

GAHC010248352023



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

Case No. : WA/441/2023

OIL INDIA LIMITED

A COMPANY REGISTERED UNDER THE INDIAN COMPANIES ACT, HAVING
ITS REGISTERED OFFICE AT DULIAJAN, IN THE DISTRICT OF
DIBRUGARH, ASSAM, PIN- 786602, REP. BY ITS RESIDENT CHIEF
EXECUTIVE.

VERSUS

ON THE DEATH OF JATIN CHANDRA SARMAH HIS LEGAL HEIRS,
S/O LATE LOK NATH SARMAH, R/O MAGZINE, VIP ROAD, SHANKAR
NAGAR, BYE LANE 1, P.O. UDAYANBIHAR, GUWAHATI- 781171, DIST.
KAMRUP (METRO), ASSAM.

1.1: JAYANTI SHARMA
W/O LATE JATIN CHANDRA SARMAH

R/O MAGZINE
VIP ROAD
SHANKAR NAGAR
BYE LANE 1
P.O.- UDAYANBIHAR
GUWAHATI- 781171
DIST.- KAMRUP (METRO)
ASSAM.

1.2: SWANDEEP SARMAH
S/O LATE JATIN CHANDRA SARMAH

R/O MAGZINE
VIP ROAD
SHANKAR NAGAR
BYE LANE 1

P.O.- UDAYANBIHAR
GUWAHATI- 781171
DIST.- KAMRUP (METRO)
ASSAM

Advocate for the Petitioner : MR. A SARMA

Advocate for the Respondent : MR. K M MAHANTA(R-1.1,1.2)

BEFORE

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUMAN SHYAM**

Date of hearing : **28.02.2024.**

Date of judgment : **28.02.2024.**

JUDGMENT & ORDER (Oral)

(Suman Shyam, J)

This Writ Appeal filed by the Oil India Limited (OIL) as appellant, is directed against the judgment and order dated 26.09.2023 passed by the learned Single Judge in WP(C) No.8048/2017 disposing of the writ petition by interfering with the order dated 14.06.2017 issued by the appellant seeking to recover a sum of Rs.23,97,895/- from the outstanding dues payable to the deceased husband of the respondent No.1.1. The facts and circumstances, giving rise to filing of the present appeal, are briefly stated herein below.

2. Pursuant to the judgment and order dated 13.08.1990 passed by this Court in Civil Rule No.1083/1988, the husband of the respondent No.1.1 and father of the respondent No.1.2 viz., Late Jatin Chandra Sarmah was appointed in the post of

Clerk/Typist under the appellant on 16.10.1990. According to the appellant, at the time of entry into service, Jatin Chandra Sarmah had entered his date of birth to be 01.03.1956 in the bio-data proforma. The age of retirement of employees of the appellant company is 60 years. Therefore, according to the appellant, he had attained the age of superannuation and ought to have retired from service with effect from 28.02.2016 upon attaining the age of 60 years. Notwithstanding the same, Jatin Chandra Sarmah overstayed in service for a period of one more year and had eventually retired only on 28.02.2017. The appellant claims that the overstay in service by the employee was on account of tampering of the relevant register, thus, altering his date of birth by re-writing the date as "01.03.1957". According to the appellant company, Late Jatin Chandra Sarmah had not only committed fraud but being fully aware of his actual date of birth based on supporting documents and not disclosing the same to the authorities, he is guilty of concealment of facts, thus, enjoying undue benefit in the form of extended period of service for a period of one year. By issuing the impugned order dated 14.06.2017, the appellant company had, therefore, sought to recover the sum of Rs.23,97,895/- being the salary and allowances drawn by Late Jatin Chandra Sarmah due to overstay in service for a period of one year.

3. It is apparent from the materials available on record that on 21.09.2016, the Deputy General Manager, ER(I/C)/OIL had issued a letter intimating Jatin Chandra Sarmah that he is due to retire from service on attaining the age of superannuation on 28.02.2017 and therefore, he was asked to fill up various forms and also to vacate the company's quarter. On 27.10.2016, the Chief Engineer, Pipeline (Operation) was also advised to ask Jatin Chandra Sarmah to submit the required forms for availing

post retirement medical benefit scheme. However, just four days prior to his retirement, a show cause notice dated 24.02.2017 was served upon the employee (Jatin Chandra Sarmah) alleging that he had tampered with the relevant record so as to change his date of birth to 01.03.1957. Since he was the sole beneficiary of tampering of the records, hence, it could be presumed that he was involved in the act of tampering the record. The employee was, therefore, asked to show cause as to why a sum of Rs.19,59,943.44, drawn as salary, including business related expenditure during the period from 01.03.2016 to 31.01.2017, besides other benefits, should not be recovered from him.

