

GAHC010237922022



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

Case No. : WP(C)/7544/2022

GOURI KUMAR SINGHA
S/O- LT. NANDA KISHOR SINGH, R/O- H.NO. 06, PILINGKATA ROAD,
RADHA GOBINDA MANDIR PATH, BAKRAPARA, BASISTHA, P.O. AND P.S.
BASISTHA, DIST.- KAMRUP (M), ASSAM, PIN- 781029

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE SECY. TO THE GOVT. OF ASSAM, PENSION AND PUBLIC
GRIEVANCES DEPTT., DISPUR, GHY-6

2:THE ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON
BELTOLA
GHY-29

3:THE DIRECTOR GENERAL OF POLICE
ASSAM
GUWAHATI (PENSION CELL)
ULUBARI
GHY-07

4:THE SUPERINTENDENT OF POLICE
CACHAR
SILCHAR
ASSAM- 788001

5:THE TREASURY OFFICER
CACHAR
SILCHAR
ASSAM- 78800

Advocate for the Petitioner : MR. S S S RAHMAN

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

Date : 05.06.2023

Heard Mr. K. Brook, learned counsel for the petitioner, Mr. A. Hasan, learned standing counsel for the Accountant General (A&E), respondent no.2 and Mr. S.S. Roy, learned counsel for the respondent nos. 1, 3 and 4 and Mr. R. Borpujari, learned standing counsel appearing for respondent no. 5.

2. The petitioner is a retired Sub-Inspector of Police in the Assam Police Department and he retired from service on 31.12.2016 upon attaining the age of superannuation. The grievance of the petitioner is that though he is in receipt of regular pension, however, the authorities has not released a portion of his gratuity benefit till date. Accordingly, the writ petition was filed.

3. The respondent authorities more particularly the Accountant General (A&E) has taken a stand that when the pension paper of the petitioner was submitted before the Accountant General (A&E), on scrutiny, it was found that the annual increment to the retired employee granted on 01.02.1984 was wrongly determined Rs.537/-. However, such increment ought to have been Rs.524/-. Accordingly, the pension papers were returned to the employer with a request to resubmit it after proper correction of the aforesaid error. Such corrections were made by the employer and was submitted to the Accountant

General (A&E) and thereafter, the Pension Payment Order was granted by correcting the mistake.

4. During the pendency of this writ petition, the calculations as regard DCRG etc were determined and by communication dated 05.06.2023, the Senior Accounts Officer of the Office of the Accountant General (A&E), Assam, it was intimated that the petitioner is entitled for DCRG for Rs.8,77,50/-. However, in view of wrong fixation of the increment as discussed hereinabove in the year 1984, a recovery was sought to be made from the DCRG of the petitioner to the tune of Rs.3,13,490/-.

5. The learned counsel for the petitioner relying on the judgment of *State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors., (2015) 4 SCC 334*, submits that there were no allegation of any fraud against the petitioner in fixation of the increment at Rs.537/- instead of Rs.524/- in the year 1984. Such mistake were committed by the authorities/ department themselves and therefore, for their fault no recovery can be made from the petitioner in view of the aforesaid settled proposition of law.

6. Mr. Hasan, learned counsel in his usual fairness submits that principle as laid down in *Rafiq Masih (supra)*, shall be applicable in the case in hand as wrong calculation was done by the Department and no role is attributed to the petitioner. However, he submits that the order dated 05.06.2023 is not under challenge in the present writ petition as the same is issued today itself.

7. Countering such arguments, the learned counsel for the petitioner submits that as it is an admitted position that the recovery cannot be made from the petitioner, it will be an empty formality to once again compel a

pensioner to file a fresh writ petition to challenge the order of recovery.

8. Considered the above submission. The fact remains that a wrong calculation was made in the year 1984 during the service of the petitioner while determining his annual increment. Such annual increment was determined to be at Rs.537/- instead of his entitled increment of Rs.524/- and such mistake was not detected by the employer during the service tenure of the petitioner and even thereafter and accordingly, pension papers were sent to the Accountant General (A&E) on the basis of the aforesaid wrong calculation. It is the Accountant General (A&E) who detected such anomalies and returned back the record to the department for re-fixation and thereafter only the re-fixation was made and the recovery is sought to be made on the basis of due and drawn statement prepared by the department. The department prepared the aforesaid statement on the basis of the correction made in the increment after the retirement of the petitioner.

9. There is also no allegations of any fraud or misrepresentation on the part of the petitioner. The petitioner has preferred the present writ petition seeking his DCRG etc. Accordingly, this Court is of the opinion that in the given facts of the present case and also in view of settled proposition of law, no such recovery can be made from the pensions and pensionary benefits of the petitioner. Accordingly, though the calculations made cannot be faulted with by this Court. However, the recovery of Rs.3,13,490/- directed to be made, is set aside and quashed following the principle enunciated in *Rafiq Masih (supra)*, in the given facts of the present case.

10. Accordingly, it is directed that the department shall issue necessary consequential order in terms of this order passed today.

11. With the aforesaid observation, this writ petition stands disposed of.

JUDGE

Comparing Assistant