

GAHC010155092017



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

Case No. : WP(C)/8048/2017

ON THE DEATH OF JATIN CHANDRA SHARMA HIS LEGAL HEIRS
S/O LATE LOK NATH SARMAH, R/O MAGZINE, VIP ROAD, SHANKAR
NAGAR, BYE LANE 1, P.O. UDAYANBIHAR, GUWAHATI-71, DIST. KAMRUP
M, ASSAM.

1.1: JAYANTI SHARMA
R/O MAGZINE
VIP ROAD
SHANKAR NAGAR
BYE LANE 1
PO UDAYANBIHAR
GUWAHATI-781171

1.2: SWANDEEP SARMAH
S/O LATE JATIN CHANDRA SARMAH
R/O MAGZINE
VIP ROAD
SHANKAR NAGAR
BYE LANE 1
PO UDAYANBIHAR
GUWAHATI-78117

VERSUS

OIL INDIA LTD. and 4 ORS.
A GOVT. OF INDIA UNDERTAKING HAVING ITS REGISTERED HEAD
OFFICE AT DULIAJAN, DIBRUGARH, ASSAM.

2:THE CHAIRMAN CUM MANAGING DIRECTOR

OIL INDIA LTD.
DULIAJAN
DIBRUGARH
PIN 786602
ASSAM.

3:THE GENERAL MANAGER
PIPE LINE SERVICE
OIL INDIA LTD. P.O. UDAYAN
VIHAR
GUWAHATI 781171

4:THE DEPUTY GENERAL MANAGER ADMINISTRATION
PIPE LINE SERVICES
OIL INDIA LTD.
P.O. UDAYAN VIHAR
GUWAHATI 781171

5:THE RESIDENT CHIEF EXECUTIVE
OIL INDIA LTD.
P.O. UDAYAN VIHAR
GUWAHATI-78117

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

Advocate for the Petitioners :Mr. K.K. Mahanta, Sr. Counsel,
Mr. K.M. Mahanta.

Advocate for Respondents :Mr. M.K. Choudhury, Sr. Counsel,
Mr. K. Kalita.

Date of hearing :19.09.2023.

Date of Judgment : 26.09.2023

JUDGMENT & ORDER (CAV)

Mr. K.K. Mahanta, learned Senior Counsel assisted by Mr. K.M.

Mahanta, learned counsel for the petitioners. Also heard Mr. M.K. Choudhury, learned Senior Counsel assisted by Mr. K Kalita, learned counsel for the Oil India Limited.

[2] The petitioners are aggrieved by the order dated 14.06.2017, by which an amount of Rs.23,97,895/- is sought to be recovered from the retirement dues of the husband of the petitioner No. 1.1, on the ground that the husband of the petitioner No. 1.1 had overstayed in service by 1 (one) year. The petitioners' case is that the husband of the petitioner No. 1.1 joined as a Clerk/Typist in the establishment of the respondent no.3 on 16.10.1990, on the basis of a judgment dated 13.08.1990, passed by this Court in Civil Rule No.1083/1988.

[3] The husband of the petitioner No. 1.1, in the Bio-Data Proforma made at the time of entry into service had recorded his date of birth to be 01.03.1956 and as such, should have retired on 28.02.2016. However, the husband of the petitioner No. 1.1 retired one year later on 28.02.2017.

[4] The respondent No. 4 had issued a retirement letter dated 21.09.2016 to the husband of the petitioner No. 1.1 stating that as per the record, he was to reach the age of 60 years on 28.02.2017 and as such was to retire on 28.02.2017. Accordingly, he was asked to fill up various forms and to vacate the Company's quarter occupied by him within three months of his retirement. Subsequent to the above, the respondent No. 3 issued a letter dated 27.10.2016 to the Chief Engineer Pipeline (Operation), informing him to advise the husband of the petitioner No. 1.1, to submit the required forms for availing the Post Retirement Medical Benefit Scheme.

[5] The petitioners' counsel submits that just prior to the husband of the petitioner No. 1.1 retirement, a Show-Cause-Notice dated 24.02.2017 was

issued to the husband of the petitioner No. 1.1, stating that it had come to notice of the authorities that husband of the petitioner No. 1.1's date of birth recorded in the Register of Employees, has been tampered with and changed to 01.03.1957. Since the husband of the petitioner No. 1.1 was the beneficiary due to tampering of the records, it could be presumed that the husband of the petitioner No. 1.1 was involved in the act of tampering. Further, as the husband of the petitioner No. 1.1 was well aware about his date of retirement, husband of the petitioner No. 1.1 continued to be in service, by concealing the fact that he had already attained the age of 60 years on 29.02.2016. The notice dated 24.02.2017 thus stated that the above act amounted to fraud and dishonesty on the part of the husband of the petitioner No. 1.1 in connection with the business of the Oil India Limited and therefore, amounted to misconduct. He was accordingly asked to submit a written explanation. The husband of the petitioner No. 1.1 thereafter submitted a reply dated 02.03.2017 to the Show-Case-Notice dated 24.02.2017, stating that when he joined the Oil India Limited, he received an Identity Card showing his date of birth as 01.03.1957 and as such, believed the same to be his correct date of birth. He also stated that he had nothing to do with the alleged tampering with his date of birth recorded in the Register of Employees.

