

HIGH COURT OF TRIPURA
AGARTALA

WP(C) No.233 of 2024

Haripada Choudhury,

Son of Lt. Naresh Bandhu Choudhury, resident of C/o Hemalata Bhavan, Vill Madhya Badharghat, Behind R.T. College, P.O Siddhi Ashram, Agartala, West Tripura 799003.

..... **Petitioner(s)**

- Versus -

- 1. The State of Tripura,**
To be represented by the Secretary, Department of Agriculture & Farmer's Welfare, Govt. of Tripura, New Secretariat Building, New Capital Complex, Kunjaban, Agartala, West Tripura, PIN 799010.
- 2. The Director of Agriculture & Famers Welfare,**
Govt of Tripura, Krishi Bhavan, Agartala, West Tripura, Pin 799001.
- 3. The Superintendent of Agriculture,**
Dukli Agri Sub. Division, Agartala, West Tripura.
- 4. The Accountant General (A&E), Tripura,**
PO Kunjaban, PS New Capital Complex, Sub-Division Sadar, District West Tripura.
- 5. The Senior Accounts Officer,**
Office of the Accountant General (A&E), Tripura, PO Kunjaban, PS New Capital Complex, Sub-Division Sadar, District West.
- 6. The Union of India,**
To be represented by the Secretary, Department of Expenditure, Ministry of Finance, Government of India, New Delhi, Pin 110001.

..... **Respondent(s)**

WP(C) No.234 of 2024

Archana Deb,

Wife of Tapas Ranjan Das, Resident of Ramnagar Road No.7, PO Ramnagar Road No.5, Agartala, Tripura.

.....**Petitioner(s)**

- Versus -

- 1. The State of Tripura,**
To be represented by the Secretary, Department of Agriculture & Farmer's Welfare, Govt. of Tripura, New Secretariat Building, New Capital Complex, Kunjaban, Agartala, West Tripura, PIN 799010.
- 2. The Director of Agriculture & Farmers Welfare,**
Govt. of Tripura, Krishi Bhavan, Agartala, West Tripura, PIN 799001.
- 3. The Superintendent of Agriculture,**
Bishalgarh Agri Sub. Division, Agartala, West Tripura.

4. **The Accountant General(A&E),**
Tripura, PO Kunjaban, PS New Capital Complex, Sub-Division Sadar, District West Tripura.
5. **The Senior Accounts Officer,**
Office of the Accountant General (A&E), Tripura, PO Kunjaban, PS New Capital Complex, Sub-Division Sadar, District West.
6. **The Union of India,**
To be represented by the Secretary, Department of Expenditure, Ministry of Finance, Government of India, New Delhi, Pin 110001.

.....Respondent(s)

For the Petitioner(s)	:	Mr. P. Roy Barman, Senior Advocate. Mr. S. Bhattacharjee, Advocate. Ms. A. Debbarma, Advocate.
For the Respondent(s)	:	Mr. B. Majumder, Dy. SGI. Mr. D. Bhattacharya, Senior Advocate. Mr. Kohinoor N. Bhattacharya, G.A. Mr. D. Sarma, Addl. G.A.

WP(C) No.235 of 2024

Pintu Das,

Son of Lt. Jagneswar Das, Resident of Mohanpur, PO Majlishpur, PS Ranirbazar, PIN 799035.

.....Petitioner(s)

- V e r s u s -

1. **The State of Tripura,**
To be represented by the Secretary, Department of Agriculture & Farmer's Welfare, Govt. of Tripura, New Secretariat Building, New Capital Complex, Kunjaban, Agartala, West Tripura, PIN 799010.
2. **The Director of Agriculture & Farmers Welfare,**
Govt of Tripura, Krishi Bhavan, Agartala, West Tripura, Pin 799001.
3. **The Executive Engineer,**
Department of Agriculture & Farmer's Welfare, Agartala, West Tripura.
4. **The Accountant General (A&E),**
Tripura, PO Kunjaban, PS New Capital Complex, Sub-Division Sadar, District West Tripura.
5. **The Senior Accounts Officer,**
Office of the Accountant General (A&E), Tripura, PO Kunjaban, PS New Capital Complex, Sub-Division Sadar, District West.
6. **The Union of India,**
To be represented by the Secretary, Department of Expenditure, Ministry of Finance, Government of India, New Delhi, Pin 110001.

.....Respondent(s)

For the Petitioner(s)	:	Mr. P. Roy Barman, Senior Advocate. Mr. S. Bhattacharjee, Advocate. Ms. A. Debbarma, Advocate.
For the Respondent(s)	:	Mr. B. Majumder, Dy. SGI. Mr. D. Bhattacharya, Senior Advocate. Mr. Kohinoor N. Bhattacharya, G.A. Mr. D. Sarma, Addl. G.A. Mr. PS Roy, Advocate.

WP(C) No.236 of 2024

Rekha Rani Das,
Wife of Sudhir Ch. Das, Resident of Mudda Para, PS Old Agartala,
Khayerpur, Pin 799008.

