

GAHC010166502019



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

Case No. : WP(C)/5103/2019

HUSSAIN AHMED BARBHUIYA
S/O- LATE MUJAMIL ALI BARBHUIYA, VILL AND P.O- PAIKAN, P.S AND
DIST- HAILAKANDI, ASSAM, PIN- 788155

VERSUS

THE BOARD OF SECONDARY EDUCATION AND 5 ORS
ASSAM, BAMUNIMAIDAM, GUWAHATI- 781021, REP. BY CHAIRMAN

2:THE CONTROLLER OF BOARD OF SECONDARY EDUCATION
ASSAM
BAMUNIMAIDAM
GUWAHATI- 781021

3:THE DEPUTY CONTROLLER OF BOARD OF SECONDARY EDUCATION
ASSAM
BAMUNIMAIDAM
GUWAHATI- 781021

4:THE SECRETARY OF BOARD OF SECONDARY EDUCATION
ASSAM
BAMUNIMAIDAM
GUWAHATI- 781021

5:THE SECRETARY OF EXAMINATION OF BOARD OF SECONDARY
EDUCATION
ASSAM
BAMUNIMAIDAM
GUWAHATI- 781021

6:THE PRINCIPAL
GOVT VMHS SCHOOL

HAILAKANDI
PIN- 788151

7:IRPAN ALI MEMORIAL HIGH SCHOOL

REPRESENTED BY IT'S HEAD MASTER
NITAINAGAR
HAILAKANDI
P.O. RATANPUR ROAD
DIST. HAILAKANDI (ASSAM) . PIN- 788155.

8:THE HEAD MASTER
IRPAN ALI MEMORIAL HIGH SCHOOL

NITAINAGAR
HAILAKANDI
P.O. RATANPUR ROAD
DIST. HAILAKANDI (ASSAM). PIN- 788155

Advocate for the Petitioner : MR. A M MAZUMDER

Advocate for the Respondent : SC, SEBA

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

Date of Hearing : 27.04.2023

Date of Judgment : 22.12.2023

JUDGMENT AND ORDER (CAV)

Heard Ms. S B Choudhury, learned counsel for the petitioner and Mr. T C Chutia, learned Senior Standing counsel, Board of Secondary Education, Assam for the respondent Nos. 1 to 5. Also heard Mr. R Mazumdar, learned counsel for the respondent No. 6 and Mr. R Dhar, learned counsel for the respondent Nos. 7 & 8.

2. Petitioner served in the Public Health Engineering Department at Hailakandi and in his service book, his date of birth was recorded as per his Class-X passed 1984 High School

Leaving Certificate Examination (in short, HSLC) (Compartmental) Certificate as 26.05.1959. Said HSLC Examination is conducted by the Board of Secondary Education, in short SEBA. Considering his said date of birth as 26.05.1959 in his Class-X Compartmental Examination passed Certificate issued by the SEBA, he retired from service on 31.05.2019 on attaining the age of superannuation at 60 years.

3. On 01.01.2019, the petitioner submitted a representation before the Secretary, SEBA through the Principal of Government V.M. H.S. School, (Government Victoria Memorial Higher Secondary School), Hailakandi for correction of his date of birth stating that earlier he appeared in the 1977 HSLC Examination with Roll 1021 No. 0121 but he could not pass the said examination and in the Admit Card to appear in the said 1977 HSLC Examination issued by SEBA, his age on 1st March, 1977 was shown as 14 (fourteen) years, 8 (eight) months and 0 (zero) days. When he appeared in the 1984 HSLC Examination with Roll-T-29 No. 120 in which he passed his Class-X examination, in his Admit Card, his date of birth was recorded as 26.05.1959. As there was a difference of three years in his two dates of birth in those Admit Cards issued by the SEBA, therefore, he requested the authorities of SEBA to take necessary action for correction of his date of birth by issuing related academic documents in new form. Along with his said representation dated 01.01.2019, the petitioner enclosed (i) the original Admit Card No. 15747 with Roll 1021 No. 0121 of 1977; (ii) the original Admit Card No.9120 with Roll T-29 No. 120 of 1984; (iii) the original pass certificate No. 9977 under Roll T-29 No. 120 of 1984 and also his date of birth as per the record book of the Government V.M. H.S. School, Hailakandi. For such correction of his date of birth, the petitioner submitted his necessary application before the Board of Secondary Education, Assam on 01.01.2019 paying necessary fee of Rs.1000/-.

