

GAHC010203602016



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

Case No. : WP(C)/2545/2016

SARBESWAR KONWAR
S/O SRI JYOGEDHAR KONWAR, R/O BELIMUKHIA CHANGMAIGAON, P.O.
NAMTI PATHAR, DIST- SIBASAGAR, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM,
P.W.D.ROAD, DISPUR, GHY-6

2:THE CHIEF ENGINEER
PWD ROAD
ASSAM
CHANDMARI
GHY-3

3:THE EXECUTIVE ENGINEER
SIBASAGAR STATE ROAD DIVISION
PWDROAD
NAZIRA
P.O. NAZIRA
DIST- SIBASAGAR
ASSA

Advocate for the Petitioner : MR.K M HALOI, MR.A K DEKA

Advocate for the Respondent : SC, PWD, SC, AG

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

ORDER

Date : 26.02.2026

Heard Mr. K.M Haloi, learned counsel for the petitioner. Also heard Mr. P.D Nayak, learned Addl. Advocate General, Assam and Mr. R Dhar, learned standing counsel, PWD, Assam, appearing for the state respondents.

2. The petitioner, in the present proceeding, has assailed a notice dated 09.03.2016 issued by the Executive Engineer, Sibasagar Roads Division, PWD (Roads) intimating the petitioner that he would be completing 60 (Sixty) years of his service as on 30.04.2016 and would retire from his services on the said date.

3. The petitioner, as projected in the writ petition, was engaged as a Muster Roll Worker in the establishment of the respondent no. 3, w.e.f 03.01.1984. The petitioner being a pre 01.04.1993 appointee, the case of the petitioner was shortlisted for consideration for regularization of his services. Accordingly, the particulars of the petitioner, was forwarded to the Government for regularization of his services. In the particulars of the Muster Roll Staff so forwarded, against the name of the petitioner, his date of initial engagement was recorded as 03.01.1984, while his date of retirement was recorded as 30.04.2016. By construing the date of his retirement as 30.04.2016, his date-of-birth would work out as 01.05.1956. The petitioner being found to be eligible for regularization of his services, the name of the petitioner was included in the final list so approved by the government. Accordingly, the petitioner was, vide a communication dated 30.09.2005, regularized in his services against a personal post created for the purpose w.e.f 22.07.2005. In the list so approved by the government, the date of retirement of the petitioner was recorded as 30.04.2016. After the petitioner was regularized in his services, a Service Book of the

petitioner was opened by the respondent no. 3. Therein, by reckoning a school certificate produced by the petitioner, the date-of-birth of the petitioner came to be recorded as 31.12.1969. As the petitioner was continuing in his services as 31.12.1969, the impugned notice came to be issued to the petitioner requiring him to proceed on retirement on reaching the age of superannuation w.e.f 30.04.2016.

The petitioner, by contending that he was entitled to continue in his service till the year 2029 basing on the date-of-birth as recorded in his Service Book as 31.12.1969, the petitioner has instituted the present proceedings.

4. Mr. K.M Haloi, learned counsel for the petitioner, by reiterating the facts noticed hereinabove, has submitted that date-of-birth having been recorded in his Service Book by the respondent authorities and he being permitted to continue in his services, in pursuance to the same, the respondent authorities, without first carrying out a rectification exercise towards correcting the date so recorded in the Service Book of the petitioner basing on cogent materials, could not have altered the date-of-birth of the petitioner recorded in his Service Book, as well as the date of his superannuation, without affording an opportunity of hearing to him. Mr. K.M Haloi, learned counsel for the petitioner submits that the decision, on the part of the respondent authorities to require the petitioner to proceed on retirement on reaching the age of superannuation w.e.f 30.04.2016, was an unilateral decision without any reference to the petitioner. He submits that the petitioner was not put to notice that his date-of-birth recorded in the Service Book had been corrected. Mr. K.M Haloi, learned counsel for the petitioner has further submitted that it was not an uncommon thing, at the relevant point of time to engage under-aged persons in government services against Grade-IV posts and accordingly, a concept called "Boy Service" was so evolved for the purpose. Mr. K.M Haloi, learned counsel for the petitioner submits that the petitioner's "Boy Service" with effect from

the date he had entered into services till he attained the age of 18 (Eighteen) years would be required to be excluded from the period of qualifying service rendered by him for the purpose of determination of his pension and pensionary benefits. However, he submits that on the said plea, the date-of-birth of the petitioner, as recorded in his Service Book as 31.12.1969, would not mandate a correction.

