

GAHC010048022022



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

**Case No. : WP(C)/1873/2022**

BAHARUL ISLAM  
S/O- LATE SOLEMAN ALI, VILLAGE-KHAKHARISAL , P.O- KHAKHARISAL,  
P.S- MUKALMUA, DIST- NALBARI, ASSAM

VERSUS

THE STATE OF ASSAM AND 7 ORS  
REP. BY THE COMMISSIONER AND SECRETARY , TO THE GOVT. OF  
ASSAM, DEPARTMENT OF ELEMENTARY EDUCATION, ASSAM, DISPUR,  
GHY 06

2:THE COMMISSIONER AND SECRETARY  
TO THE GOVT. OF ASSAM  
FINANCE DEPARTMENT  
ASSAM  
DISPUR  
GUWAHATI -06

3:THE DIRECTOR  
OF ELEMENTARY EDUCATION  
KAHILIPARA  
GHY 19  
KAMRUP (M)  
ASSAM.

4:THE DIRECTOR  
OF PENSION  
ASSAM  
HOUSEFED COMPLEX

NEW BUILDING  
DISPUR-06

5:THE DIST. ELEMENTARY EDUCATION OFFICER  
NALBARI DIST  
P.O  
P.S AND DIST- NALBARI  
ASSAM

6:THE DEPUTY INSPECTOR OF SCHOOLS  
NALBARI DIST  
P.O  
P.S AND DIST- NALBARI  
ASSAM

7:THE BLOCK ELEMENTARY EDUCATION OFFICER  
PASHIM NALBARI  
P.O  
P.S AND DIST- NALBARI  
ASSAM

8:THE TREASURY OFFICER  
NALBARI  
P.O  
P.S AND DISTRICT NALBARI  
ASSA

**Advocate for the Petitioner** : MR. A M BARBHUIYA

**Advocate for the Respondent** : MR. B. KAUSHIK  
: MR. R. BORPUJARI  
: MR. S. R. BARUAH

Linked Case : WP(C)/4936/2021

BAHARUL ISLAM  
S/O LATE SOLEMAN ALI  
VILL. KHAKHARISAL  
P.O. KHAKHARISAL  
P.S. MUKALMUA  
DIST. NALBARI

ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS  
TO BE REPRESENTED BY THE COMMISSIONER AND SECY. TO THE  
GOVT.OF ASSAM ELEMENTARY EDUCATION DEPTT.

ASSAM  
DISPUR  
GUWAHATI 6

2:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM

FINANCE DEPTT.

ASSAM  
DISPUR  
GUWAHATI 6

3:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM  
KAHILIPARA  
GUWAHATI 19

4:THE DIRECTOR OF PENSION

ASSAM  
HOUSEFED COMPLEX  
NEW BUILDING  
DISPUR 6

5:THE BLOCK ELEMENTARY EDUCATION OFFICER

PASHIM NALBARI

P.O.  
P.S. AND DIST. NALBARI  
ASSAM.

6:THE TREASURY OFFICER

NALBARI

P.O.  
P.S. AND DIST. NALBARI  
ASSAM.

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Advocate for Petitioner : MR. A M BARBHUIYA  
Advocate for Respondents : MR. B. KAUSHIK  
: MR. R. BORPUJARI  
: MR. S. R. BARUAH

**BEFORE  
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

**JUDGMENT AND ORDER (CAV)**

**Date : 25-04-2023**

Heard Mr. A. M. Barbhuiya, the learned counsel appearing on behalf of the petitioner and Mr. B. Kaushik, the learned Standing counsel appearing on behalf of the Elementary Education Department. I have also heard Mr. R. Borpujari, the learned Standing counsel appearing on behalf of the Finance Department and Mr. S. R. Baruah, the learned Standing counsel appearing on behalf of the Director of Pension.

2. Both the writ petitions being connected are taken up for disposal vide the common judgment and order. The facts of the instant case is that the petitioner was initially appointed as Stipendiary Teacher on 17.11.1999 on a fixed pay of Rs.900/-. The petitioner underwent Basic Training Course and got the regular scale of pay w.e.f. 17.01.2006. Thereupon, the petitioner retired on 10.08.2021 as per the retirement notice issued by the Block Elementary Education Officer Paschim Nalbari of Nalbari District. After his retirement, his pension papers were duly sent to the Director of Pension. The Block Elementary Education Officer, Paschim Nalbari issued a communication dated 13.09.2021 to the petitioner whereby it was mentioned that there was excess drawal of monthly salary for the period from 01.02.2018 to 30.06.2021 i.e. an amount of Rs.17,07,100/- and the petitioner was asked to pay the said amount through treasury challan and submit the challan copy within a short period for preparation of the pension

etc. Being aggrieved by the said communication dated 13.09.2021, the petitioner has approached this Court challenging the said communication and with a direction upon the respondent authorities to release the pension of the petitioner without recovery and/or repayment in accordance with law.

