

(2021) 09 GAU CK 0019

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 5325 Of 2020

Hiranya Kumar Bora

APPELLANT

Vs

State Of Assam And 6 Ors

RESPONDENT

Date of Decision : 07-09-2021

Acts Referred:

Citation : (2021) 09 GAU CK 0019

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : K M Haloi

Final Decision : Disposed Of

Judgement

1. Heard Mr. K.M. Haloi, learned counsel for the petitioner. Also heard Mr. S.M.T. Chistie, learned counsel for the respondents No.1, 2 and 3 being the authorities under the Secondary Education Department, Mr. S.R. Barua, learned counsel for the respondent No.6 Pension Department, Mr. A. Chaliha, learned counsel for the respondent No.5 & 7 being the Finance Department and Mr. B.U. Laskar, learned counsel for the respondent No.4

2. The petitioner who was working as an Assistant Teacher of Mayong H.S. School, in the district of Morigaon, Assam retired from service on attaining the age of superannuation on 31/10/2007. After his retirement, when the matter was processed for payment of his pensionary benefits, the communication dated 12/04/2018 of the Finance and Accounts Officer in the office of the Directorate of Pension, Assam was made addressed to the Inspector of School, Morigaon, Assam, 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, Morigaon 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

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 12/04/2018, it is noticed that there is no such conclusion of the Finance and Accounts Officer in the office of the 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 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/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 be made by the communication of 12/04/2018 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 pensionary benefits; the authorities shall consider and process the payment of pension to the petitioner as per law.

8. Accordingly, 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 him.

9. Mr. S.M.T. Chistie, learned counsel for the Secondary Education Department also states that a proposal dated 17.08.2021 has already been sent by the Inspector of School, Morigaon to the Director of Pension for doing the needful. If it is so, the Director may consider the same and pass a reasoned order.

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.

11. In terms of the above, the writ petition stands disposed of.