

GAHC010237552024



undefined

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

**Case No. : WP(C)/5911/2024**

KIRAN SAHARIAH  
W/O- HARI KAKATI,  
R/O- BARBARI, H.NO-37, DEHAL ARNAM PATH,  
P.O- HENGRABARI, GUWAHATI-36, DIST- KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS  
REP. BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM,  
HEALTH AND FAMILY WELFARE DEPARTMENT  
DISPUR, JANATA BHAWAN, GUWAHATI-6.

2:THE DIRECTOR OF HEALTH SERVICES  
HENGRABARI  
KAMRUP (M)  
GUWAHATI-36

3:THE JOINT SECRETARY  
TO THE GOVERNMENT OF ASSAM  
HEALTH AND FAMILY WELFARE DEPARTMENT  
DISPUR  
JANATA BHAWAN  
GUWAHATI-6.

4:THE ACCOUNTANT GENERAL  
BELTOLA  
MAIDAMGAON  
GUWAHATI- 29  
KAMRUP (M)  
ASSAM

5:THE SENIOR ACCOUNTS OFFICER

O/O THE PR ACCOUNTANT GENERAL (A AND E)

BELTOLA  
MAIDAMGAON  
GUWAHATI- 29  
KAMRUP (M)  
ASSA

**Advocate for the Petitioner** : MR. P K MUNIR, MR. A. GAYAN

**Advocate for the Respondent** : SC, HEALTH AND F W, SC, AG (A AND E)

**BEFORE  
HONOURABLE MR. JUSTICE SUMAN SHYAM**

**ORDER**

**Date** : 18-11-2024

Heard Mr. P.K. Munir, learned counsel for the writ petitioner.

The writ petitioner herein, who was serving under the Directorate of Health Services, Assam, Guwahati, has retired from service as Office Superintendent on attaining the age of superannuation, w.e.f. the month of February, 2022.

The writ petitioner is aggrieved by the letter dated 08-09-2022 issued by the Sr. Accounts Officer, AG(A&E), Assam whereby, a proposal has been *inter-alia* made to recover the amount of excess drawl from the pension of the petitioner.

By relying upon a decision of the Apex Court rendered in the case of ***State of Punjab Vs. Rafiq Masih***, reported in (2015) 4 SCC 334, Mr. Munir submits that no such recovery can be made from a retired employee. Therefore, the impugned letter dated 08-09-2022 is untenable in the eyes of law.

Mr. D. Bora, learned standing counsel, Health Department, Assam prays for some

time to obtain instruction in the matter.

Issue notice of motion returnable in 06 weeks.

Since Mr. Bora has accepted notice on behalf of respondent Nos. 1 to 3 and Mr. R.K. Talukdar, learned standing counsel, AG(A&E), Assam for respondent Nos. 4 and 5, service of notice is deemed to be complete in this case.

Extra copies of the writ petition, requisite in numbers, be furnished to the learned departmental counsel so as to enable them to obtain instruction.

Heard on the prayer of interim relief.

Said prayer will be considered on the returnable date. However, having regard to the facts and circumstances of the case, as an *ad-interim* measure, it is hereby provided that no recovery shall be made from the pension of the petitioner, till the returnable date.

**JUDGE**

GS

**Comparing Assistant**