

(2018) 04 GAU CK 0047
In the Gauhati High Court
Case No : WP(C) 1900 of 2018

INDRA KANTA PEGU

APPELLANT

Vs

THE STATE OF ASSAM AND 6 ORS.

RESPONDENT

Date of Decision : 02-04-2018

Acts Referred:

Citation : (2018) 04 GAU CK 0047

Hon'ble Judges : ACHINTYA MALLA BUJOR BARUA

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. Heard Mr. C. Goswami, learned counsel for the petitioner, Mr. B. Gogoi, learned Standing Counsel for the Finance Department, Mr. S.P

Bhattacharjee, learned Standing Counsel for the Elementary Education Department, Mr. K. Nayak, learned counsel appearing for the Pension

Department and Ms. P. Bora, learned counsel appearing for the Accountant General, Assam.

2. The petitioner earlier served as the Headmaster of Rangali Reserve ME School and he had superannuated from his service on 30.09.2015. When

the matter was processed for payment of his pensionary benefits, the communication dated 07.12.2017 of the Finance and Accounts Officer in the

Directorate of Pension, Assam was made addressed to the District Elementary Education Officer, Lakhimpur, by which it was provided that during

his service tenure, the petitioner was paid a salary of Rs.1515/- per month, whereas his actual salary ought to have been Rs.1435/- per month.

Accordingly, by the said communication, the District Elementary Education Officer 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 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 07.12.2017, 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 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 can be concluded that the excess salary was paid to the

petitioner because of no 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 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 applies to the fact of this case and as such, the recovery sought to the made by the communication of

07.12.2017 would not unsustainable 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 makes 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 as the correct pay of the petitioner ought to have been Rs.1435/- per month instead of Rs.1515/- per month, the authorities shall proceed with the payment of pension by taking into account the correct pay that he petitioner ought to have received and not the incorrect higher pay that was paid to him. In terms of the above, the writ petition stands disposed of.