

GAHC010097022024



2024:GAU-AS:11743

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

Case No. : WP(C)/2584/2024

ILIARS HUSSAIN S/O- LATE ASRAF HUSSAIN, R/O- ANANDANAGAR,
WARD NO.1, BILASIPARA, P.O. AND P.S.- BILASIPARA,
DIST.- DHUBRI (ASSAM), PIN- 783348.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, FISHERY DEPARTMENT, DISPUR,
GUWAHATI- 781006.

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM FINANCE DEPARTMENT DISPUR GUWAHATI- 781006.

3:THE DIRECTOR OF FISHERY ASSAM GUWAHATI-06.

4:THE DISTRICT FISHERY DEVELOPMENT OFFICER
DHUBRI ASSAM PIN- 783301.

5:THE ACCOUNTANT GENRERAL (A AND E)
ASSAM MAIDAMGAON BELTOLA GHY-29.

6:THE TREASURY OFFICER BILASIPARA
DHUBRI ASSAM PIN- 783348

Advocate for the Petitioner : MD H R AHMED, MR A MALEK,MR J I MONDAL,MR J ISLAM

Advocate for the Respondent : SC, FISHERY, SC, AG,SC, FINANCE

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 27.11.2024

Heard Mr. H. R. Ahmed, learned counsel for the petitioner. Also heard Ms. M. D. Bora, learned standing counsel, Fishery Department, appearing on behalf of respondents No. 1, 3 & 4; Mr. P. Nayak, learned standing counsel, Finance Department, appearing on behalf of respondents No. 2 & 7; and Ms. C. Baruah, learned standing counsel, Accountant General(A&E), Assam; appearing on behalf of respondent No. 6.

2. The petitioner, herein, was recruited as a Fishery Demonstrator on 04.04.1986, in the Department of Fishery, Government of Assam. In the Service Book so opened in respect of the petitioner at the time of his initial appointment; his Date of Birth(DoB), therein, came to be recorded as "23.12.1962". Such Date of Birth(DoB) was so recorded by the respondent authorities basing on the HSLC Pass Certificate submitted by the petitioner.

3. In the HSLC pass certificate, the age of the petitioner, herein, as on 01.03.1978, was recorded as 16 years, 2 months and 8 days. By reckoning the age of the petitioner as recorded in his matriculation certificate, his Date of Birth(DoB) works-out to 23.12.1961.

4. However, the respondent authorities basing on the said HSLC Pass certificate, recorded the Date of Birth(DoB) of the petitioner, herein, in his Service Book as "23.12.1962". The petitioner continued in his service in terms of his Date of Birth(DoB) as recorded in his Service Book and retired from his service w.e.f. 31.12.2022.

- 5.** The respondent authorities, thereafter, while processing the matter for finalization of the pension and pensionary benefits of the petitioner, herein; detected the error committed in recording his Date of Birth(DoB) in his Service Book as "23.12.1962" in lieu of "23.12.1961".
- 6.** Accordingly, the matter was processed and a decision was arrived at to recover from the pension and pensionary benefits of the petitioner, herein; the salary so drawn by him beyond 31.12.2021.
- 7.** The Principal Accountant General(A&E), Assam, vide Pension Payment Order(PPO) No. 1006311307454, dated 22.08.2023, finalized the pension and pensionary benefits of the petitioner, and therein; recovered an amount of Rs. 9,83,976/- from the pension and pensionary benefits of the petitioner towards the salary drawn by him beyond 31.12.2021.
- 8.** Being aggrieved, the petitioner has instituted the present proceeding before this Court.
- 9.** Today, when the matter was taken-up for hearing; the parties to the proceeding, have agreed to the fact that the salary drawn by the petitioner beyond 31.12.2021, till the date, he had retired from his service i.e. 31.12.2022; may not be recovered and the period be permitted to be treated as re-employment in his service. However, the learned counsels have submitted that the pension and pensionary benefits of the petitioner would be required to be finalized, by treating him to have retired from his service w.e.f. 31.12.2021.

10. The said agreement is reasonable and in tune with the directions of the Hon'ble Supreme Court rendered in the case of ***State of Punjab & ors. V. Rafiq Masih (White Washer)*** reported in ***(2015) 4 SCC 334***.

11. However, Ms. Borah, learned standing counsel, Fishery Department, appearing for respondents No. 1, 3 & 4, has submitted that the petitioner, herein, has been authorized his pension w.e.f. 01.01.2022, and further the period w.e.f. 01.01.2022 till 31.12.2022, having been permitted to be treated as re-employment in his service and the petitioner already having drawn his salary for the period, in question; the pension which has been so sanctioned to the petitioner for the said period, is required to be recovered.

12. The said prayer is not objected by Mr. Ahmed, learned counsel for the petitioner.

13. In view of the above position, the respondents are directed to release to the petitioner, herein, the amount recovered from his pension and pensionary benefits towards the salary drawn by the petitioner for the period w.e.f. 01.01.2022 till 31.12.2022, in terms of the Pension Payment Order(PPO), dated 22.08.2023. The amount of pension so drawn by the petitioner during the period w.e.f. 01.01.2022 till 31.12.2022, shall be deducted from the amount now required to be refunded to the petitioner against the recovery made in his case towards over-drawal of pay and allowances for the period of his continuance in service beyond his actual date of superannuation, which had occasioned on 31.12.2021, and the balance amount remaining, be paid to the petitioner, herein, within a period of 2 months from the date of receipt of a certified copy of this order by the respondent authorities.

14. With the above directions and observations, this writ petition accordingly stands disposed of.

JUDGE

Comparing Assistant