.....Petitioner(s)

- Versus -

- 1. The State of Tripura,**
To be represented by the Secretary, Department of Agriculture & Farmer's Welfare, Govt. of Tripura, New Secretariat Building, New Capital Complex, Kunjaban, Agartala, West Tripura, PIN 799010.
- 2. The Director of Agriculture & Farmers Welfare,**
Govt. of Tripura, Krishi Bhavan, Agartala, West Tripura, Pin 799001.
- 3. The Executive Engineer,**
Department of Agriculture & Farmer's Welfare, Agartala, West Tripura.
- 4. The Accountant General (A&E),**
Tripura, PO Kunjaban, PS New Capital Complex, Sub-Division Sadar, District West Tripura.
- 5. The Senior Accounts Officer,**
Office of the Accountant General (A&E), Tripura, PO Kunjaban, PS New Capital Complex, Sub-Division Sadar, District West.
- 6. The Union of India,**
To be represented by the Secretary, Department of Expenditure, Ministry of Finance, Government of India, New Delhi, Pin 110001.

.....Respondent(s)

For the Petitioner(s)	:	Mr. P. Roy Barman, Senior Advocate. Mr. S. Bhattacharjee, Advocate. Ms. A. Debbarma, Advocate.
For the Respondent(s)	:	Mr. B. Majumder, Dy. SGI. Mr. D. Bhattacharya, Senior Advocate. Mr. Kohinoor N. Bhattacharya, G.A. Mr. D. Sarma, Addl. G.A. Mr. R.G. Chakraborty, Advocate.

WP(C) No.237 of 2024

Bina Das,
Wife of Badal Ch. Malakar, Resident of Chanban, Udaipur, Gomati,
Tripura.

..... Petitioner(s)

- V e r s u s -

- 1. The State of Tripura,**
To be represented by the Secretary, Department of Agriculture & Farmer's Welfare, Govt of Tripura, New Secretariat Building, New Capital Complex, Kunjaban, Agartala, West Tripura, Pin 799010.
- 2. The Director of Agriculture & Farmers Welfare,**
Govt. of Tripura, Krishi Bhavan, Agartala, West Tripura, Pin 799001.
- 3. The Executive Engineer,**
Department of Agriculture & Farmer's Welfare, Agartala, West Tripura.
- 4. The Accountant General (A&E),**
Tripura, PO Kunjaban, PS New Capital Complex, Sub-Division Sadar, District West Tripura.
- 5. The Senior Accounts Officer,**
Office of the Accountant General (A&E), Tripura, PO Kunjaban, PS New Capital Complex, Sub-Division Sadar, District West.
- 6. The Union of India,**
To be represented by the Secretary, Department of Expenditure, Ministry of Finance, Government of India, New Delhi, Pin 110001.

.....Respondent(s)

For the Petitioner(s)	:	Mr. P. Roy Barman, Senior Advocate. Mr. S. Bhattacharjee, Advocate. Ms. A. Debbarma, Advocate.				
For the Respondent(s)	:	Mr. B. Majumder, Dy. SGI. Mr. D. Bhattacharya, Senior Advocate Mr. Kohinoor N. Bhattacharya, G.A. Mr. D. Sarma, Addl. G.A. Ms. Riya Chakraborty, Advocate.				
Date of hearing	:	4th December, 2024.				
Date of delivery of Judgment & order	:	31st January, 2025.				
Whether fit for reporting	:	<table border="1"><tr><td>YES</td><td>NO</td></tr><tr><td>√</td><td></td></tr></table>	YES	NO	√	
YES	NO					
√						

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA
JUDGMENT & ORDER

The common question of facts and identical nature of disputes being involved, all the writ petitions were heard together and are being disposed of by this common judgment. All the petitioners were employees of Agriculture Department under Government of Tripura.

[2.1] In **WP(C) No.233 of 2024**, the petitioner retired from service attaining the age of superannuation on 30.06.2023 from the post of UDC. On his retirement, 75% of his gratuity amount was released and rest 25% was withheld. Initially, the petitioner joined as LDC on 15.06.1987 in the service under respondent No.2 and after completion of 10 years of service, he was given first gradation i.e. CAS-I on 15.06.1997 and on completion of 17 years of service in the same post, he was also granted second gradation i.e. CAS-II on 15.06.2004 and lastly, he was given third ACP benefit on 01.04.2015. He was, thereafter, promoted to the post of UDC (Ad-hoc) vide office order dated 23.09.2021. At the time of retirement, his last basic pay was shown to be Rs.62,600/-.

[2.2] It is alleged that for fixation of his pensionary benefits, his service book was sent to the office of AG (A&E), Agartala and vide letter dated 10.08.2023 (Annexure 5), the Senior Accounts Officer of the office of Accountant General (A&E), it was stated that on scrutiny of service book, his fixation of pay w.e.f. 01.01.1998 to 31.03.2017 was found to be incorrect. It was also further reflected

in the said letter that pension and commutation of pension were already released in his favour on the basis of his last pay of Rs.62,600/- as per their calculation without the benefit of ad-hoc promotion and it was also stated that 25% of gratuity would be released on reply received from the office of Superintendent of Agriculture, Dukli Agri Sub-Division, Agartala. On 09.10.2023, another letter (Annexure 6) was sent by said Senior Accounts Officer to said Superintendent of Agriculture whereby service book of the petitioner was returned from the office of the Accountant General with a request to review the matter and to make revised regulation of pay in the service book under proper attestation and with preparation of due and drawn statement of overdrawal of pay, allowances, leave salary by the petitioner.

