

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) No.446 of 2024

Sri Chittaranjan Das,

son of late Jatindra Kumar Das, resident of
village & P.O. Fulkumari, P.S. R.K. Pur,
District- Gomati Tripura, PIN-799013

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

- V e r s u s -

- 1. The State of Tripura,**
represented by the Commissioner &
Secretary to the Department of Agriculture &
Farmers Welfare, Government of Tripura,
New Secretariat Complex, Gurkhabasti,
Agartala, P.O. Kunjaban, P.S. New Capital
Complex, Sub-Division- Sadar, District- West
Tripura
- 2. The Director,**
Department of Agriculture & Farmers
Welfare, Government of Tripura, Krishi
Bhavan, Akhaura Road, P.O. Agartala, P.S.
West Agartala, Sub-Division- Sadar, District-
West Tripura
- 3. The Deputy Director,**
Horticulture, South Tripura, Government of
Tripura, Shantirbazar, District- South Tripura
- 4. The Accountant General (A & E),**
Tripura, P.O. Kunjaban, P.S. New Capital
Complex, Sub-Division- Sadar, District- West
Tripura
- 5. The Senior Accounts Officer,**
Office of the Accountant General (A & E),
Tripura, P.O. Kunjaban, P.S. New Capital
Complex, Sub-Division- Sadar, District- West
Tripura

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

For the Petitioner (s)	:	Mr. Koomar Chakraborty, Adv.				
For the Respondent (s)	:	Mr. Kohinoor N. Bhattacharya, GA Mr. N. Majumder, Adv.				
Date of hearing	:	07.10.2024				
Date of delivery of Judgment & order	:	27.03.2025				
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 case of the petitioner, in brief, is that he was appointed as Lower Division Clerk vide office order dated 25.05.1987 issued by the respondent No.2 in the pay scale of Rs.430-850/-. Accordingly, he joined to the post on 15.06.1987 and on completion of 10 years of satisfactory service, he was provided first financial upgradation w.e.f. 15.06.1997. Thereafter, vide office order dated 13.05.2002 (Annexure-2 to the writ petition) he was promoted to the post of Upper Division Clerk and finally he was promoted to the post of Head Clerk vide office order dated 11.08.2011 (Annexure-3) in the pay scale of Rs.5000-10300/- (pre-revised). By the lapse of time, on attaining the age of superannuation, the petitioner ultimately went on retirement on 31.05.2021 from the post of Head Clerk from the office of the Deputy Director, Horticulture Department, Government of Tripura, South Tripura, Shantirbazar with his last basic pay of Rs.60,800/-.

[2] On his superannuation, the Deputy Director of Horticulture vide sanction memo dated 28.05.2021 (Annexure-4) calculated his total gratuity amount to be Rs.10,03,400/- (with the maximum ceiling limit of Rs.10,00,000/-) and 75% of the said amount i.e. Rs.7,50,000/- was sanctioned as provisional gratuity and the rest 25% was withheld. Similarly vide another sanction memo dated 28.05.2021 an amount of Rs.6,26,240/- was sanctioned as amount of leave salary and both the amounts were calculated treating his basic pay to be Rs.60,800/-.

[3] After the pension proposal of the petitioner was forwarded to the office of the Accountant General, the letter dated 25.08.2021 (Annexure-5) was communicated by the Assistant Accounts Officer of the office of Accountant General (A & E) to the said Deputy Director of Horticulture, Shantirbazar indicating that the fixation of pay of the petitioner under ROP Rules, 2009 appeared to be incorrect in the service book and his pay ought to have been fixed at Rs.5,160/- instated of Rs.5,280/- as on 01.01.2006 i.e. having a difference of Rs.120/-. As per said calculation, the office of the Accountant General came to the conclusion that the last basic pay of the petitioner would be Rs.59,000/- instead of Rs.60,800/- and a request was made by them to said Deputy Director of Horticulture to resubmit the service book of the petitioner after making proper entries of refixation of pay under ROP, 2009 and ROP, 2017 along with revised IPS and connected due and drawn statement of pay and

