

GAHC010009872023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/704/2023

MADAN BORAH
S/O- PADMANATH BORAH,
R/O- 2 NO. POULALIPATHER ,
P.O- TINGKHONG,
DIST- DIBRUGARH,
PIN-786612

VERSUS

THE STATE OF ASSAM AND 7 ORS.
TO BE REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF
ASSAM, DEPTT. OF EDUCATION, ELEMENTARY, DISPUR, GUWAHATI- 6.

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT DISPUR
GUWAHATI- 6.

3:THE DIRECTOR OF PENSION
ASSAM
HOUSEFED COMPLEX
DISPUR
ASSAM
PIN-781006

4:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 19.

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DIBRUGARH

DIST- DIBRUGARH
ASSAM

6:THE DEPUTY INSPECTOR OF SCHOOLS
DIBRUGARH
DIST- DIBRUGARH
ASSAM
PIN-786001

7:THE FINANCE AND ACCOUNTS OFFICER
DIRECTORATE OF PENSION

HOUSEFED COMPLEX
DISPUR
ASSAM
PIN-781006

8:THE TREASURY OFFICER
DIBRUGARH
DIST- DIBRUGARH
PIN-78600

Advocate for the Petitioner : Mr. B. Baruah

Advocate for the Respondent : Mr. P. N. Sharma
: Mr. B. Gogoi
: Mr. S. R. Baruah

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

Date : 10-02-2023

Heard Mr. B. Baruah, the learned counsel appearing on behalf of the petitioner and Mr. P. N. Sharma, the learned Standing counsel appearing on behalf of the respondent Nos. 1, 4, 5 and 6. I have also heard Mr. B. Gogoi, the learned Standing counsel appearing on behalf of the respondent Nos. 2 and 8

and Mr. S. R. Baruah, the learned Standing counsel appearing on behalf of the respondent Nos. 3 and 7.

2. Taking into account the facts involved in the instant case, this Court takes up the matter for disposal at the stage of motion itself.

3. The case of the petitioner herein is that the petitioner was appointed as an Assistant Teacher in Deroibam L.P. School in the year 17.02.1984 pursuant to which he joined his duty at the place of posting and retired on 31.03.2018. Pursuant to his retirement, the pension papers along with his service book have been processed by the respondent authorities and accordingly the same was submitted before the Director of Pension, Assam to finalize the pensionary benefits payable to the petitioner. The petitioner was also issued a Pension Payment Order No.ADP/PPO/GPO/2020/064133 and the amount of monthly pension before commutation stood at Rs.22,950/- per month w.e.f. 01.04.2018 up to the period of 01.03.2025 at the said rate. However, the Finance and Accounts Division in the Office of the Directorate of Pension, Assam through their letter under Memo No. ADP/PPO/GPO/2018-19/064133 dated 06.03.2020 issued to the Treasury Officer, Dibrugarh requesting to release the pension amount of Rs.22,950/- per month to the petitioner with a copy of the communication was issued to the Deputy Inspector of Schools, Dibrugarh. The aforesaid communication mentioned the requirement of disbursing the pension w.e.f. 01.04.2018 to the retired teacher i.e. the petitioner after completion of all formalities as per the procedure.

4. Furthermore, the Finance and Accounts Officer, Assam through another communication dated 06.03.2020 enclosed the copy of the communication to the Treasury Officer dated 06.03.2020 wherein the retirement benefits i.e. the

Death-Cum-Retirement Gratuity component was directed to be released to the retired teacher-petitioner as per the amount admissible to the petitioner, less recoveries made from the petitioner's due retirement benefits. Thereupon, the Finance and Accounts Officer, Directorate of Pension i.e. the respondent No.7 herein had issued a communication to the Deputy Inspector of Schools, Dibrugarh wherein it has been mentioned that while checking the pension proposal of the petitioner, certain deficiencies were found for which the pensionary benefits could not be finalized. The deficiency/shortcoming in the service book/pension papers may be examined and if found in order, appropriate steps may be taken to remove the deficiency. In the said communication, it was mentioned that the petitioners pay on 01.04.2016 was to be revised at Rs.43,250/- per month instead of Rs.48,960/- per month. The excess payment w.e.f. 01.04.2016 to 31.03.2018 may be calculated. It was also mentioned that the Head of Office may take necessary action to waive the excess payment as per the Government O.M. No.Fin(EC-III)1808/2018/2 dated 14.06.2019. Further to that, it was also mentioned that the copy of sanctioning order of encashment of unutilized Earned Leave is required to be furnished and rectifications should be recorded in the Service Book.

