



GAHC010004582020

Page No.# 1/10



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

**Case No. : WP(C)/231/2020**

SIDHESWAR DAS  
S/O- LT. DHIREN DAS, R/O- VILL. PUB DHARAMTUL, P.O. DHARAMTUL,  
P.S.- JAGIROAD, DIST- MORIGAON, ASSAM, PIN- 782412.

VERSUS

THE STATE OF ASSAM AND 4 ORS.  
REP. BY THE COMM. AND SECY., GOVT. OF ASSAM, PWD (B) DEPTT.,  
DISPUR, GHY-06.

2:THE BOARD OF SECONDARY EDUCATION  
ASSAM  
BAMUNIMAIDAN  
GUWAHATI-21.

3:THE SECY.  
BOARD OF SECONDARY EDUCATION  
ASSAM  
BAMUNIMAIDAN  
GHY.-21.

4:THE INSPECTOR OF SCHOOLS  
MORIGAON DISTRICT CIRCLE  
MORIGAON  
ASSAM  
PIN- 782105.

5:THE HEAD MASTER  
DHARAMTUL GOVT. AIDED HIGH SCHOOL  
DHARAMTUL  
P.O. DHARAMTUL  
DIST.- MORIGAON  
(ASSAM)  
PIN- 782412



**Advocate for the Petitioner : MR. M U MAHMUD**

**Advocate for the Respondent : SC, PWD**

**BEFORE  
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

**JUDGMENT**

**Date : 18.08.2021.**

A very common issue is the subject matter of dispute in this present writ petition. The issue is regard to an attempt on the part of the employee to change his date of birth in the service record on the verge of his retirement. Though the law is well settled on this issue, an independent ground is sought to be made out, namely, by bringing the instance of the elder brother of the petitioner, who would continue to the government service even after the petitioner retires from his service. The aforesaid ground needs to be dealt with by answering the issue in hand.

**2.** For the sake of convenience, the brief fact of the writ petition may be narrated in the following manner:

**3.** It is the case of the petitioner that he had passed the HSLC examination in the year 1982 from the Dharamtul Govt. Aided High School, followed by Pre-University examination in the year 1984 and BA in 1987. He was appointed in the Assam Secretariat in the year 1982 (later on orally rectified to be 1992) and is presently working as the Under Secretary, PWD (B). The petitioner claims that his date of birth was wrongly recorded in the HSLC Admit Card, HSLC Pass Certificate as well as in the Service Book as 28.11.1963 while his actual date of birth is 28.11.1966. As per the recorded date of birth, the petitioner would retire from service on attaining the age of superannuation in November, 2023. The petitioner claims to have filed applications under the Right to Information Act, 2005 (RTI) before the Inspector of School, Morigaon, seeking information regarding his date of birth. After long duration, the Head



Master of the Dharamtul Govt. Aided High School issued a certificate 31.05.2019 that the date of birth of the petitioner is 28.11.1966.

**4.** The principal basis to bring home the submission regarding the incorrect recording of date of birth of the petitioner is that the date of birth of his elder brother, Shri Dimbeswar Das is 01.01.1964 and this fact is also certified by a certificate issued by the Gaonburah of the concerned circle. It is argued that when the age of his elder brother is 01.01.1964, the date of birth of the petitioner could not have been 28.11.1963. Since, as per the petitioner, his date of retirement would be wrongly calculated, he has approached this Court for a direction to correct his date of birth from 28.11.1963 to 28.11.1966 in the Admit Card and HSLC Pass Certificate of the year 1982 and consequently, make necessary correction in the Service Book so that his date of retirement is correctly calculated.

**5.** The Board of Secondary Education, Assam (SEBA) has contested the writ petition by filing an affidavit-in-opposition dated 18.02.2020. It has been stated that the date of birth of the petitioner was entered as 28.12.1963 on the basis of the particulars of statement submitted by this school authorities and such particulars are not recorded from any candidate. It has further been stated that correction of date of birth has to be done within three years from the date of commencement of the examination and in this connection, the Head Master of the School has no right to make any corrections thereafter. It has also been stated that it is only on 30.12.2019 i.e., after expiry of 37 years that the petitioner has approached the SEBA for such correction.

**6.** The Head Master of the School, who is arrayed as the respondent no. 5, has also filed an affidavit-in-opposition on 12.08.2020. In the said affidavit, it has been stated that due to poor maintenance of record and also due to passage of a long period, the entries in the Admission Register were not found distinct and the same was found overwritten. The Head Master, however has given a personal opinion that the date of birth of the petitioner cannot be prior to the date of birth of his elder brother.

**7.** I have heard Shri MU Mahmud, learned counsel for the petitioner as well as Shri TC Chutia, learned Standing Counsel, SEBA, whereas the Education Department is represented by Shri R Mazumdar, learned Standing Counsel and the Public Works Department is by Shri P Nayak, learned Standing Counsel.

