum of Rs.46,179/- has been sought to be recovered from the petitioner's Death-Cum-Retirement-Gratuity, 'DCRG' in short.

03. The undisputed fact as appears from the record is that the petitioner initially entered in the service as a member of Tripura Junior Civil Service (TJSC) on 15.07.1977 and on 01.10.1979 he was absorbed as the member of TCS Grade-II. Thereafter, on 02.02.1991, the petitioner was promoted to the TCS Grade-I. On 23.10.2001, the petitioner was transferred and posted as the Director, Handloom, Handicrafts and Sericulture by the notification dated 23.10.2001, Annexure-P/1 to the writ petition. On 01.11.2001, his pay was fixed at Rs.14,150/- against the said post of Director, Handloom, Handicrafts and Sericulture based on the provisions of Rule 3(d) of the Tripura State Civil Services (Revised Pay) Rules, 1999 with special reference to its Annexure-B. The provisions postulate that the officers appointed to hold the post of Director or Inspector General of Prisons will be allowed higher scale of Rs.14150-20000/- for the period of holding such ex-cadre posts. There is no ambiguity in the rule. The said scale would only be applicable for the ex-cadre post of Director or Inspector General of Prisons.

04. There is no dispute even that the post of the Director, Handloom, Handicrafts and Sericulture at the relevant point of time was not a duty post under the TCS Grade-I and as such, the competent authority has fixed the pay of the petitioner in the said scale of Rs.14,150-20,000. It is apparent from the order dated 21.11.2001, Annexure-P/2 to the writ petition, the petitioner was given the benefit of Rs.14,150/- on 01.11.2001. On 01.01.2002, it appears that the pay of the petitioner against the said post was fixed at Rs.15,150/- wherefrom the dispute arises. Thereafter, on 01.01.2005, the petitioner was favoured with the pay of Rs.16,400/-. The pay definitely includes the yearly increment @ 450/- as shown in the scale of pay. The release of the pay at Rs.16,400/- is available from the Pay etc. Regulation Slip (provisional) dated 11.01.2005, Annexure-P/4 to the writ petition. But by the order dated 07.05.2005, Annexure-P/5 to the writ petition, it has been pointed out that the petitioner had been drawing the excess amount. It had been further noted that the statement of recovery be sent to the department, meaning the Department of Finance, Government of Tripura.

05. However, such statement of recovery is available neither with the writ petition nor with the counter affidavit filed by the Accountant General, Tripura or the State respondents including the Department of Finance. But from the notification/communication dated 16.11.2005, Annexure-P/6 to the writ petition, it transpires that such statement was prepared. From the Finance Dept. communication was made to the Accountant General, A&E, Tripura, Agartala on 16.11.2005, Annexure-P/6 to the writ

petition wherefrom it transpires that the petitioner had overdrawn a sum of Rs.46,179/- and that amount had been proposed to be recovered from the balance amount of the DCRG. Both these orders dated 07.05.2005 Annexure-P/5 to the writ petition and the communication of the Finance Department to the Accountant General, A&E, Agartala on 16.11.2005, Annexure-P/6 to the writ petition are under challenge in this writ petition.

06. Mr. Deb, learned senior counsel appearing for the petitioner has submitted that on 01.01.2002 when the pay was fixed at Rs.15,500/- that was so fixed on releasing of one advance increment in terms of the FR-22(1)(a)(1) as the petitioner was promoted to the post of higher responsibility. He has further submitted that the Tripura State Civil Services (Revised Pay Rules) 1999 had undergone some changes by the Tripura State Civil Services (Revised Pay) 6th Amendment Rules, 2004, Annexure-R/1 to the counter affidavit filed by the State respondents. On bare perusal of the notification dated 20.11.2004, Annexure-R/1 to the counter affidavit, it surfaces that:

"Officers appointed to hold the post of Director or Inspector General of Prisons will be allowed higher scale of Rs.14150-20000/- for the period of holding such "ex-cadre posts" appearing below Table-8 of Annexure-'B' to the TSCS (Revised Pay) Rules, 1999 shall be substituted by the following foot note:

"TCS Gr-I (Selection Grade) Officers shall be entitled to the scale of pay of Rs.14150-20000 when they are posted as Director/Inspector General of Prisons."

