
(2018) 05 GAU CK 0081
In the Gauhati High Court
Case No : WP(C) 738 of 2017

Abdul Jalil Sk

APPELLANT

Vs

State Of Assam And 8 Ors.

RESPONDENT

Date of Decision : 14-05-2018

Acts Referred:

Citation : (2018) 05 GAU CK 0081

Hon'ble Judges : ACHINTYA MALLA BUJOR BARUA, J

Bench : Single Bench

Advocate : B Ahmed

Final Decision : Disposed Off

Judgement

1. Heard Mr. A. A. R. Karim, learned counsel for the petitioner. Also heard Mr. A. K. Bhuiyan, learned Standing Counsel for the BTC authorities as

well as Mr. N. Sarma, learned Standing Counsel for the Elementary Education Department.

2. The petitioner who was serving as an Assistant Teacher in the Shimultapu L.P. School at Kokrajhar and thereafter promoted as the Head Teacher

of 785 No. Shimultapu L.P. School, had superannuated from service on 26.09.2016. It is the case of the respondent BTC authorities that according to

the correct date of birth, the petitioner ought to have retired on 31.12.2015. On the aforesaid premises, a communication dated 31.10.2016 of the

Block Elementary Education Officer, Kachugaon was issued by which an amount of Rs.3,13,830/- being the overdrawn of salary and other

entitlement of the petitioner was sought to be directed to be refunded.

3. The respondent authorities by filing an affidavit-in-opposition had taken a stand that as per the actual date of birth, the petitioner ought to have

retired on 31.12.2015 and therefore, the salary and allowances paid to the petitioner subsequent to the said date is unsustainable and therefore, a recovery is sought to be made.

4. In the affidavit, it is also stated that the Provisional Gratuity and Group Insurance benefit of the petitioner had been paid without any deduction of the over-drawal of monthly salary amounting to Rs.3,13,830/- due to overstay in services for 8 months but the leave encashment, GPF and provisional pension of the petitioner were not released.

5. From the materials available on record, it cannot be ascertained as to whether the petitioner overstayed in service due to the fault of the respondent authorities or it was the fault on the part of the petitioner. But at the same time, the respondent authorities cannot withhold payment of leave encashment, GPF, provisional pension to the petitioner as stated in their affidavit.

6. As regards the payment of provisional pension, even if the authorities contemplated to initiate any proceeding against the employee, it is mandatory on their part to pay the provisional pension and under no circumstance, the same can be withheld. As regards the leave encashment, GPF, the same also cannot be withheld because the GPF comprises of payments made by the employee, for which he had contributed during the tenure of his service period. For deduction from the leave encashment also the respondent authorities would have to first initiate a proceeding and arrive at a conclusion that the overstay was due to incorrect date of birth of the petitioner recorded as because the petitioner had produced a false information.

7. In such view of the matter, it is provided that the respondent authorities shall release the provisional pension and also release the GPF amount due to the petitioner. The finalization of pension shall be made subject to any departmental proceeding that the authorities may desire to initiate. In the event no such departmental proceeding is initiated, the leave encashment benefit as well as the final pension be paid to the petitioner.

8. The petitioner shall now be paid the provisional pension from the month of June, 2018 onwards. As regards the question of paying the regular pension, the authorities shall take a decision as to whether any proceeding is required to be initiated against the petitioner. In the event, a decision is arrived that a proceeding would initiated, the authorities shall continue to pay the provisional pension till the conclusion of the proceeding. In the event,

a decision is arrived at that no proceeding would be initiated, the process for payment of regular pension be initiated within a period of 2(two) months from the date of receipt of a certified copy of this order and till such final pension is paid, the authorities shall continue to pay the provisional pension to the petitioner. In terms of the above, this writ petitioner stands disposed of. The communication dated 31.10.2016 is accordingly set aside as indicated above.