



GAHC010083442022

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

Case No. : WP(C)/2932/2022

MANJU GUPTA
D/O- BISWA NATH PRASAD GUPTA
ASSISTANT TEACHER
VIVEKANANDA BIDYAPITH, H.S
DHEKIAJULI, DIST- SONITPUR
PIN-784110

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, DEPT. OF SECONDARY EDUCATION, DISPUR, GUWAHATI-6

2:THE DIRECTOR
OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI
ASSAM
PIN-781019

3:THE INSPECTOR OF SCHOOLS
SONITPUR DISTRICT CIRCLE
TEZPUR
DISTRICT - SONITPUR
ASSAM
PIN-784001

4:THE HEADMISTRESS
VIVEKANANDA BIDYAPITH
H.S
DHEKIAJULI



DIST- SONITPUR
PIN-784110

5:THE SCHOOL MANAGEMENT AND DEVELOPMENT COMMITTEE
REP. BY ITS CHAIRMAN
VIVEKANANDA BIDYAPITH
H.S
DHEKIAJULI
DIST- SONITPUR
PIN0-78411

Advocate for the Petitioner : MRS. R DEVI

Advocate for the Respondent : SC, SEC. EDU.

Linked Case : WP(C)/2184/2023

MANJU GUPTA
D/O- BISWA NATH PRASAD GUPTA
WARD NO.2
DHEKIAJULI
DIST.- SONITPUR
PIN- 784110

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
EDUCATION (SECONDARY) DEPTT.
DISPUR
GHY-6

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19
3:THE INSPECTOR OF SCHOOLS
SONITPUR DISTRICT CIRCLE
TEZPUR
DIST.- SONITPUR
ASSAM
PIN- 784001



4:THE HEADMASTER
VIVEKANANDA BIDYAPITH H.S
DHEKIAJULI
DIST.- SONITPUR
PIN- 784110

5:THE SCHOOL MANAGEMENT AND DEVELOPMENT COMMITTEE
REP. BY ITS CHAIRMAN
VIVEKANANDA BIDYAPITH H.S
DHEKIAJULI
DIST.- SONITPUR
PIN- 784110

Advocate for : MRS. R DEVI
Advocate for : SC
SEC. EDU. appearing for THE STATE OF ASSAM AND 4 ORS.

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner : Ms. R. Devi

Advocates for the respondents : Shri NJ Khataniar

Date of hearing & Judgment : **16.06.2023**

JUDGMENT & ORDER

Heard Ms. R. Devi, learned counsel for the petitioner. Also heard Shri NJ Khataniar, learned Standing Counsel, Secondary Education Department.

2. Considering the subject matters involved in these two writ petitions filed by the same petitioner, the same were taken up altogether for disposal at the admission stage.
3. The petitioner is an Assistant Teacher in Vivekananda Bidyapith High School,

Dhekiajuli in the district of Sonitpur (hereinafter the School). The petitioner was initially appointed in the Rashtrabhasha Bidyapith ME School, on 19.01.2018 the said ME School was amalgamated with the High School above named and thereafter the petitioner has been working in the amalgamated School. While in service, a communication was issued by the Headmistress / Secretary of the School dated 05.09.2021 withholding the monthly salaries of the petitioner from August 2021. Such withholding was on the ground that there was variation in the date of birth of the petitioner which would appear from the HSLC Certificate.

4. The aforesaid communication was the subject matter of challenge in the first writ petition being WP(C)/2932/2022 and this Court had passed an order on 06.05.2022 issuing notice of motion and had also made certain observations, which are extracted hereinbelow:

“The petitioner who is an Assistant Teacher in the Vivekananda Bidyapith HS Dhekiajuli is aggrieved by the communication dated 05.09.2021 of the Headmistress of the school. As per the said communication, the Headmistress of the school found certain discrepancies in respect of the date of birth of the petitioner in the service book with that of the date of birth recorded in the HSLC certificate of the petitioner. Accordingly by arriving at such satisfaction, the petitioner was informed that henceforth the petitioner would not be paid her salary.