[2.3] Thereafter, the petitioner sent one representation to the respondents dated 26.12.2023 (Annexure 7) requesting them to release his rest amount of gratuity with interest. The Senior Accounts Officer also forwarded said representation to the Superintendent of Agriculture vide his letter dated 25.01.2024 (Annexure 8) for appropriate action from his end with further reflection of the fact that the pension and commutation of pension were already authorized by the office of AG to the petitioner on the basis of last pay of Rs.62,600/- and that withholding of DCRG would be settled on receipt of reply from the department. Under such circumstances, the petitioner has filed this writ petition for release of said 25% of gratuity i.e. Rs.2,50,000/- with interest

@9% per annum and also to quash the letters dated 10.08.2023 and 09.10.2023.

[3.1] In **WP(C) No.234 of 2024**, similarly the petitioner retired from the service on 31.01.2023 from the post of UDC (Ad-hoc basis) and on her retirement, 75% of the gratuity was released but rest 25% of gratuity amounting to Rs.2,50,000/- was withheld on the ground, as reflected by Senior Accounts Officer vide his letter dated 07.08.2023 (Annexure 6), that fixation of her pay w.e.f. 15.06.1997 under ROP 1999 was found to be incorrect. By said letter, the Senior Accounts Officer requested the Superintendent of Agriculture, Bishalgarh Agri Sub-Division to review the matter and to prepare necessary due drawn statement of overdrawal. It was however, stated also that the commutation of pension in favour of said petitioner was released on the basis of her last pay of Rs.62,600/- as per calculation of the office of Accountant General without giving the benefit of ad-hoc promotion.

[3.2] The petitioner, thereafter, similarly sent her representation dated 21.12.2023 (Annexure 7) for releasing such withheld gratuity amount. Said representation was also forwarded by the Senior Accounts Officer to the concerned Superintendent of Agriculture vide his letter dated 25.01.2024 (Annexure 8). Under such circumstances, she preferred this writ petition for quashing said letter dated 07.08.2023 of Senior Accounts Officer and to release the rest 25% of her gratuity amount.

[4.1] In **WP(C) No.235 of 2024**, the petitioner retired from the service on attaining his age of superannuation on 28.02.2023 from the post of Office Superintendent (ad-hoc basis) and similarly 25% of his gratuity amount was withheld and at the time of his retirement, his last basic pay was Rs.64,500/-. But, the Senior Accounts Officer vide his letter dated 29.05.2023 (Annexure 6) pointed out that fixation of pay of the petitioner w.e.f. 15.01.1997 under ROP 1999 was incorrect and matter was sent to the Executive Engineer (West), Department of Agriculture and Farmers Welfare, Agartala to review the matter and to prepare necessary due and drawn statement of overdrawal as regards the pay, allowances and leave salary of the petitioner and to make revised LPC but simultaneously it was also mentioned that pension was already released in his favour determining his last pay as Rs.62,600/- and that rest amount of DCRG and commutation of pension would be released on receipt of reply from the concerned Executive Engineer.

[4.2] Another similar letter was also sent by Senior Accounts Officer on 20.10.2023 (Annexure 7) reflecting that the last pay of the petitioner to the tune of Rs.62,600/- was found to be correct and with such observation the service book of the petitioner was returned to the said Executive Engineer (West) for necessary action including preparation of said due and drawn statement. It was also stated therein that commutation of pension was released in favour

of the petitioner (Retd. Head Clerk) on the basis of superannuation pension of Rs.31,300/- withholding the DCRG.

[4.3] Petitioner, thereafter, sent a representation on 21.12.2023 (Annexure 9) to the respondents with a request to treat his last basic pay to be Rs.64,500/- instead of Rs.62,600/- and to provide him all pensionary benefits as arrear on that basis with interest and also to release 25% of the gratuity amount. Said representation was forwarded by the Senior Accounts Officer to said Executive Engineer (West) vide his letter dated 25.01.2024. Under such circumstances, the petitioner filed the writ petition with a prayer for releasing rest amount of gratuity, for a direction to issue revised PPO treating his last basic pay to be Rs.64,500/- and to release all arrears with interest and also to quash the said letters dated 29.05.2023 and 20.10.2023.

