

GAHC010105722020



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

Case No. : WP(C)/3119/2020

BIPUL DAS AND 8 ORS.

S/O- LATE BENGAL DAS, R/O- VILL UPPER KURUA, P.O- KURUA, P.S-
SIPAJHAR, DIST- DARRANG, ASSAM

2: GIRISH DAS

S/O- LATE MUKUTA DAS
R/O- VILL- RANGAMAHAL
P.O- RANGAMAHAL
P.S- NORTH LAKHIMPUR
DIST- KAMRUP
ASSAM
R/O- VILL- UPPER KURUA
P.O- KURUA
P.S- SIPAJHAR
DIST- DARRANG
ASSAM

3: MAHENDRA DAS

S/O- LATE DHARANI DAS
R/O- VILL- UPPER KURUA
P.O-KURUA
P.S- SIPHAJHAR
DIST- DARRANG
ASSAM

4: UPEN DAS

S/O- LATE LALIT DAS
R/O- VILL JALJALI
P.O- DWARKUCHI
DIST- KAMRUP
ASSAM

5: MD. SULEMAN ALI

S/O- LATE OSIMUDDIN SEIKH

R/O- VILL-ALIKASH
P.O- GHANSMALI
P.S- KHARUPETIA
DIST- DARRANG
ASSAM

6: DIMBESWAR DEKA
S/O- LATE ANANDI RAM DEKA
R/O- NO.1 AMGURI
P.O- AMGURI
DIST- DARRANG
ASSAM

7: PETITIONER 7 IS DELETED
AS PER ORDER DATED 25.10.2021 PASSED IN IA(C)/1463/2021.

8: UPEN SAHARIAH
S/O- LATE PURNA RAM SAHARIA
R/O- VILL- GADHIAPARA
P.O- CHAPAICHOWKA
P.S- MANGALDAI
DIST- DARRANG
ASSAM
PIN- 784145

9: BASUNDHAR DEKA
SON OF LATE CHAMAK CH.DEKA
RESIDENT OF VILLAGE- GAKHIR KHOWAPARA

P.O.- JANARAMCHOWKA

P.S.- MANGALDAI
DIST- DARRANG
ASSAM.
PIN- 784145

VERSUS

THE GOVT. OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
IRRIGATION DEPTT, DISPUR, GUWAHATI- 06

2:THE PRINCIPAL SECRETARY
TO THE GOVT OF ASSAM
FINANCE DEPTT
DISPUR
GUWAHATI- 781006

3:THE CHIEF ENGINEER
IRRIGATION DEPTT
ASSAM
CHANDMARI
GUWAHATI- 781003

4:THE EXECUTIVE ENGINEER
MANGALDAI DIVISION (IRRIGATION)
P.O- MANGALDAI
DIST- DARRANG
ASSA

Advocate for the Petitioner : MR. J SARMAH

Advocate for the Respondent : SC, IRRIGATION

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

21.06.2023.

1. Heard Mr. J. Sarma, learned counsel for the petitioners. Also heard Mr. N. Upadhyay, learned Standing Counsel for the Irrigation Department representing the respondent Nos. 1, 3 and 4 and Mr. B. Gogoi, learned Standing Counsel for the Finance Department representing the respondent No. 2.
2. The present writ petitioners were Muster Roll Workers posted in Mangaldai Irrigation Division. Their services were regularized in the year 2005. Subsequently, the Executive Engineer, Mangaldai Division by an order dated 02.11.2018, released the petitioners from service with effect from different dates as given in the individual order dated 02.11.2018, on the ground that the petitioners have attained superannuation on that day on attaining the age of 60 years.

