

GAHC010083282023



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

Case No. : WP(C)/2277/2023

TRAILOKYA BARUAH
S/O LATE DINO RAM BARUAH, R/O VILL-DOOMDOOMIA, P.O.-BALISATRA,
P.S.-BATRADAVA, DIST-NAGAON, ASSAM, PIN-782122

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, DEPARTMENT OF HEALTH SERVICES, DISPUR,
ASSAM, PIN-781006

2:THE DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABARI
GUWAHATI-781036

3:THE JOINT DIRECTOR OF HEALTH SERVICES
NAGAON
ASSAM

4:THE MEDICAL AND HEALTH OFFICER-I
I/C
UPPER DOOMDOOMIA MPHC
NAGAON
ASSAM

5:THE SUB-DIVISIONAL MEDICAL AND HEALTH OFFICER
DHING BPHC
DHING
NAGAON
ASSAM

6:THE PRINCIPAL GENERAL ACCOUNTANT (A AND E)
MAIDAMGAON
BELTOLA
GUWAHATI
ASSAM
PIN-781019

7:THE TREASURY OFFICER
NAGAON
ASSA

Advocate for the Petitioner

Mr. B. D. Das, Senior Advocate and Ms. K. Phukan, Advocate

Advocate for the respondents

Mrs. D. Borah, Standing Counsel, Health Department; Ms. A. Lala,
Standing Counsel, Accountant General (A&E) and Mr. R. Borpujari,
Standing Counsel, Treasury Officer, Nagaon.

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 03.05.2023

Date of Judgment : 03.05.2023

JUDGMENT AND ORDER (ORAL)

Heard Mr. B. D. Das, the learned senior counsel assisted by Ms. K. Phukan, the learned counsel for the petitioner and Mrs. D. Borah, the learned Standing Counsel appearing on behalf of the respondent Nos.1 to 5. Also heard Ms. A. Lala, the learned Standing Counsel appearing on behalf of the Principal General Accountant (A&E), Assam as well as Mr. R. Borpujari, the learned counsel appearing on behalf of the Treasury Officer, Nagaon.

2. The instant writ petition has been taken up for disposal at the motion stage.
3. The case of the petitioner herein is that the petitioner was appointed as the Pharmacist in the Manja Primary Health Centre, Karbi Anglong on 10.10.1984 on temporary basis, and

subsequently, the service of the petitioner was confirmed by the Chief Medical & Health Officer, Karbi Anglong, Diphu w.e.f 10.10.1984 vide an dated 12-9-1988. Accordingly, the Service Book of the petitioner was prepared by the authority at his initial place of posting after submission of his school certificates and other educational documents. It is further stated in the writ petition that pursuant to an order dated 02.11.1988 issued by the Additional Director of Health Services, Assam, the petitioner was transferred from his initial place of posting at Karbi Anglong to Upper Doomdomia Primary Health Centre situated in the district of Nagaon in the same capacity and posted against a newly created post vide Government letter No. HLA 441/87/34 dated 24.09.1987. Upon issuance of the order dated 02.11.2077, the petitioner was released from Manja Primary Health Centre, Karbi Anglong vide order dated 08.02.1989 issued by the Senior Medical & Health Officer, i/c, Manja Primary Health Centre, Manja, Karbi Anglong and on 09.02.1989, the petitioner joined in his new place of posting at Upper Doomdomia Primary Health Centre in the district of Nagaon. The petitioner thereupon continued to render his service.

4. In the month of September, 2022, a verbal communication was received by the petitioner from the office of the respondent No.3, i.e. the Director of Health Services, Nagaon that there was a discrepancy as regards his date of birth recorded in his Service Book and the date of birth as per the school certificate and admit card submitted by the petitioner at the time of joining his employment. It was informed to the petitioner by the respondent authority that the date of birth recorded in his Service Book was 01.07.1963 whereas in the certificates and admit card submitted by the petitioner, his age was shown as 16 years 10 months and 00 days as on 1st of March, 1977 and accordingly as per the date recorded in the H.S.L.C certificates and admit card, the date of birth of the petitioner should be 01.05.1960 instead of 01.07.1963 as recorded in the Service Book. The petitioner was informed by the respondent No.3 that in view of the date of birth shown in the school certificates and admit card, the petitioner ought to have retired on 31.05.2020, and as such, the process of disbursal of retirement benefits to the petitioner cannot be initiated unless and until the petitioner undertakes that he would have no objection if the pay and allowances

made to him during his overstayed period be adjusted towards his retirement benefits.

5. The petitioner thereupon as could be seen from the perusal of Annexure-5 to the writ petition submitted a communication to the Joint Director of Health Services in vernacular. The translated portion of the said communication is at Page No.33, Annexure-5 of the writ petition. In the said communication, the petitioner had agreed that there were discrepancies occurred as regards his date of birth recorded in the Service Book and his H.S.L.C Certificate, and as such, prayed that steps be taken to remove the discrepancies for smooth implementation of the process of payment of pension and he permitted the authority to deduct the amount which he ought to have returned to the Department from the amount which he was entitled to get from the Department following Government norms.

