

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) No.553 of 2024**

Sri Nikhil Ranjan Nath Sharma,
Retired Senior Helper of TSECL,
S/o Lt. Chitta Ranjan Nath Sharma Nath,
Resident of Vill: Lalchera, District: Khowai, Pin:799201.

----The Petitioner

Versus

- 1. The State of Tripura,**
to be represented by the Secretary.
Department of Power, Government of Tripura,
Secretariat, Capital Complex, Kunjaban, Agartala,
Pin-799010.
- 2. The Tripura State Electricity Corporation Limited (TSECL),**
to be represented by the Chairman-cum-Managing Director,
TSECL, Bidyut Bhawan, Banamalipur, Agartala, West Tripura,
Pin: 799001.
- 3. The Accountant General (A & E),**
Tripura, P.O.: Kunjaban, P.S.: New Capital Complex, Agartala,
Pin: 799010.
- 4. The Dy. General Manager, ED- Teliamura, TSECL,**
Khowai, Tripura.
- 5. The Executive Engineer (GPF & Pension),**
Department of Power, Government of Tripura,
Bidyut Bhawan, Banamalipur, Agartala, West Tripura.
- 6. The Dy. General Manager, (Corporate), TSECL,**
Bidhyut Bhawan, Banamalipur, Agartala, West Tripura.
- 7. The Senior Accountant Officer,**
O/o the Accountant General (A & E),
Tripura, P.O.: Kunjaban, P.S.: New Capital Complex,
Agartala, Pin: 799010.

....The Respondent(s)

For Petitioner(s)	:	Dr. M. L. Roy, Adv,
For Respondent(s)	:	Mr. B. N. Majumder, Sr. Adv, Mr. K. Deb, Adv, Mr. K. De, Addl. G.A.
Date of hearing	:	02.12.2024
Date of delivery of Judgment & Order	:	18.12.2024
Whether fit for reporting	:	NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

By means of filing this writ petition, the present petitioner has prayed for the following reliefs:

“(i) Issue Rule upon the Respondents to show cause as to why a Writ in the nature of Mandamus and/or any other Direction or Directions and/or Order or Orders of like nature directing the Respondents not to recover alleged wrongful/excess payment made to the Petitioner during service period, as mentioned in the Communication No. F.5(139)DGM/ED-TLN/TSECL/791-95, dated 21.05.2024 (Annexure 9) on the subject 'Recovery of wrong/excess payments'.

(ii) Issue Rule upon the Respondents to show cause as to why a Writ in the nature of Mandamus and/or any other Direction or Directions and/or Order or Orders of like nature directing the Respondents to restore the last basic pay at Rs.32,400/- for regularisation of the pension of the Petitioner.

(iii) Issue Rule upon the Respondents to show cause as to why a Writ in the nature of Mandamus and/or any other Direction or Directions and/or Order or Orders of like nature directing the Respondents to release the balance 25% of the Gratuity amounting Rs.93,150/-, plus 9% interest for deferred payment.

(iv) Upon hearing the parties, make the rules absolute.”

02. Heard Learned Counsel, Mr. M. L. Roy appearing on behalf of the petitioner. Heard Learned Addl. G. A., Mr. K. De appearing on behalf of the State-respondents and also heard Learned Senior Counsel, Mr. B. N. Majumder assisted by Learned Counsel, Mr. K. Deb appearing on behalf of the respondent Nos.2 to 7.

03. Before proceeding with the merit of this writ petition, let us discuss herein below the subject matter of the grievances raised by the writ petitioner in his writ petition. According to the petitioner, he was entered in service on 30.12.1987 in the post of

Helper in the pay scale of Rs.775/- and retired on superannuation on 28.02.2021, while he was occupying the post of Senior Helper Gr.-II, having last basic pay Rs.32,400/-.

Further, according to the petitioner he was appointed under the Department of Power, Government of Tripura and later on, his service was placed under the disposal of the Tripura State Electricity Corporation Limited (TSECL in short) and his pay was revised time to time as per Tripura State Civil Service (TSCS, in short) ROP Rules and he retired on superannuation, while he was rendering service in TSECL.

On completion of 10 years of service, the petitioner was favoured with CAS-I w.e.f. 30.12.2007, and on completion of 17 years of service the petitioner was favoured with 2nd ACP w.e.f. 30.12.2014 in terms of TSCS ROP Rules, 2009. Accordingly, the basic pay of the petitioner was fixed at Rs.9,560/- w.e.f. 30.12.2014, vide office order No.F.3(15)DGM/ED-MANU/2016-17/949-54, dated 24.06.2016 and subsequently, also revised as per Tripura State Civil Service (Revised Pay) Rules, 2017 and 1st Amendment Rule, 2018.

