

GAHC010135582023



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

**Case No. : WP(C)/3591/2023**

BUDHESWAR BORA  
SON OF LATE MIHIRAM BORA,  
VILLAGE- URIAGAON,  
P.O.- URIAGAON, P.S.- SADAR,  
DIST.- NAGAON, ASSAM,  
PIN- 782003.

VERSUS

THE STATE OF ASSAM AND 4 ORS  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE  
GOVERNMENT OF ASSAM,  
REVENUE (REGISTRATION) AND D.M. DEPARTMENT,  
DISPUR, GUWAHATI-781006.

2:THE DEPUTY COMMISSIONER  
NAGAON  
ASSAM  
PIN- 782003.

3:THE ADDL. DEPUTY COMMISSIONER (REVENUE)  
NAGAON  
ASSAM.

4:THE CIRCLE OFFICER  
NAGAON SADAR REVENUE CIRCLE  
NAGAON  
ASSAM.

5:THE JOINT DIRECTOR  
HEALTH SERVICES  
NAGAON

ASSAM

**Advocate for the Petitioner** : MR. A K BARUAH

**Advocate for the Respondent** : GA, ASSAM

**BEFORE  
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

**ORDER**

**Date : 02-02-2024**

1. Heard Mr. A.K. Baruah learned counsel for the petitioner. Also heard Mr. S Dutta learned counsel for the respondent No.1, Mr. R Dhar, learned counsel for respondent Nos.2, 3 and 4 and Mr. D Upamanyu learned counsel for the respondent No.5.

2. The petitioner is aggrieved by an action of the respondent authorities in discontinuing his service as Gaon-Burah/Gaon Pradhan. The petitioner has been serving as Gaon-Burah/Gaon Pradhan of Uria Gaon village under Singia Putani Mouza since 03.11.1994.

3. The State of Assam issued a notification on 26.08.2021, whereby the executive instructions controlling the appointment and service condition of Gaon Burah under Assam Land and Revenue Regulation, 1886 was amended. Amongst other, age of superannuation of Gaon-Burah/Gaon Pradhan was determined to be 65 years.

4. It was further provided that those Gaon-Burah/Gaon Pradhan who had already attained the age of 65 years be removed by the concerned District Commissioner of the district and the Principal Secretary, in case of autonomous council areas.

5. It is apposite to mention here that the earlier executive instructions issued under the Assam Land and Revenue Regulation, 1886 did not prescribe any upper age limit for superannuation of Gaon-Burah/Gaon Pradhan.

6. Be that as it may subsequent to such notification, the Circle Officer, Nagaon Revenue Circle issued an order dated 30.04.2022 whereby altogether 35 Gaon-Burah/Gaon Pradhan including the petitioner were removed from the post of Gaon-Burah/Gaon Pradhan on attaining the age of superannuation.

7. From the affidavit in opposition filed by the respondents and the statements made in the writ petition it is seen that the petitioner was held to be above 65 years on the basis of a report of the Lot Mondal of the concerned Lot. The said Lot Mondal submitted a report that the petitioner is above 65 years and basis of such determination of a PAN card issued by Income Tax department on 29.05.2019 which shows that the date of birth of the petitioner is 09.10.1950.

8. In terms of the aforesaid PAN card, the petitioner was more than 70 years on the date of removal. It is also not in dispute that the respondent department also relied on age of the petitioner determined by a Medical Board constituted by the State itself. The report of the Medical Board, which is a part of the record of this proceeding, clearly reveals that after physical examination and radiological investigation done on the petitioner, the Medical Board opined that the age of the petitioner is more than 60 years but less than 70 years on the date of examination i.e., on 01.03.2023. Thus,

on that date there is a probability of the petitioner being below 65 years or above but less than 70 years whereas the PAN card relied upon reflects that on the said date he is more than 70 years.

9. In the aforesaid backdrop, the petitioner preferred a representation before the District Commissioner, Nagaon claiming that he has not attained the age of 65 years to be superannuated.

10. While preferring the aforesaid representation, as available on record, the petitioner relied on his Adhar card issued by the competent authority, which goes to show that the date of birth of the petitioner is 31.12.1961. It is also contended that the earlier PAN card, which has been relied on by the respondent authorities was incorrect inasmuch as not only date of birth was incorrect but also name of the father of the petitioner was incorrectly published. Accordingly, such PAN card was corrected by the competent authorities wherein the name of the father of the petitioner was corrected as well as the date of birth of the petitioner to be 31.12.1961. The petitioner further relied on the voters list for the year 2023 wherein, the age of the petitioner is shown to be 61 years.

11. The grievance of the petitioner is that though appointment of a post of Gaon-Burah/Gaon Pradhan is by now recognized to be a civil post, however, the state authorities has not created any service book in respect of Gaon-Burah/Gaon Pradhan so as to record their date of birth inasmuch as at the point of time when the petitioner entered into the service of Gaon-Burah/Gaon Pradhan, there was no scope of obtaining any birth certificate and it was also not mandatory at that point of time.

12. Accordingly the learned counsel for the petitioner contends that the District Commissioner should re-look into the matter in view of the aforesaid materials that has been placed by the petitioner. However, his representation is still be remained unattended.

13. At this stage Mr. R Dhar, learned counsel for the respondent submits that the matter relates to a disputed question of fact and therefore, this court may not like, in exercise of its power under Article 226 of the Constitution of India, to make a determination regarding the correct date of the birth of the petitioner.

14. It is the District Commissioner who has been authorized by the executive instruction to remove those Gaon-Burah/Gaon Pradhan who have attained more than 65 years in terms of the executive instruction and therefore it is the Deputy Commissioner who is to apply its mind to given facts of an individual case to come to a conclusion, whether the Gaon-Burah/Gaon Pradhan has attained the age of superannuation or not.

15. This court is also of the opinion that in the given facts of the present case a dispute has arisen regarding the actual date of birth of the petitioner, inasmuch as there are two sets of documents which suggest two different dates. In such a circumstances, this court could have relied upon the decision of the Medical Board for determination of the age, however, the said opinion of the Medical Board is also not conclusive and in terms of such opinion, the age of the petitioner is between 60 years and below 70 years. Therefore the petitioner can either be below 65 years or above 65 years.

16. That being the position the matter is remanded back to the

District Commissioner to relook into the representation of the petitioner and decide the matter afresh regarding the age of the petitioner.

17. The District Commissioner shall be at liberty to consider any other relevant material including school record and certificates etc.

18. Such exercise shall be carried out within a period of 4 weeks from the date of receipt of a certified copy of this order to be furnished by the petitioner before the District Commissioner, Nagaon.

19. It is needless to say that in the event determination is made in favour of the petitioner, he shall forthwith be reinstated in the post of Gaon-Burah/Gaon Pradhan in question.

20. With the aforesaid observations, the writ petition stands disposed off.

**JUDGE**

**Comparing Assistant**