

**THE HIGH COURT OF TRIPURA**  
**AGARTALA**

**W.P.(C) 51 of 2016**

**Smt. Sauravi Chakraborty,**  
wife of late Ashok Ghosh,  
daughter of late Debi Prasad Chakraborty,  
Quarter No.B-72, Police Line Quarters,  
P.O. & P.S.: A.D. Nagar, Agartala,  
District: West Tripura, PIN:799 003

..... Petitioner

- Vs -

- 1. The State of Tripura,**  
to be represented by the Secretary, Home Department,  
Government of Tripura, Secretariat Building, New Capital  
Complex, Agartala, West Tripura, PIN:799 010
- 2. The Director General of Police,**  
Government of Tripura,  
Office of the Police Headquarters,  
Fire Brigade Chowmuhani, Agartala,  
West Tripura, PIN:799 001
- 3. The Superintendent of Police(Procurement),**  
Government of Tripura,  
Office of the S.P, Procurement,  
A.D. Nagar, Agartala, West Tripura,  
PIN:799 003

..... Respondents

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

For the petitioner	:	Mr. P.K. Pal, Advocate
For the respondents	:	Mr. D.C. Nath, Advocate
Date of hearing and delivery of judgment and order	:	28.07.2016
Whether fit for reporting	:	NO

**Judgment and Order (Oral)**

Heard Mr. P.K. Pal, learned counsel appearing for the petitioner as well as Mr. D.C. Nath, learned counsel appearing for the respondents.

**02.** The undisputed fact is that, the petitioner has been working as the Dresser, Grade-III in the scale of pay of Rs.3200-6030/- in the Police Hospital. By operation of the Tripura State Civil Services (Revised Pay) Rules, 2009, the pay scale of the Dresser, Grade-III was revised to Pay band-2, Rs.5310-24,000/- with grade pay of Rs.1700/- from Rs.3200-6030/-. Accordingly, the petitioner's pay was fixed by the competent authority in the said pay band. Thereafter, on her completion of 10(ten) years of service, she was moved to a higher pay scale available to the Dresser, Grade-II with effect from 21.05.2009. As per the option exercised by the petitioner, her pay was fixed @ Rs.9,710/- with effect from 01.07.2009 in the Pay Band-2, Rs.5310-24,000/- with grade pay of Rs.2100/-. The petitioner was getting, according to her calculation, a less pay, but she continued to draw the less pay. The fixation, according to the respondents, was provisional and subject to finalization, but suddenly the petitioner's pay was modified in the ACP-1 and it has been fixed @ Rs.4,410/- with effect from 21.05.2009 instead of Rs.9,740/- with effect from 01.07.2009. The said fixation, according to the petitioner, was illegal and on such re-fixation, the respondent has sought to recover the excess amount that has been paid to the petitioner and has been calculated at Rs.30,938/-. That amount has been shown as overdrawn by the respondents and to recover the said excess amount it has been directed that from her pay the recovery be made in instalments @ Rs.1,000/- per month.

**03.** On 13.02.2015, the petitioner filed an objection to such direction to the respondent No.2 and urged not to deduct any amount

from her pay. But since that representation did not bring any positive result, the petitioner filed another representation on 06.04.2015 to the respondent No.1, which met the same fate. Now, the petitioner has challenged the said Order No.1585-87/F.2/Pay & Pay & others/Acctt/Proc/07 dated 09.02.2015 (Annexure-4 to the writ petition) by means of this writ petition.

**04.** By filing the counter-affidavit, the respondents have stated that since the petitioner is not entitled to get that amount, as has been paid to her by mistake, there is no illegality in recovering the said amount.

**05.** Mr. P.K. Pal, learned counsel appearing for the petitioner, has submitted that the prayer in this writ petition is restricted against the said impugned order of deduction dated 09.02.2015 (Annexure-4 to the writ petition). Mr. Pal, learned counsel has referred to a decision of the apex court in **State of Punjab And Others vs. Rafiq Mashi (White Washer)**, reported in **(2015) 4 SCC 334**, where the apex court has provided a guideline on recovery from the various categories of the Government employees in the following terms:

**"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:**

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).**
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.**

- (iii) **Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.**
- (iv) **Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.**
- (v) **In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.**

[Emphasis supplied]

**06.** In view of the said guideline, this court is of the considered opinion that the recovery from the petitioner's salary cannot be permitted as she cannot be blamed for drawal of any excess amount. Moreover, the petitioner is a Group-C employee and in view of the said guideline the petitioner falls within the category from where deduction cannot be made in the circumstances when no blame can be attributed to the employee for wrong fixation. Accordingly, the impugned order dated 09.02.2015 (Annexure-4 to the writ petition) is set aside and the respondents are prohibited from recovering any amount from the petitioner from her salaries by means of the impugned order or by any order for the same purpose. The amount already deducted shall be refunded to the petitioner within 3(three) months from today.

**07.** In the result, this petition is allowed and disposed of.

There shall be no order as to costs.

**JUDGE**