
(2003) 07 GAU CK 0028
In the Gauhati High Court

Case No : Writ Petition (C) No. 5316 of 2000 and W.P. (C) No. 5287 of 2002

Sarju Paswan

APPELLANT

Vs

Assam Agricultural University and Others

RESPONDENT

Date of Decision : 21-07-2003

Acts Referred:

Citation : (2003) 3 GLR 701 : (2003) 3 GLT 393

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : D. Choudhury, A.K. Choudhury, P.J. Saikia and P. Das, for the Appellant; J.M. Choudhury, P. Kataki and P. Bora, for the Respondent

Final Decision : Allowed

Judgement

Ranjan Gogoi, J.—The brief facts of the case which would be necessary to complete the adjudication required, may be cited.

The petitioner was appointed as a Night Chowkidar in the then Assam Agricultural College at Jorhat on 24.11.1967. The college became a constituent college under the Assam Agricultural University by virtue of the Assam Agricultural University Act, 1968. The petitioner continued to be in employment under the University and by an order dated 27.3.1987, he was granted the revised scale of pay applicable to University employees. At the time of entry into service, the date of birth of the petitioner was recorded as 1.1.1935. The petitioner subsequently submitted an application for correction of date of his birth to 2.12.1944 and the said application was accompanied by a certificate issued by the school where the petitioner studied. The claim made by the writ petitioner was accepted and by order dated 2.2.1995, he was informed that his date of birth is now recorded as 2.12.1944 and that he would be due for retirement on 2.12.2004.

2. The petitioner, thereafter, received a letter dated 22.2.2000 issued by the Administrative Officer of the University asking him to submit the original school

certificate for verification of his date of birth. The order of the Administrative Officer was duly complied with. The authenticity of the school certificate was sought to be verified by the authority but as no significant headway could be made in this regard, the petitioner was sent for a medical examination for determination of his age. The aforesaid medical examination was held on 29.6.2000 and though the medical opinion was not very specific, it was suggestive of the fact that the petitioner would be about 56 years old on the date of examination. The authority took no further action in the matter but withheld the pay of the petitioner. Aggrieved, the petitioner instituted WP (C) No. 5316/2000. While the aforesaid writ petition continued to remain pending, by order dated 5.8.2002, the petitioner was informed that the verification of service records reveal his date of birth as 1.1.1935 and not 2.12.1944. He was further informed that he was due for retirement with effect from 1.1.1995. Consequently, the petitioner was ordered to have retired with effect from 31.12.1994. In the said order dated 5.8.2002, it was further recorded that the period of overstay of the petitioner would receive separate consideration of the University authorities. Aggrieved by the order dated 5.8.2002, the second writ petition i.e. W.P.(C) No. 5287/2002 has been instituted.

3. The university authorities have filed separate affidavits in both the cases. According to the University, after the date of birth of the petitioner was corrected as 2.12.1944, an objection in the course of audit was raised regarding the authenticity of the school certificate on the basis of which the aforesaid correction was made. The matter was enquired into and was also entrusted to the police for due investigation. However, as the school in question did not maintain any records of such certificates upto the year 1966, the matter could not be finalised. It is in these facts that the petitioner was sent for medical examination. As the opinion rendered was not very specific, the petitioner was sent for a second medical examination and the findings therein were again not conclusive. Thereafter, the authority by a visual comparison of the two certificates produced by the writ petitioner and having regard to the other facts, came to the conclusion that the correct date of birth would be 1.1.1935 and not 02.12.1944. Consequently, the impugned order dated 5.8.2002 was issued.

4. I have heard Mr. D. Choudhury, learned counsel for the petitioner and Mr. J.M. Choudhury, learned counsel for the University. The records, in original, as produced by the respondents have been duly perused.

5. The facts as recited in the affidavits filed by the University would go to show that the primary objection taken in the course of the audit was that the school which had issued the certificate to the petitioner regarding his date of birth as 2.12.1944 was not in existence in the year 1952 when the certificate was issued. The records produced in original by the University would also go to show that the aforesaid question was enquired into by the police who had reported that the school was in existence prior to 1952 but records were maintained by the school only from the year 1966. Though the objection taken in the course of the audit

i.e., that the school in question was not in existence in the year 1952 proved to be incorrect, yet the University authority considered it appropriate to have a medical opinion as regards the age of the petitioner. The two successive medical opinions did not support the stand taken that the age, as claimed by the petitioner, was not correct. It is at this stage that the University authorities decided to go back to the records already available with them and reach the conclusion that the date of birth of the petitioner is 1.1.1935. The records reveal that the aforesaid conclusion was reached by the University on a reconsideration of the existing facts, which were earlier discarded by the University authorities who had opted to send the petitioner for a medical examination. That apart, in the process of such reconsideration, no opportunity was afforded to the petitioner. As the impugned order dated 5.8.2002 has been passed on the basis of the aforesaid reconsideration, little persuasion is required to hold that the same is of doubtful legal validity. Had fresh or additional materials come to the knowledge of the University authorities, it was certainly open for the said authority to reopen the case of the petitioner but it is not understood as to how the facts which were earlier discarded by the University authorities, could have been relied upon to reach the impugned conclusion, once the medical opinion(s) did not support the stand of the University authorities.

6. For all the aforesaid reasons, both the writ petitions will have to be allowed which I hereby do. The petitioner shall be reinstated in service forthwith and in any case, within two weeks from the date of receipt of a certified copy of this order and all unpaid salaries and allowances in respect of which the petitioner has been deprived of by the actions of the authorities now held to be wrong, will be paid to him.

7. Mr. J.M. Choudhury, learned counsel for the University prays that the University authorities may be given an opportunity to conduct a fresh enquiry in the matter. If there are relevant facts and materials in the possession of the University authorities, it will always be open for the said authority to hold an enquiry but it must be understood that the reliefs granted to the writ petitioner by the present judgment and order shall not be denied to him on the ground that a fresh enquiry is in contemplation or in progress.

8. Both the writ petitions stand allowed as aforesaid.