

GAHC010122622020



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

Case No. : WP(C)/3616/2020

SAMSUL HOQUE BARBHUIYA
S/O LT. MASUR ALI BARBHUIYA, R/O ABDUL GANI ROAD, N.S. ROAD,
HAILAKANDI TOWN, NO. 12, P.S. AND DIST. HAILAKANDI, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
DEPTT. OF HEALTH SERVICE DISPUR, GUWAHATI-6

2:THE DIRECTOR OF HEALT SERVICES
ASSAM
HENGABARI
GUWAHATI-36

3:THE JOINT DIRECTOR OF HEALTH SERVICES
HAILAKANDI OLD HOSPITAL CAMPUS
P.O. AND DIST. HAILAKANDI
788151

4:THE BOARD OF SECONDARY EDUCATION
ASSAM
REP. BY ITS SECRETARY BAMUNIMAIDAM
GUWAHATI-78102

Advocate for the Petitioner : MR. A H M R CHOUDHURY

Advocate for the Respondent : SC, HEALTH

BEFORE
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioners : Shri N.J. Dutta
Shri H. Das

Advocates for the respondents : Shri TC Chutia, SC-SEBA
Ms. D. Borah, SC-Health Dept.

Date of hearing : **23.07.2024**

Date of Judgment : **26.07.2024**

JUDGMENT & ORDER

An order which, according to the petitioner, is of premature retirement whereby his retirement date was fixed on 03.09.2020 is the subject matter of challenge in this petition presented under Article 226 of the Constitution of India.

2. Before coming to the issue which has arisen for a determination, it would be beneficial if the facts of the case are narrated in brief.

3. The petitioner was initially appointed as Pharmacist in the year 1981 and by an order dated 04.05.2018 he was promoted as Head Pharmacist. According to the petitioner, his date of birth is 12.09.1962. In this regard, the petitioner has relied upon the Admit Card issued by the Board of Secondary Education (hereinafter SEBA), wherein it has been stated that as on 01.03.1977 his age was 14 years 5 months 19 days. The petitioner has accordingly deduced his date of birth as 12.09.1962.

4. It is the case of the petitioner that somehow in his Service Book, his date of birth was erroneously entered as 14.05.1960. Having come to know about

the same, the petitioner had filed a representation on 08.08.2016. On the said representation, the Director of Health Services had issued a communication dated 03.01.2017 to the Joint Director of Health Services to make an enquiry. On such enquiry, the SEBA had issued a letter dated 31.10.2017 to the Director of Health Services, wherein it was stated that as on 01.03.1977, the age of the petitioner was 16 years 5 months 19 days. However, the SEBA had issued a subsequent communication on 05.04.2018 to the Director of Health Services, whereby it has been stated that as on 01.03.1977, the age of the petitioner was 14 years 5 months 19 days. As two different stands were taken by the SEBA, the Director of Health Services had issued a communication dated 15.06.2020 seeking a clarification. According to the petitioner, thereafter, the impugned notice was issued on 20.06.2020, as per which the date of superannuation of the petitioner was fixed on 30.09.2020. It is this notice which is the subject matter of challenge in this writ petition.

5. I have heard Shri N.J. Dutta, the learned Counsel for the petitioner. I have also heard Shri T.C. Chutia, learned Additional Senior Government Advocate, Assam and Ms. D. Bora, learned Standing Counsel, Health and Family Welfare Department.

6. Shri Dutta, the learned Counsel for the petitioner has submitted that the Admit Card which has been enclosed to the writ petition would clearly show that as on 01.03.1977, the age of the petitioner was stated to be 14 years 5 months 19 days. Accordingly, he submits that the petitioner has been retired two years prior to his actual age of superannuation, whereby gross injustice and prejudice has been caused to him. By referring to the affidavit-in-opposition filed by the SEBA on 20.11.2020, it is submitted that as per the SEBA, the age of the petitioner as on 01.03.1977 has been declared to be 16 years 5 months 19

days. Reference has also been made to the additional affidavit filed by the SEBA on 15.03.2024, whereby certain allegations were made on the veracity and authenticity of the documents relied upon by the petitioner regarding his claim of date of birth. It is submitted that the SEBA had taken up the issue that the font of the letters were different and there was no counter signature of the officer-in-charge. The issue of the spelling of "Guwahati" and not "Gauhati" has also been raised. He has thereafter referred to the affidavit-in-reply dated 09.04.2024 in which, a certificate of another person of the contemporary period has been annexed, wherein the font of the letters used is the same as that of the certificate of the petitioner and the Admit Card also did not contain the counter signature. He accordingly submits that this Court may interfere with the impugned notice dated 20.06.2020 and direct the respondent authorities to deem the petitioner to be in service for the next 2 years and accordingly pay his entitlements.

