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2026:GAU-AS:16940

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

**Case No. : WP(C)/4053/2017**

M/S. KALLINE TEA ESTATE
A UNIT OF JAYASHREE TEA and INDUSTRY LIMITED, REP. BY ITS
GENERAL MANAGER, PO-KALLAINE-788815, DIST. CACHAR, ASSAM

VERSUS

ON THE DEATH OF AMOL TANTI HIS LEGAL HEIR SMTI ANURUPA TANTI
W/O LATE SRI ANUP TANTI
R/O VILLAGE KALIBARI PECHACHARA CHA BAGAN
P.O KALAIN P.S. KALAIN
CACHAR ASSAM
PIN-788815

2:REKHA TANTI
S/O LATE SRI ANUP TANTI
R/O VILLAGE KALIBARI PECHACHARA CHA BAGAN
P.O. KALAIN P.S. KALAIN
CACHAR ASSAM
PIN-788815

3:SAMIR TANTI
S/O LATE SRI ANUP TANTI
R/O VILLAGE KALIBARI PECHACHARA CHA BAGAN
P.O. KALAIN P.S. KALAIN
CACHAR ASSAM
PIN-788815

4:THE STATE OF ASSAM
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM
LABOUR DEPARTMENT
DISPUR
GUWAHATI-6

5:THE ASSISTANT LABOUR COMMISSIONER

GOVT. OF ASSAM
CACHAR
ASSA

**BEFORE**

**HON'BLE MR. JUSTICE DEVASHIS BARUAH**

For the Petitioner(s) : Mr. B. D. Das, Sr. Advocate
: Ms. R. Deka, Advocate

For the Respondent(s) : Mr. M. Dutta, Sr. Advocate
: Mr. K. Mira, Advocate

- Date on which Judgment was reserved : NA
- Date of Pronouncement of Judgment : **10.11.2026**
- Whether the pronouncement is of the Operative Part of the Judgment : Yes
- Whether the full Judgment has been Pronounced : NA

**JUDGMENT AND ORDER (ORAL)**

Heard Mr. B. D. Das, the learned Senior counsel assisted by Ms. R. Deka, the learned counsel appearing on behalf of the Petitioner and Mr. M. Dutta, the learned Senior counsel assisted by Mr. K. Mira, the learned counsel appearing on behalf of the Respondent Nos.1, 2 and 3. I have also heard Ms. U. Das, the learned Additional Senior Government Advocate appearing on behalf of the Respondent Nos. 4 and 5.

2. The present writ petition was filed by the Petitioner assailing the Award dated 02.03.2016 passed by the learned Industrial Tribunal, Cachar, Silchar in Reference Case No.02/2014.

**BRIEF FACTS OF THE CASE:**

3. The original Respondent No.1 (hereinafter referred to as the 'Workman') was offered appointment as the daily rated permanent worker by the Management of the Petitioner on 28.07.1981. Subsequent thereto, on 26.12.1983, the Workman was offered appointment as Sardar w.e.f. 02.01.1984. On 25.03.1986, the Workman was offered the post of a driver w.e.f. 01.04.1986.

4. At this stage, it is also of relevance to take note of that on 05.09.1985, the Nomination Form was filled up wherein, in the column "date of birth", it was inserted as 1950. On 20.08.2001, the Workman was upgraded to the post of Artisan Grade-B w.e.f. 01.09.2001. On 02.06.2008, a communication was issued to the Workman by the Senior Manager of the Petitioner Tea Estate intimating him that his employment in the Tea Estate as monthly staff would be terminated w.e.f. 30.06.2008 on superannuation. The Workman was also asked to handover the vacant possession of the quarter and the khet land before coming to collect the amount of gratuity admissible to him. An amount of Rs.80,099.03p

was sanctioned as the gratuity payable to the Workman upon he being superannuated on 30.07.2008 at 4:30 PM. The Workman thereupon was made an offer, post retirement on 28.06.2008 w.e.f. 01.07.2008 which would be renewed on six monthly basis. The Workman duly accepted the said re-employment.

5. The records further reveal that on 05.10.2009, the Workman was paid an amount of Rs.2,74,666/- as settlement towards his provident fund dues. Further to that, on 31.03.2011, another amount of Rs.1,08,150/- was paid to the Workman. Prior to payment of the same, it is also relevant to observe that in the Statement showing the Pensionary Benefits of the membership before the age of retired members, the Workman put his signature on 06.06.2011.

