
(2015) 08 MEG CK 0009
In the Meghalaya High Court
Case No : WP(C) No. 298 of 2013

Syed Mozibar Rahman

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 19-08-2015

Acts Referred:

Citation : (2015) 08 MEG CK 0009

Hon'ble Judges : S.R. Sen, J

Bench : Single Bench

Advocate : A. Khan, for the Appellant; S. Sen Gupta, G.A., Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.R. Sen, J—The petitioner's case in a nutshell is that:

"The Petitioner was employed as a work charged Typist in the office of the sub-Divisional Office P.W.D (R & B) in the year 1973 at the time of entry his date of birth was recorded as 01.10.1952 on the basis of School Certificate & Admit Card and he continued in service. In the year 2007 Executive Engineer P.W.D. (Roads) Nongpoh circulated a notice/list naming their staff their Date of Birth, Date of Entry in service, Date of Confirmation, Date of superannuation. The petitioner name appeared as item No. 8 (Annexure-III) and his date of Birth record as 01.10.1952 and superannuation 30.09.2010. By letter dated 23.01.2008 (Annexure-IV), Respondent No. 4 asked to submit original Birth Certificate as incumbency register his Date of Birth recorded as 01.10.1949 and there is over writing in service book/Roll. The petitioner submitted copy of Admit Card and Duplicate school certificate, issued on 10.12.2007, as the original Certificate had spoiled in flood and requested time to produce the Duplicate copy of the same in course of time. By letter dated 08.07.2008 (Annexure-VII) the petitioner was asked to submit his pension paper as in accordance with the report/letter from Secretary, Board of Secondary Education, Assam (Annexure-VIII) his age on 01.03.1968 is 18 years 5 months not 15 years hence his date of Superannuation

is on 31.09.2007. The Petitioner was entrusted with Election Duty in Feb-March 2008 and was working in the office. Later on Petitioner produced the Original Birth Certificate issued by Department of Health Services, Govt. of Assam (Annexure-VI) series and Duplicate Admit Card issued by Asst. Controllers of Examination, Board of Secondary Education, Assam (Annexure-X). But without any further enquiry and hearing his salary was withheld since January 2008. Despite of submission of pension paper, no pension has been released.

This writ petition for quashing of letter dated 08.07.2008 issued by the respondent No. 4 (Annexure-VII) and to direct the Respondents to give effect to notice/circular (Annexure-III) where the petitioner named has appeared in as item No. 8 and his date of superannuation is on 30.10.2010 and to release the pay from 01.10.2008 to 30.09.2010 along with the other benefit and to release G.P.F and pension. This Hon''ble Court vide judgment dated 21.8.2012 had set aside the impugned order and directed the respondent for conducting fresh enquiry. No findings was given as per direction of this Hon''ble Court and thereafter inspite of reminder and representation the respondent has neither released the salary of the petitioner nor paid the retirement benefit. As such the petitioner has approached this Hon''ble Court for appropriate direction".

2. Mr. A. Khan, learned counsel appeared for and on behalf of the petitioner and in support of the petitioner's case submits that, the petitioner entered service in the year 1973 in the office of the Sub-Divisional Office P.W.D. (R & B), Umsning Jagiroad Subdivision. According to the petitioner, his date of birth is 01.10.1952. If the date of birth is 01.10.1952 then, he is supposed to retire on 30.09.2010, but in this instant case the petitioner was asked to retire on 30.09.2007 and accordingly, he took retirement. In support to his submission, he relied on the admit card which is at Annexure-X page 29 annexed with the instant writ petition. The said admit card was issued by the Board of Secondary Education Assam, Guwahati which shows that, the High School Leaving Certificate Examination was commenced on 12.03.1968 and the petitioner's age as on 1st March, 1968 was 15 years 5 months.

The learned counsel for the petitioner further submits that, on earlier litigation, an order was passed by this court in W.P (SH) No. 157 of 2011 to enquire about the discrepancies, but nothing concrete came out till date as per the enquiry report dated 19.03.2013. Hence, this instant petition before this court to pass necessary direction against the untimely retirement of the petitioner.

3. Mr. S. Sen Gupta, learned GA appearing for and on behalf of the State submits that, the submission made by Mr. A. Khan, learned counsel for the petitioner is not correct. As per the Service Roll for Inferior Servants, his date of birth is 01.10.1949. If it is so, he had to retire on 30.09.2007 and in support to that; he had produced before the court the Service Roll for Inferior Servants. He further submits that, a clarification of the date of birth of the petitioner was also made from the Registrar, Board of Secondary Education Assam, Guwahati-21 to settle the disputes which is at Annexure-C wherein, it is clearly mentioned that, the

date of birth of the petitioner is 18 years 5 months as on 01.03.1968 and not 15 years 5 months. The learned GA also relied on Annexure-F (1) at page 22 annexed to the counter affidavit of the respondents No. 1-4 which is the Formal Application for Pension/Gratuity and submits that, in the said application the petitioner himself admitted that, his date of retirement is 30.09.2007 and his date of birth is 01.10.1949. The learned GA further submits that, if this is the position, no way it can be considered that the date of birth of the petitioner is 01.10.1952.