If there is any discrepancy in the date of birth recorded in the service book with that of the HSLC certificate, it is always open for the authorities to issue notice to the petitioner, draw a proceeding and pass appropriate order thereon. But it cannot be accepted under the law that merely on the allegation of discrepancy with the date of birth, the salary would be stopped.

Considering the balance of convenience and irreparable loss that the petitioner may suffer, the communication dated 05.09.2021 of the Headmistress

of Vivekananda Bidyapith HS Dhekiajuli shall remain stayed until further order(s), meaning thereby, that all consequential benefits of the stoppage of salary shall have no effect under the law as regards the payment of salaries and allowances to the petitioner.

However, if the authorities are of the view that the petitioner is required to be proceeded against, liberty remains and the pendency of the writ petition shall not be a bar for the same.”

Though the impugned communication dated 05.09.2021 was stayed, the salaries were not released leading to filing of a contempt case by the petitioner. In the said contempt proceedings, a Speaking Order dated 28.09.2022 passed by the Inspector of School, Sonitpur District Circle was produced whereupon the contempt proceeding was closed and thereafter, the second writ petition being WP(C)/2184/2023 has been instituted challenging the said Speaking Order dated 28.09.2022.

5. Ms. Devi, learned counsel for the petitioner has submitted that it is a fact that her Matriculation Certificate issued by the Council of the State of UP records her date of birth as 06.10.1958 which was due to inadvertence. To substantiate such claim, the learned counsel has referred to a School Leaving Certificate issued by the Dhekiajuli Government Aided High School where the petitioner had left the said School when she was reading in Class-VI and as per the said Certificate, her date of birth on deduction would be 30.03.1966. It is the case of the petitioner that she had left the State of Assam and was in the State of UP from where she had passed her HSLC examination and in the Admit Card issued by the Council of UP, as stated above, her date of birth was incorrectly written as 06.10.1958.

6. The pleaded case of the petitioner is that due to certain matrimonial disparity, the petitioner had come back to the State of Assam and was duly selected for appointment in the Rashtrabhasha Bidyapith ME School as an Assistant Teacher. Ms. Devi by referring to the affidavit submitted at the time of entering into her services

submits that the said affidavit had clearly mentioned about the wrong recording the date of birth by UP Council as 06.10.1958 instead of 30.03.1966. It also appears that the Certificate of UP Council was also submitted at the time of her entering into the service. Ms. Devi further submits that accepting the said claim fortified by the Certificate issued by the Dhekiajuli Government Aided High School, her date of birth in the Service Book was recorded as 30.03.1966.

7. Ms. Devi, learned counsel for the petitioner submits that after the ME School was amalgamated vide an order dated 19.01.2018, a fresh Seniority List was prepared and while doing so, the issue which was almost settled at the time of entering into services was once again raised. It is the contention of the petitioner that the authorities which were aware of the entire facts and circumstances having acted upon and proceeding with the date of birth of the petitioner as 30.03.1966, no adverse action could have been taken by taking recourse to the erroneous entry in the HSLC Certificate of the petitioner issued by the UP Council which was within the knowledge of the authorities at the time of entering into the service. The learned counsel further submits that the embargo upon an employee to make an endeavor to change the date of birth at the fag end of service is equally applicable to an employer and in this regard she has relied upon the decision of the Hon'ble Supreme Court in the case of ***Shankar Lal Vs. Hindustan Copper Ltd. & Ors.*** reported in **(2022) 6 SCC 211**.

8. On the other hand, Shri Khataniar, learned Standing Counsel of the Department submits that the Impugned Speaking Order dated 28.09.2022 has not absolutely brought the matter to a culmination and the petitioner is still given a chance to have the date of birth recorded in the Certificate by the State of UP Council rectified after which the views of the authorities would be modified. He further submits that it was only after the amalgamation process when the seniority has to be re-casted, the matter could be detected and there was no occasion earlier to go through each Certificate. The learned Standing Counsel has also submitted that an affidavit-in-opposition has been filed on 12.06.2023 whereby the action of the respondents has

been defended.

9. Referring to the Speaking Order dated 28.09.2022, the learned Standing Counsel submits that the same was passed after giving adequate opportunity to the petitioner and the order itself reflects that the petitioner was given a scope of hearing. He accordingly submits that there is no error in the decision making process which may not warrant interference by this Court in exercise of powers under Article 226 of the Constitution of India.

