



GAHC010144582021

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4643/2021

PARITOSH CHANDRA GHOSH
S/O- LT. PRAHLAD CHANDRA GHOSH, R/O- WARD NO.4, BILASIPARA, P.O.
AND P.S. BILASIPARA, DIST.- DHUBRI, ASSAM- 783348

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY ITS COMM. AND SECY. TO THE GOVT. OF ASSAM, DEPTT. OF
SECONDARY EDUCATION, DISPUR, GHY-06

2:DIRECTOR OF SECONDARY EDUCATION
KAHILIPARA
GHY-19

3:INSPECTOR OF SCHOOLS
DHUBRI
DHUBRI
PIN- 783301

4:THE DIRECTOR OF PENSION
HOUSEFED COMPLEX
CENTRAL BLOCK
6TH FLOOR
BELTOLA ROAD
GHY-06

5:THE SECRETARY
GOVT. OF ASSAM
FINANCE (PRU) DEPTT.
DISPUR
GHY-6



6:THE PRINCIPAL
I N ACADEMY H.S.SCHOOL
BILASIPARA
DIST.- DHUBRI
ASSAM- 78334

Advocate for the Petitioner : MR. S K GHOSH

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

Date : 22-09-2021

JUDGMENT & ORDER (ORAL)

Heard SK Ghosh, learned counsel for the petitioner, Ms. NM Sarma, learned counsel for the respondents No. 1, 2 and 3 being the authorities under the Secondary Education Department of the Government of Assam, Mr. Girin Pegu, learned counsel for the respondent No.4 being the Director of Pension, Assam and Mr. A Chaliha, learned counsel for the respondent No.5 being the authorities under the Finance Department of the Government of Assam. Considering the nature of the order proposed to be passed, notice not required to be issued to respondent No.6 being the Principal of I.N Academy H.S School, Bilasipara in the Dhubri district.

2. The petitioner was appointed as an Assistant Teacher in the respondent No. 6 school on 14.05.1985 in the intermediate scale of pay of Rs.520-920/- per month. Subsequently, the petitioner was up-graded to Assistant Teacher in the graduate scale of pay which is Rs.1375 to Rs.3375/- per month on 30.12.1993. In the Service Book of the petitioner, there is an entry countersigned by the Inspector of Schools, Dhubri district, by referring to certain order of the I/S No. PCB/Fix/98(1)/3861-69 dated 17.08.2004 communicated vide DS Ess Letter No.



JB-Est/ZSE/cc/88/2002/51 dated 15.03.2004 and Finance Department U/O No. FPC/35/2004 dated 27.02.2004 and Govt Letter No. B(3) S-68/2004/18 dated 27.02.2004, whereby it was provided that the increment of the petitioner in the revised scale of pay would become effective from the first of May of that given year. The petitioner continued with his service till his date of superannuation and he retired on 30.05.2020. In this writ petition, the petitioner is aggrieved by the order dated 31.03.2021 of the Finance and Accounts Officer in the office of the Director of Pension, Assam, by which it was provided as under:-

“As the incumbent was upgraded to Graduate scale on 10/12/1993 with DNI on 01/12/1994 the DNI cannot be changed back to May for revision of pay from 1/1/1996 & his pay may be regulated accordingly. Further, his pay on 1/1/2006 should be fixed at the stage of Rs.12480/- instead of Rs. 12800/-. Excess drawal may be assessed with due & drawn statement. However, HOO may move to the competent authority to waive recovery in terms of Para 8 of Govt. OM No. Fin (EC-III) 1808/2018/2 dated 14/06/2019.”

3. A reading of the order of the Finance and Accounts Officer gives the indication that the pay of the petitioner as on 01.01.2006 ought to have been Rs.12480/- and not Rs.12800/-. Accordingly, the Finance and Accounts officer was of the view that there was some excess drawl by the petitioner and by taking such view, the process for paying regular pension to the petitioner had not been carried forward any further.

4. Mr. SK Ghosh, learned counsel for the petitioner refers to the OM No.FPC85/2009/Pt/110 dated 01.06.2012 of the Commissioner and Secretary to the Government of Assam in the Finance (Pay Research Unit) Department, which inter-alia provides the entitlement of increment by such employees, who were due to get their annual increment between February to June of the year



2006. Prior to the clarification provided in the OM Dated 01.06.2012, the rule in place was that in respect of the revision of pay under the Assam Services (Revision of Pay) Rules, 2010 irrespective of the month on which an increment is due to an employee, the increment under the revised scale would be from 01.07.2006, meaning thereby that even if the increment was due in the month between July and December of 2006, it would be provided from 01.07.2006 and on the other hand, if the increment was due somewhere between February and May of 2006, still it will be given from 01.07.2006. This had caused certain anomalies to the extent that an employee, whose increment was due between February and May of 2006 would now get it from 01.07.2006 whereas another employee whose increment would have been otherwise due between July and December of 2006 would also get it from 01.07.2006. To remove the anomaly the OM provided as extracted:-

“2. There was no provision for those Govt. employees who were due to get their annual increment between February to June during 2006.

3. On consideration of the above fact and in exercise of the powers conferred in Rule 3 of the A.S (ROP) Rules, 2010 the Governor of Assam is pleased to decide that in relaxation of stipulation under Rule 10 of these Rules, those State Government employees who were due to get their annual increment between February to June during 2006 may be granted one increment on 1-1-2006 in the pre-revised pay scale as a onetime measure and thereafter will get the next increment in the revised pay structure on 1-7-2006 as per Rule 10 of A.S (ROP) Rules, 2010. The pay of the eligible employees may be re-fixed accordingly.