5. In the above premises, Mr. K.M Haloi, learned counsel for the petitioner submits that the notice dated 09.03.2016 be interfered with and the petitioner, who is continuing in his services, in terms of the interim directions passed by this Court in the present proceedings, be permitted to continue in services till the date of his superannuation by reckoning his date of birth 31.12.1969.

6. *Per contra*, Mr. P.D Nayak, learned Addl. Advocate General, Assam along with Mr. R Dhar, learned standing counsel, PWD, Assam, appearing for the state respondents submits that when the list of Muster Roll Workers, working in the establishment of respondent no. 3, found eligible for having their services regularized was so compiled, therein, the date of superannuation of the petitioner was recorded as 30.04.2016. It is submitted that basing on the said date of superannuation, as recorded, against the name of the petitioner in the list of Muster Roll Workers found eligible for regularization of their services, the date of birth of the petitioner would work out to be 01.05.1956. It is submitted that basing on the said disclosure made in the list so prepared, the competent authority, on examination of the same, along with the contemporaneous records, had proceeded to grant approval to such list so prepared of the Muster Roll Workers in the establishment of the respondent no. 3. It is submitted that upon the approval so granted, the name of the petitioner was so incorporated in the list of Muster Roll Workers found eligible for regularization of their services and the same was circulated vide communication dated 30.09.2005. Vide the communication dated

30.09.2005, the names of the persons included in the list enclosed, thereto, came to be regularized w.e.f 22.07.2005. It is contended that the petitioner was in the know-how of the particulars recorded against his name in the said list, enclosed to the communication dated 30.09.2005. It is further submitted that in the event, the particulars, recorded against the name of the petitioner, in the said list were not correct, it was for the petitioner to take steps for rectification of the same. However, no steps came to be taken by the petitioner, in this connection. It is submitted that the Service Book of the petitioner was opened by the then incumbent in the post of Executive Engineer, Sibasagar Roads Division, PWD (Roads), and by relying upon a school leaving certificate produced by the petitioner, the date-of-birth of the petitioner came to be recorded in his Service Book as 31.12.1969. It is submitted that the said date-of-birth, as recorded in respect of the petitioner, is clearly contrary to the date-of-birth, as working out from the particulars recorded against the name of the petitioner in the list of eligible Muster Roll Workers found eligible for regularization of their services. It is submitted that the petitioner not having questioned the particulars as recorded in the list the eligible Muster Roll workers, it was not open to the respondent no. 3 to record a different date-of-birth of the petitioner in his Service Book without first coming to a conclusion that the date-of-birth, as can be computed from the particulars disclosed in the said list of Muster Roll workers, in respect of the petitioner, was erroneous.

7. It is further submitted by the learned counsel for the respondents that in the event the petitioners date-of-birth is reckoned as 31.12.1969, he would be under-aged as on the date he was initially engaged as Muster Roll Worker in the establishment of the respondent no. 3 and the same would be in violation of the Government norms laid down prescribing the minimum age mandated for recruitment in services under the Government. It is submitted that it was not permissible for the respondents to engage a minor for any work in the establishment, including the works required to

the discharged by a Muster Roll Worker. Accordingly, it is submitted that the date-of-birth recorded in the petitioner's Service Book as 31.12.1969 was so recorded on misrepresentation made by the petitioner by relying upon a school certificate.

8. It is further pointed out that school certificate relied upon by the petitioner was not verified by the District Administration, as per the procedure mandated in this connection. Accordingly, it is submitted that for the purpose of arriving at the conclusion with regard to the date-of-birth of the petitioner, the said school certificate, produced by him at the time of preparation of his Service Book, was not permissible to be relied upon.

9. I have heard the learned counsel for the parties and have perused the materials available on record.

10. The facts noticed, hereinabove, are not disputed. However, the rival contentions advanced by the petitioners bring to the forefront a dispute, with regard to the actual date-of-birth of the petitioner. While in the documents prepared for the purpose of regularization of the services of the Muster Roll Workers working in the establishment of the respondent no. 3 prior to 01.04.1993, it is seen that the date-of-retirement of the petitioner, basing on the materials available on record, was recorded as 30.04.2016. The said date-of-retirement, as recorded against the name of the petitioner, if reckoned, the date-of-birth of the petitioner would work out as 01.05.1956. It is seen that on the particulars of the petitioner and other Muster Roll Workers covered by the policy of Government for regularization of their services being approved by the Government, a list was so prepared of such eligible Muster Roll Workers and the same was circulated as an enclosure to a communication dated 30.09.2005, through which the services of the persons, whose names were incorporated in the list enclosed, thereto, came to be regularized. The name of the petitioner, herein, also finds mention in the list so enclosed to the communication dated 30.09.2005 and accordingly, his service was also regularized w.e.f

22.07.2005. It is seen that the petitioner, after the issuance of the communication dated 30.09.2005, had not taken any steps for correction of his date-of-retirement as recorded against his name in the list so enclosed to the communication dated 30.09.2005. However, ignoring the position as existing in the matter, the then incumbent in the post of Executive Engineer, Sibasagar Roads Division, PWD (Roads), while preparing the Service Book of the petitioner, proceeded to record his date-of-birth, therein, as 31.12.1969.

11. In the Service Book so prepared, the date-of-birth of the petitioner was recorded as 31.12.1969 and the same is found to have been so recorded basing on a school leaving certificate produced by the petitioner from Government Aided Hafaluting High School, Sibasagar. Although the said document would be a valid document for the purpose of determining the date-of-birth of an employee concerned, who had not cleared their HSLC examinations, it is also the requirement that such certificates have to be verified and counter-signed by the jurisdictional Deputy Commissioners (presently District Commissioner). The school certificate, produced by the petitioner, is not found to have been authenticated/counter-signed by the Deputy Commissioner and accordingly, the validity, thereof, remains shrouded in mystery. Adding to the said mystery is the fact that in the event the date-of-birth of the petitioner, is taken as 31.12.1969, the date of his engagement in the establishment of respondent no. 3, being on 03.01.1984, the date of engagement not being disputed, the petitioner is found to be a minor, aged about 14 (Fourteen) years on the date of his such engagement. It is not normally permissible for any person/authority to employ a minor and the same law was applicable even as of 1984. However, if the date-of-birth of the petitioner is reckoned as 01.05.1956, he is found to be a major on the date he was so engaged as a Muster Roll Worker in the establishment of the respondent no. 3.

12. Accordingly, this Court is of the considered view that the date-of-birth

of the petitioner, computed from the date of his retirement, as recorded against his name in the list of eligible Muster Roll Workers whose services were approved for regularization of their services would mandate acceptance in as much as the petitioner, at no point of time, disputed the same and basing, thereon, the petitioner is found to be a major on the date of his initial engagement as a Muster Roll Worker. However, the date-of-birth as recorded in his Service Book basing on a school leaving certificate, not authenticated by the jurisdictional Deputy Commissioners (presently District Commissioner), and the same also having the effect of the petitioner being a minor on the date of his initial engagement as a Muster Roll Worker, would not mandate an acceptance.

13. In view of the above position, this Court is of the considered view that the date-of-birth of the petitioner as projected by the respondents i.e. 01.05.1956 is required to be so accepted. Accordingly, the date-of-retirement of the petitioner would fall on 30.04.2016 and this Court does not find any error committed by the respondent authorities in issuing the impugned notice dated 09.03.2016, requiring the petitioner to retire w.e.f 30.04.2016. Having drawn the said conclusion, this Court notices that in the present proceedings, vide order dated 27.04.2016, while issuing notices, this Court had stayed the effect and operation of the impugned notice dated 09.03.2016 and permitted the petitioner to continue as a Grade-IV employee in the establishment of the respondent no. 3. It is submitted at the bar that the petitioner, thereafter, is continuing in the said capacity till date. This Court having not accepted the date-of-birth as recorded in the Service Book of the petitioner and having concluded that the date-of-birth of the petitioner to be 01.05.1956, further continuance of the petitioner in his service in terms of the interim directions passed by this Court would not be sustainable. Accordingly, the petitioner, is held to be not eligible to continue any further in his services w.e.f 27.02.2026.

14. In view of the above conclusions, the petitioner is held to be entitled

to receive all benefits as a pensioner w.e.f. 01.05.2016. The petitioner having drawn his salaries w.e.f 01.05.2016 and this Court having held the petitioner to be not eligible to continue in his services after 27.02.2026 for the period w.e.f 01.05.2016 to 27.02.2026, the salaries drawn by the petitioner would not mandate to be recovered. However, for the said period, the petitioner would also not to be entitled to be authorized any pension. The petitioner would now be entitled to draw his pension w.e.f 01.03.2026. The respondent authorities would now prepare a pension proposal for authorizing to the petitioner, pension and pensionary benefits w.e.f 01.05.2016, the actual benefit being receivable from 01.03.2026, in the manner indicated, hereinabove, and submit the same to the Office of the Accountant General (A&E), Assam, for authorization. Till the finalization of the petitioner's pension and pensionary benefits, the PWD authorities would authorize to the petitioner a provisional pension w.e.f 01.03.2026 and the same shall be continued till the final pension and pensionary benefits are released to the petitioner.

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

JUDGE

Comparing Assistant