GAHC010104182020

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

Case No. : WP(C)/3327/2020

NIRUPAMA DUTTA
W/O LT. SUREN BORA, R/O GHILAMARI TINIALI, DIST. NORTH LAKHIMPUR, PIN-787053, ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REP. BY THE COMMISSIONER AND SECRETARY, 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 DEPUTY INSPECTOR OF SCHOOLS
DHAKUAKHANA

7:THE TREASURY OFFICER
DHAKUAKHAN

Advocate for the Petitioner : MR. M P SARMA

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

Date : 07-12-2020

JUDGMENT & ORDER (ORAL)

Heard Mr. MP Sarma, learned counsel for the petitioner. Also heard Mr. B Deori, learned Government Advocate, Mr. B Gogoi, learned standing counsel for the Finance Department and Mr. NJ Khataniar, learned counsel for the Elementary Education Department of the Government of Assam.

2. The petitioner was working as in-charge Headmistress of Ghilamara Adarsha LP School of Lakhimpur district and she retired from service on attaining the age of superannuation on 31.03.2019. After her retirement, when the matter was processed for payment of her pensionery benefits, the communication dated 15.11.2019 of the Finance and Accounts Officer, Directorate of Pension; Assam was made addressed to the Deputy Inspector of Schools, Dhakuakhana, by which, it was provided that during her service tenure, the petitioner was paid a salary higher than her actual scale. Accordingly, by the said communication, the Deputy Inspector of Schools, Dhakuakhana was required to do the needful.

3. The said communication 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 pensionery 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 communication of 15.11.2019, it is noticed that there is no such

conclusion of the Finance and Accounts Officer, Directorate of Pension, Assam that the excess salary was paid to the petitioner because of any fault of her or because of any overt act on her 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 her.

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 SCC521*** 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 the made by the communication of 15.11.2019 would not 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 pensionery benefits; the authorities shall consider and process the payment of pension to the petitioner as per law.

8. However, as submitted by Mr. B Gogoi, learned Standing Counsel for the Finance Department, it is provided that the correct pay of the petitioner would be fixed at Rs.500/- per month from 18.05.1981. 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 her.

9. The aforesaid exercise be done within a period of two months from the date of receipt of a certified copy of this judgment and order.

10. It is stated by Mr. NJ Khataniar, learned standing counsel for the Elementary Education Department that the provisional pension in respect of the petitioner has already been sanctioned vide order dated 06.07.2019 (Memo No.DIS/DHK/PEN/PRY-1/508-13 dated 06.07.2019) of the Deputy Inspector of Schools, Dhakuakhana. Accordingly, if the petitioner is not paid the provisional pension till now, the respondents are directed to pay the provisional pension to the petitioner from the next months onwards till finalization of her final pension as per the correct pay scale.

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

JUDGE

Comparing Assistant