
(2020) 11 GAU CK 0031

In the Gauhati High Court

Case No : Writ Petition (C) No. 2648 Of 2020

Hitesh Chandra Medhi

APPELLANT

Vs

State Of Assam And Ors

RESPONDENT

Date of Decision : 23-11-2020

Acts Referred:

Citation : (2020) 11 GAU CK 0031

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : M Barman

Final Decision : Disposed Off

Judgement

1. Heard Ms. M. Barman, learned counsel for the petitioner. Also heard Mr. N.J. Khatiniar, learned counsel for the Secondary Education,

Government of Assam and Mr. B. Gogoi, learned counsel for the Finance Department and Mr. B. Deuri, learned counsel for the Pension Department.

2. The petitioner who was working as a Assistant on 01.03.1982 of Muktipur Milong Lower Primary School in the district of Baksa, Assam retired

from service on attaining the age of superannuation on 31.12.2018. After his retirement, when the matter was processed for payment of his

pensionary benefits, the communication dated 26.09.2019 of the Finance and Accounts Officer in the office of the Directorate of Pension, Assam was

made addressed to the Deputy Inspector of Schools, Mushalpur, Baksa 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 Deputy Inspector of Schools, Mushalpur, Baksa, Assam

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 Honâ??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 26.09.2019, 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 Honâ??ble Supreme Court in Shyam Babu Verma and others â??vs- Union of India and others,

reported in (1994) 2 SCC 521 and State of Punjab and Others â??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 26.09.2019 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 Honâ??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 the correct pay of the petitioner would be Rs.1345/- per month. 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 his.
9. 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.
10. In terms of the above, the writ petition stands disposed of.