# THE HIGH COURT OF TRIPURA
# AGARTALA

*WP(C) NO.207 OF 2015*

**Ranjit Chandra Karmakar,**
S/O Late Shyama Charan Karmakar,
R/O Jail-Ashram Road, Dhaleswar,
Agartala, West Tripura,
P.O. Dhaleswar,
Pin-799007.

............ *Petitioner*

*- Vs –*

**1. The State of Tripura,**
to be represented by the
Principal Secretary-cum-Commissioner,
Department of Forest,
Government of Tripura,
New Secretariat Complex,
P.S. New Capital Complex,
P.O. Kunjaban,
Agartala, West Tripura,
Pin-799006.

**2. The Principal Chief Conservator of Forests,**
Government of Tripura,
Aranya Bhawan,
P.N. Complex, Gurkhabasti,
Agartala, West Tripura,
P.O. Kunjaban, Pin-799006.

**3. The Divisional Forest Officer(Research Divn.),**
Hatipara, Gandhigram, Agartala,
West Tripura,
Pin-799012.

**4. The Divisional Forest Officer,**
Manu Forest Division, Dhalai,
Ambassa, Dhalai Tripura,

**5. The Accountant General (A & E),**
Office of the Accountant General (A & E),
Agartala, West Tripura,
P.O. Kunjaban, PIN 799006.

**6. The Senior Accounts Officer,**
Office of the Sr. Deputy Accountant General(A&E),
Agartala, West Tripura,
P.O. Kunjaban,
Pin-799006.

…………. *Respondents*

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

| | | |
|---|---|---|
| For the petitioner | : | Mr. S. Bhattacharjee, Advocate<br>Mr. K. Nath, Advocate |
| For respondent Nos.1 to 4 | : | Mr. S. Chakraborty, Addl. G.A. |
| For respondents Nos.5 & 6 | : | Mr. A. Roy Barman, CGC |
| Date of hearing and delivery of Judgment & order | : | **12.08.2015** |
| Whether Fit for Reporting | : | Yes: √ / No: |

# *JUDGMENT & ORDER (ORAL)*

***(Deepak Gupta, CJ)***

This is a sad case where a person who has served the State for long years after retirement has been treated with such contempt and disdain as if he is a criminal.

**2.** The undisputed facts are that the petitioner joined Government service in the Forest Department of the State of Tripura and after 34 years of service he retired on attaining the age of superannuation on 31.03.2008. It is expected that when a person retires his retrial benefits should be settled in a period of six months prior to his retirement and immediately on his retirement the retirial benefits should be paid to him. As far as this case is concerned from the records we find that initially the office of the Accountant General sanctioned payment of all retirial benefits in favour of the petitioner on 30th May 2008. Thereafter, it appears that the Audit Officer raised certain objections with regard to some excess expenditure to the extent of Rs.74,584/- allegedly made by the petitioner in as much he had not deducted contractor's profit from the works carried out by a contractor. Because of this audit objection a communication was sent to the petitioner by the Divisional Forest Officer, Manu Forest Division, Dhalai and it was pointed out to the petitioner that Audit Department has raised an objection that excess expenditure of Rs.74,584/- has been incurred by the Department on account of non-deduction of contractor's profit. The petitioner was directed to recover the amount of Rs.74,584/- before 10.09.2008 and intimate compliance. This letter makes no sense. The petitioner had already retired from service on 31st March, 2008. How could he have recovered the amount Rs.74,584/- after he had retired. The recovery, if any, had to be done by his successor in office or by the DFO, Manu who issued this letter. We are again emphasizing that this letter was written by the DFO, Manu who in fact should have affected the recovery, if any.

