

GAHC010050782018



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

Case No. : WP(C)/1711/2018

GAURI SHANKAR BHATTACHARYYA
S/O. LT. JOGENDRA NATH BHATTACHARYYA, RESIDENT OF
CHURAMONIGAON, P.O. JHANJI HANCHARA, P.S. TEOK, PIN-785683, DIST.
JORHAT, ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, TRANSPORT DEPARTMENT, DISPUR,
GUWAHATI-781006

2:THE DIRECTOR
INLAND WATER TRANSPORT
ULUBARI
GUWAHATI-781007
ASSAM.

3:THE EXECUTIVE ENGINEER
INLAND WATER TRANSPORT
JORHAT DIVISION
JORHAT-85001
ASSAM.

4:THE ASSISTANT EXECUTIVE ENGINEER
INLAND WATER TRANSPORT
JORHAT SUB-DIVISION
JORHAT-78500

Advocate for the Petitioner : MR. B M CHOUDHURY

Advocate for the Respondent : SC, IWT

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

22/08/2023

Heard Ms. A Bhattacharyya, learned counsel for the petitioner and Ms. M D Bora, learned Standing counsel, Inland Water Transport Department for the respondent Nos. 1 to 4.

2. The petitioner passed his Class-X High School Leaving Certificate (HSLC) Examination in the year 1971 and applied for a job before the Director of Inland Water Transport, Guwahati, Assam.

3. By an order dated 29.03.1994, the Assistant Executive Engineer, Inland Water Transport (IWT), Jorhat Sub-Division appointed the petitioner as a Muster Roll Employee under the office of the Assistant Executive Engineer, IWT, Jorhat Sub-Division and accordingly, he joined his said service on 01.04.1994 in Nimati Kamalabari Ferry Service. Later, by an office order dated 28.02.1997, he was transferred and posted at Dikhowmukh Phulmari Salmara Ferry Service at Dikhowmukh, wherein he joined his service on 01.03.1997. In his application for appointment, the petitioner had shown his age as on 01.03.1971 as 17 years, but as contended by him, he was born on 01.10.1957, which was informed to the Assistant Executive Engineer, IWT, Jorhat Sub-Division by swearing an affidavit on 16.09.2010.

4. It is stated by the petitioner that the Assistant Executive Engineer, IWT, Jorhat Sub-Division respondent No. 4 by an Office Order No. 99 dated 02.06.2007 released him from the Government duty on 31.05.2017, but he received the said communication of the respondent No. 4 only on 01.11.2017.

5. Petitioner stated that he was paid his salary up to May, 2017, but from June, 2017 till October, 2017 for a period of 5 (five) months he did not receive salary though he rendered his service.

6. Hence, this writ petition by the petitioner praying for a direction to the respondent authorities in the IWT Department to pay all the pensionary and other benefits to him arising out of the employment and service that he rendered for the period of 23 years and 2 months as a Muster Roll Employee under the IWT Department along with his due salary for the period from 01.06.2017 to 31.10.2017.

7. The respondent authorities in the IWT Department on 29.11.2019 filed an affidavit in the matter stating that at the time of submission of his application for his appointment before the Director of IWT, Guwahati, he submitted his age as 17 years on 01.03.1971 and also stated that he passed his HSLC examination from the Board of Secondary Education, Assam. If his age 17 years on 01.03.1971 is to be considered, petitioner's date of birth ought have been 01.03.1954 and as such, the petitioner should have retired from service on attaining the age of superannuation at 60 years on 28.02.2014 itself and the petitioner had already drawn an excess salary for a period of 3 years 3 months up to 31.05.2017, though he should have retired in February, 2014 itself.

8. With regard to the payment of pensionary benefits, the respondent authorities in the IWT stated that a Muster Roll Employee is eligible for pensionary benefits only after his/her service is regularized by the concerned authority against a sanctioned vacant post as per the Office Memorandum issued by the Pension & Public Grievances Department on 31.07.2010. Since the service of the petitioner was not regularized he remained as a Muster Roll Employee.

