

THE HIGH COURT OF TRIPURA
AGARTALA

W. P. (C) No.349 of 2014 &

W. P. (C) No.481 of 2014

In W. P. (C) No.349 of 2014

Sri Subhash Chandra Saha,
son of late Jogesh Chandra Saha,
resident of Bardwali, near Milan Sangha,
P.O. AD. Nagar- 799003, Agartala,
Dist. 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
2. The Secretary to the Government of Tripura,
Finance Department
3. The Secretary to the Government of Tripura,
Food, Civil Supplies and Consumer Affairs Department

all of New Capital Complex, P.O. Kunjaban -799006, Agartala,
P.S. New Capital Complex, District : West Tripura

4. The Director of Food, Civil Supplies and
Consumer Affairs, P.N. Complex, Gurkha Basti,
P.O. Kunjaban -799006, Agartala,
P.S. East Agartala, District : West Tripura, Tripura

.....Respondents

For the petitioner : Mr. P.Dutta, Advocate

For the respondents : Mr. S. Chakraborty, Addl. G.A.

In W. P. (C) No.481 of 2014

Shri Subrata Pal,
son of late Nripendra Mohan Pal,
a resident of Ramnagar Road No. 4,
P.O. Ramnagar, P.S. West Agartala,
Dist. West Tripura, Pin: 799002

.....Petitioner

-V E R S U S-

1. The State of Tripura,
through the Principal Secretary to the
Government of Tripura, Food, Civil Supplies and

Consumer Affairs Department, New Capital Complex,
P.O. Agartala Secretariat- 799010,
Agartala, West Tripura
(for self and for the State of Tripura)

2. The Secretary to the Government of Tripura,
Finance Department, New Capital Complex,
P.O. Agartala Secretariat-799010,
Agartala, West Tripura
3. The Director, Food, Civil Supplies and
Consumer Affairs,
Pandit Nehru Complex, P.O. Kunjaban,
Agartala, West Tripura, Pin: 799006

.....Respondents

For the petitioner	: Mr. S.M.Chakraborty, Sr. Advocate, Ms. B. Chakraborty, Advocate
For the respondents	: Mr. S. Chakraborty, Addl. G.A.

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

Date of hearing and delivery of judgment and order	: 29.05.2015
Whether fit for reporting	: YES

Judgment and Order (Oral)

Both the writ petitions being WP(C).No. 349 of 2014 and WP(C).No. 481 of 2014 are tied up together for disposal by a common judgment inasmuch as an identical question is involved in these writ petitions.

[2] Heard Mr. S M. Chakraborty, learned senior counsel, assisted by Ms. B. Chakraborty, learned counsel appearing for the petitioner in WP(C).No. 481/14 and Mr. P. Dutta, learned counsel appearing for the petitioner in WP(C).No. 349/14. Also heard Mr.

S. Chakraborty, learned Addl. G.A. appearing in both the writ petitions for the respondents.

[3] There is no dispute that both the petitioners have retired from the Grade I of the Tripura Judicial Service (TJS in short) and they are getting their pension and other ancillary benefits for their retirement on superannuation. Thereafter, on their participation in the selection process they were appointed as the fulltime President of District Consumer Disputes Redressal Forum, West Tripura, Agartala. Even the tenure of the writ petitioner in WP(C).No. 481/14 came to end. In that vacancy, the petitioner in WP(C).No. 349/14 has been appointed as the fulltime President of District Consumer Disputes Redressal Forum, West Tripura, Agartala on observing the similar procedure of selection and he is still continuing in that post.

[4] Both Mr. S M. Chakraborty, learned Sr. Counsel and Mr. P. Dutta, learned counsel, appearing for the petitioners have unequivocally admitted that the appointment of the petitioners in the post of the President of the District Consumer Disputes Redressal Forum is not continuation or in extension of their previous appointment in the Grade I of the Tripura Judicial Service and hence they were/are not entitled to any protection of their pay and allowances in the appointment under reference. They have further stated that this is entirely a fresh appointment,

guided and governed by the provisions of Rule 3 of the Tripura Consumers Protection Rules, 1987.