6. The records further reveal that on 05.12.2011, the Workman raised the dispute by submitting a representation that he was unjustly and arbitrarily terminated prior to he attaining the age of superannuation inasmuch as it is the case of the Workman that his date of birth was 31.10.1956 and therefore, ought to have retired on 31.10.2014 but the management of the Petitioner Tea Estate adopting that he was born in the year 1950 retired him on 30.06.2008. On the basis of the said representation submitted

before the Labour Authorities, and the conciliation having been failed, the appropriate Government vide a notification dated 12.02.2014 referred the dispute to the learned Industrial Tribunal, Cachar. The dispute so referred were:

> "*(a) Whether the management of M/S Kalline Tea is justified in superannuation their workman Sri Amol Tanti w.e.f. 30.06.2008 on the basis of the date of birth given/recorded in the A.T.P.P.F nomination form in the face of a different date of birth as recorded in his school certificate, LIC documents and the Muster Roll of Employees maintained by the management?*
>
> *(b) If not, what benefits the workman is entitled to?"*

7. The Workman submitted his written statement. The Management of the Petitioner Tea Estate also submitted its written statement. In addition to that, the Management of the Petitioner Tea Estate submitted an additional written statement.

8. On behalf of the management, one witness adduced evidence i.e. the Senior Manager of the Petitioner Tea Estate and he was cross-examined. On behalf of the Workman, he himself adduced evidence and he was cross-examined. Various documents were exhibited.

9. The learned Industrial Tribunal vide a Judgment and Award

dated 02.03.2016 came to a categorical finding that the date of birth of the Workman was 31.10.1956. The PF nomination form so submitted could not be proved that the Workman had put his signature. The learned Industrial Tribunal also opined that the date of birth of the Workman was 31.10.1956 and therefore his date of superannuation was on 31.10.2014. The learned Industrial Tribunal vide the impugned Award dated 02.03.2016 held that though the Workman is not entitled to get any compensation from the management regarding his termination of service by the management but the Workman would be entitled to the benefits as an employee till the date of superannuation up to 31.10.2014.

10. Being aggrieved, the present writ petition was filed by the Petitioner on 07.07.2017.

11. The learned Coordinate Bench of this Court vide an order dated 12.07.2017 stayed the impugned Award dated 02.08.2016. The interim order thereupon has been extended from time to time.

12. It is of relevance to take note of that during the pendency of the present writ petition, the Workman expired and he was substituted by his legal representatives i.e. his wife, son and daughter vide an order dated 13.10.2023.

13. The records reveal that the substituted Respondents filed an affidavit-in-opposition on 21.12.2023 wherein they supported the Award passed and also placed on record another document namely the Staff Register Details wherein the Workman whose employment code number was 90031 was reflected in the Staff Register Details with his date of birth as 31.10.1956.

**SUBMISSIONS ON BEHALF OF THE LEARNED COUNSELS FOR THE PARTIES:**

14. Mr. B. D. Das, the learned Senior counsel appearing on behalf of the Petitioner submitted that the industrial dispute so raised could not have been an industrial dispute, inasmuch as upon the superannuation of the Workman w.e.f. 30.06.2008, there was no employer-workman relationship. The learned Senior counsel further submitted that prior to that, on 26.08.2008, the Workman was given a post-retirement employment, which the Workman duly accepted and continued till his services were dispensed with.

15. The learned Senior counsel for the Petitioner referring to the records submitted that it would show that the Workman duly accepted his date of birth as in the year 1950, as he never raised any issue. The Workman duly accepted the gratuity and all other pensionary benefits. It is only after the entire pensionary benefits

were disbursed, then on 15.12.2011, a representation was submitted raising a purported dispute as regards his date of retirement. The learned Senior counsel, therefore, submitted that after the superannuation of the Workman, he cannot raise such a dispute as regards his date of birth and in that regard, referred to the judgment of the Supreme Court in the case of ***The General Manager, M/S Barsua Iron Ore Mines Vs. The Vice President, United Mines Mazdoor Union and Others***, *reported in* ***(2024) 4 SCR 63 : 2024 INSC 264***, and placed reliance upon Paragraph Nos. 18, 19, 20, and 21 of the said judgment.

