

GAHC010125632015



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

Case No. : WP(C)/7856/2015

RAM GIRI
S/O LT. GOVINDA GIRI, R/O BHABANI NAGAR, W/NO.12, DHUBRI TOWN,
P.O. and DIST- DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM, DEPTT.
OF LABOUR, DISPUR, GHY-6

2:THE ADMINISTRATIVE MEDICAL OFFICER
EMPLOYEES STATE INSURANCE E.S.I. SCHEME
PANCHADEEP BHAWAN
BAMUNIMAIDAN
GHY-21
DIST- KAMRUP METRO
ASSAM

3:THE INSURANCE MEDICAL OFFICER
EMPLOYEES STATE INSURANCE E.S.I. SCHEME DISPENSARY
DHUBRI

4:SENIOR AUDIT OFFICER

O/O THE PRINCIPAL ACCOUNTANT GENERAL AUDIT
ASSAM
BELTOLA
GUWAHATI
ASSA

Advocate for the Petitioner : MS.M BHATTACHARJEE

Advocate for the Respondent : SC, AG

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 13/03/2023

Heard Mr. K. Bhattacharjee, learned counsel appearing for the writ petitioner. Also heard Mr. T.C. Chutia, learned Additional Senior Government Advocate, Assam, appearing for the respondent no.1 and Mr. R. K. Talukdar, learned Standing Counsel, AG, Assam, representing the respondent no. 4. None has appeared for the respondent nos. 2 and 3 although they were duly served in this case.

The facts of this case lie in a narrow campus. The writ petitioner herein was employed in a Grade-IV post under the respondent no. 3 on 01/04/1975. He served under the respondent no. 3 as a Night Chowkidar. As per the entry made in the Service Book of the petitioner, his date of birth was recorded as 01/01/1954. Since the date of retirement of the employees serving under the respondent no. 3 was 60 years, hence, according to his recorded date of birth, the petitioner would have retired from service on attaining the age of superannuation with effect from 31/12/2014. However, just a few years prior to his retirement, his employer i.e. the respondent no. 3 had unilaterally altered his date of birth recorded in the Service Book from 01/01/1954 to 01/05/1952, without notice to the petitioner. Consequently, the petitioner was asked to go on retirement with effect from 30/04/2012. The pension paid to the petitioner is also by taking account his date of retirement from service as 30/04/2012.

Assailing the pre-mature retirement of the petitioner from service, Mr. Bhattacharjee has argued that once an entry regarding date of birth of the employee is made in the Service Book, the same cannot be altered by the employer, unilaterally, that too, to the detriment of the employee, without giving him an opportunity to show cause. In support of his above argument, Mr. Bhattacharjee has placed reliance upon a decision of the Hon'ble Supreme Court of India rendered in the case of ***Shankar Lal Vs. Hindustan Copper Ltd. and others*** reported in ***2022 0 Supreme(SC) 336***. Mr. Bhattacharjee has, therefore, prayed for an order interfering with the date of retirement of the petitioner and also to issue a Writ of Mandamus directing the respondents to give notional benefit of service up to 31/12/2014 to the petitioner for the purpose of computation of his pension.

Mr. T.C. Chutia, learned Additional Senior Government Advocate, Assam, on the other hand,

submits that there were certain discrepancies /over-writing in the Service Book, which had prompted the employer to take the aforesaid recourse. However, according to Mr. Chutia, the respondent no. 3, which is the employer of the petitioner, not being present before this Court, there was no scope for him to improve on the case of the respondents. Similar is the stand of Mr. R.K. Talukdar, learned Standing Counsel, AG, Assam, appearing for the respondent no. 4.

As noted above, there is no dispute in this case, about the fact that the writ petitioner was serving under the respondent no. 3 in a Grade-IV post and he had retired from service with effect from 30/04/2012, purportedly on attaining the age of superannuation.

It also appears from the materials available on record that the age of the petitioner, as recorded in the Service Book was 01/01/1954, but the same was altered unilaterally by the employer and re-recorded as 01/05/1952. There is also no dispute in this case that the alteration of the age of the petitioner was done without giving any opportunity of being heard to him. Based on such altered age, the period of service of the petitioner was reduced and he was sent on retirement with effect from 30/04/2012.

In the case of ***Shankar Lal (Supra)***, the Supreme Court has taken note of the decision of the employer to unilaterally alter the date of birth of the employee and held that such a recourse was impermissible in the eye of law, firstly, on account of not adhering to the Principles of Natural Justice and secondly, the principle that there can be no alteration in the date of birth of an employee at the fag end of the service would be equally applicable to the employer as well as the employee.

After careful analysis of the facts and circumstances of the case, I am of the unhesitant opinion that the ratio laid down in the case of ***Shankar Lal (Supra)*** would be squarely applicable in the present case as well. The respondent no. 3 had clearly committed an error in unilaterally altering the age of the petitioner recorded in the Service Book when the writ petitioner was just on the verge of retirement and compelled the petitioner to go on retirement prior to completion of his normal tenure as per the date of birth originally recorded in his service book which was 01/01/1954.

Whether there was any justifiable ground for the authority to do so or not, cannot be an issue in this proceeding, since no opportunity whatsoever, was granted to the petitioner to show cause in the matter. The above exercise in altering the recorded date of birth of the petitioner in the service book without putting him on notice has to be held to be arbitrary and illegal warranting interference by this Court.

For the reasons stated herein above, this Court is of the opinion that the writ petition succeeds and is hereby allowed.

However, since the petitioner has already retired from service, this Writ petition is being disposed of by directing the respondents to treat the petitioner to be in service upto 31/12/2014 for the purpose of notional fixation of his pay/pension and accordingly, give him the arrear pensionary dues, if any, payable as per Rules.

The aforesaid exercise be carried out and completed within a period of 90(ninety) days from the date of receipt of a certified copy of this order.

JUDGE

sukhamay

Comparing Assistant