

GAHC010132012022



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

Case No. : WP(C)/4600/2022

MANORANJAN BHATTACHARJYA
SON OF LATE ADYA NATH BHATTACHARYYA, RETD. PRINCIPAL, BISHNU
RAM MEDHI HIGHER SECONDARY SCHOOL, BORIDOTORA, NALBARI,
RESIDENT OF NALBARI PALA ROAD, P.O. AND DISTRICT- NALBARI, PIN-
781335, ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, PENSION AND GRIEVANCES DEPARTMENT,
DISPUR, GUWAHATI- 781006.

2:THE DIRECTOR

DIRECTORATE OF PENSION
HOUSEFED COMPLEX
CENTRAL BLOCK
6TH FLOOR
BELTOLA ROAD
HOUSEFED
GUWAHATI- 781006
ASSAM.

3:THE FINANCE AND ACCOUNTS OFFICER

DIRECTORATE OF PENSION
ASSAM
HOUSEFED COMPLEX
CENTRAL BLOCK
6TH FLOOR
BELTOLA ROAD

HOUSEFED
GUWAHATI- 781006
ASSAM.

4:THE DIRECTOR
SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-781019.

5:THE INSPECTOR OF SCHOOLS
NALBARI DISTRICT CIRCLE
NALBARI
COLLEGE ROAD
NALBARI
ASSAM
PIN- 781335

Advocate for the Petitioner : MR. A DHAR

Advocate for the Respondent : GA, ASSAM

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

21.02.2023

Heard Mr. A. Dhar, the learned counsel for the petitioner and Mr. P. Saikia, the learned counsel appearing on behalf of the respondent Nos. 1 to 3 as well as Mr. B. Kaushik, the learned counsel appearing on behalf of the respondent Nos.4 & 5.

2. The instant writ petition has been filed by the petitioner challenging the communication dated 07.02.2022 issued by the respondent No.3 as well as the letter dated 05.04.2022 issued by the respondent No.5 to recover the alleged excess drawal of salary by the petitioner.

3. The brief facts of the instant case are that the petitioner joined as an

Assistant Teacher in Kamarkuchi High School, Nalbari on 01.04.1981. Thereafter, the petitioner joined as Subject Teacher (Economics) in Bishnu Ram Medhi Higher Secondary School, Boriditora, Nalbari on 21.02.1992. It is relevant to take note of that pursuant to the order dated 13.07.2012 issued by the respondent No.4, the petitioner was allowed to hold the charge of the Principal of the said school under Nalbari District in addition to his normal duties as Subject Teacher. Vide an order dated 22.03.2013, the respondent No.4 had granted financial up-gradation under the Assured Career Progression Scheme (ACPS) to the eligible in-service employees of Higher Secondary/High School/Government Schools under the jurisdiction of Directorate of Secondary Education Department, Assam thereby raising basic pay with effect from 01.01.2011 by taking into account of the performance. It further appears that the said order dated 22.03.2013 was issued pursuant to the Government Notification Nos.FPC.109/2010/42 dated 15.05.2021 and FEG.28/2011/12 dated 19.06.2012. The name of the petitioner was appeared at Sl. No.54 of the order dated 22.03.2013.

4. A perusal of the said entry would show that the petitioner was granted financial up-gradation with effect from 01.01.2011 and the basic pay as on 01.01.2011 was raised to Rs.26,380/-.

5. The petitioner retired from his service on 31.03.2018. After his retirement, vide the letter dated 04.10.2021, the Office of the respondent No.4 forwarded the pension papers and other related documents including the original Service Book of the petitioner after refixation of MACPS scale of pay to the respondent No.2 for finalization of the petitioner's pension papers. It is further apparent that vide the letter dated 04.10.2021, the provisional pension as well as the DCRG was sanctioned by the respondent No.4. However, on 07.02.2022, the respondent No.3 addressed a communication to

the respondent No.5 stating inter-alia that there was deficiency for which the Directorate of Pension could not finalize the pensionary benefits of the petitioner. The deficiency so mentioned in the communication dated 07.02.2022 is reproduced herein under:-

“1) PAY AS ON 1/1/2011 DUE TO GP SHOULD BE FIXED AT RS.24130/- INSTEAD OF RS.26380/-. RESULT EXCESS DRAWAL MADE. WAIVE OF PROPOSAL TO BE MADE TO THIS DIRECTORATE AS PER GOVT. OM NO.FIN(EC-III0/1808/2018/2 DTD 14/6/2019 AT THE EARLIEST.”