6. It is the specific stand of the petitioner in the writ petition that the said communication was issued by the petitioner under coercion and pressure employed upon him by the respondent. No.3. Thereupon, the petitioner was asked to submit for verification the original School Certificate and Admit Card for initiation of pension. It is the further case of the petitioner that the petitioner had lost the original school certificate and admit card for which he had applied for duplicate Admit Card and H.S.L.C Certificates through an application dated 31.10.2022 before the Secretary, Board of Secondary Education, Assam enclosing therewith the Police Report and the News Paper declaration. In pursuance to the said application dated 31.10.2022, the Competent Authority of the Board of Secondary Education, Assam issued duplicate Admit Card and Pass certificate of H.S.L.C Examination pertaining to the petitioner which was submitted by the petitioner before the respondent No.3. It appears from the admit card which is enclosed as Annexure-7A that the date of birth of the petitioner was recorded as 16 years 10 months 00 days on 01.03.1977. The HSLC enclosed as Annexure-7B also mentions the same date of birth.

7. Subsequent thereto, on 19.04.2023, the Joint Director to Health Services, Nagaon issued a communication to the petitioner informing him that as the date of birth is on 01.05.1960 as per the school certificate, his date of retirement from service is on 31.05.2020 and the petitioner was directed to submit his pension papers etc. for onward transmission to

the higher authority. The petitioner was also directed to handover the charge to the M&HO-I, i/c Upper Doomdomia MPHC, if not done accordingly. Further to that it was also mentioned in the said communication that if no information is received from the office, the petitioner will have to retire from service on 31.05.2020. The petitioner accordingly on 25.01.2023 handed over the charge to the Medical Officer, Upper Doomdomia MPHC and further mentioned that he had retired from service on 31.05.2020.

8. Thereupon, the SDM & HO, Dhing PHC, Nagaon issued a release order dated 01.02.2023 whereby the petitioner was released from Upper Doomdomia MPHC after attaining the age of retirement on 31.05.2020.

9. It is the further case of the petitioner as could be seen from a perusal of the writ petition that he strongly apprehends that the respondent No.3 would initiate the process for recovery of his overdrawn pay and allowances for the period w.e.f 01.06.2020 to 30.08.2022 from his retirement benefits and in the event of such steps taken, it would be in total violation of the Government of Assam guidelines based on Government of Assam Notification No. FAP/SC/9/76/5 dated 29.04.1976. The petitioner has also relied upon the judgment of the Supreme Court in the case of *The State of Punjab and Others –vs Rafiq Masih [White Washer]*, reported in (2015) 4SCC 334 and the notification issued by the Government of Assam dated 27.01.2022 wherein it has been mentioned that the recovery of overdrawn pay and allowance after the retirement was not permissible as the petitioner was a Class-III employee. It is on the basis of the above, the petitioner has approached this Court seeking a writ of mandamus thereby prohibiting the respondents from recovery/adjustment of the salary drawn by the petitioner from 01.06.2020 to 31.08.2022 and for a further direction upon the respondent authorities to pay the petitioner his pension GPF, Gratuity and other benefits, if any, at the earliest without any deduction from the salary, the petitioner received, i.e. from 01.06.2020 to 31.08.2022.

10. This Court upon hearing the learned counsel for the parties raised a specific query upon the learned counsel for the petitioner as to whether the petitioner had submitted any representation to the concerned respondent authorities, more particularly to the respondent

No.2 before filing of the instant writ petition more so when the petitioner had approached this Court only on an apprehension without there being any order by the respondent authorities for initiating recovery proceedings. The learned counsel for the petitioner submitted that no such representation has been submitted. In that view of the matter, this Court is of the opinion that as the law is already well settled by the judgments of the Supreme Court and this Court and the acceptance of the same by the Government of Assam as would be evident from a perusal of the Office Memorandum dated 27.01.2022, this Court is of the opinion that instead of entertaining the writ petition at this stage, it would be in the interest of justice that the petitioner approaches the respondent No.2 by filing a representation requesting the concerned respondent authority not to recover from the petitioner on account of over stay from the retirement benefits of the petitioner and also for claiming the pension as well as the pensionary benefits, more so taking into account that the petitioner rendered his service till 31.08.2022 as claimed without any objection from the respondents.

11. Accordingly this Court, therefore, disposes of the writ petition by giving liberty to the petitioner to submit a representation before the Director of Health Services, i.e. the respondent No.2 herein for finalization of pension as well as pensionary benefits as well as also for release of the provisional pension to the petitioner. In the said representation the petitioner would be at liberty to place the law declared by the Supreme Court in the case of *The State of Bihar & Others vs. Pandey Jagdishar Prasad*, reported in (2009) 3 SCC 117; *The State of Punjab and Others –vs Rafiq Masih [White Washer]*, reported in (2015) 4SCC 334 as well as the Office Memorandum dated 27.01.2022 issued by the Principal Secretary to the Government of Assam, Finance Department following the judgment of the Supreme Court in the case of *Rafiq Masih (White Washer)* (supra).

12. This Court further directs the petitioner to submit such representation if so advised within a period of 4 (four) weeks from the date of the instant order. Upon such representation being filed, the respondent authorities, more particularly, the respondent No.2 shall consider the case of the petitioner by taking into account the law declared by the

Supreme Court in the above two judgments as well as the Office Memorandum dated 27.01.2022 issued by the Principal Secretary to the Government of Assam, Finance Department. The respondent authorities shall thereupon pass a reasoned order on the said representation within 5 (five) weeks from the date of submission of the representation by the petitioner.

13. It is made clear that if the petitioner is aggrieved by such order being passed, the petitioner would be at liberty to assail the said order by way of an appropriate proceedings.

14. This Court further grants liberty to the petitioner to submit an application before the respondent No.2 for release of his provisional pension. The respondent No.2 shall, on receipt of the said application, give due consideration to the same by taking into account that the petitioner had rendered more than 30 years of service and the provision of Rule 22 of the Assam Services (Pension) Rules, 1969.

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

JUDGE

Comparing Assistant