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

Case No. : WP(C)/3737/2024

MD ABDUR RASHID
S/O- BAKTU ZAMAL, VILLAGE AND P.O. GUNIALGURI, P.S. KALGACHIA,
DISTRICT- BARPETA, ASSAM, PIN- 781319

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY, TO THE
GOVERNMENT OF ASSAM, DEPARTMENT OF SCHOOL EDUCATION,
DISPUR, ASSAM

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI

3:THE DIRECTOR OF PENSION
ASSAM
HOUSEFED COMPLEX
NEW BUILDING
ASSAM-06

4:THE INSPECTOR OF SCHOOL
BARPETA DISTRICT CIRCLE
BARPETA
ASSAM

5:THE PRINCIPAL CUM SECRETARY OF G.K. ARABIC COLLEGE
GUNIALGURI
P.O. GUNIALGURI
DISTRICT- BARPETA
ASSAM

PIN- 78131

Advocate for the Petitioner : MR GAURAV R DUTTA, MR A R BAROOAH

Advocate for the Respondent : SC, SEC. EDU., GA, ASSAM

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

ORDER

Date : 07.04.2026

Heard Mr. G R Dutta, Learned Counsel for the Petitioner. Also heard Mr. P P Dutta, Learned Standing Counsel, Department of School Education, Assam, and Mr. P Saikia, Learned Government Advocate.

2. The petitioner, by way of instituting the present Writ Petition, has presented a challenge to a communication dated 28.04.2017, issued by the Director of Madrassa Education, Assam, requiring the Principal of GK Arabic College, Gunialguri, Barpeta, to withhold the pay and allowances of the petitioner w.e.f April, 2017, and also requiring the Principal of GK Arabic College, Gunialguri, Barpeta, to prepare a detailed statement, with regard to the salaries and other allowances, drawn by the petitioner, w.e.f 01.12.2015 to 31.03.2017.

3. The petitioner, in the present writ petition, has projected that during the period 1971-73, he had prosecuted his studies in Gunialguri M.E Madrassa. After completing his Class VI Standard, the petitioner proceeded to enroll himself in GK Arabic College, Gunialguri, Barpeta. Both Gunialguri M.E Madrassa and GK Arabic College, Gunialguri, Barpeta, were functioning from the same premises. It is projected that there being a vacancy, arising in the post of Menial in the said College, the Managing Committee of the College, proceeded to engage the petitioner as a Menial, in the year 1974. Such engagement is said to

have been so made, basing on the Class VI pass certificate, produced by the petitioner. It is to be noted that when the petitioner was so engaged as a Menial, the GK Arabic College, Gunialguri, Barpeta, was in its venture stage. The petitioner further projects that in terms his said engagement, he joined the post on 01.08.1974. The petitioner, thereafter, projects that he had appeared in the Assam Madrassa Intermediate Examination, in the year 1981 and had cleared the same in the Second Division.

It is further projected by the petitioner that, on clearing the Assam Madrassa Intermediate Examination, the Governing Body of the GK Arabic College, Gunialguri, Barpeta, in its meeting held on 27.07.1986, resolved to appoint the petitioner as an Assistant Teacher, w.e.f 01.08.1986, for its pre-senior sections. Accordingly, the petitioner joined in his services as an Assistant Teacher w.e.f. 01.08.1986. The petitioner further projects that in the year 2015, certain vested interests had raised objections, with regard to the age of the petitioner. It is projected that an enquiry was carried out, in the matter, by the Director of Madrassa Education, Assam, and in the said enquiry, it was found that the 'date-of-birth' of the petitioner, recorded as '01.12.1960', in his service records, was correct and the same was not mandated to be altered.

The petitioner projects that in the Assam Madrassa Intermediate Examination certificate, the age of the petitioner was recorded as 19 years 03 months 0 days, as on 01.03.1980, and, basing on the said age, the 'date-of-birth' of the petitioner works out to '01.12.1960'. It is projected that the Director of Madrassa Education, Assam, ignoring the date-of-birth as recorded in the Service Book of the petitioner, proceeded to issue the impugned communication dated 28.04.2017, requiring the Principal of GK Arabic College, Gunialguri, Barpeta, to restrain the petitioner from attending the College and also to withhold his salaries

w.e.f April, 2017. The petitioner projects that by reckoning the age of the petitioner as '01.12.1960', his age of superannuation would fall on '31.12.2020'. However, the respondent authorities have arbitrarily forced him to move out of the College, w.e.f 14.09.2017.

