



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

**WRIT APPEAL No.102 OF 2023**

The Assam Power Distribution Company Limited, a Company incorporated under the Companies Act, having its registered Office at Bijulee Bhawan, Paltan Bazar, Guwaahati-781001, represented by its Chief General Manager (HR).

**.....Appellant**

**-Versus-**

1. On the death of Prasanna Ch. Barman, his legal heirs -

2. Smti. Pramila Barman,  
Wife of Late Prasanna Ch. Barman,  
Resident of Teliagaon Town, Teliagaon,  
Nagaon Sadar, Assam, PIN – 782141.

3. Chandan Barman,  
Son of Late Prasanna Ch. Barman,  
Resident of Teliagaon Town, Teliagaon,  
Nagaon Sadar, Assam, PIN – 782141.

**.....Respondents**

**- B E F O R E -**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MRS. JUSTICE MITALI THAKURIA**

For the Appellant : Mr. N. Deka, Advocate.

For the Respondents : Mr. K.K. Mahanta, Sr. Advocate,  
assisted by Mr. K.M. Mahanta,  
Advocate.

Date of Judgment & Order : **28.04.2023**

## **JUDGMENT & ORDER**

**[Sandeep Mehta, C.J.]**

This intra-Court writ appeal is preferred by the appellant Assam Power Distribution Company Limited (APDCL) being aggrieved by the order dated 08.02.2023 passed by the learned Single Judge in WP(C) No.1725/2022, whereby the writ petition preferred by the legal heirs of Late Prasanna Ch. Barman, an erstwhile employee of the Corporation, assailing the action of the employer in deducting an amount of Rs.7,36,614/- (Rupees Seven Lakh Thirty Thousand Six Hundred and Fourteen) from the retiral benefits and gratuity of the erstwhile employee on the ground that he continued to serve for a period of 2(two) years 9(nine) months beyond his actual date of retirement, i.e. 31.12.2012, was accepted and the action of recovery undertaken by the appellant was interfered/quashed and a cost of Rs.10,000/- (Rupees Ten Thousand) was imposed upon the appellant.

**2.** We have heard Mr. N. Deka, learned counsel representing the appellant and Mr. K.K. Mahanta, learned senior counsel, assisted by Mr. K.M. Mahanta, learned counsel representing the respondents.

**3.** Mr. N. Deka, learned counsel representing the appellant vehemently and fervently urged that the late employee Shri Barman was undoubtedly aware about the actual date of his retirement and thus, the burden was upon him to forthwith inform the authorities having

completed the actual tenure of service. The employee, however, took advantage of the inadvertent error in the Superannuation Register, wherein by mistake the date of birth was recorded as 13.12.2015 instead of 13.12.2012. He thus, urged that the ratio of the judgment rendered by Hon'ble Supreme Court in the case of ***State of Punjab & Ors. -Vs- Rafiq Masih (White Washer) & Ors.***, reported in ***(2015) 4 SCC 334*** would not apply to the present controversy inasmuch as the said was a case of excess payment on account of wrong fixing of pay scale.

4. Per contra, Mr. K.K. Mahanta, learned senior counsel representing the respondents vehemently and fervently opposed the submissions advanced by the learned counsel for the appellant. He urged that Late Shri Prasanna Ch. Barman was a Grade-IV employee in the Corporation and thus, he could not be expected to be having deep knowledge of the legal procedure. The employee was, admittedly, never intimated about the date of his retirement and thus, he sincerely continued to serve the employer till September, 2014 when he expired before the date of superannuation recorded in the Superannuation Register, i.e. 31.12.2015. He urged that the widow of the late employee, i.e. respondent No.1 herein, suffered from a stroke and thus, even though the recovery was illegally effected 6(six) years back, the respondents herein, could not muster the resources to challenge this blatantly illegal action of the appellant by increasing the cost. He thus, implored this Court to dismiss the appeal.

**5.** We have given our thoughtful consideration to the submissions advanced at Bar and have gone through the impugned order/material available on record.

**6.** At the outset, it may be noted that there is no allegation that the employee made any misrepresentation on account whereof, he continued to serve beyond his actual date of superannuation, i.e. 31.12.2012. The error in recording the date of superannuation in the Superannuation Register is not attributed to the employee. Thus, the ratio of the Supreme Court judgment in the case of ***State of Bihar & Ors. -Vs- Pandey Jagdishwar Prasad***, reported in ***(2009) 3 SCC 117*** squarely covers the controversy at hand. There is no dispute that the erstwhile employee, continued to serve the employer without any demur till he passed away, i.e. on 19.09.2014. Thus, there was no justification whatsoever in the action of the employer in effecting the recovery of amount paid to the employee for the excess tenure of service from the retiral benefits accruing to the family members of the deceased employee.

**7.** The view taken by the learned Single Judge while accepting the writ petition of the respondents is absolutely justified in facts as well as in law and does not warrant any interference. However, the direction to impose cost of Rs.10,000/- (Rupees Ten Thousand) upon the employer does not seem appropriate in the given facts and circumstances. Hence, while closing the writ appeal, the

direction imposing cost of Rs.10,000/- upon the appellant is hereby set aside.

**8.** No order as to costs.

**JUDGE**

**CHIEF JUSTICE**

**Comparing Assistant**