

GAHC010267082023



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

Case No. : WP(C)/6878/2023

NURUL AMIN
SON OF LATE SAMED ALI, RESIDENT OF VILLAGE- TARABORI, P.O.
TARABORI KALSILA SATRA, DISTRICT- MORIGAON, ASSAM

VERSUS

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

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

3:THE DIRECTOR OF PENSION
ASSAM
HOUSEFED COMPLEX
GUWAHATI-6

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

5:THE FINANCE ACCOUNT OFFICER
DIRECTOR OF PENSION
ASSAM
HOUSEFED COMPLEX
GUWAHATI-6

6:THE DEPUTY INSPECTOR OF SCHOOLS
MORIGAON DISTRICT
MORIGAON
ASSAM

7:THE BLOCK ELEMENTARY EDUCATION OFFICER (BEEO)
BHURBANDA ELEMENTARY EDUCATION BLOCK
P.O. BHURBANDA
DISTRICT- MORIGAON
ASSAM
PIN

Advocate for the Petitioner : MR. B RAHMAN

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

08.01.2024

Heard Mr. B. Rahman learned counsel for the petitioner. Also heard Mr. N.J Khataniar, learned Standing Counsel, Education.

2. The petitioner who was appointed as Assistant Teacher and joined his service on 10.04.1984 in Kajalichaki L.P. School and serving as Head Teacher of Bakulghuri L.P. School, who superannuated from service on 31.07.2023.

3. The Finance & Accounts Officer in the Director of Pension, Assam had made an impugned recovery list of excess amount of Rs. 2,78,502/- drawn by the petitioner since 01.01.1996 till the date of his retirement.

4. The Department has not indicated in any of the orders that the petitioner was given the graduate scale of pay from the date of provincialisation because of any fault attributable to him or that there was any role of the petitioner in causing any manipulation, which resulted in the petitioner receiving the graduate scale of pay from the date of provincialisation.

5. The law in this respect has been settled by the Hon'ble Supreme Court in Shyam Babu Verma reported in (1994) 2 SCC 521 and Rafiq Masih case reported in (2015) 4 SCC 334, wherein, it has been provided that in the event, an employee is paid a higher pay, than he is entitled during his service tenure for no fault of his, such amount cannot be deducted from his pensionary benefit upon superannuation.

6. The learned counsel for the respondents submits that he had no instructions

as to whether the excess payment was made to the petitioner because of the fault of the petitioner himself.

7. By following the principle of law laid down by the Hon'ble Supreme Court, this Court is of the view that the authorities cannot deduct any excess payment that was made to the petitioner for no fault of his during his service tenure.

8. Accordingly, this Court is of the view that as per the law laid down by the Hon'ble Supreme Court in Shyam Babu Verma (supra) and Rafiq Masih(Supra), the respondent authorities cannot take up a process to deduct the excess payment made to the petitioner from his pensionary benefits which was not due to any fault of the petitioner. The respondent authorities are directed to process the pension papers of the petitioner as per law without any deduction as proposed to be made. It is made clear that the respondent authorities shall proceed for payment of pension by arriving at a conclusion as to whether the enhanced pay was given to the petitioner because of any fault of his own or not.

9. Writ petition, accordingly, stands disposed of.

JUDGE

Comparing Assistant