

GAHC010204942022



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

Case No. : WP(C)/6616/2022

SUKHALATA PHUKAN GOGOI
W/O- SHRI NAREN GOGOI,
R/O LAKHI NEPALI BASTI (MIGOM DOLUNG),
P.O.- JONAI, DISTRICT- DHEMAJI,
PIN- 787060, ASSAM.

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
EDUCATION (HIGHER) DEPARTMENT, ASSAM,
DISPUR, GUWAHATI- 781006.

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE ACCOUNTANT GENERAL
ASSAM
OFFICE OF THE ACCOUNTANT GENERAL (A AND E)
ASSAM

MAIDAMGAON
BELTOLA
GUWAHATI- 781029
ASSAM.

4:THE DIRECTOR OF HIGHER EDUCATION

HIGHER EDUCATION DEPARTMENT

KAHILIPARA
GUWAHATI- 781019

ASSAM.

5:THE DIRECTOR OF PENSION
ASSAM
HOUSEFED COMPLEX
GUWAHATI- 781006
ASSAM.

6:THE PRINCIPAL
MURKONG SELEK COLLEGE
JONAI
DISTRICT- DHEMAJI

PIN- 787060
ASSAM.

7:THE PRESIDENT

OFFICE OF THE GOVERNING BODY

MURKONG SELEK COLLEGE
JONAI

DISTRICT- DHEMAJI
PIN- 787060

ASSAM.

8:THE TREASURY OFFICER

JONAI SUB-TREASURY
JONAI

Advocate for the Petitioner : MS RUKMINI BARUA

Advocate for the Respondent : SC, HIGHER EDU

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Ms. P Baruah, Advocate.
For the Respondents : Mr. K Gogoi, SC, Higher Education
Mr. SK Medhi, SC, AG (A&E).
Date of Hearing : 20.02.2024, 23.02.2024
Date of Order : 15.03.2024

JUDGMENT AND ORDER(CAV)

1. Heard Ms. P Baruah, learned counsel for the petitioner. Also heard Mr. K Gogoi, learned counsel representing the Higher Education Department and Mr. SK Medhi, learned standing counsel for the Accountant General (A&E)
2. The petitioner who retired as Principal from Murkong Selek College, Jonai as Lecturer on 31.12.2018 has preferred the instant writ petition challenging the impugned action of recovery of financial benefit already made to the petitioner on account of overstay in service from 01.01.2018 to 31.12.2018. The respondent authorities concerned have recovered/deducted an amount of Rs. 21,27,846/- from her pension and other benefits. The learned counsel submits that the overstay in service is not the fault of the petitioner and the petitioner was never informed at any point of time that her date of birth was wrongly recorded in her Service Book and therefore, such being the position, the recovery from her pension and other benefits cannot be done and the same should be refunded back to her. In support of her submission, the learned counsel has relied upon the judgment of the Apex Court in the case of ***State of Bihar & Ors. vs. Pandey Jagdishwar Prasad, reported in (2009) 3 SCC 117.***
3. The basic contention of the petitioner is that on being appointed as a Lecturer at Murkong Selek College, Jonai, the petitioner joined her service on 01.10.1993. According to the petitioner, her age is reflected in the admit card as 16 years 3 months as on 02.04.1974. Accordingly, her date of birth shall be 01.12.1957. It is the further case of the petitioner that her employer has wrongly recorded her date of birth in the service book as 01.12.1958 instead of 01.12.1957. Though her date of birth was recorded as 01.12.1958, the same is a wrong recording of date and it is a mistake on

the part of the employer. The petitioner had no role in recording of such date of birth. The learned counsel contends that even if it is decided that she ought to have retired on 31.12.2017, no recovery can be made as the employer has extracted her service till 31.12.2018 and there is no allegation of committing any fraud by the petitioner.

4. The respondent employer has filed an affidavit and has taken a specific stand that the petitioner being the Principal/ In-charge of the college, was the custodian of all the official records and responsible for all official dealings, process and verification of all records including the service book of herself and employees of the college and therefore, when she is well aware of her actual date of birth, she as a Principal cum Secretary of the college ought not to have over stayed in service rather as a Secretary of the college, it was her responsibility to intimate the Governing Body regarding her actual date of birth and wrong entry of her date of birth. Therefore, it is contended by the respondent State, in the aforesaid factual background that it cannot be said that petitioner has not taken advantage of the wrong/ mistake committed at the time of entry into her service and therefore, the respondent State has rightly recovered the amount.
5. From the materials available on record this court can very well conclude the following facts:
 - I. The petitioner joined the service as Lecturer in the college on 01.10.1993.
 - II. Her date of birth was recorded in her service book on the basis of her matriculate certificate. Such matriculation certificate does not reflect any specific date of birth, however, declares that the petitioner was 16 years 3 months on 1st of March, 1974.
 - III. Thus, her date of birth ought to have been recorded in the service book as 1st December, 1957. However, it was recorded as 1st December, 1958.
 - IV. It is an admitted position that such entry was neither made by the

petitioner nor she had any control over the service book at the relevant point of time when it was entered.

V. The fact also remains that there was no allegation of manipulation of such record or date of birth by the petitioner nor there is over writing in such an entry made in the service book.

VI. It is an admitted position that the petitioner is actually aware of her date of birth and therefore, she is aware of her actual date of retirement.