After retirement of the petitioner, vide office order No.F.2(25)/PD/PEN/2021/2566-71, dated 05.05.2021, the Executive Engineer (GPF & Pension etc.), Department of Power, Government of Tripura also sanctioned provisional Death-cum-Retirement Gratuity at the rate of 75% amounting Rs.2,79,450/- of the total entitled amount Rs.3,72,600/- only.

Further, on attaining the age of superannuation, the petitioner retired from service on 28.02.2021 and as per LPC, dated 03.08.2021, issued by the Dy. General Manager, Teliamura, TSECL, Khowai District, at the time of retirement, basic pay of the petitioner was determined at Rs.32,400/-.

After that, vide communication No.Pen-2/RC/PR-106/2021-22/10305, dated 07.01.2022, the Sr. Accounts Officer of the O/o the Accountant General (A & E), Tripura intimated the Executive Engineer (GPF & Pension), Department of Power, Government of Tripura, Bidyut Bhawan, Banamalipur, Agartala, West Tripura, that, the pay regularization of the petitioner needed to be corrected, for which he also made request to review the matter and to make revised regulation of pay in the Service Book of the petitioner, under proper attestation. It was further mentioned in the said communication that, however, pension and commutation of pension of the petitioner has already been authorized from their end on the last basic pay of Rs.31,500/- pending DCRG, which will be released on reply from the end of the Executive Engineer (GPF & Pension), Department of Power, Government of Tripura, Bidyut Bhawan, Banamalipur, Agartala, West Tripura.

In response, Dy. General Manager, ED-Teliamura, TSECL, Khowai, Tripura communicated to the Executive Engineer (GPF & Pension), Department of Power, Government of Tripura, Bidyut Bhawan, Banamalipur, Agartala, West Tripura, vide Letter

No.F.6(33)/DGM/ED-TLM/2022-23/6912-13, dated 05.11.2022 with copy to the petitioner that, the pay of the petitioner has been revised as asked by the Sr. Accounts Officer of the O/o the Accountant General (A & E), Tripura and also made entry in his Service Book accordingly, under proper attestation. Along with the said communication, the Service Book with IPS & Leave account in original of the petitioner, copy of revised regulation of Pay, and Due and Drawn (Overdrawn) Statement were also enclosed.

In the Due and Drawn (Overdrawn) Statement, enclosed by the Dy. General Manager, ED-Teliamura, TSECL, Khowai, Tripura with the communication No.F.6(33)/DGM/ED-TLM/2022-23/6912-13, dated 05.11.2022 shown that, the petitioner has overdrawn an amount Rs.93,409/-.

Thereafter, the O/o the Accountant General (A & E), Tripura also rectified the PPO of the petitioner vide dated 02.02.2023, in which his last basic was reduced to Rs.31,500/- from Rs. 32,400/-.

After that, in the Due and Drawn (Overdrawn) Statement, enclosed by the Dy. General Manager, ED-Teliamura, TSECL, Khowai, Tripura with the communication No.F.6(33)/DGM/ED-TLM/2022-23/6912-13, dated 05.11.2022 it is shown that, the petitioner had allegedly overdrawn an amount Rs.93,409/-, (ii) balance 25% of the entitled Gratuity was not released, and (iii) behind the back of the petitioner, without giving any chance/opportunity to defend his last basic, the last basic of

the petitioner reduced from Rs.32,400/- to Rs.31,500/-, the petitioner served representation, dated 23.02.2023 followed by Legal Notice through his Counsel Ld Advocate Aradhita Debbarma on 15.02.2024 upon the Respondents No.4 & 7.

That, as the representation dated 23.02.2023 of the petitioner and the subsequent Legal Notice, 15.02.2024 gave no result, so, the petitioner, being aggrieved approached this High Court by filing a writ petition bearing No.WP(C)/184/2024 for relief.

This High Court vide order dated 11.03.2024 disposed of the said writ petition of the petitioner directing the respondents to pass a speaking order. The operative portion of the order of this High Court dated 11.03.2024 passed in WP(C)184 of 2024 is narrated herein below:

".....without expressing any opinion on the merits of the case, this present writ petition is disposed of directing the respondents to pass a speaking order in respect of the case of the petitioner in accordance with law within a period of three months from the date of receipt of copy of this order. In the event, if the petitioner is aggrieved by such order, the petitioner is at liberty to challenge the same in accordance with law. It is needless to mention here that the doctrine of res judicata will not be applicable here."

After that, the petitioner communicated the order dated 11.03.2024 of the High Court in the aforesaid case to the respondent Nos.4, 5 & 7 for compliance. In response to the said communication, the Dy. General Manager, ED-Teliamura, TSECL, Khowai, Tripura, the respondent No.4, issued letter vide No.F.5(139)/DGM/ED-TLN/TSECL/791-95, dated 21.05.2024

(Annexure-9) informed the petitioner that as the office of AG determined the fixation of last basic pay at the rate of Rs.31,500/- in place of Rs.32,400/-, so, Rs.31,500/- is being considered as 'promissory estoppels' on the part of TSECL as on 28.02.2021.