3. It appears from records that the said writ petition i.e. WP(C) No.4936/2021 was filed on 20.09.2021 and this Court vide an order dated 28.09.2021 issued notice making it returnable by 6 (six) weeks and in the interim directed the respondent authorities that the alleged excess payment of the salary shall not be recovered until further orders. The record reveals that the respondents have not filed any affidavit in WP(C) No.4936/2021. It further appears that the petitioner had filed an Interlocutory Application i.e. I.A.(Civil) No.1828/2021 for a direction upon the respondents to release the provisional pension of the petitioner till the disposal of the WP(C) No.4936/2021. Vide an order dated 11.11.2021, this Court disposed of the said Interlocutory Application with a direction upon the Elementary Education Department to process and arrive at their decision as to at what rate the petitioner would be entitled to provisional pension and thereupon to pay the provisional pension from the month of December, 2021 onwards. It further appears that there was another Interlocutory Application which was filed by the petitioner being I.A.(Civil) No.2177/2022 with a prayer to direct the official respondents to release the pensionary benefits of leave salary, gratuity and GP fund and other benefits to the petitioner as admissible under law. The said application however is still pending.

4. Subsequent thereto, the petitioner filed another writ petition i.e. WP(C) No.1873/2022. In the said writ petition, it has been mentioned that pursuant

to the order dated 28.09.2021 passed in WP(C) No.4936/2021, the petitioner on 01.10.2021 submitted the said order before the Block Elementary Education Officer, Paschim Nalbari as the said official had issued the order dated 13.09.2021 and he was responsible for processing the pension papers of the petitioner. It has also been mentioned in the subsequent writ petition about the order dated 11.11.2021 passed in I.A.(Civil) No.1828/2021 and about filing of a contempt case being Cont.Cas(C) No.65/2022 for violating the order dated 11.11.2021 passed by this Court. It has also been mentioned that the Deputy Inspector of Schools, Nalbari vide an order dated 11.02.2022 granted provisional pension of Rs.1,70,792/- for the period from 01.03.2021 to 31.01.2022 to the petitioner. On the basis of the same, the said Cont.Cas(C) No.65/2022 was closed. It is the further case of the petitioner that the petitioner is further entitled to the provisional pension from 01.02.2018 onwards but the petitioner was only granted the provisional pension from 01.03.2021 to 31.01.2022. Apart from that, the petitioner is also entitled to the retirement benefits like gratuity, leave salary, provident fund etc. for which the same has not been paid. It is under such circumstances the second writ petition being WP(C) No.1873/2022 was filed seeking a direction upon the respondents to release the retirement benefits like gratuity, leave salary, provident fund etc. to the petitioner with arrear provisional pension to the petitioner from 01.02.2018 onwards except for the period from 01.03.2021 to 31.01.2022 for which the petitioner had already received an amount of Rs.1,70,792/-.

5. This Court vide an order dated 16.03.2022 issued notice making it returnable by 6 (six) weeks. It appears on record that the Director of Elementary Education (respondent No.3) had filed an affidavit-in-opposition

on 28.07.2022. It is the case of the said respondent that the petitioner was initially appointed as Stipendiary Teacher of Gadira L.P. School and after passing of the Basic Training Course, the petitioner got the regular scale and served as the Head Teacher at Mohbiyeni L.P. School. It was further stated that as per the HSLC Examination certificate, the date of birth of the petitioner is 01.01.1958 and accordingly, his date of retirement should have been 30.01.2018. However, the In-charge Block Elementary Education Officer, Paschim Nalbari had issued a retirement notice to the petitioner on 10.08.2021 stating the date of retirement of the petitioner as 31.01.2018. It was mentioned that it is the common sense of an employee to know his date of retirement on the basis of his date of birth counting service period of 60 years as per Government norms. It was mentioned that the petitioner kept his Service Book in his custody and he did not submit his Service Book to the BEEO, Paschim Nalbari after repeated reminders. It was further mentioned that as per the report of the District Elementary Education Officer, the petitioner kept his Service Book with him without verifying his age. It was mentioned that there was no date of birth recorded in his Service Book as reported by the In-charge, BEEO, Paschim Nalbari. It was therefore the case of the respondents that the petitioner intentionally kept his Service Book in his custody in order to hide his actual date of birth with mala fide intention. It was further mentioned that the In-charge BEEO, Paschim Nalbari had served the notice to the petitioner for recovery of the amount of Rs.17,07,100/- for the period from 01.02.2018 to 30.06.2021. To the said affidavit, a document has been enclosed issued by the Director of Elementary Education dated 09.12.2021 wherein there was a direction to the District Elementary Education Officer, Nalbari to release the provisional

