GAHC010135822020

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

Case No. : WP(C)/4180/2020

PHUKAN CHANDRA DOLEY
S/O- LT. BIRSOY DOLEY, R/O- VILL- AKAJAN, P.O. AKAJAN, P.S. SILAPATHAR, DIST.- DHEMAJI, ASSAM, PIN- 787059

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, THE SECONDARY EDUCATION DEPTT., SACHIVALAYA, DISPUR, ASSAM- 781006

2:THE DIRECTOR OF PENSION

3:THE FINANCE AND ACCOUNTS OFFICER

4:THE INSPECTOR OF SCHOOLS

5:THE HEAD MASTE

Advocate for the Petitioner : MR. S BORTHAKUR

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

ORDER

Date : 02-12-2020

JUDGMENT & ORDER (ORAL)

Heard Mr. J Abbas, learned counsel for the petitioner. Also heard Mr. R Mazumder, learned standing counsel for the Secondary Education Department, Mr. SR Barua, learned Government Advocate for the authorities in the Pension Department as well as Mr. A Chaliha, learned Standing counsel, Finance Department.

2. The petitioner was initially appointed as a Lower Division Assistant (LDA) on 01.01.1978 in the Akajan High School under the Inspector of Schools, Dhemaji and subsequently upgraded to the post of Upper Division Assistant (UDA) in the same School vide order dated 10.04.1997 with effect from 01.01.1987. The petitioner retired from service on 30.11.2014. After his retirement, the petitioner applied for the retirement benefits and pension before the authority.

3. The Finance & Accounts Officer in the Director of Pension, Assam had made a communication dated 23.09.2019 to the Inspector of Schools, Dhemaji that the petitioner who was working as LDA upto 09.04.1997 was upgraded to the post of UDA, but was allowed to draw UDA scale of pay only w.e.f. 01.01.1987 and hence there was an excess payment w.e.f. 01.01.1987 to 30.11.2014 i.e. the date of retirement of the petitioner which comes to Rs.7,17,260/-.

4. 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 pensionary benefits cannot be made in respect of any salary that was paid to an employee during his/her service period for no fault of his own.

5. In the communication of 23.09.2019, it is noticed that there is no such conclusion of the Finance and Accounts Officer in 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 can be concluded that the excess salary was paid to the petitioner because of no fault of his.

6. 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 service tenure because of no fault of his, such excess payment cannot be recovered from the retirement benefits.

7. The aforesaid provisions of law squarely apply to the fact of this case and as such, the recovery sought to be made by the communication of 23.09.2019 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 her 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.

8. 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.

9. 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.

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

JUDGE

Comparing Assistant