

GAHC010199172021



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

Case No. : WP(C)/6545/2021

KOMAR UDDIN CHOUDHURI
S/O LT NOOR UDDIN CHOUDHURI, VILL-DASHIRPAR, P.O.-BADARPUR,
DIST-KARIMGANJ (ASSAM), PIN-78806

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY, ELEMENTARY
EDUCATION, DEPARTMENT DISPUR, GUWAHATI-6

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-06

3:THE COMMISSIONER AND SECRETARY
PENSION AND PUBLIC GRIEVANCES DEPARTMENT
GHY-06

4:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
GUWAHATI
KAHILIPARA-19

5:THE DIRECTOR OF PENSION GOVT. OF ASSAM
HOUSEFED COMPLEX
DISPUR
GHY-06

6:THE FINANCE AND ACCOUNTS OFFICER
DIRECTORATE OF PENSION
ASSAM

GUWAHATI

7:THE DEPUTY INSPECTOR OF SCHOOLS
DIST-KARIMGANJ (ASSAM)

Advocate for the Petitioner : G UDDIN

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE BUDI HABUNG

ORDER

Date : 12-06-2024

Heard G. Uddin, learned counsel for the petitioner. Also heard Mr. P.N. Sarma, learned Standing counsel Elementary Education for the respondents No.1, 4 and 7, Ms. D.D. Barman, learned counsel for respondent Nos. 3 and 5 and Mr. A. Chaliha, learned counsel for the respondents No.2 & 6. The learned counsel for the parties submits that it is a covered case and prays for similar order and direction as in W.P.(C) 2358/2021.

2. The petitioner was appointed as Assistant Teacher on 03.04.1975. He was working as Assistant Teacher at 233 No.Tirkorpara L.P. School in the district of Karimganj, Assam retired from service on attaining the age of superannuation on 31/01/2017. After his retirement, when the matter was processed for payment of his pensionary benefits, the communication dated 07.05.2018 and subsequently by communication dated 30.01.2020 of the Finance and Accounts Officer in the office of the Directorate of Pension, Assam was made addressed to the Deputy Inspector of Schools, Karimganj, 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 communications, the Deputy Inspector of Schools, Karimganj, Assam

was required to do the needful.

3. The said communications 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 pensionary 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 communications of 07.05.2018 and 30.01.2020, it is noticed that there is no such conclusion of 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 of his 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 because of no fault of his/her, such excess payment cannot be recovered from the retirement benefits.

6. The aforesaid provisions of law would squarely be applicable to the facts of this case and as such, the recovery sought to be made by the communication of 07.05.2018 and 30.01.2020 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 deems 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. In the event, 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. 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. The aforesaid exercise be done within a period of 2 (two) months from the date of receipt of a certified copy of this judgment and order.

10. As the alleged excess salary claimed had already been paid by the petitioner, if in the exercise pursuant to this order, the authorities finds that the excess salary cannot be recovered, the same be refunded back to the petitioner within a period of three months from the date of receipt of the certified copy of the order.

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

JUDGE

Comparing Assistant