

GAHC010170082022



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

Case No. : WP(C)/5820/2022

ABDUS SOBUR PRODHANI
S/O- LATE ABDUL WAHAB PRODHANI, R/O- VILL.- KAWAHAGI, P.O. AND
P.S. SOUTH SALMARA, DIST. SOUTH SALMARA MANKACHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM, GENERAL ADMINISTRATION DEPARTMENT, DISPUR, GUWAHATI-
06.

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
GENERAL ADMINISTRATION DEPARTMENT
DISPUR
GUWAHATI-06.

3:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-06.

4:THE PRINCIPAL ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI-29.

5:THE DEPUTY COMMISSIONER
SOUTH SALMARA MANKACHAR
HATSINGIMARI
DIST. SOUTH SALMARA MANKACHAR

ASSAM
PIN- 783135.

6:THE CIRCLE OFFICER
SOUTH SALMARA REVENUE CIRCLE
DIST. SOUTH SALMARA MANKACHAR
ASSAM
PIN- 783135

Advocate for the Petitioner : MR. M AHMED

Advocate for the Respondent : MR. P. NAYAK
: MR. R. K. TALUKDAR
: MRS. A. TALUKDAR

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

Date : 20-02-2023

Heard Mr. M. Ahmed, the learned counsel appearing on behalf of the petitioner and Mr. P. Nayak, the learned Standing counsel appearing on behalf of the respondent Nos. 1, 2 and 3. I have also heard Mr. R. K. Talukdar, the learned Standing counsel appearing on behalf of the respondent No. 4 and Mrs. A. Talukdar, the learned Standing counsel appearing on behalf of the respondent Nos. 5 and 6.

2. The case of the petitioner herein is that the petitioner was initially appointed as a Grade-IV employee in the Office of the Sub-Divisional Officer (Civil), Hatsingimari, vide order No. HSM/E-4/83/183 dated 10.04.1986. Pursuant to the said order, the petitioner had joined his service on 10.04.1986. By another order bearing No. HSM/E-4/83/171 dated 25.06.1986, the petitioner was allowed to work as Grade-IV employee in the Office of the Sub-Divisional

Officer, (Civil), Hatsingimari. In the year, 1989, the petitioner was promoted as Process Server. Subsequent thereto, the petitioner had retired from his services as Jarikarak from Tahsil Office, South Salmara on 30.06.2017. Upon retirement from his service, the petitioner received the amount from his G.P.F. account as well as other pensionary benefits. The petitioner was drawing/getting the provisional pension as per the rules holding the field. It is further mentioned that the Office of the Deputy Commissioner, South Salmara, Mankachar has submitted the pension papers of the petitioner to the Office of the Principal Accountant General (A&E) Assam, Beltola, vide letter No.HPE.34/2017/15 dated 29.05.2018. On receiving the pension papers of the petitioner, the Office of the Principal Accountant General (A&E) Assam, Beltola issued a letter dated 10.08.2018 requesting to make necessary correction of pay of the petitioner. By the said letter the Senior Accounts Officer, Office of the Principal Accountant General (A&E) Assam, Beltola returned the Service Book and other related pension papers in original and requested to re-submit after complying with the observations made in the said letter dated 10.08.2018.

3. In response to the said letter, the Deputy Commissioner, South Salmara, Mankachar, Hatsingimari had issued a letter dated 12.06.2020 seeking necessary approval to the stepping up of pay of the petitioner from the Joint Secretary to the Government of Assam, General Administrative Department. It appears that nothing happened at the end of the General Administrative Department. Subsequent thereto, vide another communication dated 02.06.2022 addressed to the Accountant General, Assam, the Additional Deputy Commissioner, South Salmara had observed that the pay of the petitioner was wrongly fixed at Rs.2,950/- instead of Rs.2,770/- and the aforesaid wrong fixation of pay has now been corrected/rectified and in that regard, statement

of excess drawal of pay from 12.12.1997 to 30.06.2017 and excess drawing of Leave Encashment benefit have also been prepared. It was mentioned that there was an occasion when the pay of the petitioner was stepped up from Rs.2,770/- to Rs.2,950/- w.e.f. 12.12.1997 vide order dated 05.08.2000 and the same was done without the approval of the Finance Department which have been re-fixed without stepping up of the pay and the excess drawal of pay of the incumbent is clearly indicated in the statement. It was further mentioned that it appears from the statement that the petitioner has drawn an excess amount of Rs.1,68,838/- including leave encashment benefit and it is mentioned in Form-19 which may be adjusted from arrear pension of the petitioner. On the basis thereof, the pension papers of the petitioner were re-submitted with a request to issue final pension payment order in terms with the above. Being aggrieved by the same, the petitioner has approached this Court under Article 226 of the Constitution.

4. This Court vide an order dated 07.09.2022 issued notice making it returnable by 4 (four) weeks. In the interim there was a direction to the respondent authorities not to recover the excess pay given to the petitioner amounting to Rs.1,68,838/-. Further to that, the learned counsel appearing on behalf of the Accountant General was directed to apprise this Court as to whether the PPO has been issued in favour of the petitioner.

5. Today, when the matter has been called up, the learned counsel appearing on behalf of the respondent Nos. 5 and 6 has submitted that although vide letter dated 10.08.2018, a request was made to the Joint Secretary to the Government of Assam, Revenue and Disaster Management Department seeking necessary approval for stepping up of pay of the petitioner, however no

response was received and as such, the communication dated 02.06.2022 was issued from the Office of the Deputy Commissioner, South Salmara, Mankachar about the excess drawal of Salary by the petitioner to the tune of Rs.1,68,838/-. It was also mentioned that the pay of the petitioner was duly stepped up vide order dated 05.08.2000 and the said order was issued by the then Additional Deputy Commissioner, Dhubri. Further to that, it has been mentioned that although the petitioner retired on 30.06.2017 but his pension could not be finalized because of the reasons that the amount of Rs.1,68,838/- have been found to be in excess drawal of salary by the petitioner including leave encashment benefit.

6. This Court upon perusal of the pleadings and the materials and having heard the learned counsels for the parties, is of the opinion that the instant case is squarely covered by the judgment of the Supreme Court in the case of ***State of Punjab Vs. Rafiq Masih (White Washer)*** reported in ***(2015) 4 SCC 334***. Paragraph 18 of the said judgment which stipulates under the circumstances when the recovery is impermissible being relevant is reproduced hereinbelow:

“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."*

7. A perusal of the above quoted paragraph would show that the instant case comes within the ambit of paragraphs 18(ii) & 18(iii) which stipulates that recovery after retirement or within 1 year from the date of retirement as well as when the excess payment has been made for a period in excess of five years before the order of recovery is impermissible and iniquitous. Under such circumstances, as in instant case there is no allegation of any fraud or misrepresentation on the part of the petitioner and further to that the stepping up of the pay was done as far back on 05.08.2000 by the then Additional Deputy Commissioner, Dhubri, this Court finds no reason as to why the ratio laid down by the Supreme Court in the case of Rafiq Masih (supra) shall not be applicable.

8. Accordingly, this Court therefore sets aside the communication dated 02.06.2022 insofar as the direction that the amount of Rs.1,68,838/- would be adjusted from the arrear pension of the petitioner.

9. Consequently, this Court therefore directs the respondents to complete the process of payment of the regular pension to the petitioner within period of 2 months from the date a certified copy of the instant order is served upon the respondent No.5.

10. Before concluding, this Court would also like to observe that the regular pension of the petitioner has to be based upon the correct fixation of pay i.e. without taking into account the stepping up of the pay.

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

JUDGE

Comparing Assistant