

GAHC010202652024



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

Case No. : WP(C)/5121/2024

KANBAR DAS
S/O- LATE METAKA DAS, VILL.- HUJ GAON, P.O. DHAKUAKHANA, DIST.
LAKHIMPUR, ASSAM, PIN- 787055.

VERSUS

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

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE INSPECTOR OF SCHOOLS

LAKHIMPUR DISTRICT CIRCLE (LDC)
DIST. LAKHIMPUR
ASSAM
PIN- 787001.

4:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-6.

5:THE TREASURY OFFICER
DHAKUAKHANA SUB TREASURY
DIST. LAKHIMPUR

ASSAM
PIN- 787001.

6:THE DIRECTOR OF PENSION
ASSAM
DISPUR
GUWAHATI-06.

7:THE FINANCE AND ACCOUNTS OFFICER
DIRECTORATE OF PENSION
ASSAM
DISPUR
GUWAHATI-06

Advocate for the Petitioner : MD. S ALOM, MS. A BEGUM,MR. M S ALAM

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

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

O R D E R

01.10.2024

Heard Mr. S. Alom, learned counsel appearing for the petitioner. Also heard Mr. U. Sarma, learned Standing counsel, Department of School (Secondary) Education, Assam, for the respondent Nos. 1, 2 & 3, Mr. A Chaliha, learned Standing counsel, Finance Department, Assam for the respondent Nos. 4 & 5, as well as Mr. B Deori, learned Government Advocate, Assam for the respondent Nos. 6 & 7.

2. Petitioner was serving as an Assistant Teacher in Pub Dhakuakhana Janajati High School in the district of Lakhimpur, Assam, and retired from service on 28.02.2018, on attaining the age of superannuation at 60 years.

3. The Inspector of Schools (IS, in short), Lakhimpur District Circle (LDC), District-Lakhimpur, North Lakhimpur, on 24.04.2023 submitted the Pension Proposal of the petitioner before the Directorate of Pension, Assam, at

Guwahati.

4. Finding that the scale of pay of the petitioner as on 01.01.1996 should have been fixed at Rs. 3190/-, but was fixed as Rs. 3250/-, the Directorate of Pension, Assam vide communication no. DP.ADP/2019-20/2019/06/0471, returned the pension proposal of the petitioner to IS, LDC, District- Lakhimpur, directing it to fix the scale of the petitioner at Rs. 3190/- as on 01.01.1996, the subsequent fixation of his salary on the basis of the same, thereafter to assess the excess drawal by the petitioner, and to take action as per the order dated 14.06.2019 of the Finance department of the State.

5. The IS, LDC accordingly after fixation of salary of the pensioner at Rs. 3190/- as on 01.01.1996, assessed the excess drawal by him from 01.01.1996 to 28.02.2018 and found that due to such wrong fixation of his salary at Rs. 3250/- as on 01.01.1996, the petitioner had drawn an amount of Rs. 1,64,536/- in excess.

6. The Finance Department, Government of Assam, by its Office Memorandum No. Fin(EC-III).1808/2018/2 Dated- 14.06.2019, pertaining to recovery of wrongful/excess payments made to the Government Employees, issued a clarification in compliance of the decision of the Hon'ble Supreme Court in the case of *State of Punjab & Ors Vs Rafiq Masih (White Washer)*, decided on 18.10.2014, clarifying that whenever any excess payment is made on account of fraud, mis-representation, collusion, favouritism, negligence or carelessness etc., roles of those responsible for over-payments in such cases as well as the employees who benefited from such actions should be identified and departmental/criminal actions should be considered in appropriate cases.

7. The said Office Memorandum dated 14.06.2019 of the Finance Department of the State also clarified that when the waiver of recovery in such situation is considered by the said Office Memorandum dated 14.06.2019, the Finance

Department, Assam, empowered the Pension and Public Grievance Department with financial ceiling of Rs.1,00,000/- in each individual case where recovery is to be waived and with further observation that in cases beyond Rs.1,00,000/-, the express approval of the Finance Department, Assam, is to be obtained.

