

GAHC010101402020



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

Case No. : WP(C)/3009/2020

SURENDRA NATH RAY
S/O LT. MAHANTA RAY, R/O VILL. AND P.O. BIDYARDABRI, DIST. DHUBRI,
ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION (SECONDARY) DEPTT. DISPUR, GHY-06

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
PENSION AND PUBLIC GRIEVANCES DEPTT. DISPUR
GHY-06

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

4:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

5:THE DIRECTOR OF PENSION
ASSAM
HOUSEFED COMPLEX

DISPUR
GHY-6

6:ACCOUNTANT GENERAL
ASSAM
BELTOLA
GHY-29

7:THE DEPUTY INSPECTOR OF SCHOOLS
DHUBRI
P.O. AND DIST. DHUBRI
ASSAM
PIN-78330

Advocate for the Petitioner : MR. N ALAM R K

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

24.05.2023

Heard Mr. A. Rahman, learned counsel for the petitioner. Ms. D. Mushahary, learned Standing Counsel appears for the respondent Secondary Education Department; Mr. R. Ahmed, learned Standing Counsel appears for the Accountant General (A&E), Assam and Mr. S.R. Barua, learned Counsel appears for the respondent nos.2 & 5.

2. The case of the petitioner herein is that the petitioner had retired in the year 2014. Subsequent thereto the petitioner has received the provisional DCRG and presently is getting the provisional pension. However, the final pension of the petitioner has not been finalized and it is under such circumstances the petitioner is before this Court. This Court, vide an order dated 19.10.2020 had issued notice and further in the interim directed the respondents not to recover

the excess amount of Rs.1,62,289/- from the pensionary benefits of the petitioner if the same has not yet been recovered. It is further apparent from a perusal of the records that excess amount of Rs.1,62,289/- is on account of wrong fixation of the salary of the petitioner. It is been stated in the writ petition and also submitted by the learned counsel for the petitioner that in respect to the fixation of pay of the petitioner, the petitioner had no role.

3. Today when the matter has been listed Ms. D. Mushahary, learned Standing Counsel for the Secondary Education Department has placed on record a communication issued by the Inspector of Schools, Dhubri to the Director of Secondary Education, Assam, whereby a request was made for taking necessary steps in terms with the Government O.M. dated 27.01.2022 for waiving the excess drawn amount and finalise the pension in respect of the petitioner as he had retired on 30.06.2014 and till date his pension have not been finalized due to wrong fixation of pay etc. The said instruction is kept on record and marked with the letter "Y".

4. The law as regards recovery from retired employees on account of wrong fixation of pay is well settled by the judgment of the Supreme Court. 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*** categorically mandates the circumstances in paragraph-18 when such recovery shall not be permissible.

5. Paragraph-18 of the said judgment is re-produced 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."*

6. The case of the petitioner is squarely covered by the directions in paragraph 18(ii) of the aforesaid judgment and as such the recovery of the said amount of Rs.1,62,289/- from the pensionary benefits of the petitioner would be impermissible. In that view of the matter, this Court therefore disposes off the instant writ petition directing the Director of Secondary Education, Assam as well as the Director of Pension, Assam to take appropriate steps for finalising the pension of the petitioner within 4 (four) months from the date a certified copy of the instant order is served to the Director of Pension, Assam as well as the Director of Secondary Education, Assam. It is made clear that the Director

of Secondary Education, Assam while sending proposal to the Director of Pension, Assam shall send the proposal on the basis of the correct scale of pay.

7. With the above directions and observations, the writ petition stands disposed off.

JUDGE

Comparing Assistant