GAHC010015762020

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

Case No. : WP(C) 507/2020

1:KANMAI SONOWAL
W/O. LT. MUNINDRA NATH SONOWAL, R/O. CHINATALLA GAON VIA KHELMATI, P.O. BOGOLIJON, DIST. LAKHIMPUR, PIN-787031, ASSAM.

VERSUS

1:THE STATE OF ASSAM AND 6 ORS.
REP. BY THE COMM. AND SECY., ELEMENTARY EDUCATION DEPTT., DISPUR, GUWAHATI-781006.

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

3:THE COMMISSIONER AND SECRETARY
FINANCE DEPTT.
DISPUR
GUWAHATI-781006.

4:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-781019.

5:THE DIRECTOR OF PENSION
GOVT. OF ASSAM
HOUSEFED COMPLEX
DISPUR
GUWAHATI-781006.

6:THE DY. INSPECTOR OF SCHOOLS
LAKHIMPUR.

7:THE TREASURY OFFICER
LAKHIMPUR

Advocate for the Petitioner : MR. M P SARMA

Advocate for the Respondent : SC, EDU

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 31-01-2020

Heard Ms. Upasana Sharma, learned counsel for the petitioner. I have also heard Ms. N. Phukan, learned Standing Counsel, Elementary Education Department, Assam appearing for the respondent nos. 1, 4 and 6 ; Mr. B. Deuri, learned Government Advocate, Assam representing the respondent nos. 2 and 5 and Mr. R. Borpujari, learned Standing Counsel, Finance Department, appearing for the respondent nos. 2 and 7.

The writ petitioner has retired from service from the post of Assistant Teacher on 30/11/2016 upon attaining the age of superannuation. Under the relevant Rules, the petitioner is entitled to receive pension and accordingly, the respondents have paid her pension. However, the petitioner is aggrieved by the notification dated 08/12/2017 issued by the Finance and Accounts Officer in the Directorate of Pension, Assam, whereby, instruction has been issued to recover a sum of Rs. 2,75,603/- from the petitioner on account of excess drawal. The notification dated 08/12/2017 mentions that the pay of the petitioner was erroneously fixed on 01/01/1987 at Rs. 660/- instead of Rs. 645/- and that is why, the petitioner has ended up making excess drawal. A sum of Rs. 2,75,603/- has, in the meantime, been recovered from the petitioner.

By referring to a decision rendered by this Court in the case of *Purna Ram Deka Vs. State of Assam*

and others [WP(C) 2104/2016 decided on 07/06/2018], Ms. Sharma submits that in a similar case, this Court has set aside the order of recovery issued in respect of a similarly situated pensioner. Ms. Sharma has made an attempt to persuade this Court to take a similar view in this case and set aside the order for recovery of any amount from her client.

Mr. Deuri, learned Government Advocate, Assam, has produced a copy of the Circular dated 14/06/2019 issued by the Finance Department of Govt. of Assam, which prohibits recovery from employees in the Class-III and IV category, when excess payment has been made, for a period in excess of five years. Mr. Deuri submits that the petitioner would be entitled to the benefit under the notification dated 14/06/2019. Therefore, he would have no objection if an order is passed by this Court to such effect.

It is apparent from the record that the petitioner had retired from a Grade-III post and the excess drawal allegedly made by her is on account of incorrect pay fixation made on 01/01/1987. Therefore, the excess payment in this case has clearly been made exceeding a period of five years. If that be so, notification dated 14/06/2019 would not permit recovery of such excess drawal from the petitioner.

In the case of *State of Punjab and Vs. Rafiq Masih* reported in (*2015) 4 SCC 334*, the Hon'ble Supreme Court has observed that no recovery should be made from the over drawn salary of a Grade-III employee. Relying upon the decision of the Supreme Court in the case of *Rafiq Masih (Supra)*, this Court had held in the case of *Purna Ram Deka (Supra)* as follows :-

> "*In the present case, the wrong fixation of pay having been made in the year 1984, the State respondents cannot be allowed to make recovery of any excess/overdrawn salary of the petitioner due to the mistake committed by the State respondents, which was not due to any misrepresentation or fraud played by the petitioner. Also the petitioner retired as a Class-III employee. However, as held by the Apex Court, a mistake cannot confer any right upon anyone. Accordingly, the fixation of pension and payment of pension as per the correct fixation of pay/ entitlement of the petitioner will have to be made @ Rs.9640/- per month. However, as the recovery of Rs. 3,67,758/-was impermissible in law, the said amount will have to be repaid to the*

petitioner within a period of 6(six) weeks from the date of receipt of a certified copy of this order by respondent Nos. 4 and 9."

Having regard to the notification dated 14/06/2019 and in view of the ratio laid down in the case of *Purna Ram Deka (Supra),* I am of the view that the recovery of excess drawal made from the petitioner was impermissible in the eye of law. Accordingly, the impugned order dated 08/12/2017 stands quashed. Since a sum of Rs. 2,75,603/- has already been recovered from the petitioner, the respondent no. 5 would now initiate steps to refund the said amount to the petitioner within a period of 45 days from the date of receipt of a certified copy of this order. It is, however, made clear that the respondents would be entitled to notionally fix the pay of the petitioner with effect from 01/01/1987 by taking the correct pay scale and her pensionary entitlement for future shall be worked out on the basis of such pay fixation.

With the above observation, the writ petition stands disposed of.

JUDGE

Sukhamay

Comparing Assistant