

HIGH COURT OF TRIPURA

_A_G_A_R_T_A_L_A_

WA No.36 of 2024

Sri Swapan Roy Choudhury

..... Appellant(s)

V E R S U S

The State of Tripura and others

..... Respondent(s)

For Appellant(s) : Mr. P. Roy Barman, Sr. Advocate,
Mr. Samarjit Bhattacharjee, Advocate,
Mr. Koomar Chakraborty, Advocate.

For Respondent(s) : Mr. Kohinoor N Bhattacharya, G.A.,
Mr. N. Majumder, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D PURKAYASTHA

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29/04/2024

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. Samarjit Bhattacharjee and Mr. Koomar Chakraborty, learned counsel appearing for the appellant. Also heard Mr. Kohinoor N Bhattacharya, learned Government Advocate and Mr. N. Majumder, learned counsel appearing for respondent Nos.4 and 5.

[2] The writ petitioner (appellant herein) is aggrieved by the dismissal of WP(C) No.1098 of 2022 dated 07.03.2024 passed by the learned Single Judge whereby the learned Writ Court did not interfere in the matter. Petitioner, a Junior Engineer (Civil) Grade-II (Group-C) in the Department of Agriculture, superannuated on 28.02.2022. During service, he was granted the benefit of CAS-I and CAS-II respectively *with effect from* 05.10.1992 and 01.01.1999. He was also accorded the ACP-III benefit on

completion of 25 years service *with effect from* 05.10.2013. However, the Office of Accountant General (A&E) issued a letter dated 23.08.2022 (Annexure-2) to the Executive Engineer (West), Department of Agriculture & Farmers Welfare, West Tripura on the subject of pension proposal of the petitioner. The relevant part of the letter is extracted hereunder:

“No.Pen-2/RC/PR-44/2021-2022/ Dated: 23.08.2022
To
The Executive Engineer (West),
Deptt. of Agriculture & Farmers Welfare
Krishi Bhavan, Agartala, West Tripura

Subject: Pension proposal in respect of Sri Swapan Roy Choudhury,
Retd. Jr. Engineer (Civil)

Sir,

With reference to your letter No.F.2(3)-Agri/EE/W/Estt/19-20/20-21 05/04/2022, on the subject cited above, I am to state that on scrutiny of the Service book of Sri Swapan Roy Choudhury, Retd. Jr. Engineer (Civil), it is observed that the pay fixation of Sri Swapan Roy Choudhury, Retd. Jr. Engineer (Civil) needs to be corrected. He is entitled for 2nd CAS on 05/10/2000 instead of 01/01/1999 (as per 15th amendment under ROP 99). Accordingly, his last pay would be Rs.1,10,300/- as on 01/07/2021 (Date of Retirement 28-02-2022).

In the light of above observation, you are requested to review the matter, if agreed, the revised regulation of pay may be made in the Service Book under proper attestation and Due & Drawn statement of overdrawal of Pay and Allowances and Leave Salary etc. and revised LPC along with a undertaking of pensioner for recovery from commutation (if needed) may be furnished to this office for further necessary action at this end.

However, pension has already been released on the basis of last pay Rs.1,10,300/- as per this office calculation – withholding of DCRG and commutation at the same will be released on receipt of reply from your end.

An early reply is requested.

Yours faithfully,

Enclo: Service Book

Sd/- Illegible
Sr. Accounts Officer”

[3] It was observed on scrutiny of the Service Book of the petitioner that pay fixation needs to be corrected and that petitioner was entitled for 2nd CAS from 05.10.2000 instead of 01.01.1999 (as per 15th amendment under ROP-1999). As such, his pay fixation needs to be corrected. Accordingly, his last pay would be Rs.1,10,300/- as on 01.07.2021 (date of retirement 28.02.2022). The Executive Engineer concerned was requested to review the matter, if he agreed, and issue revised regulation of pay made in the Service Book under proper attestation and due

& drawn statement of overdrawal of pay and allowances and Leave Salary etc. and a revised last pay certificate along with undertaking of the pensioner for recovery from commutation (if needed) may be furnished to the office for further necessary action at their end. However, it was also indicated that pension has already been released on the basis of last pay of Rs.1,10,300/- as per the office calculation withholding DCRG and commutation which shall be released on receipt of reply from their end. A copy of the communication was also sent to the writ petitioner. This communication was impugned in the writ petition. Apart from that, petitioner also prayed that the respondents may be restrained from recovering any amount from the pensionary benefits of the petitioner on account of alleged excess payment. He also prayed for a Writ of Mandamus for release of the remaining gratuity amount, commuted value of pension and other outstanding pensionary benefits.