**8.** Shri Mahmud, learned counsel submits that admittedly Dimbeswar Das being the elder brother of the petitioner, whose date of birth is 01.01.1964, the date of birth of the petitioner could not have been 28.11.1963. The learned counsel has tried to distinguish his case from other cases relating to date of birth by contending that his case is not in connection with wrong recording of his date of birth in the Service Book but wrong recording in the HSLC documents itself which led to the anomaly. The learned counsel has submitted that the certificate issued by the Gaonburah in this regard, dated 21.12.2019 would clinch the issue wherein it has been categorically stated that Dimbeswar Das (elder brother of the petitioner) is nearly two and half years older than the petitioner. He submits that his attempt to get the date of birth rectified having failed, he has approached this Court. He, accordingly, submits that unless the date of birth is corrected, grave prejudice would be suffered by him.

**9.** In support of his submissions, the learned counsel for the petitioner relies upon the following case laws:

1. *Col. PM Xavier, Pro, Silchar Vs. The Union of India and Ors.*, 1997 (2) GLT 140;

2. *Moirangthem Irabot Singh Vs. State of Manipur and Ors.*,  
1998 (4) GLT 322.

**10.** Shri TC Chutia, learned counsel representing the SEBA has vehemently opposed the contention of the writ petitioner. By referring to the affidavit-in-opposition filed on 18.02.2020, it is submitted that Regulation-8 of the Regulation on Examination of the Board, 2016 (Regulation) deals with correction of date of birth. The said Regulation specifically

requires that application for such correction has to be done within 3 years from the date of the examination by the Board with payment of necessary fee. It is submitted that no such application has been filed and what is important is that such attempt has been made after about 37 years without any acceptable justification. He, accordingly submits that the writ petition has been filed as an afterthought and accordingly, liable to be dismissed.

**11.** Shri R Mazumdar, learned Standing Counsel, Secondary Education Department submits that the only basis of making the present claim by the petitioner is a statement accompanied by a certificate of the present Gaonburah regarding the elder brother of the petitioner, whose recorded date of birth is less than that of the petitioner. In absence of any other materials to substantiate, it cannot be sufficient for a writ court to come to a conclusion as advanced by the writ petitioner.

**12.** Shri P Nayak, learned Standing Counsel, PWD, while opposing the writ petition, contends that the petitioner has miserably failed to bring on record sufficient materials to substantiate his claim. Apart from the fact that the approach is made after about 37 years, the same is also made at the verge of retirement of the petitioner from service. It is submitted that any move for correction of date of birth has to be done at least five years prior to the date of retirement, which has admittedly not done in the instant case. The learned Standing Counsel further submits that a mere statement made by the petitioner supported by a certificate from the Gaonburah given after 37 years cannot be the sole basis for accepting the case of the petitioner.

**13.** The rival contentions of the parties have been duly considered and the materials before this Court carefully examined.

**14.** This Court has noted that the sole basis of the present claim to alter the date of birth of the petitioner is a statement regarding his elder brother, Shri Dimbeswar Das and a certificate issued by the Gaonburah. A mere glance at the certificate would show that the same is of recent origin and is dated 21.12.2019 which appears to have been procured just

prior to filing of the present writ petition which was done on 06.01.2020. Apart from the fact that the above are disputed questions of fact which a writ court cannot enter into, even taking a lenient view, what stares upon this Court is the long delay of 37 years in making the claim. The said delay is also required to be viewed from the fact that the same has been done at the fag-end of the service career of the petitioner. It appears that to circumvent the requirement to apply for correction of date of birth in the Service Book of the petitioner prior to five years of the date of retirement, the present modus operandi has been adopted.

**15.** This Court also finds force in the argument of the learned counsel for the SEBA regarding the procedure prescribed for change of date of birth which has to be within three years from the date of examination by the SEBA. No justifiable reasons, whatsoever have been cited in the writ petition as to why application in time could not be made. It is to be noted that the petitioner is an Under Secretary in the PWD and cannot be treated to be a rustic villager.

**16.** The petitioner has tried to explain the delay by referring to an application dated 12.03.1982 addressed to the Head Master of the School and also an application under the RTI made to the Inspector of School dated 30.05.2012. Apart from the fact that neither of the aforesaid application has been made before the appropriate authority, in absence of any seal of the School, acknowledging receipt of the same, the authenticity of the application dated 12.03.1982 cannot be accepted in *toto*.

**17.** This Court has noted that admittedly there is no representation worth its name submitted to the SEBA, not to talk about submitting the same within the prescribed time, there is also no representation to the PWD which has been submitted five years prior to the retirement. Though a frail attempt has been made by the learned counsel for the petitioner that Regulation-8 of the Regulation is substantially complied with, this Court is unable to accept the said submission of substantial compliance.

