

GAHC010004992023



2024:GAU-AS:13062

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

Case No. : WP(C)/169/2023

JHARNA PATGIRI
W/O- LATE DULAL CHANDRA PATGIRI, R/O- BILASIPARA, NAYAPARA, P.O.
BILASIPARA, DIST. DHUBRI, ASSAM, PIN- 783348.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE HOME DEPTT.,
DISPUR, ASSAM, GUWAHATI-6.

2:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI-7.

3:THE ADDL. DIRECTOR GENERAL OF POLICE (Admin.))
ULUBARI
GUWAHATI-7.

4:THE SUPERINTENDENT OF POLICE
DHUBRI
ASSAM
PIN- 783301.

5:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-6.

6:THE PRINCIPAL ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI-29.

7:THE SENIOR ACCOUNTS OFFICER
OFFICE OF THE PRINCIPAL ACCOUNTANT GENERAL (A AND E)
ASSAM
GUWAHATI-29.

8:THE TREASURY OFFICER
DHUBRI
ASSAM
PIN- 783301

Advocate for the Petitioner : MS. S DOLEY, MS. M K SHARMA

Advocate for the Respondent : GA, ASSAM, MR. S K MEDHI (R-6,7),SC, FINANCE,SC, AG

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT

Date : 18.12.2024

Heard Mr. J. Payeng, learned counsel for the petitioner; Mr. D. Bora, learned Junior Government Advocate, Assam for the respondent nos. 1 – 4; Mr. A. Chaliha, learned Standing Counsel, Finance Department for the respondent nos. 5 & 8; and Mr. S.K. Medhi, learned Standing Counsel, Principal Accountant General [A&E], Assam for the respondent nos. 6 & 7.

2. The petitioner herein is the wife of Late Dulal Chandra Patgiri, who served in the Assam Police. The petitioner's husband, who retired from service as a Constable on superannuation, died on 25.06.2022 after retirement. After retirement and before his death, Dulal Chandra Patgiri submitted all the relevant documents before the employer for processing and finalizing his retiral benefits including monthly pension. After submission of those documents, the respondent no. 4 passed an Order vide Memo no. RA/DBB/Pen/2021/712 dated 09.03.2021 stating that as per Service Book of Dulal Chandra Patgiri, his date of birth was written as 13.02.1961. The Order further mentioned that when the employee, Dulal Chandra Patgiri was asked to submit a copy of his HSLC Admit Card for correction of his date of birth, the employee submitted his HSLC Admit Card and HSLC Pass Certificate on 09.03.2021. As per the HSLC Admit Card and HSLC Pass Certificate, his date of

birth was 18.03.1960. The Order further recorded that Late Dulal Chandra Patgiri had to go on superannuation w.e.f. 31.03.2020 and he received salary upto the month of February, 2021 which resulted into overdrawal of pay and allowances for 11 [eleven] months, and the same had to be recovered from his pensionary benefits.

3. Subsequent to the Order dated 09.03.2021, the Office of the Principal Accountant General [A&E], Assam issued a Letter dated 08.06.2022 to the Inspector General Police [Administration], Assam returning the pension papers of Dulal Chandra Patgiri to resubmit it after doing the needful, as mentioned therein.

4. When the matter of finalization of pension and other benefits in respect of the service of Dulal Chandra Patgiri was being processed, Dulal Chandra Patgiri expired on 25.06.2022. After the death of Dulal Chandra Patgiri on 25.06.2022 the petitioner was informed that there would be recovery of an amount of Rs. 4,58,698/- from the retiral benefits of Late Dulal Chandra Patgiri due to overdrawal of pay and allowances. Aggrieved thereby, the petitioner has approached this Court by this writ petition seeking *inter-alia* a direction to the respondent authorities not to recover the amount of Rs. 4,58,698/-, which was shown in the Letter dated 08.06.2022 [supra], as the amount towards overdrawal of pay and allowances for 11 [eleven] months beyond 31.03.2020.

5. It transpires that Late Dulal Chandra Patgiri served for a period of 11 [eleven] months beyond 31.03.2020 due to non-reflection of his date of birth in his Service Book.

6. An affidavit-in-opposition has been filed on behalf of the respondent no. 4. The reasons for which Late Dulal Chandra Patgiri had worked for a period of 11 [eleven] months from 01.04.2020 to 28.02.2021, beyond 31.03.2020, have been stated in Paragraph 6 as follows :-

6. That with regard to the statement made in paragraph 5 of the Writ Petition the answering Deponent respectfully states that as per service sheet during entry in service in the 1st page of Service Sheet, the Date of Birth of Constable [B] Dulal Ch. Patgiri is noted as 13.02.1961. There is

no documentary proof of Date of Birth found in his Service Sheets as well as Personal Folder at the time of joining service. On receipt of communication from the Deputy Inspector General of Police [MPC], Assam, Ulubari, Guwahati regarding list of employees to go on superannuation vide Letter No. E/II-18,426/Pt-XI/1, Dated 25.06.2020, all the employees under the list were asked to submit proof of date of birth for preparation of pension case vide this office Signal No. RA/DBB/2020/1418, Dated 15.07.2020. A Letter was sent to Deputy Inspector General of Police (MPC), Assam, Ulubari, Guwahati in response to the above Letter, vide Memo No. RRA/DBB/2020/1704, Dated 12.09.2020 indicating the date of superannuation based on Date of Birth on record as per service sheet.

