THE HIGH COURT OF TRIPURA
AGARTALA

WP(C) NO.242 OF 2010

Sri Dipak Lal Ghosh,
Son of Late Dinesh Chandra Ghosh,
Rudradyuti Co-Operative Housing Society Ltd.,
Baisnabghata, Patuli Township, Block Q, Plot
No.69, Flat A 2, P.O. Panchasayar,
Kolkata-700094.

.... *Petitioner*

- Vs –

1. Tripura Board of Secondary Education,
To be represented by the President,
Tripura Board of Secondary Education,
Pandit Nehru Complex, Gurkhabasti, Agartala,
P.O. Kunjaban, District-West Tripura.

2. The Secretary,
Tripura Board of Secondary Education,
Pandit Nehru Complex, Gurkhabasti, Agartala,
P.O. Kunjaban, District-West Tripura.

3. The State of Tripura,
To be represented by the Secretary,
Finance Department,
Government of Tripura,
New Secretariat Complex,
Khejurbagan, Agartala,
P.O. Kunjaban, P.S. East Agartala,
District – West Tripura.

4. The Commissioner-cum-Secretary,
Finance Department,
Government of Tripura,
New Secretariat Complex,
Khejurbagan, Agartala,
P.O. Kunjaban, P.S. East Agartala,
District- West Tripura

.... *Respondents*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE S.C. DAS

For the petitioner	:	Mr. P. Roy Barman, Advocate Mr. S. Bhattacharjee, Advocate
For respondent Nos.1 & 2	:	Mr. B. Banerjee, Advocate

For respondent Nos.3 & 4	:	Mr. S. Chakraborty, Addl. G.A.
Date of hearing and delivery of Judgment & order	:	**21.07.2015**

Whether Fit for Reporting :

Yes	No
	√

JUDGMENT & ORDER(ORAL)

(Deepak Gupta, C.J.)

By means of this petition the petitioner has prayed that his retiral benefits which have been wrongly withheld be paid to him.

2. The undisputed facts are that the petitioner was earlier an employee of the Agriculture Department of the Government of Tripura. He was offered appointment as Deputy Secretary in the Tripura Board of Secondary Education(TBSE) and joined as such on 30.04.1982. Later he was allowed to be permanently absorbed in the Board *w.e.f* 01.11.1986. The petitioner retired from service on attaining the age of superannuation on 31.01.2000. According to him, his retiral benefits had not been paid to him and he filed a writ petition being WP(C) No.417 of 2002 which was disposed of on 10.02.2003.

It would be pertinent to mention that this writ petition was disposed of without the reply of the TBSE. Since the reply had not been filed and the learned Judge felt that since it was a petition relating to retiral benefits, no further adjournment could be granted and the oral request was rejected. However, the only direction was that all retiral benefits of the petitioner including regular pension be finalized within a period of 60(sixty) days and the gratuity which is payable be also disbursed within this period.

Thereafter, the TBSE filed an application seeking modification/clarification of this order. This application remained pending for five years. In this application it was stated by the TBSE that in fact a lot of overpayment had been made to the petitioner in respect of his pay, allowances, etc. and these were to be adjusted from his pension, gratuity, etc. The learned Single Judge dealing with this application passed the following order:

> *"Upon hearing the learned counsel for both the sides, Accountant General, Tripura is directed to release the current pension immediately effective from the month of August, 2000. For this purpose, 'TBSE' shall forward the proposal for payment of pension to the Accountant General, Tripura within 2(two) weeks from today. For the previous period, the pension shall be released after resolving the dispute regarding excess payment."*

3. The order of the learned Single Judge was clear that as far as the pension was payable that could not be stopped and the current pension may be paid but as far pension for the previous period was concerned that was to be paid after resolving the dispute regarding excess payment.

4. The TBSE prepared a due and drawn statement in respect of the petitioner and found that ₹3,46,605/- was due and payable to him. However, this due and drawn statement was sent to the Finance Department which raised three objections. The first objection was that overpayment had been made to the petitioner by giving him benefit of Career Advancement Scheme (CAS) to which he was not entitled. We are clearly of the view that even if the petitioner was given such benefit and he was not entitled to the benefit, this benefit having been given in the year 1999 and no notice having been issued to the petitioner during his service, the Department cannot wake up after 15/20 years and then claim that excess payment has been made. Therefore, we hold that the excess amount of ₹76,758/- cannot be recovered from the petitioner.

Next objection of the Finance Department is that an amount of ₹95,592/- has been paid excess on account of leave salary. When the petitioner was absorbed in the Board, the State Government paid 180 days salary as cash equivalent which was deposited to the Board. This was withdrawn by the petitioner. We are doubtful whether he could withdraw the amount because an employee is entitled to encash his leave only at the time of retirement except for 10 days encashment of leave permitted during the employment. However, since that leave encashment was permitted and nobody has questioned that we are not going to that aspect of the matter. The whole problem arises that the petitioner in addition to leave encashment amount for 180 days deposited by the State also claimed leave salary for 60 days which amounted to ₹30,256/-. The petitioner also claimed leave salary of 27 days which would amount to ₹13,525/- but was actually wrongly calculated as ₹1,39,373/-. Therefore, an excess payment of ₹95,592/- was admittedly made to the petitioner who was Deputy Secretary of TBSE at that time. He received that money which in our opinion he was not entitled to receive because he had not even retired and there is no question of encashment of leave salary at that stage. Therefore, this Department is definitely entitled to recover ₹95,592/- from the dues of the petitioner. Even with regard to the excess payment due to provisional pension the prevention being only provisional. If any excess payment has been made that has to be adjusted from the future pension and the Department cannot be stopped from doing that even after making this adjustment.

5. In view of the above discussions we dispose of the writ petition with the following directions:

(a) out of the total amount due and payable to the petitioner as found by the Department itself *i.e.* sum of ₹3,46,605/-. The Department shall be entitled to recover an amount of ₹95,592/- along with interest @6 percent per annum from the date when this excess payment was made till date of retirement of the petitioner.

(b) the petitioner has not been paid his retiral benefits soon after his retirement but in any event once the Court had ordered that the petitioner's claim should be settled in the year 2008 and the arrears if any shall be paid with interest @9 percent per annum from the date of the order of the learned Single Judge dated 11.08.2008, *i.e.* from the date the learned Single Judge had directed that pension be paid and said interest shall be payable till the date the actual payment was made or is made to the petitioner.

6. We, however, make it clear that now the Board has admitted that every employee is entitled to 300 days leave encashment and in case the petitioner is entitled to any further amount as leave encashment that will be adjusted against this amount of ₹95,592/-.

7. The writ petition is disposed of accordingly.

JUDGE **CHIEF JUSTICE**