GAHC010160172020

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

Case No. : WP(C)/4771/2020

PUTUMAI DEVI
W/O- SRI RAJANI KANTA SARMA, R/O- MILANNAGAR, WARD NO. 5, NORTH LAKHIMPUR, P.O. NORTH LAKHIMPUR, DIST.- LAKHIMPUR, ASSAM, PIN- 787001

VERSUS

THE STATE OF ASSAM AND 7 ORS.
TO BE REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, DEPTT. OF ELEMENTARY EDUCATION

2:SECY. TO THE GOVT. ASSAM

3:DIRECTOR OF ELEMENTARY EDUCATION

4:ACCOUNTANT GENERAL (A AND E)

5:DIRECTOR OF PENSION AND PUBLIC GRIEVANCE

6:DY. INSPECTOR OF SCHOOLS

7:BLOCK ELEMENTARY EDUCATION OFFICER

8:TREASURY OFFICE

Advocate for the Petitioner : MR. C GOSWAMI

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

Date : 27-11-2020

JUDGMENT & ORDER (ORAL)

Heard Mr. C Goswami, learned counsel for the petitioner, Mr. PK Bora, learned counsel for the Elementary Education Department, Mr. SR Barua, learned counsel for the Pension Department, Mr. A Hasan, learned counsel for the Accountant General, Assam and Mr. A Chaliha, learned counsel for the Finance Department of the Government of Assam.

2. The petitioner retired from service from the post of Headmaster of Gharmara Satra LP School on 30.04.2017. Although the pension papers were submitted in the required manner through the proper channel before the respondent authorities, but till date the pension has not been paid to the petitioner. With the said grievance, the petitioner is before this Court.

3. Mr. C Goswami, learned counsel for the petitioner refers to a communication dated 21.05.2019 from the Finance and Accounts Officer in the office of the Director of Pension, Assam addressed to the Deputy Inspector of Schools, which provides as follows:-

> "*(1) It has been clearly stated by the DI North Lakhimpur that excess payment was done due to negligence of the then BEEO, Lakhimpur. The Hon'ble Supreme Court has not imposed bar to recover the excess payment to the employee from the officer at fault. As such HOO may take immediate necessary action to recover the excess payment from the then BEEO, Lakhimpur. (2) Excess payment wef 1/2/85 to 30/4/17 may be calculated. (3) Rectification should be recorded in Service Book.*"

4. A reading of the said communication shows that the petitioner was paid some excess amount of salary during his service period, but it happened due to the negligence of the then BEEO, Lakhimpur. In the communication, a provision of law laid down by the Hon'ble Supreme Court has been referred, which is stated to have provided that there is no bar for recovery of any excess payment made to an employee from the officer because of whose fault such excess payment had

taken place. Accordingly, it was suggested that the Head of the Office may take immediate necessary action to recover the excess payment from the then BEEO, Lakhimpur. It was also provided in the order that the excess payment may be calculated and further rectification if required be done in the Service Book of the petitioner. It is stated that because of the aforesaid incident, the pension of the petitioner had not been further processed. It is stated that the order also refers to some sanctioning order of encashment of unutilized leave, which was not availed.

5. Unavailability of any sanctioning order of encashment of unutilized earned leave is not a relevant aspect as far as the petitioner is concerned for not paying his pensionery dues. It is an inter-departmental requirement between the Pension Department and the Elementary Education Department and it is for the appropriate departmental officers to act amongst themselves and ensure that the process of pension of the petitioner is complete. As there is no issue against the petitioner for any recovery of any excess payment as per communication of 21.05.2019, which clearly states that the recovery would be from the then BEEO, Lakhimpur, we do not find any reason legally acceptable as to why the petitioner be not paid the pension.

6. In the circumstance, we direct the Director of Elementary Education, Assam, the Director of Pension, Assam and the Secretary in the Finance Department of the Government of Assam to co-ordinate the issue amongst themselves and ensure that the petitioner receives his pension within a period of two months from the date of submission of a certified copy of this order. If there is any other legal issue, which may not entitle the petitioner to receive any pension, the respondent authorities may pass a reasoned order indicating such reason. But in the absence of any such reason, the pension is to be paid within a period of two months as indicated above.

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

JUDGE

Comparing Assistant