

HIGH COURT FORM NO.(J) 2.

HEADING OF JUDGMENT ON ORIGINAL SUIT.

District : Sonitpur.

IN THE COURT OF THE CIVIL JUDGE AT TEZPUR.

Present : **Sri M. Kalita,**
Civil Judge,
Sonitpur, Tezpur.

Friday the 8th day of June, 2012.

Title Suit NO. 27 of 2001.

1. Sri Basanta Kumar Goswami,
S/O Late Prafulla Goswami,
Resident of West Bye Lane .12,
R.G. Baruah Road, Guwahati -24. **Plaintiff.**

-VERSUS-

1. M/S. Sonabheel Tea Ltd.,
Duckback Building, 3rd floor,
41, Shakespeare Sarani,
Calcutta-700017. **Defendant.**

This suit coming on for final hearing or having been heard on 30th day of May,2012.

Mr. H. Sarmah, Sr. Advocate ... For the appellant.

Mr. T.C. Khatri, Sr. Advocate

Mr. T.K. Maitra and

Mr. A. Goswami For the respondent.

And having stood for consideration this day, the 8th June, 2012 the Court delivered the following Judgment :

J U D G M E N T

1. This is the suit filed by the plaintiff for declaration that the action of the defendant in not granting the pensionary benefits and Gratuity to the plaintiff to which he is legally entitled to, is arbitrary, unfair, illegal and unjust. The suit is valued at Rs. 3,67,288/- for the purpose of jurisdiction and a fixed court fee is paid.

2. As reflected in the plaint the plaintiff's case in brief is that the plaintiff after completing his studies joined the service in M/S Octovious Steel & Co. Ltd., a London based company on 01-09-1961 as Assistant Manager and by virtue of which he became a member of Octovious Steel & Co. Ltd Superannuation Fund. Subsequently, the said M/S Octovious Steel & Co. Ltd cancelled the Agency agreement on 25-01-1977 entered with M/S Octovious Steel & Co. Ltd, Calcutta and subsequently on 07-02-1977 appointed T.M & M.C. Ltd., Calcutta as their constituted attorney. During the management of M/S T.M. & M.C. Ltd., three Sterling Companies, namely (1) Bazaloni Tea Co. Ltd., (2) M/S Sonabheel (Assam) Tea Co. Ltd and (3) M/S Bamgaopn Tea Co. Ltd were amalgamated and merged with M/S Bazaloni Group Ltd with its registered Office at Bazaloni Tea Estate as per approval given by Hon'ble Calcutta High Court as well as Reserve Bank of India for converting the aforesaid three companies to contribute including contribution to superannuation Fund. and subsequently the M/S Bazaloni Group Ltd was bifurcated into two groups on 01-01-1989, namely – (1) Bazaloni Group Ltd and (2) Sonabheel Tea Ltd and plaintiff opted to continue his service with M/S Sonabheel Tea Company. Though the plaintiff joined in the service in the year 1961 in M/S Octovious Steel & Co. Ltd he continued to be in the same Company though the Board of Directors was changed twice. After the said bifurcation M/S Sonabheel Tea Ltd continued to contribute to Bazaloni Group Ltd. Superannuation Fund with effect from 01-01-1983. At that time

Mr.V.N. Singhania,President verbally agreed to the request of enhancement of quantum of Pension to 66% of the Basic Pay in place of 50% of the Basic pay through discussion. Accordingly the defendant Company obtained a Medical Insurance Policy in the name of the plaintiff on 14-08-1991 and the new scheme was also created with effect from 01-01-1983 in the name of Bazaloni Group Ltd Superannuation fund and defendant company obtained a letter of option on 30-12-1982 but the defendant Company never circulated the new pension scheme till the year 1990.

3. The plaintiff's further case is that the plaintiff took over the charge of Sonabheel and Bamgaon Tea Estates in August, 1981. At that both the Tea Estates were in a bad shape and running at a loss. But due to untiring efforts, made by the plaintiff the two Tea Estates became with the tie of other two Tea Estate in the State of Assam. The plaintiff handed over the charge of Sonabheel and Bamgaon Tea Estate on 30-06-1998 on his retirement after 38 years of selfless and dedicated service. But the Chief Executive of M/S Sonabheel Tea Ltd vide his letter No. No. SNB/ADMN/96-97/22 dt. 04-05-1996 apprised the plaintiff about his retirement from service with effect from 01-06-1996. The plaintiff was also apprised that he would receive the gratuity as per rules of the Company. At that time, the Chief Executive of M/S Sonabheel Tea Ltd also requested the M/S Octovious Steel & Co. Ltd Superannuation Fund and M/S Bazaloni Group Ltd Superannuation Fund for payment of pension to the plaintiff as per the agreed scheme.