5. A reading of the aforesaid provisions of the OM dated 01.06.2012 makes it explicit that the provision thereof was in respect of those Government employees who were due to get their annual increment between February to



June 2006. The OM provided that those State Government employees who were due to get their annual increment between February to June 2006 would be granted one increment on 01.01.2006 in the pre-revised pay scale as a onetime measure and thereafter they will get the next increment in the revised pay structure on 01.07.2006.

6. It is contented that the anomalies noticed by the Finance and Accounts officer in the order impugned dated 31.03.2021 was because the officer concerned had not taken note of the OM dated 01.06.2012. It is the contention that under the provisions of the OM dated 01.06.2012, the petitioner was given one increment in the pre-revised scale of pay from 01.01.2006 and by including the said increment, his scale of pay was Rs.12800/-. Had the one increment been not included, his pay would have been Rs.12480/- as opined by the Finance and Accounts Officer.

7. The said contention raised by the petitioner definitely requires a consideration by the Finance and Accounts Officer before he can arrive at a final conclusion that the scale of pay of the petitioner on 01.01.2006 should have been at Rs.12480/- per month instead of Rs.12800/- per month.

8. We have already taken note of that the petitioner was appointed as an Assistant Teacher in the concerned school in the intermediate scale of Rs.520/- to Rs.920/- per month on 14.05.1985, meaning thereby he was appointed in the month of May, 1985 and therefore, his month of receiving the subsequent annual increment would be the month of May of the given year. But we also take note of that the petitioner was up-graded from the intermediate scale of pay to a graduate scale of pay on 30.12.1993. Therefore, if the relevant month for entitlement of an increment would be the month on which he was up-graded to the graduate scale of pay, it would have to be in the month of December of

every year and if the date of initial appointment is to be taken to be the relevant month, it would be the month of May of every year. To clarify this aspect, Mr. SK Ghosh, learned counsel for the petitioner relies upon the provision of Clause-5 of the Assam Services (Revision of Pay) Rules, 1998, which is extracted as below:-

“5. Date of next Increment:

The Commission have recommended that in all cases of fixation of pay in the revised scale, the next increment in these scales be given on the anniversary date of the last increment in the pre-revision scale. In a case, where an increment in the existing scale is due to a Government servant on the date of his being entitled to draw pay in the revised scales, his basic pay is to be calculated by taking into account the increment due on that date and the next increment will be due to him after completion of 1(one) year from the date of fixation in the revised scale.

9. A reading of the said provision provided by Mr. SK Ghosh, learned counsel for the petitioner gives an indication that the relevant month for being entitled to the annual increment would be the anniversary date of the last increment, which in case of the petitioner was the month of May of the given year i.e. the month of his initial appointment as appeared in the Service Book of the petitioner. Accordingly, for the petitioner it would be the month of initial appointment and not the month of a subsequent up-gradation in the scale from an intermediate scale to a graduate scale. From the said point of view, it would have to be accepted that the month of increment of the petitioner would be the month of May of a given year and reading together with the provisions of the OM dated 01.06.2012, it would also have to be accepted that the petitioner was entitled to one increment in his pre-revised scale on 01.01.2006 and the next

increment in the revised scale from 01.07.2006.

10. As the aforesaid aspect was not taken into consideration by the Finance and Accounts Officer in the office of the Director of Pension, Assam, we remand the matter back to the Finance and Accounts Officer in the office of Director of Pension to pass an appropriate order by taking the aforesaid aspect into consideration and by giving his reasons. After taking the aforesaid aspect of the matter into consideration, if the Finance and Accounts Officer is still of the view that the scale of pay of the petitioner as on 01.01.2006 ought to have been Rs. 12480/- instead of Rs.12800/-, appropriate order may be passed, but by giving detailed reasons thereof. The necessary consideration and order be passed by the Finance and Accounts Officer within a period of one month from the date of receipt of a certified copy of this order.

11. We further take note of that even if the Finance and Accounts Officer retains his earlier conclusion that the scale as on 01.01.2006 ought to have been Rs.12480/- instead of Rs.12800/-, still as there does not appear to be any collusion or fraud on the part of the petitioner in getting his salary at the scale of Rs.12800/- per month from 01.01.2006 and therefore, the recovery cannot be made after his retirement by following the law laid down by the Supreme Court in *Shyam Babu Verma and others –vs- Union of India and others*, reported in (1994) 2 SCC 521 and *State of Punjab and Others –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/her service tenure because of no fault of his/her, such excess payment cannot be recovered from the retirement benefits.

12. From the said point of view, the determination of the Finance and Accounts officer of the scale of pay of the petitioner as on 01.01.2006 would



have its bearing only on the pension amount that is payable to the petitioner and it cannot be a reason for initiating any process for recovery. If ultimately it is concluded that the petitioner would be entitled to a scale of pay of Rs.12480/- per month as on 01.01.2006, the pension papers of the petitioner be processed based on such scale of pay. And if a conclusion is arrived at that it ought to be Rs.12800/- per month as on 01.01.2006, the pension be processed by taking the scale to be Rs.12800/- per month. Upon arriving at the conclusion by the Finance and Accounts Officer, the requirement for processing the pension of the petitioner be done within a period of three months thereafter.

The writ petition is allowed as indicated above.

JUDGE

Comparing Assistant