After that, the petitioner submitted representation to the authority vide communication dated 19.06.2024 (Annexure-10) which was forwarded to the concerned authority (Annexure-11). But as no further action was taken, hence, the petitioner filed the second writ petition.

It was further stated by the petitioner that the subject of the dispute also covered by the judgment of this High Court passed in WP(C) No.303 of 2022 dated 27.04.2023 and WP(C) No.13 of 2024 dated 27.06.2024 and the judgment of the Hon'ble Supreme Court passed in Civil Appeal No.5527 of 2022 (M.P. Medical Officers Association vs. The State of Madhya Pradesh & Others) dated 26.08.2022.

As already stated the respondent No.2, 4 & 6 and other respondents have filed two separate counter-affidavits denying the assertions of the petitioner in the writ petition. Rather the respondents took the plea that the petitioner was allowed CAS-I on 30.12.2007 with the pay scale of Rs.2650-4350/vide office order of DGM, Corporate, TSECL of dated 10.05.2008 vide reference No.F.6(92)/TSECL/E-1/11.161-65.

Thereafter, on completion of 17 years of service, he was further allowed 2nd ACP w.e.f. 30.12.2014 in terms of TSCS ROP Rules, 2009, vide office order of dated 24.06.2016 of DGM, ED-Manu and the basic pay of the petitioner fixed at Rs.9,560/- as per ROP (6th amendment) Rules, 2012.

But in the office order vide No.F.3(15)/DGM/ED-Manu/2016-17/949-54, dated 24.06.2016 of the Deputy General Manager, Electrical Division-Manu make an error with unclean format and fixed the basic pay of Rs.10,890/- as on 01.07.2015 in place of 10,610/-. So, the last basic pay came up Rs.32,400/- during retirement time in place of actual basic pay of Rs.31,500/-.

Thereafter, the ironical pay was identified by the Sr. Accounts Officer, AG (A & E) Agartala, which was communicated to the Executive Engineer (GPF & Pension) etc., Bidyut Bhawan on dated 06.01.2022 to review and make revised the pay scale of the petitioner.

In line with the Sr. Accounts Officer, AG (A & E), Agartala, a revised of pay scale of the petitioner has been made revised vide office order No.F.6(2)/DGM/ED-TLM/2022-23/6811-15 dated 01.11.2022.

In addition to that in para No.27 of the counter-affidavit filed by the respondent Nos.2, 4 & 6, a comparative table was shown in respect of wrong and revised pay regularization.

Hence, the contesting respondents by their counter-affidavits urged for dismissal of this writ-petition.

04. In course of hearing, Learned Counsel appearing for the petitioner submitted that the subject matter involved in the writ petition is squarely covered by the memorandum dated 02.03.2016 of the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, Government of India **(Annexure-12)** and also the judgment and order passed by the Hon'ble Apex Court on 02.05.2022 in Civil Appeal No.7115 of 2010 (Thomas Daniel vs. State of Kerala and Ors.) **(Annexure-13)** and the judgment passed by this Court dated 27.06.2024 in connection with WP(C) No.13 of 2024 (Sri Dipak Baidya vs. The State of Tripura and 3 Ors.).

Learned Counsel also referred another judgment of the Hon'ble Supreme Court of India in Civil Appeal No.5527 of 2022 (M.P. Medical Officers Association vs. State of Madhya Pradesh and Ors.). Referring those citations, Learned Counsel for the petitioner further submitted that it is the settled principle of law that the employees who had retired from service and once his accounts and retiral benefits are settled and pension is paid then it is not open for the employer to say that by mistake the employer have paid excess amount to the employee and the same needs to be recovered. Learned Counsel also submitted that such recovery is not permissible in the eye of law.

05. On the other hand, Learned Counsel for the respondent submitted that the said recovery of amount is permissible under the ambit of law.

06. I have heard both the sides at length and perused the writ petition and the objection in the form of counter-affidavits filed by the respondents as well as the documents annexed with the writ petition by the writ petitioner. In the memo dated 02.03.2016 issued by the Deputy Secretary to the Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, (Annexure-12), in para Nos.4 & 5 the Department observed as under and the said memo was issued in pursuance of the judgment of Hon'ble Supreme Court of India in case of C.A. No.11527 of 2014 [State of Punjab and Ors. etc. vs. Rafiq Masih (White Washer) etc.]:

"4. The Hon'ble Supreme Court while observing that 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 has summarized 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 the 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."

5. The matter has, consequently, been examined in consultation with the Department of Expenditure and the Department of Legal Affairs. The Ministries/Departments are advised to deal with the issue of wrongful/excess payments made to Government servants in accordance with above decision of the Hon'ble Supreme Court in CA No.11527 of 2014 (arising out of SLP (C) No.11684 of 2012) in State of Punjab and others etc vs Rajiq Masih (White Washer) etc. However, wherever the waiver of recovery in the above-mentioned situations is considered, the same may be allowed with the express approval of Department of Expenditure in terms of this Department's OM No.18/26/2011-Estt (Pay-I) dated 6th February, 2014."

07. Further, Hon'ble the Supreme Court of India in **Civil Appeal No.7115 of 2010** dated 02.05.2022 in **Thomas Daniel vs. State of Kerala and Ors.** in para No.13 sub-para No.18 Hon'ble the Apex Court observed as under:

"13.....

18. It is not possible to postulate all situations or 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 hereinabove, 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 the 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.

08. Again, Hon'ble the Supreme Court of India in Civil Appeal No.5527 of 2022 in **M.P. Medical Officers Association vs. State of Madhya Pradesh and Ors.** etc. reported in **(2022) SCC OnLine SC 1099** wherein in para No.8 Hon'ble the Apex Court observed as under:

"8. It is not in dispute that the members of the appellant association, who were serving as Specialists, Dental Specialists and officers in the specialist's cadre got the benefits under the circular dated 23.05.2009. It was the Department/State, who issued the circular dated 23.05.2009 and paid the benefits under the circular dated 23.05.2009 to the members of the appellant association, which subsequently came to be withdrawn by the State in the year 2012. Therefore, as such, there was neither any misrepresentation on the part of the concerned employees - members of the appellant association nor can the mistake be attributed to them. The mistake, if any, can be said to be that of the Department/State, who issued the circular dated 23.05.2009 under which the members of the association were given certain benefits till the same was withdrawn in the year 2012. Therefore, in the peculiar facts and circumstances of the case, the State was not justified in ordering recovery of the excess amount paid along with the interest. It is true that *stricto sensu*, the decision of this Court in the case of *State of Punjab v. Rafiq Masih*, (2015) 4 SCC 334 may not be applicable. However, at the same time, as observed hereinabove, and in the facts and circumstances of the case, the State was not justified in ordering recovery of the excess amount paid with interest, more particularly, when it is reported that some of the doctors/dentists - members of the association have retired on attaining the age of superannuation and the recovery shall be from their pension/pensionary benefits. However, at the same time, their pay fixation and the pension shall have to be as per the order dated 26.08.2008."

09. Further this High Court in WP(C) No.13 of 2024 dated 27.06.2024 in **Sri Depak Baidya vs. The State of Tripura and Ors.** in para No.6 observed as under:

"6. Why back by order dated 27.04.2023 passed in WP(C) No.303 of 2022, this Court has categorically held that following the judgment of the Hon'ble Supreme Court passed in Civil Appeal No.5527 of 2022, wherein, the Apex Court had said that in respect of retired people where excess amount have been paid, the same cannot be recovered, following the said principle, this Court allowed the earlier round of writ petition on 27.04.2023. Again the respondents have issued a fresh demand notice for the same amount and this Court finds fault with the said action of the respondents. The said action of the respondents is arbitrary and illegal and thus, the said impugned demand notice is set aside allowing the present writ petition."

In the given case, the petitioner is a retired Government employee. There is no evidence on records that the excess payment was made due to fault of the petitioner or any fraud or misrepresentation by the petitioner, rather the department itself committed the error.

10. In course of hearing, Learned Counsel for the respondent failed to satisfy the Court regarding admissibility/validity of the communication dated 21.05.2024 of the writ petition (Annexure-9). Further from the aforesaid principles of law laid down by the Hon'ble Apex Court, it appears that Hon'ble the Apex Court observed in those cases that in respect of retired people where excess amount have been paid, the same cannot be recovered. This High Court in WP(C) No.184 of 2024 filed by the present writ petitioner by order dated 11.03.2024 directed the respondents to consider the grievances of the petitioner in-accordance-with law but inspite of that the respondents have issued a fresh notice of recovery and wrongful/ excess by communication dated 21.05.2024 to the writ petitioner (Annexure-9) and in view of principles of law laid down by the

Hon'ble Apex Court in the aforementioned cases, the said action of the respondents is arbitrary and illegal and thus, the impugned communication dated 21.05.2024 (Annexure-9) is hereby set aside. The petitioner in course of hearing failed to project the other issues by showing any cogent evidence, as such excepting setting aside the memo dated 21.05.2024 (Annexure-9), no further relief is granted to the petitioner and accordingly, the writ petition is stands disposed of with the said observation.

With this observation, the case is thus disposed of.

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

JUDGE



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