
(2011) 02 GAU CK 0031
In the Gauhati High Court
Case No : Writ Petition (C) No. 4067 of 2008

Shri Dulal Krishna Bhatta

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 21-02-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 02 GAU CK 0031

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : D. Das, A. Das and S. Khound, for the Appellant; M.K. Mishra, Standing Counsel, Education Department and D. Baruah, for the Respondent

Final Decision : Allowed

Judgement

I.A. Ansari, J.—The facts, which are admitted and necessary for the purpose of disposal of this writ petition, may, in a narrow compass, be set out as under:

The Petitioner's date of birth is 17.06.1946. The Petitioner was appointed to a sanctioned post of Lower Division Assistant (in short, "LDA") in Pandu College, Guwahati, in the year 1976, his appointment having been approved by the Director of Public Instructions (in short, "DPI"), Assam, on 04.02.1970. The Petitioner's service was confirmed, w.e.f. 01.08.1968, by a letter, dated 04.02.1970, issued, in this regard, by the DPI. As the Petitioner's service conditions were guided, controlled and regulated by the Assam Aided College Employees' Rules 1960 (hereinafter referred to as "the 1960 Rules"), the age of superannuation of the Petitioner was 60 years. By Office Memorandum, dated 25.01.2005 (Annexure 3 to the writ petition), the age of superannuation, in respect of the State Government employees, who were due to retire after 01.01.2005 and other than those, whose age of superannuation was 60 years, came to be fixed at 59 years.

By virtue of the Assam College Employees (Provincialised) Act, 2005 (in short,

"the 2005 Act"), which came into force on 01.12.2005, the Pandu College stood provincial zed w.e.f. 01.12.2005. On coming into force of the 2005 Act, the Petitioner's age of superannuation got reduced, in terms of the Office Memorandum, dated 25.01.2005, aforementioned, to 59 years, though his age of retirement earlier, in terms of the provisions of the 1960 Rules, was 60 years. On coming into force of the Assam College Employees (Provincial zed) Act, 2005 (in short, "the 2005 Act"), which came into force on 01.12.2005, the Petitioner was superannuated on 31.01.2006. Though the Petitioner was paid his pension with effect from 30.06.2005, his date of retirement having been given effect from 30.06.2005, his date of retirement, for the purpose of pensionary benefit, was treated as 30.06.2004.

2. Aggrieved by the fixation of his date of retirement, as 30.06.2004, by treating his age of superannuation as 58 years, and claiming that he ought to have been treated as retired, on 30.06.2005, at the age of 59 years and that his date of retirement ought not to have been treated as 30.06.2004, which is meant for the employees, who were to superannuate at the age of 58 years, this writ petition has been filed by the Petitioner, under Article 226 of the Constitution of India, seeking appropriate directions to be issued to the Respondents.

3. Resisting the writ petition, the Respondents, particularly, Respondent No. 3, namely, Accountant General, Assam, has contended that the date of retirement of the Petitioner has been determined on the basis of the Office Memorandum, dated 06.08.2007, issued by the Department of Education (Higher), Government of Assam, where under it has been made clear that prior to January, 2005, the age of superannuation of a government employee was 58 years and, w.e.f. 01.01.2005, the age of superannuation has become 59 years and that prior to the enactment of the 2005 Act, the College Employees were governed by the provisions of the Assam Non-Government Management Rules, 2001 (as amended) and Assam Aided College Employees Rules, 1960, where under the retirement age of the college employees was 60 years, and that having examined this issue, the State Government has decided to regularize the overstay period of the employees of the provincial zed colleges of Assam, but their overstay shall not be counted towards pensionary benefit, and that pension to the employees of the provincial zed college shall be governed by the Assam Service (Pension) Rules, 1969, (hereinafter referred to as "the 1969 Rules"). Thus, according to the Respondent No. 3, it is on the basis of the Office Memorandum, dated 06.08.2007, aforementioned that they have determined the Petitioner's age of superannuation as 30.06.2004.

