



GAHC010259242018

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/8203/2018

BIROZA HAZARIKA
W/O- SRI ABHIJEET KUMAR BARUAH, R/O- BORBARI, UPPER
HENGERABARI, THAMKITILA, BYE LANE NO. 2, HOUSE NO 25, P.O.
HENGERABARI, P.S. DISPUR, GHY- 36, DIST- KAMRUP (M), ASSAM, M.NO.
7086743536, EMAIL ID- LILAKANTABORAH2@GMAIL.COM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMM. AND SECY. TO THE DEPTT. OF HEALTH, GOVT. OF
ASSAM, DISPUR, GHY-6, DIST- KAMRUP (M), ASSAM

2:THE JOINT SECRETARY
GOVT. OF ASSAM
THE DEPTT. OF HEALTH ANND FAMILY WELFARE (A)
DISPUR GHY-6
DIST- KAMRUP (M)
ASSAM

3:THE DIRECTOR
DEPTT. OF HEALTH
GOVT. OF ASSAM
HENGERABARI
PUBLIC HEALTH
P.O. SASHIBALAYA
GHY-6 DIST- KAMRUP (M)
ASSAM

4:THE SUPERINTENDENT
GUWAHATI MEDICAL COLLEGE AND HOSPITAL
BHANGAGARH GHY- 32
DIST- KAMRUP (M)



ASSAM

5:THE COMMISSIONER
DEPT. OF FINANCE (ESST.)
GOVT. OF ASSAM
P.O. SACHIBALAYA
GHY-6 DIST- KAMRUP (M)
ASSA

Advocate for the Petitioner : MR. L K BORAH

Advocate for the Respondent : MR. B GOGOI

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

Date : 16-11-2022

JUDGMENT & ORDER (ORAL)

Heard Mr. LK Borah, learned counsel for the petitioner, Mr. B Gogoi, learned counsel for the respondents No. 1 to 4 being the authorities in the Health Department of the Government of Assam and Mr. A Chaliha, learned counsel for the respondent No. 5 being the authorities in the Finance Department.

2. The petitioner Smti Biroza Hazarika is relying on a high school leaving certificate issued by the Board of Secondary Education, Assam, wherein her age is shown to be as 17 years 11 months and 0 days as on 01.03.1974. Accordingly, the respondents in the Health Department where the petitioner was working as a GNM had calculated her date of birth to be 01.04.1956. The petitioner having her date of birth on 01.04.1956, had completed 60 years of service as on 31.03.2016, which would accordingly be her date of superannuation. The petitioner accordingly superannuated and is receiving her pension as per law.

3. This writ petition is instituted on the premises that the respondents in the Health Department had incorrectly calculated the date of birth of the petitioner

to the extent that it ought to have been 02.04.1956 and not 01.04.1956. To substantiate such issue, the learned counsel for the petitioner relies upon the examples given in paragraphs 3 and 4 of an Office Memorandum dated 31.10.2012, which are extracted below:-

*“For example, if the age of a candidate be mentioned in the old HSLC/HSSLC pass certificate/ Admit Card as 15 years 10 months 1 day on 1st March, 1999, his date of birth should be computed as **1st May, 1983** and the Govt. servant shall retire on superannuation on **30th April, 2043**.*

*Further, if the age of a candidate be mentioned in the old HSLC/ HSSLC pass certificate/ Admit Card as 15 years 10 months on 1st March, 1999 his date of birth should be computed as 2nd May, 1983 and the Govt. Servant shall retire on superannuation on **31st May, 2043**.”*

4. A reading of the example provided in paragraph 3 of the Office Memorandum dated 31.10.2012, as extracted, makes it discernible that if the HSLC certificate provided the age to be 15 years 10 months 01 day as on 01.03.1999, the date of birth should be computed as 01.05.1983. Paragraph 4 of the aforesaid Office Memorandum provides that if the age provided in the HSLC certificate is 15 years 10 months 0 days as on 01.03.1999, the date of birth should be computed as 02.05.1983. In other words, if the certificate provides the age to be a given years and months and one day, the date of birth would be the first day of the appropriate month when the person was born and whereas if the certificate provides that the age to be the given years and months and zero day, the date of birth would be the second day of the month when the person was born.

5. In the instant case, we have noticed that the HSLC certificate of the petitioner on record shows that her date of birth was 17 years 11 months and 0



days as on 01.03.1974. As the certificate shows the age to be 0 (zero) days apart from the number of years and months, therefore, as per the paragraph 4 of the Office Memorandum dated 31.10.2012, the date of birth of the petitioner ought to have been 02.04.1956.

6. If the date of birth of the petitioner is 02.04.1956, as per the judgment rendered by this Court in WP(C) No. 5974/2001 dated 18.01.2006 [reported in (2009) 1 GLR 781], the petitioner would superannuate from service on the last day of the given month. If the date of birth of the petitioner is 02.04.1956, she otherwise would have retired on 01.04.2016. But as per the aforesaid judgment of this Court providing that if the date of retirement is the first day of the given month, the actual retirement would be effected only on the last day of the said month.

7. Therefore, we have to accept that under the law, the petitioner ought to have retired on 30.04.2016. Having so provided, we direct the respondents to provide the petitioner with a salary for the month of April, 2016 and to calculate the retirement benefits as per the salary that the petitioner would have received for the month of April, 2016.

8. The requirement be done by the respondents within a period of three months from the date of receipt of a certified copy of this judgment.

The writ petition is allowed to the extent as indicated above.

JUDGE

Comparing Assistant