8. Later on, by another Notification No. PPG(P) 418/2021/20 dated 11.11.2021, the State Government in the Administrative Reforms, Training, Pension and Public Grievance Department, authorised the Director of Pension, Assam, for waiver of excess drawal upto the amount of Rs. 3,00,000/-, exclusively for the pensioners of Provincialised Schools and PRIs with immediate effect.

9. Pursuant to the earlier communication of the Directorate of Pension, Assam, noted above, the Inspector of Schools, Lakhimpur District Circle, District- Lakhimpur, North Lakhimpur, by letter no. IS/LDC/AC/PEN/11/2023 dated 18.06.2024, submitted a fresh proposal for pension of the petitioner, along with his original service book and necessary documents, proposing waiver of excess drawal by the petitioner amounting to Rs. 1,64,536/-, as per the Government Notification dated 14.06.2019 noted above.

10. As the petitioner's preferred for his final pension is pending for consideration, apprehending that the said amount of Rs. 1,64,536/- will be recovered from his pensionary amount, the petitioner has filed this writ petition on 24.09.2024, praying to set aside and quash the process initiated by the respondent authorities to recover the excess amount drawn by him, amounting to Rs. 1,64,536/-; and to direct the Directorate of Pension, Assam, respondent No. 6, to waive the said excess payment of Rs. 1,64,536/- as per the Office Memorandum No.Fin(EC-III).1808/2018/2 dated 14.06.2019, as well as the Notification of the State Government in the Administrative Reform etc., dated 11.11.2011, under No. PPG(P) 418/2021/20, and to regularise his pension

amount, and to release his pensionary benefits at the earliest, without recovering the said excess payment of Rs. 1,64,536/-.

11. It is seen that the petitioner retired as an Assistant Teacher of Pub Dhakuakhana Janajati High School on 28.02.2018. From the communication of the Inspector of Schools, Lakhimpur District Circle, North Lakhimpur, dated 18.06.2024, it is also seen that the petitioner was not the Drawing and Disbursing Officer of the school concerned as on 01.01.1996, nor, at any point of time. It is also not the case of the respondents that the petitioner fraudulently, by misrepresentation, collusively or by any other means, fixed the salary at Rs. 3250/- as on 01.01.1996 instead of Rs. 3190/-.

12. The petitioner had drawn the said excess amount in the scale of pay of Rs. 3250/- as on 01.01.1996 instead of Rs. 3190/-, because of wrong fixation of his salary by the authorities concerned in the Department of School (Secondary) Education, Assam.

13. Considering the above, and in compliance of the decision of the Hon'ble Supreme Court in the case of *State of Punjab & Ors Vs Rafiq Masih (White Washer)*, as well as in *the case of Shyam Babu Verma vs Union Of India, reported in 1994 2 SCC 521*, the respondent's authorities in the Department of School (Secondary) Education, as well as the Director of Pension, Assam, are directed not to recover the said excess drawal by the petitioner, amounting to Rs. 1,64,536/-, due to wrong fixation of his salary by the authorities concerned, in the Department of School (Secondary) Education.

14. However, the respondent authorities, both the School (Secondary) Education Department as well as the Director of Pension, Assam, are directed to determine the Pensionary amount payable to the pensioner, by fixing his salary at Rs. 3190/- as on 01.01.1996, and the subsequent fixation of his salary on the said amount that was payable to him at the time of his retirement on

28.02.2018.

15. After such determination of his pensionary amount on proper fixation of his salary as on 01.01.1996 at Rs. 3190/-, the authorities in the Director of Pension, Assam, shall issue the Final Pension Pay Order to the petitioner, intimating him as well as the Treasury Officer, Dhakuakhana Sub Treasury, District Lakhimpur, Assam at the earliest, preferably within 4 (four) months from the date of receipt of certified copy of this order to be submitted by the petitioner before the Director of Pension, Assam, as well as the Inspector of Schools, Lakhimpur District Circle, District- Lakhimpur, North Lakhimpur, obtaining necessary acknowledgment from those authorities in that regard.

16. In the meanwhile, the respondent authorities shall release other pensionary benefits to the petitioner, as per his entitlement, as directed above. Further, till such payment of his Final Pension Pay Order to the petitioner, the respondent authorities in the Department of School (Secondary) Education, shall continue to pay him provisional pension.

17. With the above observation and direction, this writ petition stands disposed of.

JUDGE

Comparing Assistant