allowances w.e.f. **01.01.2009 to 30.11.2012** under factor 1.74, w.e.f **01.12.2012 to 31.03.2015** under factor 1.86, Grade Pay w.e.f. **01.04.2015 to 31.03.2017** and thereafter, w.e.f. **01.07.2017 to 31.05.2021** along with leave salary for finalisation of the case at their end. It was also stated in the said communication that the pension and commuted value of the pension were already released on the basis of last pay of Rs.59,000/- as per the above said fixation of pay regulation withholding gratuity which would be released on receipt of the reply from the office of the Deputy Director of Horticulture.

[4] Another letter was also issued on 27.10.2021 (Annexure-7) by the Senior Accounts Officer of said office to said Deputy Director of Horticulture stating further that the re-fixation of pay of the petitioner under ROP, 1999 also appeared to be incorrect inasmuch as it was not clearly mentioned in the service book about the change of DNI as on 01.01.1998 instead of 01.06.1998 and therefore, request was made from the office of the Accountant General to the said office of Deputy Director of Horticulture to re-examine the matter again. Another ground was also raised from the office of the Accountant General through their another communication dated 04.01.2022 addressed to said Deputy Director of Horticulture, Shantirbazar stating that in view of the notification dated 24.06.2008 issued by the Finance Department, the substituted provision of FR-22(I) (a) (2) as per notification No.F.19(1)-FIN(G)/83 dated 03.10.1999 shall be

applicable in case of movement under CAS of Tripura State Civil Services (Revised Pay) Rules, 1999 and the date of next increment (DNI) along with the scope for exercising option shall be regulated as per provision of FR-22(I) (a) (2) w.e.f. 01.01.1999 but as per service book of the petitioner, it was found that he got the first gradation on 15.06.1997. Therefore, further request was made to the said Deputy Director to re-examine the matter and in case of necessity to communicate with the Finance Department and to resubmit the service book after proper fixation of pay regulation along with views of Finance Department and the revised IPS & LPC. Again similar letter on 20.12.2022 (Anexure-7) was also issued by Senior Accounts Officer. Further on 08.06.2023 (Annexure-8) the senior Accounts Officer communicated said Deputy Director of Horticulture with a request to furnish the revised LPC at Rs.59,000/- as per refixation of pay in the service book of the petitioner along with such due and drawn statement under proper attestation for authorisation of the gratuity at their end.

[5] A specimen of the due and drawn statement of the petitioner was also sent along with the said communication under Annexure 8 to the office of the Deputy Director by the Senior Accounts Officer wherein an amount of Rs.1,24,576/- was shown to be paid in excess from the pay and allowances and further Rs.18,540/- was shown to be paid as excess payment of leave salary.

[6] The petitioner then sent a representation to the respondents on 26.12.2023 (Annexure-9) with a request to release his rest amount of gratuity along with interest @ 9% per annum and also to reissue his PPO correcting the same to be Rs.60,800/- and also to calculate his pensionary benefits considering his last basic pay to be Rs.60,800/- in place of Rs.59,000/-.

[7] As no response was received from the respondents by the petitioner in respect of the said representation, he also issued one legal notice on 01.05.2024 (Annexure-10) through his learned counsel ventilating his grievances again, to which the Deputy Director of Horticulture, Shantirbazar vide his letter dated 21.05.2024 (Annexure-11) informing that as per the demand of the petitioner, the application along with service book and due and drawn statement were sent to the office of the Director, Horticulture and Soil Conservation vide letter dated 08.08.2023 and then same was sent to the office of Director of Agriculture & Farmers Welfare, Tripura for correction of his basic pay. The Senior Accounts Officer also sent a reply against the said legal notice vide his letter dated 03.05.2024 (Annexure-12) informing the above said communications made by them and the replies of their office letters dated 20.12.2022 and 08.06.2023 from the concerned department with views of the Finance Department were still awaited and therefore, they were not in a position to issue GPO in favour for the petitioner unless and until the proper

reply is received from the concerned department. The petitioner thereafter has approached this court under Article 226 of the Constitution seeking redresses.

