
(1994) 06 GAU CK 0027
In the Gauhati High Court
Case No : Civil Rule No. 2618 of 1992

Chenimai Kalita

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 14-06-1994

Acts Referred:

Citation : (1994) 2 GLJ 50

Hon'ble Judges : A.K.Patnaik, J

Bench : Single Bench

Advocate : A.C.Buragohain, P.J.Saikia, C.Barua, Advocates appearing for Parties

Judgement

1. In this writ petition under Article 226 of the Constitution of India, the petitioner has challenged the order dated 1.11.92 of the Block Elementary Education Officer, Kaliabor, Nagaon, Assam by which she has been released from her service as Assistant Teacher, Dulal Madhav Prathamik Vidyalaya on the ground that her date of retirement was 28.2.91.

2. The facts stated in the writ petition are that the petitioner has been working as Assistant Teacher, No. 2 Dulal Madhav Prathamik Vidyalaya, which is a provincialised school under the State of Assam. The date of birth of the petitioner was 16.1.1936 as per the school certificate and the certificate issued by the Principal, Basic Training Centre, Roha. Copies of the said school certificates and the certificate issued by the Principal, Basic Training Centre, Roha annexed to the writ petition as Annexure A and B.

3. The further case of the petitioner is that although the date of birth of the petitioner was originally recorded in the Service Book as 28.2.1933, on an enquiry made by the Deputy Inspector of Schools, Nagaon and on the basis of the said school certificate (Annexure A) the Deputy Inspector of Schools, Nagaon has corrected the date of birth in the Service Book as 16.1.1936 instead of 28.2.1933.

4. After the said correction of the date of birth of the petitioner as 16.1.1936, the

petitioner was under the impression that she would retire on 15.1.1994 but suddenly by the impugned order dated 1.11.1991, a copy of which annexed to the petition as Annexure C, the Block Elementary Education Officer, Kaliabor, Nagaon released the petitioner with immediate effect on the ground that she had retired on 28.2.1991. The petitioner's further grievance is that on account of confusion created about her date of birth, she was not paid her salary for the period from September, 1991 onwards. But pursuant to the order dated 3.12.1993 passed by this Court in the present Civil Rule the petitioner has been paid salary upto the month of February, 1992.

5. Mr. C. Baruah, learned counsel for the petitioner brings to my notice a copy of the memo dated 8.5.1992 of the Block Elementary Education Officer, Kaliabor, Nagaon addressed to the Deputy Inspector of Schools, Nagaon in which the said Block Elementary Education Officer stated that he along with the Block Elementary Education Officer, Kathiatuli, Nagaon inspected the Uriagaon Girls ME School on 5.5.92 and during the inspection verified the certificate with regard to the age of the petitioner and compared the same with the counterfoil of the certificate in the school and found that the said certificate had been issued by the school. Hence the certificate in support of her date of birth is a genuine one and in the circumstances the order dated 1.11.91 of the Block Elementary Education Officer Kaliabor, Nagon under Annexure C stating that the petitioner's date of retirement was 28.2.91 was not warranted. Mr. Baruah further submits that since the petitioner's date of birth has already been corrected in the Service Book by the Deputy Inspector of Schools, Nagaon as 16.2.1936, any change in the said date of birth as recorded in the Service Book could only be made in accordance with the Subsidiary Rule 8 (c) where under the Head of the Department can change the date of birth after due enquiry and since the order dated 1.11.91 of the Block Elementary Officer, Kaliabor, Nagaon under Annexure C has been passed contrary to the said SR 8 (c) of the Subsidiary Rules, the said order under Annexure C is liable to be quashed and the petitioner is entitled to all the service benefit upto 15.1.1994.

6. No counter affidavit has been filed by the respondents. Further the matter has been posted from day to day for hearing, but no Advocate on behalf of the respondents has appeared to oppose the writ petition and support the order under Annexure C.

7. I am of the opinion that the contention of Mr. Baruah, learned counsel for the petitioner has force. The date of birth of the petitioner though originally was 28.2.1933 had been corrected to 16.1.1936 in the Service Book and the said date of birth could only be changed in accordance with SR 8 (c) of the Subsidiary Rules. The procedure in SR 8 (c) has not been followed and the date of birth has not been altered to 28.2.33 by the Head of the Department and yet the order dated 1.11.91 under Annexure C has been passed by the Block Elementary Education Officer, Kaliabor, Nagaon treating the date of birth of the petitioner as 28.2.1933. In view of the contravention of the SR 8 (c) of the Subsidiary Rules, I

have no option but to quash the order dated 1.11.91 under Annexure C of Block Elementary Education Officer, Kaliabor, Nagaon and direct that the date of birth of the petitioner shall be treated as 16.1.1936 and the date of her retirement as 15.1.1994 and all service benefit including arrear salary shall be paid by the opposite parties to the petitioner within 4 (four; months from the date of receipt of this order.

With the aforesaid direction the writ petition is disposed of.