[6] The husband of the petitioner No. 1.1 was thereafter promoted to the job Grade-EG2 Grade Code E2 with the new designation of Supervising Assistant, vide letter dated 21.12.2016.

[7] Subsequent to the above, Notice of Enquiry dated 03.04.2017 was issued to the husband of the petitioner No. 1.1, wherein it is stated that it had been decided to hold a formal enquiry into the charges levelled against the husband of the petitioner No. 1.1. The husband of the petitioner No. 1.1 being

aggrieved against the Notice of Enquiry dated 03.04.2017 filed WP(C) No.2512/2017. Interim order dated 03.05.2017 was passed in WP(C) No.2512/2017, with an observation that recovery of the already paid remuneration to the husband of the petitioner No. 1.1 should not be made in pursuant to the proposed formal enquiry notified on 03.04.2017. However, the husband of the petitioner No. 1.1 was to cooperate with the inquiry proceedings.

[8] The husband of the petitioner No. 1.1 being aggrieved by the interim order dated 03.05.2017 passed in WP(C) No.2512/2017 filed an appeal, vide WA No.141/2017, before the Division Bench of this Court. However, as the respondents had taken a decision to drop the departmental proceeding initiated against the husband of the petitioner No. 1.1, WA 141/2017 was allowed to be withdrawn, vide order dated 20.06.2017.

[9] The petitioners' counsel submits that the tampering with the Register of Employees, with regard to the date of birth of the husband of the petitioner No. 1.1 from 01.03.1956 to 01.03.1957 had not been done by the husband of the petitioner No. 1.1. He also submits that in terms of the judgment of the Apex Court in the case of ***State of Punjab and others vs. Rafiq Masih (White Washer)***, reported in ***(2015) 4 SCC 334*** and in the case of ***Thomas Daniel vs. State of Kerala & Others***, reported in ***2022 SCC Online SC 536***, the recovery of excess payment cannot be done from an employee, who belongs to Class-III or Class-IV category of employees and also from retired employees.

[10] Mr. MK Choudhury, learned Senior Counsel for the Oil India Limited submits that the husband of the petitioner No. 1.1 being the sole beneficiary of the tampering of the Register of Employees, the same implies that the husband

of the petitioner No. 1.1 could have been the only person who could be involved with the tampering of the Register of Employees. He also submits that the husband of the petitioner No. 1.1 would have been well aware of his date of birth and the date on which he was to retire. However, by keeping quiet with regard to his actual date of birth, the husband of the petitioner No. 1.1 has surreptitiously been allowed to stay in office for another extra year. He also submits that the husband of the petitioner No. 1.1 was a Workman Grade-IX, who was being given the pay scale of Executive Grade-II. He submits that in Oil India Limited, the husband of the petitioner No. 1.1 would be deemed to be Class-II officer, though the husband of the petitioner No. 1.1's nomenclature would remain as a Workman Grade-IX. He also submits that there are 9 (nine) Grades of Workman in the Oil India Limited. After a Workman has reached Grade-IX, the Workman can only be given the stagnation benefit of pay, which is the pay of the Executive Grade-I Officer and thereafter Executive Grade-II Officer.

[11] In support of his submission that the recovery of excess payment made to the husband of the petitioner No. 1.1 is proper, the learned Senior Counsel for the Oil India Limited has referred to the judgments of the Apex Court in ***State of Punjab and others vs. Rafiq Masih (White Washer)***, reported in ***(2015) 4 SCC 334*** (paragraph 7 to 12); ***Chandi Prasad Uniyal & Others vs. State of Uttarakhand & Others***, reported in ***(2012) 8 SCC 417*** (paragraph 7 to 16); ***Registrar, Cooperative Societies, Haryana & Others vs. Israil Khan & Others***, reported in ***(2010) 1 SCC 440*** (paragraph 7 to 11) and in the judgment of this Court in the case of ***Rantu Kumar Gohain vs. Assam Electronics Development Corporation & Others***, reported in ***2021 (5) GLT 181***.

[12] I have heard the learned counsels for the parties and perused the pleadings.

[13] The documents show that the husband of the petitioner No. 1.1, at the time of his employment with Oil India Limited, had given his date of birth as 01.03.1956, as recorded in the employee's bio-data. However, the Register of Employees shows the date of birth of the husband of the petitioner No. 1.1 as 01.03.1957, there being a clear case of over-writing with the figure "7" in relation to the year "1957", visible even to the naked eye. The husband of the petitioner No. 1.1 should have retired on 28.02.2016 as per his biodata. However, due to the over writing of his date of birth in the Register of Employees, the husband of the petitioner No. 1.1 has retired one year later, i.e., 28.02.2017.