Again the plaintiff was appointed after retirement as advisor of Sonabheel and Bamgaon Tea Estate vide letter NO. SNB/ADMN/96/87. dt. 16-7-1996 for a period of one year at a consolidated monthly remuneration of Rs. 30,000/- . On consideration of request made by plaintiff the period of appointment as advisor was extended from 19-07-1997 to 30-06-1998 subject to termination of service by giving one month prior notice from either side or one month's remuneration in lieu of notice. Then the plaintiff

was directed to hand over the charge of advisor to Sri R.S. Raghav vide letter No. SNB/ADMN/98/44 dt 30-05-98.

4. The plaintiff's further case is that he became surprised when Rs. 2,612.83 was giving to him as pension from Life Insurance Company of India as monthly pension against his entitlement of Rs. 7,125/- per month. Then, the plaintiff submitted a representation by citing that his date of retirement was mentioned as 01-06-1996 instead of 30-12-1996 with a six months termination leave as per service rules. The plaintiff was also prayed only the nominal amount of Rs. 1,00,000/- as Gratuity as per Gratuity Act though he should have been paid 20 months basic salary as his case was covered under Company's Gratuity Scheme. As per Income Tax Rule, the gratuity was also increased upto Rs. 2,50,000/- with effect from 01-04-1995 so, the plaintiff would have been paid Rs. 3,50,000/- as gratuity. As plaintiff was illegally entitled to get 50% of last 3 years average basic salary so plaintiff ought to have been paid Rs. 7,125/- as monthly pension instead of Rs. 2,612.83. The plaintiff submitted another representation on 31-08-98 to O.P. Jindal stating that he should have been paid Rs. 25,000/- to 26,000/- per month as pension in view of pensionary benefit rendered by erstwhile agent, Goodrike Group Ltd but, no reply was given to him. The plaintiff again submitted a representation to defendant company on 06-10-1999 by requesting them for payment of Rs. 7,125/- as monthly pension. But subsequently, the said Executive of defendant company vide its letter No. SNB/PEN/99/146 dt. 30-10-99 intimated the plaintiff regarding the payment made to plaintiff by LIC of India as (i) Rs. 1,678.33 on Account of M/S Octovious Steel & Co. Ltd Superannuation Fund, (ii) Rs. 2,612.83 on Account of M/s M/S Bazaloni Group Ltd Superannuation Fund.

So, being surprised with the said intimation the plaintiff raised objection vide his letter dt. 10-11-99 but the defendant company expressed their inability to accept the point raised by the

plaintiff vide letter dt. 17-11-99. The plaintiff was treated step motherly by giving monthly pension @ Rs. 2,612.83 even after rendering by him, the selfless and dedicated service of 38 years towards the company. Though the gratuity amount was increased upto Rs. 3,50,000/- with effect from 24-09- 1997 as per Income Tax Rules and if the date of retirement of plaintiff is accepted as 30-06-98 in that case he was entitled to Rs. 3,45,000/- as gratuity but the defendant Company violated the Company's Gratuity Scheme by giving a nominal amount of Rs. 1,00,000/- towards gratuity.

5. The plaintiff's further case is that the defendant Company surprisingly gave retirement to the plaintiff with effect from 01-06-1996 while he was on earned leave with effect from 27-05-1996 till 20-07-1996. So, the plaintiff had to protest for the aforesaid arbitrary action of the defendant Company. After retirement he was only given the contractual service with consolidated remuneration. His date of retirement should have been treated as 31-06-1998 for the purpose of determining the pensionary benefit in place of 01-06-1998. But the Chief Executive of defendant Company has deprived the plaintiff of the benefit. If 30-06-1998 would have been treated as date of retirement of plaintiff then his pension would have been Rs. 8,125/- per month on the basis of calculation of 3 months Basic Pay. Thus the defendant Company acted in a manner prejudicial to the interest of the plaintiff by depriving the plaintiff from his legitimate and statutory dues for which the plaintiff had to suffer financial loss and income. The action of defendant Co. was unjust, illegal and without any authority of law. Though it was the bounden duty of the defendant Company for making of payment of Rs. 8,125/- as monthly pension and also an amount of Rs. 3,45,000/- as gratuity. The defendant Company also without giving any valid reasons and without providing any opportunity to the plaintiff for hearing, arbitrarily turned down the bonafide and lawful demand of the plaintiff for monthly pension @ Rs. 8,125/- and for payment of Rs. 3,45,000/- as gratuity. The cause

