

GAHC010124092020



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

Case No. : WP(C)/3825/2020

BHUPEN CHANDRA GOSWAMI @ BHUPEN GOSWAMI
RETIRED VETERINARY FIELD ASSISTANT, VILLAGE KHATIAMARI, PO
JHAROBARI, PS PALASHBARI KARMUP R ASSAM 781122

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
ANIMAL HUSBANDRY AND VETERINARY DEPARTMENT DISPUR,
GUWAHATI 781006

2:THE DIRECTOR OF ANIMAL HUSBANDRY AND VETERINARY
DEPARTMENT
ASSAM GUWAHATI 781003

3:THE DEPUTY DIRECTOR
ICDP AND FSC
ANIMAL HUSBANDRY AND VETERINARY DEPARTMENT
ASSAM KHANAPARA
GUWAHATI 781022

4:THE DEVELOPMENT OFFICER (PIG
SHEEP AND GOAT)
ANIMAL HUSBANDRY AND VETERINARY DEPARTMENT
ASSAM GUWAHATI ASSAM 781003

5:THE DISTRICT ANIMAL HUSBANDRY AND VETERINARY DEPARTMENT
JORHAT

6:THE ACCOUNTANT GENERAL (A AND E)
MAIDAMGAON
BELTOLA ASSAM

Advocate for the Petitioner : DR. N DEKA
Advocate for the Respondent : GA, ASSAM

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

21-08-2023

Heard Ms. D. Borgohain, learned counsel for the petitioner and Ms. M. M. Kakati, Standing counsel, for the Animal Husbandry and Veterinary Department for the respondent Nos. 1 to 5 and Mr. D. Rabha, learned Standing Counsel, AG (A&E), Assam for the respondent No.6.

2) The petitioner, served as Veterinary Field Assistant in the office of the Deputy Director, Animal Husbandry and Veterinary Department (ICDP & FSC), Khanapara, Guwahati-22. In his Service Book, the date of birth of the petitioner is recorded as 1st May of 1958 (01.05.1958). The Deputy Director of A.H. and Vety. Deptt. (ICDP & FSC), Khanapara, Guwahati by his letter under Memo No. ICDP & FSC/R-2/2018-19/77-79 dated 08.05.2018 informed the petitioner that since his date of birth has been recorded in his Service Book as 01.05.1958, he shall retire from service on 31.05.2018 on superannuation (at 60 years) and directed him to submit his pension papers (Annexures-8 to this petition). Accordingly, the petitioner retired from service on 31.05.2018 and submitted his pension papers before the authority concerned in the AH and Vety. Deptt.

3) However authorities in the AH and Vety. Deptt., Assam by letter under Memo No. PI-8452/2019-20/3704 dated 31.07.2019 returned the pension proposal of the petitioner stating that though he was allowed to retire from service on 31.05.2018 considering his date of birth appeared in his service book as 01.05.1958 that was calculated on the basis of his horoscope; but as per High School Leaving Certificate Examination 1977 issued by the Principal of Palashbari R.B. Higher Secondary & Multi Purpose School, Mirza, District Kamrup his date of birth falls on 02.05.1953 and therefore, he should have retired from service on 31.05.2013 (Annexures-10 to this petition).

4) By the said letter dated 31.07.2019 the respondents in the AH and Vety. Deptt., Assam

directed the Deputy Director, AH & Vety. Deptt. (ICDP & FSC), Khanapara, Guwahati to re-submit the pension proposal of the petitioner after correcting his date of birth as 02.05.1953 and his date of retirement as 31.05.2013 along with over-drawl statement of the pay and allowances drawn by him for the period from 01.06.2013 to 31.05.2018 for recovery, by forwarding a copy of the said letter to the petitioner.

5) The petitioner thereafter, filed representation on 06.08.2019 before the Director of AH & Vety. Deptt., requesting him to release his monthly pension and other pensionary benefits without further delay that was received by the office of the said Director on 08.08.2019.

6) As the respondent authorities did not take any action to release his pensionary benefits, the petitioner has filed this writ petition.