pension of the petitioner based on the actual date of superannuation within 7 (seven) days and submit action taken report to the Office of the Director of Elementary Education.

6. To the said affidavit-in-opposition, the petitioner has filed an affidavit-in-reply. In paragraph No.4 of the said affidavit-in-reply, it was mentioned that when the petitioner joined his post pursuant to his appointment on 17.11.1999, there was no mention about his date and/or age of his retirement. However, the petitioner could gather from reliable sources that in 1999, the superannuation age was 58 years. However, during his service tenure, the superannuation age was made from 58 years to 60 years by the State Government. It was further mentioned that neither in the advertisement nor in his appointment letter there was any mention about his date of his retirement and as per the established procedure, the petitioner has to retire from service as per the retirement notice to be served upon him by the departmental concerned authority and after his retirement, he is entitled to receive monthly pension and other related benefits in accordance with law.

7. It was further mentioned in paragraph No.5 of the said affidavit-in-reply that the Service Book was all along maintained by the Block Elementary Education Officer who was the drawing and disbursing authority of the petitioner's monthly salary. The petitioner further stated that on various occasions, he had approached the Office of the Block Elementary Education Officer to know as to why he has not yet been given the retirement and/or when he will be given retirement. However, the said Office informed the petitioner that he would be given retirement in due time. It was further



mentioned that one Accountant in the Office of the Block Elementary Education Officer even expressed to the petitioner that from the Service Book of the petitioner, he was unable to find out the exact date of retirement. It is therefore the case of the petitioner that it is at the instance of the petitioner, the retirement notice dated 10.08.2021 was issued to the petitioner notifying his date of retirement as on 31.01.2018 and therefore the petitioner was entitled to receive his pension from 01.02.2018 in accordance with law. It was further mentioned that there was no mistake committed by the petitioner and it was due to the mistake committed by the Department concerned which led the petitioner to continue his service from 01.02.2018 to 10.08.2021.

8. To the said effect, there was an additional affidavit filed by the petitioner on 05.02.2023 wherein it was mentioned that the Block Elementary Education Officer, Paschim Nalbari in order to save his skin reported to the Director of Elementary Education, Assam alleging that the petitioner did not submit his Service Book with a mala fide intention as there was no mention of the date of birth in his Service Book. The petitioner denied such allegations as the petitioner cannot be the custodian of his Service Book. It was further mentioned that the concerned official wrongly entered the date of birth of the petitioner in his Service Book according to which the petitioner was supposed to retire on 01.03.2023. However, when the petitioner persistently approached the office of the Block Elementary Education Officer, Paschim Nalbari to know his actual date of retirement, then the Block Elementary Education Officer, Paschim Nalbari asked the petitioner to furnish the office provided Xerox copy of his Service Book to verify or compare his date of retirement. Thereupon, the petitioner was

issued a retirement notice dated 10.08.2021 asking him to be retired w.e.f. 31.01.2018.

9. I have heard the learned counsels for the parties. During the course of the hearing, this Court directed the respondent authorities to produce the Service Book of the petitioner. The learned Standing counsel for the Elementary Education Department had produced the original Service Book of the petitioner and this Court had directed the Bench Assistant of this Court vide an order dated 23.03.2023 to make a photocopy of the same and keep a copy of it in the records and the original be returned to the learned Standing counsel for the Elementary Education Department.