4. As the respondents SEBA was sitting over his said application dated 01.01.2019, the petitioner filed a writ petition being WP(C) No. 2175/2019 stating the above facts and the Court after hearing the parties by order dated 03.04.2019 disposed of said WP(C) No. 2175/2019 of the petitioner with a direction to the Secretary of SEBA to dispose of the said application of the petitioner dated 01.01.2019 by issuing a speaking order in accordance with law within a period of one month from the date of receipt of the certified copy of the said

order.

5. As his said application dated 01.01.2019 was pending before the SEBA which was yet to be disposed of by its Secretary pursuant to the order dated 03.04.2019 passed in WP(C) No. 2175/2019 and as he was to retire from service on 31.05.2019 on the basis of his incorrect date of birth as 26.05.1959, therefore the petitioner again preferred a writ petition before the Court being WP(C) No. 3577/2019. The Court after hearing the parties disposed of said WP(C) No. 3577/2019 by order dated 30.05.2019 directing the authorities in the SEBA to pass a speaking order within a period of ten days from the date of receipt of certified copy of the said order as to the date of his correct date of birth observing that the SEBA will do the necessary verification and enquiry as it may deem fit and appropriate and if necessary, the relevant documents of the school from which the petitioner had passed the HSLC Examination may also be examined.

6. In the said order dated 30.05.2019 passed by the Court in WP(C) No. 3577/2019, the Court also observed that in the event the date of birth is found to be 01.07.1962, he would be entitled to continue his service by taking him back to service along with all benefits including arrear of payment due to him, even if the petitioner is made to retire from service on 31.05.2019 and the authorities who issue necessary orders for allowing him to continue in service till attaining the age of superannuation at sixty years and on the other hand, if it is found that the correct date of birth of the petitioner is 26.05.1959, the question of his reinstatement in service will not arise after he retires from service on 31.05.2019.

7. Thereafter, the Secretary of SEBA on 12.06.2019 passed a speaking order with the findings that – *from the records (as noted in the said speaking order) the petitioner appeared in HSLC Compartmental Examination 1984 as he was unsuccessful in the regular examination of 1984. The Date of Birth recorded, both in regular examination of 1984 and Compartmental Examination is same, i.e., 26.05.1959. No linkage into the record of 1977 is established. As such, after going through all the records and statements the Secretary was of the view that the claim for considering the change of Date of Birth (of the petitioner) cannot be considered and accordingly disposed of the said representation in terms of the order dated 30.05.2019 passed in WP(C) No. 3577/2019.*

8. Aggrieved with the said findings of the Secretary SEBA dated 12.06.2019, the petitioner filed this writ petition praying amongst others (i) to set aside and quash the said speaking order dated 12.06.2019 of the Secretary of SEBA being bias and malafide; (ii) to direct the SEBA to make necessary correction in respect of his date of birth/age on the basis of the School Records/Admission Register of the Government V.M.H.S. School, Hailakandi and on the basis of his first HSLC Admit Card of 1977 that bears his correct age which was issued by SEBA itself, records of which is available in the office of SEBA and (iii) to direct the respondent authorities to do the necessary correction of the date of birth of the petitioner on the basis of his school admission register which is the only authentic document that cannot be denied under any circumstances.

9. It is seen from this writ petition that the petitioner annexed his initial appointment order dated 03.07.1981 as a Peon in the office of the Public Health Executive Engineer, Hailakandi, copy of Admit card with Roll T-29 No. 120 issued by SEBA pertaining to HSLC Compartmental Examination, 1984, wherein date of birth is recorded as 26.05.1959, 1984 HSLC Compartmental Examination passed Certificate issued by SEBA containing date of birth as 26.05.1959, his appointment to the post of LDA and also his promotion to the post of UDA. Further, copy of his Service Book, duplicate Admit Card dated 02.02.2018 issued by SEBA with Roll 1021 No. 0121 for 1977 HSLC Examination, wherein the petitioner claimed that his age was shown as 14 years 8 months and 0 days as on 01.01.1977. Duplicate Mark-sheet of Class-X issued by SEBA dated 02.02.2018 with Roll 1021 No. 0121, photocopy of the register of admission in Government V.M. High School, Hailakandi.