[4] The learned Writ Court referred to an undertaking given by the petitioner on 12.05.2009 in a Form of option as per rule 5 and 6 to Schedule-II, Part-A to the effect that he undertakes to refund to the Government any amount which may be drawn by him in excess of what is admissible on account of erroneous fixation of pay in the revised pay structure as soon as the fact of excess withdrawal comes to his notice. There is another declaration in Schedule-I with an undertaking in similar language that has been received by the Department of Agriculture on 16.06.1999. The learned Writ Court, therefore, held that the proposed recovery from the pensionary benefits of the petitioner because of conferment of CAS II benefits from a date anterior to the due date was proper. The petitioner had undertaken to

reimburse any excess payment received. The learned Writ Court also referred to the decision rendered by the Apex Court in case of *State of Punjab and others versus Rafiq Masih (White Washer) and others*, reported in (2015) 4 SCC 334, *Civil Appeal No.7115 of 2010 (Thomas Daniel versus State of Kerala and others)*, reported in AIR 2022 SC 2153 and further in case of *High Court of Punjab and Haryana and others versus Jagdev Singh*, reported in 2016 14 SCC 267. The learned Court, therefore, held that if any amount is found to be paid in excess to the petitioner is required to be refunded in view of the undertaking.

[5] The writ petitioner being aggrieved is in appeal.

[6] Mr. P. Roy Barman, learned senior counsel for the appellant at the outset submits that if the CAS-II benefits have been conferred from a date i.e. 01.01.1999 anterior to the due date i.e. 05.10.2000 appellant does not have any objection to fixation of his last pay at a reduced scale to Rs.1,10,300/- from Rs.1,17,000/-. However, the conferment of CAS benefit from an anterior date was not on account of any misrepresentation or fraud on the part of the writ petitioner. The pay fixation is done by the department and disbursement is allowed by the competent authority i.e. the drawing and disbursing authority. The writ petitioner was working at a lower post of Junior Engineer in the department. It is submitted that neither any show-cause notice has been issued for proposed recovery by the competent authority under the department nor any formal order of recovery has been issued against him. Petitioner in *bona fide* belief that his pensionary benefits may be withheld on account of the impugned communication between the

office of Accountant General and the Executive Engineer, Department of Agriculture & Farmers Welfare, West Tripura approached the Writ Court for relief. It is submitted that the recovery of excess payment, if any, also relates to a period far in excess of 5 years from his retirement or any such order of recovery which is yet to be issued. He relies upon the principles laid down by the Apex Court in case of **Rafiq Masih** (supra) in support of his submission. It is submitted that in such circumstances, when recovery of pensionary benefits or it's withholding by the respondents entails adverse civil consequences. It should not be allowed to be made without proper opportunity to the petitioner to show-cause. As such, learned senior counsel for the appellant prays that the department may be directed to consider the case of the petitioner in the light of the aforesaid facts and the proposition of law laid down by the Apex Court so far as the question of recovery is concerned. However, he does not object to re-fixation of his last pay scale to Rs.1,10,300/- from Rs.1,17,000/- for the purposes of issuance of pension payment order and other pensionary benefits.

[7] Mr. N. Majumder, learned counsel for the respondents No.4 and 5 submits that the impugned communication dated 23.08.2022 is a correspondence between the office of Accountant General and the concerned Executive Engineer of the Department with a copy to the petitioner but it is not any order of recovery issued by the office of Accountant General against the petitioner *per se*. The competent authority under the department had been only asked to revise the pay of the petitioner and re-submit it with endorsement in the Service Book and proper attestation with an undertaking

of the pensioner for any recovery from commutation of pension (if needed) to the office of Accountant General.

[8] Mr. Kohinoor N Bhattacharya, learned Government Advocate submits that as on date no such order of recovery has been issued by the department. He however does not dispute the legal position that in case the department chooses to recover any such amount paid in excess due to conferment of CAS-II benefits to the petitioner from an anterior date, principles of natural justice required a proper show-cause notice to be issued upon him before any such order is passed.

[9] We have considered the submissions of learned counsel for the parties and taken note of the relevant materials from record. We have also gone through the impugned judgment. The relevant facts referred in the foregoing part of this order do not need any reiteration. It has been submitted at the outset on behalf of the petitioner that if the CAS-II benefits were conferred from a date anterior to the due date, petitioner does not have any objection to re-fixation of his last pay as proposed by the Accountant General. However, recovery without any due notice after retirement and that too for benefits conferred not on account of any misrepresentation or fraud on the part of the petitioner for a period relating to more than 22 years back should not be done without an opportunity to the petitioner to show-cause. We are also in agreement with the submission that in case the department chooses to recover the amount paid in excess due to conferment of CAS-II benefits from a date i.e. 01.01.1999 anterior to the due date i.e. 05.10.2000 the competent authority under the department should issue a show-cause

notice to the petitioner before the proposed recovery. The petitioner shall be allowed opportunity to submit his reply with all supporting documents and submissions. The competent authority on consideration of reply of the petitioner would thereafter proceed to take a decision, in accordance with law, within a reasonable time. It appears that the pension of the petitioner at the reduced scale of Rs.1,10,300/- has already been released but gratuity benefits have been withheld awaiting a response from the department. In those circumstances, the competent authority of the department would take an early decision in the matter, in accordance with law.

[10] In the light of discussions and observations made hereinabove, the impugned judgment dated 07.03.2024 passed in WP(C) No.1098 of 2022 is set aside. The writ appeal is disposed of in the manner and to the extent indicated above.

Pending application(s), if any, also stands disposed of.

(S.D PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ

SIDDHARTHA
LODH

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LODH
Date: 2024.05.03 19:18:36 +05'30'

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