16. Per contra, Mr. M. Dutta, the learned Senior counsel appearing on behalf of the substituted Respondents, submitted that from a perusal of the Award, it would show that the PF Nomination Form could not be proved. The management witness failed to show that he had any knowledge when the PF Nomination Form was filled up. The learned Senior counsel also submitted that the witnesses who had signed in the PF Nomination Form were also not examined to prove the PF Nomination Form. The learned Senior counsel, therefore, submitted that sans the PF Nomination Form not being proved, the learned Industrial Tribunal had rightly taken note of the Driving License as well as the Insurance Policy, which categorically showed that the date of birth of the Workman was on

31.10.1956.

17. The learned Senior counsel appearing on behalf of the substituted Respondents also contended that it is a trite principle of law that the Court exercising jurisdiction under Article 226 of the Constitution ought not to interfere with the Award passed by the learned Labour Court, except in a case where there is a perversity on the face of the records. In that regard, he has referred to the judgment of the Supreme Court in the case of ***Management of Madurantakam Coop. Sugar Mills Vs. S. Viswanathan*** *reported in* ***(2005) 3 SCC 193***.

18. The learned Senior counsel also contended that the very reference made to the learned Industrial Tribunal categorically refers to the School Certificate, the Driving License, as well as the Insurance Policy, which are documents which ought to have been taken into consideration for fixing the date of birth, rather than a nomination form which could not be proved. The learned Senior counsel therefore submitted that there is no infirmity or perversity in the impugned Award for this Court to exercise the certiorari jurisdiction in the extant facts.

**ANALYSIS AND DETERMINATION:**

19. I have heard the learned counsels appearing on behalf of the parties and perused the materials on record, including the records of the learned Industrial Tribunal.

20. It is well settled that if a particular date of birth is entered in the Service Register, a change sought for cannot be entertained at the fag end of the service, after accepting the same to be correct during the entire service career. In the instant case, the Workman was duly intimated on 02.06.2008 that he would be retiring w.e.f. 30.06.2008. The Workman never challenged the said aspect then. The Workman accepted the gratuity along with other pensionary benefits. The provident fund dues were also accepted on 06.06.2011. This aspect is borne out of the records of the learned Labour Court. The Workman not only accepted the gratuity, the pensionary benefits as well as the pension, but also accepted an order of re-employment, i.e. an appointment post-superannuation, which would be reviewed on a six-monthly basis. This is also borne out of the records. It was only after accepting the gratuity, the pensionary benefits, as well as the provident fund, on 15.12.2011, the Workman raised the dispute that he ought not to have been superannuated on 30.06.2008; rather, he should have been in service and his date of superannuation was on 31.10.2014. The basis on which the Workman raised such dispute is his School

Certificate, the Driving License, as well as the Life Insurance Policy, wherein the date of birth of the Workman was shown as 31.10.1956.

21. This Court has minutely perused the evidence on affidavit of the Workman as well as his cross-examination. In his cross-examination, the Workman categorically stated that on the various dates post the offer of his appointment dated 28.07.1981, 26.12.1983, 25.03.1986 and 20.08.2001, the Workman did not submit any certificate concerning his date of birth.

22. This Court duly takes note of a document which was placed in the present writ proceedings by way of an affidavit by the substituted Respondents, wherein in the Staff Register Details, the Workman's date of birth was recorded by the Petitioner Tea Estate as 31.10.1956. However, the said document was not adduced as evidence before the learned Industrial Tribunal.

23. In the backdrop of the above, let this Court refer to the judgment of the Supreme Court in the case of ***The General Manager, M/S Barsua Iron Ore Mines (supra)*** wherein the issue before the Supreme Court was as to whether a Workman who had accepted the date of birth for a period of 10 years can be allowed

to change the date of birth. The Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as well as the learned Division Bench of the High Court of Orissa at Cuttack held that the Workman in those proceedings could be permitted to raise the issue pertaining to his date of birth, although he had accepted on 27.12.1972 that his date of birth was 27.12.1948 till 14.08.1982. However, the Supreme Court in the said judgment interfered with the Award passed by the learned Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar, as well as the Judgment dated 04.02.2021 passed by the learned Division Bench of the High Court of Orissa and held that the principle of estoppel would come into play, inasmuch as the Workman, having stated on 27.12.1972 that his date of birth was 27.12.1948, cannot be permitted to raise the claim of his date of birth being 12.03.1955, that too on 14.08.1982, i.e. almost after a decade. Paragraphs 18 to 21 of the said judgment, being relevant, are reproduced hereinunder:

