

GAHC010177342023



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

Case No. : I.A.(Civil) No.2364 of 2023

In W.A. No.15969/2022 (Filing Number)

ABDUL MATIN @ ABDUL MOTIN SK
S/O NURAL HOQUE, RESIDENT OF JHAGRARPAN PART- II, P.O.-
JHAGRARPAN, P.S.- DHUBRI, ASSAM.

VERSUS

1: THE STATE OF ASSAM AND 5 ORS. REPRESENTED BY THE
COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM, PWD,
GUWAHATI- 6.

2:THE CHIEF ENGINEER
PWD CHANDMARI GUWAHATI- 781003.

3:THE EXECUTIVE ENGINEER PWD DHUBRI CIVIL SUB-DIVISION
TERRITORIAL ROAD DIVISION DHUBRI- 783301.

4:THE ACCOUNTANT GENERAL (A AND E)
ASSAM MAIDAMGAON BELTOLA GUWAHATI- 29.

5:HEADMASTER, NO. 343 MOTICHAR J B SCHOOL
SUB- DIVISION DHUBRI ASSAM DHUBRI- 783301.

6:TREASURY OFFICER DHUBRI
DIST.- DHUBRI ASSAM- 783301

Linked Case : W.A. No.15969/2022 (Filing Number)

ABDUL MATIN @ ABDUL MOTIN SK

VERSUS

THE STATE OF ASSAM AND 5 ORS

For the Applicant/Appellant : Mr. M.J. Baruah, Advocate.

For the Respondents : Mr. P. Nayak, Advocate for respondent Nos.2 & 3.

- B E F O R E -

HON'BLE THE CHIEF JUSTICE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

26.09.2023

The instant interlocutory application has been preferred by the applicant/appellant with a prayer seeking condonation of delay of 162 days occasioned in preferring the connected writ appeal, which is yet to be numbered.

The applicant herein filed WP(C) No.3918/2021 before the learned Single Bench with a prayer that he was prematurely retired from service on 28.02.2021 by treating his date of birth to be 15.02.1961. After the applicant/appellant was retired, he claims to have realized that his date of birth had been wrongly recorded in the Service Book as 15.02.1961, whereas the actual date of birth of the applicant/appellant is 30.09.1970 and thus, he should have been superannuated on 30.09.2030.

The writ petition came to be presented on 03.08.2021, i.e. nearly 6(six) months after the petitioner (applicant/ appellant herein) was superannuated from service. The learned Single Bench rejected the writ petition by the order dated 13.06.2022 holding that the challenge given to the date of birth at the fag end of one's career cannot be entertained. It was also held that the petitioner's claim that his date of birth was 30.09.1970, was dubitable because he was engaged as a temporary Muster Roll worker on 03.05.1988 and, in that event, he would have been less than 18(eighteen) years of age, which is below the permitted age for employment in Government service. The learned

Single Judge drew an inference that the date of birth of the petitioner, as recorded in the Service Book, was correct and rightly so in our opinion.

Law is well settled by a catena of judgments rendered by the Hon'ble Supreme Court, some of which are referred to below, that a Government employee cannot be permitted to lay challenge to his date of birth as recorded in the Service Record at the fag end of his career. Reference in this regard may be had to the judgments rendered by the Hon'ble Supreme Court in the cases of ***State of Assam & Anr. -Vs- Daksha Prasad Deka & Ors.***, reported in ***(1970) 3 SCC 624*** and ***Union of India -Vs- Harnam Singh***, reported in ***(1993) 2 SCC 162***.

The applicant/appellant herein laid challenge to the date of birth as entered into his Service Record after being superannuated, which was hopelessly barred by laches. Thus, the learned Single Bench, in our opinion, was perfectly justified in rejecting the writ petition by the order dated 13.06.2022, which does not suffer from any infirmity. In addition thereto, we find that the reasons set out in the application seeking condonation of delay are totally flimsy and unacceptable and hence, the instant interlocutory application and the writ appeal, which is yet to be numbered, lack merit and are hereby dismissed as such.

JUDGE

CHIEF JUSTICE

Comparing Assistant