Being aggrieved, the petitioner has instituted the present writ petition.

4. Mr. G R Dutta, Learned Counsel for the Petitioner, by reiterating the facts noticed, hereinabove, has submitted that after the issuance of the communication dated 28.04.2017, the petitioner had approached the Head-Master, of Gunialguri M.E Madrassa for procuring his Class VI pass certificate, inasmuch as, the same was required to be submitted before the Departmental Authority, in terms of the impugned communication dated 28.04.2017. The application submitted by the petitioner was responded to by the Head-Master of Gunialguri M.E Madrassa, vide a communication dated 12.06.2017, wherein, it was highlighted that on account of devastating floods, which occurred on 15.09.1984, the records as maintained in the School, were washed away and the same is presently not traceable. As such, it was highlighted that it would not be possible to issue any certificate to the petitioner, in the absence of the records. It is further projected that the petitioner had brought the said aspect of the matter, to the notice of the Secretary, Assam State Madrassa Education Board, vide a communication dated 27.01.1986. Mr. G R Dutta, Learned Counsel for the Petitioner, further submits that the 'date-of-birth' of the petitioner, as recorded in the Assam Madrassa Intermediate Examination, 1981, was so recorded, basing on the earlier School records of the petitioner and the 'date-of-birth', as computed from the age disclosed in the said certificate, works out to 01.12.1960. He submits that the 'date-of-birth' as working out in the Assam Madrassa Intermediate Examination Certificate, 1981, is to be given primacy and the same is mandated to be so reckoned, for the purpose of determining

the date of superannuation of the petitioner, herein. Mr. G R Dutta, Learned Counsel for the Petitioner, further submits that, although the petitioner, earlier, had approached this Court, by way of instituting a writ petition being WP(C) No. 3204/2017, claiming the arrears of his salaries, the same was withdrawn, basing on a assurance given by the departmental authorities for releasing to the petitioner, his arrear salaries. However, Mr. G R Dutta, Learned Counsel for the Petitioner, submits that the arrear salaries of the petitioner have not been released. The Learned Counsel for the Petitioner submits that the petitioner's age, in terms of the records maintained by the Assam State Madrassa Board, works out to '01.12.1960', and accordingly, the same would not be permissible to be altered by the departmental authorities. Mr. G R Dutta, Learned Counsel for the Petitioner further submits that in the Service Book of the petitioner, his 'date-of-birth' was recorded as '01.12.1960' and the same is also found to have been endorsed by the Director of Madrassa Education, Assam, vide his endorsement dated 30.07.2015. He submits that the date-of-birth of the petitioner, as recorded in his Service Book was not altered, thereafter.

5. In the above premises, Mr. G R Dutta, submits that the Petitioner, being restrained by the authorities from continuing with his services, w.e.f 01.04.2017, the petitioner is entitled to be authorized his salaries and other allowances w.e.f 01.04.2017 to 31.12.2020 i.e. the date of his actual superannuation from his services. Mr. Dutta, further submits that the petitioner has also not been authorized his due pension and other pensionary benefits, although the petitioner had already proceeded, as per the 'date-of-birth' in his Service Book, on retirement w.e.f 31.12.2020.

