

GAHC010116822023



2026:GAU-AS:5945

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

**Case No. : WP(C)/3144/2023**

JAHINDRA BRAHMA  
S/O LATE DANDARAM BRAHMA, R/O VILL-PALASHBARI (NORTH  
KAJALGAON), P.O.-KAJALGAON, P.S.-DHALIGAON, DIST-CHIRANG, BTAD,  
ASSAM, PIN-783385

VERSUS

THE STATE OF ASSAM AND 5 ORS  
THROUGH THE ADDITIONAL CHIEF SECRETARY TO THE GOVERNMENT  
OF ASSAM, ENVIRONMENT AND FOREST DEPARTMENT, DISPUR,  
GUWAHATI-781006

2:THE COMMISISONER AND SECRETARY TO THE GOVERNMENT OF  
ASSAM  
FINANCE DEPARTMENT  
DISPUR  
GUWAHATI-781006

3:THE ACCOUNTANT GENERAL (A AND E)  
ASSAM  
MAIDAM GAON  
BELTOLA TINIALI  
GUWAHATI-781029

4:THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS  
ASSAM  
REHABARI  
GUWAHATI-781008

5:THE DIVISIONAL FOREST OFFICER  
CHIRANG DIVISION  
KOKRAJHAR  
P.O.-KAJALGAON

DIST-CHIRANG  
ASSAM

6:THE TREASURY OFFICER  
BONGAIGAON  
P.O.-BONGAIGAON  
DIST- BONGAIGAON  
ASSAM

**BEFORE  
HONOURABLE MR. JUSTICE BUDI HABUNG**

Advocate for the Petitioner : Mr. A. K. Hussain, Id. counsel.

Advocate for the Respondents : Mr. R. R. Gogoi, Id SC, Forest; for the resp.  
Nos. 1 & 4; Mr. A. Baruah, Id. SC, AG for resp.  
No. 3; and Mr. A. Chaliha, Id. SC, Finance, resp.  
No. 6 .

Date on which Judgment is reserved : 24.04.2026

Date of Hearing : 24.04.2026

Date of Judgment and Order 30.04.2026

Whether the pronouncement is of the Operative part of the Judgment?

:No

Whether the full Judgment has been pronounced ? : Yes

**JUDGMENT & ORDER**

**(CAV)**

Heard Mr. A. K. Hussain, learned counsel for the petitioner. Also heard Mr. R. R. Gogoi, learned Standing Counsel, Forest for the respondent Nos. 1 & 4; Mr. A. Baruah, learned Standing Counsel, AG for the respondent No. 3; and Mr. A. Chaliha, learned Standing Counsel, Finance for the respondent No.6.

- 2.** The present writ petition raises a short but important question regarding the legality of recovery of alleged excess payment of gratuity from the pensionary benefits of a retired employee.
- 3.** The brief facts of the case is that the petitioner was appointed as Forest Range Officer on 02.05.1976. He retired from the service on 30.10.2011 as Assistant Conservator of Forests (ACF).
- 4.** Initially, by an order dated 11.07.2019, the petitioner was paid DCRG amounting to Rs. 6,76,253/- (Rupees six lakhs seventy-six thousand two hundred fifty-three only). Thereafter, by an order dated 28.09.2020, the pension of the petitioner was revised. Upon revision, a further amount of Rs. 1,54,341/- (Rupees one lakh fifty-four thousand three hundred forty-one only) was released to the petitioner, making the total gratuity amount of the petitioner to Rs. 8,30,594/- (Rupees eight lakhs thirty thousand five hundred ninety-four only).
- 5.** Since the benefits entitled to him was denied, he filed writ petition being WP(C) No. 1511/2020 seeking direction for promotional and financial benefits, consequential arrears, and re-fixation of pension amounts. During pendency of WP(C) No. 1511/2020, the petitioner was retrospectively promoted to the rank of Deputy Conservator of Forests (DCF) w.e.f. 26.11.2010 by order dated 17.08.2022. Subsequently, pursuant to direction of this Court dated 24.08.2022, passed in WP(C) No. 1511/2020, the respondent authorities had worked out and recalculated the pensionary benefits and released the dues.
- 6.** However, by impugned order dated 26.12.2022, the respondent No. 3 directed recovery of Rs. 1,30,594/- (Rupees one lakh thirty thousand five hundred ninety-four only) from the petitioner on the ground of "excess payment" of gratuity, to be adjusted from pensionary benefits. The said order being relevant is reproduced as follows:

**"O.O the Principal Accountant General(A& F)Assam,  
Maidamgaon, Beltola, Guwahati-781029**

No. PR-6/Seq No.8051/A-055180/Rev/R2/2022

dated 14/12/2022

To,

The Treasury Officer  
Bongaigaon, PIN- 783380

Sub: Payment of Revised Pension etc. in respect of Shri Jahindra Brahma Retd.  
Assistant Conservator of Forest holder of PPO No.902611256713.

