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

Case No. : WP(C)/3676/2026

FAKHARUDDIN ALI AHMED
R/O- HOUSE NO.75, GANESH NAGAR,P.O.- BAMUNIMAIDAM, P.S.- CHANDMARI, DISTRICT KAMRUP M, ASSAM, PIN-781021.

VERSUS

THE STATE OF ASSAM AND 4 ORS
THROUGH THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM, HEALTH AND FAMILY WELFARE DEPARTMENT, DISPUR, GUWAHATI- 6

2:THE DIRECTOR OF HEALTH AND FAMILY WELFARE
ASSAM
HENGRABARI
GUWAHATI-781036.

3:THE DIRECTOR OF PENSION
ASSAM
HOUSEFED COMPLEX
BELTOLA
GUWAHATI- 6.

4:THE ACCOUNTANT GENERAL
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI- 28.

5:THE PRINCIPAL SECRETARY
TO THE GOVERNMENT OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI -

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri I.H. Saikia

Advocates for the respondents : Ms. D. Bora, SC, Health & Family Welfare Department;
Shri A. Chaliha, SC, Finance Department

Date of Judgment & Order : **29.09.2026**

JUDGMENT & ORDER

The instant petition under Article 226 of the Constitution of India has been filed with the following relief:

"*Under the above circumstances, it is therefore prayed that Your Lordships would graciously be pleased to admit this petition, call for the records, and issue a Rule, calling upon the Respondents to show cause as to why a Writ in the nature of Mandamus/Certiorari and/or any other appropriate Writ, order or direction of like nature should not be issued:*

i) by directing the respondents to immediately finalize the pension of the petitioner and make the payment of the same on regular basis;

ii) by restraining the respondents from making any recovery from the petitioner;

iii) by granting any other relief/reliefs as Your Lordships may deem fit and proper in the interest of justice.

-AND-

After perusal of the of records, cause or cause shown if any and upon hearing the parties, Your Lordships may be pleased to make the Rule absolute and/or

pass such appropriate Order/Orders or direction as Your Lordships may deem fit and proper in the interest of justice.

-AND-

Further, it is also prayed that pending disposal of the Rule, Your Lordships would be pleased to pass an interim order:

i) by directing the respondents to immediately release the provisional pension of the petitioner and make the payment of the same on regular basis;

ii) by restraining the respondents from making any recovery from the petitioner, in the interest of justice.
And, for this act of kindness, petitioner as in duty bound shall every pray."

2. As per the facts projected, the petitioner was working as a Grade-IV employee (Duftry) in the Health Department and had retired from service on attaining the age of superannuation on 31.12.2025. It is the case of the petitioner that his date of birth was recorded in his Service Book as 02.12.1965, which was accepted all throughout his service. However, upon his retirement, the Office of the Accountant General had raised an objection regarding his date of birth and had alleged overstay for a period of one year, namely from 01.01.2025 to 31.12.2025. As a consequent thereof, the pensionary benefits were withheld and there was a contemplation for recovery of the salary for the aforesaid period of overstay. It is with this cause of action that the petitioner has approached this Court with the relief as quoted above.

3. I have heard Shri I.H. Saikia, learned counsel for the petitioner. I have also heard Ms. D. Bora, learned Standing Counsel, Health and Family Welfare Department as well as Shri A. Chaliha, learned Standing Counsel, Finance Department.

4. Shri Saikia, the learned counsel for the petitioner has submitted that the

impugned action is based on mere presumption and grave prejudice has been sought to be caused to the petitioner. He has highlighted that the petitioner is a Grade-IV employee and the impugned action would cause immense hardships and would otherwise be against the principles laid down on the subject, including by the Hon'ble Supreme Court in the case of ***State of Punjab & Ors. vs. Rafiq Masih (White Washer)*** reported in ***(2015) 4 SCC 334***. He has however informed this Court that after filing of the writ petition, the provisional pension has been released.

5. On the other hand, Ms. Bora, the learned Standing Counsel, Health Department, by referring to the affidavit-in-opposition filed on 03.09.2026 by the respondent no. 2 has contended that there were materials to show that there was indeed an overstay in service by the petitioner for the period 01.01.2025 to 31.12.2025 and therefore, the action taken by the authorities is lawful. She has submitted that the anomaly was detected by the Office of the Accountant General which was informed leading to the impugned action.

6. She has however endorsed the submission that after filing of the case, the provisional pension has been released to the petitioner.

7. The aspect of overstay of employees due to various grounds was deliberated in details in the case of ***Rafiq Masih*** (supra). The Hon'ble Supreme Court, in the aforesaid case, after due deliberations had carved out certain situations, which constitute the principles that would govern an issue of the present nature. Those are as follows:

> *"12. 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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

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

(iii) Recovery from 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."

8. In the instant case, the petitioner is a Grade-IV employee and had retired from service on attaining the age of superannuation on 31.12.2025. It is also the case of the petitioner that his date of birth was recorded in the Service Book as 02.12.1965 which had remained intact throughout his service career. The dispute has arisen because of an objection raised by the Office of the Accountant General.

9. Even assuming that there has been some anomaly / mistake in recording the date of birth and consequently leading to overstay, there is nothing on record to suggest that the petitioner had an overt or covert role in the said anomaly.

10. The principles laid down by the Hon'ble Supreme Court in the case of ***Rafiq Masih*** (supra), would be squarely applicable in the present case and

recovery from employees belonging to Class 3 and Class 4 service has been held to be impermissible in law.

11. In view of the above, the writ petition stands allowed by directing payment of the post-retirement benefits of the petitioner by deeming him to have retired from service on 31.12.2025. It is further made clear that no recovery of the salaries for the period 01.01.2025 to 31.12.2025 would be permissible.

12. Writ petition accordingly stands allowed in the manner indicated above.

13. The pensionary aspects be finalized in terms of this order expeditiously and in any case within a period of 2 (two) months from today.

JUDGE

Comparing Assistant