

(2018) 03 GAU CK 0043
In the Gauhati High Court
Case No : WP(C) 291 of 2018

RAJANI KANTA HAZARIKA

APPELLANT

Vs

THE STATE OF ASSAM

RESPONDENT

Date of Decision : 14-03-2018

Acts Referred:

Citation : (2018) 03 GAU CK 0043

Hon'ble Judges : ACHINTYA MALLA BUJOR BARUA

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. Heard Mr. S. Borthakur, learned counsel for the petitioner. Also heard Mr. N. Sarma, learned standing counsel for the Elementary Education

Department, Mr. R.K. Talukdar, learned counsel for the Pension Department as well as Mr. R Borpujari, learned standing counsel for the Finance

Department.

2. The petitioner who was serving as Head Teacher of Bherekichuk L.P. School, superannuated from service on 31.07.2014.

3. The Finance & Accounts Officer in the Directorate of Pension, Assam had made a communication dated 21.02.2017 to the Deputy Inspector of

Schools, Dhemaji, that the pay of the petitioner should be fixed at Rs.525/- instead of Rs.537/- and hence there is an excess drawal from that date.

4. The law in this respect has been settled by the Honâ??ble Supreme Court in Shyam Babu Verma and Rafiq Masih case, wherein, it has been

provided that in the event, an employee is paid a higher pay, than he is entitled during his service tenure for no fault of his, such amount cannot be

deducted from his pensionary benefit upon superannuation.

5. Mr. R.K. Talukdar, learned State counsel for the Pension Department states that in the meantime, the Judicial Department of Govt. of Assam has

also given a legal opinion in the communication dated 16.02.2018 that as per the law laid down by the Honâ??ble Supreme Court, recovery due to

excess payment is impermissible under the law, in the event the higher pay was not paid because of any fault of the employee.

6. By following the principle of law laid down by the Honâ??ble Supreme Court, this Court is of the view that the communication dated 21.02.2017 of

the Finance & Accounts Officer to the Deputy Inspector of Schools, Dhemaji is unsustainable and the authorities cannot deduct any excess payment

that was made to the petitioner for no fault of his during his service tenure.

7. Accordingly, this Court is of the view that as per the law laid down by the Honâ??ble Supreme Court in Shyam Babu Verma and Rafiq Masih, the

respondent authorities cannot take up a process to deduct the excess payment made to the petitioner from his pensionary benefits without ascertaining

that the excess payment was not due to any fault of the petitioner. Accordingly, the communication dated 21.02.2017 is hereby set aside. The

respondent authorities are directed to process the pension of the petitioner as per law without the aforesaid deduction. It is made clear that the

respondent authorities shall proceed for payment by arriving at a satisfaction that the enhanced pay was not given to the petitioner because of any

fault of his own.

8. Writ petition, accordingly, stands disposed of. Interim order, if any, passed earlier stands vacated.