

GAHC010136352023



2026:GAU-AS:3817

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

Case No. : WP(C)/3694/2023

DR. DIPANKAR DAS CHOUDHURY
S/O LATE KRITENDRA PRASAD DAS CHOUDHURY,
VIDYARTHI BHAWAN LANE 1,
PO- SETTLEMENT ROAD,
KARIMGANJ TOWN,
DIST.- KARIMGANJ- 788712,
ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
EDUCATION (HIGHER) DEPARTMENT,
DISPUR, GUWAHATI- 781006.

2:THE COMMISSIONER AND SECRETARY
FINANCE DEPARTMENT
GOVERNMENT OF ASSAM
DISPUR
GUWAHATI-6.

3:THE DIRECTOR OF HIGHER EDUCATION
PRESENTLY KNOWN AS THE SCHOOL EDUCATION DEPARTMENT ASSAM

KAHILIPARA
GUWAHATI- 781019.

4:THE TREASURY OFFICER
KARIMGANJ
ASSAM.

5:RABINDRA SADAN GIRSL COLLEGE
REPRESENTED BY ITS PRINCIPAL

PO AND DIST- KARIMGANJ

PIN- 788710

Advocate for the Petitioner : MR H R A CHOUDHURY, MS N RAI,MS S DEV,MR. M DUTTA

Advocate for the Respondent : SC, HIGHER EDU, SC, FINANCE

BEFORE
HONOURABLE MR. JUSTICE RAJESH MAZUMDAR

ORDER

Date : 13.03.2026

Heard Mr. M. Dutta, learned counsel appearing for the petitioner. Also heard Mr. A. R. Tahbildar, learned counsel appearing for the Higher Education Department.

2. The grievance in this writ petition under Article 226 of the Constitution of India is the proposal of recovery made by the Department of Higher Education against the petitioner, alleging overdrawal of salary/pay by the petitioner with effect from August 2000.

3. The facts of the case as revealed in the pleadings is that the petitioner had been offered appointment as a Lecturer in Mathematics by the appointment letter dated 01.08.2000 issued by the Principal of Education to which was an order consequential to the directions issued by the Director of Higher Education Assam, memo number G (B) (A) (C)/ 51/ 2000/ 30 dated 29.07.2000. While the memo dated 29.07.2000 stated that the incumbent would draw the minimum of the scale during the probationary period, the appointment order dated 01.08.2000 did not

record such a condition. The appointment letter dated 01.08.2000 is reproduced below for ready reference

Office of the Principal
RABINDRASADAN GIRLS' COLLEGE

P. O. & DT. Karimganj Assam Pin 788710 ANNEXURE No:-2

Ref. No RSC/APPTT/ESTD/TS/ZK/301 Date 01-08-2000.

ORDER

In pursuance of B's Res. No.5 dt. 18. 2. 2000 and the D. H. E., Assam Meme. No.G(B) AC/51/2000/30 dt. 29.7.2000, Sri Dipankar Das Choudhury, M. Sc. of Vidyarthi Bhawan Lane-1, P.O. & Dt.Karimganj Assam-788710 is hereby appointed lecturer in the deptt. of Mathematics of this college in the scale of pay of 8000/- 13,500/- with other allowances as admissible under the rules. He will be treated as probationers and liable to be discharged if he fails to obtain clearance of NET/SLET.

Further, the pay and allowances of the incumbent will be released on receipt of final approval and grant-in-aid from the D. H. E., Assam.

Sri D. Das Choudhury is therefore, requested to join the post within 7(seven) days from the date of issue of this letter.

Principal,
Rabindrasadan College,
P.o. & Dist-Karimganj
dt. 01-08-2000.

Memo.No.RSC/APPTT/ESTD/TS/2K/

Copy to:-

1. The Director of Higher Education, Assam.
2. H.O.D., Mathematics of this college.
3. Librarian.
4. Asstt. in charge of Accounts.
5. H.A/Office File.

