
(2018) 03 GAU CK 0068
In the Gauhati High Court
Case No : WP(C) 7973 of 2017

SUBHASH RAMCHİYARI

APPELLANT

Vs

STATE OF ASSAM and 5 ORS

RESPONDENT

Date of Decision : 19-03-2018

Acts Referred:

Citation : (2018) 03 GAU CK 0068

Hon'ble Judges : ACHINTYA MALLA BUJOR BARUA

Bench : Single Bench

Final Decision : Disposed Of

Judgement

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

Department, Ms. DD Barman, learned State counsel for the authorities in the Pension Department as well as Mr. R Barpujari, learned Standing counsel, Finance Department.

2. The petitioner who was serving as an Asstt. Teacher of No.1 Tekjuri L.P.(Bodo) School, superannuated from service on 31.08.2012.

As the petitioner had overstayed his service tenure by two years, the authorities are required to arrive at a conclusion whether such overstay was due to any contributory factor on the part of the petitioner.

3. It is stated that the Block Elementary Education Officer, Dhemaji vide communication dated 23.09.2016 to the Deputy Inspector of School, Dhemaji submitted a recovery statement in respect of the petitioner and directed to recover an amount of Rs.485345.20/- from the pensionary benefit of the petitioner.

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 communication dated 23.09.2016 of

the Block Elementary Education Officer, Dhemaji, is unsustainable in its present form and the authorities cannot deduct any excess payment that was

made to the petitioner without evaluating as to whether the excess payment was due to any fault of the petitioner.

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 if the same was not

due to any fault of the petitioner. The respondent authorities are directed to process the pension of the petitioner as per law. The respondents in the

Directorate of Pension shall consider the case of the petitioner and arrive at a conclusion as to whether the excess salary paid to the petitioner was

due to any fault of the petitioner or it was because of the fault of the department. Upon arriving at such conclusion and depending on the order that

may be passed, payment of pension to the petitioner be further processed.

8. Writ petition, accordingly, stands disposed of.