

GAHC010086562025



2026:GAU-AS:6326

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

Case No. : WP(C)/2475/2025

MOTILAL RABIDAS
S/O- LATE DHYA RABIDAS, VILL- NONKULI, PO- WEST CHANDPUR, PS-
HAILAKANDI, DIST- HAILAKANDI, ASSAM, PIN- 788151

VERSUS

THE STATE OF ASSAM AND OTHERS
REP BY THE COMMISSIONER AND SECRETARY JUDICIAL DEPTT, DISPUR,
GUWAHATI- 06

2:THE SECRETARY (JUDICIAL)
LAW DEPTT
ASSAM
DISPUR
GUWAHATI- 06

3:THE DISCIPLINARY AUTHORITY -CUM-DISTRICT JUDGE
HAILAKANDI
ASSAM
PIN-788151

4:THE MEMBER MACT-CUM DISTRICT JUDGE
HAILAKANDI
ASSAM
PIN-78815

BEFORE

HON'BLE MR. JUSTICE DEVASHIS BARUAH

For the Petitioner(s) : Ms. S. B. Choudhury, Advocate

For the Respondent(s) : Mr. T. J. Mahanta, Sr. Advocate
: Ms. P. Sarma, Advocate
: Mr. K. Gogoi. Addl. Sr. GA, Assam

- Date on which Judgment was reserved : N/A
- Date of Pronouncement of Judgment : **07.05.2026**
- Whether the pronouncement is of the Operative Part of the Judgment : No
- Whether the full Judgment has been Pronounced : Yes

JUDGMENT AND ORDER (ORAL)

Heard Ms. S. B. Choudhury, the learned counsel appearing on behalf of the Petitioner and Mr. K. Gogoi, the learned Additional Senior Government Advocate appearing on behalf of the Respondent No.1. I have also heard Mr. T. J. Mahanta, the learned Senior counsel assisted by Ms. P. Sarma, the learned counsel appearing on behalf of the Respondent Nos. 3 and 4.

2. The Petitioner herein who is a Grade-IV employee in the Office of the District and Sessions Judge, Hailakandi has approached this Court by filing the present writ petition by raising two issues. First, the non-consideration of the representation dated 13.12.2016 and

second as regards recovery made from the salary of the Petitioner pursuant to the order dated 25.07.2022.

3. It is pertinent to take note of that as on date, the Petitioner is around 58 years old and would be superannuating in two years time.

4. In the backdrop of the above, let this Court take up the two issues raised by the Petitioner in the present proceedings.

5. The first issue pertains to non-consideration of the representation dated 13.12.2016. A perusal of the said representation reveals that the Petitioner sought for exonerating him from Charge No.3 as well as drop all charges against him in DP Case No.1/2007 and also sought that no penalty should be imposed upon the Petitioner. The records reveal that the said DP Case No.1/2007 had already been disposed of on 23.12.2016 whereby penalty has been imposed upon the Petitioner withholding three successive annual increments and with a further observation that the Petitioner would be allowed to draw the arrear pay of his suspension period excluding the subsistence allowance already drawn. Under such circumstances, the representation so submitted on 13.12.2016 had already become infructuous inasmuch as the

Disciplinary Proceedings has already been disposed of and there is no challenge to the Disciplinary Proceedings before the appropriate forum. The first issue so raised by the Petitioner hence stands rejected.

6. The second issue which is raised is on the question of recovery which has been sought to be made from the Petitioner on the basis of the order dated 25.07.2022. A perusal of the said order reveals that upon verification of the Acquaintance Roll with the pay bill for the month of June, 2022, it was noticed that the Petitioner, who was a peon in the Office of the Member, MACT, Hailakandi, was drawing salary on the basis of Pay Band Rs.24,110/- with Grade Pay Rs.3,900/- whereas, as per the Service Book, it should have been Pay Band 22,490/- with Grade Pay of Rs.3,900/-. It was also noticed that the overdrawal had been running from the month of March, 2011 while the bill was prepared taking Pay Band Rs.6,020/- with Grade Pay of Rs.1,500/- instead of Pay Band Rs.5,680/- with Grade Pay of Rs.1,500/- and accordingly the fixation of pay as per ROP, 2017 was calculated on the resultant basic pay of the incumbent. It was also found that on account of this mistake being committed by the officials, there was an excess payment made to the Petitioner of an amount of Rs.1,81,339/- as overdrawn by the Petitioner as on 30.06.2022.

Vide the order dated 25.07.2022, it was observed and directed that the said amount of Rs.1,81,339/- shall be realized in 37 monthly installments from the salary of the Petitioner and out of these 37 monthly installments, the first installment would be Rs.1339/- and the remaining 36 installments would be Rs.5000/- only per month.

