

GAHC010134272023



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

Case No. : WP(C)/3580/2023

MEENA GAYARI
W/O LATE PABAN GAYARI,
R/O- VILL- NAJIRAKHAT,
P.O.- TEPEZIA, P.S.- SONAPUR,
DIST- KAMRUP(M), ASSAM,
PIN- 782402.

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
PENSION AND PUBLIC GRIEVANCES DEPARTMENT
DISPUR
GUWAHATI-6.

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

4:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
PANJABARI
JURIPAR
GUWAHATI-37

5:THE ACCOUNTANT GENERAL (A AND E)
MAIDAMGAON
BELTOLA
GUWAHATI-29.

6:THE BLOCK DEVELOPMENT OFFICER
RAHA DEVELOPMENT BLOCK
DISTRICT- NAGAON
ASSAM
PIN- 782103.

7:THE TREASURY OFFICER
NAGAON TREASURY
DISTRICT- NAGAON
ASSAM
PIN- 782001

Advocate for the Petitioner : MR. K R PATGIRI

Advocate for the Respondent : SC, P AND R.D.

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

Date : 14-11-2023

1. Heard Mr. KR Patgiri, learned counsel for the petitioner. Also heard Mr. U Sarma, learned counsel appearing on behalf of Mr. K Konwar, learned counsel for the P&RD Department. Mr. A Chakraborty, learned counsel appears for the respondent No. 2, while Mr. KK Medhi, learned counsel appears on behalf of Mr. SK Medhi, learned counsel for the respondent No.

5.

2. The prayer of the petitioner herein is to set aside the sanction letter dated 16.02.2023 issued by the office of the respondent No. 5, in so far as it has directed recovery of Rs. 8,62,276/- from the Death-cum-retirement gratuity (DCRG) payable to the petitioner. Further a prayer has been made to direct the respondent Nos. 5 to 7 to repay the above amount deducted from the DCRG.

3. The petitioner's case in brief is that her husband Paban Gayari, who was serving as an Accountant-cum-Store Keeper at Raha Development Block office under the P&RD Department in Nagaon District, died-in-harness on 27.04.2020.

4. The petitioner submitted pension papers to the concerned authority, with a request to sanction compassionate family pension as well as other service benefits to the petitioner. The respondent No. 6 forwarded the petitioner's application for compassionate family pension to the respondent No. 4, who in turn forwarded the same to the respondent No. 5. The respondent No. 5 thereafter issued the impugned letter dated 16.02.2023 to the respondent No. 7, sanctioning death-cum-retirement gratuity DCRG amounting to Rs. 9,77,988/- payable to the petitioner. However, the impugned letter dated 16.02.2023 also issued a direction to the respondent No. 7 to recover an amount of Rs. 8,62,276/- as dues, due to over payment of pay and allowances

to the petitioner's husband. The petitioner has prayed for setting aside the impugned letter dated 16.02.2023 and further prayed that the recovered amount should be given back to the petitioner, inasmuch as, the petitioner's husband being a Class-III employee, no overpay of pay and allowances could be recovered from him, in terms of the judgment of the Supreme Court in the case of ***State of Punjab & Ors. vs. Rafiq Masih (White Washer) & Ors.***, reported in ***(2015) 4 SCC 334***.

5. Mr. U Sarma, learned counsel appearing for the P&RD Department submits that he has received instructions from the Department, which is to the effect that while sanctioning the family pension proposal of the petitioner, it was found that the petitioner's husband had been given the basic pay of Rs. 542 instead of Rs. 482 w.e.f. 01.01.1983. In view of the above wrong fixation of pay of the petitioner's husband, the total over excess payment of pay and allowances to the petitioner's husband amounting to Rs. 8,62,276/-, had to be recovered. He accordingly submits that there is no infirmity with the recovery of the money, which was mistakenly paid to the petitioner's husband.

6. Mr. KK Medhi, learned counsel for the AG's office submits that there is no infirmity with the decision of the Accountant General, to order the recovery of the over drawn pay and allowances by the petitioner's husband, inasmuch as,

the petitioner cannot be allowed to enjoy the fruits of a mistake committed by the Government, in mistakenly giving the petitioner's husband basic pay beyond his entitlement from 01.01.1983.

7. I have heard the learned counsels for the parties.

8. As can be seen from the para wise comments given to the P&RD Department, which has been shown to this Court and the submissions made by the counsel for the respondents, the petitioner's husband had been given excess pay and allowances, due to a mistake committed by the Government by making a wrong fixation of pay on 01.01.1983. There is nothing in the para wise comments to show that there was any fraud or misrepresentation made on the part of the petitioner's husband, during the making of wrong fixation of pay by the Government. In the case of ***Shyam Babu Verma & Ors. vs. Union of India & Ors.***, reported in ***(1994) 2 SCC 521***, the Supreme Court had held that since the petitioners therein had received the higher scale of pay due to no fault of theirs since 1973, it would not be just and proper to recover any excess amount paid to the petitioners therein, due to the fault of the State respondents. In the case of ***Rafiq Masih (supra)***, the Supreme Court has held that recovery of excess pay from employees belonging to Class-III and Class-IV service would be impermissible in law, where payments in excess of their

entitlements have mistakenly been made by the employers to the employees. The Supreme Court further held that recovery would be impermissible in law, when excess payment has been made for a period of five years, before the order of recovery is issued.

9. In the present case, there is nothing to show that the wrong fixation of pay made in the year 1983 had been made due to any fraud or misrepresentation on the part of the petitioner's husband. As the wrong fixation of pay had been made by the State respondents w.e.f. 01.01.1983, it would not be permissible to make the recovery of the excess amount after the death of the Government servant in the year 2020.

10. In that view of the matter, the recovery made on the excess pay and allowances made to the petitioner's husband, by recovering the same from the DCRG amount payable to the petitioner, is not sustainable.

11. Accordingly, the impugned letter dated 16.02.2023, in so far as it allows recovery of Rs. 8,62,276/- as over pay of pay and allowances to the petitioner's husband is hereby set aside. The respondents are directed to reimburse the petitioner with the amount of Rs. 8,62,276/- within a period of one month from the date of receipt of a certified copy of this order.

12. The family pension, leave encashment and other retirement benefits that

are payable to the petitioner should however be paid, by calculating the correct pay scale/entitlement of the petitioner's husband.

13. The writ petition stands allowed and disposed of accordingly.

JUDGE

Comparing Assistant