**18.** Let us now deal with the case law relied upon by the petitioner. In the case of *Col. PM*

*Xavier, Pro, Silchar (supra)*, though the same relates to a similar issue of correction of date of birth in the service record, a caveat has been laid down that there has to be irrefutable evidence for such action which is not the facts of the instant case. Further, though delay has been held to be not an absolute bar, a rider has been attached that the authorities were holding out certain hopes for redressal of the grievance. However, in the instant case, the appropriate authorities were not even approached in accordance with law. So far as SEBA is concerned, there was no approach as per the Regulation and the employer of the petitioner was approached at the fag-end of the career.

**19.** In the case of *Moirangthem Irabot Singh (supra)*, relied upon by the petitioner, the error was an arithmetical one which occurred while calculating the date of birth and there was no delay in approaching the authorities. Therefore, this case is also distinguishable from the facts of the instant case.

**20.** The Hon'ble Supreme Court in a recent case of *Bharat Coking Coal Ltd. Vs. Shyam Kishore Singh*, reported in (2020) 3 SCC 411 has reiterated the settled law of deprecating any attempt to change the date of birth by an employee at the fag-end of his service. Such change or correction is permissible only under extra ordinary circumstances when there is apparent miscarriage of justice. The relevant part of the judgment is extracted hereinbelow:

*“9. This Court has consistently held that the request for change of the date of birth in the service records at the fag end of service is not sustainable. The learned Additional Solicitor General has in that regard relied on the decision in State of Maharashtra v. Gorakhnath Sitaram Kamble<sup>4</sup> wherein a series of the earlier decisions of this Court were taken note and was held as hereunder: (SCC pp. 428-29, paras 16-17 & 19)*

*“16. The learned counsel for the appellant has placed reliance on the judgment of this Court in U.P. Madhyamik Shiksha Parishad v. Raj Kumar Agnihotri<sup>5</sup>. In this case, this Court has considered a number of judgments of this Court and observed that the grievance as to the date of birth in the service record should*

*not be permitted at the fag end of the service career.*

*17. In another judgment in State of Uttaranchal v. Pitamber Dutt Semwal<sup>6</sup> relief was denied to the government employee on the ground that he sought correction in the service record after nearly 30 years of service. While setting aside the judgment<sup>7</sup> of the High Court, this Court observed that the High Court ought not to have interfered with the decision after almost three decades.*

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*19. These decisions lead to a different dimension of the case that correction at the fag end would be at the cost of a large number of employees, therefore, any correction at the fag end must be discouraged  by the Court. The relevant portion of the judgment in Home Deptt. v. R. Kirubakaran<sup>8</sup> reads as under: (SCC pp. 158-59, para 7)*

*‘ 7. An application for correction of the date of birth [by a public servant cannot be entertained at the fag end of his service]. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose their promotions forever. ... According to us, this is an important aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case, on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule*



*or order. ... the onus is on the applicant, to prove the wrong recording of his date of birth, in his service book.”*

**21.** So far as the Regulation of SEBA is concerned, the validity of the same was the subject matter of challenge in a litigation which had gone up to the Hon’ble Supreme Court. The Hon’ble Supreme Court in the case of *Board of Secondary Education, Assam Vs. Mohd. Sarifuz Zaman*, reported in (2003) 12 SCC 408 has negated the said challenge. For ready reference, the relevant part of the judgment is extracted hereinbelow:

*“13. Three-year period provided by the Regulation, is a very reasonable period. On the very date of issuance of the certificate, the student concerned is put to notice as to the entries made in the certificate. Everyone remembers his age and date of birth. The student would realise within no time that the date of birth as entered in the certificate is not correct, if that be so, once the certificate is placed in his hands. Based on the certificate the applicant would ☐ seek admission elsewhere in an educational institution or might seek a job or career where he will have to mention his age and date of birth. Even if he failed to notice the error on the date of issuance of the certificate, he would come to know the same shortly thereafter. Thus, the period of three years, as prescribed by Regulation 3, is quite reasonable. It is not something like prescribing a period of limitation for filing a suit. The prescription of three years is laying down of a dividing line before which the power of the Board to make correction ought to be invoked and beyond which it may not be invoked. Belated applications, if allowed to be received, may open a Pandora’s box. Records may not be available and evidence may have been lost. Such evidence — even convenient evidence — may be brought into existence as may defy scrutiny. The prescription of three years’ bar takes care of all such situations. The provision is neither illegal nor beyond the purview of Section 24 of the Act and also cannot be called arbitrary or unreasonable. The applicants seeking rectification within a period of three years form a class by themselves and such prescription has a reasonable nexus with the purpose sought to be achieved.*



*No fault can be found therewith on the anvil of Article 14 of the Constitution.”*

**22.** In view of the aforesaid facts and circumstances and the discussions made above, this Court is of the opinion that the petitioner has failed to make out a case warranting interference by this Court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India. Rather, it appears that the petitioner took a chance by abusing the process of law by obtaining a certificate from the school just prior to filing of the instant case. This Court being a court of equity cannot be a mere spectator regarding such conduct of the petitioner.

**23.** The writ petition, accordingly, stands dismissed. No order as to costs.

**JUDGE**

**Comparing Assistant**