[8] It is also agitated that other two employees, namely Dhirendra Kumar Das and Badal Majumder as similarly situated with the petitioner who joined in the service with the petitioner and also got promotion in the post of UDC by the same notification, went on retirement on 30.06.2021 and 31.01.2019 respectively and in the case of Dhirendra Kr. Das, his last basic pay was maintained at Rs.60,800/- and the last basic pay of Badal Majumder was determined to be Rs.59,000/- considering his early date of retirement but illegally the last pay of the petitioner was reduced.

[9] During hearing, Mr. Koomar Chakraborty, learned counsel appearing for the petitioner argues before this court that before reducing such last basic pay of the petitioner, no show cause notice was issued to him and actually, the bunching benefit by way of one increment of Rs.120/- was not provided to the petitioner w.e.f. 01.01.2006 by the office of the Accountant General rather it was provided w.e.f. 01.06.2006 wrongly and for that reason, illegally the last basic pay of the petitioner was reduced to Rs.59,000/-. In this regard, learned counsel Mr. Chakraborty also referred to Rules 3 (1)(k) and 7 of the ROP Rules, 2009 which are extracted hereunder:

3(1)(k) bunching benefit-the term bunching benefit means that the older employee shall be given the benefit of one increment in the existing pay for 10 completed years of service from the date of entry into the State Govt. service under regular scale and two increments for 20 completed years of service from the date of entry in the State Govt. service under regular scale. The benefit provided shall be treated as a one time measure at the time of fixation only under these rules i.e. on the date of coming over to the revised scale;

7. Fixation of initial pay in revised pay structure-(1) The initial pay of the Government employee who elects or is deemed to have elected under rule 6 to be governed by the revised pay structure incorporated in these rules on and from the 1st day of January, 2006, shall, unless in any case the Governor by special order or otherwise directs, be fixed in the following manner, namely:-

(i) **for the purpose of fixation of initial pay in the revised pay structure effective from 1st January, 2006 bunching benefit in the form of one increment shall be provided in the existing scale of pay of the concerned employee for 10 completed years of service from the date of his/her direct entry in the cadre service of the State Government or, as the case may be, in the State Government Department. Subject to fulfilment of these criterion, those who have completed further 10 years of service, i.e. total 20 years of service will be provided further one increment in the existing scale for the purpose of fixation of initial pay in the revised pay structure. The reference date for calculation of completed years of service of 10/20 years will be 31st December, 2005. This-bunching benefit would be admissible only as a one time measure for the purpose of revision under these rules.**

(ii) on providing the bunching benefit, increment(s) provided under rule 11 & 13 and benefits provided under rule-14 of these rules for the eligible cases to the existing basic pay, pay in the pay band of the employee who continued in service after 31st December, 2005, shall be determined notionally as on 1st day of January, 2006 or the date of coming over to the revised pay scale as per option exercised, by way of multiplying with a factor of 1.74 and rounding off the resultant figure to the next multiple off 10;

Provided that if the minimum of the revised pay band is higher than the amount so arrived at in accordance with the provisions of this item, the pay shall be fixed at the minimum of the revised pay band;

(ii) After the pay in the pay band so determined, grade pay corresponding to the existing scale shall be added;

(2) Subject to compliance of rule-6, the initial substantive pay of the employee in the permanent post on which he holds lien or would have held a lien had his lien not been suspended, and in respect of his pay in the officiating post held by him shall be fixed separately in the manner indicated in sub rule(1);

[10] It is also argued by Mr. Chakraborty, learned counsel that the deduction of any amount on the ground of wrong fixation for a period w.e.f. 01.01.2006 or w.e.f. 01.01.1998 as the case may be, was not permissible in view of the decision of the Apex Court rendered in **State of Punjab and others vs. Rafiq Masih (White Washer) and others, (2015) 4 SCC 334**. According to Mr. Chakraborty, learned counsel, illegally the gratuity amount has been withheld which is required to be released immediately with interest and the last pay of the petitioner should be fixed at Rs.60,800/- in place of Rs.59,000/-.