6. *Per contra*, Mr. P P Dutta, Learned Standing Counsel, Department of School Education, Assam, submits that the contemporaneous records

maintained, pertaining to the services rendered by the petitioner as a Menial in GK Arabic College, Gunialguri, Barpeta, reveals that the 'date-of-birth' of the petitioner is '22.11.1955' and not '01.12.1960'. Mr. P P Dutta, Learned Standing Counsel, submits that the particulars of the teachers working in GK Arabic College, Gunialguri, Barpeta, as submitted, in connection with the deficit grants of aid granted to the College, the age of the petitioner as on 01.03.1976 was reflected as 20 years 5 months and 9 days. Mr. P P Dutta, submits that the same was so done, basing on the disclosure, made by the petitioner, at the time of his engagement as a Menial i.e. on 01.08.1974. He submits that considering the age of the petitioner as on 01.03.1976, as disclosed in the said particulars, the 'date-of-birth' of the petitioner works out to '22.11.1955'. He further submits that the said 'date-of-birth' i.e. '22.11.1955', has also been reflected in the other records of the petitioner maintained, in this connection, like the online details of the employees of the College in question. Mr. P P Dutta, submits that considering the 'date-of-birth' of the petitioner as '22.11.1955', his date of retirement would work out to be '30.11.2015'. Mr. P P Dutta, submits that the 'date-of-birth' of the petitioner as recorded in his Assam Madrasa Intermediate Examination certificate, is on account of a misrepresentation made by the petitioner, in the matter, while filling up his form for appearing in the said examination. He submits that in the event, the 'date-of-birth' of the petitioner, is construed as '01.12.1960', on the date he had joined his services in the College as a Menial i.e. on '01.08.1974', the petitioner would be aged around 13 years 8 months i.e. the petitioner would be a minor. He submits that it is not permissible to engage a minor, in a Government recognized institution. However, he submits that the said position had not occasioned in the matter, inasmuch as, the petitioner, on the date of his engagement as a Menial, is found to have been aged

above 18 years by construing his 'date-of-birth' to be '22.11.1955'. In the above premises, Mr. P P Dutta, Learned Standing Counsel submits that the petitioner is required to be held to have superannuated from his services w.e.f '30.11.2015' and the amount drawn by the petitioner, as pay and allowances, for the period w.e.f 01.12.2015 till 31.03.2017, is required to be recovered from the petitioner.

7. Rejoining his submissions, Mr. G R Dutta, Learned Counsel for the Petitioner submits that the projections made by the Learned Counsel for the Respondents are clearly perverse. He submits that the Respondent authorities have not revealed, as to the basis, on which they had computed the age of the petitioner as on '01.03.1976' to be 20 years 03 months and 09 days. He submits that the such calculation is solely based on a presumption drawn, without there being any basis for the same. He submits that the 'date-of-birth' of the petitioner is to be computed from the age of the petitioner disclosed in his Assam Madrassa Intermediate Examination certificate, 1981. Mr. Dutta, further submits that the respondent authorities have made the projection of the petitioner's date-of-birth to be '22.11.1955', by taking advantage of the fact that the original records, pertaining to the petitioner, as maintained in the Gunialguri M.E Madrassa, is no longer available, on the same being washed away and destroyed in the floods occasioning in the month of September, 1984. Mr. G R Dutta, further highlights that there is no material available on record to indicate that the petitioner, while submitting his application for appearing in the Assam Madrassa Intermediate Examination, had made any misrepresentation, therein, with regard to his age. Accordingly, the Learned Counsel for the Petitioner prays that the reliefs, as sought for in the present writ petition, be granted to the petitioner.

8. I have heard the learned counsel for the parties and also perused

the materials available on record.

9. The service particulars as well as the educational pursuits, made by the petitioner, noticed hereinabove, are not in dispute.

