



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

Case No. : WP(C)/229/2022

1:SMTI. N. AJUNGLA
R/O LOWER PWD, KOHIMA, NAGALAND,
PIN - 797001

VERSUS

THE STATE OF NAGALAND AND 5 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
NAGALAND,
KOHIMA - 797001

2:THE COMMISSIONER AND SECRETARY
PLANNING AND MACHINERY
NAGALAND
KOHIMA - 797001

3:THE DEVELOPMENT COMMISSIONER
NAGALAND
KOHIMA - 797001

4:THE ADDITIONAL DEVELOPMENT COMMISSIONER
PLANNING AND CO-ORDINATION DEPARTMENT
NAGALAND
KOHIMA

5:THE PRINCIPAL ACCOUNTANT GENERAL
NAGALAND
KOHIMA - 797001

6:THE PRINCIPAL DIRECTOR
TREASURIES AND ACCOUNTS
NAGALAND
KOHIMA - 797001

Advocate for the Petitioner : C. T. JAMIR, SR. ADV

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

Date : 08-12-2023

Heard Mr. Imti Longchar, learned counsel for the petitioner. Also heard Ms. Suponglemla Chang, learned Government Advocate for the State respondent Nos. 1 to 4 & 6 and Ms. P. Mhonbeni Ezung, learned counsel for respondent No.5.

2. Adjournment prayer has been made on behalf of Smti. Suponglemla Chang, learned Government Advocate for the respondent nos.1, 2, 3 & 4 on the ground that she has some personal difficulty.

3. The petitioner is aggrieved by the letter dated 16.03.2021 issued by the Additional Development Commissioner, requesting the Principal Accountant General, Nagaland to recover the excess pay and allowances for a period of 1 (one) year and 11 (eleven) months from the petitioner, on account of the petitioner overstaying in service. The petitioner's case is that there has been no overstay in service on the part of the petitioner, inasmuch as, the petitioner's 35 years of service should be counted from 29.08.1986, i.e. the date on which the petitioner was given her regular appointment as Typist Grade-III in the Planning Machinery, Nagaland, Kohima in the scale of pay of Rs.450-11-538-12-670-EB-15-850 plus allowances, vide order dated 29.08.1986 issued by the Development Commissioner, Planning & Coordination Department (Planning Branch), Government of Nagaland.

4. Mr. Imti Longchar, learned counsel submits that though the petitioner had been initially appointed on a temporary basis as a Typist Class-III in the Office of the Backward Area Development Cell, Kohima under the Development Commissioner's establishment, vide order dated 06.04.1984, issued by the Additional Secretary Planning, Planning & Coordination Department (Planning Branch), Government of Nagaland, the petitioner's service had to be counted for the purpose of superannuation pension from 29.08.1986, in terms of the Nagaland Retirement from Public Employment Act, 1991, hereinafter referred to as the Act. It was only in view of the Second Amendment to the Act, which came into force in the year 2009, vide the Nagaland Retirement from Public Employment (Second Amendment) Act, 2009 that the petitioner's service period was regularized to be counted w.e.f. 06.04.1984. However, the petitioner does not wish to press this point and is only aggrieved with the impugned letter dated 16.03.2021 issued by the Additional Development Commissioner, Planning & Coordination Department, wherein a decision to recover the excess pay for overstay in service has been directed to be made from his retirement benefits. He submits that there being no fraud and misrepresentation on the

part of the petitioner and due to the above reason, the State respondents cannot be allowed to recover the excess salary paid to the petitioner, for the alleged overstay in service of one year and eleven months. He submits that out of the total amount of Rs.15,38,244/-, Rs.9,38,784/- has been recovered by the State respondents which should be returned to the petitioner.

5. Mr. Imti Longchar, learned Advocate relies upon the Supreme Court judgment in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer)**, reported in **(2015) 4 SCC 334** and in the case of **State of Bihar & Others vs. Pandey Jagdishwar Prasad**, reported in **(2009) 3 SCC 117** in support of his submission that the respondents cannot recover the excess pay made from a Grade- III & Grade-IV employee, when there is no fraud or misrepresentation on their part.

6. Ms. P. Mhonbeni Ezung, learned counsel appearing on behalf of Mr. Joshua Sheqi, learned counsel for the respondent No.5 submits that the Addl. Development Commissioner, Planning & Co-ordination Department, Nagaland vide letter dated 16.3.2023 requested the office of the Principal Accountant General, Nagaland Kohima to recover an amount of Rs.14,76,574/- from the petitioner for overstay of her service period w.e.f.1.3.2019 to 31.1.2021. An amount of Rs.61,670 being excess drawal of leave encashment was also directed to be recovered being excess on drawal of leave encashment.

The respondent No.5 thereafter, recovered an amount of Rs.9,38,784 from the Death Cum Retirement Gratuity(DCRG). The balance of Rs.5,99,46/- was to be recovered from the pension payable to the petitioner.

7. Ms. Suponglemla Chang, learned Government Advocate appearing for the respondent Nos. 1 to 4 and 6 submits that the recovery of the petitioner's excess salary for the period of over stay, had been initiated through the Accountant General's Office, based on the direction of the Planning & Coordination Department. The role and function of the Treasury Department in the present case is to calculate the Dearness relief amount of the petitioner and to recover the same through treasury challan as per the instruction received from the Accountant General's office. As such, the Treasury Officer has no other role to play for recovery of the excess payment made due to over stay of the petitioner in service.

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

9. From the submissions made by the learned counsel for the petitioner, it appears that earlier, the 35 years service which a Government servant was to serve prior to retirement, was to be counted from the date of his regular appointment to the post. However, the said policy of counting the service of a Government servant has been changed to the effect that even the temporary service of a Government servant would have to be counted for the purpose of deciding the date of retirement of a Government servant. This has been clarified in the O.M. No.AR-3/GEN-231/2011 dated 29.3.2017.

10. Keeping the above fact in view and as there is no averment made in the affidavit of the respondents that there was any fraud or mis-representation on the part of the petitioner, in over staying her service, this Court is of the view that the petitioner cannot be penalized by recovering the excess pay given to her for over stay in service. Further, the petitioner has worked during her over stay period of service.

11. In the case of **State of Punjab and others Vs. Rafiq Masih (White**

Washer), reported in **(2015) 4 SCC 334** , the Supreme Court has held that recovery of pay mis-takenly made by the employer was not permissible from employees belonging to Class-III and Class-IV services (or Group-C and Group-D services), when there was no fraud or misrepresentation on the part of the employee. In the present case, as the petitioner has over stayed in service for 1 year, 11 months, without there being any fraud or mis representation on her part, this court is of the view that the recovery of the excess pay made to the petitioner was unreasonable and arbitrary. It was the duty of the respondents to inform the petitioner that she was to retire on a certain date due to the change in policy made by the State respondents, with regard to the change in the manner of computation of the length of service of an employee in terms of the O.M. Dated 4.5.2017. As there is nothing to show that the respondents had informed the petitioner with regard to the day when the petitioner was to retire, this Court is of the view that the recovery made by the respondents would have to be returned to the petitioner.

12. Accordingly, in view of the reasons stated above, the impugned letter No.PLN/PLN/DBA/22/85 dated 16.3.2021 is hereby set aside. The respondents are accordingly directed to re-imburse the amount of Rs.9,38,784 deducted from the petitioner's DCRG to the petitioner, within a period of one month from the date of receipt of a copy of this order.

13. The writ petition is accordingly allowed.

Sd/-

JUDGE

Comparing Assistant