

THE HIGH COURT OF TRIPURA
AGARTALA

WP(C) 15 OF 2012

Sri Dilip Kumar Daschaudhuri,
S/O. Late Dinesh Daschaudhuri,
Resident of Krishnanagar (Natunpalli),
Agartala, Post Office: Agartala-799001,
Police Station: Agartala West,
District: West Tripura, Tripura.

..... **Petitioner.**

- V e r s u s -

1. The State of Tripura,
represented by the Chief Secretary to the
Government of Tripura, Secretariat,
New Capital Complex,
Agartala-799006,
West Tripura, Tripura.
2. The Principal Secretary to the
Government of Tripura,
GA (AR) Department Secretariat,
New Capital Complex, Agartala-799006,
West Tripura, Tripura.
3. The Commissioner and Secretary to the
Government of Tripura,
Finance Department,
Secretariat, New Capital Complex,
Agartala-799006, West Tripura, Tripura.

..... **Respondents.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE U.B. SAHA

For the petitioner : Mr. D.K. Daschaudhuri,
Petitioner-in-person.

For the respondents : Ms. R. Guha, Advocate.

Date of hearing : 26.03.2015.

Date of judgment : 16.04.2015.

Whether fit for reporting : **YES.**

JUDGMENT & ORDER

(Deepak Gupta, C.J.)

The petitioner is a retired Judicial Officer. After his retirement, he was appointed as State Information Commissioner in the Tripura Information Commission and worked on the said post from 19-01-2006 to 11-10-2009, i.e. 3 years 8 months and 22 days.

2. The petitioner has claimed three reliefs. His first relief is that his pay and allowances should be identical to that of the Chief Secretary of the State and he has wrongly been denied the benefit of special allowances, such as special compensatory allowance and special duty allowance.

3. The second relief claimed by the petitioner is that additional pension for rendering service in the Information Commission should be paid to him. In this behalf, he contends that the State Chief Information Commissioner has been provided additional pension for the service rendered in the Information Commission. He has also placed reliance on the rules framed by some other States where the Information Commissioners are paid additional pension for the service rendered in the State Information Commission. Reference has been made to the rules of the State of Karnataka, State of Mizoram etc.

4. Lastly, the petitioner has claimed interest on the amounts belatedly paid to him. Though he ceased to hold the post of Information Commissioner on 11-10-2009, the dues were paid to him in January, 2013 after the filing of the present petition. The

petitioner has very fairly submitted that though there was some difficulty in revising the basic pay, DA and HRA before finalization of Judicial Pension of the petitioner which was done on 04-04-2011 and communicated to the respondents on 29-04-2011 even then the payment should not have been delayed any further.

Payment of special allowances as payable to the Chief Secretary:-

5. Section 16(5)(b) of the Right to Information Act, 2005 (hereinafter referred to as the Act) lays down that the pay, allowances and other terms of service of the State Information Commissioner shall be the same as that of the Chief Secretary to the State Government. Section 16(5)(b) of the Act reads as follows:-

“16.(5).The salaries and allowances payable to and other terms and conditions of service of—

(a) xxx xxx xxx

(b) the State Information Commissioner shall be the same as that of the Chief Secretary to the State Government:

Provided that if the State Chief Information Commissioner or a State Information Commissioner, at the time of his appointment is, in receipt of a pension, (other than a disability or wound pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the State Chief Information Commissioner or a State Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity:

Provided further that where the State Chief Information Commissioner or a State Information Commissioner if, at the time of his appointment is, in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his salary in respect of the service as the State Chief Information Commissioner or the State Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits:

Provided also that the salaries, allowances and other conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall not be varied to their disadvantage after their appointment.”

6. The stand of the State Government with regard to this stand of the petitioner is reflected in para-14 of the counter affidavit dated 03-11-2014 which reads as follows:-

“14. With reference to paragraph no.16 of the said Petition the answering Respondents state that, the Petitioner was paid HRA as per the Rules of the State Government of Tripura, as the Petitioner was appointed by the Governor of Tripura. The Petitioner is not entitled to get special duty allowance as this is given to Central Government Employees who have the liability of being transferred all over India, on posting to any station in the North Eastern Region.

Copy of the notification and/or Memo issued in this regard to All India Transfer Liability is annexed hereto and marked as Annexure R/5.

Save and except what are matters of records the answering Respondents deny and dispute anything contrary to or inconsistent with the statements made by them herein above.”