10. I have perused the Service Book so produced by the Elementary Education Department. It appears from the Service Book that the official who has put the signature is the Block Elementary Education Officer, Paschim Nalbari. Surprisingly, in column No.7 of the Service Book which is a column pertaining to "Date of birth of Christian era as nearly can be ascertained", the same has been kept blank and there is a signature of the Block Elementary Education Officer with the date being inserted as 30.03.2007. This is almost 11 years prior to the petitioner's actual date of retirement. It further transpires that there are further attestations being made in the Service Book by the Block Elementary Education Officer on 30.03.2007 and 30.12.2011. Subsequent thereto, although there has been various attestations being made by the Block Elementary Education Officer, Paschim Nalbari, there is no date put against such attestations. It further appears that the very Block Elementary Education Officer who did not put the date against the attestations so made was the official concerned who

also put the endorsement in the Service Book to the following effect "Retired on 31-01-2018 as per HSLC pass certificate" and this very official had also issued the communication dated 13.09.2021 as would appear from the signature.

11. In the backdrop of the above facts as could be discerned from the records, let this Court take into consideration as to whether the respondents can be permitted at this stage to recover the amount of Rs.17,07,100/- from the petitioner on the ground of overstay.

12. The Supreme Court in the case of ***State of Bihar and Others Vs. Pandey Jagdishwar Prasad reported in (2009) 3 SCC 117*** was called upon to decide as to whether the recovery so sought to be made by the respondents therein vide an order dated 04.12.2004 on account of overstay was permissible. It is relevant to mention herein that initially the learned Single Judge of Patna High Court had dismissed the writ petition challenging the order dated 04.12.2004 whereby there was a direction to recover the excess amount drawn by the employee. But the Division Bench of the Patna High Court interfered with the order of recovery sought to be made by the State authorities and directed refund of the amount already recovered with interest @6% per annum. The matter thereupon reached the Supreme Court whereby the Supreme Court while upholding the judgment of the Division Bench of the Patna High Court held that the as the employee was allowed to work beyond his due date of superannuation without raising any objection and in absence of misrepresentation or fraud to be attributed to the employee, the Division Bench of the Patna High Court was justified in setting aside the recovery of the excess amount on account of overstay. In

paragraph No.22 of the said judgment, the Supreme Court observed that it cannot be conceived of that the authorities could not examine the possibility of two dates of birth to be entered in the Service Book of the respondent. It was further observed that it was the duty of the authorities who ought to have deleted the initial date of birth based on matriculation certificate if the authorities were of the view that the affidavit sworn by the respondent therein was correct and the date of birth appearing in the matriculation certificate must be found to be incorrect on the basis of the documents produced by the respondent to show that the date of birth entered in the Service Book initially was incorrect. It was further observed that as the authorities have not issued any notice of retirement to the respondent therein as per the actual date of birth on his attaining superannuation and allowed the respondent to work and got works from him and paid salary, it would not be permissible and proper to allow deduction from his retirement benefits of the respondent therein, the amount received by him as salary, after his actual date of retirement.

13. In paragraph No.24 of the said judgment, the Supreme Court further observed that as there was no allegation of misrepresentation or fraud which could have been attributed to the respondent therein and considering the fact that the authorities have allowed the respondent to work and got works done by him and paid him salary, it would be unfair at this stage to deduct the said amount of salary paid to him. It was observed that the Division Bench of the Patna High Court was right in setting aside the said recovery since the respondent therein was allowed to work and was paid salary for his work during the period of 2 years after his actual date of retirement without raising any objection whatsoever, and as such no deduction could be made

for that period from the retiral dues of the respondent therein. Paragraph Nos. 22, 23, 24, 25 and 26 being relevant are reproduced hereinunder:

*“22. As noted hereinafter, in the Service Book of the respondent, two dates of birth have been mentioned, which is not permissible. It cannot be conceived of that the authorities could not examine the possibility of two dates of birth to be entered in the Service Book of the respondent. They ought to have deleted the initial date of birth based on the matriculation certificate if the appellants were of the view that the affidavit sworn by the respondent was correct and the date of birth appearing in the matriculation certificate must be found to be incorrect, it is needless to say that the affidavit sworn by the respondent must be on the basis of documents produced by the respondent to show that the date of birth entered in the Service Book initially was incorrect. Instead, the appellant had not issued any notice of retirement of the respondent on 28-2-2002, which was the date for retirement of the respondent on his attaining superannuation i.e. on the basis of the date of birth shown in the matriculation certificate. On the other hand, the appellant allowed the respondent to work and got works from him and paid salary. Only for the first time, the appellant took note of two dates of birth after he had completed two years from the date of his actual date of retirement.*

