

GAHC010127832017



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

Case No. : WP(C)/2489/2017

PABITRA SARKAR

S/O- LATE BALA RAM SARKAR, VILL- BAMUNJARI, P.O- KARATIPAM, P.S-
MAYONG, DIST- MORIGAON, ASSAM, PIN-782105

VERSUS

THE STATE OF ASSAM and 6 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT
OF ASSAM, ELEMENTARY EDUCATION DEPARTMENT, DISPUR,
GUWAHATI.P.O- ASSAM SACHIVALAYA, P.S- DISPUR, DIST- KAMRUPM,
ASSAM, PIN- 781006

2:THE COMMISSIONER and SECRETARY
TO THE GOVERNMENT OF ASSAM
FINANCE DEPARTMENT
DISPUR
DIST- KAMRUPM
ASSAM
PIN- 781006

3:THE DIRECTOR
ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI
P.O. KAHILIPARA
P.S- DISPUR
DIST- KAMRUPM
ASSAM
PIN- 781019

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER

MORIGAON
ASSAM
P.O- MORIGAON
P.S- MORIGAON
DIST- MORIGAON
ASSAM
PIN- 782015

5:THE DEPUTY INSPECTOR OF SCHOOLS
MORIGAON
ASSAM
P.O- MORIGAON
P.S- MORIGAON
DIST- MORIGAON
ASSAM
PIN- 782015

6:THE BLOCK ELEMENTARY EDUCATION OFFICER
MAYONG
P.O- JAGI BHAKATGAON
P.S- JAGIROAD
DIST- MORIGAON
ASSAM
PIN- 782411

7:DIRECTORATE OF PENSION
REPRESENTED BY PENSION DEPARTMENT
HOUSEFED COMPLEX
DISPUR
GUWAHATI
ASSAM-781006

Advocate for the Petitioner : MR.S K SINHA

Advocate for the Respondent : MR.C BARUAH

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

O R D E R

30.03.2023

Heard Mr. B.P. Sinha, learned counsel for the petitioner. Also heard Mr. R. Mazumdar, learned standing counsel for the Elementary Education Department appearing for respondent nos. 1 and 3 to 6, Mr. A Chaliha, learned standing counsel for the Finance Department appearing for respondent no.2 and Mr. G. Bokalia, learned Govt. advocate appearing for respondent no.7, Director of Pension.

2. The father of the petitioner, namely, Late Bala Ram Sarkar, at the relevant point of time was the Head Master of Bamunjari LP School. While serving in the said post, he had died-in-harness on 05.02.2013, while performing his duty as a Polling Officer during the Assam Panchayat Election, 2013. Thereafter, the petitioner had applied for payment of death-cum-retirement gratuity, leave encashment benefit and GIS benefit and other receivables. The Deputy Inspector of Schools, Morigaon (respondent no.5) had issued an order dated 02.06.2015, thereby directing the petitioner to refund a sum of Rs.4,66,400/- out of the gratuity, leave encashment benefit, GIS etc. on the ground that the father of the petitioner was responsible for the construction of new school building of the Bamunjari Namapara LP School and that the concerned construction work, quantified at Rs.4,66,400/-, remained pending during his lifetime.

3. The learned counsel for the petitioner has submitted that the order passed for recovery of the amount was in violation of Rule 21 of the Assam Services (Pension) Rules, 1969. Accordingly, by filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the impugned order dated 02.06.2015.

4. The learned standing counsel for the Elementary Education

Department has submitted that as the authorities have quantified the refund amount at Rs.4,66,400/-, there is every likelihood that a departmental proceeding or any other enquiry had been held against the father of the petitioner. By referring to the statements made in the affidavit-in-opposition filed by the Director of Elementary Education (respondent no.3), it is submitted that at the time of death of the father of the petitioner, the work in progress was only to the extent to 60% as on 04.05.2013, but an amount of Rs. 9.98 lakh was released and therefore, the estimated cost for balance work has been calculated as Rs.4,66,400/- and as the father of the petitioner was responsible for the construction, the amount became recoverable from him. It is also submitted that the Deputy Inspector of Schools, Morigaon had taken steps to release the provisional death-cum- retirement gratuity, leave encashment benefit, GIS etc., but the petitioner had refused to receive the amount because of deduction of sum of Rs.4,66,400/-.

5. From the materials available on record, it does not appear that any departmental proceeding was drawn up against the father of the petitioner. No materials has been brought on record to show that the father of the petitioner has misappropriated the amount. Therefore, in the absence of any material to show that based on any enquiry, the authorities are demanding refund of Rs.4,66,400/-, the Court is of the considered opinion that impugned order dated 02.06.2015, requiring the petitioner to refund the amount is not sustainable.

6. The learned standing counsel for the Elementary Education Department has submitted that as the amount has been quantified, there is every likelihood that a proceeding has been drawn up against the father of the petitioner. Moreover, it is submitted that as the father of the petitioner had

undertaken to complete the construction, it is possible that owing to such admission, no formal proceeding was drawn up.

7. In the said regard, the Court is of the considered opinion that if already a proceeding had been drawn up against the father of the petitioner within the time prescribed under the Assam Services (Pension) Rules, 1969, it could have been permissible to recover the amount from the terminal dues of the father of the petitioner. In the absence of any disciplinary and / or criminal proceedings, the Court is of the considered opinion that the withholding of the disbursement of benefits like gratuity, leave encashment benefit, GIS etc. any adjustment against the incomplete construction works to the extent of Rs.4,66,400/-, is not sustainable.

8. The learned counsel for the petitioner has referred to case of *State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr., (2013) 12 SCC 210* to project that in the absence of invoking any particular rule permitting adjustment of the recovery of amount, if any, from the gratuity, leave encashment, GIS money, etc. was not sustainable.

9. In view of the ratio laid down in the case of *Jitendra Kumar Srivastava & Anr. (supra)*, and further considering that no documents has been produced by the respondent authorities to show that by virtue of any proceedings, the alleged liability in respect of incomplete construction work would become recoverable against the dues payable against gratuity, leave encashment, GIS money etc., the Court is inclined to hold that that the impugned order under memo no. DIS(M)/Pension-33/2015/3390 dated 02.06.2015 is not sustainable and the same is set aside and quashed.

10. This order would not come in the way for the respondent authorities, to recover any amount found due, if they have already initiated any lawful proceedings and the same is brought to its logical end.

11. Accordingly, the unpaid amount, if any, to the petitioner shall be disbursed within an outer period of 3(three) months from the date when the certified copy of this order is served on the Deputy Inspector of Schools, Morigaon (respondent no.5).

12. Accordingly, this writ petition stands disposed of to the extent as indicate above.

JUDGE

Comparing Assistant