

GAHC010033422017



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

Case No. : WP(C)/4649/2017

CHANDI NATH BARUAH
S/O LATE RATNESWAR BARUAH, R/O VILLAGE- NIZ GORAIMARI, PO-
TEZPUR, DIST. SONITPUR, ASSAM, PIN-784101

VERSUS

THE UNION OF INDIA and 5 ORS.
REP. BY ITS SECRETARY, MINISTRY OF HOME AFFAIRS, NORTH BLOCK,
NEW DELHI

2:THE DIRECTOR GENERAL

SSB
EAST BLOCK-V
R.K. PURAM
NEW DELHI-110066

3:THE INSPECTOR GENERAL

SSB
FRONTIER HEADQUARTERS
SSB
GUWAHATI
PIN-781022
ASSAM

4:THE COMMANDANT

15TH BN
SSB
KAJALGAON
PO-DHALIGAON
CHIRANG
BTAD
ASSAM

PIN-783385

5:PAY and ACCOUNTS OFFICER
CENTRAL PENSION ACCOUNTING OFFICE
GOVT.OF INDIA
TRIKOOT-2
BHIKAJI KAMA PALACE
NEW DELHI-110066

6:THE SENIOR ACCOUNTS OFFICER
ZONAL PAY and ACCOUNTS OFFICE
SSB
GOVT. OF INDIA
MINISTRY OF HOME AFFAIRS
208-KAUTILYA NAGAR
SHEIKHPURA
RAJA BAZAR
PATNA-80001

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

For the petitioner : Mr. G. Rahul, Advocate.

For the respondents : Ms. B. Sarma, CGC.

**BEFORE
HON'BLE MR. JUSTICE SUMAN SHYAM**

Date of hearing : **23.07.2024 .**

Date of judgment : **23.07.2024 .**

JUDGMENT & ORDER (Oral)

Heard Mr. G. Rahul, learned counsel appearing for the writ petitioner. Also heard Ms. B. Sarma, learned Central Govt. Counsel appearing for respondents.

2. The facts of this case, in a nutshell, are that No.6652533 ex-Head Constable (GD) Sri Chandi Nath Baruah i.e. the writ petitioner herein was initially appointed under the Sashatra Seema Baal (SSB) on 02.05.1966 whereafter, he had joined service. During the course of his service the petitioner was promoted to the post of Head Constable (GD) with effect from 01.07.1974. Eventually, the petitioner retired from service on attaining the age of superannuation with effect from 31.07.2005. The petitioner was entitled to receive pension. Therefore, the authorities on processing his pension papers had sanctioned pension to the petitioner which he went on drawing with effect from the date of his retirement. After implementation of the 6th CPC recommendation, the pension of the petitioner was revised and he was allowed to draw an amount of Rs.11,651/- per month as pension with effect from 01.01.2006. However, subsequently, the respondents had detected that the pension paid to the petitioner was in excess of his entitlement under the rules. Situated thus, the Senior Accounts Officer of Sashatra Seema Bal, Ministry of Home Affairs, Zonal Pay and Accounts Office had issued a communication dated 23.02.2016 addressed to the petitioner intimating him that after implementation of the recommendation of the 6th CPC, his basic pension would be Rs.5828/- per month and not Rs.11651/- per month.

3. Mr. Rahul, learned counsel for the petitioner submits that the respondents have not only unilaterally reduced the pension of the petitioner from Rs.11651/- per month to Rs.5828/- per month but they had even gone on to deduct a sum of Rs.1900/- per month from the aforesaid amount of Rs.5828/- without any formal order to that effect, thus prejudicially affecting the rights and interest of the petitioner. According to the

learned counsel for the petitioner, such recovery of pension from the petitioner without issuing a formal order of recovery is not only illegal but the same is also in violation of the law laid down by the Supreme Court in the case of **State of Punjab and others vs. Rafiq Masih** reported in **(2015) 4 SCC 334** .

4. Responding to the above, Ms. B. Sarma, learned Central Government Counsel submits that if the pension of an employee is wrongly fixed it would be permissible for the departmental authorities to correct any computational effort. She submits that in the present case, having realized the mistake committed by the department, corrective measures were adopted which had resulted into deduction of certain amount from the pension of the petitioner. Ms. Sarma further submits that such a recourse is permissible under Clause-2 of the Office Memorandum dated 28th January, 2013 bearing No.F.No.38/37/08-P & PW (A) issued by the Government of India, Ministry of Personnel, PG & Pensions. Therefore, submits Ms. Sarma, no fault can be found with the action initiated by the department in this regard. In support of her above submission, Ms. Sarma has placed reliance on the decision of the Supreme Court rendered in the case of **High Court of Punjab and Haryana and others Vs. Jagdev Singh** reported in **(2016) 14 SCC 267**.

5. After going through the materials on record, I find that taking note of the grievance expressed by the writ petitioner in this writ petition, the learned Single Judge had passed the following order on 04.08.2017 :-

“Heard Mr. G. Rahul, learned counsel for the petitioner. Also heard Ms B. Sarma, learned CGC appearing for the respondent Nos. 1, 2, 3, 4 and 6.

Issue notice of motion, returnable on 27.10.2017.

No formal steps are called for with regard to the respondent Nos. 1 to 4 and 6 as they are duly represented. However, extra copies be served.

Steps on respondent No. 5 by registered post with A/D.

Until further orders, the respondents are directed not to make any further recovery from the pension amount of the petitioner.”

6. Pursuant to the interim order 04.08.2017, further recovery of the pension of the petitioner had been stopped.

7. Mr. Rahul, learned counsel for the petitioner has fairly conceded that he is not questioning the re-fixation of the pension of the petitioner at the rate of Rs.5828/- per month but the grievance of the petitioner is as regards the manner in which the recovery is being sought to be made from a retired employee, without issuing any formal order of recovery by citing appropriate reasons as well as correct facts and figures.

8. After careful examination of the materials on record, this Court also finds that there is no formal order issued by any authority indicating as to what is the amount of excess drawal by the petitioner, the period to which the same corresponds to and the manner and mode in which such amount is sought to be recovered by the departmental authorities from the writ petitioner. What the respondents have done is that they have merely started making recovery from the bank account of the petitioner by issuing instructions to the bank. The petitioner being a retired employee, who was drawing certain amount of pension, is undoubtedly entitled to a formal order of recovery so as to enable him to examine as to whether, the same is in

accordance with law or if the matter can be agitated before the Court. Since no such formal order has admittedly been issued to the petitioner, the question of validity of re-fixation of pension and recovery of excess amount paid cannot be gone into in the present proceeding at this stage.

9. This writ petition is, therefore, being disposed of by providing that the respondent authorities would be at liberty to issue a formal order to the petitioner indicating the amount of excess drawal, the period to which the same corresponds to and the procedure sought to be adopted for recovery of the amount. Upon issuance of the formal order, it would be open for the departmental authorities to take appropriate steps in the matter, as may be permissible under the law. Till such time the formal order is issued to the petitioner to the above effect, the interim order dated 04.08.2017 passed by this Court shall continue to operate.

With the above observation, this writ petition stands disposed of.

There would be no order as to cost.

JUDGE

T U Choudhury/Sr.PS

Comparing Assistant