[5] The grievance of the petitioners is identical. According to them they were/are not getting the salary in terms of the provisions of Rule 3 of the Tripura Consumers Protection Rules 1987, which stipulates as under :

3. SALARIES AND OTHER ALLOWANCES AND TERMS AND CONDITIONS OF THE PRESIDENT AND MEMBERS OF THE DISTRICT FORUM (SECTION 10(3) :-

- 1) The president of the District Forum shall receive the salary of the judge of a District Court if appointed on whole-time basis or an honorarium of Rs. 150/- per day if appointed on part-time basis. Other members if sitting on whole time basis, shall receive a consolidated honorarium of Rs. 2000 per month and if sitting on part time basis, a consolidated honorarium of Rs. 100/- per day for the sitting.
- 2) The president and the members of the District Forum shall be entitled for such travelling allowance and daily allowance on official tour as are admissible to Grade I officer of the State Government.
- 3) The salary, honorarium and other allowances shall be defrayed out of the Consolidated Fund of the State Government.
- 4) Before appointment, the president and members of the District Forum shall have to take an undertaking that he does not and will not have any such financial or other interests as is likely to affect prejudicially his functions as a member.
- 5) In addition of provisions of section 10(2), State Government may remove from the office, the president and member of a District Forum who :-
 - a) has been adjudged and insolvent, or
 - b) has been convicted of an offence which in the opinion of the State Government, involves moral turpitude, or
 - c) has become physically or mentally incapable of acting as such member, or

- d) has acquired such financial or other interest as it likely to affect prejudicially his functions as a member, or
- e) Has so abused his position as to render his continuance in office prejudicial to the public interest.

Provided that the president or member shall not be removed from his office on the ground specified in clauses (d) and (e) of the sub-rule (5) except on an inquiry held by State Government in accordance with such procedure as it may specify in this behalf and finds the member to be guilty of such ground.

- 6) The terms and conditions of the service of the President and the members of the District Forum shall not be varied to their disadvantage during their tenure of office.
- 7) Where any vacancy occurs in the office of the president of the District Forum, the senior-most (in order of appointment) member of District Forum, holding office for the time being, shall discharge the functions of the president until a person appointed to fill such vacancy assumes the office of the president of the District Forum.
- 8) When the president of the District Forum is unable to discharge the functions owing to absence, illness, or any other cause, the seniormost (in order to the appointment) member of the District Forum shall discharge the functions of the president until the day on which the president resumes the charge of his functions.
- 9) The president or any member ceasing to hold office as such shall not hold any appointment in or be connected with the management or administration of an organisation of which have been the subject of any proceeding under the Act during his tenure for a period of 5 years from the date on which ceases to hold such officer.

[Emphasis laid for reference]

[6] Both the learned counsel for the petitioners have submitted that the grievances of the petitioners fundamentally emanate from Sub-Rule 1 of Rule 3 of Tripura Consumers Protection Rule 1987, hereinafter, if required, would be referred to

as the rules. According to that Sub-Rule 1 of Rule 3 of the rules the president of the District Forum shall receive the salary of the Judge of a District Court if appointed on whole time basis or an honorarium of Rs. 150/- per day if appointed on part time basis. There is no dispute that the petitioners were/are appointed on full time basis and as such according to the learned counsel of the petitioners they were/are entitled to get salary of the Judge of the District Court but the petitioners were/are not, for squinted interpretation given that 'salary' but they were/are getting less salary than which they were or are entitled to.

[7] According to the respondents they were/are getting their salary in terms of the employment notice which has clearly mentioned that the person so engaged shall be entitled to receive pay based on the formula of 'last pay minus pension as per the State Government policy'. Since the terms and conditions of appointment for the post of President, West Tripura District Consumer Redressal Forum are clearly laid in the appointment notice dated 20.09.13 and the petitioners expressed their intention to be appointed in the post as per the notified terms and conditions in writing, the answering respondents have denied the statement alleging arbitrary determination of pay by the petitioners.

[8] Mr. Chakraborty, learned Addl.G.A. appearing for the respondents has contended that the petitioners were/ are appointed as the full time President of the District Consumer

