

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.495/2020

Sri Sudip Kumar Dhar

----Petitioner(s)

Versus

The State of Tripura & others

-----Respondent(s)

For Petitioner(s) : Mr. Raju Datta, Advocate.

For Respondent(s) : Mr. Bidyut Majumder, Asstt. S.G.,
Mr. Debalay Bhattacharjee, G.A.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

Order

26/11/2020

Rule.

Learned Government Advocate Mr. Debalay Bhattacharjee waived rule on behalf of the respondents No.1 to 5 and learned Asstt. S.G. Mr. Bidyut Majumder waived rule on behalf of respondent No.6.

Petitioner has challenged an order dated 21.11.2019 under which Superintendent of Police has asked the petitioner to refund an amount of Rs.24,80,011/-. Counsel for the petitioner pointed out that the said recovery was on account of the decision of the Division Bench in *Writ Appeal No.86 of 2018* and connected proceedings in case of *The State of*

Tripura & others vrs. Saroj Bhattacharjee dated 09.09.2019 from which following findings may be noted:

“38. However, challenge made to this batch of writ appeals preferred by the State to the extent of grant of arrears of salary and allowances is allowed. Consequently, the direction of the learned Single Judge in that batch of writ petitions granting arrears of salary and allowances and prayer for granting the same benefit in the present batch of writ petitions are rejected. We make it clear that the writ petitioners, whether they are retired or still in service, shall not be entitled to any arrear of salary whatsoever and their pay scales shall be fixed notionally. On the other hand, the order of the learned Single Judge directing the State to pay arrears of salary commensurate to their scales of pay as fixed by this Judgment is set aside.

39. In the result, the batch writ petitions filed before this Court are allowed, to the extent as indicated above, and the writ appeals filed by the State of Tripura are also allowed in part, in the above terms.

There shall be no order as to costs.

Pending applications, if any, stand disposed of.”

Counsel submitted that subsequently the present petitioner and some other petitioners had filed review petitions seeking recall of the said judgment of the Division Bench. He stated that the petitioner herein was

petitioner No.12 in Review Petition No.07 of 2020 in Writ Appeal No.146 of 2019 in which on 11.03.2020 the Court passed following order:

“These review petitions are filed by the original petitioners. They seek recall of a common judgment dated 09.09.2019 passed by the Division Bench in their respective Appeals by which part of the judgment of the learned Single Judge pertaining to back wages was reversed. They point out that there was considerable delay in filing such Appeal by the Government. Delay was condoned and Appeals were partially allowed without hearing any of the petitioners.

Mr. M. Debbarma, learned Additional Government Advocate was unable to refute the factual averments made by the counsel for the review petitioners. It appears that the common judgment of the learned Single Judge disposed of large number of petitions giving rise to multiple Writ Appeals at the hands of the Government. While considering such Appeals and disposing of them finally, the Division Bench had also decided these three Writ Appeals. In the process, opportunity of hearing was not granted to the review petitioners before condonation of delay or passing of the final orders in the Writ Appeals. Under the circumstances, the said order dated 09.09.2019 insofar as it concerns these three Writ Appeals, the same is recalled. Respective Writ Appeals are revived and shall be placed for hearing finally along with petition for condonation of delay on 18th of March, 2020 before this Bench.

Learned advocate for review petitioners would appear for the respondents in such Appeals, who shall be provided

copies of Writ Appeals and petition for condonation of delay by the State Government.

All review petitions are disposed of. Pending application(s), if any, also stands disposed of.”

When thus the base judgment on the basis of which the impugned recovery is raised, does not survive qua this petitioner, the recovery must be stopped. Unless and until the revived appeal of the Government is heard by the Division Bench and some further order is passed afresh, no recovery from the petitioner can be made. The impugned communication is, therefore, quashed. It is clarified that the question of any recovery against the petitioner would arise only after and upon the revived appeal being disposed of by the Division Bench afresh.

Petition is disposed of accordingly.

(AKIL KURESHI), CJ

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