of action for filing the suit arose on 02-09-1998, 03-09-98, 04-10-1999 and on 06-10-1999 on which the plaintiff made request and demand for monthly pension and gratuity and on 17-11-1999 on which date the defendant apprised the plaintiff as to their inability to accept the demand of plaintiff. So, the plaintiff has prayed for a decree of declaration that

(i) defendant in withholding payment of monthly pension @ RS. 8,125/- and also the gratuity amounting to Rs. 3,45,000/- is illegal, unjust and improper;

(ii) for a declaration that the plaintiff is entitled to Rs. 8,125/- as monthly pension in place of Rs. 2,612.83 with effect from 01-06-1999 ;

(iii) a decree for Rs. 2,612.83 on account of pensionary benefit ;

(iv) a decree for declaration that the plaintiff is entitled to a gratuity amount to Rs. 3,45,000/- in place of Rs. 1,00,000/- ;

(v) a decree of declaration that the plaintiff actually retired from service on 30-06-1998 and not on 01-06-96 for purpose of calculating the pensionary benefit ;

(vi) a decree of declaration that the plaintiff is entitled to Overseas Leave every three years ;

(vii) for a decree of Rs. 3,50,000/- on account of encasement of Overseas leave and ;

(viii) a decree for cost of the suit.

6. Subsequently, the names of other defendants have been struck out except defendant No.1 and amended plaint has been filed by plaintiff.

7. After receiving the summon, the defendant No.1 contested the suit by filing the written statement on the grounds that there is no any cause of action for the suit, the suit is clearly barred by law of limitation, the plaintiff suit is imaginary, fabulous, vexatious and the suit is barred by principles of waiver, estoppel and

acquiescence.

8. The defendant No.1 has also filed additional written statement after amendment of the plaint and the names of other defendants were strike out. The defendant No.1 has stated in the written statement that the plaintiff has suppressed the fact that the plaintiff had confirmed vide letter dt. July, 18, 1996 regarding his retirement from service of the defendant with effect from 1st June, 1996. The plaintiff also deliberately and contumaciously suppressed the fact that the plaintiff acknowledged the receipt of his gratuity dues in full and final settlement vide receipt dt. July 20, 1996. The defendant Company never undertook to indemnify the plaintiff or any other employee of the defendant company against any personal loss as alleged by the plaintiff. There is no nexus between the amalgamation of Companies and superannuation fund of employees of M/S Octovious Steel @ Co. Ltd. During the service period of plaintiff in M/S Octovious Steel and Company Ltd the plaintiff's age of superannuation was 55 years. After joining in the Bazaloni Group Ltd a separate pension scheme was created with the LIC of India and thus the age of superannuation of plaintiff was increased upto 58 years and the plaintiff opted for the new pension scheme created by Bazaloni Group Ltd Plaintiff vide letter dated 30-12-1982 informed about his joining to the new created group of Bazaloni Group Ltd. Superannuation Fund and he opted for the new pension scheme created by Bazaloni Group Ltd and Bazaloni Group Ltd Superannuation fund. So thereby he acquiesced therein and is estopped from questioning the same. No request was made to Bazaloni Group Ltd to enhance quantum of pension from 15% of basic pay to 66% of basic pay as alleged by the plaintiff. The amount accumulated in the M/S Octovious Steel & Co. Ltd. Superannuation Fund was not transferred to Bazaloni Group Ltd Superannuation Fund as alleged by plaintiff. So, the plaintiff is withdrawing the pensionary benefit from LIC on account of M/S Octovious Steel & Co. Ltd Superannuation Fund.