6. The petitioner thereupon on coming to learn about the said communication dated 07.02.2022 which was also endorsed to him submitted a representation dated 13.04.2022 to the Finance and Accounts Officer, Directorate of Pension stating inter-alia that the petitioner's basic pay as on 01.01.2011 was fixed in terms with the order dated 22.03.2013 with effect from 01.01.2011. However, the concerned respondents, in spite of receipt of the said representation, have not taken any action. Be that as it may, the respondent No.5, i.e. the Inspector of Schools, Nalbari District Circle, Nalbari had issued a communication on 05.04.2022 to the Directorate of Pension making allegation that the petitioner being Principal-in-Charge he was the DDO and he had wrongly shown his basic pay for which his basic pay was found increased instead of his actual basic pay. Taking into account that the respondent Nos.1, 2 & 3 have not taken any action pursuant to the representation dated 13.04.2022 and the communication so issued by the Inspector of Schools dated 05.04.2022 and the pension of the petitioner having not been finalized till date, the petitioner is before this Court.

7. This Court vide an order dated 18.07.2022 had issued notice, and in the interim, directed that no recovery shall be made from the petitioner till the next date. Thereafter, the matter came up on 05.12.2022 as well as on

08.02.2023. But the respondents have not filed any affidavit.

8. In the backdrop of the above, let this Court therefore take into consideration the respective submissions made by the learned counsels for the parties.

9. Mr. A. Dhar, the learned counsel for the petitioner submitted that the basic pay of Rs.26,380/- was fixed by the Director of Secondary Education, Assam vide an order dated 22.03.2013 with effect from 01.01.2011. The learned counsel for the petitioner further submitted that likewise the petitioner, there were other 174 employees who were also given the same benefits. He, therefore, submitted that the question of raising any objection by the Directorate of Pension as has been done by the communication dated 07.02.2022 to the effect that there was an excess drawal on the face of it, is misconceived and is based upon non-existent facts. He further submitted that the allegation so made in the communication dated 07.04.2022 by the Inspector of Schools is also not tenable in view of the order dated 22.03.2013.

10. On the other hand, Mr. B. Kaushik, the learned counsel appearing on behalf of the Secondary Education Department, with all fairness, submitted that the Inspector of Schools, i.e. the respondent No.5, while issuing the communication dated 05.04.2022, did not take into consideration the order dated 22.03.2013 issued by the Director of Secondary Education Department.

11. Mr. P. Saikia, the learned counsel appearing on behalf of the respondent Nos. 1 to 3 submitted that the Finance and Accounts Officer vide the impugned communication dated 07.02.2022, upon finding some anomalies had therefore returned the pension papers of the petitioner as has

been recorded in the communication dated 07.02.2022.

12. Upon perusal of the materials on record and upon hearing the learned counsels for the parties, it appears on record that vide an order dated 22.03.2013, the Director of Secondary Education Department had granted the financial up-gradation under the ACPS to various employees including the petitioner thereby raising their basic pay with effect from 01.01.2011. It would further be seen from a perusal of the order dated 22.03.2013 that the said order was passed pursuant to the Government notification communicated vide No. FPC.109/2010/42 dated 15.05.2021 and FEG.28/2011/12 dated 19.06.2012.

13. Taking into account that there is no fault being pointed out to the said order dated 22.03.2013 by which the petitioner's basic pay after first financial up-gradation as on 01.01.2011 was fixed at Rs.26,380/-, this Court finds no reason as to why the Finance and Accounts officer has raised the issue pertaining to excess drawal thereby stating inter-alia that the petitioner's pay as on 01.01.2011 should be fixed at Rs.24,130/- instead of Rs.26,380/-.

14. Accordingly, this Court, therefore, sets aside the communication dated 07.02.2022. The communication dated 05.04.2022 is a fallout of the communication dated 07.02.2022 and the said communication was also issued without taking into account the order of the Director of Secondary Education Department dated 22.03.2012, and as such, the communication dated 05.04.2022 is also set aside.

15. This Court, therefore, observes that vide the order dated 22.03.2013, the Director of Secondary Education Department had granted financial up-gradation to the petitioner with effect from 01.01.2011 thereby fixing the basic pay after the first financial up-gradation at Rs.26,380/-. Pursuant to the

said declaration, this Court, therefore directs the respondent Nos.1, 2 & 3 to process the pension papers of the petitioner on the basis thereof.

16. On the basis of the above direction, the respondent Nos.4 & 5 are directed to resubmit pension papers of the petitioner to the respondent No.2 and the respondent No.2, on the basis of the above declaration, shall process the pension papers of the petitioner. The said process be completed within a period of 90 (ninety) days from the date a certified copy of this order is served upon the respondent No.4.

17. This Court also directs the petitioner to serve a certified copy of this order to the respondent No.2 for effective compliance.

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

JUDGE

Comparing Assistant