10. Rejoining her submissions, Ms. Devi, learned counsel for the petitioner contends that though an affidavit-in-opposition was filed on 12.06.2023 by the Department, there is no categorical denial of the averments made in the writ petition and there is no denial in paragraph wise either. With regard to the submission made that original Certificate issued by the UP Council concerning the date of birth was submitted at the time of entering into the services, the averments made in paragraphs 9, 10 and 17 have been pressed into service. The same reads as follows:

“9. That the petitioner completed her Graduation in Arts from L.O.K.D College, Dhekiajuli in the year 1998. Thereafter, pursuant to the recommendation of the Sub- Divisional Selection Board, Tezpur/ Biswanath Sub-Division, the petitioner was appointed as Assistant Teacher in Rastrabhasha Bidyapith M.E School, Dhekiajuli by the District Elementary Education Officer, Sonitpur, Tezpur vide Memo No. 2- 84/98/2108-113 dated 09.07.99 wherein she joined on 10th July, 1999. It is pertinent to mention herein that at the time of her appointment as Assistant Teacher, petitioner submitted the HSLC Certificate issued by the Secondary Education Council, UP along with the affidavit dated 23.10.1987 wherein her date of birth was correctly shown and the authorities duly accepted it without any reservation and objection and recorded her date of birth as 30.03.1966 in her service record.

10. That the petitioner was transferred to the Vivekananda Bidyapith H.S,

Dhekiajuli pursuant to the Govt. Letter No. PMA 478/2006 / Pt - I / 317 dated 9/7/2010 under OBB (4040) against the existing vacant post and she joined in her post on 12.08.2010. Thereafter, the petitioner was released from her duty for training in DIET for D.El.Ed which she completed successfully. The Headmaster of the Vivekananda Bidyapith H.S, Dhekiajuli issued a certificate in this respect on 25.08.2010.

17. That the petitioner begs to state that at the time of her appointment as the Assistant Teacher, she submitted all the required documents to the authorities including the certificate issued by the Secondary Education Council, UP along with the affidavit sworn on 23.10.1987 to the effect that her original date of birth is 30.03.1966 and not 06.10.1958 as recorded in the school certificate and same were duly accepted by the authorities and accordingly, recorded her date of birth in the service book as 30.03.1966. Therefore, it is not the case that petitioner has misrepresented the authorities by any fabricated documents, but the mistake was duly brought to the notice of the authorities and considering all the relevant facts, the authorities accepted the date of the birth as 30.03.1966 and recorded the same in her service. Therefore, the authorities now barred by the principles of estoppels to raise the issue of discrepancy of her date of birth at this belated stage of service career which they have already accepted.'

11. The learned counsel further submits that no opportunity was granted before passing of the Speaking Order dated 28.09.2022 and with regard to the observation that the petitioner was heard, the learned counsel for the petitioner has referred to the averments made in paragraph 16 wherein it has been stated that though the petitioner had met the Inspector of School, that was with regard to the matter of release of her salary and her visit has been manipulated in the Speaking Order by stating that the petitioner was heard. The relevant averments of paragraph 16 is extracted hereinbelow-

“The Petitioner met the Inspector of Schools once in order to request him to release her salary in compliance of the Hon'ble High Court's interim order and the petitioner apprehends that the Inspector of Schools, Sonitpur District Circle, Tezpur has manipulatively shown that meeting as the enquiry conducted pursuant to the Hon'ble Court's order dated 06.05.2022 in order to avoid contempt proceeding.”

The learned counsel for the petitioner reiterates that none of the aforesaid categorical averments have been denied by the respondents.

12. The learned counsel for the petitioner has lastly submitted that the petitioner is suffering from serious illness and therefore depriving from her salaries at this juncture is not at all rectified and in this regard he has referred to the averments made in paragraph 11, the relevant part of which is extracted hereinbelow:

“11. ... At the petitioner was serving in the school, she was diagnosed with breast cancer and from 17.12.2015 to till date, the petitioner has been undergoing treatment in the B. Barooah Cancer Institute, Guwahati.”

