
(2010) 06 GAU CK 0035
In the Gauhati High Court
Case No : Writ Petition No. 3576 of 2007

Pradip Kumar Neog

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 07-06-2010

Acts Referred:

Assam Secondary Education (Provincialisation) Act, 1977 — Section 4(3)
Constitution of India, 1950 — Article 226

Citation : (2011) 1 GLT 149

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : R.P. Sarmah, for the Appellant; M.R. Pathak, for the Respondent

Final Decision : Allowed

Judgement

Amitava Roy, J.—The decision of the concerned departmental authorities to effect recovery of the pay and allowances drawn by the Petitioner's father (since deceased) is the immediate cause of the present endeavour to seek the remedial intervention of this Court in the exercise of its jurisdiction under Article 226 of the Constitution of India. A declaration of the deceased employee's right for pension has also been sought for.

2. I have heard Mr. R.P. Sarmah, learned senior counsel for the Petitioner and Mr. M.R. Pathak, learned Standing Counsel, Education Department, Govt. of Assam for the Respondents.

3. A synoptic recital of the rival pleadings would be essential. The Petitioner's father Late Manik Ch. Neog rendered his services as the Headmaster of the Missamora Higher Secondary School since 1972 (hereinafter for short referred to as the School). The said School having been upgraded as a Higher Secondary Institution, he was appointed as the Principal thereof vide Memo dated 18.03.1982 of the Inspector of Schools", S. D. C., Jorhat. He was relieved from the service on superannuation with effect from 31.01.1982. Consequent

thereupon, he was disbursed an amount of Rs. 6349.12 by way of contributory provident fund, which he did not collect. Though, thereafter, he ran from the pillar to post, neither his pension, nor his other retiral benefits were released and he eventually expired of the terminal disease of cancer on 30.09.2003. Meanwhile, the Assam Secondary Education Provincialisation Act, 1977 (hereinafter for short referred to as the Act) had been promulgated with effect from 01.10.1977. According to the Petitioner, the original matriculation certificate of his father issued by the Calcutta University recorded his age therein to be 14 years 1 month on 01.03.1938. However, the duplicate certificate issued later by the said University disclosed his age therein to be 19 years 11 months as on 01.03.1938. The Petitioner has asserted that as his father had retired from service at the age of 60 years without exercising any option u/s 4(3) of the Act, he was entitled to pension and other retiral benefits. Instead, by the impugned communications dated 19.02.2001 (Annexure-IV) and 25.04.2001 (Annexure-V), the pay and allowances drawn by him for the period 01.04.1978 to 31.01.1982 is sought to be recovered.

4. The Respondent No. 2, Deputy Director of Secondary Education, Assam in his affidavit has averred that the Petitioner's father had entered the service as Assistant Teacher of the School on 04.06.1938 and had overstayed beyond 58 years without any written option as required under Rule 4(3) of the Act. According to the answering Respondent, his date of birth was recorded to be 01.04.1918 in his Service Book and that he ought to have retired on 31.03.1976 after attaining the age of 58 years, but continued in fact, till 31.01.1982 and thus overstayed in service by at least 5 years 10 months. The answering Respondent has thus not only asserted that the Petitioner's father was not covered by the pension scheme under the relevant Rules as he was scheduled to retire on 31.03.1976, the decision to recover the pay and allowances drawn by him during the period of his overstay is also valid. It has been reiterated that in terms of the recorded date of birth of the Petitioner's father on the basis whereof, he ought to have retired on 31.03.1976 on the completion of 58 years, the service rendered by him was not pensionable as well.

5. Mr. Sarmah, has urged that the overstay of the Petitioner's father in service was not deliberate and culpable, he having discharged his duties without any blemish till after the enforcement of the Act and thus the decision to recover his pay and allowances and refuse his pension, is per se arbitrary, illegal and discriminatory. As it is apparent that the Petitioner's father during his lifetime did not exercise any option u/s 4(3) of the Act to forsake his right to pension and other retiral benefits for the services rendered, the impugned decision is liable to be adjudged, illegal null and void, he pleaded.

