
(2020) 12 GAU CK 0014
In the Gauhati High Court
Case No : Writ Petition (C) No. 5422 Of 2020

Kiran Chandra Mashahary

APPELLANT

Vs

State Of Assam And Ors

RESPONDENT

Date of Decision : 16-12-2020

Acts Referred:

Citation : (2020) 12 GAU CK 0014

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 S. Neogi, learned counsel for the Secondary Education Department, Mr. B

Deuri, learned State counsel for the authorities in the Pension Department as well as Mr. A Chaliha, learned Standing counsel, Finance Department.

2. The petitioner was initially appointed as a Assistant Teacher in the second post in Bodo medium of Subankhata M.E. School in the year 1983 with a

fixed pay at Rs.525/-. Thereafter, vide office order memo No. For/05/3344 - 48 dated 27.10.2005 the Subankhata M.E. School was amalgamated with

Subankhata High School and the salary of the petitioner was re-fixed at Rs.3,053/- per month w.e.f. 16.05.2005. Subsequently, the petitioner retired

from service on attaining the age of superannuation on 31.03.2019. After his retirement, the petitioner applied for the retirement benefits and pension

before the authority.

3. The Finance & Accounts Officer in the Directorate of Pension, Assam had made a communication dated 11/11/2019 to the Inspector of Schools,

Mushalpur that the petitioner who was working as Assistant Teacher was upgraded to graduate scale by virtue of amalgamation which is impracticable and hence there was an excess payment of Rs.3,90,416/-.

4. 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/her service period for no fault of his own.

5. In the communication of 11/11/2019, 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.

6. 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.

7. The aforesaid provisions of law squarely apply to the fact of this case and as such, the recovery sought to be made by the communication of 11/11/2019 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 Honâ??ble Supreme Court as indicated above.

8. 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.

9. 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.

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