

(2022) 08 GAU CK 0007
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 603 Of 2022

Bishnath Karmakar

APPELLANT

Vs

State Of Nagaland And 6 Ors

RESPONDENT

Date of Decision : 03-08-2022

Acts Referred:

Citation : (2022) 08 GAU CK 0007

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : P K Gogoi

Final Decision : Allowed

Judgement

1. Heard Mr. P.K. Gogoi, learned counsel for the petitioner and Ms. A. Aier, learned counsel for the respondents No. 1, 2, 3 and 6, being the authorities under the Home Department and the Police Department of the Government of Nagaland. Also heard Mr. R.K. Talukdar, learned counsel for the respondents No. 4 and 5, being the Accountant General (A&E), Nagaland and the Accountant General (A&E), Assam respectively and Mr. B. Gogoi, learned counsel for the respondent No. 7, being the Treasury Officer, Sonari.

2. The petitioner was appointed as a Driver Constable (Grade-IV) in the establishment of Sub-Divisional Police Officer, Mon, Nagaland on 15.01.1980. Although the initial appointment was for a period of 1 year, the petitioner continued in service and ultimately retired on 30.12.2016. The petitioner is aggrieved by the communication dated 01.10.2018 of the Senior Accounts Officer, AAG in the Office of Accountant General (A&E), Nagaland, by which an amount of Rs. 5,17,110/- was sanctioned towards his payment of gratuity after retirement. The said communication also provides that there would be a recovery of Rs. 3,87,710/- towards overdrawal of salary during his service period.

3. As there is a variance in the date of retirement as per the service book of the petitioner according to the respondents and the date of his actual retirement, an

order of recovery of the salaries paid to the petitioner for the said period of alleged overstay is sought to be done by the communication impugned dated 01.10.2018. The law in this respect has been settled by the Hon'ble Supreme Court in the case of State of Bihar & Ors. Vs. Pandey Jagdishwar Prasad reported in (2009) 3 SCC 117, wherein paragraphs 23 and 24, it had been held as extracted:

"23. Without going into the question whether the appellant was justified after completion of two years from the actual date of retirement to deduct two years' salary and other emoluments paid to the respondent, we may say objection from the side of the appellant and the appellant had got works done by the respondent, we do not think that it was proper at this stage to allow deduction from his retiral benefits, the amount received by him as salary, after his actual date of retirement.

24. Considering the fact that there was no allegation of misrepresentation or fraud, which could be attributed to the respondent and considering the fact that the appellant had allowed the respondent to work and got works done by him and paid salary, it would be unfair at this stage to deduct the said amount of salary paid to him. Accordingly, we are in agreement with the Division Bench decision that since the respondent was allowed to work and was paid salary for his work during the period of two years after his actual date of retirement without raising any objection whatsoever, no deduction could be made for that period from the retiral dues of the respondent."

4. The proposition laid down by the Supreme Court in Pandey Jagdishwar Prasad (Supra) goes to show that if an employee had overstayed in service and there was no allegation of any misrepresentation or fraud by the employee resulting in such overstay, and in a situation where the respondent authorities had allowed the petitioner to work and got the work done by him and paid his salaries, it would be unfair at a later stage to deduct the said amount already paid.

5. In the instant case, there is no allegation that the petitioner had overstayed in service because of any misrepresentation or fraud being committed by him. In the circumstance, we are unable to accept the communication dated 01.10.2018, requiring a recovery of Rs. 3,87,710/- from the petitioner for the salaries paid to him during the alleged overstay in service. The said amount requiring recovery for excess drawal of salaries also finds place in a communication dated 22.11.2018 of the Assistant Accounts Officer in the Office of the Accountant General (A&E), Assam also cannot be recovered. Accordingly, the respondents are directed to proceed to pay the retirement benefits to the petitioner without insisting on the recovery of an amount of Rs. 3,87,710/- towards the salaries paid to him for the alleged overstay in service. As it is a case of retirement benefits, the respondents collectively are directed to expedite the matter and pay the required amount at the earliest and not later than 2 months from the date of receipt of certified copy of this order.

Writ petition stands allowed as indicated above.