

GAHC010156092023



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

Case No. : WP(C)/4021/2023

PURNIMA HAZARIKA
WIFE OF SANKHAPANI BORAH,
RESIDENT OF BORAHOLIA, TEZPUR,
DISTRICT- SONITPUR,
PIN- 784001.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM,
DEPARTMENT OF WOMEN AND CHILD DEVELOPMENT,
1ST FLOOR, D-BLOCK, JANATA BHAWAN, DISPUR,
GUWAHATI-6.

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
DEPARTMENT OF WOMEN AND CHILD DEVELOPMENT
2ND FLOOR
C- BLOCK
JANATA BHAWAN

DISPUR
GUWAHATI-6.

3:THE DISTRICT SOCIAL WELFARE OFFICER
DISTRICT- SONITPUR
ASSAM.

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

GUWAHATI-29

ASSAM

Advocate for the Petitioner : MR. U K NAIR

Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

05-08-2023

Heard Mr. U. K. Nair, learned Senior Counsel assisted by Mr. K. U. Ahmed, learned counsel for the petitioner and Mr. A. Chakroborty, learned Government Advocate, Assam for the respondent Nos. 1 to 3. Also heard Mr. R. K. Talukdar, learned Standing Counsel, AG (A&E), Assam for the respondent No.4.

2) Petitioner Smti. Purnima Hazarika was initially appointed as Supervisors (*Mukhya Sevikas*) of ICDS (Integrated Child Development Services) Projects on temporary basis at Lanka, District – Nagaon, by order No.DSW(ICDS)5/84/37 dated 12.02.1985 issued by the Director of Social Welfare and Probation, Assam.

3) Thereafter, in the interest of public service and for operationalisation of new ICDS Projects, the Secretary to the Government of Assam in the Social Welfare Department by Notification No. SWD.34/99/Pt./190 dated 11.06.2004 allowed the petitioner as in-Charge CDPO (Child Development Project Officer) and posted her at East Jorhat ICDS Project, Jorhat.

4) Subsequent to that the State Government in the Social Welfare Department vide Notification No. SWD.88/2005/39 dated 20.01.2006 promoted the petitioner along with others as CDPO under Regulation 4 (d) of the APSC (the Assam Public Services Commission) Regulation, 1951 from the date of taking over charge and posted her at Dhekiajuli ICDS Project, District – Sonitpur, Assam. Later, the services of the petitioner as CDPO in the Social Welfare Department of the State was regularised and she was placed under the control of the Directorate of the Social Welfare Department, Assam.

5) As directed, the petitioner submitted her Service Book along with the copy of her HSLC

(High School Leaving Certificate) Examination Admit Card for her Class-X Examination that commenced in April, 1976 as well as her 1976 Class-X HSLC Examination Passed Certificate, both issued by the Board of Secondary Education, Assam (SEBA).

6) The petitioner stated that in her Admit Card issued by SEBA for her Class-X HSLC Examination of 1976 her age as on 01.03.1976 was shown as 14 years, 4 months, 5 days. As such, as per her said Admit Card, her date of birth is 27th October, 1961.

7) Petitioner also stated that in her Class-X Passed 1976 HSLC Certificate issued by SEBA her age as on 01.03.1976 was shown 16 years, 5 months, 4 days and considering the same, her date of birth is 28th September, 1959 but in her Service Book her date of birth was recorded as 27.09.1959.

8) Considering her date of birth as per her Class-X 1976 HSLC Examination Admit Card as per which her date of birth is 27.10.1961, she should have retired from service on 31.10.2021.

9) While, the petitioner was serving as CDPO, Balipara ICDS Project as well as Rangapara ICDS Project of District - Sonitpur, the Secretary to the Government of Assam in the Social Welfare Department by W.T. message No.SWD.54/2015/53 dated 05.05.2021 informed the petitioner that her date of retirement from service was on 30.09.2019 and accordingly, directed her to handover charge of the CDPO, Balipara ICDS Project as well as Rangapara ICDS Project to one Smt. Rupa Borah, CDPO of Borchola ICDS Project with immediate effect and to report to the Government with a copy of charge handing over report.