The learned counsel has also referred to the Medical Certificate annexed in this regard.

13. The rival contentions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

14. Generally, in exercise of the extra-ordinary powers conferred by under Article 226 of the Constitution of India, this Court is loathe in interfering with matters pertaining to change of date of birth at the fag end of the career which is normally seen to be mooted by the employees with the intention to get some extensions. However, each case would depend on the facts and circumstances.

15. In the instant case, there is admittedly variation in the date of birth. While the



Council of the State of UP had issued the HSLC Certificate stating that the date of birth of the petitioner to be 06.10.1958, the School of Dhekiajuli where the petitioner had studied upto Class VI records her date of birth which is deduced as 30.03.1966. The matter would have been totally different if the HSLC Certificate of the State of UP Council was not brought to the notice of the authorities at the time of entering into the services. Rather, to the contrary not only the said Certificate was produced, an affidavit was also submitted stating that the said recording of the date of birth was incorrect and the correct date of birth was 30.03.1966. The aforesaid position appears to have been accepted by the authorities at the time of entering into service of the petitioner in the Rastrabhasha Bidyapith ME School which was under the Directorate of Elementary Education. At no point of time, the issue was ever raised and therefore it can be presumed that the date of birth of the petitioner was 30.03.1966.

16. However, since there was an amalgamation of the said School with the High School and the issue of recasting of seniority had come up, the question of date of birth of the petitioner had again crept up leading to present action impugned in these two writ petitions. This Court is of the opinion that since admittedly there was no misrepresentation or suppression by the petitioner while entering into the service as would be evident from the affidavit executed on 23.10.1987 submitted along with the Certificate of the State of UP Council at the time of entering into her service, the issue regarding her date of birth had attained finality which cannot be re-opened now. This Court has also seen that the averments made in these two writ petitions have not been denied and the writ petition also contains Certificate from the Dhekiajuli Government Aided High School from which it can be deduced that the date of birth of the petitioner is 30.03.1966 and this position was accepted by the authorities, as elaborately stated above.

17. With regard to the legality of the impugned Speaking Order dated 28.09.2022, though there is an observation that the petitioner was heard before passing of the same, the explanation given by the petitioner in paragraph 16 of the writ petition, as

quoted above, have not been controverted. Even assuming that a hearing was afforded to the petitioner that perhaps would not be sufficient as an impugned action having adverse civil consequences would have to be preceded by giving an adequate opportunity to the petitioner to place her case which cannot be said to be sufficient by simply giving her a hearing at the time of passing of the order. The records does not reveal that any enquiry was conducted giving the petitioner any opportunity to present her case before passing the impugned Speaking Order.

18. This Court has also finds force in the argument made on behalf of the petitioner by relying upon the case of **Shankar Lal (supra)** of the Hon'ble Supreme Court. The relevant part fo which is extracted hereinbelow-

21. ... There are several authorities in which this Court has deprecated the practice on the part of the employees at the fag end of their career to dispute the records pertaining to their dates of birth that would have the effect of extension of the length of their service. We are not referring to those authorities in this judgment as the ratio laid down on that count by this Court is not relevant for adjudication of this appeal. The very reasoning on which an employee is not permitted to raise age correction plea at the fag end of his service to extend his tenure should also apply to the employer as well. It is the employer here who had proceeded on the basis of age of the appellant reflected in his service book during the latter's service tenure and they ought not to be permitted to fall back on the Form "B" which would curtail the VRS benefit of the appellant."

19. In view of the aforesaid facts and circumstances and the principle of law explained by the Hon'ble Supreme Court in the case of **Shankar Lal (supra)**, this Court is of the view that a case for interference is made out and accordingly the Speaking Order dated 28.09.2022 is set aside. Consequently, the petitioner is directed to be allowed to discharge her duties till her date of superannuation by reckoning her



date of birth as 30.03.1966.

20. It is further made clear that the salaries for the period which has been held up be released immediately. The requirement of which is more in view of the serious ailment of the petitioner. It is also made clear that the authorities should consider the petitioner to be in continuous service for the period from which she has been debarred from discharging her duties.

21. These writ petitions accordingly stand allowed.

22. No order as to cost.

JUDGE

Comparing Assistant