VII. In the meantime, in the year 2016, the petitioner was appointed as Principal In-Charge of the college and by virtue of such appointment she has become ex-officio Secretary of the Governing Body of the college in terms of **Assam College Employee (Provincialisation) Act, 2005.**

VIII. During the tenure of the petitioner as Principal In-charge cum Secretary of the Governing Body of the college, her actual date of retirement fell.

IX. It is an admitted position that though the petitioner was aware of her actual date of birth, the petitioner kept silent and did not initiate the process required to be taken under Assam Services Pension Rules' 1969 and continued to enjoy the benefit of resulted from wrong calculation of her date of birth at the initial stage.

X. The fact also remains that the Governing Body of the college also did not notice such discrepancies and thus the petitioner continued to serve the college as the Assistant Professor and as In-charge Principal of the college beyond her actual date of superannuation, however, in terms of the wrong recording of her date of birth.

XI. The record also reveals that when the case of the petitioner for consideration of pension and pensionary benefits were taken, the Accountant General could find out the wrong entry of the date of birth and resultant

overstay of the petitioner in service and accordingly they returned the pension proposal of the petitioner to the employer for necessary correction.

XII. Another aspect of the matter is that the State of Assam has issued an OM dated 01.02.1992 laying down the procedure for ensuring officials handing over charge on the date of superannuation. Such OM prescribed that the officer due for retirement shall also submit his pension paper to his administrative department months before the actual date of retirement without waiting for intimation in this regard from his administrative department or appointing authority. The record produced also reveals that while forwarding the pension paper from the employer the petitioner herself declared her date of birth in term of wrong entry and when the Accountant General returned the pension proposal after detecting the over stay the petitioner corrected such wrong entry herself and entered the actual date of birth.

6. It is also seen from the record that while forwarding the pension paper, in the format prescribed under the Pension Rule, 1969, the petitioner declared her date of birth, which was wrongly recorded in her service book and not the actual date of birth which admittedly she is well aware of.
7. Thus, from the aforesaid, this court is of the unhesitant view that the petitioner has taken advantage of the wrong entry into her date of birth and after knowing fully well of her date of birth, continued to serve beyond her actual date of superannuation. And even when she served as Principal cum Secretary of the College, she did not take any step for correction of such date of birth.
8. This court cannot ignore the fact that the petitioner has been a Lecturer / teacher in the college imparting education and she also became the Principal of the college and it is not expected from a person of that stature to take advantage of wrong entry of date of birth and continue to serve the college beyond her actual date of superannuation, which she is well aware and in a situation where she had the authority as principal cum secretary of the College to correct such mistake. Thus, the silence of the petitioner is

for no other reasons but to take advantage and she continued to serve beyond the date of actual superannuation. Such a course of action is depreciated by this Court.

9. Having held thus, now the question arises whether the recovery of the petitioner as done can be interfered with by this court in exercise of power of judicial review.

10. It is true that the petitioner kept silent knowing fully well that her date of birth was wrongly entered in the service book, at least when she became Principal cum Secretary of the College or at the time when she ought to have superannuated as per her actual date of Birth. However, from the material available on record, it is not established that the petitioner had any initial deception in the mind or any role on the part of the petitioner in entering the wrong date of birth in her service book. It is also not the case of the employer that it is the petitioner who with an intention to take a benefit has wrongly entered the date of birth inasmuch as when the date of birth was entered the petitioner did not have any control over the correction or deletion or entry in her service book. The petitioner was allowed to continue and to serve beyond her actual date of superannuation on the basis of the wrong entry in the date of birth and such wrong entry even was not detected by the college authority but it is the Accountant General (A&E) who could detect the same while calculating the pension of the petitioner. Therefore, the silence of the petitioner as discussed hereinabove for the purpose of taking an advantage cannot be equated with fraud. Such being the position and in absence of any allegation of misrepresentation or fraud made by the employer or even by the Accountant General (A&E), in the considered opinion of this court, it cannot be held that it is the petitioner who has committed fraud or misrepresented and had a role in entering the wrong date of birth in the service book.

11. That being the position, this court cannot allow the respondent authorities to recover the salary paid to the petitioner for the period she had rendered service beyond the actual date of superannuation in as much as the petitioner rendered her service for the said period. Accordingly, the impugned recovery is interfered with. As the record reveals that recovery is not only on account of payment of salary for the period of

overstay, but such recovery also involves certain arrears of enhanced salary that has been granted by virtue of revision of pay scale and some other excess drawl, therefore, while setting aside the decision of impugned recovery, the matter is relegated to the Accountant General (A&E) to recalculate such recovery.

12. In the facts and circumstances of the present case, as discussed hereinabove, this court is also of the un-hesitant view that the petitioner shall not be entitled for any enhanced salary, which has come into effect beyond the date of the actual superannuation, which the petitioner would not have been granted if superannuated on the basis of her actual date of birth. The petitioner shall also not be entitled for other benefits attached to her basic salary plus Dearness Allowance during the period of overstay.

13. Accordingly, this writ petition stands allowed in terms of the determination made herein above. The Accountant General (A&E) shall do recalculation in terms of the determination made within a period of six weeks from the receipt of a certified copy of this order and pay such amount determined within a period of three weeks thereafter.

JUDGE

Comparing Assistant