

**HIGH COURT OF TRIPURA
AGARTALA
WA NO.94 OF 2024**

Mousumi Bhattacharjee,
Wife of Sri Hiranmoy Bhattacharjee,
Resident of 21/4 Old Kalibari Lane
(near Narendra Ila Apartment),
P.O.- Agartala, P.S.- West Agartala,
District-West Tripura, Pin-799001

.....**Appellant(s)**

Versus

1. The State of Tripura,
Represented by the Secretary, Department of Co-
operation, Government of Tripura, New Secretariat Complex,
Gurkhabasti, Agartala, P.O.- Kunjaban, P.S.- New Capital
Complex, Sub-Division- Sadar, District-West Tripura.

2. The Registrar of Co-operative Societies,
Government of Tripura, Palace Compound, P.O.-Agartala, P.S.-
West Agartala, District-West Tripura, Pin-799001.

3. The State Co-operative Marketing Federation of Tripura
Limited(Tripura Markfed), represented by its managing
Director, Badharghat, P.O.- Siddhi Ashram, P.S.-Amtali, District-
West Tripura, Pin-799003.

4. The Board of Directors, State Co-operative Marketing
Federation of Tripura Limited(Tripura Markfed), Badharghat,
P.O. Siddhi Ashram, P.S.-Amtali, District-West Tripura, Pin-
799003.

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

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

For the Respondent(s) : Mr. Chandrasekhar Sinha, Advocate.
Mr. D. Sharma, Addl. G.A.
Mr. Dulal Ch. Saha, Advocate.

Date of hearing : 11.02.2025

Date of delivery of
Judgment & Order : 18/02/2025

Whether fit for reporting : NO.

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT
J U D G M E N T & O R D E R**

T. AMARNATH GOUD(J)

This present appeal has been filed under Rule B(A) (General Rules for Writ Appeals) of Chapter VIII of the High Court of Tripura Rules, 2023, read with Article 226 of the Constitution of India, against the impugned Order dated 05.07.2024 passed in WP(C) No.194 of 2024, whereby the learned Single Judge has partly allowed the connected writ petition.

2. The brief fact of the case is that the petitioner-appellant was initially engaged on a contingent basis in Tripura Markfed on 11th January, 1993, before being regularized as Junior Assistant on 28th December, 2012. On 1st November, 2019, the petitioner-appellant submitted a representation requesting two advance increments based on their past experience. The Board of Directors of Tripura Markfed, in a meeting held on 1st July, 2020, granted these increments. However, following an audit report the respondents found the increments were illegally granted. Thereafter vide meeting dated 19th January, 2024, they decided to withdraw

the same. A memorandum issued on February 17, 2024, subsequently reduced the petitioner's pay from Rs.34,100/- to Rs.31,400/-, to be effective from 1st July 2023, and also initiated recovery of the excess amount paid.

3. Hence, the writ petition was filed by the petitioner-appellant herein seeking the following reliefs:

"(i) Issue Rule, calling upon the Respondents and each one of them, to show cause as to why a Writ of Certiorari and/or in the nature thereof, shall not be issued, directing them, to transmit the records, lying with them, for rendering substantive and conscionable justice to the Petitioners, and for quashing/setting aside the impugned Memoranda, each dated 17.02.2024 (Annexure-11 supra), insofar as it relates to reduction of the respective basic pays of the Petitioners;

(ii) Issue Rule, calling upon the Respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued, mandating/directing them, to restore the respective basic pays of the Petitioners, to Rs.34,100/-(w.e.f. 01.07.2023), and also to restore 2 Nos. of advance increments, alongwith all consequential benefits flowing therefrom, as granted to the Petitioners, vide the Memorandum dated 16.07.2020 (Annexure-9 supra);

(iii) Issue Rule, calling upon the Respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued, mandating/directing them, not to recover any amount, from the monthly salary of the Petitioners or from any other service benefits, on account of the alleged excess payment;

(iv) In the Ad-interim, and thereafter, on hearing the parties, in the Interim, an Order in terms of (iii) above;

(v) Call for the records, appertaining to this Writ Petition;

(vi) After hearing the parties, be pleased to make the Rule absolute in terms of (i) to (iv) above;

(vii) Costs of and incidental to this proceeding

(viii) Any other Relief(s) as to this Hon'ble High Court may deem fit and proper;"

4. Vide Judgment and Order dated 05.07.2024, the learned Single Judge allowed the writ in part by directing the respondents not to recover the amount, but insofar as the withdrawal of the increments was concerned, the same stood upheld.

5. Aggrieved by the second portion of the Order, i.e., the withdrawal of the increments, the present writ appeal has been filed.

