

GAHC010004822022



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

Case No. : WP(C)/252/2022

LIAKAT ALI
S/O LATE ABED ALI, R/O MATHURAPUR, MAJGAON, P.O.-NIMALAGARH,
P.S.-MATHURAPUR, DIST- CHARIDEO, ASSAM, PIN-785689

VERSUS

ASSAM POWER GENERATION CORPORATION AND 2 ORS
REPRESENTED BY CHIEF GENERAL MANAGER, (GEN), APGCL, BIJULEE
BHAWAN, GUWAHATI-1

2:THE GENERAL MANAGER (HR)
APGCL
BIJULEE BHAWAN
GUWAHATI-1

3:THE GENERAL MANAGER
LAKWA THERMAL POWER STATION
APGCL
MAIBELLA
CHARAIDEO
ASSA

Advocate for the Petitioner : MR. R ALI

Advocate for the Respondent : SR. SC, APGCL

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
ORDER

03.01.2024

Heard Mr. R Ali, learned counsel for the petitioner. Also heard Mr. D Nath, learned standing counsel for the APGCL.

2. The petitioner was serving as a Turbine Operator Grade-III in APGCL, which is a Grade-IV post. As per his service record, he was supposed to retire from service on 31.08.2021. However, his younger brother, who was also a Grade-IV employee lodged a complaint before the employer that the date of birth of the petitioner entered in the service record is incorrect. On the basis of such complaint, the employer made an enquiry and finally came to a conclusion that the actual date of the birth of the petitioner is 01.07.1954 and accordingly, he was to retire from the service on attaining the age of superannuation on 31.07.2014.
3. Such determination was intimated to the petitioner by a communication dated 24.01.2020 and he was asked to go on retirement with effect from 31.07.2014. Thereafter, an order was issued on 06.08.2020, whereby commuted value of pension, retirement gratuity and family pension of the petitioner etc. were computed. However, yet another order was passed by the respondent authorities on 24.12.2021, whereby the petitioner was asked to show cause why the salary drawn with effect from 31.07.2014 (actual date of retirement) to 24.01.2022 (the date when the petitioner was released from service) shall not be recovered. The petitioner is aggrieved by the aforesaid order of recovery.
4. One of the prayers made in the writ petition is implementation of the order dated 06.08.2020 (annexure 10) of the writ petition. Mr. Nath, learned standing counsel for the APGCL submits that they have no difficulty in implementing the order dated 06.08.2020, however, as the petitioner has over stayed in service, therefore, they may be allowed to recover the excess drawl.
5. Mr. Ali, learned counsel for the petitioner relying on the decision of the ***State of Punjab and Others vs Rafiq Masih (White Washer) and Others***

reported in (2015) 4 SCC 334 contends that the petitioner being a Grade – IV employee the recovery should not be made inasmuch as there is no specific finding that the petitioner has committed any fraud.

6. Considered the matter in entirety. The fact remains that the petitioner had rendered service with effect from 31.07.2014 to 24.01.2022. The fact also remains that the entire process of verification/ enquiry was initiated on the basis of a complaint filed by the younger brother of the petitioner not at the instances of the employer itself. It is also a fact that the petitioner is a Grade-IV employee and therefore, considering the matter in entirety and in the given facts of the present case more particularly the initiation of the complaint at the behest of a third party not by the employer and in absence of any specific finding of fraud committed by the petitioner, this court is of the view that recovery should not be allowed at this stage inasmuch as the petitioner undisputedly, rendered service during the said period.
7. Accordingly, it is provided that the petitioner be granted the pensionary benefits in terms of the communication dated 06.08.2020 (annexure 10) without insisting on any recovery from the salary paid with effect from 31.07.2014 to 24.01.2022. It is needless to say that calculation of the pension/ pension benefits of the petitioner is to be made taking his date of retirement to be 31.07.2014. He will be entitled for the payment of monthly pension if any with effect from 25.01.2020 as from 31.07.2014 to 24.01.2022 he has already been paid salary. The entire exercise shall be carried out within a period of three months from the date of receipt of a certified copy of this order to be furnished by the petitioner to the respondent No. 1.

JUDGE