3. It is the claim of the petitioners that such course of action is misconceived inasmuch as such order has been issued on the basis of wrong date of birth recorded in their order of regularization whereas their actual date of birth is different.
4. Mr. Upadhyay, learned Standing Counsel for the Irrigation Department has submitted that in view of such dispute, an Enquiry was conducted by the employer department and after enquiry, it was found that in fact, the date of birth of the petitioners were wrongly recorded in the order of regularization and on the basis of such date of birth entered, the petitioners were asked to go on superannuation calculating the age of 60 years on the basis of such date of birth entered into the order of regularization. Therefore, on the basis of such enquiry, a corrigendum has been issued by the Government of Assam in the Department of Irrigation on 14.06.2023 correcting the date of birth. Such corrigendum issued is quoted herein below:-

“CORRIGENDUM

Dated Dispur, the 14th June, 2023.

No. IGN-14018/137/2023-ESTT/58: Please read the respective Dates of Birth in respect of the following regularized Master Roll Workers under erstwhile Mangaldai Division (Irrigation), Mangaldai now renamed as Mangaldai-Dalgaon-Sipajhar Division (Irrigation), Mangaldai, as in column 'B' of the table below instead of those in column 'A' which got inadvertently mentioned in the Govt. Regularization Order Vide No. IGN(E)/104/2003/198, dtd. 03.10.2005.

This is issued on the basis of HSLC/ School certificates of the concerned employees, duly verified from SEBA/ concerned school authorities/ Inspectors of Schools and in

cancellation of earlier Corrigendum issued vide No. IGN(E)/74/2018/288 dated 29.04.2022.

SL No.	Name of employee	A Date of Birth recorded in the Govt. regularization order	B (Date of birth as corrected)
1.	Shri Upen Saharia, Khalashi	12.02.1958	07.07.1960
2.	Shri Pradip Ch. Kalita, Helper	01.01.1959	01.01.1961
3.	Shri Basundhar Deka, Khalashi	18.10.1957	02.10.1965
4.	Sri Phukan Ch. Deka, Khalashi	01.01.1957	02.03.1960
5.	Shri Bipul Das, Chowkider	01.03.1958	01.03.1969
6.	Shri Girish Das, Helper	14.04.1958	07.08.1970
7.	Shri Mahendra Das, Helper	02.02.1958	30.11.1973
8.	Shri Upen Das, Helper	01.03.1957	01.01.1969
9.	Shri Suleman Ali, Chowkider	10.08.1958	30.04.1975
10	Shri Dimbeswar Deka, Helper	13.06.1957	13.06.1959

Sd. (D. roy chowdhury)

Under Secy.(E) to the Govt. of Assam

Irrigation Department, Dispur”.

5. Out of the aforesaid 10 persons, except the person at Sl. No. 2 and Sl. No. 4 are the petitioners herein. Even on the basis of corrected date of birth, the petitioner Nos. 6 and 7 whose names are reflected at Sl. No. 1 and Sl. No. 10 otherwise had attained the age of superannuation.
6. In the aforesaid view of the matter, this Court is of the considered opinion that the petitioner Nos. 6 and 7 whose names are reflected at Sl. No. 1 and Sl. No. 10, respectively shall be entitled for their arrears of salary from the date of their release on the basis of impugned order dated 02.11.2018 till their date of retirement in terms of the aforesaid communication dated 14.06.2023.
7. The principle of no work no pay could not be applicable in the considered opinion of this Court in the given case for the reason that it was not the fault of the petitioners that they were out of job but for the miscalculation of age by their employer, therefore, they cannot be deprived of the aforesaid back wages/ salary.
8. So far relating to the other petitioners, in view of the aforesaid determination be taken back to their service and they also be paid their back wages/ salary from the date of their release on the basis of the impugned order dated 02.11.2018 till their reinstatement in service on the basis of corrected date of birth in terms of the aforesaid communication dated 14.06.2023.

9. It is also made clear that if the petitioner Nos. 6 and 7 are entitled for pensionary benefit, same be calculated on the basis of their actual date of retirement on the basis of correction made by the aforesaid communication dated 14.06.2023. The respondent authorities be paid the back wages/ salary to the petitioners within a period of six months from the date of serving a copy of this order before the employer.
10. With the aforesaid, this present writ petition stands disposed of.

JUDGE

Comparing Assistant