4. Accordingly, the petitioner joined the Department of Mathematics in

the Rabindrasadan Girls' College, Karimganj on 1st of August 2000 itself. From then on, the petitioner has been drawing his salary in the pay scale of Rs. 8,000/- to Rs. 13,500/-, along with other admissible allowances. Pursuant to the Sixth Pay Commission, the pay of the petitioner was fixed by taking into account the annual increments, etc.

5. The petitioner obtained his PhD in the year 2012, which was notified by the Registrar of the concerned university, namely Assam University, on 23.02.2012. By a letter dated 12.08.2014, the Department of Higher Education sought a copy of the petitioner's joining report in connection with the process to be initiated for the petitioner's regularisation as an Assistant Professor (re-designated from lecturer).

6. Pursuant to the petitioner having obtained the PhD in 2012, the Government in the Education (Higher) Department, by an order issued on 20.11.2019, allowed the regular scale of pay to the petitioner with effect from 23.02.2012 since the petitioner had acquired the PhD from Assam University, Silchar on that day. It is the case of the respondents, as projected in their affidavit-in-opposition, that it came to the department's notice that the petitioner had been drawing his salary in the pay scale from the initial date of his appointment, that is, from 1st of August 2000. In contrast, he should have actually drawn his salary at the minimum of the pay scale, which is 8000/- rupees per month, until he obtained his NET/SLET clearance and/or his PhD. When such an error was noticed, the respondent authorities initiated the process to recover the excess payment made to the petitioner from 01.08.2002 till 23.02.2012, i.e. the date on which he acquired the PhD qualification.

7. Further, it was also noticed by the department that since he had been

allowed to draw the salary on a pay scale instead of at a fixed pay of the minimum of the pay scale, his pay had to be re-regulated and the excess of salary drawn to the date of the issuing of the excess of salary drawn was also required to be recovered. In such circumstances, the principal of the college was required to submit a data sheet depicting the recovery required to be made from the petitioner. It is at that stage that the petitioner has approached this court with two grievances;

Firstly, the petitioner has assailed the attempt to recover an alleged overpayment of salary. Secondly, he has sought directions for the fixation of the petitioner's salary under the 7th Pay Commission and for the grant of notional benefits, including upgradation and promotion from 2012 in stage 2 from stage 1 in 2017, from stage 3 to stage 2, and promotion as an Associate Professor with effect from 2020.

8. During the course of the argument, the learned counsel for the petitioner has submitted that the primary grievance of the petitioner is the attempted/proposed recovery. The grievance of the petitioner regarding the upgradation or fixation of salary would be redressed in the event this court directs the respondents to correctly fix the salary/pay of the petitioner in accordance with law.

9. Mr. M. Dutta learned counsel appearing for the Petitioner has drawn the attention of this court to the judgment rendered by the Supreme Court in the case of ***Jagadish Prasad Singh v. State of Bihar and Others*** reported in ***A.I.R. (2024) Supreme Court 3950***. The learned counsel for the petitioner has submitted that paragraph 23 of the aforesaid judgment would cover the case of the petitioner to the extent of restraining the respondents from making recoveries. Paragraph 23 of the

aforesaid judgment is quoted herein below for ready reference;

*In the case of **State of Punjab and Others v. Rafiq Masih (White Washer) and Others**, this Court held as under: -*

"18. It is not possible to postulate all situations of hardship that would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).*
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
- (v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."*

10. The learned counsel for the petitioner further submits that the relevant law would govern the fixation of pay of the petitioner and therefore, the respondents cannot shy away from fixing the pay of the petitioner in accordance with the recommendations of the Sixth Pay

Commission and the Seventh Pay Commission, which the State Government has accepted.