[14] The question to be decided is whether the respondents can recover the excess amount of Rs. 23,97,895/- paid to the husband of the petitioner No. 1.1, due to his over stay in service by one year and whether the over writing in the Register of Employees showing the husband of the petitioner No. 1.1's date of birth as 01.03.1957 had been done by the husband of the petitioner No. 1.1, as he was the person who benefitted from the said over-writing. Thus, the issue boils down to whether there was any fraud or tampering done on the part of the husband of the petitioner No. 1.1, in having his service tenure illegally extended by one year, due to the over-writing.

[15] In the present case, the husband of the petitioner No. 1.1 has denied having any involvement in the over-writing made in the Register of Employees, showing the petitioner's date of birth as 01.03.1957. In this respect, it would be fruitful to consider the law laid down by the Supreme Court in the case of ***State of Bihar vs. Pandey Jagdishwar Prasad***, reported in ***(2009) 3 SCC 117***,

wherein it has been held that if at all the respondents had entered the 2nd date of birth at a subsequent period of time, the authorities concerned should have detected it and there should have been a detailed enquiry whether the respondents were responsible for the same. It further held that if higher pay scale was given to an employee by mistake, without their being misrepresentation or fraud, no recovery can be made from the retiral dues and the monetary benefit available to the employees. In the present case, the respondents had initiated a formal enquiry against the husband of the petitioner No. 1.1, wherein it was alleged that the husband of the petitioner No. 1.1 had tampered with and changed his date of birth to 01.03.1957 in the Register of Employees. However, as has been stated in the foregoing paragraphs, the Departmental enquiry initiated against the husband of the petitioner No. 1.1 was dropped by the respondents and as such, no determination was made as to whether the husband of the petitioner No. 1.1 was responsible for the over-writing made in his date of birth, in the Register of Employees.

[16] In the case of ***Kailash Singh vs. State of Bihar***, reported in ***(2005) 13 SCC 576***, the Supreme Court had held that recovery sought to be made from the salary of an employee, on the ground of alleged over stay in service on the basis of age assessed or considered, despite the fact that the employee has worked during the period of the alleged over stay, could not be made.

[17] In the case of ***State of Punjab and others vs. Rafiq Masih (White Washer) (supra)***, the Supreme Court has held that recovery of monetary benefits wrongly extended to employees, can only be interfered with, only in such cases where, it would be iniquitous to recover the payment made. The Supreme Court further held that recovery by the employers would be

impermissible in law, from employees belonging to Class III and Class IV service (Grade- C & D).

[18] In the case of ***Thomas Daniel vs. State of Kerala (supra)*** the Supreme Court has also held in the same lines as in the case of ***State of Punjab and others vs. Rafiq Masih (White Washer) (supra)***.

[19] In the cases of ***Chandi Prasad Uniyal & Others vs. State of Uttarakhand & Others (supra)*** and ***Registrar, Cooperative Societies, Haryana & Others vs. Israil Khan & Others (supra)*** the Supreme Court has held that only if there is misrepresentation or fraud on the part of the recipients of the money in getting the excess pay, the amount paid due to irregular/wrong fixation of pay can be recovered.

[20] In the case of ***Syed Abdul Qadir vs. State of Bihar***, reported in ***(2009) 3 SCC 475***, the Supreme Court has held that the relief against recovery is granted by Courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess.

[21] In the case of ***Rantu Kumar Gohain (supra)***, this Court had dismissed the writ petition which had challenged the order for recovery of the excess salary given due to overstay in service. The reason for the same was that the petitioner therein had not made a challenge to the allegation of

falsification of the records by the petitioner, in incorporating an incorrect date of birth with the intention to make wrongful gain.

[22] In the present case, the husband of the petitioner No. 1.1 overstayed in service by one year due to over writing in the Register of Employees in relation to his date of birth. It is no doubt a fact that the benefit of over stay in service resulted in the husband of the petitioner No. 1.1 getting excess salary for one year. Though the respondents had tried to fix the onus of over-writing on the date of birth of the concerned employee, i.e. the petitioner, the said issue had not been conclusively determined, as the inquiry against the petitioner had been dropped by the respondents. As such, there was no proof that the petitioner had anything to do with the over-writing, as was required to be done, as held by the Supreme Court in the case of ***State of Bihar vs. Pandey Jagdishwar Prasad (supra)***. As such, there is nothing to show that there was any fraud or misrepresentation on the part of the husband of the petitioner No. 1.1 in the over writing made in the Register of Employees. The above being said, the husband of the petitioner No. 1.1 was a Workman even though he had reached Workman Grade-IX, as per the submission of the learned senior counsel for the Oil India Limited. The employee being a Workman, this Court is of the view that it would not permissible to recover the excess salary paid to the husband of the petitioner No. 1.1.

[23] Accordingly, in view of the above reasons, the impugned order dated 14.06.2017, by which an amount of Rs.23,97,895/- is sought to be recovered from the petitioner is hereby set aside. However, the fact remains that the correct date of birth of the husband of the petitioner No. 1.1 is 01.03.1956. As such, the retirement benefits payable to the husband of the petitioner No. 1.1 would have to be made on the basis of his pay given for the month of February

2016. Consequently, any promotion given to the husband of petitioner No. 1.1 subsequent to 01.03.2016 is declared null and void.

[24] The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant