

GAHC010078592022



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

Case No. : WA/170/2022

MANIK SARMA
S/O. LT. K.C SARMA,
RESIDENT OF SEUNI ALI, JORHAT TOWN,
DIST. JORHAT, ASSAM.

VERSUS

1.THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE SECRETARY PERSONNEL AND PENSION
DEPARTMENT,
DISPUR, GUWAHATI 06, ASSAM

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR GUWAHATI 06 ASSAM

3:THE DEPUTY COMMISSIONER JORHAT ASSAM

4:THE TREASURY OFFICER
JORHAT TREASURY JORHAT ASSAM

5:THE PRINCIPAL ACCOUNTANT GENERAL
MAIDAMGAON BELTOLA
GUWAHATI ASSAM 78102

For the Appellant	:	Mr. A. Thakur, Advocate.
	:	Ms. J.R. Thakur, Advocate.
For the Respondent(s)	:	Mr. N. Das, Government Advocate, Assam for respondent Nos.1 & 3.

– BEFORE –
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE KARDAK ETE

18.06.2024

(Vijay Bishnoi, CJ)

This writ appeal is filed by the appellant being aggrieved with the order dated 22.03.2022 passed by the learned Single Judge in WP(C) No.2875/2016, whereby the writ petition filed by the appellant has been dismissed.

2. In the writ petition, the appellant challenged the order dated 05.04.2013 issued by the Deputy Commissioner, Jorhat, whereby it was ordered that the salary of the appellant for the over-stayed period be deducted from his pension and Death-Cum-Retirement Gratuity (in short, DCRG). The over-stayed period is mentioned as from 01.11.2009 to 30.08.2012. The appellant also challenged the order dated 10.01.2014 issued by the Office of the Principal Accountant General (A & E), Assam for recovery of Rs.13,41,441/- and for adjustment of the said amount from "Relief and DCRG". The appellant further challenged a communication dated 23.04.2014 from the Treasury Officer, Jorhat to adjust a sum of Rs.4,12,146/- from the admissible DCRG payable to the appellant against over-payment made to him.

3. In the writ petition, the appellant claimed that he served as Senior Treasury Assistant in the Jorhat Treasury and was also promoted to the post of Accountant. It was contended by the appellant that he had applied for and was released on medical grounds under Voluntary Retirement Scheme (in short, VRS) on 01.09.2022. However, after his retirement, the impugned orders were passed without providing any opportunity of hearing to him and in violation of the provisions of Assam Services (Pension) Rules, 1969.

4. It was also the case of the appellant that he had not committed any forgery or illegality but the respondents, without holding any enquiry, passed the impugned orders illegally.
5. The claim of the appellant was vehemently opposed by the respondent State on the ground that the appellant over-stayed in Government job by suppressing his actual date of birth. It was also contended on behalf of the respondent State that, as a matter of fact, the appellant had voluntarily agreed for his retirement on attaining the age of superannuation as per the Higher Secondary School Leaving Certificate (in short, HSSLC) submitted by him and for deduction of the over-payment from DCRG and other pensionary benefits.
6. The learned Single Judge, after considering the arguments advanced on behalf of the counsel for the appellant as well as the State, has dismissed the writ petition with the following reasons :-

“7) It is further seen that by a letter dated 22.03.2013, addressed to the Deputy Commissioner, Jorhat and Treasury Officer, Jorhat, the petitioner had enclosed therewith the copy of his HSSLC Certificate received by him in the last week. The petitioner had also admitted that as per the said certificate, the petitioner ought to have superannuated on 31.10.2009 and that knowingly or unknowingly he had over-stayed in service by 2 years 10 months for which he sought pardon. The petitioner also requested the said authority to pay his provisional pension and requested the said authorities to deduct the overdrawn amount from his DCRG, un-utilised leave salary, and provisional pension and also forwarded a “due and drawn statement”.

8) It may be mentioned that as per Board of Secondary Education Letter dated 27.11.2013, the Secretary of the Board had requested for furnishing him the original pass certificate of the petitioner because in the year 1970 there were only 162 number of candidates in HSSLC (HUM) Examination, 1970 and expressed that therefore, the roll number of the petitioner was doubtful. Thus, there appears to be force in the submissions made by the learned standing counsel for the Finance Department that as the petitioner, as Accountant, was then working as Establishment Assistant was aware of the nature of enquiry being made against him by the Deputy Commissioner, Jorhat, thought it

appropriate to write a letter dated 22.03.2013, because of which the respondent authorities had taken a lenient view of the matter and without taking steps to prosecute the petitioner, agreed to make deductions from the retiral amounts receivable by the petitioner.