11. The learned counsel appearing for the Higher Education Department, Mr. H. R. Tahbildar has placed reliance on the judgment of this court rendered in the case of ***Ms. Deepshikha Das v. State of Assam*** decided on 27.07.2017, WP(C) No. 5636 of 2010 to impress upon this court that the appointment of the petitioner being conditional, he would not have been empathetic to draw his salary in the pay scale and payment of such salary in the pay scale was an error on the part of the respondent authorities. He has submitted that, as per the judgment rendered in *Deepshikha Das (Supra)*, the petitioner would not be entitled to draw salary in the pay scale, as at that relevant time the petitioner did not have the NET/SLET qualification, and therefore, full salary for under-qualified lecturers would not be justified.

12. This court in the case of *Deepshikha Das (Supra)* has held that the petitioner in the case, who did not qualify NET/SLET, was not at par with regular faculty members drawing full salary and therefore, in that case, the relief prayed for equal pay to the petitioner was not found to be justified and was accordingly declined.

13. Mr. A. R. Tahbildar, learned counsel for the Department of Higher Education, submitted that when the petitioner was not entitled to such pay, the excess payment made can be recovered by the department in accordance with law. Having considered the submissions of the learned counsel for the petitioner and the respondent and having also considered the case law cited at the bar, this court finds that the appointment letter of the petitioner did not contain the condition that he would be drawing

the minimum of the pay scale which had been granted to other lecturers appointed and who had the qualification of NET/SLET.

14. The grant of the pay scale to the petitioner was not in the hands of the petitioner at the relevant point in time. It has been stated in the writ petition that, although the order of the DHE Assam mentioned that the petitioner would be entitled to the scale of pay upon fulfilment of the condition of obtaining NET/SLET, the order of the Principal did not reflect any such condition. The college authorities had fixed the petitioner's pay. The same continued until the year 2019, when the conditions in the approval required the petitioner to obtain NET or SLET to be entitled to the regular pay scale were withdrawn.

15. By the aforesaid letter dated 20.11.2019, the petitioner was held to be entitled to the UGC scale of pay with other allowances with effect from 23.02.2012. The issue of the excess payment and the proposed recovery was raised by the respondent authorities in 2020. At this stage, it is necessary to notice that by the judgment passed by the Apex Court in the case of ***State of Punjab and Others v. Rafiq Masih (White Washer) and Others***, reported in ***(2015) 4 SCC 334***, the Apex Court had held that recovery from employees when excess payment had been made for a period in excess of 5 years before the order of recovery is issued would be one of the instances where the recovery would be impermissible in law.

16. In the present case, the petitioner has been paid in excess of what he should have drawn for a period of nearly 20 years. It is also observed that in ***Thomas Daniel vs. State of Kerala and others***, reported in ***AIR 2022 Supreme Court 2153***, the Apex Court held that the State cannot recover an excess amount paid to an employee after a delay of 10

years.

17. Going by the second law, this Court is of the considered opinion that the excess amount already paid to the petitioner for a period of over 20 years cannot now be permitted to be recovered from the petitioner by putting him in an iniquitous or a harsh situation. In such circumstances, the respondents are directed not to initiate the proposed recovery proceedings.

18. Coming to the question of the fixation of the pay of the petitioner in the correct scale, this Court is of the opinion that the petitioner would have been entitled to the payment of salary in the pay scale only from 23.02.2012 and therefore this Court cannot, under this Court leaves the liberty to the respondent authorities to fix the pay of the petitioner at the correct scale in accordance with law.

19. However, before fixing the pay of the petitioner, it would be prudent on the part of the respondent authorities to give notice to the petitioner of the proposed fixation since such fixation may vary the pay of the petitioner to his disadvantage.

20. Accordingly, this writ petition is disposed of by granting the prayers of the petitioner to the extent that the respondents would be restrained from making any recovery of the alleged excess of pay as proposed by the order dated 06.08.2021 and giving the respondents the liberty to fix the pay of the petitioner at the correct scale.

21. The fixation of the pay of the petitioner if taken up by the respondents shall be completed within a period of 4 months from the date of receipt of the certified copy of this order.

22. The writ petition is disposed of. No cost.

JUDGE

Comparing Assistant