9. The plaintiff actually retired from the service from the defendant Company with effect from 1st June, 1996 and all emoluments of the plaintiff were paid and settled by the defendant Company and it was duly accepted in full and final satisfaction by the plaintiff. Though the plaintiff was appointed as advisor as per terms and conditions in the letter of appointment but such plaintiff's appointment had no nexus with the plaintiff's earlier employment with the defendant Company. So, he is not entitled to receive any gratuity for the period as appointed as advisor because he was only appointed as advisor at a consolidated monthly remuneration of Rs. 30,000/- inclusive of all perquisites and allowances. The defendant has further stated in the written statement that the plaintiff is getting pensionary benefit of RS. 1,678.33 per month from the LIC on account of M/S Octovious Steel & Co. Ltd Superannuation Fund and Rs. 2,612.83 per month from LIC on account of Bazaloni Group Ltd Superannuation Fund. In addition of that amount the plaintiff had received one third of the total contribution in the plaintiff's account from LIC amounting to Rs. 2,07,976/-. In that connection LIC issued two letters to the Octovious Steel & Co. Ltd Superannuation Fund and Bazaloni Group Ltd Superannuation Fund. So, the plaintiff is entitled himself total monthly pensionary benefit as stated above. Though the plaintiff retired from his service on June 1, 1996 but no grievance was made by the plaintiff till September, 1998 (till to the completion of the tenure as an advisor to the Company). The plaintiff was also entitled to only Rs. 1,00,000/- on 01-01-1996 on account of gratuity as per prevailing law and rules. But he was not entitled to Rs. 3,50,000/- on account of gratuity as alleged by him. The defendant has denied in his written statement the allegation of plaintiff that he is entitled to monthly pension of Rs. 7,125/- considering the retirement benefit on the basis of average of 3 months monthly basic pay. Though the plaintiff completed only 15 years of service in Bazaloni Group Ltd but he was given the pensionary benefit on the basis of

treatment given by the defendant to him that he had completed 30 years of service as the defendant treated no break in service, though earlier, the plaintiff served in M./S Octovious Steel & Co Ltd and then in Bazaloni Group Ltd. Moreover, the plaintiff was given 2 years service as advisor with consolidated monthly payment of Rs. 30,000/- by appreciating plaintiff's service to the defendant Co. The plaintiff completed only 34 years 9 months in service i.e. the total period that the plaintiff was in service with M/s Octovious Steel & Co. Ltd and Bazaloni Group Ltd and in the defendant Company. The plaintiff never rendered service for 38 years as alleged by him. The defendant Company never acted illegally and arbitrarily in regards to the payment of gratuity to the plaintiff in accordance with law. The post retirement service on the basis of consolidated payment can not be treated as continuous service as alleged by the plaintiff.

10. Considering the content of plaint and written statement, the following issues have been framed :-

- 1.** Whether the suit is maintainable in law.
- 2.** Whether there is any cause of action for the suit and whether the plaint discloses any cause of action?
- 3.** Whether the suit is barred by limitation ?
- 4.** Whether the suit is barred under the principles and law of acquiescence, waiver and estoppel ?
- 5.** Whether material facts/particulars pertaining to "drawal of pensionary benefits of Rs. 1,678.33 per month from LIC on account of M/S Octovious Steel & Co. Ltd Superannuation fund, as well as receipt of a sum of Rs. 2,07,976/- being one third of the total contribution in the plaintiff's account from LIC" has been deliberately suppressed and concealed by the plaintiff and whether for such deliberate

suppression/concealment of material particulars, the suit is liable to be dismissed?

6. What is the date of birth of the plaintiff ?

7. Whether the plaintiff retired from service with effect from 01-06-1996 and if not on which date?

8. From which date the plaintiff is entitled to pension.

9. Whether the plaintiff is entitled to pensionary benefit both from M/S Octovious Steel & Co. Ltd Superannuation fund, as well as, M/S Bazaloni Group Ltd. And if so, what would be the quantum?

10. Whether the basis of calculation as per schedule appended to the plaint is correct under facts and circumstances of the case?

11. Whether the plaintiff was post retirement contractual employee from 18-07-1996 to 30-06-1998 on consolidated remuneration of month Rs. 30,000/- and whether fro such period of service the plaintiff is entitled to any separate retirement benefits?

12. Whether the claim of the plaintiff is imaginary, false, frivolous , vexatious, and tends to abuse of process of law and whether allowing such claim would amount to unjust enrichment of the plaintiff?

13. Whether the suit is properly valued and whether lawful court fees has been paid thereon?

14. Whether the suit is merely for declaration without any consequential relief and whether maintainability of such suit is barred under the provision of Sec. 34 of Specific Relief Act ?