7. The writ petition has been strenuously resisted by SEBA represented by Shri T.C. Chutia, the learned Standing Counsel. He has submitted that the documents relied upon by the petitioner are apparently forged documents. By referring to the Admit Card and Pass Certificate, the learned Standing Counsel has submitted that the font used in the alphabets do not match with the font which was used by SEBA at that particular period. As regards the Admit Card, it is pointed out that there is no counter signature of the Officer-in-Charge. As regards the Pass Certificate, it is submitted that even here the font is not matching and so far as the spelling of "Gauhati" is concerned, it is written as "Guwahati" and not "Gauhati". He submits that at that relevant point of time, the spelling was "Gauhati" and not "Guwahati" which would itself demonstrate that the certificate produced by the petitioner is forged. He clarifies that the

change in the spelling was only in the year 1984 whereas the Certificate is of the year 1977. The learned Standing Counsel has produced another Pass Certificate of that period to show the difference in the font as well as the other aspects.

8. Shri Chutia, learned Standing Counsel has also drawn the attention of this Court to the contradictory pleadings of the petitioner regarding the certificates. By referring to the pleadings made in paragraph 3 of the writ petition, it is pointed out that the petitioner had pleaded that he had collected the Pass Certificate when it was issued by the Board in due course from the School. However, in his reply affidavit, it has been stated that the petitioner never felt the necessity of the original HSLC Certificate immediately after passing of the examination and he had collected the same only in the year 2015.

9. On the aspect of the two contradictory stands by the SEBA in the letters dated 31.10.2017 and 05.04.2018, the learned Standing Counsel has submitted that noticing the two contradictory stands, the Director of Health Services had issued a communication dated 15.06.2020 seeking a clarification. The said communication was replied to by the SEBA vide letter dated 05.08.2020 whereby it has been categorically stated that the petitioner was 16 years, 5 months and 19 days as on 01.03.1977. It has further been clarified that the letter dated 05.04.2018 was issued by oversight. The learned Standing Counsel had also raised doubt on the *bona fide* of the officer issuing the second letter dated 05.04.2018 as many allegations of misconduct was against him. He accordingly submits that not only the writ petition should be dismissed, exemplary cost should be imposed for misusing the process of the Court for and for using forged documents.

10. Ms. D. Bora, learned Standing Counsel, Health and Family Welfare

Department has submitted that clarification was sought from the SEBA on the issue of the date of birth. Further, as inconsistencies were noticed in the two replies initially given by SEBA, a clarification was sought for vide communication dated 15.06.2020 which was replied by the SEBA on 05.08.2020. After such reply, the Department had issued the notice dated 26.20.2020 fixing the date of superannuation. It is submitted that the action has been taken in accordance with law and no relief is entitled to by the petitioner.

11. In his rejoinder, the learned Counsel for the petitioner has submitted that the petitioner possesses the original certificates and has also presented the same before the Court. It is submitted that the Pass Certificate was obtained subsequently and therefore the change in spelling of Gauhati had occurred. On a specific query with regard to the signature of the Secretary, SEBA appearing on the Pass Certificate which was of the officer existing at that time (1977), it is submitted that the signature was in a printed format which was affixed.

12. The rival submissions have been duly considered and the materials placed before this Court have been carefully perused.

13. The petitioner alleges that he came to know about the incorrect recording of his date of birth in his Service Book and had accordingly submitted his first representation on 08.08.2016. There is no explanation as to why the petitioner had to wait till the year 2016 to submit a representation. However, the representation was not rejected and rather was acted upon by the Director of Health Services by seeking adequate information from the SEBA. The SEBA in the first communication dated 31.10.2017 had concurred with the date of birth recorded in the Service Book of the petitioner. It is however not known as to why the SEBA had to issue another communication on 05.04.2018 whereby the date as claimed by the petitioner has been endorsed. This Court has noticed

