

GAHC010159902023



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

Case No. : WP(C)/4142/2023

AMRAWATI DOLEY
W/O LATE PHULESWAR DOLEY,
VILLAGE- MATMORA GAON,
P.O.- DHAKUAKHANA,
DIST.- LAKHIMPUR, ASSAM,
PIN- 787055.

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
EDUCATION (SECONDARY) DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE DIRECTOR
SECONDARY EDUCATION DEPARTMENT
ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE INSPECTOR OF SCHOOLS
LAKHIMPUR DISTRICT CIRCLE
NORTH LAKHIMPUR
ASSAM
PIN- 787001.

4:THE HEADMASTER
KHERKATAMUKH KONENG HIGH SCHOOL
P.O.- KHERKATAMUKH
DIST.- LAKHIMPUR
ASSAM

PIN- 787055.

5:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-6.

6:THE TREASURY OFFICER
DHAKUAKHANA SUB-TREASURY
DIST.- LAKHIMPUR
ASSAM
PIN- 787001.

7:THE DIRECTOR OF PENSION
ASSAM
DISPUR
GUWAHATI-06.

8:THE FINANCE AND ACCOUNTS OFFICER
DIRECTORATE OF PENSION
ASSAM
DISPUR
GUWAHATI-06

Advocate for the Petitioner : MD. S ALOM
Advocate for the Respondent : SC, SEC. EDU.

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

O R D E R

31.08.2023

Heard Mr. S Alom, learned counsel for the petitioner, Mr. SMT Chisti, learned counsel for the respondents in the Secondary Education Department, Mr. P Saikia, learned counsel for the Pension Department and Mr. B Gogoi, learned counsel for the Finance Department.

2. The husband of the petitioner, namely Phuleswar Doley, who was a Grade-IV employee in the Kherkatamukh Koneng High School in the Lakhimpur district,

died on 14.04.2021 while he was still in service. In the resultant circumstance, the petitioner being his wife is entitled to be paid the family pension in respect of the deceased husband. While processing the family pension papers of the petitioner, the Finance and Accounts Officer in the office of the Director of Pension, Assam, made a communication to the Inspector of Schools, North Lakhimpur dated 14.06.2022 by which it was provided that the pay of the deceased husband of the petitioner ought to have been Rs. 2610/- per month instead of Rs. 2770/- and therefore, the Finance and Accounts Officer is of the view that there was an excess payment of salary to the deceased husband of the petitioner from 01.01.1996 to 14.04.2021. Accordingly, the pension papers were returned back to the Inspector of Schools for being assessed with 'due and drawn statement' and for 're-submission with a certificate by the HoO' as to whether there was any fault on the part of the former Grade-IV employee.

3. The said provision in the order of the Finance and Accounts is perhaps by referring to the law laid down by the Hon'ble Supreme Court in Shyam Babu Verma and others –vs- Union of India and others, reported in (1994) 2 SCC 521 and State of Punjab and Others –vs- Rafiq Masih (White Washer) and others, reported in (2015) 4 SCC 334, wherein it had been held that in the event an excess salary had been paid to an employee during his service tenure because of no fault of his, such excess payment cannot be recovered from the retirement benefits.

4. The provision of the Finance and Accounts officer in the impugned communication of 14.06.2022 to find out as to whether any fault on the part of the former Grade-IV employee appears to be based on the said proposition. But, it is noticed that the said proposition was rendered by the Hon'ble Supreme Court in a matter where an employee served the complete tenure and thereafter

retired, where the person is expected to be living for the purpose of payment of the pension. But, in the instant case, it is noticed that the husband of the petitioner had died on 14.04.2021 while he was still in service. Even if there was any fault on the part of the deceased husband of the petitioner in any excess payment being made to him, the same would require a determination and in such determination, the concerned person would also have to be given a hearing. As the husband of the petitioner is no more and therefore no further opportunity of any hearing can be given to him, we are of the view that the respondents now cannot make an enquiry as to whether there was any fault on the part of the deceased employee in providing the excess payment.

5. Accordingly, the communication dated 14.06.2022 of the Finance and Accounts Officer as regards a determination to be made as to whether there was any fault on the part of the deceased employee is set aside. The Pension Department is directed to process the pension papers otherwise as per law and complete the same within a period of one month from the date of receipt of a certified copy of this order. For the purpose, all the other respondents in the Education Department shall also co-operate with the Pension Department by providing necessary documents etc., as may be required.

The writ petition is allowed to the extent as indicated above.

JUDGE

Comparing Assistant