[5.1] In **WP(C) No.236 of 2024**, the petitioner retired from service on attaining the age of superannuation on 30.04.2023 from the post of Office Superintendent (Ad-hoc). On his retirement, 75% of his gratuity amount was released and rest 25% amounting to Rs.2,50,000/- was withheld. Initially, the petitioner joined as LDC on 15.06.1987 in the service under respondent No.2 and after completion of 10 years of service, she was benefitted with first gradation i.e. CAS-I on 15.06.1997 and on completion of 25 years of service, she was granted second gradation i.e. CAS-III on 15.06.2012. Petitioner was, thereafter, promoted to the post of Officer Superintendent vide office order dated 17.11.2022 on ad-

hoc basis. At the time of retirement, her last basic pay was shown to be Rs.64,500/-.

[5.2] It is stated that for fixation of her pensionary benefits, when her service book was sent to the office of AG (A&E), Agartala, the Senior Accounts Officer in his letter dated 28.07.2023 (Annexure 7) pointed out that on scrutiny of service book, her fixation of pay w.e.f. 15.06.1997 under ROP 1999 was found to be incorrect. It was further noted that the pension and commutation of pension were already released in her favour determining her last pay as Rs.62,600/- as per their calculation without any ad-hoc promotion and that DCRG would be released on receipt of reply from the concerned Superintendent of Agriculture, Dukli Agri Sub-Division, Agartala.

[5.3] The petitioner also sent one representation dated 13.07.2023 (Annexure 8) to the Superintendent of Agriculture requesting him to review her last basic pay and the same was forwarded by the Superintendent of Agriculture to the Accountant General (A&E) vide letter dated 13.07.2023 (Annexure 8). Another letter dated 20.10.2023 (Annexure 10) was also communicated by the Senior Accounts Officer to Superintendent of Agriculture whereby service book of the petitioner was returned from their office with a request to review the matter and to make revised regulation of pay in the service book under proper attestation and for preparation of due and drawn statement of overdrawal of pay, allowances and leave salary by the petitioner. Thereafter, the

petitioner sent another representation to the respondents dated 21.12.2023 (Annexure 11) requesting them to release her rest amount of gratuity with interest @9% per annum from due date till actual payment is made.

[5.4] Under such circumstances, the petitioner filed this writ petition praying for release of her rest amount of gratuity with 9% interest, and for a direction to issue revised PPO treating her last basic pay to be Rs.64,500/- and to release all arrears with interest. The petitioner further prayed to quash the letters dated 28.07.2023 and 20.10.2023.

[6.1] In **WP(C) No.237 of 2024**, the petitioner retired from service on attaining the age of superannuation on 31.01.2023 from the post of Office Superintendent (Ad-hoc). On her retirement, 75% of her gratuity amount was released and rest 25% amounting to Rs.2,50,000/- was withheld. Initially, the petitioner joined as LDC on 15.06.1987 in the service under respondent No.2 and after completion of 10 years of service, she was allowed the benefit of first gradation i.e. CAS-I on 15.06.1997 and on completion of 25 years of service, she was given the benefit of Grade pay fixed @Rs.4200/- on 15.06.2012. She was promoted to the post of UDC vide office order dated 28.07.2003. At the time of retirement, her last basic pay was shown to be Rs.64,500/-.

[6.2] The Senior Accounts Officer, Accountant General (A&E) issued a letter to the Superintendent of Agriculture, Kakraban

Agriculture Sub-Division for wrong fixation of basic pay of the petitioner w.e.f. 01.04.2015 as it appears from the counter affidavit filed by the State respondents and the letter dated 12.09.2023 of Superintendent of Agriculture, Kakraban to the Director of Department of Agriculture and Farmers Welfare (Annexure 9 as well as Annexure R/4). After her superannuation, a letter dated 14.08.2023 (Annexure 7) was sent to her by the Superintendent of Agriculture, Kakraban Agri Sub-Division informing that an excess amount totalling Rs.1,65,921/- of pay/allowances and leave salary have been drawn by her. In the said letter, she was further asked to submit a confirmation letter regarding mode of such deduction of excess amount for final settlement of her claim. In reply to the said letter, the petitioner submitted a representation dated 23.08.2023 (Annexure 8) to the Superintendent of Agriculture stating that all her pay and salary have been sanctioned with approval of the competent authority and as such, liability of overdrawal payment could not come upon her. Said Superintendent of Agriculture sent a letter to the Director, Department of Agriculture & Farmers Welfare, Govt. of Tripura on 12.09.2023 (Annexure 9) as stated above, seeking decision regarding follow-up course of action to be taken up against the representation submitted by the petitioner towards exemption from recovery of excess drawal of pay etc.

[6.3] Thereafter, the petitioner sent another representation to the respondents dated 22.12.2023 (Annexure 11) requesting them to release her rest amount of gratuity with interest @9% per

annum. She further pleaded for recalculating all her pensionary benefits considering her last basic pay to be Rs.64,500/- instead of Rs.62,600/-. The Senior Accounts Officer also forwarded said representation of the petitioner to the Superintendent of Agriculture vide letter dated 09.02.2024 (Annexure 12) for obtaining legal views from the Finance Department. In the said letter, it was further reflected that pension and commutation of pension were already released to the petitioner on the basis of last pay of Rs.62,600/- and that withholding of DCRG would be settled on receipt of reply from the department. In that event, the petitioner has filed this writ petition for release of rest amount of gratuity i.e. Rs.2,50,000/- with interest @9% per annum and also to quash the letter dated 14.08.2023 (Annexure-7).

