

GAHC010140932023



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

Case No. : Review.Pet./82/2023

THE INSURANCE MEDICAL OFFICER
EMPLOYEES STATE INSURANCE E.S.I. SCHEME DISPENSARY, DHUBRI,
REPRESENTED BY DR. PABITRA KUMAR DAS, 62 YEARS, S/O LATE
KAMALA KANTA HIRA, RESIDENT OF VILLAGE DEOHATI PART II, PO AND
PS ABHAYAPURI, DIST BONGAIGAON ASSAM 783384

VERSUS

RAM GIRI AND 3 ORS.
S/O LT. GOVINDA GIRI, R/O BHABANI NAGAR, W/NO.12, DHUBRI TOWN,
P.O. and DIST- DHUBRI, ASSAM

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM
DEPTT. OF LABOUR
DISPUR
GHY-6

3:SENIOR AUDIT OFFICER

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

4:THE ADMINISTRATIVE MEDICAL OFFICER
EMPLOYEES STATE INSURANCE E.S.I. SCHEME
ASSAM
HOUSE NO. 19
BYE LANE 2 BACK SIDE OF ESIC MODEL HOSPITAL
BELTOLA

JAWAHARLAL NAGAR
PO KHANAPARA
GUWAHATI
ASSAM 78102

Advocate for the Petitioner : MR F U BARBHUIYA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 20-11-2023

Heard Mr. F.U. Barbhuiya, learned counsel for the petitioner. Also heard Mr. K. Bhattacharjee, learned counsel for the respondent No. 1/ writ petitioner. Mr. J.K. Goswami, learned counsel is present on behalf of respondent No. 2 and Mr. R.K. Talukdar, learned counsel is present on behalf of respondent No. 3.

The review petitioners were the respondent Nos. 2 and 3 in the connected writ petition preferred by the respondent Ram Giri as writ petitioner assailing the decision of the authorities to send him on retirement w.e.f. 30-04-2012 by unilaterally altering the entries in the service book of the petitioner, that too, when he was on the verge of his retirement. According to the writ petitioner, he would have retired from service on attaining the age of superannuation w.e.f. 31-12-2014 but due to the manipulation in the service book, he has been prematurely asked to go on retirement w.e.f. 30-04-2012.

The review applicants did not appear when the writ petition was taken up for hearing.

After considering the submissions of the parties and on perusal of the materials available on record, this Court had found that the impugned action of the respondent Nos. 2 and 3 in the writ petition, in altering the service book of the writ petitioner without putting him on notice was arbitrary and illegal. As such, by the order dated 13-03-2023 the W.P.(C) No. 7856/2015 preferred by the respondent No. 1/ writ petitioner, the writ

petition was disposed of with the following direction:-

“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 up to 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.”

Mr. F.U. Barbhuiya, learned counsel for the review petitioner submits that if the order of the Court is allowed to stand in its present form, then the petitioner would have to be treated to be in service till attaining the age of 61 years, which will be de hors the rules. In order to drive home his point, the learned counsel for the review petitioner has addressed elaborate arguments.

However, after hearing the submissions of the learned counsel, this Court is of the opinion that entertaining the plea raised by the review petitioner would lead to rehearing the writ petition on merits, which would not be permissible in a review petition. Nothing has been pointed out to show that there was any error apparent on the face of the record calling for allowing in this review petition. In a review petition, the Court cannot enter into the merit of the matter afresh.

If the petitioner is, in any manner, aggrieved by the judgment and order dated 13-03-2023 passed by this Court, the remedy would lie elsewhere and not in a review petition.

With the above observation, this writ petition stands disposed of.

JUDGE

GS

Comparing Assistant