Sir,

Consequent upon revision pension case in terms of OM No.PPG(P) 88/2010/27 dated 01/06/2010, the pensionary benefits of **SHRI JAHINDRA BRAHMA RETD. ASSISTANT CONSERVATOR OF FOREST** has been revised as follows :-

I) Pension @ Rs. 43080/- (Rupees forty three thousand eighty only) p.m w.e.f. 01/11/2011 onwards.

II) Reduced payment @ Rs. /- (Rupees only) p.m. from the date of commutation or w.e.f. 01.11.2011 whichever is later till the date of restoration of pension due to commutation of Rs./- (Rupees only) only p.m.

III) In the event of death of pensioner Enhanced Family Pension @ Rs./-(Rupees only) only p.m. from the date following the date of death of the pensioner for the period of 7 (seven) or upto 08.10.2016 whichever period is less and thereafter Normal Family Pension @ of Rs 25870/- (Rupees Twenty five Thousand eight hundred seventy only ) till her/his death or whichever is earlier.

IV) Gratuity of Rs. 700000/- (Rupees seven lakhs only) in lump less already drawn Rs. 830594/- (Rupees Eight lakhs thirty thousand five hundred ninety-four only)vide GPO NO. 61225671319.

V) Dearness relief & Medical, Allowance as admissible on revised pension/family pension.

VI) Necessary amendments in quantum of revised pension/family pension shown in column (i), (ii), (iii) & (iv) above as the case may be please be made in both halves of PPO NO. 902611256713 under your attestation quoting the No. and date of this letter as an authority and the fact of having done so many please to intimated to this office.

VII) I, therefore, to request you to make necessary arrangement for payment of arrear revised pension as stated in column (i) above at present and the arrear of the revised pension may also be paid w.e.f. 01/11/2011 to the date of last payment and the balance amount of DCRG Rs. 130594/- (Rupees one lakh thirty thousand five hundred ninety-four only) in lump.

VIII) N.B.:- While making payment of arrear of the revised pension on the strength of this authority, the existing pension, dearness relief, medical allowance etc paid so far from 01.11.2011 to the date of last payment together with revised provisional pension and revised provisional DCRG, if any, paid by

*the Department may be recovered.*

*IX) The charge is debitable to the Government of Assam, under Major Head "2071-Pension & Other Retirement Benefit (i)-01-Civil Assam".*

*X) Receipt of the letter may please be acknowledged.*

*\*\* Due to some technical error Rs.8,30,594/-(Rupees eight lakhs thirty thousand five hundred ninety four) only being Gratuity was wrongly authorized vide GPO NO. 61225672319-R1 dated 28/09/2020 instead of admissible amount of Rs. 7,00,000/- (Rupees seven lakhs) only. The excess drawal of Rs.130594/- may also be adjusted from the relief on pension admissible to the Pensioner.*

*Yours faithfully,*

*Sr. Accounts Officer*

*No. PR-6/Seq No.8051/A-055180/Rev/R2/2022/3416*

*Copy to : Shri Jahindra Brahma Retd. Assistant Conservator of Forest, Vill-Palashbari (Kajalgaon), P.O-Kajalgaon, PIN- 783385, Dist.- Chirang, BTAD.*

*He/She is requested to appear before the Treasury Officer Bongaigaon, PIN-783380 for payment.*

*2. The Deputy Secy to the Govt. of Assam, Environment & Forests Deptt., Dispure, Ghy-6.*

*The Service books of the pensioner is enclosed here with, the receipt of which may please be acknowledge.*

*26.12.2022*

*Asstt. Account Officer*

*O/o the Accountant General (A&E) Assam)"*

**7.** From the pleadings only one issue arises for Determination;

**i.** Whether recovery of alleged excess gratuity, in absence of misrepresentation or fraud on the part of the petitioner, is legally sustainable?