5. Subsequent thereto, as the respondent authorities were not finalizing the pension papers of the petitioner, the petitioner was compelled to deposit an amount of Rs.1,57,395/- on 20.12.2019. It was only after the deposit so made that the respondent authorities have finalized the pension of the petitioner and the petitioner presently is receiving his pension and other pensionary benefits.

6. The case of the petitioner herein is that the fixation of pay of the petitioner at Rs.48,960/- instead of Rs.43,250/- was done by the respondent

authorities and the petitioner had no role in the fixation of the pay. Under such circumstances, the learned counsel has submitted that in view of the law laid down by the Apex Court in the case of ***State of Punjab and Others Vs. Rafiq Masih Vs. (White Washer) and Others*** reported in (2015) 4 SCC 334 and specifically referring to paragraph No.18 and its sub-paragraphs wherein it has been categorically mentioned in paragraph 18(ii) to that effect that there should not be any recovery from any retired employee or any person who is due to retire within 1 (one) year. The learned counsel for the petitioner therefore submitted that the petitioner having retired on 30.03.2018, the respondents ought not to have imposed and/or coerced upon the petitioner to make the payment of Rs.1,57,395/- in order to finalize his pension. He therefore submitted that in view of the above law laid down, the petitioner is entitled to the refund of the said amount of Rs.1,57,395/-.

7. I have heard the learned counsels for the parties and have perused the materials on record. Let this Court first take into consideration the judgment of the Supreme Court in the case of ***Rafiq Masih (White Washer) (supra)***. In the said judgment, the question before the Supreme Court related to as to whether the monetary benefits which accrued upon the employees upon a mistake committed by the Competent Authority in determining the emoluments payable could be recovered. It was observed that when the excess unauthorized payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery. It was further observed that interference because of an action is iniquitous, must really be perceived as, interference because the action is arbitrary. While the Supreme Court in paragraph No. 13 of the said judgment observed that if a mistake of

making a wrongful payment is detected within 5 years, it would be open to the employer to recover the same in the case of an employee being in service, but in respect to employees who are about to retire or have retired, it was observed in paragraph No. 16 that a retired employee or an employee about to retire is a class apart from those who have sufficient service to their credit, before their retirement inasmuch as at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger and despite that, the employee's earnings have substantially dwindled (or would substantially be reduced on his retirement). With that perspective, the Supreme Court observed that the recovery would be iniquitous and arbitrary if it is sought to be made after the date of retirement, or soon before retirement. The Supreme Court further observed that the period within one year from the date of superannuation, in the considered view of the Supreme Court, should be accepted as the period during which the recovery should be treated as iniquitous, and therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the order is sought to be made after the employee's retirement, or within one year from the date of his retirement on superannuation. This aspect of the matter was further clarified in paragraph No. 18 wherein the Supreme Court as a ready reference summarized the following situations where recovery by employers, would be impermissible in law. Paragraph No. 18, being relevant, is quoted herein below:

“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."*

8. For the purpose of the instant case, this Court is concerned with sub-para (ii) of paragraph No.18 which stipulates that the recovery from the retired employees, or the employees who are due to retire within one year, the order of recovery would be impermissible in law. In the instant case, the respondents herein did not finalize the pension as well as the pensionary benefits to the petitioner on the ground that the petitioner received excess payment w.e.f. 01.04.2016 to 31.03.2018. In order to get the pension and the pensionary benefits, the petitioner was compelled to deposit the amount of Rs.1,57,395/- as could be seen from Annexure-4 to the writ petition. The fixation of the pay of the petitioner was done by the concerned respondent authorities and admittedly the petitioner had no hand in the said fixation of pay.

9. Applying the law as laid down by the Supreme Court in the case of **Rafiq Masih (White Washer) (supra)**, this Court is of the opinion that the recovery so made from the petitioner of the amount of Rs.1,57,395/- was clearly arbitrary, unreasonable, irrational as well as iniquitous. Accordingly, the said recovery so made is interfered with. Taking into account that the petitioner has already made the payment of the said amount of Rs.1,57,395/-, this Court therefore directs the Deputy Inspector of Schools to take appropriate steps with the Director of Pension and the Treasury Officer, Dibrugarh to reimburse the petitioner the amount of Rs.1,57,395/- on the basis of a certified copy of the instant order being submitted to the Deputy Inspector of Schools by the petitioner. The said exercise be completed within a period of 60 days from the date the petitioner serves the certified copy of the instant order to the Deputy Inspector of Schools.

10. It is made clear that in the eventuality, the said amount is not reimbursed to the petitioner within the period as above mentioned, the said amount shall carry an interest @9% after the completion of 60 days from the date of serving the certified copy of the instant order.

11. With above observations and directions, the instant petition stands disposed of.

JUDGE

Comparing Assistant