GAHC010181472020

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

Case No. : WP(C)/5472/2020

JATINDRA NATH ROY
S/O. LT. NARESWAR ROY, R/O. KATANIPARA, P.O. ATHIABARI, DIST. BAKSA, ASSAM, PIN-781377.

VERSUS

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

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GUWAHATI781006.

3:THE DIRECTOR

SECONDARY EDUCATION
BTR
KOKRAJHAR
P.O. AND DIST. KOKRAJHAR
ASSAM
PIN-783370.

4:THE DIRECTOR OF PENSION

ASSAM
HOUSEFED COMLEX
GUWAHATI-781006.

5:THE INSPECTOR OF SCHOOLS

BAKSA
P.O. MUSHALPUR
DIST. BAKSA
ASSAM
PIN-781343

Advocate for the Petitioner : MR. M ISLAM
Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

Date : 17-12-2020

JUDGMENT & ORDER (ORAL)

Heard Mr. M Islam, learned counsel for the petitioner. Also heard Mr. SR Barua, learned Government Advocate, Mr. A Chaliha, learned standing counsel for the Finance Department, Ms. RB Bora, learned counsel for the BTC and Mr. SMT Chisti, learned counsel for the Secondary Education Department of the Government of Assam.

2. The petitioner was working as Assistant Teacher of Athiabari Vidya Mandir HS School in the Baksa district and he retired from service on attaining the age of superannuation on 31.08.2018. After his retirement, when the matter was processed for payment of her pensionery benefits, the communication dated 22.05.2020 of the Finance and Accounts Officer, Directorate of Pension; Assam was made addressed to the Inspector of Schools, Mushalpur, 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, Mushalpur 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 22.05.2020, 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 22.05.2020 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 authorities shall proceed with the payment of pension by taking into account the correct pay that the petitioner ought to have received.

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