15. Whether the suit is liable to be dismissed with exemplary cost as envisaged under the provisions of Section 35 A of the CPC?
16. Whether the plaintiff is entitled to the reliefs claimed in the suit ?
17. To what other relief or reliefs are the parties entitled ?

11. The plaintiff has examined 4 PWs including himself and proved 37 Nos of documents in support of his case. On the other hand, the defendant side has examined 2 Dws and proved 22 Nos of documents in support of contention of defendant.

12. I have also heard arguments from learned counsel of both sides and anxious consideration is given to the submission of learned counsels.

13. Now, I like to discuss the issues one by one for final decision of the suit. For benefit of convenient discussion, I like to discuss the Issue No.5 first.

Issue No. 5.

14. Whether material facts/particulars pertaining to "drawal of pensionary benefits of Rs. 1,678.33 per month from LIC on account of M/S Octovious Steel & Co. Ltd Superannuation fund, as well as receipt of a sum of Rs. 2,07,976/- being one third of the total contribution in the plaintiff's account from LIC" has been deliberately suppressed and concealed by the plaintiff and whether for such deliberate suppression/concealment of material particulars, the suit is liable to be dismissed ?

On meticulous examination of contention stated in the

plaint as well as the evidence of PWs, it is found that plaintiff has only stated that he was allowed the pension amounting to Rs. 1,678.33 on account of M/S Octovious Steel & Co. Ltd Superannuation fund and Rs. 2,612.83 on account of M/S Bazaloni Group Ltd Superannuation Fund as pension. He has further claimed that he is entitled the monthly pension amounting to Rs. 7,125/- considering the average basic pay drawn by him in last 3 years of his service. In the plaint the plaintiff has also stated in another paragraph that he is legally entitled to Rs. 8,125/- as his monthly pension from the defendant Company because he initially made mistaking in calculating the monthly pension and thus, he is entitled to the amount of Rs. 8,125/- per month as his pensionary benefit. In his evidence he has made same contention.

In the cross-examination, he has admitted that he was given Rs. 1,29,480/- through the Ext. 'K' and Rs. 61,000/- through the Ext. 'N' as retirement benefit as per his demand. On the other hand, the defendant has stated in the written statement that the plaintiff has suppressed the receipt of amount of Rs. 1,29,480/- and Rs. 61,000/- as retirement benefit in the plaint. The plaintiff also received one third of the total contribution in the plaintiff's account from LIC amounting to Rs. 2,07,976/- and in that connection LIC issued two separate letters. The defendant has further stated in the written statement that the plaintiff would have been entitled to receive the pensionary benefit as claimed by him if he would not have been opted to withdraw one third of the contribution on the plaintiff's account from LIC. Thereafter, the plaintiff was giving total sum of Rs. 2,612.33 as monthly pensionary benefit after withdrawal of above amount. The plaintiff also did not place any grievances before the defendant prior to September, 1998. Thereby the quantum of monthly pensionary benefit reduced due to withdrawal of one third of the amount of total contribution in the plaintiff's pension account. But the plaintiff has suppressed the said fact

regarding the receipt of the said amount as retirement benefit through the Ext. 'K' and 'N' respectively.

15. During the course of argument, the learned counsel for the plaintiff has stated that the plaintiff is entitled to sum of Rs. 7,125/- per month or Rs. 85,500/- annually as pension but he is receiving only Rs. 4,703.20. On the other hand, the learned counsel for the defendant has submitted that the plaintiff received Rs. 2,07,976/- one third of the total contribution of the plaintiff's account from LIC but the plaintiff has suppressed the said fact in the plaint.

16. On perusal of Ext.21, it is found that the plaintiff had received Rs. 2,07,976/- being one third of the total contribution in his account of LIC.

From the above discussion, it is found that the plaintiff has not stated regarding the fact of drawal of amount of Rs. 2,07,976/- being one third contribution of the plaintiff's account in LIC either in plaint or in his evidence in affidavit. On the other hand, the defendant has proved with sufficient oral as well as documentary evidence that the plaintiff had received the said amount after retirement of his service. I do not find any ground to disbelieve the contention raised by the defendant in this regard. It is also found from the plaintiff as well as written statement that the plaintiff has prayed for decree in regards to the pensionary benefit, gratuity payment and also leave encasement of oversease leave. Except pensionary benefit, the plaintiff has prayed for decree of other benefits also. Though the plaintiff has expressed the fact regarding the receipt of Rs. 2,07,976/- but such deliberate suppression of fact is not the ground for dismissal of the suit as the plaintiff has also prayed for decree of other two benefits.