4. Jatin Chandra Sarmah submitted his show cause reply dated 02.03.2017 *inter-alia* denying the allegation of record tampering brought against him. However, the appellant company was not satisfied with the reply submitted by the employee and accordingly, vide notice of enquiry dated 03.04.2017, enquiry proceeding was initiated against the employee.

5. Aggrieved thereby, Jatin Chandra Sarmah, as petitioner, had filed WP(C) No.2512/2017 before this Court wherein, the learned Single Judge had passed an interim order dated 03.05.2017 permitting the authorities to go ahead with the enquiry proceeding. However, the appellant company was restrained from making any recovery of remuneration already paid to the employee. Assailing the interim order dated 03.05.2017, Writ Appeal No.141/2017 was preferred by Jatin Chandra Sarmah. However, taking note of the fact that a departmental proceeding against a retired employee was not permissible under the Certified Standing Order of the Company,

the proceedings initiated against him was dropped. Consequently, by order dated 20.06.2017, the Writ Appeal was also dismissed on withdrawal. It was only thereafter, that the impugned order dated 14.06.2017 was issued by the appellant company alleging that due to overstay in service, the employee had illegally drawn salary and other benefits for the period from 01.03.2016 to 28.02.2017, which he was lawfully not entitled to receive. As such, the same has resulted into loss being suffered by the company. Consequently, the decision of the appellant company to recover a sum of Rs.23,97,895.65 was communicated to the husband of the respondent No.1 by the impugned order dated 14.06.2017. Aggrieved by the aforesaid order, Late Jatin Chandra Sarmah, during his lifetime, had preferred WP(C) No.8048/2017. However, during the pendency of the Writ Petition, Jatin Chandra Sarmah expired on 16.10.2021 as a result of which, his widow and son, i.e. the respondent Nos.1.1 and 1.2 respectively, were substituted in the writ petition.

6. During the course of argument, Ms. G. Goswami, learned counsel for the appellant has strenuously argued that this is a clear case of tampering of records. She submits that Late Jatin Chandra Sarmah was aware of his actual date of birth and therefore, even if there was any mistake committed by the company officials, the employee ought to have pointed out the same but he had failed to do so resulting in his overstay in service for a period of one year. Contending that it is a clear case of tampering of relevant records leading to changing the date of birth of the employee and also concealment of facts, Ms. Goswami has argued that since Late Jatin Chandra Sarmah is the sole beneficiary of such record tampering, it can be reasonably presumed that he was responsible for the same. The learned counsel for

the appellant has further argued that the appellant being a public sector undertaking, it cannot be saddled with such heavy financial burden in the form of salary and allowances, which was unduly availed by Late Jatin Chandra Sarmah due to his own misdeeds. On such count the appellant's counsel has sought to justify the order dated 14.06.2017 by contending that the learned Single Judge had erred in exercise of jurisdiction under Article 226 of the Constitution in passing the impugned judgment and order dated 26.09.2023.

7. The respondents' counsel has opposed the submissions advanced by the learned counsel for the appellant and has argued that recovery of such heavy amount from the widow and son of the deceased employee would not only be illegal but also highly inequitable in the facts and circumstances of the case.

8. We have considered the submissions advanced at the bar and have also carefully gone through the materials available on record.

9. As noticed above, the husband of the respondent No.1.1, Late Jatin Chandra Sarmah had gone on retirement with effect from 28.02.2017 on the basis of a letter dated 21.09.2016 issued by the Deputy General Manager, ER (I/C) of OIL. The deceased employee had not denied that his actual date of birth was 01.03.1956 but his stand in the show cause reply has been to the effect that after joining service he had received an Identify Card issued by the authority wherein his date of birth was also mentioned as 01.03.1957 and the said date of birth was mentioned in other correspondences as well. Contending that he had no role to play in tampering of records, the employee had strongly refuted the allegations brought against him by

the appellant. What is to be noted herein that the date of birth and other relevant particulars of an employee of the Corporation is required to be maintained in a register which is kept in the custody of the authorities. Such record/register cannot be tampered by any employee without the complicity of other officials. However, there is no such allegation against any other staff of the company. If there is over-writing in the date of birth of Late Jatin Chandra Sarmah wherein, the year of birth has been changed from "1956" to "1957" then, the same could raise a strong suspicion as regards the involvement of the employee. However, such suspicion alone, in our opinion, would not be sufficient to establish the fact that the employee had a direct role in tampering of the record. Allegation of fraud has also been brought against the employee. Therefore, the impugned order is also stigmatic. Allegation of fraud and concealment of facts are serious matters and unless a proper enquiry is conducted on such allegation by giving the employee adequate opportunity to defend his interest, guilt/misconduct of the employee cannot be said to have been established in accordance with law.