Disputes Redressal Forum, West Tripura, Agartala for a terms of 5 (five) years or 65 (sixty five) years of age whichever is earlier. The petitioner in WP(C).No. 349/14 was appointed by the notification dated 02.12.13, **Annexure-2** to that Writ petition and whereas the petitioner in WP(C). No. 481/14, was appointed by the Notification dated 21.12.12 **Annexure-P2** to that writ petition. In both the Notifications it has been provided that for their appointment as the President of the District Consumer Disputes Redressal Forum, West Tripura, Agartala, their pay would be the last pay minus the pension as per the Government policy, in addition to other benefits as may be decided by the State Government. Other terms and conditions of the appointment will be governed as per the provisions of Tripura Consumers Protection Rules 1987 as amended from time to time. The stipulation that their pay would be the last pay minus the pension has generated the controversy, which has ultimately led to filing of these writ petitions for undoing the detriment as described by the petitioners. The law is well settled that by issuing the executive order the provisions of the statutory rules can neither be curbed nor be rendered otiose. Dominance of the statutory provisions is well acknowledged in the rule of law. Even no agreement or contract can be in conflict with the law. If there surges the controversy as to what would be the salary of the fulltime President of the District Consumer Disputes Redressal

Forum that may only be settled by the appropriate interpretation of the substantive provision in this regard available in the rules. As already reproduced, Rule 3 (1) of the rules categorically provides that the fulltime President of the District Consumer Disputes Redressal Forum shall get the salary of a Judge of District Court. The way the salary and other component have been conceived and implemented by the respondents, has indisputably caused denial of the entitlement in terms of Sub-Rule 1 of Rule 3 of the rules. Mr. Chakraborty, learned Addl. G.A. has strenuously contended that since the petitioners had/ have agreed to the condition of appointment which was made expressly published in the employment notification they are estopped to raise any further claims. In this regard, this Court is constrained to observe that the principle of estoppel never operates against the claim emerging from the provision of the statute. As such, this Court is not at all persuaded by the said objection raised by Mr. Chakraborty, learned Addl. G. A., appearing for the respondents. To set the controversy at rest forever, this Court is of the considered opinion that the salary of the petitioners would be fixed treating their appointments as the fresh and the fulltime appointment as the President of the District Consumer Disputes Redressal Forum. Their 'salary' shall be determined as par with the Judge of the District Court without having any nexus with their previous service or the last pay. As observed, the condition of

appointment as regards the salary cannot eclipse the statutorily provided salary. Thus their salary shall be counted from the respective day of their appointment as the fulltime President of the District Consumers Disputes Redressal Forum and their salary shall be determined in the scale of pay available for the Grade I of the Tripura Judicial Service with all allowances and other pecuniary benefits.

[9] For the purpose of mathematical representation that salary to be deduced in terms of the above be marked as **X**. But the fact cannot be denied that both the petitioners are receiving the pension and other ancillary benefits for their retirement on superannuation from the Grade I of the Tripura Judicial Service. They cannot receive both the salary of a District Judge for their appointment as the fulltime President of District Consumer Disputes Redressal Forum and the pension and other ancillary benefits for their retirement from the grade of the District Judge on superannuation. For averting any complication that may visit in future, this Court is of the considered opinion that the remittance in the form of the pension with ancillary benefits should not be frozen or disturbed. The pension with ancillary benefits the petitioners are receiving for the purpose of mathematical representation be indicated by **Y**.

[10] What the appointment notification of the Government has proposed for that purpose i.e. the last pay minus

pension is read down without interference with the other terms and conditions. It should mean and operate as that the petitioners' are even though entitled to get the salary package of a Judge in the District Court but they would be entitled to the pay-packet on deduction of the pension and other ancillary benefits as the petitioners would continue to receive the pension and other ancillary benefits as before. The mathematical representation would follow as under:

$$X-Y = Z$$

Z is what the petitioners would get at the end of every month till expiration of their respective tenures.

[11] Since the petitioner in the WP(C).No. 481/14 has vacated the post of the President of the District Forum, he would be entitled to the arrears in terms of the formula as provided above and the petitioner in WP(C).No. 349/14 in addition to the arrears in terms of the formula as above shall also be entitled to receive the said amount in every month till his tenure expires as the President of the District Consumer Disputes Redressal Forum, West Tripura, Agartala.

[12] Further, the respondents are directed to release the arrears of the petitioners in terms of the said formula within a period of 3 months from today. But the petitioner in WP(C) No. 349/14 shall receive with immediacy the pay-packet in terms of

the above formula till his tenure expires. The petitioners may, if they so desire, furnish the account of arrear to the Secretary to the Government of Tripura, Food, Civil Supplies and Consumer Affairs Department forthwith.

[13] With these observations and directions as stated, these writ petitions are allowed to the extent as indicated above. However, there shall be no order as to costs.

JUDGE

A. Ghosh.