

GAHC010153232022



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

Case No. : WP(C)/5047/2022

MS RADHIKA RABIDAS
D/O- LATE BISHNU PRASAD RABIDAS, VILLAGE- SIBBARI ROAD, HOJAI
TOWN, DISTRICT- HOJAI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, DEPARTMENT OF AGRICULTURE, DISPUR,
GUWAHATI-06.

2:THE DEPUTY SECRETARY TO THE GOVERNMENT OF ASSAM
AGRICULTURE DEPARTMENT
DISPUR
GUWAHATI-06.

3:THE DIRECTOR OF AGRICULTURE
ASSAM
KHANAPARA
GUWAHATI-22.

4:THE ADMINISTRATIVE OFFICE
DIRECTORATE OF AGRICULTURE
ASSAM
KHANAPARA
GUWAHATI-22.

5:THE EXECUTIVE ENGINEER (AGRI)

NAGAON DIVISION
NAGAON
ASSAM

PIN- 781010.

6:THE ASSTT. EXECUTIVE ENGINEER (AGRI)
HOJAI SUB-DIVISION
HOJAI
PIN- 782435.

7:THE DEPUTY COMMISSIONER
HOJAI
SANKARDEV NAGAR
PIN- 782442

Advocate for the Petitioner : MRS. P BARMAN (BORKAKOTI)

Advocate for the Respondent : SC, AGRI. DEPARTMENT

Linked Case : WP(C)/1320/2022

RADHIKA RABIDAS
D/O. LT. BISHNU PRASAD RABIDAS
VILL. SIBBARI ROAD
HOJAI TOWN
DIST. HOJAI
ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
DEPTT. OF AGRICULTURE AND ANIMAL HUSBANDARY
DISPUR
GUWAHATI-06.

2:THE DIRECTOR OF AGRICULTURE

ASSAM
KHANAPARA
GUWAHATI-22.
3:THE EXECUTIVE ENGINEER (AGRI)

NAGAON DIVISION
NAGAON

ASSAM
PIN-782010.
4:THE ASSTT. EXECUTIVE ENGINEER (AGRI)

HOJAI SIB DIVISION
HOJAI
PIN-782435.
5:THE DEPUTY COMMISSIONER

HOJAI
SANKARDEV NAGAR
PIN-782442.

Advocate for : MRS. P BARMAN (BORKAKOTI)
Advocate for : GA ASSAM appearing for THE STATE OF ASSAM AND 4 ORS

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 20-07-2023

Heard Mrs. P. Barman, learned counsel for the writ petitioner. Also heard Ms. G. Bora, learned standing counsel, Agriculture Department, Assam appearing on behalf of respondent Nos. 1 to 4 in both these writ petitions. Mr. C.S. Hazarika, learned Govt. Advocate, Assam has appeared on behalf of respondent No. 5, i.e. the Deputy Commissioner, Hojai at Sankardev Nagar.

2. These two writ petitions have been filed by the same petitioner being primarily aggrieved by the order of the department sending her on premature retirement. The facts of the case, in a nutshell, are that the writ petitioner herein was originally engaged as a Muster-Roll worker w.e.f. 01-06-1988 under the Executive Engineer (Agri), Hojai, i.e. the respondent No. 3. Her service as muster-roll worker was thereafter, regularized w.e.f. 05-

10-2005 and she was appointed as office peon. However, in the order dated 05-10-2005, the date of retirement of the petitioner was shown as 30-09-2021. According to the writ petitioner her date of birth as per High School Leaving Certificate (HSLC) issued by the Board of Secondary Education, Assam (SEBA), is 08-09-1969. As such, the age of superannuation of the petitioner on attaining the age of 60 years, would be 30-09-2029. The writ petitioner, therefore, claims that she has been prematurely retired from service.

3. Mrs. Barman, learned counsel for the writ petitioner submits that by taking note of the date of birth of the petitioner recorded in her HSLC Admit Card, the authorities have also entered the date birth of the petitioner as 08-09-1969 in her service book. Notwithstanding the same, by the order dated 01-10-2021, the petitioner was relieved from duty purportedly on attaining the age of superannuation of 60 years. Thereafter, by the order dated 07-03-2022 as well as the subsequent order dated 11-03-2022, the request for correction of date of retirement of the petitioner were also rejected. When the request of the petitioner for correction of her age of superannuation was not acted upon, the petitioner had approached this Court by filing W.P.(C) No. 1320/2022 assailing the order dated 01-10-2021. During the pendency of the aforesaid writ petition, the petitioner has instituted the W.P.(C) No. 5047/2022 assailing the orders dated 07-03-2022 and 11-03-2022.