[11] Mr. Kohinoor N. Bhattacharya, learned GA appearing for the State-respondents submits that the rest amount of gratuity was withheld by the office of the Accountant General for the reason of erroneous pay fixation of the pay of the petitioner and the petitioner also submitted one option form by way of undertaking to refund to the government the excess payment, if any, drawn by him on account of erroneous fixation in the revised pay structure. He also submits that when the erroneous fixation was detected by the office of the Accountant General, the last basic pay was also reduced after making necessary correction as per rules and nothing illegality or arbitrary was done by the respondents.

[12] Mr. N. Majumder, learned counsel appearing from the side of the Accountant General i.e. the respondents Nos.4 & 5,

submits that as per Rule 7 of ROP Rules, 2009 proper calculation of the fixation of pay of the petitioner was done from the office of the Accountant General as per norms and therefore, no irregularity and illegality were committed by the respondents No.4 & 5. He also refers to the letter dated 25.08.2021 of Assistant Accounts Officer under Annexure-5 addressed to the Deputy Director of Horticulture as discussed earlier. According to Mr. Majumder, learned counsel, the last basic pay of the petitioner was correctly refixed at Rs.59,000/- from the office of the Accountant General and therefore, there is no merit in the writ petition.

[13] Regarding the plea raised from the side of the petitioner about not providing the bunching benefit by way of one increment of Rs.120/- under Rule 7 of the ROP Rules, 2009 w.e.f. 01.01.2006 on completion of 10 years of service from the date of direct entry in the service, Mr. Majumder, learned counsel during hearing on 25.09.2024 submitted that an additional affidavit in this regard would be submitted on behalf of the respondents No.4 & 5 with further clarification as to whether such benefit was provided to the petitioner or not and then an additional affidavit was also submitted from the side of the said respondents, *inter alia*, in the following terms:

".....In this instant case the pay regulation was found incorrect w.e.f. 01.01.1998 because the concerned Department had wrongly fixed the pay giving benefit of 1st Gradation after 10 years from the date of joining as per office order vide F.2(516)-Agri(Estt)/2011-12/10221-84,

dated 05.05.2012, which does not match with the Notification issued by the Finance Department, Govt. of Tripura vide No.F.6(1)-FIN(PC)/98, dated 24.06.2008 at Sl. No.2(c) wherein it has been mentioned that the Date of next increment (DNI) alongwith the scope for exercising option shall be effective from 01.01.1999 but the writ petitioner had got this benefit w.e.f. 01.01.1998. In this connection the concerned Department fixed the pay w.e.f. 01.01.2006 at Rs.5,280/- and had been found incorrect for revised pay regulation under ROP, 2009 and this office communicated the concerned Department on several occasions regarding this wrong fixation of pay vide letter dated 27.10.2021, 04.01.2022, 20.12.2022 & 08.06.2023 (which are mentioned in the writ petition, this office communicated with the concerned Department on several occasions regarding the wrong fixation of pay regulation vide letter dated 27.10.2021, 04.01.2022, 20.12.2022 & 08.06.2023 (which are mentioned in the writ petition). On receipt of reply from the concerned department along with the correct pay regulation this office will authorized withheld pensionary benefits.