10. The petitioner was engaged as a Menial by the Managing Committee of GK Arabic College, Gunialguri, Barpeta, w.e.f 01.08.1974. While forwarding the deficit particulars of the employees of the GK Arabic College, Gunialguri, Barpeta, in the year 1976, the age of the petitioner, as on 01.03.1976, was recorded, therein, as 20 years 05 months 09 days. Further, his initial appointment as a Menial was recorded, therein, to have been so effected w.e.f 01.08.1974. The said particulars are also found to have been approved by the then Deputy Director Public Instructions, Assam, on 25.03.1976/77. The petitioner, while continuing as a Menial in GK Arabic College, Gunialguri, Barpeta, had submitted his application for appearing in the Assam Madrassa Intermediate Examination, 1981. The petitioner was successful in the said examination and a certificate, to the effect, was issued to him and therein, as on 01.03.1980, the age of the petitioner was reflected as 19 years 03 months 0 days. Basing on the said certificate, the 'date-of-birth' of the petitioner works out to be 01.12.1960. Basing on the date-of-birth of the petitioner, as projected by the petitioner, i.e. on '01.12.1960', this Court finds that the petitioner, as on 01.07.1974, was aged only 13 years 07 months 11 days i.e. he was a minor. However, from the materials brought on record, it is found that there is no disclosure that a minor was mandated to be so engaged on the ground that there was no adult available for such engagement. Further, such engagement is also found to have been approved by the Departmental Authorities, more particularly the authorities of the Directorate of Madrassa Education and no objection is seen to have been raised, with regard to the engagement of a minor, which was clearly not permissible. The said aspect of the

matter, when viewed in the proper perspective, would reveal that in fact the person engaged as a Menial on 01.08.1974 in GK Arabic College, Gunialguri, Barpeta, was not a minor, but an adult, and for the said reason, no objection, whatsoever, was raised from any quarter to such engagement. The said aspect of the matter is further fortified from the deficit particulars of the employees of the said College as of the year 1976, wherein, the age of the petitioner, as on date 01.03.1976, was shown as 20 years 05 months 09 days and accordingly, by calculating back the petitioner's age, as on 01.08.1974, he was found, admittedly, to be more than 18 years. To be more precise, the petitioner would be aged around 18 years 08 months and 09 days as on 01.08.1974.

11. The petitioner, in the present writ petition had projected that his engagement as a Menial in GK Arabic College, Gunialguri, Barpeta, was so made basing on the Class VI pass Certificate, produced by him, in the matter. The age of the petitioner as recorded by the College authorities, at the time of his engagement as a Menial, must also be held to have been so recorded, basing on the said Class VI pass certificate. However, the said Class VI pass certificate has not been produced, either by the petitioner or by the Departmental Authorities. However, it is reasonable to presume that the age of the petitioner recorded as 20 years 03 months 09 days on 01.03.1976, was so done, basing on the disclosures made in the said Class VI pass certificate. Accordingly, basing on the same, the 'date-of-birth' of the petitioner works out to be '22.11.1955'.

12. In view of the above discussions, it is found that there are two dates-of-birth emerging in the matter, in respect of the petitioner, herein. The petitioner's date-of-birth, prior to 1981, was considered as '22.11.1955' and after he had cleared his Assam Madrassa Intermediate Examination, in the year 1981, basing on the certificate issued to him, in this connection, and his age reflected, therein, the date-of-birth of the

petitioner was construed as '01.12.1960'.

13. From the materials brought on record, it is revealed that the age of the petitioner, as on '01.03.1976', was recorded as 20 years 03 months and 09 days, in the deficit particulars of the employees of the College, in question. The petitioner having projected that he was engaged as a Menial in the College, in question, basing on the Class VI pass certificates, the age of the petitioner, as reflected in the deficit particulars of the employees of the College, as on '01.03.1976', in the absence of any contrary material being brought on record, is to be deemed to have been so recorded, basing on the Class VI pass Certificate of the petitioner. Accordingly, this Court, basing on the age of the petitioner as on '01.03.1976', as recorded in the deficit particulars of the employees of the College in question, holds that the date-of-birth of the petitioner would be '20.11.1955'. The date-of-birth of the petitioner, as working out from the Assam Madrassa Intermediate Examination Certificate, 1981, as '01.12.1960', having not been demonstrated by the petitioner to have been so recorded, basing on any relevant document/material, this Court holds that the age of the petitioner, in his Assam Madrassa Intermediate Examination, 1981, and for the purpose, in the records of the Assam State Madrassa Board, was so recorded, basing on the self-declaration made by the petitioner, in the matter. Accordingly, in absence of any material being brought on record, to support the age of the petitioner, as recorded in his Assam Madrassa Intermediate Examination Certificate, 1981, to be so made, not on the basis of a self-declaration, but on the basis of some other relevant documents, material for the purpose, the date-of-birth of the petitioner, working out as '01.12.1960', basing on the said certificate issued to him by the Assam State Madrassa Board, would not mandate an acceptance by this Court. Accordingly, it is concluded that the date-of-birth of the

petitioner is to be construed as '22.11.1955'. Further, the age of the petitioner, reflected in his Assam Madrassa Intermediate Examination, 1981, cannot also be held to be based on his Class VI pass Certificate, inasmuch as, the same contradicts the age of the petitioner, recorded, while he was engaged as a Menial w.e.f 01.08.1974, which engagement is again projected to be made, based on the said Class VI pass Certificate.

