
(2019) 08 GAU CK 0028
In the Gauhati High Court
Case No : Writ Petition (C) No. 5758 Of 2019

Binapani Mahanta

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 09-08-2019

Acts Referred:

Citation : (2019) 08 GAU CK 0028

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : P K Das

Final Decision : Disposed Off

Judgement

1. Heard Mr. P.K. Das, learned counsel for the petitioner. Also heard Mr. B. Gogoi, learned Standing Counsel for the Finance Department, Mr. N. Sarma, learned Standing Counsel for the Secondary Education Department and Mr. S.R Barua, learned counsel appearing for the Pension Department.

2. The petitioner was working as an Assistant Teacher of TRB High School, Jorhat, Assam. The petitioner retired from service on attaining the age of superannuation on 30.09.2016. After her retirement, when the matter was processed for payment of her pensionary benefits, the communication dated 09.05.2018 of the Finance and Accounts Officer in the Directorate of Pension, Assam was made addressed to the Chief Executive Officer, Zilla Parishad, Morigaon, by which it was provided that during her service tenure, the petitioner was paid a salary higher than her actual scale, whereas her actual salary ought to have been Rs.1595/- per month instead of Rs.1635/- per month. Accordingly, by the said communication, the Chief Executive Officer, Zilla Parishad, Morigaon was required to do the needful for recovery of the excess payment made from the pensionary benefits of the petitioner.

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

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.

4. In the communication of 09.05.2018, 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 her or because of any overt act on her 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 her.

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 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.

6. The aforesaid provisions of law squarely applicable to the fact of this case and as such, the recovery sought to be made by the communication of 09.05.2018 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 make an assessment as to whether there was any contribution on the part of the petitioner in receiving such excess salary during her 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 pensionary benefits, the authorities shall consider and process the payment of pension to the petitioner as per law.

8. However, as submitted by Mr. B. Gogoi, learned Standing Counsel for the Finance Department, it is provided that as the correct pay of the petitioner ought to have been Rs.1595/- per month, 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 her.

9. It is further provided that the provisional pension paid to the petitioner shall be continued to be paid till a final decision on her regular pension is taken and given effect to.

10. 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.