[7] Mr. P. Roy Barman, learned senior counsel appearing for the petitioners reiterating the facts of the writ petitions argues that the pension of the petitioners was finalised by the Accountant General (AG) in W.P(C) No.233 of 2024 and WP(C) No.234 of 2024 and therefore, except for arithmetical or clerical error, now the basic pension cannot be reduced. Mr. Roy Barman, learned senior counsel also contends that in the W.P(C) No.235 of 2024, W.P(C) No.236 of 2024 and W.P(C) No.237 of 2024, the basic pay of the petitioners was even reduced by the AG without issuing any show cause notice to the petitioners and without their knowledge, in gross violation of the principles of natural justice. Therefore, all the impugned memorandum/letters issued by the AG for re-fixation of

pay of the petitioners and consequent fixation of basic pension, are illegal. The next point as raised by learned senior counsel is that the recovery of any amount consequent to any re-fixation is not permissible inasmuch as all the petitioners were Group-C employees. Learned senior counsel further contends that though two of the petitioners were given promotion to the post of Office Superintendent but such promotion was on ad-hoc basis and no financial benefit thereupon was given to the petitioners and therefore, all the practical and legal purposes, they are to be treated as Group-C employees.

[8] Mr. Roy Barman, learned senior counsel relies on a decision of the Apex Court rendered in ***Thomas Daniel vs. State of Kerala and others, AIR 2022 SC 2153***, wherein at Para 9, it was observed that if the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee concerned or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances were not recoverable. It was also further held that if in a given case, it was proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and

circumstances of any particular case order for recovery of amount paid in excess.

[9] Mr. Roy Barman, learned senior counsel also relies on earlier decision of the Apex Court in a case in between ***State of Punjab and others vs. Rafiq Masih (White Washer) and others, (2015) 4 SCC 334***, wherein certain parameters were laid down by the Apex Court where recovery of excess amount, paid mistakenly to an employee, was not permissible. The relevant paragraph of the said decision is extracted hereinbelow:

"18. 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 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 the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the 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."

[10] Mr. Roy Barman, learned senior counsel also relies on another decision of the Apex Court rendered in ***Jagdish Prasad Singh vs. State of Bihar and others, [Civil Appeal No(S).1635***

of 2013] and the relevant Para No.20 as referred is extracted hereunder:

"20. Without prejudice to the above findings, we are of the view that no departmental action could have been initiated by the State against the appellant after eight years following his superannuation because the employer employee relationship had come to an end after the appellant's superannuation. The order directing reduction in pay scale and recovery from the appellant was manifestly not preceded by any show cause notice and was thus, passed in gross violation of the principles of natural justice. Pursuant to the order dated 20th July, 2009 passed in the Writ Petition No. 6714 of 2009 filed by the appellant, he submitted a representation to the Secretary, Food and Consumer Protection Department, Government of Bihar, which *vide* order dated 8th October, 2009 was rejected, preceded by a personal hearing. A perusal of the said order would indicate that the Secretary took a view that as per paragraph 11(*supra*) of the Government Resolution, the first/second time bound promotion of the appellant had come to an end automatically w.e.f. on 1st January, 1996 and thus, the appellant was required to be re-designated to the post of Marketing Officer and would be entitled to the revised pay of Rs.5500-9000 w.e.f. 1st January, 1996 as recommended by the Fitment Committee. Thus, even in this order, the promotion conferred to the appellant to the post of ADSO on 10th March, 1991 is not doubted."

[11] Mr. Roy Barman, learned senior counsel also submits that in all the cases the allegation of wrong fixation was for a period much earlier than 5(five) years from the date of retirement of the petitioners or from the date of passing the impugned direction for recalculation or re-fixation of their pay and on that score also, such recovery was not permissible.

[12] The last point as argued by Mr. Roy Barman, learned senior counsel is that following the principle of provisions of Section 14 of the Payment of Gratuity Act, 1972, no such gratuity amount can be withheld for the purpose of recovery of any arrears from the said gratuity amount and therefore, 25% of the gratuity amount as withheld by the department is required to be immediately released in favour of the petitioners.

[13] Mr. D. Bhattacharya, learned senior counsel appearing for the respondents No.4 & 5 referring to Rule 70 of Central Civil Services (Pension) Rules, 1972 submits that as per provision of Rule 70 that even after final assessment of the pension, the department has the authority to recalculate the same. For useful reference, said Rule 70 of CCS (Pension) Rules, 1972 is excerpted hereunder:

Revision of pension after authorization-

(1) Subject to the provisions of Rules 8 and 9, pension once authorized after final assessment shall not be revised to the disadvantage of the Government servant, unless such revision becomes necessary on account of detection of a clerical error subsequently:

Provided that no revision of pension to the disadvantage of the pensioner shall be ordered by the Head of Office without the concurrence of the Department of Personnel and Administrative Reforms if the clerical error is detected after a period of two years from the date of authorization of pension.

