

GAHC010049822021



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

**Case No. : WP(C)/1914/2021**

GAUTAM KR. DAS  
S/O LATE CHIDANANDA DAS, R/O HOUSE NO. 45, RIHABARI BILPAR,  
GUWAHATI 781008, DIST. KAMRUP (M)

VERSUS

THE STATE OF ASSAM AND 5 ORS.  
REPRESENTED BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM,  
INDUSTRIES AND COMMERCE DEPTT., DISPUR, GUWAHATI 06

2:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM

INDUSTRIES AND COMMERCE DEPTT.  
DISPUR  
GUWAHATI 06

3:THE SECY. TO THE GOVT. OF ASSAM

INDUSTRIES AND COMMERCE DEPTT.  
DISPUR  
GUWAHATI 06

4:THE COMMISSIONER OF INDUSTRIES AND COMMERCE DEPTT.

ASSAM  
UDYOG BHAWAN  
BAMUNIMAIDAM  
GUWAHATI 21

5:THE ADDL. DIRECTOR (FP)  
OFFICE OF THE COMMISSIONER OF INDUSTRIES AND COMMERCE  
ASSAM

UDYOG BHAWAN  
BAMUNIMADAM  
GUWAHATI 21

6:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM

FINANCE (ESTT-A) DEPTT.  
DISPUR  
GUWAHATI 0

**Advocate for the Petitioner** : MS. A DEVI

**Advocate for the Respondent** : SC, INDUSTRIES

**BEFORE**  
**HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

**ORDER**

**Date : 09.01.2023**

Heard Ms. A.Devi, the learned counsel appearing on behalf of the petitioner, Mr. A.Kalita, the learned counsel appearing on behalf of the respondent Nos. 1, 2, 3, 4 and 5 and Mr. P.Nayak, the learned counsel appears on behalf of the respondent No.6.

2. The dispute involved in the instant writ petition pertains as to whether the petitioner's date of superannuation is 31<sup>st</sup> of December, 2019 or 31<sup>st</sup> of January, 2020. The case of the petitioner herein, is that the petitioner's date of birth was recorded in the High School Leaving Certificate as 15 years 2 months on the 1<sup>st</sup> day of March of 1975. It is the case of the petitioner that applying the Office Memorandum dated 31<sup>st</sup> of October, 2012, issued by the Government of Assam, Finance (Estt-A) Department dated 31<sup>st</sup> of October, 2012, the petitioner's date

of Superannuation would be 31<sup>st</sup> of January, 2020. However, the respondent authorities have superannuated the petitioner on 31<sup>st</sup> of December, 2019. It is under such circumstances that the petitioner had approached this Court.

3. The question involved in the instant writ petition depends upon the interpretation of the Office Memorandum dated 31.10.2012. Taking into account the relevance of the said Office Memorandum, the same is reproduced herein below:

*“ GOVERNMENT OF ASSAM  
FINANCE (ESST-'A') DEPARTMENT  
DISPUR. GUWAHATI-6*

*No.FEG.26/2012/29*

*Dated Dispur, the 31<sup>st</sup> October,2012*

*OFFICE MEMORANDUM*

*It is observed that some Departments are coming to Finance Department for interpretation as regards calculation of Date of Birth on the basis of age, as used to be mentioned in old HSLC/HSSLC pass certificate/Admit Cards etc. in which the age on 1<sup>st</sup> March of a year was mentioned instead of the exact date of birth.*

*In this connection it may be mentioned that there should not be any confusion into the matter as explanation is already provided below F.R 56(a) of the F.R & S.R from which it is clear that a Govt. servant whose date of birth falls on the 1<sup>st</sup> day of any month shall have attained the age of superannuation on the afternoon of the last day of the preceding month and that a Govt. servant whose date of birth falls on days other than 1<sup>st</sup> day of a month shall attain the age of superannuation on the last day of the month.*

*For example, if the age of a candidate be mentioned in the old HSLC/HSSLC pass certificate/Admit Card as 15 years 10 months 1 day on 1<sup>st</sup> March, 1999, his date of birth should be computed as 1<sup>st</sup> May, 1983 and the Govt. servant shall retire on superannuation on 30<sup>th</sup> April, 2043.*

*Further, if the age of candidate be mentioned in the old HSLC/HSSLC pass certificate/Admit Card as 15 years 10 months on 1<sup>st</sup> March, 1999, his date of birth should be computed as 2<sup>nd</sup> May, 1983 and the Govt. Servant shall retire on superannuation on 31<sup>st</sup> May, 2043.*

*In view of the above, it should not be necessary to come to Finance Department for interpretation in this regard.*

