

GAHC010044052023



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

Case No. : WP(C)/1218/2023

JOYMOTI GOGOI
W/O LATE PRADIP GOGOI
R/O 2 GHUGULONI, P.O. MOTHAWANI, DIST. DIBRUGARH, PIN-786610

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
ELEMENTARY EDUCATION DEPARTMENT, DISPUR, PIN-781006

2:THE STATE OF ASSAM

REP. BY THE COMMISSIONER AND SECRETARY
GOVT. OF ASSAM

FINANCE DEPARTMENT
DISPUR
PIN-781006

3:THE DIRECTOR OF PENSION

ASSAM
HOUSEFED COMPLEX
DISPUR
ASSAM
PIN-781006.

4:THE DIRECTOR OF ELEMENTARY EDUCATION DEPARTMENT

ASSAM
KAHILIPARA
GUWAHATI

PIN-781019

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER

DIBRUGARH
DIST. DIBRUGARH
ASSAM

6:THE DEPUTY INSPECTOR OF SCHOOLS

DIBRUGARH
DIST. DIBRUGARH
PIN- 786001

7:THE FINANCE AND ACCOUNTS OFFICER

DIRECTORATE OF PENSION HOUSEFED COMPLEX
DISPUR
ASSAM
GUWAHATI-781006

8:THE TREASURY OFFICER

DIBRUGARH
DIST. DIBRUGARH
ASSAM
PIN-78600

Advocate for the Petitioner : MR. B BARUAH

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 10.03.2023

Heard Mr. B. Baruah, the learned counsel appearing on behalf of the petitioner. Mr. P.N. Sarma, the learned counsel, Elementary Education appears for the respondent No. 1, 4, 5 and 6, Mr. B. Gogoi, the learned counsel for the respondent No. 2 and 8, Mr. S.R. Baruah, the learned counsel appears for the respondent No. 3 and 7.

2. Taking into account the facts involved, this Court proposes to dispose off the writ petition at the motion stage itself.

3. The case of the petitioner is that the petitioner is a retired teacher of Dewghoria L.P. Schools, Dibrugarh. Upon her retirement on 31/3/2018 her pension papers along with service book was processed by the respondent authorities and the same was submitted before the Director of Pension, Assam to finalise the pensionary benefits payable to the petitioner. As per the particulars of the pensioner/the petitioner, her PPO Number is ADP/PPO/GPO/2019/059736 and the amount of monthly pension before commutation stood at Rs. 22,950/- w.e.f. 1/4/2018. However, on her retirement from service on 31/3/2018 the due pension and other retirement benefits was not processed immediately by the Director of Pension for release and payment to the petitioner and instead the petitioner was granted the provisional pension only. The reason for was that the Director of Pension while checking the pension papers of the petitioner found some deficiency for which the Director of Pension could not finalize the pensionary benefits to the petitioner. This aspect of the matter was notified by the Finance and Accounts Officer to the Deputy Inspector of Schools vide the communication bearing No. ADP/2018-19/2018/11/0856 wherein the deficiency mentioned therein is reproduced herein under :

“Pay of the incumbent on 01.04.2016 is to be fixed at Rs.43250/- instead of Rs.48960/-. Subsequent fixations be made accordingly and recorded in the S.B. Excess Payment be assessed. It the excess payment is not due to misrepresentation or fraud etc. on the part of the Pension HOO/Department may waive the recovery upto Rs. 1,00 lac with approval of PPG Deptt. and above Rs. 1.00 lac with Finance Deptt. as per Govt. OM No. Fin (EC-III)/1808/2018/2

dtd.14.06.2019.”

4. It was further mentioned in the said communication that a new pension proposal should be submitted by removing the said deficiency. The petitioner thereupon was informed by the respondent authorities to the effect that unless the deficiency is cured by payment of the excess amount to which the petitioner received on account of wrong fixation of pay, the petitioner 's pension papers cannot be further processed. Under such circumstances, the petitioner under compulsion deposited an amount of Rs. 1,57,395/- on 3rd of August 2019. Thereupon it was only on 1/1/2020 that the petitioner received her pension with other pensionary benefits.

5. The petitioner herein is aggrieved by the action of the respondent authorities in directing the petitioner to return/refund the recovered amount of Rs. 1,57,395/- which as per the learned counsel for the petitioner could not have been done by the respondent authorities taking into account the judgment of the Supreme Court in the case of **State of Punjab Vs. Rafiq Mashi(White Washer) and Ors.** reported in **(2015) 4 SCC 334.**

6. I have also heard the learned counsel appearing on behalf of the respondents who submits that though the issue is covered by the judgment in the case of Rafiq Mashi(White Washer) (supra) for which the recovery would be contrary to the judgment, the learned counsel appearing on behalf of the Elementary Education Department submitted that the petitioner would be entitled to the pension as per her actual entitlement and not on the basis of the wrong fixation of pay, which was done on 1/4/2016 at Rs.48,960/-.

7. The learned counsel for the petitioner however, has replied to the fact that the petitioner presently have been paid pension on the basis of the correct fixation of the pay and her only grievance is in respect to recovery so made of an amount of Rs. 1,57,395/-

8. Upon hearing the learned counsel for the parties, it appears that the issue involved in the instant case is squarely covered by the judgment of the Supreme Court in the case of Rafiq Mashhi (White Washer) wherein the Supreme Court had laid down the circumstances under which it would be iniquitous, unreasonable and impermissible to make recovery. Paragraph 18 of the said judgment being relevant is quoted herein under :

“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 for outweigh the equitable balance of the employer's right to recover."

9. The instant case squarely comes within the ambit of paragraph 18(ii) which stipulates that it shall be impermissible for making recovery from retired employees or employees who are due to retire within one year of the order of recovery.

10. In that view of the matter, the recovery so made of Rs. 1,57,395.06 in the opinion of this Court is contrary to the law laid down by the Supreme Court in Rafiq Mashi White Washer(supra) and accordingly this Court therefore disposes of the writ petition with a direction to the respondent authorities to refund the petitioner the amount of Rs.1,57,395.06 within 2 months from the date a certified copy of this order is served upon the respondent Nos. 6 & 8.

11. It is made clear that upon the submission of the certified copy, the respondents, more particularly the respondent Nos. 6 and 8 shall take appropriate steps so that the amount is refunded to the petitioner within the time stipulated hereinabove.

12. With the above, the instant writ petition stands disposed off.

JUDGE

Comparing Assistant