[14] However, no straight forward reply was given by the respondents No.4 & 5 in the said additional affidavit about providing of bunching benefit under Rule 7 of ROP Rules, 2009. In support of the plea of State-respondents in respect of execution of 'undertaking' by the petitioner, they submitted such undertaking as Annexure-E with their counter affidavit but it manifests that the same was executed on 05.08.2021 i.e. after two months of the retirement of the petitioner and not at the time of fixation of pay as per ROP or prior thereto. Therefore, the said document is not much relevant. However, another option form was also signed by the petitioner regarding fixation of his pay w.e.f. 01.01.2006, as relied on by State-respondents, giving the undertaking that he would be liable to refund the excess amount drawn by him in case of any wrong fixation. Be that as it may, said fact will be examined in different perspective in the light of the judgment of the Apex Court as to whether such

refund after retirement about any wrong fixation done long ago would be harsh and iniquitous towards the petitioner or not.

[15] Now 2(two) questions come up for consideration before this court i.e. (i) the matter of alleged wrong fixation of pay by the office of the Accountant General and (ii) the matter of recovery of amount on the ground of alleged wrong fixation. So far the second question i.e. the matter of recovery is concerned, from the correspondences made from the office of the Accountant General, it is clear that the wrong fixation was either w.e.f. 01.01.1998 or latest by 01.01.2006. Admittedly, the petitioner was a Group-C employee and he had no contribution in such wrong fixation, if any. In **Rafiq Masih** (*supra*), some situations have been postulated by the Hon'ble Supreme Court wherein recoveries by the employer was held to be impermissible in law and the relevant paragraph No.18 thereof, is extracted hereunder:

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 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.

[16] It is already noted that the petitioner was a Group-C employee and the alleged recovery from the employee on the ground of excess payment is for a period far beyond 5[five] years from the date when such order of recovery was proposed and already the petitioner has gone on superannuation. Therefore, the case of the petitioner is covered by above said decision. Consequently, it is held that recovery of any such amount at a belated stage after retirement will be very much harsh, iniquitous and impermissible at law. So far the matter of alleged wrong fixation is concerned, nothing could be shown from the side of the respondents that before making any such decision of wrong fixation, the petitioner was given a scope to be heard. Therefore, any order passed against his interest alleging wrong fixation is violative of principle of natural justice. Therefore, the respondents cannot be allowed to give effect to the letter dated 25.08.2021 (Annexure-5) and the letters dated 27.10.2021, 04.01.2022, 20.12.2022 and 08.06.2023 (under Annexure-7 and Annexure-8) of the office of Accountant General unless the petitioner is given a scope to be heard and to explain his own stand.

[17] So far the matter of withholding of rest amount of gratuity of the petitioner is concerned, it is also not the case of the respondents that there was any outstanding dues recoverable from the petitioner at the time of retirement in terms of Rules 70 and 75 of the CCS Pension Rules, 1972 as adopted in Tripura. Moreover, it appears that if, the gratuity is calculated treating his last basic pay to be Rs.59,000/- in place of Rs.60,800/-, the difference with the amount what has been calculated earlier, will not be very significant. Therefore, the gratuity already calculated shall remain unaltered.

[18] Considering thus, the writ petition is partly allowed. It is held that proposed recovery of any amount by the respondents on the ground of wrong fixation of pay of the petitioner is held to be harsh, iniquitous and impermissible at law and therefore, the respondents are directed not to recover any amount from the petitioner on the ground of any such wrong fixation. However, the respondents will have the liberty to revisit the pay fixation of the petitioner to examine and verify it's correctness for the purpose of fixation of his last basic pay and pension, but while doing so, the petitioner shall be notified and shall be given the opportunity to be heard and to place any document(s), if so desire, in support of his contention.

The respondents are also directed to release the balance amount of gratuity immediately along with interest @ 7%

per annum w.e.f. 30 [thirty] days from the date of retirement of the petitioner, till payment is made.

The entire exercise of revisit of fixation of the pay of the petitioner, if any, and the release of rest amount of gratuity as ordered, shall be done within 8(eight) weeks from the date of receipt of a copy of this judgment.

With such observations and directions, this writ petition is disposed of.

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

JUDGE

Sujay

