

GAHC010267112023



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

Case No. : WP(C)/6881/2023

NILA KANTA GOGOI
S/O- LATE JUGANANDRA GOGOI, VILLAGE- LELUWANI, P.O.-
GHILAMORA, DIST.- LAKHIMPUR, ASSAM, PIN- 787053

VERSUS

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

2:THE DIRECTOR
ELEMENTARY EDUCATION DEPARTMENT
ASSAM
KAHILIPARA
GUWAHATI-19

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER (DEEO)
LAKHIMPUR
DISTRICT- LAKHIMPUR
ASSAM
PIN- 787001

4:THE BLOCK ELEMENTARY EDUCATION OFFICER
BORDOLONI EDUCATIONAL BLOCK
DIST.- LAKHIMPUR
ASSAM
PIN- 787053

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

GUWAHATI-6

6:THE TREASURY OFFICER
DHAKUAKHANA
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-0

Advocate for the Petitioner : MD. S ALOM

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

01.12.2023

Heard Mr. S. Alom, learned counsel for the petitioner. Also heard Mr. B. Talukdar, learned Standing Counsel, Elementary for the respondents No. 1, 2, 3 & 4; Mr. A. Chaliha, learned Standing Counsel, Finance for the respondents No. 5 & 6 and Mr. P. Saikia, learned Junior Government Advocate for the respondents No. 7 & 8.

2. The petitioner who was working as an Assistant Teacher of Bordoibam M.V. School in the district of Lakhimpur, Assam retired from service on attaining the age of superannuation on 31.05.2016. After his retirement, when the matter was processed for payment of his pensionary benefits, the communication dated 08.12.2017 of the Finance and Accounts Officer in the office of the Directorate of Pension, Assam was made addressed to the District Elementary Education Officer, Lakhimpur Assam, by which, it was provided that during his service tenure, the petitioner was paid a salary higher than his actual scale. Accordingly, by the said communication, the District Elementary Education Officer, Lakhimpur was required to do the needful.

3. The said communication has been assailed in this writ petition on the ground that as per the law laid down by the Hon'ble Supreme Court, recovery from the pensioner benefits cannot be made in respect of any salary that was paid to an employee during his service period for no fault of his own.

4. In the communication of 08.12.2017, it is noticed that there is no such finding by the Finance and Accounts Officer in the office of the Directorate of Pension, Assam that the excess salary was paid to the petitioner because of any fault on the part of the petitioner or because of any overt act on his part, which had

contributed to such payment of excess salary. In the absence of any such material, it cannot be concluded whether the excess salary was paid to the petitioner because of any fault of his.

5. The law in this respect has been settled 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 is paid to an employee during his/her service tenure for no fault of his/her, such excess payment cannot be recovered from the retirement benefits.

6. The aforesaid law will be squarely applicable to the facts of this case and as such, the recovery sought to be made by the communication of 08.12.2017 would not be sustainable in its present form. However, as no material has been produced before this Court as to whether the excess salary was paid to the petitioner because of any overt act of the petitioner, this Court considers it appropriate that the ends of justice would be met if the authorities in the Pension Department make an assessment as to whether there was any contribution on the part of the petitioner in receiving such excess salary during his service tenure. If it is found that there was no such contribution from the petitioner leading to such excess payment, the authorities shall not insist upon the recovery in view of the law laid down by the Hon'ble Supreme Court as indicated above.

7. Further, in the event, the authorities arrive at a situation where the excess payment can no longer be recovered from the pensionary benefits; the authorities shall consider and process the payment of pension to the petitioner as per law.

8. However, as submitted by Mr. A. Chaliha, learned Standing Counsel for the Finance Department, it is provided that the correct pay of the petitioner would be Rs.525/- as on 16.11.1984. Accordingly, the authorities shall proceed with the

payment of pension by taking into account the correct pay that the petitioner ought to have received and not the incorrect higher pay that was paid to him.

9. As the amount of Rs.2,06,875/- had already been recovered from the petitioner being the alleged excess drawl, we provide that in the event after examining the case of the petitioner, the respondents are of the view that the drawl of excess salary by the petitioner was not due to any fault of her or that there was no manipulation or fraud by the petitioner, the said amount be refunded to the petitioner.

10. The aforesaid exercise be done within a period of three months from the date of receipt of the certified copy of the order and if the order goes in favour of the petitioner, the refunded be effected within a period of three months thereafter.

11. In terms of the above, the writ petition stands disposed of

JUDGE

Comparing Assistant