6. Heard Mr. P. Roy Barman, learned Sr. Counsel, assisted by Mr. S. Bhattacharjee, learned counsel, and Mr. Koomar Chakraborty, learned counsel appearing for the appellant-petitioner Also heard Mr. C.S. Sinha, learned counsel appearing for the respondents-cooperation, and Mr. D. Sharma, learned Addl. G.A., appearing for the State-respondent.

7. Mr. Roy Barman, learned counsel appearing for the appellant-petitioner, submits that the benefit of two advance increments was consciously granted to the appellant in tune with the decision of the Board of Directors, Tripura Markfed, in the meetings held on 04.03.2020 and 01.07.2020. However, the same was arbitrarily withdrawn from the appellant vide the meeting of the Board of Directors, Tripura Markfed, dated 19.01.2024. The learned

Sr. Counsel contended that prior to such reduction of the basic pay, the appellant was not confronted with any show-cause notice inviting her explanation. As such, the said reduction of the basic pay of the appellant, in the guise of pay fixation under the relevant Revised Pay Rules, is in violation of the principles of natural justice. The appellant-counsel contended that his client was not guilty of fraud or misrepresentation regarding the alleged excess payment. The respondents, on their own motion, had granted the same to the appellant. The appellant is a Group-C employee, hence, any attempt to recover excess payment would cause hardship to his client.

8. On the other hand, Mr. C.S. Sinha, learned counsel appearing for the respondent-cooperation, argued that it is public money, and the petitioner, without the authority of law, is not supposed to have wrongful gains and is not entitled to the increments. He also contended that the question of violating the principles of natural justice and giving the petitioner an opportunity before withdrawing the increments does not arise. The learned counsel has drawn the attention of this Court to an audit report, which states that by virtue of the proceedings of the Registrar and the concerned Department, the petitioner had been extended the financial benefit, and thereafter, in 2024, steps for recovery were initiated. The action of the respondents is well within their authority,

and he prayed for the dismissal of the writ petition as well as the writ appeal.

To substantiate his argument, he also relied upon the reasoning given in the Judgment of the Hon'ble Supreme Court passed in **Civil Appeal No.1763 of 2007**, titled **Raj Kumar Soni & Anr. Vs. State of U.P. & Anr.**

9. Mr. D. Sharma, learned Addl. G.A., appearing for the State-respondents, submitted that the recovery is within jurisdiction and correct since it pertains to the recovery of pay fixation with the increment and is not a one-time settlement of retirement benefits, particularly for Group-D employees or clerical cadre employees. He further submitted that, this Court earlier considering the decisions of the Hon'ble Supreme Court has taken a view that recovery of amount paid in excess from a retired employee cannot be done, but that principle does not apply in the present case. He prayed for the dismissal of the case.

10. Heard both sides and perused the evidence on record.

11. During the course of argument, learned counsel for the respondents has drawn the attention of this Court that the mistake was committed by the respondent-Department in granting increments and accordingly, a decision was taken by the Board and

they started the recovery of the amount. For that, the petitioner preferred this Court by filing the writ petition and the learned Writ Court by the said order dated 05.07.2024, partly allowed the same in respect of decision of the respondents for recovery of the amount paid against 2(two) increments, but, no relief was granted to the appellant in respect of the reduction of the pay of the petitioner.

12. On the other hand, the learned counsel for the respondents submitted that the audit was rightly pointed out that the benefit were illegally given to the petitioner, as such, the Board of Directors in their meeting resolved to reduce the pay of the petitioner by excluding those 2(two) increments. But, in respect of payment already made in favour of the appellant-petitioner in pursuance of the decision of the Board dated 01.07.2020, learned counsel for the respondents fairly submitted that the respondent-Department stands agree with the decision of the learned Single Judge in respect of that part that is the payment which have already been made. But in respect of the reduction of the pay of the petitioners, the learned counsel for the respondents fairly submitted that the learned Single Judge after considering the material on record rightly decided the said issue and as such at this stage there is no scope to interfere with the order of the learned Single Judge.

13. However, after hearing both the sides and considering the materials placed on record that no proper opportunity was granted to the petitioner-appellant by the respondents before taking the decision in respect of reduction of the pay of the petitioner, as such, the observation of the learned Single Judge in respect of other part of the relief i.e., interference in respect of reduction of the pay of the petitioner is interfered with and the same observation is set aside. But in respect of the relief granted as admitted by the respondents, there is scope to interfere with the same observation made by the learned Single Judge. In the result, the appeal is disposed of with a direction to the respondents to deal with the matter of the petitioner-appellant in accordance with law following the principles of natural justice. Till any decision is made, no further recovery shall be made from the petitioner-appellant.

14. As a sequel, any stay stands vacated. Pending application(s), if any, also stand closed.

B. PALIT, J

T. AMARNATH GOUD, J

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