

GAHC010021432023



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

Case No. : WP(C)/719/2023

DURGADHAR CHETIA
S/O- LT. KHAGEN CHETIA, R/O- VILL- BHEHPARA, WARD NO. 4, P.O.
DHEMAJI, DIST.- DHEMAJI, ASSAM, PIN- 787057

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMM. AND SECY., DEPTT. OF HIGHER EDUCATION, GOVT.
OF ASSAM, ASSAM SECRETARIAT, DISPUR, GHY, ASSAM, PIN- 781006

2:THE PRINCIPAL ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI
ASSAM
PIN- 781029

3:SENIOR ACCOUNTS OFFICER
O/O THE PRINCIPAL ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON
BELTOLA
GHY
ASSAM
PIN- 781029

4:TREASURY OFFICER
DHEMAJI
PIN- 787057

5:THE DIRECTOR OF HIGHER EDUCATION

DIRECTORATE OF HIGHER EDUCATION
ASSAM
KAHILIPARA
GHY
ASSAM
PIN- 781019

6:DHEMAJI COMMERCE COLLEGE
REP. BY ITS PRINCIPAL
DHEMAJ

Advocate for the Petitioner : MR. S. DEY

Advocate for the Respondent : MR. K. GOGOI
: MR. R. AHMED
: MR. A. CHALIHA

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

Date : 03-04-2023

Heard Mr. S. Dey, the learned counsel appearing on behalf of the petitioner and Mr. K. Gogoi, the learned Standing counsel appearing on behalf of the Higher Education Department. I have also heard Mr. R. Ahmed, the learned Standing counsel appearing on behalf of the Accountant General (A&E) and Mr. A. Chaliha, the learned Standing counsel appearing on behalf of the Treasury Officer.

2. The case of the petitioner herein is that the petitioner was initially appointed as a Lecturer at Dhemaji Commerce College which was approved by the Director of Higher Education, Assam on 13.01.2000. Subsequently, the services of the petitioner as Lecturer in Political Science at Dhemaji Commerce College was confirmed vide an order dated 22.12.2003 issued by the Director of

Higher Education, Assam. The pay of the petitioner was fixed by the respondent authorities from time to time and the petitioner had no role in the fixation of the said pay. The petitioner ultimately retired from Dhemaji Commerce College on 30.09.2020 and at that relevant point of time, he held the post of Assistant Professor in the said College. Subsequent to the retirement of the petitioner, the papers of pension as well as the pensionary benefits were forwarded to the Office of the Accountant General (A&E), Assam.

3. It is the case of the petitioner that the total entitlement of the petitioner on account of Death-cum-Retirement Gratuity was calculated to be Rs.8,80,100/-. However, an amount of Rs.2,90,235/- was deducted on account of overpayment and the petitioner was paid only an amount of Rs.5,89,865/-. The petitioner is aggrieved by the deduction of the amount of Rs.2,90,235/- which as per the petitioner could not have been deducted on account of overdrawal inasmuch as the petitioner had no role in the fixation of his pay. It is under such circumstances, the instant petition has been filed.

4. The case of the petitioner as could be seen from a perusal of the writ petition is that by virtue of the judgment of the Supreme Court in the case of ***State of Punjab and Others Vs. Rafiq Masih (White Washer)* reported in (2015) 4 SCC 334** as well as the Office Memorandum issued by the Finance Department dated 14.06.2019, the deduction of the amount of Rs.2,90,235/- from the amount to which the petitioner was entitled to on account of Death-cum-Retirement Gratuity was not tenable.

5. This Court vide an order dated 10.02.2023 had issued notice making it returnable on 22.02.2023. In the said order, this Court in detail has reflected the case of the petitioner and directed the Standing counsel for the Higher

Education Department to apprise this Court on the next date as to whether the fixation of pay of the petitioner was made putting the petitioner into notice and further whether the petitioner had any role in fixation of the higher pay.

6. On 03.04.2023, when the matter was again listed, the learned Standing counsel for the Higher Education Department submitted instructions to the effect that at the time of verification of the pension papers in respect to the petitioner, it came to the notice that at the time of revision of pay under the RoP, 2010, the College Authorities had wrongly fixed the pay of the petitioner at Rs.19,110/- instead of Rs.18,650/- w.e.f. 01.01.2006. Further to that, the petitioner's pay was again wrongly fixed by the College Authorities at Rs.64,510/- instead of Rs.61,780/- w.e.f. 01.04.2016 under the RoP, 2017. It is also mentioned that upon the instructions issued by the Director of Higher Education, Assam, the College Authorities of Dhemaji Commerce College worked out the overdrawal of the salary for the aforementioned period and adjusted the same from the pensionary benefits. Thereupon, the College Authorities refunded the excess drawal of Rs.2,90,235/- through Treasury Challan dated 08.06.2022. The instructions so submitted by the learned Standing counsel for the Higher Education Department is kept on record and marked with the letter "X".

7. I have heard the learned counsels for the parties and have perused the materials on record. From the above instructions, it is absolutely clear that it is the College authority i.e. the respondent No.6 who had incorrectly fixed the pay of the petitioner and there is no allegation of any fraud or misrepresentation on the part of the petitioner which have resulted in the overdrawal of the said amount. At this stage, this Court finds it relevant to refer to paragraph No.18 of the judgment of the Supreme Court in the case of **Rafiq Masih (White Washer)**

(supra) wherein the Supreme Court had made it clear that the recovery from retired employees or employees who are due to retire within one year of the order of recovery is impermissible being unreasonable and iniquitous. Paragraph No.18 of the said judgment being relevant is reproduced hereinunder:

“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. This Court also takes note of an Office Memorandum dated 14.06.2019

wherein the Government of Assam, Finance Department pursuant to the judgment of the Supreme Court in the case of **Rafiq Masih (White Washer) (supra)** have laid down the guidelines under what circumstances the excess payment can be recovered.

9. Taking into consideration that in the instant case, the recovery has been done pursuant to the retirement of the petitioner and there is no element of any fraud, collusion and misrepresentation on the part of the petitioner which has led to the excess drawal of pay, this Court is of the opinion that the deduction of the amount of Rs.2,90,235/- from the entitlement of the petitioner in respect to Death-cum-Retirement Gratuity was totally impermissible and iniquitous. Therefore, this Court therefore disposes of this writ petition with a direction to the respondent authorities to refund the amount of Rs.2,90,235/- to the petitioner within a period of 60 days from the date a certified copy of the instant order is served upon the Director of Higher Education, Assam.

10. It is made clear that in the circumstance, the said amount is not refunded to the petitioner within the period stipulated hereinabove, then the petitioner shall be entitled to interest @12% per annum from 08.06.2022 i.e. the date on which the said amount was deducted from the entitlement of the petitioner till the amount is refunded along with interest as ordered herein.

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

JUDGE

Comparing Assistant