10) Being aggrieved with the said W.T. message No. SWD.54/2015/53 dated 05.05.2021, the petitioner preferred a writ petition being WP(C) No. 2961/2021. A co-ordinate Bench of this Court by an order dated 19.05.2021 disposed of said WP(C) No. 2961/2021 with the following observation and direction —

“I have heard the learned counsel. At this stage in my considered opinion as the petitioner is yet to file her representation bringing forth the stand taken in this writ petition before the competent authority/ Government, this writ petition can be closed which I accordingly do at this stage thereby allowing the petitioner to file her representation supporting the claim that her date of birth as recorded in the service

book is 26.10.1961 and on the basis of the same the petitioner is supposed to retire on 31.10.2021. The said representation shall be addressed to the Director, Social Welfare Department who on receipt of the same shall make an endeavor to dispose of the same within a period of 4 weeks from the date of receipt of representation.

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

During the pendency of the representation of the petitioner, no coercive measure like recovery of any financial benefit already received by the petitioner shall be ordered by the respondents. Accordingly the impugned order dated 05.02.2021 is not interfered. However in the event the claim of the petitioner is found to be valid she shall be allowed to continue her service till the date of retirement on superannuation."

11) The petitioner stated that on her representation and on the basis of said HSLC Admit Card the date of birth in her Service Book was corrected as 26.10.1961 and as per the said corrected date of birth the petitioner was to retire on 31.10.2021. Further, the said correction of her date of birth as 26.10.1961 was also carried out in the records in the Office of the Accountant General of Assam and she was regularly paying the GPF subscription.

12) After the order of the Court dated 19.05.2021, passed in WP(C) No. 2961/2021, the petitioner submitted representation before the authorities concerned in the Social Welfare Department of the State by submitting the Certificate of Transfer of Charge by her to said Smt. Rupa Borah, CDPO, Borchola ICDS Project, Sonitpur in terms of the order to WT message dated 05.05.2021, noted above.

13) By communication No.242519/151 dated 21.06.2023 the State Government in the Department of Women and Child Development with regard to the amount drawn by the petitioner, retired CDPO, for the period from 01.10.2019 to 03.06.2021 wrote to the Accountant General (A&E), Assam stating that the petitioner over stayed in service for the said period and after obtaining the view of the Personnel as well as Judicial Departments it has decided to adjust the amount drawn by her for the said over stay period from 01.10.2019 to 03.06.2021 from her DCRG and accordingly, by the said letter dated 21.06.2023 the AG (A&E), Assam was requested to inform the amount drawn by the petitioner during her said period of over stay, so that the said amount can be adjusted from her DCRG.

14) Petitioner contended that she had served as CDPO of ICDS Projects of Balipara as well as Rangapara upto 03.06.2021 considering her date of birth as 26.10.1961 as recorded by the Director of Social Welfare in her Service Book, stating further that the same date i.e., 26.10.1961 has also been recorded in the records of the Principal Accountant General (A&E), Assam as her date of birth and that upto March, 2021 she had regularly deposited towards her share of GPF (General Provident Fund).

15) Being aggrieved, with the said communication No.242519/151 dated 21.06.2023 of the respondents in the Department of Women and Child Development of the State to the Accountant General (A&E), Assam with regard to the proposed recovery of the amount drawn by the petitioner, for the period from 01.10.2019 to 03.06.2021 towards her over stay in service from her DCRG, the petitioner has filed this writ petition on 19.07.2023 praying amongst others, (i) to set aside the said communication No.242519/151 dated 21.06.2023, (ii) to regularise the period of her service for the period from 01.10.2019 to 03.06.2021 to be spent on duty with full pay and allowances, increments etc., and (iii) to fix her pension of taking into account her last pay drawn as on 03.06.2021 with all consequential benefits.

16) It is an admitted position that in the Admit Card for her 1976 Class-X HSLC Examination issued by SEBA, her age on 1st March, 1976 was recorded as 14 years, 4 months, 5 days; whereas, in the Certificate of Class-X Passed 1976 HSLC Examination issued by SEBA her age on 1st March, 1976 was recorded as 16 years, 5 months, 4 days.

17) It is not the case of the respondents in the Department of Women and Child Development of the State, the erstwhile Social Welfare Department of Assam that the petitioner fraudulently or by misrepresentation fixed her date of birth in the Service Book. In her Service Book her date of birth was initially recorded as 27.09.1959 and it is the Director of Social Welfare, Assam considering her age as 14 years, 4 months, 5 days on 1st March, 1976 on the basis of her Admit Card for her 1976 Class-X HSLC Examination issued by SEBA recorded that "*Inadvertently the date of birth of the petitioner shown as on 27.09.1959 which actually should have been as on 26.10.1961*". It is also seen that the office of the Principal AG (A&E), Assam recorded the date of birth of the petitioner as 26.10.1961.