[(1-A) The question whether the revision has become necessary on account of a clerical error or not shall be decided by the administrative Ministry or Department.]

(2) For the purpose of sub-rule (1), the retired Government servant concerned shall be served with a notice by the Head of Office requiring him to refund the excess payment of pension within a period of two months from the date of receipt of notice by him.

(3) In case the Government servant fails to comply with the notice, the Head of Office shall, by order in writing, direct that such excess payment, shall be adjusted in instalments by short payments of pension in future, in one or more instalments, as the Head of Office may direct.

[14] However, the pari materia provision of the said Rule 70 is available in Rule 61 of said CCS Pension (Rules), 1972 as adopted in Tripura with necessary amendments and the said provision of Rule 61 is as follows:

61. Revision of pension after sanction.

(1) Subject to the provisions of rules 8 and 9, pension once sanctioned after final assessment shall not be revised to the disadvantage of the Government servant unless such revision

becomes necessary, on account of a clerical error, subsequently:

Provided that no revision of pension to the disadvantage of the pensioner shall be ordered by the pension sanctioning authority without the sanction of the Finance Department if the clerical error is detected after a period of two years from the date of sanction of pension.

(2) For the purpose of sub-rule (1), the Government servant concerned shall be served with a notice by the pension sanctioning authority requiring him to refund the excess payments of pensions within a period of two months from the date of receipt of notice by him.

(3) In case the Government servant fails to comply with the notice, the pension sanctioning authority shall, by order in writing direct that such excess payment shall be adjusted by short payments of pension in future, in one or more installments, as the said authority may direct.

[15] Mr. D. Bhattacharya, learned senior counsel also refers to Rule 64 of the CCS Pension (Rules), 1972 which deals with the matter of provisional pension and envisages in sub-rule (1) of said Rule that where in spite of following the procedure as laid down in Rule 59, it is not possible for the Head of Office to forward the pension papers referred to Rule 61(1) to the Accounts Officer within the period specified in sub-rule (4) of that rule or where the pension papers were forwarded to the Accounts Officer within the specified period but the Accounts Officer may have returned the pension papers to the Head of Office for eliciting further information before issuing pension payment order and order for the payment of gratuity and the Government servant is likely to be retired before his pension and gratuity or both can be finally assessed and settled in accordance with the provisions of said Rule, the Head of Office shall rely upon the information as may be available in the final official records and without delay, determine the amount of provisional pension and the amount of provisional retirement

gratuity. The sub-rule (3) of said Rule 64 further provides that where the amount of pension and gratuity cannot be determined for reasons other than the Departmental or Judicial proceedings, the Head of Office shall issue a letter of sanction addressed to the Government servant endorsing a copy thereof to the Accounts Officer authorising 100% of pension as provisional pension for a period not exceeding six months to be reckoned from the date of retirement of the Government servant and 100% of the gratuity as provisional gratuity withholding 10% of gratuity. The Head of Office shall also in that case specify in the letter of sanction the amount recoverable from the gratuity under sub-rule (1) of Rule 63 and after issuing the letter of sanction, the Head of Office shall draw the amount of provisional pension and the amount of provisional gratuity after deducting therefrom the amount specified in sub-clause (ii) of clause (a) and the dues, if any, specified in Rule 71, in the same manner as pay and allowances of the establishment are drawn by him.

[16] As per sub-rule (4) of the said Rule, as referred by Mr. Bhattacharya, learned senior counsel, the amount of provisional pension and gratuity payable under sub-rule (2) or sub-rule (3) shall, if necessary, be revised on completion of the detailed scrutiny of the records. Mr. Bhattacharya, learned senior counsel also refers sub-Rule (5) which is as under:

(5) (a) The payment of provisional pension shall not continue beyond the period of six months from the date of retirement of a Government servant or from the date of submission of Form 5 by the Government servant, whichever is later, and if the

amount of final pension and the amount of final gratuity had been determined by the Head of Office in consultation with the Accounts Officer before the expiry of the said period of six months, the Accounts Officer shall –

(i) issue the pension payment order; and

(ii) direct the Head of Office to draw and disburse the difference between the final amount of gratuity and the amount of provisional gratuity paid under sub-clause (ii) of clause (b) of sub rule (3) after adjusting the Government dues, if any, which may have come to notice after the payment of provisional gratuity.

(b) If the amount of provisional pension disbursed to a Government servant under sub-rule (3) is, on its final assessment, found to be in excess of the final pension assessed by the Accounts Officer, it shall be open to the Accounts Officer to adjust the excess amount of pension out of gratuity withheld under sub- clause (ii) of clause (a) of sub-rule (3) or recover the excess amount of pension in instalments by making short payments of the pension payable in future.

(c) (i) If the amount of provisional gratuity disbursed by the Head of Office under sub-rule (3) is more than the amount finally assessed, the retired Government servant shall not be required to refund the excess amount actually disbursed to him.

(ii) The Head of Office shall ensure that chances of disbursing the amount of gratuity in excess of the amount finally assessed are minimized and the officials responsible for the excess payment shall be accountable for the over-payment.