10. In the present case, as noted above, the appellant company had initiated a departmental enquiry against the husband of the respondent No.1.1 but the proceeding was dropped. There was no F.I.R./police complaint ever lodged against the deceased employee alleging fraud. Therefore, it is evident that the alleged guilt/misconduct on the part of the employee has not at all been established by following the due process of law. Notwithstanding the same, the impugned order dated 14.06.2017 was issued by the authorities seeking to recover the sum of Rs.23,97,895/-.

11. It would be pertinent to note herein that the amount claimed in the impugned order dated 14.06.2017 is admittedly the salary and allowances paid to the husband of the respondent No.1.1 during his lifetime for rendering services to the company. Such amount received by the deceased employee would undoubtedly form part of his estate. Article 300-A of the Constitution provides that no person shall be deprived of his property save by authority of law [see **Abdul Vahab Vs. State of Madhya Pradesh** reported in **(2022) 13 SCC 310**]. As has been noticed above, the impugned order dated 14.06.2017 is not based on any finding of guilt or misconduct on the part of the employee in a proper proceeding initiated against him under the law. Rather, it is an order of recovery issued merely on the basis of *ipse dixit* of the officials of the appellant company. In such view of the matter, this Court is of the considered opinion the demand for recovery of amount from the respondent Nos.1.1 and 1.2 in the facts and circumstances of the case, would be wholly impermissible under the law.

12. We also find that the order dated 14.06.2017, apart from being confiscatory in nature, also proceeds on a basis that the appellant company had suffered loss due to overstay of Late Jatin Chandra Sarmah for one year. Such assertion of the appellant, as reflected in the impugned order dated 14.06.2017, also appears to be wholly untenable for the following reasons. Firstly, a confiscatory order which is based on perception of guilt/wrong doing of the employee cannot be based on mere *ipse dixit* of the authorities but the same ought to be premised on clear finding of misconduct established in a proceeding conducted in accordance with law, which has evidently not been done in the present case. Secondly, even assuming that the

husband of the respondent No.1.1 had overstayed for a year, yet, the amount paid to him was admittedly against the services rendered by him and as per the applicable rules. It is not the case of the appellant that the amount was drawn by the employee without rendering any work. Therefore, the argument of loss having been suffered by the company due to overstay of the employee, is also found to be untenable in the eyes of law.

13. By taking note of the facts and circumstances of the case and by noticing the law laid down by the Hon'ble Supreme Court in the cases of **State of Punjab and others vs. Rafiq Masih (White Washer)** reported in **(2015) 4 SCC 334**, **Chandi Prasad Uniyal & Others vs. State of Uttarakhand & others** reported in **(2012) 8 SCC 417** and **Registrar, Cooperative Societies, Haryana & Others vs. Israil Khan & Others** reported in **(2010)1 SCC 440** the learned Single Judge was of the view that it would be highly inequitable to permit the authorities to make recovery of the amount from the widow and the son of the deceased employee. The learned Single Judge has, however, observed that since the correct date of birth of the husband of the respondent No.1.1 is 01.03.1956, hence, he should not get the benefit of any promotion given to him subsequent to 01.03.2016.

14. Having regard to the facts and circumstances of the case in its entirety, we find ourselves in complete agreement with the views expressed by the learned Single Judge in the impugned judgment and order dated 26.09.2023. As noticed above, the impugned order dated 14.06.2017 has been issued at the *ipse dixit* of the authorities in the company, without establishing the fact that the deceased employee had any

involvement in tampering the records leading to his overstay in service for one year. Even if it is presumed that the employee was aware of his original date of birth, which was a year earlier than his projected date of birth of 01.03.1957, even then, mere failure on his part to point out the same before the authorities, in our considered opinion, would not amount to fraud or concealment of facts, which could justify a confiscatory action of this nature, that too, to be enforced against the widow and the son of the deceased employee after his demise.

15. For the reasons stated herein above, this appeal is held to be devoid of any merit. The same is accordingly dismissed.

JUDGE

CHIEF JUSTICE

T U Choudhury/Sr.PS

Comparing Assistant