7. The Petitioner on coming to learn about the said order dated 25.07.2022, submitted a representation to the District and Sessions Judge, Hailakandi on 05.08.2022 requesting that instead of recovering the amount of Rs.1,81,339/- in 37 installments, the same be done in 60 installments of Rs.3000/- each month after deducting Rs.1,339/- initially. As per the request made by the Petitioner vide the representation dated 05.08.2022, the deductions were made from the Petitioner's salary by recovering the said amount and the Petitioner accordingly did not raise any objections then. However, subsequently, the present writ petition is filed before this Court on 23.04.2025 whereby the Petitioner has challenged the recovery made of Rs.3000/- per month from the salary of the Petitioner. This is the second issue.

8. Mr. T. J. Mahanta, the learned Senior counsel appearing on behalf of the Respondent Nos. 3 and 4 submitted that there was wrong fixation of the salary of the Petitioner and resultantly there

was an excess payment to the Petitioner of an amount of Rs.1,81,339/- which is an admitted fact. The said aspect would be seen from the acceptance of the order passed by the learned Member, MACT, Hailakandi dated 25.07.2022 by the Petitioner in his representation dated 05.08.2022 and on the basis of which, the deduction which was directed to be made @5,000/- per month was reduced to Rs.3,000/- per month for 60 months w.e.f. August, 2022. The learned Senior counsel submitted that in the meantime, 46/47 installments out of the 60 installments have already been deducted and as the deduction has been made upon due acceptance by the Petitioner and it is being done at a rate which the Petitioner had represented, this Court may not like to interfere with the recovery proceedings which are going on.

9. Per contra, Ms. S. B. Choudhury, the learned counsel for the Petitioner submitted that the wrong fixation was not on account of any fraud or misrepresentation by the Petitioner. It was done by the officials concerned and the Petitioner has no hand in that. The learned counsel further submitted that the Petitioner is admittedly a Grade-IV employee and would be superannuating in another two years time. The continuation of the said recovery proceedings against the Petitioner is grossly iniquitous and harsh for which, this Court may interfere insofar as the deduction from the Petitioner's

salary inasmuch as the Petitioner is facing great difficulties in running his day to day affairs. The learned counsel further referred to the judgment of the Supreme Court in the case of ***State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others reported in (2015) 4 SCC 334*** and more particularly to paragraph No.18 wherein it is mentioned as to when it would be impermissible for the employer to recover.

10. This Court has given anxious consideration to the respective submissions and have also taken note of that the Petitioner had approached this Court at a very late stage. However, it cannot also be lost sight of that the Petitioner is a Grade-IV employee and has limited material resources for which the Petitioner did not receive proper legal advice.

11. The Supreme Court in the case of ***Rafiq Masih (supra)*** observed that there may be many circumstances of hardship which would govern employees on the issue of recovery where payments have been made by the employer in excess of their entitlement. However, for the purpose of ready reference, the Supreme Court summarized some of the situations. Paragraph No.18 of the said judgment being relevant is reproduced herein under:

“18. It is not possible to postulate all situations of hardship which would govern

employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).*
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
- (v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."*

12. The circumstances under which it was held by the Supreme Court to be iniquitous inter alia related to recovery sought to be made from employees belonging to Class-III or Class-IV services; recovery from employees when the excess payment has been made for a period in excess of five years before the order of

recovery was issued as well as when the Court arrives at a conclusion that recovery made from the employee would be iniquitous, harsh or arbitrary to such an extent as would far outweigh the equitable balance of the employer's right to recover. In the instant case, it would be seen that the above three conditions apply inasmuch as the Petitioner herein is a Grade-IV employee. Secondly, it is only in the month of July, 2022, it was noticed that since March, 2011 there has been excess payment and under such circumstances, the recovery which was sought to be made for the period prior to five years from the date of the order dated 25.07.2022 would come within the ambit of Clause-(iii) of the Paragraph No.18 of the judgment of the Supreme Court in the case of ***Rafiq Masih (supra)***.

13. In addition to that, this Court also finds it pertinent to observe that the Petitioner who belongs to the Grade-IV service is going to retire in two years time. The continuation of the recovery would be grossly iniquitous and harsh and accordingly, would violate the mandate of Article 14 of the Constitution.

14. Accordingly, this Court therefore disposes of the instant writ petition with the following observation and direction:

- (i) The representation dated 13.12.2016 had become infructuous in view of the order dated 23.12.2016 whereby the DP Case No.1/2007 stood disposed of thereby imposing penalty upon the Petitioner.
- (ii) This Court is not inclined to interfere with the order dated 25.07.2022 whereby there was a decision taken to recover an amount of Rs.1,81,339/- from the Petitioner. Consequently, the recovery which have already been made till date is not interfered with. However, it is the opinion of this Court that it would be iniquitous and harsh to further recover any amount from the Petitioner. Accordingly, it is directed that there shall be no further recovery from the month of May, 2026 from the salary of the Petitioner.
- (iii) This Court further directs the Respondent No.1 to intimate the Office of the Accountant General, Assam about the present judgment whereby this Court had passed specific directions that there shall be no further recovery made from the salary of the Petitioner w.e.f. May, 2026.

JUDGE