According to Mr. Bhattacharya, learned senior counsel, under above said provisions the Department has it's authority to withhold a part of the gratuity subject to final assessment.

[17] Mr. Bhattacharya, learned senior counsel further refers to sub-Rule (6) of the said Rule 64 which further provides that if the final amount of pension and gratuity have not been determined by the Head of Office in consultation with the Accounts Officer within a period of six months referred to in clause (a) of sub-rule (5), the Accounts Officer shall treat the provisional pension and gratuity as final and issue pension payment order immediately on the expiry of the period of six months.

[18] Mr. Bhattacharya, learned senior counsel relying on above said provision submits that the Office of the Accountant General as per the above said provisions determined the final pension and issued PPO which is subject to further verification by the concerned department. Mr. Bhattacharya, learned senior counsel also submits that the Office of the Accountant General cannot prepare any corrected fixation rather they can only communicate such error detected in the fixation of the employee to the concerned department.

[19] Mr. D. Sarma, learned Addl. GA appearing for the State-respondents in some of the writ petitions argues that the option was given by all the petitioners for getting benefit of revised pay scale as per ROP Rules, 2009 and therefore, such option is binding upon them. Referring to Rule 6 of the ROP Rules, 1999, learned Addl. GA also argues that the State can any time re-fix the pay of an employee and recover any excess amount paid to any employee even after his retirement and there was no challenge in this regard about the said application of said provisions in these writ petitions and therefore, the same is binding on the petitioners. Mr. Sarma, learned Addl. GA relies on a decision of the Apex Court rendered in ***High Court of Punjab and Haryana and others vs. Jagdev Singh, (2016) 14 SCC 267***, wherein the respondent was appointed as a Civil Judge (Junior Division) on 16.07.1987 and was promoted as Additional Civil Judge on 28.08.1997 in the judicial service of the State and by a notification dated 28.09.2001, a pay

scale of Rs.10000-325-15200/- (senior scale) was allowed to him under the Haryana Civil Service (Judicial Branch) and Haryana Superior Judicial Service Revised Pay Rules, 2001. Under the rules, each officer was required to submit an undertaking that any excess which may be found to have been paid will be refunded to the Government either by adjustment against future payments due or otherwise. The respondent accordingly submitted an undertaking and was granted the revised pay scale and later on, the selection grade and while opting for revised pay scale, the respondent undertook to refund any excess payment if it was so detected and demanded subsequently. In that back ground, the Apex Court held as under:

"10. In *State of Punjab. vs. Rafiq Masih*, this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law: (SCC pp.334-35)

"(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the 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."

(emphasis supplied).

11. The principle enunciated in Proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first

instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

12. For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over a period of two years."

[20] Relying on above said decision, learned Addl. GA strenuously argues that the department has the full authority to recover such excess amount paid to each of the petitioner and therefore, the challenges made by the petitioners are not sustainable at law.

[21] Mr. P.S. Roy, learned counsel, Mr. R.G. Chakraborty, learned counsel and Ms. R. Chakraborty, learned counsel appearing for the state-respondents in some of the writ petitions also submit in the same tune like Mr. Sarma, learned Addl. GA.

[22] Mr. B. Majumder, learned Dy. SGI appearing for the Union of India submits that the Union of India is a formal party and therefore, their name may be deleted from the proceeding.

[23] After taking into consideration of contentions of all the sides and also on perusal of the materials as placed in above said writ petitions, it is found that practically all the petitioners went on superannuation as Group-C employee. Though the petitioners in WP(C) No.235 of 2024, WP(C) No.236 of 2024 and WP(C) No.237 of 2024 were given promotion to the post of Office Superintendent but same was on ad-hoc basis and the policy decision of the Government as per notification No.F.2(24)-GA(P & T)/2021 dated

22.06.2021 also clarifies that such ad-hoc appointment on promotion shall not be treated as regular appointment on promotion and such promotion shall be subject to final outcome of the decision of the Hon'ble Apex Court in SLP(C) No.19765-19767 of 2015. It is also evident in all the writ petitions that the alleged wrong fixation of the pay of the petitioners were for a period for more than 5 years before the order of fresh fixation. It is also not the case of the respondents that such wrong fixation was done due to any misrepresentation or fraud exercised by any of the petitioner, rather according to the respondents, such excess payment was made applying a wrong principle for calculating the pay/allowances. Moreover, such steps of revisiting the fixation has been taken after all of them have gone on retirement and therefore, the ratio of **Rafiq Masih (White Washer) (Supra)** and **Thomas Daniel (Supra)** are squarely applicable in this case, so far matter of recovery of overdrawn of any amount is concerned. In **High Court of Punjab and Haryana and others vs. Jagdev Singh (Supra)** as relied on by Mr. D. Sarma, learned Addl. G.A., the fact of the case was quite different as noted above and in that given facts and situations, it was held by the Hon'ble Supreme Court that the proposition No.(ii) in **Rafiq Masih (White Washer)**'s case was not applicable in that case as the officer to whom the payment was made in the first instance was placed on notice that any payment found to have been made in excess would be required to be refunded and he accordingly, furnished an undertaking while opting for the revised pay scale and therefore, he

was bound by his own undertaking. In that case, the officer concerned was a Group A officer.