14. Having concluded that the date-of-birth of the petitioner has to be construed as '22.11.1955', this Court finds that basing thereon, the petitioner's date of superannuation would fall on '30.11.2015'. However, the petitioner is found to have continued in his services till 31.03.2017 i.e. beyond the date of his superannuation. The petitioner was restrained from attending his duties, on account of the dispute arising, with regard to his date-of-birth, only w.e.f 01.04.2017 and the salaries of the petitioner have also not been released w.e.f 01.04.2017. However, the petitioner is found to have drawn his salaries in access, on account of overstay, w.e.f 30.11.2015 till 31.03.2017. While the said position as emanating from the records of the matter, is noted, this Court cannot also ignore the fact that the petitioner, although had continued in his services till 01.04.2017, and the petitioner was held by the departmental authorities to have retired from his services on reaching the age of superannuation w.e.f 30.11.2015, this Court finds that while the pay of the petitioner was not being released, the respondent authorities have also not authorized to the petitioner, his due pension and pensionary benefits. Even a provisional pension was not authorized to the petitioner.

15. In view of the above position obtaining in the matter, balancing the equities, this Court holds that while the petitioner is to be deemed to have retired from his services on reaching the age of superannuation

w.e.f 30.11.2015, by construing his date-of-birth to be '22.11.1955', the salaries drawn by the petitioner w.e.f 01.12.2015 till 31.03.2017, shall not be permissible to be recovered, on the ground that the petitioner is found to have discharged his duties during the said period. The said direction is also drawn by appreciating the fact that the petitioner was also not authorized his due pension and pensionary benefits by the respondent authorities, for the long period of time lapsing in the matter, after the petitioner was restrained from attending his duties w.e.f '01.04.2017'.

16. In view of the above conclusions, this Court passes the following directions :

(i) The petitioner's date-of-birth be deemed to be '22.11.1955' and his date of superannuation from his services to be as '30.11.2015'.

(ii) The petitioner, herein, would be entitled to his pension and pensionary benefits w.e.f '01.12.2015'.

(iii) The salaries drawn by the petitioner, w.e.f 01.12.2015 till 31.03.2017, shall not be recovered. Such period of service be treated as re-employment.

(iv) The petitioner, now having been permitted to retain the salaries, drawn by him, w.e.f 01.12.2015 till 31.03.2017, the petitioner, although is held to have retired from his services, w.e.f 30.11.2015, his pension and other pensionary benefits, which would now be fixed as on 01.12.2015, however, the arrears, thereof, shall be released to the petitioner, only w.e.f 01.04.2017, and not from 01.12.2015.

(v) The respondent authorities, in accordance with the directions passed, hereinabove, shall finalize a proposal for authorizing to the petitioner his pension and other pensionary benefits and forward the same to the Director of Pensions, Assam, within a period of 3 (Three) months from

the date of receipt of a certified copy of this order. The Director of Pensions, Assam, on receipt of such proposal, shall further process the same and authorize to the petitioner, his due pension and other pensionary benefits, in accordance with the directions passed, hereinabove, within a further period of 2 (Two) months from the date of receipt of a proposal, in this connection, from the Education Department.

17. It is further directed that, pending finalization of his pension and pensionary benefits, the petitioner, shall be authorized a provisional pension w.e.f 01.04.2017. The provisional pension so computed, be released to the petitioner within a period of 1 (One) month from the date of receipt of a certified copy of this order.

18. With the above observations and directions, the present Writ Petition stands disposed of.

JUDGE

Comparing Assistant