7) During pendency of this writ petition, the respondents in the Vety. Deptt., by order under Memo No. PI-8452/2020-21/1200-03 dated 14.07.2021 allowed provision pension @ Rs. 7,575/- from 01.06.2013 with medical allowance of Rs. 600/- also from 01.06.2013 till the issue of Final Pension Pay Order by the Accountant General, Assam, respondent No.6. Being aggrieved with the said order dated 14.07.2021, the petitioner filed the connected I.A.(C) No. 3260/2022 and the Court by order dated 17.03.2023 passed in said I.A.(C) No. 3260/2022 observed that its decision shall be subject to the present writ petition and the same shall be taken up for disposal along with the main writ petition.

8) As per the High School Leaving Examination Certificate, 1977 conducted by the Board of Secondary Education, Assam (SEBA) and the Certificate issued in that regard by SEBA on 27.06.1977 (Annexure-2 to this petition) as well as the Certificate issued by the Principal of R. B. Higher Secondary and Multi Purpose School, Mirza on 08.07.1977 (Annexure-3 to this petition), issued in favour of the petitioner, it is seen that he was 23 years 10 months as on 1st March, 1977. Considering the same, the date of Birth of the petitioner was on 02.05.1953.

9) However, the respondent authorities in the Animal Husbandry and Veterinary Department, Assam accepted the date of birth of the petitioner as 01.05.1958 as recorded in his Service Book (Annexure - 6 to this petition) as per the horoscope of the petitioner (Annexures - 4 and 5 to this petition). The date of birth of the petitioner as 01.05.1958 that

has been accepted by the respondent authorities can also be seen from the communication dated 08.05.2018 of the Deputy Director of AH & Vety. Deptt., dated 08.05.2018 (Annexure-8 to this petition) by which the petitioner was informed that he will retire from service on 31.05.2018 and accordingly he was directed to submit his pension papers before the said authority.

10) It is settled that the respondent authorities unilaterally alter the date of birth of the petitioner that too, after retirement from service on 31.05.2018, considering his date of birth as recorded in his Service Book, without making any enquiry and without complying the Rules of natural justice [Sarju Prasad Vs. General Manager, reported in (1981) 3 SCC 544].

11) It is also seen that petitioner rendered his service upto 31.05.2018 and his service was accepted by the respondent authorities upto 31.05.2018.

12) For the reasons above, at a belated stage, without making any enquiry the respondent authorities cannot alter his date of birth to 02.05.1953 holding that he should have retired from service on 31.05.2013 though on the basis of his date of birth recorded in his Service Book as 01.05.1958, the petitioner served upto 31.05.2018 and retired from service on attaining the age of superannuation at 60 years.

13) Accordingly, the impugned communication under Memo No. PI-8452/2019-20/3704 dated 31.07.2019 issued by the Development Officer, (Pig, Sheep and Goat) Animal Husbandry and Veterinary Department, Assam, Guwahati is set aside and quashed.

14) Consequently, order under Memo No. PI-8452/2020-21/1200-03 dated 14.07.2021 issued by the Director Animal Husbandry and Veterinary Department, Assam, Guwahati is also set aside and quashed.

15) Considering the above, the respondents in the Animal Husbandry and Veterinary Department are directed not to recover any such payment made to the petitioner during the period of his alleged overstay in service from 01.05.2013 to 31.05.2018.

16) In the meanwhile, if the respondent authorities in the Animal Husbandry and Veterinary Department have not submitted the pension proposal of the petitioner, then the said Department shall submit the pension proposal of the petitioner forthwith on submission of the certified copy of this order by the petitioner before the Director of Animal Husbandry

and Veterinary Department, Assam considering the date of superannuation of the petitioner at the age of 60 years on 31.05.2018.

17) The petitioner shall submit all the relevant documents before the Director of Animal Husbandry and Veterinary Department along with a certified copy of this order on or before 30.10.2023 obtaining necessary acknowledgement from the said authority. The petitioner shall also furnish all the necessary documents, filling up all the necessary forms, his photographs and signatures.

18) On submission of such pension proposal of the petitioner before the Accountant General (A&E), Assam as directed above, the same shall be processed within a period of 60 days. Thereafter, the entire process shall be completed on or before 29.02.2024 by issuing necessary regular Pension Pay Order to the petitioner considering the fact that he retired from service on 31.05.2018 on attaining the age of superannuation at the age of 60 years.

19) Until the payment of regular pension, the petitioner shall be paid provisional pension and all other pensionary benefits, forthwith, as per his entitlement, that is due to him, considering that the petitioner is without any pensionary benefits since 01.06.2018, for last more than five years.

20) With the above observation and direction, this writ petition stands disposed of.

JUDGE

Comparing Assistant