7. There is no merit in this contention. The State Information Commissioner is appointed under the Right to Information Act. His pay and allowances are governed by the provisions of the said Act which makes it clear that he should get the same pay and allowances as are payable to the Chief Secretary of the State concerned. Merely because the Chief Secretary belongs to on All India Service is no ground to reject the claim of the petitioner. The pay and allowances of the Chief Secretary after revision of the pay scales are as follows:-

<i>Particulars</i>	<i>Rates per month in Rs.</i>	<i>Remarks</i>
<i>Basic Pay</i>	<i>80000/- Fixed</i>	<i>Admissible w.e. from 01.01.2006</i>
<i>Dearness Allowance</i>	<i>At Central Rate</i>	<i>Rate of Central DA:</i> <i>Nil w.e. From 01.01.2006</i> 2% " <i>01.07.2006</i> 6% " <i>01.01.2007</i> 9% " <i>01.07.2007</i> 12% " <i>01.01.2008</i> 16% " <i>01.07.2008</i> 22% " <i>01.01.2009</i> 27% " <i>01.07.2009</i>
<i>Special Compensatory Allowance</i>	<i>Revised SCA:</i> <i>1500/- w.e. from 01.09.2008</i> <i>1875/- w.e. from 01.01.2011</i>	
<i>Special Duty Allowance</i>	<i>@ 12.5% of Basic Pay =10000/-</i>	<i>Revised DA is admissible w.e. from 01.09.2008</i>
<i>Special Allowance</i>	<i>@ 25% of Basic Pay =20000/-</i>	<i>Revised SA is admissible w.e. from 10.02.2009</i>
<i>House Rent Allowance</i>	<i>Normal rate is 10% of Basic Pay. Not admissible to CS as he was availing of Govt. accommodation</i>	<i>Revised HRA is admissible w.e. from 01.09.2008</i>
<i>The rate of House Rent Allowance admissible to IAS Officers working in Tripura in the event of their residing in own house is 10% of Basic Pay (Band Pay + Grade Pay)</i>		

8. Since Section 16 clearly provides that the pay and allowances of the State Information Commissioner are to be the same as that of the Chief Secretary, we fail to understand how this can be denied to the petitioner on the ground that he is being paid the allowances as per the rules of the Tripura Government. It is well known fact that the Chief Secretary of the State is normally one of the senior most IAS Officers of the State and, therefore, is a member of the Indian Administrative Service. The person holding the post of Chief Secretary is entitled to a number of allowances such as, special compensatory allowance, special duty allowance, special allowance, house rent allowance etc. and the incumbent holding the post of Information Commissioner is, as a matter of right, entitled to all these allowances. As far as the first issue is concerned, we decide the same in favour of the petitioner.

9. However, as far as the second claim of the petitioner that the State should be directed to allow pension for the period he served as State Information Commissioner is concerned, we are of the view that the same is without any merit. The petitioner relies upon the fact that the State has granted this benefit to the Chief Information Commissioner and urges that the same benefit on parity should be given to him also. We are not in agreement with this submission. The salary and emoluments of the Chief Information Commissioner are totally different. In terms of Section 16, the Chief Information Commissioner is to get the same emoluments as the Election Commissioner. The stand of the State

is that since the Election Commissioner has been provided pension, this benefit has been extended to the Chief Information Commissioner also. We are in agreement with the State that this benefit cannot, as a matter of right, be granted to the petitioner.

10. We are also not in agreement with the petitioner that merely because in some States, the Information Commissioners are granted pension for the period of service rendered by them, he is also entitled to such pension. The Right to Information Act does not make any reference to pension. It only deals with the salary of the Chief Information Commissioner and the Information Commissioners. It is for the State to decide whether it wants to pay pension or not. Merely because of the fact that in some States pension has been paid to the Information Commissioners does not vest any legal right in the petitioner to claim pension. Therefore, this prayer of the petitioner is rejected.

11. As far as interest is concerned, we are clearly of the view that the petitioner is entitled to interest at a reasonable rate on delayed payments. Therefore, we hold that on the amount already paid to the petitioner in January, 2013, the State Government shall be liable to pay interest @ 9% per annum with effect from 01-06-2011, i.e. after giving it a little more than one month's time to grant administrative approval after the finalization of the pension payable to the petitioner in Judicial Service was settled on 04-04-2011 till the payment was made in January, 2013. We further direct that the petitioner is entitled to all

allowances which were payable to the Chief Secretary to the State of Tripura at the time when he was serving as Information Commissioner as held by us above and this amount shall be paid along with interest @ 9% per annum from the date when the amount fell due till payment thereof. Both the amounts be paid to the petitioner latest by 31st July, 2015 failing which the State shall be liable to pay interest @ 12% per annum from today.

12. With these observations, the petition is disposed of. No order as to costs.

JUDGE

CHIEF JUSTICE