10. From the Annexures appended to this writ petition by the petitioner, it is noticed that duplicate Admit Card issued by SEBA on 02.02.2018 pertaining to Roll 1021 No. 0121 for 1977 HSLC Examination where the age of the candidate as on 01.01.1977 was shown as 14 years 08 months and 0 days was issued in the name of "Hussain Ahamed Barbhuiya". The duplicate mark sheet issued by SEBA on 02.02.2018 is also in the name of "Hussain Ahamed Barbhuiya", name of father of the petitioner shown in the alleged admission register of Government V.M. High School, Hailakandi as "Mujammilali Barbhuiya". But the petitioner claims himself to be "Hussain Ahmed Barbhuiya", son of Mujamil Ali Barbhuiya. It is not the

case of the petitioner that "Hussain Ahmed Barbhuiya" and "Hussain Ahamed Barbhuiya" is the same and one person and similarly his father "Mujammil Ali Barbhuiya" and "Mujammilali Barbhuiya" is the same and one person.

11. The respondent SEBA placed the relevant records in original along with photocopy of Government V.M. High School, Hailakandi, wherein at serial No. 43, one "Hussian Ahamed Barbhuiya" (male), with father's name "Muzamil Ali Barbhuiya", whose age as on 01.03.1977 is reflected as 14 years 8 months 0 days that was signed by the Head Master of the said school on 10.01.77. Further, from the record placed by SEBA pertaining to Irpan Ali Memorial High School, Nitai Nagar, Hailakandi at serial No. 439, the name of one "Hussain Ahmed Barbhuiya", father's name "Mahmud Ali Laskar", age as on 01.03.1982 as 22 years 9 months 5 days and date of birth as 26.06.59 is reflected. Said record of Irpan Ali Memorial High School was signed by its Head Master on 18.12.81 for appearance in the HSLC Examination 1982.

12. Similarly, in another record of SEBA of Irpan Ali Memorial High School, Nitai Nagar, Hailakandi of HSLC Examination 1984, at serial No.1126, name of one "Hussain Ahmed Barbhuiya", date of birth 26.05.59, father's name "Muzammil Ali Barbhuiya" is found in the record with signature of its Head Master on 29.01.84.

13. Though the Principal of Government V.M. High School, Hailakandi placed a copy of admission register signed by its Principal on 18.02.2023, wherein it reflects that at serial No. 0121 for HSLC 1977, the name of one "Hussian Ahamed Barbhuiya" father's name "Muzamil Ali Barbhuiya", age on 01.03.77 as 14 years 8 months 0 days and the said "Hussian Ahmed Barbhuiya" put his signature as "*Hussian Ahamed Borbhuiya*".

14. Further, the Principal of Government V.M. High School, Hailakandi also placed a copy consisting of various names where at serial No. 120 name of one "Hussain Ahamed Barbhuiya" with date of birth 26.05.59, father's name "Mujamil Ali" is reflected with the signature of one "Hussian Ahamed Barbhuiya", which the said Principal signed 18.02.2023, along with the duplicate Admit Card of 1977 HSLC Examination in the name of one "Hussain Ahamed Barbhuiya" but signed by one "Hussain Ahmed Barbhuiya". Similarly, the Principal of Government V.M. High School, Hailakandi also placed Admit Card of SEBA in the name of one

"Hussain Ahamed Borbhuiya", son of "Mujamil Ali Barbhuiya" for the HSLC (Compartmental) Examination 1984 with the date of birth of the said candidate as 26.05.59, signed by one "Hussain Ahmed Barbhuiya".

15. The above record placed before the Court reflects lots of discrepancies and disputed questions of fact with regard to the date of birth of the petitioner as well as the name of the petitioner, name of his father, the duplicate Admit Cards allegedly issued by the Board of Secondary Education, Assam pertaining to HSLC Examination and HSLC (Compartmental) Examination. It is also seen that just five months before his retirement on 31.05.2019, the petitioner on 01.01.2019 approached the SEBA for correction of his date of birth as recorded in his service book.

