
(2018) 04 GAU CK 0114
In the Gauhati High Court
Case No : WP(C) 1804 of 2018

NANDA NATH DUTTA

APPELLANT

Vs

THE STATE OF ASSAM AND 6 ORS.

RESPONDENT

Date of Decision : 25-04-2018

Acts Referred:

Citation : (2018) 04 GAU CK 0114

Hon'ble Judges : ACHINTYA MALLA BUJOR BARUA

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. Heard Mr. BK Das, learned counsel for the petitioner. Also heard Mr. P Nayak, learned Standing Counsel for the Finance Department, Mr. N

Sarma, learned Standing Counsel for the Secondary 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, who was working as a Headmaster in the Namoni Borkhamukh LP School had superannuated from service on 31.01.2015. When

the matter for payment of his pensionary benefits was processed, a communication dated 29.05.2017 of the Finance and Accounts Officer in the

Directorate of Pension, Assam was made to the Deputy Inspector of Schools, Dhakuwakhana, wherein it was provided that during his service tenure,

the petitioner was paid a salary of Rs.537/- per month, whereas his actual salary ought to have been Rs.525/- per month. Accordingly, by the said

communication, the Deputy Inspector of Schools 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 29.05.2017, 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 apply to the fact of this case and as such, the recovery sought to be made by the communication of

12.12.2017 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 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. P Nayak, learned Standing Counsel for the Finance Department, it is provided that as the correct pay of the petitioner ought to have been Rs.525/- per month instead of Rs.537/- per month, 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. In terms of the above, the writ petition stands disposed of.