4. I have heard Mr. D. Das, learned Senior counsel, for the Petitioner, and Mr. M. K. Mishra, learned Government Advocate, appearing on behalf of Respondent Nos. 1, 2, 4 and 5. I have also heard Mr. D. Baruah, learned Counsel, appearing on behalf of Respondent No. 3.

5. There is no dispute that in terms of the 1969 Rules, the Petitioner would have, in the ordinary course, retired at the age of 60 years. As far as the Office

Memorandum, dated 25.01.2005, is concerned, it was divided into two parts. While this Office Memorandum, dated 25.01.2005, raised the age of retirement of those employees, who were to superannuate at the age of 58 years, to 59 years, the age of retirement of those employees, whose age of retirement, on superannuation, was 60 years, came to be reduced to 59 years, meaning thereby that the employees, such as, the present Petitioner, who would have, otherwise, retired, on superannuation, at the age of 60 years, became liable to be retired at the age of 59 years. Logically, therefore, the Petitioner could not have been retired at the age of 58 years, for, his service to the extent of 59 years was protected by the Office Memorandum, dated 25.01.2005, aforementioned itself and this Office Memorandum was never superseded. For the purpose of clarity, the Office Memorandum, dated 25. 01.2005, aforementioned is reproduced below:

OFFICE MEMORANDUM

Dated Dispur, the 25th January, 2005. Subject: Raising of the age of retirement of State Government employees from 58 years to 59 years on superannuation.

Government have been considering for sometime past the question of raising the age of superannuation of State Government employees from 58 years to 59 years. After very careful consideration of all relevant aspects it has now been decided that the age of retirement on superannuation of the State Government employees other than those in whose case the age of superannuation is 60 years should be 59 years.

This decision will be applicable to all State Government employees who are due to retire after 1st January, 2005. Those employees, who retired on 31.12.2004 on superannuation will not be entitled to get this benefit.

The age of retirement of Grade IV employees and other state Govt. employees, who are at present entitled to serve up to the age of 60 years including the new entrants, will continue to be 60 years.

Action is being taken to amend the relevant provision of rules in this regard accordingly.

Sd/- J.P.

Saikia Commissioner and Secretary to the Govt. of
Assam, Personnel (A) Department.

6. A minute reading of the above Office Memorandum reveals that the Office Memorandum carried into effect three decisions of the State Government, namely, (i) the age of retirement of all the Government employees came to be fixed at 59 years, (ii) the age of retirement of those employees, who were to retire on 31.12.2004, on superannuation, at the age of 58 years, was raised to 59 years, but (iii) those employees, who would have, otherwise, retired, on superannuation, at the age of 60 years, became liable to be retired on

completing the age of 59 years. Thus, when read in the light of the Office Memorandum, dated 25-01-2005, it transpires that the most significant aspect of the Office Memorandum, dated 06-08-2007, which appears to have escaped the notice of the Respondent No. 3, is that those employees, who were to retire on 31.12.2004, at the age of 58 years, but had overstayed, their pensionary benefits were to be calculated w.e.f. 31.12.2004. Obviously, this condition could not have been applied to the case of a person, such as, the Petitioner, whose age of superannuation was 60 years, when the 2005 Act came into force. The Petitioner was entitled to remain in service till completion of the age of 59 years. The Petitioner's date of birth being 01.07.1946, he completed his superannuation, at age of 59 years, on 30.06.2005. The Petitioner could not have, therefore, been treated to have retired w.e.f. 30.06.2004 for the purpose of calculating his pensionary benefits. To this extent, therefore, the grievance of the Petitioner is wholly justified and, consequently, the stand of the Respondents cannot be sustained.

7. In the result and for the foregoing reasons, this writ petition succeeds. The Respondents are hereby directed to pay to the Petitioner pensionary benefits treating his date of retirement as on 30.06.2005 and not as on 30.06.2004.

8. The writ petition shall accordingly stand allowed in terms of the above observations and directions.

9. No order as to costs.