*23. Without going into the question whether the appellant was justified after completion of two years from the actual date of retirement to deduct two years' salary and other emoluments paid to the respondent, we may say that since the respondent had worked during that period without raising any objection from the side of the appellant and the appellant had got works done by the respondent, we do not think that it was proper at this stage to allow deduction from his retiral benefits, the amount received by him as salary, after his actual date of retirement.*

*24. Considering the fact that there was no allegation of misrepresentation or fraud, which could be attributed to the respondent and considering the fact*

*that the appellant had allowed the respondent to work and got works done by him and paid salary, it would be unfair at this stage to deduct the said amount of salary paid to him. Accordingly, we are in agreement with the Division Bench decision that since the respondent was allowed to work and was paid salary for his work during the period of two years after his actual date of retirement without raising any objection whatsoever, no deduction could be made for that period from the retiral dues of the respondent.*

**25.** *In Kailash Singh v. State of Bihar this Court observed that the employer State would not be entitled to recover the salary paid in excess after the due date of superannuation. In our view, this decision was practically based on the concession made by the State before this Court.*

**26.** *Again in Hari Singh v. State of Bihar this Court held that since the Government had never put the employee on notice to indicate that the date of birth as entered in the Service Book was incorrect though it could have done so and since no notice had been given to the employee concerned for accepting a date of birth other than the one entered in the Service Book, the order of retirement could not be sustained. From the aforesaid decision, it is evident that it was the duty of the State to put the employee on notice about his date of retirement and not having done so, the appellant was not entitled to recover the excess amount paid to the respondent."*

14. It surprises this Court to take note of that the official who had signed on 30.03.2007 in the Service Book did not find it relevant for insertion of the date of birth in the Service Book of the petitioner or to insist to have the date of birth of the petitioner inserted as per column No.7 of the Service Book. If the said aspect of the matter would have been done in the year 2007, i.e. the date on which the official had put his signature, then the petitioner would not have continued in his service beyond the permissible

date of retirement. It is also relevant herein to mention that although in the affidavit-in-opposition filed by the Director of Elementary Education, there has been a mention that the Service Book was in the custody of the petitioner, but this Court finds it difficult to accept the said contention on the ground that the Service Book as per the established norms in so far as the petitioner is concerned is required to be maintained in the Office of the Block Elementary Education Officer. There is also no documents enclosed to the affidavit filed by the respondents herein that the respondent authorities have asked the petitioner to submit the Service Book to the authorities concerned.

15. Be that as it may, this Court finds it shocking that the official concerned had signed on the Service Book on 30.03.2007 and did not insist that the date of birth of the petitioner be inserted as is required in terms with column No.7 of the Service Book. It is further necessary to take note of that there is no allegation of any fraud or misrepresentation on the part of the petitioner which led to the overstay of the petitioner. On the other hand, the affidavit-in-reply as well as the additional affidavit so filed shows that it is on account of the petitioner's persistent efforts which have led to the issuance of the superannuation notice to the petitioner. Consequently, this Court therefore is of the opinion that the case of the petitioner squarely comes within the ambit of the law declared by the Supreme Court in the case of ***Pandey Jagdishwar Prasad (supra)*** and this Court therefore sets aside the communication dated 13.09.2021 issued by the Block Elementary Education Officer whereby the petitioner was directed to deposit the amount of Rs.17,07,100/- for the purpose of processing the pension papers of the petitioner. Accordingly, the said communication dated 13.09.2021 is set aside and quashed.

16. This Court further finds it relevant to take note of another judgment of the Supreme Court rendered in the case of ***State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others reported in (2015) 4 SCC 334*** wherein the Supreme Court laid down the circumstances under which it would be unreasonable and iniquitous to make recovery by the employers and accordingly impermissible in law. Paragraph 18 of the said judgment being relevant is quoted hereinbelow:

*“18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible 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.”*



17. This case squarely comes within the ambit of paragraph 18(ii) whereby the Supreme Court has held that recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery would be impermissible in law.