For the reasons stated above, this issue is decided in partly positive and partly negative.

Issue No 1.

17. Whether the suit is maintainable in law?

On perusal of the plaint, it is found that the plaintiff has instituted the suit for declaration that the action of defendant in not granting the pensionary benefit and gratuity to the plaintiff as he is legally entitled to are arbitrary, unfair, illegal and unjust. Accordingly, the suit is valued at Rs. 3,67,288/- for the purpose of jurisdiction and court Fee of Rs. 22/- has been paid for seeking the declaratory benefit.

On the other hand, the defendant has stated that there is no merit in the plaintiff's suit. The plaintiff's case is imaginary, baseless and false. The plaintiff has filed the suit for declaration which is not permissible. But it is found from the plaint that the plaintiff has paid requisite court fee over the suit value. Considering such fact, it is found that the contention raised by the defendant in the written statement regarding the maintainability of the suit is not tenable and hence, on the basis of such grounds this Issue is decided in affirmative.

Issue No. 2.

18. Whether there is any cause of action for the suit and whether the plaint discloses any cause of action?

On examination of plaint and the evidence of PWs, it is found that the plaintiff has contended that the defendant's action regarding the payment of pensionary benefit and gratuity is very much arbitrary, unfair and illegal. He has not been paid proper pensionary benefit. The plaintiff has sought the monetary relief as well as the declaratory relief.

On the other hand, on perusal of written statement it is found that the defendant has stated that the plaintiff's suit does not

disclose any cause of action. The purported claims of the plaintiff are imaginary and hopelessly barred by the law of limitation. But considering the material reflected in the plaint as well as in the evidence of PWs and also considering the contention raised by the defendant in the written statement, I am of the considered opinion that there is a cause of action for the suit as the plaintiff has filed the suit by seeking declaratory relief. Hence, on the basis of above reason, this issue is decided in affirmative.

Issue No. 3.

19. Whether the suit is barred by limitation ?

The defendant has stated in the written statement that the plaintiff's suit is barred by limitation as he has instituted the suit after period of limitation.

On the other hand, the plaintiff has stated in the plaint that the Chief Executive of the defendant Company informed the plaintiff vide letter No. SNB/EM/99/163 dt. 17-11-99 by stating the inability of the company to accept the point raised by the plaintiff in regards to the entitlement of monthly pension as well as gratuity. It is found from the record that the suit was filed by the plaintiff on 13th August, 2001 so, it is found that the suit is filed within the period of limitation and considering the stated above, it is found that the suit is not barred by law of limitation. Hence, this issue is decided in negative for aforesaid reason.

Issue No. 4.

20. Whether the suit is barred under the principles and law of acquiescence, waiver and estoppel ?

In regards to this issue, it is found on meticulous examination of material on record that the plaintiff has pleaded that he has been deprived of the legally entitlement of pensionary benefit, gratuity and leave encasement though he had rendered his selfless and dedicated service for 38 years to the defendant

company. He was given only Rs. 1,678.33 per month from the LIC on account of M/S Octovious Steel & Co. Ltd Superannuation fund and Rs. 2,612.83 on account of M/S Bazaloni Group Ltd Superannuation Fund as monthly pension though he is entitled to Rs. 7,125/- considering the basis of pay drawn by him in the last 3 years. He was also given Rs. 1,00,000/- on account of gratuity though he is entitled to the sum of Rs. 3,45,000/- as gratuity. He was also deprived of the benefit of leave encasement though he is entitled to such amount for the purpose of leave encasement for oversea. The plaintiff has also claimed in his evidence that he was only given Rs. 2,612,83 per month from the Bazalone Group Ltd instead of Rs. 7,125/-. The plaintiff is also legally entitled to get gratuity amounting to Rs. 3,45,000/- in place of Rs. 1,00,000/- which has been paid arbitrarily. But during the cross-examination the plaintiff has admitted that he was given Rs. 61,000/- as commission and another amount of Rs. 1, 29,480/- against his demand. The defendant has contended in the written statement that the plaintiff received Rs. 1,00,000/- as gratuity by acknowledging the amount in full and final settlement. The DW 1 has also stated in the evidence that the plaintiff had received the amount by giving acknowledgment expressing that he received the money in full and final settlement. In support of the said contention, the DW 1 has proved the Ext. I and the signature of plaintiff as Ext. I(1). So, the defendant has claimed that the plaintiff has filed the suit under the principles and law of acquiescence, waiver and estoppel as he received the gratuity in full and final settlement and the one third of the contribution on account of plaintiff's in LIC as desired by him.