9. Pursuant to the orders of the Court passed earlier on 19.10.2022 and 01.08.2023, the respondent authorities in the IWT filed an additional affidavit on 14.08.2023 stating that the petitioner was paid Rs.7,258/- per month in his account for the months from April, 2017 to May, 2017 and the Attendance Register of the Muster Roll Workers at the office of the Assistant Executive Engineer, IWT, Jorhat Sub-Division for the month of June, 2017 reflects that from 01.06.2017 upto October, 2017, the petitioner remained absent from his service.

10. It is also placed before the Court that the petitioner was released from service by an Office Order No. 99 under Memo No. SWJ/MR/P-II/347/06/293 dated 02.06.2007 that was duly served on the petitioner on 01.11.2017 with his signature.

11. Ms. Bora, learned Standing counsel, IWT Department has placed the original records relating to the attendance of the petitioner for the months from April, 2017 to October, 2017 which has also been shown to Ms. Bhattacharyya, learned counsel for the petitioner.

12. The records reveal that the petitioner was absent from his service from 01.06.2017 to 31.10.2017 and said Attendance Register of the Muster Roll Employees including that of the petitioner were duly signed by the Junior Engineer as well as the Assistant Executive Engineer, IWT, Jorhat Sub-Division.

13. Though, Ms. Bhattacharyya, learned counsel for the petitioner raised the issue that if the

petitioner was released w.e.f. 31.05.2017, there was no requirement of preparing the Attendance Register of the Muster Roll employee for the months from June, 2017 to October, 2017 incorporating the name of the petitioner at Sl. No. 59 amongst the Muster Roll Employees serving under the Assistant Executive Engineer, IWT, Jorhat Sub-Division. To that extent, Ms. Bhattacharyya, learned counsel for the petitioner submitted that though he was serving in the said field but there was no information to him that he was released from service w.e.f. 31.05.2017.

14. However, Ms. Bora, learned Standing counsel, IWT Department submitted that if the petitioner did not receive his monthly salaries from June, 2017 to October, 2017, he could have immediately raised the issue regarding non-receipt of his monthly salary before the concerned authority, but he has preferred this writ petition later in the month of March, 2018.

15. From the application form submitted by the petitioner before the Director of IWT, Guwahati on 29.03.1994 annexed to this writ petition by the petitioner as Annexure-1, it is seen that the petitioner at Sl. No. 6 relating to his educational qualification stated that he is a HSLC passed candidate from the Board of Secondary Education, Assam and at Sl. No. 9, the petitioner stated his age as 17 years on 01.03.1971.

16. Considering the same, the date of birth of the petitioner was found to be on 01.03.1954. As such, on attaining the age of superannuation at 60 years, the petitioner should have retired from service on 28.02.2014. Later, the petitioner had sworn an affidavit on 16.09.2010 stating that his date of birth as per Horoscope was 01.10.1957 (Annexure-3 to the petition) which he submitted before the Assistant Executive Engineer, IWT, Jorhat Sub-Division.

17. On perusal of the said affidavit filed by the petitioner on 16.09.2010, it can be seen that the petitioner himself stated that in the month of September, 2010, he was about 54 years. If in the year 2010, the petitioner was of 54 years then his date of birth was in the year 1956 and not in the year 1957.

18. It is seen from the said affidavit of the petitioner annexed to this writ petition as Annexure-3 that at Paragraph-1 though he stated that his actual date of birth as per horoscope was 01.10.1957, but the number 7 of 1957 appears to be overlapped/corrected.

19. The petitioner could not place any relevant document to establish that he rendered service from 01.06.2017 to 31.10.2017. By placing different documents with regard to his date of birth as Annexures to this writ petition, the petitioner raised disputed questions of facts pertaining to his date

of birth which is apparent from the records of the case.

20. Considering such disputed materials available in the record, the Court is not inclined to consider the case of the petitioner in exercise of the power under Article 226 of the Constitution of India with regard to his date of birth as 01.10.1957.

21. Accordingly, this writ petition, being devoid of any merit, stands dismissed.

JUDGE

Comparing Assistant