

GAHC010271342023



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

Case No. : WP(C)/7049/2023

INA DEVI
W/O- BIMAL SAIKIA, R/O- VILLAGE- BAMPARBATIA, P.O. TEZPUR, DIST.-
SONITPUR, ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE SECRETARY, DEPARTMENT OF SCHOOL
EDUCATION, ASSAM, DISPUR, GUWAHATI- 781006

2:THE COMMISSIONER AND SECRETARY

PENSION AND PUBLIC GRIEVANCES
GOVT. OF ASSAM
DISPUR
GHY-06

3:THE COMMISSIONER AND SECRETARY

TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GHY-06

4:THE DIRECTOR OF PENSION

HOUSEFED COMPLEX
DISPUR
GHY-06

5:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GHY- 781019

6:THE DISTRICT ELEMENTARY EDUCATION OFFICER

SONITPUR
P.O. AND DIST.- SONITPUR
ASSAM
PIN- 784001

7:THE BLOCK ELEMENTARY EDUCATION OFFICER

GABHARU
TEZPUR
DIST.- SONITPUR
ASSAM
PIN- 7845

Advocate for the Petitioner : MR. M KHAN, MS J AKTAR

Advocate for the Respondent : SC, ELEM. EDU, GA, ASSAM,SC, FINANCE DEPTT.

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR

ORDER

Date : 03.09.2024

Heard Mr. M. Khan, learned counsel for the petitioner. Also heard Ms. N. Phukan, learned standing counsel, Elementary Education Department for the respondent Nos. 1, 5, 6 and 7; Mr. B. Deuri, learned Govt. Advocate for the respondent Nos. 2 and 4 and Ms. R. M. Baruah, learned standing counsel, Finance Department for the respondent No.3.

2. The petitioner was initially appointed as Assistant Teacher of Parbatia Girls M. V. School under Gabharu Education Block in the district of Sonitpur, Assam on

06.12.1999. After entering into service, the service book of the petitioner was opened and in the said service book, the date of birth of the petitioner was entered as 23.10.1961 as per affidavit dated 07.11.1990. Prior to entering into service the petitioner passed her HSLC examination in the year 1980 and in the said HSLC Pass Certificate the date of birth of the petitioner is recorded as 22 years 4 months 8 days as on 1st of March, 1980 i.e., her date of birth as 23.10.1957. As her date of birth was wrongly recorded in the said HSLC Certificate, the elder brother of the petitioner swore an affidavit on 07.11.1990 before the Judicial Magistrate, First Class, Tezpur declaring that her actual date of birth is 23.10.1961. It was on the basis of this affidavit that the date of birth of the petitioner was entered as 23.10.1961 in her service book.

3. While the petitioner was serving as Assistant Teacher of Parbatia Girls M. V. School, the petitioner was served a Communication dated 04.09.2019, issued by the District Elementary Education Officer, Sonitpur stating that as per service book the petitioner is going to complete 60 (sixty) years on 24.10.2017 and hence the petitioner is to retire on 31.10.2017. Thereafter, on the basis of the said communication dated 04.09.2019, the petitioner retired on 31.10.2017.

4. After retirement, the petitioner was served with another communication dated 19.06.2020, written by the Block Elementary Education Officer, Gabharu, Tezpur directing to recover the excess amount of monthly salary and the other financial benefits at an early date and the statement of the amount to be recovered was also enclosed with the said communication. In the statement of excess amount drawn w.e.f November, 2017 to August, 2019 prepared by the

Block Elementary Education Officer, Gabharu, Tezpur the deduction amount is shown as Rs.8,74,582/-. Thereafter, the Under Secretary to the Govt. of Assam, Department of School Education by a Communication dated 03.10.2023 and addressed to the Director of Elementary Education, Assam, requested for refund of the excess drawn amount in respect of the petitioner at the earliest. Consequently, the District Elementary Education Officer, Sonitpur by a communication dated 04.11.2023, addressed to the petitioner informed to take necessary steps for refund of excess drawn amount through treasury challan under appropriate Head of Accounts at an early date and to submit the same to Office of the District Elementary Education, Officer, Sonitpur.

5. Being aggrieved with the direction for refund of the excess amount drawn by the petitioner, the present writ petition has been filed.

6. The respondent No.5 has filed an affidavit in opposition, wherein, it is stated that as per the report of Block Elementary Education Officer, Balipara by letter dated 15.03.2022 and Block Elementary Education Officer, Gabharu by letter dated 19.06.2020 and on verification of the HSLC Certificate and Admit Card of the petitioner it was observed that her date of birth is recorded as 23.10.1957, and as per Rule her date of retirement from Government service is 31.10.2017. However, in the service book, her date of birth was recorded as 23.10.1961 on the basis of an affidavit which is not acceptable. It is also stated that with regard to the date of birth of any Government employee the age recorded in the HSLC Certificate or Admit Card is considered to be authentic and the retirement date of employee is calculated as per the HSLC Pass Certificate and Admit Card. The petitioner has overstayed 22 months in excess to her

actual date of retirement.

7. Ms. N. Phukan, learned standing counsel, Elementary Education Department submits that as the date of birth of the petitioner has to be reckoned in terms of the entry made in the HSLC Certificate/ Admit Card, her date of birth should be 23.10.1957 and not 23.10.1961. Therefore, the petitioner was made to retire on 31.10.2017 by the Communication dated 04.09.2019. She also submits that as the petitioner has overstayed for a period of 22 months, the petitioner was directed to refund the excess salary drawn for the said period and therefore, no interference is required in the Communications made by the respondents.

8. This Court has considered the submissions made by the learned counsel for the parties as well as perused the materials available on record.

9. When the petitioner entered into service on 06.12.1999 as Assistant Teacher of Parbatia Girls M. V. School her date of birth was recorded as 23.10.1961 in terms of the affidavit sworn by the elder brother of the petitioner on 07.11.1990. Assuming that the affidavit dated 07.11.1990 cannot be considered and that the date of birth recorded in her HSLC Pass Certificate as 23.10.1957 is to be accepted, what is seen in the present case is that respondents permitted the petitioner to work beyond her date of retirement and extracted her service and also paid her salary. As the respondents had permitted the petitioner to work for the period without raising any objections, it would not be proper at this stage to allow the deduction from his retirement benefits,

particularly, when the petitioner offered her service to the respondents.

10. Considering that there was no allegation of misrepresentation of fraud, which could be attributed to the petitioner and also taking into consideration the fact that the respondents have permitted the petitioner to work for the said period and paid her salary, it would be unfair at this stage to deduct the said amount of salary paid to the petitioner. Accordingly, the Communication dated 19.06.2020, written by the Block Elementary Education Officer, Gabharu the Communication dated 03.10.2023, written by the Under Secretary to the Government of Assam and addressed to the Director of Elementary Education Assam and the Communication dated 04.11.2023, written by the District Elementary Education Officer, Sonitpur Tezpur and addressed to the petitioner are set aside and quashed. It is made clear that there shall be no deduction of the excess salary paid to the petitioner for her overstay in service for the said period.

11. Although this Court has given a direction to the respondents not to recover the excess amount paid for the said period of 22 months, however, makes it clear that for fixing the retirement benefits, the period of 22 months in respect of which salary was already paid to the petitioner cannot be taken into consideration and the petitioner would be entitled to fixation of retiral benefits as on the date of her superannuation i.e., 31.10.2017.

12. The respondents are directed to fix the retiral benefits of the petitioner in terms of the order passed today and thereafter pay the same to the petitioner

at the earliest but not later than 4(four) months from the date of receipt of a copy of the order of this Court.

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

JUDGE

Comparing Assistant