18. Considering the above, this Court therefore holds that the respondents authorities cannot make the recovery of the amount of Rs.17,07,100/- from the petitioner at the present stage. This Court further finds it relevant to take note of another important aspect of the matter which can be seen from paragraph No.30 of the judgment of the Supreme Court in the case of ***Pandey Jagdishwar Prasad (supra)*** wherein it has been observed that the excess amount paid for two years to the respondent therein as salary cannot be recovered from the respondent but while fixing the retiral benefits, the period of two years in respect of which the salary was received by the respondent therein cannot be taken into consideration and the respondent therein would be entitled to fixation of the retiral benefits as on the date of his actual date of superannuation. Paragraph No.30 of the said judgment being relevant is reproduced hereinunder:

*“30. There is another aspect in this matter. Although we have directed that the excess amount paid for two years to the respondent as salary cannot be recovered from the respondent, but we make it clear that for fixing the retiral benefits, the period of two years in respect of which salary was received by the respondent cannot be taken into consideration and the respondent would be entitled to fixation of retiral benefits as on the date of his superannuation i.e. 28-2-2002.”*

19. This Court therefore taking note of the above declaration of law by the Supreme Court in the case of ***Pandey Jagdishwar Prasad (supra)*** is of the

opinion that the retirement benefits of the petitioner has to be fixed as on from the actual date of his superannuation i.e. 30.01.2018 which is based upon the HSLC pass certificate.

20. Consequently, this Court therefore disposes of both the writ petitions with the following observations and directions.

(i) The communication dated 13.09.2021 issued by the Block Elementary Education Officer is set aside and quashed.

(ii) The respondent authorities are directed not to make any recovery from the petitioner in any mode including from the retirement dues of the petitioner, the amount of Rs.17,07,100/- which was computed to be the excess payment drawn by the petitioner on account of overstay.

(iii) The respondent authorities are directed to fix the retirement benefits of the petitioner on the basis of the petitioner's actual date of superannuation i.e. on 30.01.2018 which is based upon the date of birth as recorded in the HSLC certificate.

(iv) The respondent authorities including the Elementary Education Department and the Director of Pension are directed to immediately process the pension of the petitioner so that the petitioner receives his arrear pension as well as all other pensionary benefits at the earliest. The said exercise be completed within a period of 4 (four) months from the date a certified copy of the instant judgment and order is served upon the Director of Elementary Education as well as to the Director of Pension.

(v) This Court further directs that upon the formalities being completed by

the Elementary Education Department as well as the Director of Pension, the concerned Treasury Officer shall do the needful so that the petitioner receives his arrear pension, regular pension as well as the pensionary benefits to which the petitioner is otherwise is entitled to.

21. Before parting with the records, this Court finds it relevant to observe that it has become a recurrent phenomenon as can be noticed on every other day relating to litigations filed challenging recovery or proposed recovery on account of overstay in service. These notices for recovery or recovery so made by the concerned Department wherein the employee had worked come to light at a very late stage after the actual date of superannuation. Either it comes to light at the behest of the employee or a vigilant official of the Department and mostly when the Director of Pension or the Office of the Principal Accountant General (A&E) points out the deficiency as regards the date of birth which have resulted in overstay. It can also be seen that when such deficiency is pointed out, the concerned Department issues notice for recovery to the employee or recovers from the employee. The law laid down in ***Pandey Jagdishwar Prasad (supra)*** and ***Rafiq Masih (White Washer) (supra)*** being well settled, it is not known why the concerned Departments or for that matter the officials responsible for issuing superannuation notices are not vigilant. In fact, the present case is an epitome of the lack of vigilance and diligence on the part of the officer who was required to see that the date of birth of the petitioner ought to have been inserted in the Service Book. This Court further fails to understand that in the present age where so much impetus is given to digitalization, how the issue as regards the date of birth and date of superannuation can still continue to remain an issue on the ground that the Service Book was not

available. It is also relevant to observe that what is normally seen is that the concerned Department when it realizes that there is overstay by an employee, steps are taken to recover from the employee who has retired but no action is taken on the erring officials for whose lack of diligence for not recording the date of birth or issuing the superannuation notice in time, the steps for recovery or notice of recovery is/are issued. If the State Government is serious to root out the problem of overstay, the State Government is required to take appropriate steps by not only holding the retiring employee accountable (if there is a case of fraud or misrepresentation) but also steps are required to be taken against such erring official for whose lack of diligence and vigilance it had led to overstay. This Court also feels that steps are also required to be taken to digitalize the service records of the employees so that not only the official who is required to issue the superannuation notice can do so without any hindrance but the senior officials of the Department can also keep a tab as to whether the official required to take steps for issuance of superannuation notice in doing so. This Court hopes and expects that the Government of Assam in its own wisdom shall take appropriate steps so that malady of the present kind do not continue.

22. Pending applications, if any, stands disposed of.

**JUDGE**

**Comparing Assistant**