> "***18.*** *Undoubtedly, a decision on the issue of date of birth is as important for the employer as it is for the employee. Reference in this regard can be made to* ***Bharat Coking Coal Ltd. v Shib Kumar Dushad, (2000) 8 SCC 696. As expressed in Union of India v C Rama Swamy, (1997) 4 SCC 647****, "… the court also ought not to grant any relief even if it is shown that the date of birth, as originally recorded, was incorrect because the candidate concerned had represented a different date of birth to be taken into consideration obviously with a view that*

*that would be to his advantage. …".*

***19.*** *Moreover, the principles of estoppel would come into play in the present case. The respondent no.3, having stated on 27.12.1972, that his date of birth was 27.12.1948, cannot be permitted to raise the claim of his date of birth being 12.03.1955, that too on 14.08.1982, i.e., almost after a decade (counting from 27.12.1972 to 14.08.1982). Even the STC was submitted after the appellant requested the respondent no.3 for documentary proof on 24.11.1998.*

***20.*** *Although, we have examined the matter from the lens of fraud as well, in view of our discussions hereinabove, the said aspect does not merit deeper probe. We leave it at that. For the present, it would suffice to refer to a pronouncement of recent vintage by this Court in* ***Karnataka Rural Infrastructure Development Limited v T P Nataraja, (2021) 12 SCC 27****, where earlier precedents in* ***Home Department v R Kirubakaran, 1994 Supp (1) SCC 155; State of Madhya Pradesh v Premlal Shrivas, (2011) 9 SCC 664; Life Insurance Corporation of India v R Basavaraju, (2016) 15 SCC 781*** *and* ***Bharat Coking Coal Limited v Shyam Kishore Singh, (2020) 3 SCC 411*** *were considered. Although this Court in* ***T P Nataraja*** *(supra) was looking at the facts therein, in the context of the Karnataka State Servants (Determination of Age) Act, 1974, the principle of law laid down would equally apply insofar as change of date of birth in service records is concerned, with which we concur:*

> "***11****. Considering the aforesaid decisions of this Court the law on change of date of birth can be summarised as under:*
>
> *(i) application for change of date of birth can only be as*

*per the relevant provisions/regulations applicable;*

*(ii) even if there is cogent evidence, the same cannot be claimed as a matter of right;*

*(iii) application can be rejected on the ground of delay and laches also more particularly when it is made at the fag-end of service and/or when the employee is about to retire on attaining the age of superannuation."*

***21.*** *In view of the aforesaid, this Court finds that the much-delayed disclosure of the date of birth as 12.03.1955 by the respondent no.3, coupled with his initial declaration and the admitted position that based on such initial declaration, he had received employment, as otherwise based on 12.03.1955, he could not have been legally appointed due to being under-age, there is no manner of doubt that the respondent no.3, irrespective of his real date of birth, for the purpose of employment under the appellant, cannot be allowed the purported rectification/correction of date of birth to 12.03.1955. He would have to, necessarily, be content with his service and benefits accounted taking his date of birth as 27.12.1948."*

24. Factually, the present case is similar inasmuch as the Workman's date of birth was recorded as 1950 in the PF Nomination Form. On 02.06.2008, the Workman was duly informed that he would superannuate on 30.06.2008. The Workman accepted the said date and took the pensionary benefits, which includes the gratuity and the provident fund. It is only upon receipt

of all these benefits, the Workman raised the issue on 15.12.2011. In addition to that, the Workman had also accepted his date of superannuation to be 30.06.2008 by accepting the re-employment order dated 28.06.2008, wherein the Workman was appointed post-retirement as a driver on a six-monthly basis. In the opinion of this Court, the learned Industrial Tribunal failed to take note of these vital aspects of the matter, which touches on the principles of estoppel. Under such circumstances, the findings so arrived at by the learned Industrial Tribunal merely on the basis of not proving the PF Nomination Paper and overlooking the conduct of the Workman have led to perversity in the impugned Award dated 02.03.2016. Accordingly, the impugned Award cannot be sustained in law.

**CONCLUSION:**

25. In that view of the matter, the instant writ petition stands disposed of with the following observations and directions:

(i) The impugned Award dated 02.03.2016 passed by the learned Industrial Tribunal, Cachar, in Reference Case No. 02/2014 is set aside and quashed.

(ii) There shall be no order as to costs.

(iii) Return the TCR.

Bijoy Saha

Digitally signed by Bijoy Saha
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**JUDGE**

**Comparing Assistant**