[24] In the present batch of writ petitions, even if the proposition no. (ii) of **Rafiq Masih (Supra)** is not applied in view of the decision of **Jagdev Singh's case**, still the proposition Nos. (i) and (iii) of **Rafiq Masih's** case are applicable as all the petitioners were treated as group-C employees and the alleged excess payment was for a period for more than five years, before the orders of revisiting their fixation were issued. All the petitioners have gone on retirement and recovery of any amount now on the ground of any wrong fixation or wrong calculation for a much older period will be harsh and iniquitous. It is also not the case of the respondents that there was any outstanding dues recoverable from the petitioners at the time of retirement in terms of Rule 70 and 75 of CCS (Pension) Rules, 1972 as adopted in Tripura. Therefore, balance amount of gratuity is required to be released immediately. Reduction, if any, of gratuity amount already calculated on the ground of any wrong fixation of a much older period will also similarly cause hardship to the petitioners in view of the involved facts and circumstances of the present cases and therefore gratuity already calculated shall remain unaltered.

[25] In WP(C) No.233 of 2024, the last basic pay of the concerned petitioner was Rs.62,600/- and his final pension and commutation were also released on the basis of said last pay of Rs.62,600/-. Similarly, in writ petition No.234 of 2024 also the PPO

(pension payment order) and CPO (commutation payment order) are already released by the office of the Accountant General treating his basic to be Rs.62,600/- which was his last basic pay. Once the pension is settled by the competent authority, after final assessment of the pension, same can be revisited under Rule 61 of CCS (Pension) Rules, 1972 as adopted in Tripura with necessary amendments. As per said Rule 61, revision of pension once finally assessed is permissible on account of any clerical error.

[26] The High Court of Delhi in a Division Bench in the case of ***K.S. Dhingra vs. Union of India and others [WP(C) No.4473 of 2021 decided on 09.04.2021]*** observed that the words “clerical error” as have been used in Rule 70 should be given a broader meaning, whereby, if it is subsequently realized by the respondents that the pension has wrongly been fixed on account of mis-interpretation of Rules, the same would amount to be a clerical error and the respondents would have the right to revise the same at a later point of time. Therefore, in the above said two writ petitions, though the basic pension is finally assessed and PPO are already issued as mentioned above, revision of the same is permissible on any such clerical error in terms of Rule 61.

[27] In other three writ petitions i.e. in WP(C) No.235 of 2024, WP(C) No.236 of 2024 and WP(C) No.237 of 2024, the office of the Accountant General already reduced the basic pay from Rs.64,500/- to Rs.62,600/- before issuance of pension payment order and therefore, Rule 61 above has no application in their

cases. But, it is the grievances of the petitioners of above said writ petitions that before such reduction in the basic pay while determining the pension, no notice was issued to them giving them opportunities to be heard. Considering above said factual position, the Court deems it proper to give the petitioners of above said three writ petitions bearing nos. WP(C) No.235 of 2024, WP(C) No.236 of 2024 and WP(C) No.237 of 2024 the liberty to submit representations to the Accountant General placing their grievances, if any, against such reduction in the last basic pay, with all necessary materials they intend to rely upon and the respondent No.4 will dispose of such representation by a reasoned order within 4(four) weeks of receipt of such representations. Similarly, in WP(C) No.233 of 2024 and WP(C) No.234 of 2024 also, if the respondents intend to reduce the last basic pay of the petitioners revisiting the fixation of their respective pay, opportunities shall be given to the concerned petitioners of being heard.

[28] In view of above said discussion, it is held that recovery of any amount from the petitioners of above said cases on the ground of wrong fixation will be harsh, iniquitous and therefore impermissible. Consequently, -

(i) The respondents are directed to release the 25% of the gratuity amount as withheld by them within 8 (eight) weeks of receipt of copy of this judgment, to the respective petitioners along with interest @7% per annum w.e.f. 30 days after the respective date of their retirement till payment is made.

(ii) It is further directed that in WP(C) No. 233 of 2024 and WP(C) No.234 of 2024 if the respondents intend to reduce the last basic pay of the petitioners revisiting the fixation of their pay, opportunities shall be given to the concerned petitioners of being heard.

(iii) The petitioners of WP(C) No.235 of 2024, WP(C) No.236 of 2024 and WP(C) No.237 of 2024 are given liberty to submit representations within 4(four) weeks from today to the Accountant General placing their grievances, if any, against such reduction in the last basic pay, with all necessary materials they intend to rely upon, and the respondent No.4 will dispose of such representation by reasoned order within next 4(four) weeks of receipt of such representation(s).

(iv) In case of any over payment on the ground of wrong fixation, no amount shall be recovered from any of the petitioners.

With such observations and directions, the writ petitions are disposed of.

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

JUDGE