**8.** The petitioner contends that as per the Gratuity Rule as well as Notification issued from time to time, Rule for calculation of gratuity of a government employee who has completed 35 years of service is last gross Pay-HRA-MA=Total X 16.5 and accordingly the respondent No.3 has rightly calculated the gratuity amount of the petitioner. It further contends that there is no wrong or technical error in the letter

dated 28.12.2022 issued by the respondent No.3 making the payment of gratuity amount of Rs.8,30,594/- to the petitioner. And since, the payment was made after due calculation by the competent authority and no error is attributable to the petitioner, hence, the recovery of the excess amount of Rs.1,30,594/- is illegal and arbitrary, and as such, the same is liable to be set aside and quashed. Therefore, prays for a direction to refund the same.

**10.** In support of his submission reliance has been placed by the learned counsel for the petitioner on the decision of the Hon'ble Supreme Court in ***Jogeshwar Sahoo & Ors. v. District Judge, Cuttack & Ors.***, reported in ***2025 0 AIR (SC)2291***, whereby, the Hon'ble Supreme Court held that the Recovery of excess payment is impermissible where there is no misrepresentation or fraud by the employee; and the excess payment occurred due to employer's mistake or wrong calculation.

**11.** The learned counsel for the respondent on the other hand submitted that consequent upon the promotion of the petitioner to the post of deputy Conservator of Forest with retrospective effect as well as the order passed by this court in WP(C) No. 1511/2020, the pay of the petitioner was revised and the corresponding pension was also revised vide authority dated 26.12.2022. At the time of such revision of pension, it came to the light that the amount of Rs.8,30,594/- towards gratuity was inadvertently authorized vide authority dated 28.09.2020 and as the said amount of gratuity exceeded the maximum limits of the 7 lakhs under ROP, 2010, it was directed to be adjusted from the relief of pension admissible to the petitioner. The learned counsel for the respondent thus submits that excess payment is recoverable irrespective of fault.

**12.** The issue is no longer *res integra*. As relied upon by the learned counsel for the petitioner in ***Jogeshwar Sahoo & Ors.*** (supra), the Hon'ble Supreme Court has clearly held that Recovery of excess payment is impermissible where there is no misrepresentation or fraud by the employee; and the excess payment occurred due to

employer's mistake or wrong calculation. The Court further emphasized that recovery from retired employees or from pensionary benefits causes undue hardship and is inequitable.

**13.** The relevant paragraph 9 of the said judgment is reproduced below:

*"This Court has consistently taken the view that if the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous, such excess payments of emoluments or allowances are not recoverable. It is held that such relief against the recovery is not because of any right of the employee but in equity, exercising judicial discretion to provide relief to the employee from the hardship that will be caused if the recovery is ordered."*

**14.** This principle is consistent with earlier settled law laid down in multiple decisions including ***State of Punjab v. Rafiq Masih (white washer)***, reported in AIR 2015 SC 696; where the Hon'ble Supreme Court held that where the employee is not at fault; and the payment was not obtained by fraud or misrepresentation, the recovery in such case would be arbitrary and inequitable.

**15.** In the present case the petitioner is a retired employee. The gratuity was calculated by the respondent authority and it was released by the department itself. There is no any allegation of misrepresentation or fraud by the petitioner. The alleged excess payment arose, if at all, was due to departmental recalculation after retrospective promotion. Thus, the case squarely falls within the protective umbrella of the law laid down by the Hon'ble Supreme Court in the above referred cases.

**16.** The contention of the respondents that excess payment is automatically recoverable cannot be accepted in view of aforesaid settled judicial principles.

**17.** In view of the above, the impugned recovery is arbitrary, inequitable and contrary to law.

**18.** Accordingly, for the reason stated above, the impugned order dated 26.12.2022 issued by Respondent No. 3 directing recovery of Rs. 1,30,594/- is hereby set aside and quashed.

**19.** The respondents are directed to Refund the recovered amount of Rs. 1,30,594/- to the petitioner.

**20.** The said amount shall be refunded within a period of 3 (three) months from the date of receipt of this order.

**21.** If the amount is not refunded within the stipulated period, it shall carry interest @ 6% per annum from the date of recovery till actual payment.

**22.** With the above, the writ petition is allowed and disposed of.

**JUDGE**

**Comparing Assistant**