16. In the case of *Union of India Vs. Harnam Singh*, reported in (1993) 2 SCC 162, the Hon'ble Supreme Court in its majority view have held that — *Even if one is able to establish that the entry of date of birth in service record was not correct and erroneous on the basis of good evidence, the inaction by the claimant for long period of time would disentitle any such claim.*

17. The Hon'ble Supreme Court in the case of *Burn Standard CO. Ltd. & Others Vs. Dinabandhu Mazumdar and Another*, reported in (1995) 4 SCC 172 have held that — *Any claim for correction of date of birth at the fag end of career service will not be maintainable because of delay and laches. No Court or the Tribunal can come to the aid of those who sleep over their rights.*

18. In the case of *Board of Secondary Education, Assam Vs. Md. Sarifuz Zaman and Others*, reported in (2003) 12 SCC 408, the Hon'ble Supreme Court — *accepted the time period of three years prescribed in the regulation of SEBA for correction of date of birth as quite reasonable and beyond the said period the Board may not invoke such power as belated applications, if allowed to be received that may open a ponderous box.*

19. The Hon'ble Supreme Court in the case of *State of U.P. and Another Vs Shiv Narain Upadhyaya*, reported in (2005) 6 SCC 49 have held that — *An application of the date of birth should not be dealt with by the Court, Tribunal or the High Court keeping in view the only*

public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned as a chain reaction, inasmuch as others waiting for years, below him/her for their respective promotions are affected in this process. Before any such direction is issued or declaration made, the Court or the Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed and within the time fixed by any rule or order.

20. In the case of *U.P. Madhyamik Siksha Parishad and Others Vs. Raj Kumar Agnihotri* reported in (2005) 11 SCC 465, the Hon'ble Apex Court after considering number of judgments of the said Court observed that — *The grievance as to the date of birth in the service record should not be permitted at the fag end of the service career.* Further, the Hon'ble Supreme Court in the case of *State of Uttaranchal Vs. Pitambar Dutt Semwal* denied the relief to the Government employee on the ground that he sought correction in the service record after nearly 30 years of service and while setting aside the judgment of the High Court the Supreme Court observed that *the High Court ought not to have interfered with the decision after almost three decades.*

21. The Hon'ble Supreme Court in the case of *Bharat Cooking Coal Ltd. and Others Vs. Shyam Kishore Singh* reported in (2020) 3 SCC 411 have held that — *Even if there is good evidence to establish that the recorded date of birth is erroneous, the correction cannot be claimed as a matter of right.*

22. From the above, we have already noticed that there are discrepancies and disputed questions as regards the date of birth of the petitioner, his name, name of his father, names reflected in the duplicate Admit Cards and Mark-sheet as well as date of birth and age mentioned in those documents.

23. Further, the petitioner joined his service as Peon in July, 1981 in the PHE Department at Hailakandi, became an Lower Division Assistant in the same department pursuant to the order dated 06.01.1986 and Upper Division Assistant pursuant to the order dated 25.07.2008. His service record was opened on 30.07.1982, wherein his date of birth was corrected from

01.07.1962 to 26.05.1959 with due signature of the authorities on 10.08.1984, as can be seen from the Annexures appended by the petitioner to this writ petition. Since 10.08.1984, the petitioner, with his said recorded date of birth in his service book as 26.05.1959, after more than 34 years of service, on 01.01.2019 for the first time on 01.01.2019 submitted his application before the Board of Secondary Education, Assam for correction of his date of birth, that too when he was to retire within five months on 31.05.2019, with his said date of birth recorded in his service book as 26.05.1959 since 10.08.1984. All along petitioner slept over the matter for more than 34 years and 4 months and finally woke up on 01.01.2019 at the verge of retirement from service.

24. For the reasons and discussion made hereinabove and considering the materials placed before the Court by the SEBA as well as the petitioner and the Principal of Government Victoria Memorial Higher Secondary School, Hailakandi, this Court did not find any illegally or irregularity with the impugned speaking order of the Secretary of the Board of Secondary Education, Assam dated 12.06.2019 issued under Memo No. SEBA/GEN/SUIT/24/19/171 requiring any interference with the same.

25. Accordingly, this writ petition, being devoid of merit, stands dismissed.

JUDGE

Comparing Assistant