On the basis of the above communication, Constable [B] Dulal Ch. ASSAM Aatgiri submitted a H.S.L.C Examination Pass Certificate to this office in February, 2021. As per the submission, it came to light that, he attained 21 years 11 months 13 days of age on 01.03.1982 and accordingly his date of birth was ascertained as 18.03.1960. Hence his corrected date of superannuation was 31.03.2020, as per the Date of Birth proof that was submitted. However, since the Date of Birth proof was submitted in February, 2021, the Date of Birth was corrected in service sheet to be 18.03.1960 vide D.O. No. 515, Dated 09.03.2021. As per corrected Date of Birth, the date of Superannuation was 31.03.2020. But the petitioner served till 28.02.2021 and received salary up to 28.02.2021. Thus salary and allowances were overdrawn for a period of 11 months from 01.04.2020 to 28.02.2021. As per Government rules, no Government Servant can remain in service after attaining 60 years of age. Hence, no employee can draw salary after attaining 60 years of age. Accordingly, the order vide D.O. No. 515, Dated 09.03.2021 was issued for recovery of the overdrawal amount from his pensionary benefits and the proposal was submitted to the Addl. Director General of Police [M&L], Assam, Ulubari, Guwahati vide this office Memo No. DBB/Pea/B-577/2021/3593 Dated 20.12.2021.

7. From the statements and averments made in Paragraph 6 of the affidavit-in-opposition of the respondent no. 4, it is not evident that any overt act to conceal his actual date of birth is attributable to Late Dulal Chandra Patgiri. There is no material to indicate that there was any hand of Dulal Chandra Patgiri behind not making entry of his date of birth in the service book. It transpires that when Dulal Chandra Patgiri was asked to submit document regarding his date of birth, he had submitted his HSLC Admit Card and HSLC Pass Certificate before the employer. On submission of the HSLC Admit Card and the HSLC Pass Certificate, the respondent authorities had entered the date of birth of the petitioner by taking note of the

fact that as per the HSLC Admit Card, Dulal Chandra Patgiri attained the age of 21 years 11 months 13 days on 01.03.1982 and thus, his date of birth was ascertained as 18.03.1960. It was on that basis, the Office Order dated 09.03.2021 came to be passed observing that Dulal Chandra Patgiri was to go on superannuation w.e.f. 31.03.2020.

8. The post of Constable is a Grade-III post. The employee herein, Dulal Chandra Patgiri had already expired on 25.06.2022. From the facts stated in the affidavit-in-opposition of respondent no. 4, it does not emerge that there was any concealment or misstatement attributable to Dulal Chandra Patgiri which resulted into non-entry of his actual date of birth in the service book.

9. The Hon'ble Supreme Court in *State of Punjab and others vs. Rafiq Masih [White Washer] and others*, reported in [2015] 4 SCC 334, the Hon'ble Supreme Court has examined the right of the State as employer to recover the amount paid in excess to employee without any fault on the part of the employee. If it is found that the amount has been paid in excess without any fault of on the part of the recipient and the same would cause hardship, then on equitable consideration, recovery of such excess amount may not be permissible.

10. The Hon'ble Supreme Court as a ready reference has summarized the following few situations wherein recovery by the employers would not be permissible in law :-

[i] Recovery from the employees belonging to Class III and Class IV service [or Group C and Group D service].

[ii] Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

[iii] Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

[iv] Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

[v] In any other case, where the court arrives at the conclusion, that recovery if made from the

employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

11. Having regard to the law enunciated by the Supreme Court of India in *Rafiq Masih* [supra] and considering the facts and circumstances obtained in the case, this court is of the considered view that the instant the case in hand is a case where, on equitable consideration, any recovery from the retiral benefits of Late Dulal Chandra Patgiri, who was a Constable in the Assam Police, would cause immense hardship to the petitioner and to the family of Late Dulal Chandra Patgiri. In such facts and circumstances, this Court holds that there shall not be recovery of any amount, which was paid to Late Dulal Chandra Patgiri for the period from 01.04.2020 to 28.02.2021 as during that period Late Dulal Chandra Patgiri had extended service as Constable in the Assam Police.

12. The writ petition stands allowed to the extent indicate above. It is further observed that if in the meantime, any amount has been recovered from the retiral benefits of Late Dulal Chandra Patgiri, the respondent authorities shall take necessary steps to refund the amount so recovered and complete the process of refund within a period of 6 [six] from today. No cost.

JUDGE

Comparing Assistant