*This is issued as a general clarification.*

*Sd/-*

*(Dr.A.K.Bhutani)*

*Commissioner & Secretary to the*

*Government of Assam*

*Finance (Esst-A) Department*

*Memo No.FEG.26/2012/29-A*

*Dated Dispur, the 31<sup>st</sup> October, 2012'*

4. A perusal of the said Office Memorandum would show that a question was raised before the Finance Department for interpretation as regards the calculation of the date of birth on the basis of age as used to be mentioned in the old HSLC/HSSLC pass certificate/Admit Card etc., in which the age on 1<sup>st</sup> of March of the year was mentioned instead of the exact date of birth. It was observed that in view of the explanation to F.R 56(a) of the Fundamental Rules

and the Subsidiary Rules of the State of Assam, a Government servant whose date of birth falls on the 1<sup>st</sup> day of any month shall have attained the age of superannuation on the afternoon of the last day of the preceding month and that a Government servant whose date of birth falls on days other than the 1<sup>st</sup> day of the month shall attain the age of superannuation on the last day of the month. Two illustrations have been given in the said Office Memorandum to the effect that if the age of a candidate mentioned in the old HSLC/HSSLC pass certificate/Admit Card as 15 years 10 months 1 day on 1<sup>st</sup> of March, 1999 his date of birth should be computed as 1<sup>st</sup> of May, 1983 and the Government servant shall retire on superannuation of 30<sup>th</sup> April, 2043. However, if the age of a candidate has been mentioned in the old HSLC/HSSLC pass certificate/Admit Card as 15 years 10 months on 1<sup>st</sup> of March, 1999 and his date of birth should be computed as 2<sup>nd</sup> of May, 1983 and Government servant shall retire on superannuation on 31<sup>st</sup> of May, 2043. The learned counsel for the petitioner has submitted that in the instant case the petitioner's date of birth was recorded as 15 years 2 months on 1<sup>st</sup> of March, 1975 and as such in view of the Office Memorandum dated 31<sup>st</sup> of October, 2012, the petitioner's date of birth would be 2<sup>nd</sup> of January, 1960 and accordingly, the date of Superannuation of the petitioner would be 31<sup>st</sup> of January, 2020. The learned counsel submitted that taking into account that in the service book, it has been recorded as 1<sup>st</sup> of January, 1960, the petitioner has been superannuated by the respondent authorities on 31<sup>st</sup> of December, 2019.

5. On the other hand, the learned counsel Mr. A.Kalita, appearing on behalf

of the respondent Industries and Commerce Department has submitted that in view of the S.R 8 of the F.R & S.R of the State of Assam, the petitioner's case vide the impugned orders was rejected because he failed to seek correction of the date of birth within the period as permissible. However, the learned counsel agreed as regards the interpretation so given in respect to the Office Memorandum dated 31<sup>st</sup> of October, 2012 by the petitioner. The learned counsel for the Finance Department, Mr. P.Nayak, has also submitted that taking into account the Office Memorandum dated 31<sup>st</sup> of March, 2012, the petitioner would come within the ambit of the second illustration and thereby, the petitioner's date of birth has to be computed as 2<sup>nd</sup> of January, 1960 and accordingly, the petitioner ought to have retired on superannuation on 31<sup>st</sup> of January, 2020.

6. Having heard the learned counsels for the parties and upon perusal of the Office Memorandum dated 31<sup>st</sup> of October, 2012, as well as the Annexure B to the writ petition which is HSLC Certificate, whereby, the petitioner's date of birth have been recorded as 15 years 2 months on 1<sup>st</sup> of March, 1975, this Court is of the opinion that the petitioner's date of birth should be computed as the 2<sup>nd</sup> of the January, 1960 and accordingly, the petitioner ought to have retired on 31<sup>st</sup> of January, 2020. Under such circumstances, this Court therefore set aside the letter dated 13.11.2019/14.11.2019, as well as the order dated 03.08.2020. The question of petitioner seeking change of the date of birth does not arise in the instant case as the present case relates to applying the Office Memorandum dated 31.10.2012 and giving effect to the same.

7. This Court further observes that the petitioner's date of superannuation shall be construed in terms with the Office Memorandum dated 31.10.2012 to be 31.01.2020 and accordingly, the concerned respondent authorities shall grant the petitioner, the consequential benefits to which the petitioner shall be entitled to in view of the Court's observation that the petitioner's date of retirement would be 31.01.2020. The said exercise be completed by the concerned respondent authorities within a period of 45(forty five) days from the date of receipt of a certified copy of this order is served upon the respondent No.2.

8. With the above observations and directions, the instant petition stands disposed of.

**JUDGE**

**Comparing Assistant**