(2018) 03 GAU CK 0048

In the Gauhati High Court

Case No : WP(C) 431 of 2018

RINA NEOG BORDOLOI — APPELLANT

Vs

THE STATE OF ASSAM — RESPONDENT

Date of Decision : 12-03-2018

Acts Referred:

Citation : (2018) 03 GAU CK 0048

Hon'ble Judges : ACHINTYA MALLA BUJOR BARUA

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1.Heard Mr. P. Mahanta learned counsel for the petitioner. Also Ms. DD Barman, learned Addl. Senior Govt. Advocate appearing for the respondent

Nos. 1 and 2 and Mr. P. Nayak, learned counsel for the respondent Nos. 4 and 5.

2. The husband of the petitioner served as the Headmaster of Ranganadi Janajati M.E. School, Lakhimpur district and had superannuated on

30.11.2009. It is the grievance of the petitioner that on his death, the petitioner had not been paid the family pension as entitled under the Rules as well

as the regular pension to her deceased husband.

3. From the Annexure C & D communications dated 05.09.2013 and 12.08.2016 of the Finance & Accounts Officer in the Director of Pension,

Assam, it is noticed that the pension had not been paid to the husband of the petitioner on the ground that there were some excess drawal of salary

during his tenure of service and the reasons for such excess is that his pay ought to have been fixed at Rs.1375/- per-month instead of Rs. 1515/- per-

month.

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. Ms. D.D. Barman, 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 communications dated 05.09.2013

and 12.08.2016 of the Finance & Accounts Officer to the District Elementary Education Officer are unsustainable and the authorities cannot deduct

any excess payment that was made to the husband of 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 husband of the petitioner from his pensionary benefits

which was not due to any fault of the husband of the petitioner. Accordingly, the communications dated 05.09.2013 and 12.08.2016 are hereby set

aside. The respondent authorities are directed to process the arrear pension and family pension of the petitioner as per law without the aforesaid

deduction.

8. 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.

9. Writ petition, accordingly, stands disposed of.

10. Interim order, if any, passed earlier shall stand vacated.

