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

Case No. : WP(C)/5340/2020

SUNANDA KR BORO
S/O LATE HABI RAM BORO,
RESIDENT OF VILLAGE MILANPUR, PO BOKO, KAMRUP R ASSAM, 781123

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY, SECONDARY EDUCATION DEPARTMENT, DISPUR, GUWAHATI 781006

2:THE COMMISSIONER AND SECRETARY
PENSION AND PUBLIC GRIEVANCES DEPARTMENT
DISPUR
GUWAHATI 781006

3:THE COMMISSIONER AND SECRETARY
FINANCE DEPARTMENT
DISPUR GUWAHATI 781006

4:THE DIRECTOR OF SECONDARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI 19

5:THE DIRECTOR OF PENSION

GOVT. OF ASSAM
HOUSEFED COMPLEX
DISPUR GUWAHATI 781006

6:THE INSPECTOR OF SCHOOLS

AMINGAON

7:THE TREASURY OFFICER

AMINGAON DC OFFICE ROAD
AMINGAON
GUWAHATI
KAMRUP R ASSAM 78103

Advocate for the Petitioner : MR. M P SHARMA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

Date : 16-12-2020

JUDGMENT & ORDER (ORAL)

Heard Mr. MP Sarma, learned counsel for the petitioner. Also heard Mr. B Deori, learned Government Advocate, Mr. A Chaliha, learned standing counsel for the Finance Department and Ms. N Phukan, learned counsel for the Elementary Education Department of the Government of Assam.

2. The petitioner was working as Assistant Teacher of Boko High School, Kamrup (R) district and he retired from service on attaining the age of superannuation on 30.04.2018. After his retirement, when the matter was processed for payment of her pensionery benefits, the communication dated 11.11.2019 of the Finance and Accounts Officer, Directorate of Pension; Assam was made addressed to the Inspector of Schools, Amingaon, by which, it was provided that during his service tenure, the petitioner was paid a salary higher than his actual scale. Accordingly, by the said communication, the Inspector of Schools, Amingaon 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 11.11.2019, 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 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 cannot be concluded whether the excess salary was paid to the petitioner because of any fault of his.

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 11.11.2019 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. A Chaliha, learned Standing Counsel for the Finance Department, it is provided that the correct pay of the petitioner would be fixed

at Rs.70130/- per month from 01.07.2016. 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 him.

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.

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

JUDGE

Comparing Assistant