

GAHC010053562023



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

Case No. : WP(C)/1384/2023

PURNIMA SAIKIA (KACHARI)
W/O- LATE RAMONI MOHAN SAIKIA,
R/O- VILLAGE KULAPATHAR,
PANIGAON, P.O.- ARADHAL,
DISTRICT- DHEMAJI, ASSAM,
PIN- 787057.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY,
DEPARTMENT OF HIGHER EDUCATION,
GOVERNMENT OF ASSAM,
ASSAM SECRETARIAT,
DISPUR, GUWAHATI, ASSAM.
PIN- 781006.

2:THE PRINCIPAL ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON
BELTOLA

GUWAHATI
ASSAM

PIN- 781029.

3:SENIOR TREASURY OFFICER
O/O THE PRINCIPAL ACCOUNTANT GENERAL (A AND E)
ASSAM

MAIDAMGAON

BELTOLA

GUWAHATI
ASSAM

PIN- 781029.

4:THE TREASURY OFFICER
DHEMAJI
DISTRICT- DHEMAJI
ASSAM

PIN- 787057.

5:THE DIRECTOR OF HIGHER EDUCATION
DIRECTORATE OF HIGHER EDUCATION
ASSAM

KAHILIPARA
GUWAHATI
ASSAM.
PIN- 781019.

6:DHEMAJI COMMERCE COLLEGE
REPRESENTED BY ITS PRINCIPAL

DISTRICT- DHEMAJI
ASSAM

Advocate for the Petitioner : MR S BORTHAKUR

Advocate for the Respondent : SC, HIGHER EDU

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

ORDER

12.03.2024

Heard Mr. S Dey, learned counsel for the petitioner. Mr. D Upamanyu, learned counsel for the respondent Nos. 1 & 5, Ms. A Sharma, learned counsel for respondent Nos. 2 & 3 and Mr. B Gogoi, learned counsel for the Finance

Department respondent No. 4.

[2.] By filing this writ petition, the petitioner seeks for a direction to the respondent authorities concerned to refund a sum of Rs. 3,42,474/- which was deducted through PPO dated 03.06.2022 on the ground that the late husband of the petitioner was given excess pay for the period between 1999 to 11.09.2021. It is the case of the petitioner that her husband expired that 11.09.2021 before his superannuation, which was due within a few months' time and therefore, in view of the Apex Court decision rendered in *State of Punjab vs. Rafik Masih & Ors*, reported in *2015 4 SCC 334* and pursuant to which the State Government in the Finance Department had also issued the O.M dated 14.06.2019 (Annexure-3), the amount that was deducted should be refunded to the petitioner. Counsel for the petitioner referring to paragraph No. 4 (ii) of the O.M dated 14.06.2019 submits that recovery should not be made from retired employees or employees who are due to retire within one year of the order or recovery. Since the husband of the petitioner was due to retire in a few months' time before he expired on 11.09.2021, the case of the petitioner is squarely covered by this provision. The learned counsel for the petitioner submits that at any rate, the late husband of the petitioner is in no way responsible for the wrong fixation of his pay and therefore, in view of the decision of the Apex Court in *Rafik Masih & Ors* (supra), the amount that was deducted should be refunded back to the petitioner.

[3.] Mr. D Upamanyu, learned counsel for the Department submits that as per the instructions received by him, the Director, Higher Education, Assam has written to the Principal, Dhemaji Commerce College to take necessary action for refunding the said overdrawn amount which was already deducted from the Death-cum-Retirement Gratuity payable to the petitioner and therefore, he submits that in view of the said communication, necessary process is due to follow.

[4.] It is, however, seen that the salary drawn by the employees are prepared by the Department and not by the College concerned and it is the Government including the Principal Accountant General and the Senior Accounts Officer from the Office of the Principal Accountant General who are the authorities to take necessary steps.

[5.] Therefore, considering the fact that the respondents are also aware of the fact that deduction made should be refunded, this writ petition is disposed of with a direction to the Principal, Dhemaji Commerce College (respondent No. 6) to submit the proposal for refund of the deducted amount to the Director of Higher Education, Assam within a period of 2 (two) weeks from the date of receipt of a certified copy of this order and the Director of Higher Education on receipt of the proposal alongwith all the other respondents shall take necessary steps, as may be required. The entire process of refund should be completed within a period of 3

(three) months from the date of receipt of the proposal by the Director of Higher Education, Assam.

[6.] The Communication dated 12.03.2024 produced by Mr. D Upamanyu shall be kept on record and marked as 'X' for identification.

JUDGE

Comparing Assistant