that the second communication dated 05.04.2018 was issued by another officer against whom there were allegations of misconduct also as per the submission made. Be that as it may, on noticing the inconsistencies, the Department had sought a clarification by the letter dated 15.06.2020. The said communication was replied by the SEBA on 05.08.2020 whereby it was categorically stated that as on 01.03.1977 the age of the petitioner was 16 years 5 months 19 days. It has also been clarified that the letter dated 05.04.2018 was issued by oversight. Without even going to the aspect as to why the letter dated 05.04.2018 was issued by the officer concerned, this Court is of the view that the final opinion and information was given by the SEBA vide the communication dated 05.08.2020 which is not the subject matter of challenge. The impugned order dated 20.06.2020 is based on the aforesaid communication dated 05.08.2020 as per which, the petitioner was sent on retirement on attaining the age of superannuation on 03.09.2020. Great emphasis has been made on the documents enclosed to the writ petition, namely the Admit Card and the Pass Certificate by the petitioner. The SEBA has made a categorical assertion that both the documents appear to be forged documents. In this connection, this Court has carefully compared the documents along with the documents of the contemporary period which have been produced and it is apparent that the font used of the alphabets do not match. There is also no signature of the Officer-in-Charge in the Admit Card. So far as the Pass Certificate is concerned, apart from the font not matching, the spelling of "Gauhati" has been written as "Guwahati". The certificate being of the year 1977, it could not have been written as Guwahati and the change in the spelling had only taken place in the year 1984. This Court also finds force in the contention of Sri Chutia, learned Standing Counsel who has pointed out that even in the pleadings there are

inconsistencies and the original Pass Certificate sought to be produced will not inspire any confidence. This Court has noted that while in paragraph 3 of the writ petition the petitioner has stated that he had collected the Pass Certificate in due course from the school when the same was made available by the SEBA, in the reply affidavit it has been stated that the petitioner did not feel the necessity to collect the original certificate and the same was collected only in the year 2015. For ready reference, the pleadings made in paragraph 3 of the writ petition and paragraph 3 of the reply affidavit are extracted herein below-

Paragraph 3 of the writ petition

“3. That, the petitioner begs to state that he came out successfully in the said H.S.L.C. Examination in the year 1977 by securing 3rd Division. Thereafter, in due course of time, the Board issued original H.S.L.C. pass certificate in favour of the petitioner which he collected from the concerned school from where he appeared the said examination. In the H.S.L.C. certificate the age of the petitioner was also recorded as 14 years 5 months 19 days as on 1st March, 1977. The petitioner also obtained Diploma in Pharmacy from Assam Medical College under Dibrugarh University in the year 1980.

Relevant portion of the paragraph 3 of the reply affidavit

“3. ... In course of time, the deponent never felt the necessity of original HSLC Certificate inasmuch as he had fulfilled all his requirement with the provisional HSLC Certificate (hand written certificate) issued by his School immediately after passing of HSLC examination. In the year, 2015 when he found that his provisional HSLC certificate had been missing/lost, he rushed to Deshbandu Vidyapith H.S. School, Hojai to collect the original

HSLC Certificate but unfortunately, he was informed from his School that since he did not collect the original certificate for quite long time, the school had returned back the same to the Board. Thereafter, the petitioner approached the Board and on his approach, he was asked to submit an application in this regard. Accordingly, the petitioner submitted an application and paid Rs.32/- or Rs 35/- (exact amount the petitioner cannot remember) as necessary fee and thereafter the petitioner was issued the original certificate within around two months from the date of application. The petitioner cannot remember the exact date of issuance of the certificate but it was issued in the year 2015. Hence, since the certificate was issued in the year 2015, the word 'Guwahati' might have been used inasmuch as because by this time the Board started using 'GUWAHATI' instead of 'GAUHATI'."

14. An issue regarding date of birth can be ultimately resolved only by the authorities who had issued the certificate relied upon by the petitioner. It is not in dispute that it is the SEBA which had issued the Admit Card and the Pass Certificate. On the verification exercise carried out by the Department, the SEBA in its clarificatory letter dated 05.08.2020 has clearly stated that the age of the petitioner as on 01.03.1977 was 16 years 5 months 19 days. In view of such categorical finding which is also not the subject matter of challenge, this Court, cannot find any fault with the order dated 20.06.2020 by which the petitioner has been sent on retirement on attaining the age of superannuation.

15. In view of the above, this Court is of the opinion that no relief is entitled to by the petitioner and accordingly the petition is dismissed.

16. At this stage, the learned counsel for the petitioner has submitted that the pension and other post retirement benefits have not been released to the

petitioner. It is accordingly directed that the pension of the petitioner may be released in accordance with law. However, the said direction is subject to the liberty granted to the Department to make further enquiry into the aspect of the allegation of forgery in the documents produced by the petitioner and even to institute appropriate criminal case, if deemed necessary.

JUDGE

Comparing Assistant