

WP(C) 3719/2010
BEFORE
HON'BLE MR JUSTICE I A ANSARI

Heard Mr. H. Talukdar, learned counsel for the petitioner, and Mr. J. Patowary, learned counsel, appearing on behalf of the respondents.

While serving as a work-charged employee under the establishment of the Executive Engineer, Tinsukia Rural (Roads) Division, Public Works Department (Roads), Government of Assam, the petitioner has been released by the respondents with effect from 30.06.2010, on the ground that the petitioner has superannuated on 30.06.2010, whereas the petitioner contends that his date of birth is 19.01.1956 and he, therefore, ought not to have been ordered to be released by the respondents from his service, with effect from 30.06.2010, on superannuation. The question, as to whether the petitioner's date of birth is 12.06.1950 (as contended by the respondents) or 10.01.1956 (as contended by the petitioner), is a disputed question of fact. Determination of this disputed question of fact would require making of roving enquiry and, in a writ proceeding under Article 226, such as, the present one, such an enquiry cannot be hold inasmuch as witnesses may have to be examined and cross-examined by the parties concerned. This apart, this Court, while exercising power under Article 226, cannot make declaration as regards the question as to whether the petitioner's date of birth is 12.06.1950 or 10.01.1956. Situated thus, it is clear that the remedy of the petitioner's grievance lies in instituting an appropriate suit, in a civil court of competent jurisdiction, seeking declaration of his date of birth.

Because of what have been discussed and pointed out above, this writ petition cannot be admitted. The petitioner, therefore, seeks to withdraw this writ petition.

In view of the above and in the interest of justice, this writ petition is disposed of as having been withdrawn by the petitioner. However, the petitioner shall remain free to institute appropriate suit for remedy of his grievances.