

GAHC010194232022



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

Case No. : Review.Pet./154/2022

THE STATE OF ASSAM AND ANR
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM, EDUCATION (ELEMENTARY) DEPARTMENT, DISPUR, GUWAHATI-
781006.

2: THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI 1

VERSUS

ARUN CHANDRA SAIKIA .
S/O BANGSHI SAIKIA,
O/O THE DEPUTY INSPECTOR OF SCHOOLS, CHARAIDEO, PO AND PS
CHARIADEO ASSAM 785640

Advocate for the Petitioner : MR. N J KHATANAR

Advocate for the Respondent : MR. S. J. SARKAR

Linked Case : WP(C)/5042/2018

ARUN CHANDRA SAIKIA
S/O. BANGSHI SAIKIA
PRESENTLY POSTED AS A SENIOR ASSISTANT
DEPUTY INSPECTOR OF SCHOOLS
CHARAIDEO

P.O. CHARAIDEO SIVSAGAR
ASSAM PIN 785640

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
EDUCATION (ELEMENTARY) DEPARTMENT
DISPUR
GUWAHATI- 781006.

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER

SIVSAGAR
ASSAM. PIN 785640.

4:THE DEPUTY INSPECTOR OF SCHOOLS

CHARAIDEO
ASSAM. PIN 785640
5:THE BLOCK ELEMENTARY EDUCATION OFFICER

SIVASAGAR
ASSAM. PIN 785640.

Advocate for : MR. R MAZUMDAR
Advocate for : SC
ELEM. EDU appearing for THE STATE OF ASSAM AND 4 ORS.

Linked Case : I.A.(Civil)/214/2019

ARUN SAIKIA
S/O. BANGSHI SAIKIA
PRESENTLY POSTED AS A SENIOR ASSISTANT
DEPUTY INSPECTOR OF SCHOOLS
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ASSAM. PIN 785640.

Advocate for : MR. R MAZUMDAR
Advocate for : SC
ELEM. EDU appearing for THE STATE OF ASSAM AND 4 ORS.

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR

ORDER

Date : 23.06.2023

Heard Mr. N.J.Khataniar, learned standing counsel, Elementary Education for the review petitioner. Also heard Mr. S.P.Choudhury, learned counsel appearing on behalf of the sole opposite party/writ petitioner.

2. The sole opposite party as writ petitioner instituted WP(C)/5042/2018,

before this Court for correction of his date of birth in the service book as 01.12.1967 instead of 31.07.1958. The opposite party was engaged as Office Peon in the Office of the Sub-Inspector of Schools, Goghrapar Circle, Nalbari by an order dated 15.11.1976. Thereafter, when the service book was opened his date of birth was entered as 31.07.1958. According to the opposite party, his date of birth in his service book is wrongly recorded as 31.7.1958 instead of 01.12.1967. He therefore requested to correct his date of birth on the basis of his HSLC Admit Card issued by the Board of Secondary Education, Assam. The Under Secretary to the Government of Assam, Elementary Education Department by communication dated 10th of May, 2018, wrote to the Director of Elementary Education, Assam that the matter of correction of date of birth in respect of the opposite party has been examined and request was made to correct the date of birth for the incumbent as per certificate forwarded by the Secretary, Board of Secondary Education. The grievance of the opposite party in the said writ petition was that while the said process was going on, the District Elementary Education Officer issued the impugned order dated 15.05.2018 by which the petitioner was directed to retire from service on the ground that he would be attaining 60 years of age on 31.07.2018 as per the date of birth i.e., 31.07.1958. Considering the overall facts and circumstances of the case, this Court by order dated 19.11.2019, disposed of WP(C)/5042/2018 with the following directions:

“7. Accordingly, the petition is allowed setting aside the impugned order dated 15.05.2018 and the authorities are directed to do the needful in terms of the direction issued by the State Government in the letter dated 10.05.2018 issued by the Under Secretary to the Government of Assam, Elementary Education Department. This Court has also noted that this Court had stayed the aforesaid impugned order when this matter was taken up on 31.07.2018.

8. In that view of the matter, the petitioner will be allowed to continue in service until appropriate order is issued by correcting the date of birth as directed by the State Government mentioned above and till attaining the age of superannuation as per the corrected date of birth."

3. The present review petition has been filed by the State of Assam represented by the Commissioner & Secretary to the Govt. of Assam Education (Elementary) Department praying for review of the order dated 19.11.2019 passed in WP(C)/5042/2018 on the ground that after the communication dated 10th of May, 2018 was made by the Under Secretary to the Govt. of Assam, Elementary Education Department, the Commissioner & Secretary to the Govt. of Assam, Elementary Education Department issued another Office Order dated 10th of July, 2019, cancelling the letter dated 10.05.2018. Subsequent thereto, the Joint Secretary to the Govt. of Assam, Elementary Education Department by a communication dated 10th of July, 2019 addressed to the Director of Elementary Education requested to treat the date of birth of the opposite party/writ petitioner, who was serving as Senior Assistant in the Office of the Deputy Inspector of Schools, Charaideo as the original date of birth submitted at the time of joining and his date of retirement/ superannuation may accordingly be treated as per original records.

4. Mr. N.J.Khataniar, learned counsel for the review petitioner submits that the two documents, namely, the Office Order dated 10th of July, 2019, and the communication dated 10th of July, 2019 could not be placed before this Court when the order dated 19.11.2019 was passed in WP(C)/5042/2018, inasmuch

as no counter affidavit was filed and the learned counsel appearing for the review petitioner was also not properly briefed. He therefore submits that if these said two documents were produced before this Court at the time of hearing of the WP(C)/5042/2018, this Court may not have passed the order directing the review petitioner to correct the date of birth of the opposite party/writ petitioner.

Mr. S.P.Choudhury, learned counsel for the opposite party on the other hand submits that there is no error apparent on the face of the record and therefore, the review petition should be dismissed.

5. After considering the submission of the learned counsel for the parties, this Court on considering the Office Order dated 10.07.2019, as well as the Communication dated 10.07.2019, is of the considered opinion that there has been an error apparent on the face of the record inasmuch as, these vital documents which required consideration were not placed before this Court while hearing WP(C)/5042/2018.

6. Accordingly, the order dated 19.11.2019, passed in WP(C)/5042/2018 is recalled.

Review petition is accordingly allowed.

7. Let WP(C)/5042/2018 be listed in the admission column after the ensuing summer vacation.

JUDGE

Comparing Assistant