

GAHC010080052023



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

Case No. : WP(C)/2090/2023

MANIDIPA ROY
W/O- DHANABINDU SARMA, RTD. ASSTT. TEACHER (I/C HEAD MISTRESS)
OF KATHALTALI M.E.SCHOOL, R/O- VILL- BIDYARDABRI- PT-V, P.O.
MAHAMAYAHAL, P.S. GOLAKGANJ, DIST.- DHUBRI (ASSAM), PIN- 783335

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
(ELEMENTARY) DEPTT., DISPUR, GHY-6

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GHY-6

3:THE DIRECTOR OF PENSION
ASSAM
DISPUR
GHY-06

4:THE FINANCE AND ACCOUNTS OFFICE
DIRECTORATE OF PENSION
ASSAM
DISPUR
GHY-06

5:THE DIRECTOR
ELEMENTARY EDUCATION
KAHILIPARA
GHY-19

6:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DHUBRI
ASSAM
PIN- 783301

7:THE DEPUTY INSPECTOR OF SCHOOLS
DHUBRI
ASSAM
PIN- 783301

8:THE BLOCK ELEMENTARY EDUCATION OFFICER
AGOMANI
DHUBRI
ASSAM
PIN- 78330

Advocate for the Petitioner : MR. P K DEKA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

12.06.2023

1. Heard Mr. PK Deka, learned counsel for the petitioner. Also heard Mr. B Talukdar, learned standing counsel for the Elementary Education and Mr. SR Baruah, learned standing counsel for the Director of Pension.
2. The case of the petitioner herein is that her service was regularized w.e.f. 21.04.1993. Thereupon, the petitioner has been getting the regular scale of pay. Vide an order dated 03.11.2018, the petitioner was promoted to the post of Headmistress and was allowed to draw the scale of pay of Rs.14,000/- to Rs.49,000/- plus Grade Pay of Rs.8,700/- as per the ROP Rule, 2017 under Pay Band-2 (PB-2) per month plus other allowances as

admissible from the date of joining as the regular Headmistress. The petitioner thereupon retired on 31.12.2022. Upon retirement, the pension papers of the petitioner were sent to the Director of Pension wherein an objection has been raised as regards there being an excess drawal of an amount of Rs.88,766/-.

3. In view of the said objection, the Block Elementary Education Officer, vide a communication dated 27.03.2023 had directed the petitioner to refund the said amount of Rs.88,766/-. The petitioner is aggrieved by the order dated 27.03.2023 and it is the case of the petitioner that as the petitioner has already retired from service and the petitioner had no role in the fixation of her pay, the case of the petitioner squarely comes within the ambit of paragraph 18(ii) of the judgment of the Supreme Court rendered in the case of ***State of Punjab and Others Vs. Rafiq Masih (White Washer) reported in (2015) 4 SCC 334*** wherein it has been mentioned that it is impermissible and iniquitous to make recovery after the person has already retired or is going to retire within one year from the date of the order of recovery.
4. While issuing notice of motion, this court under its order dated 12.04.2023 directed the respondents more particularly the Education Department to apprise this court on the returnable dated as to whether in fixing the pay of the petitioner, the petitioner had any role in that regard and as to whether there was any case of fraud or misrepresentation by the petitioner which have resulted in higher pay.
5. Mr. B Talukdar, learned standing counsel for the Elementary Education department on instruction submits that while fixing the pay of scale, the petitioner had no role and there is also no allegation against her

committing any fraud or misrepresentation which resulted in excess drawl.

6. The Hon'ble Apex Court in the case of **Rafiq Masih (White Washer) (supra)** after taking into consideration various factors, was of the opinion that the recovery would be iniquitous or arbitrary if sought to be made after the date of retirement or soon before retirement. In paragraph No. 18 of the said judgment, the Supreme Court clarified as a ready reference the various situation where recoveries from employees would be impermissible in law. Paragraph 18 of the said judgment being relevant is quoted hereinbelow :-

“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."

7. For the purpose of the instant case sub-para (ii) of paragraph 18 which stipulates that recovery from retired employees or employees who are due to retire within one year of the order of recovery would be impermissible in law would be applicable. In the instant case the respondents herein have resorted to take steps for recovery after the petitioner had retired. This Court is of the opinion that the case of the petitioner herein is squarely covered under paragraph 18(ii) of the judgment in the case of ***Rafiq Masih (White Washer) (supra)***.
8. In view of the above, the instant writ petition stands disposed off with the following observations and directions –
 - (i). The communication dated 27.03.2023 stands set aside and quashed insofar as the recovery of the amount of Rs. 88,766 is concerned.
 - (ii) The respondents authorities are directed not to make any recovery from the petitioner in any mode including from the retirement dues of the petitioner on account of excess payment.
 - (iii) The respondent authorities including the respondent authorities including the Office of the Principal Accountant General (A & E) are directed to immediately process the pension of the petitioner so that the petitioner receives her pension along with any arrear due as well as other pensionary benefits at the earliest.
 - (iv) The said exercise be completed within a period of 4(four) months

from the date of receipt of a certified copy of the instant judgment to be furnished by the petitioner upon the respondents.

(v) The pension of the petitioner has to be computed by taking into account the petitioner's actual scale of pay and not on the basis of excess drawl.

9. Accordingly, this writ petition stands disposed of. Parties to bear their own costs.

JUDGE

Comparing Assistant