4. After hearing the submissions advanced by the learned counsel at Bar, I have gone through the case record placed before me and while going through the Service Roll for Inferior Servants, I noticed that, there are two date of births found mentioned in the said Service Roll. One is 01.10.1952 and the other is 01.10.1949. This is really confusing. However, to find the truth, I further examined the admit card issued by the Board of Secondary Education Assam, Guwahati (Xerox Copy) which is at Annexure-X page 29 of the writ petition, wherein, it is clearly mentioned that the date of birth of the petitioner as on 01.03.1968 was 15 years 5 months. However, this court has asked the learned counsel for the petitioner to produce the original admit card. He submitted that, it has been lost, and he was also asked whether, he had made an attempt to get the duplicate copy of the admit card from the Board of Secondary Education Assam, Guwahati? He replied in the negative. The learned counsel for the petitioner also submits that no FIR was filed about the loss of the admit card. Now, to ascertain the discrepancies, I further examined the Formal Application for Pension/Gratuity signed by the petitioner on 20.12.2013 at Annexure-F (1) page 22 annexed to the counter affidavit of the respondents No. 1-4. For easy reference the same is reproduced herein below:

Sir,

1. I beg to say that I am to retire from service with effect from the 30.09.2007 my date of birth being 01.10.1949 therefore request that steps may kindly be taken with a view to the pension and gratuity admissible to me being sanctioned by the date of my retirement I desire to draw my pension from Nongpoh Treasury, Ri Bhoi District, Nongpoh.

2. I, hereby declare that I have neither applied for nor received any pension or gratuity in respect of my portion of the service qualifying for the pension and in respect of which pension and or gratuity is claimed herein nor shall I submit an application hereafter without quoting a reference to this application and the orders which may be passed hereon.

3. I enclose herewith:--(i) Two specimen signatures of mine, duly attested.

(ii) Two copies of passport size photograph of mine also duly attested.

(iii) Two slips each bearing my left hand thumb and fingers impression duly attested.

(iv) Two slips each showing particulars of my height and identification marks duly attested.

4. My present address is Vill - Akana, P.O - Barajal, Via - Ghograpar, District - Nalbari, Assam (There is required only in case person/person who are illiterate and cannot sign their names) and my address after my retirement will be Vill - Akana, P.O - Barajal, Via - Ghograpar, District - Nalbari, Assam.

5. Now, on further perusal of the clarification of the date of birth issued by the Registrar, Board of Secondary Education Assam, Guwahati-21 dated 30.06.2008 it is mentioned that, as on 01.03.1968 the age of the petitioner was 18 years 5 months and not 15 years 5 months. For easy reference the same is reproduced herein as under:

Sir,

With reference to your letter cited above, I am directed to inform you that the Admit Card (Photocopy) you sent for verification in respect of Syed Muzabir Rehman bearing Roll NAL No. 791 of the HSLC Examination, 1968, is verified and found to be genuine (Passed in Third Division). His age is 18 (Eighteen) years 5 (five) months only, on 01/03/1968, (Not 15 years 5 months), as per records of this office.

This is for favour of your information and necessary action.

Yours faithfully, Sd/- 30/6/08 Registrar Board of Secondary Education, Assam, Guwahati-21".

6. Now, after considering the submissions advanced by the learned counsel and on perusal of the documents referred above, I am of the considered view that the petitioner could not make out the case that his date of birth is 01.10.1952. He has relied only on the photocopy of the admit card, but failed to produce the original admit card, which in logical conclusion cannot be accepted safely. On the other hand, I have noticed that, there are two date of births found mentioned in the Service Roll. One is 01.10.1952 and the other is 01.10.1949 and that remains unanswered by the learned counsels for the parties. Now, the question remains that the petitioner in his Formal Application for Pension/Gratuity signed by him on 20.12.2013 at Annexure-F (1) page 22 annexed to the counter affidavit of the respondents No. 1-4 he has admitted that his date of birth is 01.10.1949 and his date of retirement is 30.09.2007. Similarly, the clarification of the date of birth issued by the Registrar, Board of Secondary Education Assam, Guwahati-21 made it clear that the petitioner's date of birth as on 01.03.1968 was 18 years 5 months and not 15 years 5 months. Here, the pension/gratuity paper submitted by the petitioner as well as the clarification of the date of birth issued by the Registrar, Board of Secondary Education Assam, Guwahati-21 confirms that the date of birth of the petitioner was 01.10.1949 and his date of retirement was 30.09.2007. If it is so, I do not find any merit in this instant writ petition and also I do not see any irregularities on the part of the Government

(Respondents). However, at the end of conclusion of the judgment, petitioner's counsel submits that, after superannuation, the petitioner has worked in the office for almost 3(three) years to which the learned GA for the State denied and said that, it is disputed. I also observed that, when the petitioner has admitted that his date of birth is 01.10.1949 and his date of retirement is 30.09.2007 why should he work after his retirement without any valid order from the Government. However, if he has overworked after his superannuation, he may be considered by the Government (Respondents) if they desire so. The learned counsel for the petitioner also stated that the petitioner is not getting his pension since January, 2015. Accordingly, the Government (Respondents) is directed to take immediate steps to regularize his pension.

7. Court Master is directed to keep on record the Service Roll for Inferior Servants and other documents placed before the court for future reference.

8. With these observations and directions the instant writ petition is dismissed and stands disposed of.