4. By referring to the materials available on record, the learned counsel for the petitioner has argued that not only the HSLC Admit Card but even the other certificates issued by the school authorities where the petitioner had studied, records her date of birth as 08-09-1969. Taking note of the grievance expressed by the petitioner, the office

of the Accountant General (Audit), Assam had also categorically observed that the date of retirement of the petitioner was recorded as 30-09-2021 in her service book but there is no supporting document in respect thereof. Notwithstanding the same, the respondents have failed to consider the grievance of the petitioner.

5. Ms. Bora, learned departmental counsel, on the other hand, has argued that in another document issued by the Assistant Employment Officer of the Department of Labour, the date of birth of the petitioner has been reflected as 18-09-1961. The said document has been signed by the petitioner. Therefore, it must be presumed that the correct date of birth of the petitioner is 08-09-1961, in which event, her date of superannuation would be 30-09-2021. Therefore, submits Ms. Bora, there is no infirmity in the action of the department. It is also submitted by Ms. Bora that the request for correction of date of birth cannot be entertained less than 03 years from the date of retirement and therefore, the petitioner's request was rightly rejected by the departmental authorities. Similar is the stand of Mr. C.S. Hazarika, learned Govt. Advocate, Assam appearing for the State.

6. Responding to the above, Mrs. Barman submits that this is not a case of correction of date of birth but for correction of date of retirement wrongly recorded in the communication dated 05-10-2005. Since the aforesaid reflection was contrary to the entries made in the service book of the petitioner, the respondent could not have given effect to the retirement of the petitioner w.e.f. 30-09-2021.

7. I have considered the submissions advanced by the learned counsel for the parties and have also gone through the record. The basic controversy involved in this writ

petition pertains to the issue of correct date of retirement of the petitioner. In her service book, the date of birth of the petitioner has evidently recorded as 08-09-1969. As per the recorded date of birth, the petitioner would retire on 30-09-2029. However, in the order dated 05-10-2005, her date of retirement has been shown as 30-09-2021. The aforesaid date appears to have been calculated by taking into account the date of birth of the petitioner shown in the certificate issued by the Assistant Employment Officer wherein, her date of birth has been recorded as 18-09-1961. However, there is no dispute about the fact that there is not even an iota of documentary evidence to show that the correct date of birth of the petitioner is 18-09-1961. On the contrary, there are sufficient and cogent materials available on record including the school certificate as well as HSLC Admit Card produced by the petitioner to establish that her date of birth was 08-09-1969. Moreover, on the basis of such documents, the date of birth of the petitioner has been recorded as 08-09-1969 even in her service book. If that be so, her date of retirement would be 30-09-2029 and not any other date.

8. It is to be borne in mind that the age of retirement of an employee would be strictly on the basis of the date of birth and age of the employee recorded in the service book. Until and unless there is rectification in the entry made in the service book by following proper procedure and based on cogent materials, such entry made in the service book, regarding age of the employee would be binding, both upon the employee and the employer. In the present case, since the date of birth of the petitioner has been entered as 08-09-1969, which is in consonance with the date of birth of the petitioner as recorded in her HSLC Admit Card, there was no scope for the department to send her on

retirement prematurely by treating her date of birth as 18-09-1961.

9. In the above context, it would also be pertinent to mention herein that I find from the record that even the Director of Agriculture Department, Assam had issued a communication dated 28-06-2021 addressed to the Assistant Executive Engineer (Agri), Hojai asking the later to furnish a proposal for correction of date of retirement of the petitioner along with the relevant documents. However, it appears that the Assistant Executive Engineer (Agri), Hojai did not take proper action in the matter, as a result of which, the writ petitioner had to go on premature retirement. What is significant to be noted herein is that this is not a case where the petitioner is seeking "correction of age" but the prayer is for "correction of date of retirement", which had been wrongly recorded in the order dated 05-10-2005. The prayer of the writ petitioner is consistent with the entries made in her service book. It is not the case of the respondents that the entry of age made in the service book of the writ petitioner was incorrect.

10. For the reasons stated hereinabove, this Court is of the unhesitant opinion that the respondents have acted in an illegal and unfair manner by sending the petitioner on retirement much before her actual age of superannuation. Consequently, the impugned orders dated 01-10-2021 and 07-03-2022 as well as the subsequent order dated 11-03-2022 are hereby set aside.

11. It is hereby directed that the petitioner shall be allowed to join back her duty as office peon in the same post within a period of 02 weeks from the date of receipt of a certified copy of this order. Thereafter, she shall be allowed to continue in service till such time, she attains the age of superannuation as per the date of birth of the petitioner

recorded in the service book.

Needless to say, it will be open for the petitioner to approach the competent authority with a prayer for payment of back wages by making out proper case on facts. If such an application is made by the petitioner, the same be considered in accordance with law and appropriate order be passed in the matter by the competent authority.

If the petitioner continues to remain aggrieved in the matter pertaining to payment of back wages ever thereafter, she would be at liberty to approach this Court once again.

With the above observation, both these writ petitions stand allowed.

Parties to bear their own cost.

JUDGE

GS

Comparing Assistant