**3.** Thereafter, the petitioner made various representations in which he denied that he was liable for any non-deduction of contractor's profits. Reference may be made to his first representation in this behalf, relevant portion of which reads as follows:

*"………All the construction work were done on the basis of estimate technically checked and approved by the D.F.O Manu. Sanction were issued on the basis of estimates. No instruction were issued either in sanction memo on in work order about deduction of contractor's profit as stated in the recovery order. Work given to the contractor issuing local quotations. rate approved by the D.F.O and work done.*

*The every items related constructional works like cement/rod/sand etc. were purchased by me, through short quotation and too were approved by the D.F.O. Manu. Bills of all works including M.B. were also checked and passed by the D.F.O. Manu. So, it can not be said that any excess of payment were made rather payment were made at per market rate prevailing during that time which consistence with P.W.D. schedule."*

**4**. He kept making representations that his retirial benefits may be fixed and the amount which had been withheld be paid to. It appears that this matter was not settled because on 26.12.2012 *i.e.* four years after the retirement of the petitioner, the Divisional Forest Officer, Forest Research Division, wrote a letter to the Sr. Accounts Officer, in which it is mentioned that "*this issue has not been settled till now*". On 27.08.2013, the Divisional Forest Officer wrote a letter in which it is mentioned that the petitioner, Shri Karmakar has accepted to recover the amount from his pending GPF Final withdrawal amount and therefore it had been decided to release his pensionery benefits. A copy of this communication was sent to the petitioner who immediately objected to this line in the previous letter and denied that he had ever agreed to such a proposal. Thereafter, the petitioner wrote a letter on 20th May, 2013 in which he stated that the amount of Rs.73,808/- may be recovered from his pending GPF Final withdrawal amount but he added a note, in the following terms:-

> *"…..I would like to request you to recover the amount from my pending GPF final withdrawal amount & accumulated Group Insurance subscription amount which in total makes an amount of ₹81586/-(₹73808 + ₹.7740)."*

However, at the bottom of the letter, the petitioner also made an endorsement to the Principal Chief Conservator of Forests wherein he stated as follows:

> *"1. The Principal Chief Conservator of Forests, Tripura, Agartala for his kind information please. I am going to make payment of the so called excess expenditure as was pointed out by the audit party only for finalization of my pension, but my earnest request to you is to ask the DFO, Manu for issue sanction for ₹ 74584/- and to make payment to me the same as for that I am not at all liable."*

The second part of the letter clearly indicates that the petitioner did not accept his liability to pay this amount but agreed that this amount of Rs.74,584/- may be deducted so that his pension may be finalized. He did not admit his liability to pay the amount and clearly stated that he is not liable to pay such amount. We can understand the agony of an employee who retired five years earlier, whose pension is not finally settled, who is deprived of all his retirial benefits and such a person would readily agree for deduction of this amount but this agreement was hedged with the condition that he is not liable to pay the amount and he only agreed for deduction so that his retirial benefits may be settled.

**5**. According to the petitioner, an inquiry was also held against the DFO, Manu, Sri Nirode Baran Debnath with regard to this very overpayment and Sri Nirode Baran Debnath was exonerated in the said inquiry. At this stage, we may mention that this petition first came up for hearing in 09.06.2015 and keeping in view the facts that retiral benefits were involved we had directed the respondents to file reply and had clearly mentioned that in case a reply is not filed by the next date then the petition shall be disposed of on the basis of the averments made therein. The case then came up before us on 22.07.2015 on which date at the request of the learned Addl. G.A., Mr. S. Chakraborty we had granted three weeks further time to file counter affidavit. Today also no counter affidavit has been filed and, therefore, we have to accept the averments made in the petition to be correct.

**6.** It is by now well settled law that pension and retiral benefits are not bounty but the right of an employee. The Government has no right or authority to deduct any amount from the retiral benefits except in accordance with law. No inquiry has been held against the petitioner. Even his representation has not been decided till date. He has denied his liability to make the payment. The Government has neither initiated any disciplinary proceedings against the petitioner nor has taken a conscious decision to recover this amount from the petitioner. Merely because the audit party has raised an objection is not by itself a ground to hold that the recovery has to be made. Audit objections are raised on various occasions. Thereafter, the matter has to be inquired whether the audit objection is correct or not. No such inquiry has been conducted and therefore we have no hesitation in holding that the deduction on this amount of Rs.74,584/- is totally illegal and not in accordance with law. We are constrained to observe that for five long years the petitioner who had served for 34 years in the Department and who by now have become 63 years old was denied the benefit of pension.

**7.** We, therefore, allow the writ petition and direct the Government to refund the amount of Rs.74,584/- along with interest at the rate of 9 percent per annum from the date when the petitioner retired till payment is made to the petitioner. The amount be paid latest by 31st December,2015.

**8.** The writ petition accordingly stands disposed of.

**JUDGE** **CHIEF JUSTICE**