

GAHC010105482019



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

Case No. : WP(C)/3223/2019

ABDUL HAKIM
S/O- LT AMBRUG ALI, R/O- VILL- KUNAPARA, P.O. UMARPUR, P.S.
BADARPUR, DIST- KARIMGANJ, ASSAM, PIN- 788806

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM EDUCATION
(HIGHER EDUCATION) DEPTT., DISPUR, GHY-6

2:THE DIRECTOR/DY. DIRECTOR
OF HIGHER EDUCATION
ASSAM
KAHILIPARA
GHY-19

3:THE PRINCIPAL/SECRETARY
NABINCHANDRA COLLEGE
BADARPUR
KARIMGANJ
ASSAM
PIN- 788806

4:THE SECRETARY
BOARD OF SECONDARY EDUCATION
ASSAM
GUWAHATI-21

Advocate for the Petitioner : G UDDIN

Advocate for the Respondent : SC, HIGHER EDU

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

29.05.2023

Heard Shri AK Azad, learned counsel appearing on instructions of Shri G Uddin, learned counsel for the petitioner. Also heard Shri S Das, learned Standing Counsel, Education (Higher) Department, Assam whereas Shri DK Roy, learned Standing Counsel, Board of Secondary Education, Assam (SEBA) is present for the respondent no. 4.

2. Considering the subject matter in question and the fact that the respondent no. 4–SEBA has filed the affidavit, this writ petition, which is pending since the year 2019, is taken up for disposal at the admission stage.

3. The facts projected are that the petitioner is serving as a Lower Division Assistant (LDA) at the Nabinchandra College (hereinafter referred to as the College) in the district of Karimganj. His appointment relates back to 16.10.1992 initiated by the Governing Body of the College whereafter, his service was approved vide an order dated 19.06.2009 by granting regular scale of pay w.e.f. 01.05.2009.

4. The controversy raised is with regard to the date of birth of the petitioner. At the outset, it may be mentioned that the trend of this Court in matters pertaining to date of birth is a strict one whereby such practice of applying for correction of date of birth at the fag end of service period is discouraged. However, the facts of the instant case are something different which would be revealed by the subsequent narration. The petitioner appeared in the HSLC examination and on the Admit Card, his date birth was recorded as 30.01.1964 which, according to the petitioner, was incorrectly done

and his actual date of birth is 30.01.1968. The petitioner claims to have applied to the concerned authority, namely, the SEBA by submitting an application dated 21.07.1998. As no action was taken, the petitioner had submitted a second application on 10.12.2014 for correction and the said application was duly forwarded by the Inspector of Schools, Karimganj to the SEBA vide a forwarding letter dated 16.12.2014. The SEBA, after due deliberation and examination, vide order dated 27.05.2015 had corrected the date of birth of the petitioner as 30.01.1968. Immediately after receipt of such communication regarding correction, the petitioner submitted an application to the Director of Higher Education on 23.06.2015 with a request to make consequential correction in the Service Book of the petitioner. The said application was kept pending for about 2 years whereafter, vide the impugned order dated 23.10.2017, the request was rejected on the ground that the correction should have been done within 2 years from the date of publication of the result. For ready reference, the observation made in the impugned order is extracted hereinbelow:

“ With reference to your letter on the subject cited above, I am directed to state that Date of Birth can be corrected within 2 years of exam and not beyond that i.e. after 20 years.

In view of the above, Original Certificate of HSLC Examination and original service book of Abdul Hakim, L.D. Asstt. of your college are returned herewith.”

5. As would be evident from the said order, the original HSLC certificate and the original Service Book of the petitioner were, accordingly returned to the college.

6. Shri Azad, learned counsel for the petitioner submits that the aforesaid rejection is not sustainable in law, as the same has been done without citing any cogent reason.

Referring to SR 8-C, he has submitted that the power has been vested upon the Head of the Department to alter the recorded date of birth in case of Non-Gazetted Government servant on being satisfied after an inquiry that the previous date of birth was incorrect. He submits that the reason appearing in the impugned order does not reflect that the procedure laid down in the aforesaid provision was followed. He further submits that the reason assigned is not at all germane which is required to be made as per the prescription of law. Shri Azad, learned counsel, accordingly submits that the aforesaid order is liable to be interfered with, more so when the date of superannuation of the petitioner is approaching and there is only some months of the service period is left.

7. Before dealing with the submission made on behalf of the Department, this Court deems it fit to record in this order that the authenticity of the correction by SEBA regarding the date of birth has not been disputed and rather, in the affidavit filed, the same has been admitted by SEBA.

8. Shri Das, learned Standing Counsel, Education (Higher) Department, while defending the impugned order, has submitted that applications for correction of date of birth are not liable to be entertained at the fag end of the service career. He submits that there are number of judicial pronouncements in this regard, as the same would open a floodgate of applications by unscrupulous employees who would like to get their superannuation extended on the issue of an incorrect date of birth recorded in the Service Book.

9. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

10. The issue which arises for determination is the validity and the procedure adopted for passing the impugned order dated 23.10.2017. The rejection of the case of the petitioner for correction of his date of birth, as discernible from the impugned order, is not because the same has been applied at the fag end of the service career but on the reason that the date of birth can be corrected within 2 years of the examination and not beyond that i.e., after 20 years. The said reason, in the context of the instant case, would be wholly irrelevant, as the correction was done by the appropriate authority, namely, SEBA which was accepted by all concerned. The correction was done in the year 2015 and only after such correction, the petitioner could have applied for consequent correction of the date of birth in the Service Book of the petitioner. The reasons assigned, in the opinion of this Court, are beyond the jurisdiction and ambit of the powers of the authority passing the impugned order dated 23.10.2017. Though the authority was vested with the power to be satisfied by holding an inquiry, that not having been done, the impugned order with the reasons assigned cannot be held to be sustainable in law.

11. This Court has also find force in the arguments made on behalf of the petitioner based upon SR 8-C which lays down the procedure for correction and in the instant case, the rejection not being on the ground of delay in applying for such correction in the Service Book or the same being done at the fag end of the service career, this Court is of the opinion that the impugned order dated 23.10.2017 is not backed by the sanction of law. This Court has also noticed that the application for correction was done at the earliest possible after the correction was done by the SEBA in the Admit Card pertaining to HSLC examination of the petitioner and that was also prior to more than 5 years of the date of superannuation. Therefore, even that aspect which has been sought to be argued on behalf of the Department may not be factually correct.

12. In view of the aforesaid discussions, this Court while setting aside the impugned

order dated 23.10.2017, directs the authorities, more particularly, the respondent no. 2 to make necessary correction in the Service Book of the petitioner regarding his date of birth expeditiously and in any case, within an outer limit of 2 months from today, as it has been submitted that the petitioner hardly has 5 months of service period left which has been reckoned from the incorrect date of birth.

13. The petitioner may submit a certified copy of this order to the respondent no. 2-Director, Higher Education, Assam.

14. The writ petition is, accordingly disposed of.

JUDGE

Comparing Assistant