18) It is also not the case of the respondents in the Department of Women and Child

Development of the State, the erstwhile Social Welfare Department of Assam that the petitioner did not render service as CDPOs of Balipara as well as Rangapara ICDS Projects, District Sonitpur for the period from 01.10.2019 to 03.06.2021 and further not the case of the respondents that the petitioner on 03.06.2021 did not hand over charge of those CDPOs to Smt. Rupa Borah, CDPO of Borchola ICDS Project of Sonitpur District.

19) It is settled that the authorities concerned unilaterally alter the date of birth of a serving employee and also an employee after his/her retirement from service as recorded in his/her Service Book, without making any enquiry and without complying the Rules of natural justice as deiced by the Hon'ble Apex Court in the case of *Sarju Prasad Vs. General Manager*, reported in (1981) 3 SCC 544.

20) The respondent authorities made enquiry and from the Board of Secondary Education, Assam came to the authenticated age of the petitioner as 16 years, 5 months, 4 days as on 1st March, 1976 as recorded in the Certificate of her Class – X Passed 1976 HSLC Examination issued by SEBA, which is also not denied by the petitioner.

21) Considering the fact that the petitioner rendered her service upto 03.06.2021 and as the respondent authorities in the Department of Women and Child Development of the State, the erstwhile Social Welfare Department of Assam had extracted her service upto 03.06.2021, therefore, the Court is of the view that any steps to be adopted by the respondent authorities in the Department of Women and Child Development to recover and/or adjust the amount drawn by the petitioner during her over stay period from 01.10.2019 to 03.06.2021 from her pension or other consequential pensionary benefits payable to her like DCRG, GPF etc., shall be illegal.

22) Accordingly, the impugned communication under Memo No. No.242519/151 dated 21.06.2023 of the State Government in the Department of Women and Child Development communicated to the Accountant General (A&E), Assam pertaining to the proposed recovery of the amount drawn by the petitioner, retired CDPO, for the period from 01.10.2019 to 03.06.2021 from her DCRG amount payable to her, is set aside and quashed.

23) Considering the above, the respondents in the State Government in the Department

of Women and Child Development are directed not to recover any such payment made to the petitioner during the period of her overstay in service for the period from 01.10.2019 to 03.06.2021.

24) Since, the petitioner deposited her share of GPF amount with the Principal AG (A&E), Assam upto March, 2021, on verification of records she shall be paid the benefit of the said GPF as she rendered her service as CDPO of Balipara ICDS Projects upto 03.06.2021.

25) However, considering the fact that after necessary enquiry and from the Board of Secondary Education, Assam as the respondent authorities in the Department of Women and Child Development of the State came to the authenticated finding that age of the petitioner was 16 years, 5 months, 4 days as on 1st March, 1976, her date of birth was 28.09.1959 and should have retired on 30.09.2019, therefore, it is made clear that the respondent authorities shall determine the pension of the petitioner considering petitioner's actual date of retirement as on 30.09.2019 and shall submit the pension proposal of the petitioner to the office of the Principal AG (A&E), Assam on that basis.

26) The respondents authorities in the Department of Women and Child Development of the State including its Directorate considering the above, are directed to submit the pension proposal of the petitioner forthwith on submission of the certified copy of this order by the petitioner before the Secretary to the Government of Assam in the Department of Women and Child Development considering the date of superannuation of the petitioner at the age of 60 years as on 30.09.2019.

27) The petitioner shall submit all the relevant documents before the District Social Welfare Officer of Sonitpur District in the Department of Women and Child Development along with a certified copy of this order on or before 15.11.2023 obtaining necessary acknowledgement from the said authority. The petitioner shall also furnish all the necessary documents, filling up all the necessary forms, her photographs and signatures as required for preparing the Final Pension Pay proposal.

28) The petitioner shall also furnish copy of the certified copy of this order before the Principal Accountant General (A&E), Assam obtaining necessary acknowledgement.

29) On submission of such pension proposal of the petitioner before the Principal

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 she is out of service since 04.06.2021 without receiving any farthing and retired from service on 30.09.2019 on attaining the age of superannuation at the age of 60 years.

30) Until the payment of regular pension, the petitioner shall be paid provisional pension and all other pensionary benefits, forthwith, as per her entitlement, that is due to her, considering that the petitioner is without any pensionary benefits since 30.09.2019.

31) With the above observation and direction, this writ petition stands allowed to the extent above.

JUDGE

Comparing Assistant