9) *There also appears to be force in the submissions made by the learned standing counsel for the Finance Department that as per the impugned order dated 05.04.2013, the Deputy Commissioner, Jorhat had allowed the petitioner to discontinue his service with effect from 01.09.2012 and therefore, there is no force in the stand of the petitioner that he was allowed to go on VRS.*

10)

11) *As indicated herein before, at the cost of repetition, it is reiterated that the petitioner on his own volition had written his letter dated 22.03.2013, addressed to the Deputy Commissioner, Jorhat and Treasury Officer, Jorhat, the petitioner had enclosed therewith the copy of his HSSLC Certificate received by him and made an admission that as per the said certificate, he would have superannuated on 31.10.2008 and that he had over-stayed in service by 2 years 10 months and by seeking pardon, requested the authorities to pay his provisional pension and requested them to deduct the overdrawn amount from his DCRG, un-utilised leave salary, and provisional pension and also forwarded a "due and drawn statement. It may be mentioned that the petitioner had not come before the Court with clean hands because he had suppressed the fact in the writ petition that he had issued such a letter dated 22.03.2013. Thus, as the petitioner has not come to the writ Court with clean hands, the Court is of the considered opinion that he is not entitled to any equitable relief.*

12) *It may also be mentioned that in paragraph 11 of the writ petition, the petitioner had specifically pleaded that the respondents were pleased to accept his prayer and allowed the petitioner to go on VRS, which is wholly incorrect and belied by the order dated 05.04.2013 (Annexure-8 of writ petition), wherein it has been mentioned that the Deputy Commissioner had allowed the petitioner to discontinue his service w.e.f. 01.09.2012. The indelible fact remains that the said order dated 05.04.2013 was issued only some days after the petitioner had written his letter dated 22.03.2013, addressed to the Deputy Commissioner, Jorhat and Treasury Officer, Jorhat.*

13) *Therefore, having prima facie found merit in the stand taken by the respondent no. 3 in his affidavit-in-opposition filed in this case the Court has no other option but to accept the contention that the petitioner, who was working as Establishment Assistant in Jorhat Treasury, was aware of the nature of enquiry being made against him by the Deputy Commissioner, Jorhat, thought it appropriate to write a letter dated 22.03.2013, because of which the respondent*

authorities had taken a lenient view of the matter and without taking steps to criminally prosecute the petitioner, had accepted the proposal of the petitioner to make deductions of over-paid amount from the retiral amounts receivable by the petitioner. In this case, the order to deduct over-drawn pay was taken in the same order dated 05.04.2013 (Annexure-8) by which the petitioner was allowed to discontinue his service w.e.f. 01.09.2012.

14) The Court is inclined to accept the submissions made by the learned standing counsel for the Finance Department that the actual date of birth came to light for the first time on 22.03.2013, when HSSLC certificate, was submitted and that as per the said certificate, the petitioner was 18 years 5 months 0 days as on 01.03.1968 and accordingly, the Deputy Commissioner, Jorhat had allowed the petitioner to discontinue his service on 01.09.2012. Be it mentioned that if the petitioner was 18 years 5 months on 01.03.1968, his date of birth would have been 01.10.1949 and hence, if age of retirement is taken to be 60 years, the petitioner would ordinarily have retired on 30.09.2009. Hence, in the opinion of the Court, the petitioner was definitely the perpetrator of fraud or misrepresentation owing to which the petitioner overstayed in service. In the said context, the Court hastens to add that the aforesaid finding is only for the purpose of deciding this case and the said observations is not intended to prejudice the petitioner in any other proceeding whatsoever.

15)

16) Therefore, as the Court is satisfied that the recoveries made and/or sought to be made from the petitioner has been ordered at the own request of the petitioner, none of the cases cited by the learned counsel for the petitioner would come to the aid of the petitioner. The reason for arriving at the said conclusion is that by writing letter dated 22.03.2013 (Annexure-C to affidavit-in-opposition of respondent no.3), the petitioner has been successful in persuading the Deputy Commissioner, Jorhat and other officials of the Jorhat Treasury not to prosecute him on allegations of various criminal offences committed by him and to take a lenient view because of the offer made by the petitioner to recover over-payment made to him. Therefore, there appears to be no good reason to burden this order with discussions on 27 cases cited by the learned counsel for the petitioner, because of distinguishable facts of this present case in hand. As already indicated above, the petitioner had not come with clean hands and suppressed his letter dated 22.03.2013 in his writ petition, for which the petitioner is not found to be entitled to any equitable relief. The petitioner had misrepresented while entering into service and again suppressed material while filing this writ petition.”

7. Having heard the learned counsel for the appellant and after going

through the findings recorded by the learned Single Judge in the impugned order dated 22.03.2022, we are of the view that no case for interference is made out in this writ appeal because the respondent State has successfully demonstrated that the appellant has suppressed his actual date of birth and has over-stayed in the Government job. The respondent State has also proved that the appellant himself has agreed for his retirement from the service on attaining the age of superannuation as per the date of birth mentioned in the HSSLC Certificate, issued by the Board of Secondary Education (SEBA), produced by him and the appellant has deliberately suppressed this fact from this Court while approaching this Court for certain reliefs through the aforesaid writ petition.

Hence, the writ appeal is dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant