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

Case No. : Review.Pet./95/2024

SUBHAS BHATTACHARJEE
SON OF LATE JITENDRA NATH BHATTACHARJEE, RESIDENT OF VILLAGE-
DHEKIAJURI BONGALI GAON, P.O.- WEST SRIPURIA, PIN- 786145,
DISTRICT- TINSUKIA.

VERSUS

THE STATE OF ASSAM AND 7 ORS
EPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, EDUCATION (SECONDARY) DEPARTMENT,
DISPUR, GUWAHATI- 781006.

2:THE COMMISSIONER AND SECRETARY
PENSION AND PUBLIC GRIEVANCES DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE DIRECTOR OF PENSION
OFFICE OF THE DIRECTOR OF PENSION
ASSAM
HOUSEFED COMPLEX
DISPUR
GUWAHATI- 781006.

4:THE FINANCE AND ACCOUNTS OFFICER

OFFICE OF THE DIRECTOR OF PENSION
ASSAM
HOUSEFED COMPLEX
DISPUR
GUWAHATI- 781006.

5:ACCOUNTANT GENERAL
ASSAM
BELTOLA
GUWAHATI- 781029.

6:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 781019.

7:THE INSPECTOR OF SCHOOLS

TINSUKIA DISTRICT CIRCLE
TINSUKIA.

8:TREASURY OFFICER
TINSUKIA.

9:THE MANAGER
STATE BANK OF INDIA
DOOM DOOMA BRANCH
TINSUKIA- 78615

Advocate for the Petitioner : MR B M DEKA, MS D MAHANTA,MS P THAPA

Advocate for the Respondent : SC, SEC. EDU., GA, ASSAM,SC, FINANCE,SC, AG

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

09.12.2024

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Heard Mr. B.M. Deka, learned counsel for the petitioner. Also heard Mr. H. Tenrangpi, learned Standing Counsel for the Secondary Education, Ms. A. Sarma, learned counsel on behalf of Mr. B. Chakraborty, learned Standing Counsel, Accountant General for the respondent No.5.

This review petition is directed against the order dated 02.04.2024 passed in WP(C) 4379 of 2022. The petitioner had superannuated as an U.D.A.

from Doomdooma Bangiya Vidyalaya. Pursuant to his superannuation the recovery of an amount of Rs. 4,54,210/- was made by the Finance and Accounts Officer, Office of the Director of Pension on the ground of excess drawal by the petitioner. The writ petitioner approached this Court and by the said order dated 02.04.2024 this Court disposed of the petition by placing reliance of the judgment on the Apex Court rendered in *Rafiq Masih Case*. While disposing of the matter the following directions were issued:

“8. Accordingly, this Court considers it appropriate to close the present writ petition in terms of the law laid down by the Apex Court in Rafiq Mash (Supra) read with the Office Memorandum dated 14.06.2019 issued by the Government of Assam. The respondent authorities cannot proceed to deduct any excess payment unless a proper enquiry is made to the satisfaction that this excess payment had occasioned due to the fault of the writ petitioner. The respondent authorities will make necessary enquiry into the matter and unless it is seen that this excess payment was made because of the fault on the part of the writ petitioner, no steps will be taken to deduct the excess payment or adjust the same from the pension payable to the petitioner.

9. Upon making such enquiry as directed, a copy of the order shall be furnished to the writ petitioner. Upon such enquiry being made and where it is found that there was no fault on the part of the writ petitioner towards the excess payment made in his favour, the respondent authorities will forthwith release the pension payable to the petitioner at the pay-scale last drawn without proceeding to deduct any excess payment made.

10. The entire exercise directed to be carried by the State shall be carried out within a period of 60 (sixty) days from the date of receipt of certified copy of this order.”

This review petition is filed on the ground that there is error apparent on the face of the record in the order dated 02.04.2024 passed in WP(C) No. 4379 of 2022.

It is submitted that in the order under review it is recorded that the learned counsel for the respondents had no instructions as to whether excess payment was rendered from the petitioner was due to the fault of the petitioner. Therefore, it is urged that the recovery of excess drawal was unjustified, as there was no fault on the part of the petitioner for any excess drawal. Such submission of the learned counsel for the respondent is on the basis of a communication dated 26.03.2024, which was produced during the hearing

before the writ Court and is now enclosed in the review petition also. The learned counsel for the review petitioner submits that the excess drawal occurred due to the incorrect fixation of his pay by the Office of the Inspector of Schools, Tinsukia, and not due to any of his fault. This fact is clearly apparent from the submissions of the respondent's counsel recorded as is evidence from the order dated 02.04.2024 passed in WP(C) No. 4379 of 2022. He therefore submits that there was no fault on from the part of the petitioner and therefore, enquiry directed to be conducted by the Department in the order under review was uncalled for.

Notice was issued in the matter and the respondents were permitted to obtain instructions. Today when the matter is called up, the learned counsel appearing for the Secondary Education has placed before the Court a communication and submits that the enquiry as directed was already conducted and the Enquiry Committee has informed that there are no anomalies noticed on the part of the employee concerned leadings to excess drawal of amount by the petitioner. This communication was issued by the Inspector of Schools to the Director of Secondary Education vide communication dated 17.08.2024. In that view of the matter, since the enquiry as directed by order dated 02.04.2024 passed in WP(C) No. 4379 of 2022 has already been completed and the Committee has filed a report stating that no anomalies noticed on the part of the employee concerned for drawal of excess amount, no further order is called for in the review petition as the directions contained in the order sought for review was already carried out. Needless to say that the amount which was recovered from the petitioner to the tune of Rs.4,30,694/- shall be refunded to the petitioner.

With the above observations this review petition stands disposed of.

This exercise be carried out within a period of 60 days from the date of receipt of certified copy.

Copy of the instructions placed before the Court is kept in the case record.

JUDGE

Comparing Assistant