The said amendment has been given retrospective effect from 01.01.1996, meaning from the date when Tripura State

Civil Services (Revised Pay) Rules, 1999 was given effect to. The amendment as well would take its effect from the same date.

07. While responding to the submissions of Mr. Deb, learned senior counsel appearing for the petitioner, Ms. A. S. Lodh, learned Addl. GA has submitted at the outset that for the purpose of recovery, the Tripura State Civil Services (Revised Pay) 6th Amendment Rules, 2004 was never applied. The petitioner was wrongly given the pay of Rs.15,150/- on 01.01.2002 as the petitioner was not promoted to that post. He was merely posted there. As such, he was not entitled to get any additional benefit whatsoever. An additional sum of Rs.450/- the petitioner had been drawing wrongly since 01.01.2002 and that has culminated into the accrual of the sum of Rs.46,179/-.

08. Ms. A. S. Lodh, learned Addl. GA has also referred a decision of the apex court in ***Chandi Prasad Uniyal and Ors. vs. State of Uttarakhand and Ors.*** reported in **2012 AIR SCW 4742** where the apex court has enunciated the law holding that any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships, but not as a matter of right. In such situations, law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment. Recovery of the excess public money paid cannot be limited only to the cases of fraud or misrepresentation. Concept of fraud or misrepresentation is not applicable to such situation. Excess payment made to employees due to wrong pay fixation is liable to be recovered. Moreso when there is clear stipulation in the

fixation order that in case of wrong/irregular fixation the institution in which the employee works would be responsible for recovery of over payment made.

09. It is to be examined that whether for the petitioner's posting to the post of the Director of the Handloom, Handicrafts and Sericulture, he was entitled to get any additional/advance increment to his pay. Mr. Deb, learned senior counsel has referred to the notification under No.F.6(1)-FIN(PC)/98 dated 24.03.2000 of the Government of Tripura in the Finance Department in this respect which stipulates, inter alia, as under:

"(a) The mode of pay fixation along with DNI under provisions of F.R. 22 C and F.R. 22(a)(1) as incorporated in the Tripura State Civil Services (Revised Pay) Rules, 1999 shall be substituted by the provisions "FR-22 – (I)(a)(1) and "FR-22(1)(a)(2)" respectively consequent upon the adoption of Fundamental (Tripura Amendment) Rules, 1999 issued in Finance Department's Notification No.F.19(1)-Fin(G)/83 dated 03-10-1999.

(b) The substituted provision of F.R.22(I)(a)(I) shall be application in cases of promotion/appointment to another post(s) with higher/same pay scale, provided such posts carry duties and responsibilities of greater importance than those attached to the post held by him before promotion as per Recruitment Rules Date of Next Increment (DNI) along with the scope for exercising option shall be regulated as per provision of F.R. 22(I)(a)(I).

(c) The substituted provision of F.R.-22(I)(a)(2) shall be applicable in cases of movement to higher/next higher pay scale under graded pay scale/CAS (Modified) and also in cases of appointment to another post(s) with same pay sale, provided such posts do not carry duties and responsibilities of greater importance, than those attached to the post held by him before appointment to new post as per Recruitment Rules Date of Next Increment (DNI) along with the scope for exercising option shall be regulated as per provision of F.R.22(I)(a)(2).

3. The posts outside cadre services who were directly recruited in the un-revised pay scale of Rs.2100-3000 (SL)-5000/- (revised to Rs.7800-15,100/-) shall get

revised pay scale of Rs.10,000-15,100/- as CAS-I after completion of 4(four) years of service in the respective post as applicable to the Cadre Services.”

10. It is clear that certain changes have been made in FR 22 C and FR 22a(1). Now the release of the advance increment is only restricted to making good of that part of the pay which may fall less than what an officer who has been promoted to the post of higher responsibility was drawing in the feeder post at the time of his promotion. No benefit under provision of FR 22(1)(a) can be availed for posting of the nature as made in the case of the petitioner.

11. Having held so, this Court does not find any infirmity in the impugned order and the communication and hence this writ petition stands dismissed. However, in the circumstances there shall be no order as to the costs.

JUDGE

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