GAHC010174442020

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

Case No. : WP(C)/5159/2020

MAHENDRA NATH BARUAH
S/O LATE SUTRAM BARUAH
VILLAGE NO. 1 OUJARI, PO DURUNG, PS KHETRI, DIST KAMRUP M
ASSAM 782403

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM EDUCATION (SECONDARY) DEPARTMENT, DISPUR ASSAM

2:THE DIRECTOR OF EDUCATION
ASSAM (SECONDARY)
KAHILIPARA
GUWAHATI 781019

3:THE INSPECTOR OF SCHOOLS
MORIGAON

4:THE DIRECTORATE OF PENSION

HOUSEFED COMPLEX
DISPUR
GUWAHATI 781006

5:THE FINANCE AND ACCOUNTS OFFICER

DIRECTORATE OF PENSION
ASSAM
GUWAHATI 781006

6:THE TREASURY OFFICER

MORIGAON TREASUR

Advocate for the Petitioner : MR. R BORO

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

Date : 09-12-2020

JUDGMENT & ORDER (ORAL)

Heard Mr. R Boro, learned counsel for the petitioner. Also heard Ms. P Chakraborty, learned standing counsel for the Secondary Education Department, Mr. B Deuri, learned State counsel 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 in the Dongabori Higher Secondary School in the year 1981 and thereafter promoted to the post of Upper Division Assistant by the order dated 13.09.1994 of the Inspector of Schools, Morigaon. Thereafter, the Inspector of Schools Morigaon by the order dated 17.07.2001 increased the scale of pay of the petitioner from 3850/- to 7350/- per month. Subsequently, the petitioner retired from service on attaining the age of superannuation on 31.12.2013. After his retirement, the petitioner applied for the retirement benefits and pension before the authority.

3. The Finance & Accounts Officer in the Directorate of Pension, Assam had made a communication dated 16.06.2016 to the Inspector of Schools, Morigaon that the pay of the petitioner should have been fixed at Rs.3940/- on 01.12.1996 with DNI 01.09.1997 per month and hence there was an excess drawal from that date.

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 service period for no fault of his own.

5. In the communication dated 16.06.2016, 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 applies to the fact of this case and as such, the recovery sought to be made by the communication dated 16.06.2016 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 makes 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.

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. The pension process be brought to its logical end within a period of 3(three) months from the date of receipt of a certified copy of this order.

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

JUDGE

Comparing Assistant