

(2021) 07 GAU CK 0063

Gauhati High Court

Case No: Writ Petition (Civil) No. 7539 Of 2019

Manju Saikia

APPELLANT

Vs

State Of Assam And 4
Ors

RESPONDENT

Date of Decision: July 14, 2021

Acts Referred:

- Constitution Of India, 1950 - Article 226

Hon'ble Judges: Kalyan Rai Surana, J

Bench: Single Bench

Advocate: S Barthakur

Final Decision: Allowed

Judgement

1. Heard Mr. S. Borthakur, learned counsel for the petitioner. Also heard Ms. S. Baruah, learned Junior Govt. Advocate appearing for the respondent

nos.1 and 2, Mr. B. Chakrabarty, learned standing counsel for the Accountant General (A&E), Assam, respondent nos.3 and 4 and Mr. B. Gogoi,

learned standing counsel for the respondent no.5.

2. By filing this writ petition under Article 226 of the Constitution of India, the case projected by the petitioner is that her husband, while working as

Scientific Assistant (Grade-III) in the Office of the Director, Forensic Science Laboratory, Assam had died in harness on 22.07.2018. After demise of

her husband, the petitioner had applied for the retiral dues and pension benefit, to which she was entitled to. The competent authority sanctioned the

pension and the petitioner started receiving regular pension. However, vide impugned communication dated 21.01.2019 (Annexure-E), direction was

issued by the respondent no.4 to the respondent no.5 to make recovery of an amount of Rs.3,35,046/- (Rupees three lakh thirty five thousand forty six only) out of the pensionary dues of the petitioner against over payment of pay and allowances.

3. The learned State Counsel as well as the learned standing counsel for the respondent nos.3 and 4 have submitted that vide Annexure-A to the affidavit-in-opposition filed by the respondent nos.3 and 4, the respondent no.2 had communicated to the Accountant General (A&E), Assam vide letter dated 10.12.2018 to recover the over drawn amount of Rs.3,35,046/- (Rupees three lakh thirty five thousand forty six only) and for adjustment of gratuity. Referring to the stand taken in the writ petition, it is submitted that the aforesaid sum has already been recovered and that the petitioner is being paid regular pension and accordingly, the recovery made from the petitioner is sought to be justified.

4. On a perusal of the materials available in the writ petition as well as in the affidavit-in-opposition filed by the respondent nos.3 and 4, it is seen that there is no material available on record to show that the competent authority had drawn up any proceedings in respect of the husband of the petitioner regarding over drawal of pay and allowances. Accordingly, it is seen that an unilateral decision have been taken by the respondent no.2 seeking recovery of the above referred amount. There is no material to suggest that the deceased husband of the petitioner had committed any fraud and that he had over drawn his pay and allowances by committing any misrepresentation or fraud. It is further seen that the husband of the petitioner had died on 22.07.2018, and that only after his death, communication dated 10.12.2018 was issued by the respondent no.2 to the Accountant General (A&E), Assam. Under the aforesaid facts, the Court is of the considered opinion that the State respondents, specially the respondent no.2 would not have ordered recovery without giving due opportunity to the petitioner or her deceased husband of hearing.

5. Reference is also made to Annexure-B to the affidavit-in-opposition, which is a office memorandum dated 14.06.2019, wherein the case of State of Punjab vs. Rafiz Masih, (2015) 4 SCC 334 regarding recovery made from employee belonging to Class-III and Class-IV service (Group-C and Group-

D service) is referred to. In clause-7 thereof, it is provided that "In a case like this where the authorities decide to rectify an incorrect order, a

show-cause notice may be issued to the concerned employee informing him of the decision of rectify the order which has resulted in the overpayment.

Reasons for the decision should be clearly conveyed as to enable the employee to represent against the same. Speaking orders may thereafter be

passed after consideration of the representation, if any, made by the employee." However, in clause-9 thereof, it is provided that "However, when

the waiver of recovery in the above mentioned situations is considered, Pension and Public Grievances Department is empowered with financial

ceiling of Rs.1.00 Lakh (Rupees One Lakh) in each individual case here recovery is to be waived, and beyond Rs.1.00 Lakh (Rupees One Lakh) the

express approval of Finance Department is to be obtained."

6. In the present case in hand, the question of waiver of recovery does not arise as this Court has arrived at a conclusion that the amount was sought

to be recovered without hearing the petitioner and/ or her deceased husband. Moreover, the said office memorandum dated 14.06.2019 is after the

date of the impugned communication dated 21.01.2019. Accordingly, the said office memorandum does not appear to come to the aid of the

respondents in any manner.

7. Accordingly, the Court is inclined to set aside and quash the communication under Memo No.PR-4/HOM/14/054299/2018 dated 21.01.2019 by the

Assistant Accounts officer (respondent no.4) to the Treasury Officer, Dispur (respondent no.5) as illegal and void ab initio. Resultantly, the respondent

no.2, 4 and 5 shall restore the recovered amount of Rs. Rs.3,35,046/- (Rupees three lakh thirty five thousand forty six only) into the bank account of

the petitioner within a period of 2 (two) months from the date of receipt of certified copy of this order by the receiving clerk in the Office of the

Accountant General (A&E), Assam.

8. Accordingly, this writ petition stand allowed to the extent as indicated above. There shall be no order as to cost.