6. Mr. Pathak, controverting the above, has argued that it being apparent from the service record of the Petitioner's father that his date of birth recorded therein is 01.04.1918, having regard to the age of superannuation in vogue at all relevant times, he ought to have retired on 31.03.1976 on attaining the age of

58 years. As he continued beyond that till after the enactment of the Act his option u/s 4(3) thereof is to be deemed in law and therefore he is not entitled to any pensionary benefit. Moreover, as he continued beyond 31.03.1976, the decision to recover the pay and allowances disbursed to him thereafter is also sustainable in law.

7. I have extended my thoughtful consideration to the rival pleadings and the arguments based thereon. The Service Book of the Petitioner's father indicates that his date of birth had been recorded to be 01.04.1918 on the basis of the duplicate matriculation certificate issued by the University of Calcutta on 12.10.1988. The endorsement to the above effect, vis-?-vis the date of birth of the Petitioner's father was made on 20.03.1982. Incidentally, the Petitioner's father had retired from service with effect from 31.01.1982 i.e. before the above endorsement had been made in his Service Book. That the two matriculation certificates had been issued by the University of Calcutta, one on 09.06.1938 showing the candidate's age to be 14 years 1 month and the duplicate on 12.10.1998 as 19 years 11 months on 01.03.1938 is admitted by the Respondents. The date 01.04.1918 appearing in the Service Book of the Petitioner's father seems to be one substituted in place of an existing entry. The other entries in the Service Book manifests that it was opened in the year 1938 at the time of the induction of the Petitioner's father in service. It is therefore, clear that his date of birth originally recorded in his Service Book was based on the first matriculation certificate issued by the University of Calcutta on 09.06.1938. In such an event having regard to his year of birth (14 years 1 month on 01.03.1933) counted there from, he ought to have retired from service on the completion of 58 years in the year 1981-1982. Alteration in his date of birth to 01.04.1918 is apparently after his retirement with effect from 31.01.1982. The grievance expressed by the Petitioner against the Respondents' plea of overstayal in service of his father when viewed in this perspective cannot be lightly dislodged.

On a cumulative reading of the matriculation certificates and entries in his Service Book, this Court is of the opinion that the Petitioner's father was allowed to continue in service on the basis of the original entry of his date of birth based on the first certificate issued by the University of Calcutta on the completion of 58 years. The alteration in his date of birth to 01.04.1918 is thus not sustainable. The said entry by its impression and other characteristics does not even otherwise inspire confidence. There is nothing on record to demonstrate that the alteration in his date of birth on the basis of the duplicate matriculation certificate had been with due notice to him. The plea of overstayal in service, therefore does not commend for acceptance.

8. Admittedly the Petitioner's father had been continuing in service after the Act had been enforced on 01.10.1977. There is no dissension at the Bar that he did not exercise option u/s 4(3) thereof to continue in service up to the age of 60 years on the prevailing terms and conditions. In that premise as well, he cannot

be denied the benefit of pension and other retiral benefits in accordance with the relevant pension Rules applicable to him.

9. The materials on record do not disclose any attempt overt or covert of the Petitioner to secure his continuance in service beyond his actual age of superannuation sanctioned by law. The departmental authorities cannot absolve themselves of their solemn responsibility of being scrupulously alert and vigilant to take necessary corrective steps in time to avoid such controversies. They, having failed to do so, in the instant case, it would be unfair to lay the blame on the Petitioner's father and deprive him of the benefit of the services actually rendered by him. Noticeably, the Respondents do not complain about the quality of service and performance of the Petitioner's father during his tenure in the School in various capacities.

In the comprehension of this Court, having regard to the attending facts and circumstances, the impugned decisions cannot be sustained. The Petitioner's father having rendered unblemished service till his retirement on 31.01.1982 in absence of any proof of delinquency to guarantee his continuance in office beyond his actual age of retirement, he ought not to be deprived of his legitimate dues.

10. In the wake of the above, the impugned communications dated 19.02.2001 and 25.04.2001 are hereby annulled. The Petitioner's father is also adjudged to be entitled to pension and other retiral benefits in terms of the relevant Rules. The Respondents would take consequential steps for release of these benefits early.

The petition is thus allowed. No costs.