After going through the Ext. I and Ext. M, it is found that the plaintiff tendered acknowledgment by receiving the amount in full and final settlement so I find sufficient ground to hold the opinion that the suit is filed by plaintiff is barred under the principles and law of acquiescence, waiver and estoppel and for that above reason, the suit is decided in positive.

Issue No. 6.

21. What is the date of birth of the plaintiff ?

In regards to this issue, it is found from the perusal of the case record that the plaintiff has submitted the High School Leaving Certificate as Ext.1 showing the age of plaintiff 15 years 9 months on 1st March, 1954. He has also submitted another transfer certificate from MCBHE School showing his date of birth as 10th February, 1937. In this context, the defendant has not raised any plea. Moreover, during the course of argument learned counsel for the plaintiff has not pressed on this issue, so considering the document submitted by the plaintiff as Ext. 2 the date of birth of plaintiff is 10th February, 1937.

Issue No. 7.

22. Whether the plaintiff retired from service with effect from 01-06-1996 and if not on which date?

In regards to this issue, it is found from the material on records that the plaintiff has claimed that his actual date of retirement was 30-06-1996 instead of 01-06-1996. The plaintiff has stated that though he was provided 2 years extended service but the defendant has not treated it as contribution of his service. On the other hand, the defendant has stated in the written statement that the plaintiff retired with effect from 01-06-1996 and thereafter he was given only 2 years contractual service after retirement. In support of the said contention, the DW 1 has proved the Ext.1, the letter written by plaintiff himself. In that letter the plaintiff himself requested Sonabheel Tea Company Ltd to take the matter with

M/S Octovious Steel &

Co. Ltd as he actually retired on 01-06-1996 and he is entitled for benefit from that date. So, this contention raised by the defendant has been adequately supported by the documentary evidence. On the basis of such cogent and reliable evidence, I am of the considered opinion that the plaintiff has retired from service on

01-06-1996. So, his appointment from 18-07-96 to 30-06-1998 on contractual basis is not continuation of service. So, it can be stated that 01-06-1996 is the date of retirement of plaintiff.

Issue No. 8.

23. From which date the plaintiff is entitled to pension?

In regards to this issue it is found from the meticulous examination of material on records that the plaintiff's contention is that he retired from service on 30-06-1996 and not on 01-06-1996. On the other hand, the contention of defendant is that the plaintiff retired from service on 01-06-1996. In support of said contention the defendant (DW1) proved the Ext. H wherein it is found that the plaintiff admitted his retirement date as 01-06-1996. So, it is found that the defendant has proved with reliable documentary as well as oral evidence that the plaintiff retired from service on 01-06-1996. It is also found from meticulous examination of material on record that neither the plaintiff nor the defendant has raised any specific plea in regards the date for obtaining the pension. The plaintiff has only stated that he is entitled for pensionary benefit amounting to Rs. 7,125/- per month instead of Rs. 2,612.83. So, it is found from the above facts and circumstances that the plaintiff has been drawing the pension from the date of retirement.

Issue No. 9.

24. Whether the plaintiff is entitled to pensionary benefit both from M/S Octovious Steel & Co. Ltd Superannuation fund, as well as, M/S Bazaloni Group Ltd. And if so, what would be the quantum?

In regards to this issue, the plaintiff has claimed only pensionary benefit from the M/S Bazaloni Group Ltd Superannuation Fund as he retired from service from the Sonabheel Tea Estate and Sonabheel Tea Estate is covered by M/S Bazaloni Group Ltd

Superannuation Fund in case of pensionary benefit. On the other hand, the defendant has stated that Rs. 1,678.33 has been given per month to the plaintiff from the account of the M/S Octovious Steel & Co. Ltd Superannuation fund and Rs. 2,612.83 from the account of M/S Bazaloni Group Ltd Superannuation Fund. In the Ext. 31 which has been proved by the plaintiff it is stated that Rs. 1,678.33 per month was given from the account of M/S Octovious Steel & Co. Ltd Superannuation fund and Rs. 2,612.83 from the account of M/S Bazaloni Group Ltd Superannuation Fund as monthly pension. The DW 1 has stated in his evidence that he informed the plaintiff vide letter dt. 04-05-1996 that the plaintiff would retire from the service on 01-06-1996 after attainment of superannuation at the age of 58 years. Thereafter, the plaintiff was given 2 years contractual service as advisor only. So, considering such material reflected in the case record, I am of the considered opinion that the plaintiff is entitled to the pensionary benefit from M/S Octovious Steel & Co. Ltd Superannuation fund, as well as, M/S Bazaloni Group Ltd Superannuation fund as the plaintiff has rendered service in both the companies. At first he joined in the M/S Octovious Steel & Co. Ltd and in the year 1981 then he joined in the M/S Bazaloni Group Ltd. It is also found from the perusal of Ext. 21 that the plaintiff withdrawn the amount of Rs. 2,07,976/- being one third of the total contribution made by me to the account of LIC. So he was given pensionary benefit from the M/S Bazaloni Group Ltd. Superannuation Fund of Rs. 1,612.83 per month. The defendant has also specifically stated in the written statement that the plaintiff would have been entitled to receive any pensionary benefit as claimed by him if he would not have withdrawn his contribution from the LIC account amounting to Rs. 1,07,976/-. So, from the above material facts reflected in the case record after appreciating the evidence of PWs and Sws, I am of the considered opinion that the pensionary benefit given by the defendant company is as per rule. It is not arbitrarily fixed by the defendant Company. So, I find that it is

the quantum of pension and that has been received by the plaintiff as pensionary benefit. For that reason, this issue is decided in affirmative.

Issue No. 10.

25. Whether the basis of calculation as per schedule appended to the plaint is correct under facts and circumstances of the case?

In regards to this issue, it is found from the foregoing discussion that the plaintiff has suppressed the fact of receipt of amount of Rs. 2,07,976/- being one third of his contribution to the plaintiff's account of LIC and the receipt of Rs. 1,29,480/-. So, considering such fact raised by the defendant which has been adequately supported by the documentary evidence, I find that calculation shown by the plaintiff in schedule of plaint as well as in Ext. 35 regarding the entitlement of pensionary benefit, gratuity is found incorrect.

During the course of argument the learned counsel for the plaintiff has submitted that the plaintiff was entitled to receive monthly pension of Rs. 7,125/- but he is receiving only Rs. 47,032.00 . This is a breach of committed by the defendant Company and they are legally bound by this commitment. Moreover, the Tea Companies had their own Gratuity scheme for decades much before the Gratuity Act came into force. Sonabheel Tea Ltd made new Gratuity Scheme from 01-01-1991 as reflected in Ext. 36. As per rule 15(ii) Part (v) – the amount of Gratuity payable will be at the rate of half a month's basic Salart for each completed year of service calculated on the basis of the average Basic Salary for three years. Rule 17 says if to any member the proision of the Act are applicable and at the same time he is entitled a gratuity under the Company Gratuity Scheme as detailed in Rule 16, no

amount payable was to be calculated both under the Act and under the Company's Gratuity Scheme whichever is higher will be payable to the member as per Rule 17 of Gratuity Rule Scheme as described in Ext. 36.

On the other hand, the learned counsel of defendant has submitted that the gratuity that was paid to plaintiff is not unfair and arbitrary. In support of such contention the learned counsel of defendant has cited the Ext. M where the upper ceiling amount of gratuity is shown as Rs. 10,000/-. The DW 1 has stated in the cross-examination that the plaintiff retired from service on 01-06-1996. So, the plea for encasement of overseas leave by considering extended 6 month's leave term after retirement is not permissible.

But considering the materials on record in its entirety, I am of the considered opinion that the calculation of dues as per schedule appended to the plaint and shown in Ext. 35 is not correct under facts and circumstances of the facts.

On the basis of such reason, this issue is decided in negative.

Issue No. 11.

26. Whether the plaintiff was post retirement contractual employee from 18-07-1996 to 30-06-1998 on consolidated remuneration of month Rs. 30,000/- and whether for such period of service the plaintiff is entitled to any separate retirement benefits?

In regards to this issue, the plaintiff has admitted that he was appointed as advisor on contractual basis @ Rs. 30,000/- per month as remuneration for 2 years. The defendant has also admitted such fact in the written statement.

On the other hand, during the course of argument the learned counsel for the plaintiff has not pressed this issue. So, considering such facts and circumstances, I am of the considered

opinion that the plaintiff was appointed as advisor from 18-07-1996 to 30-06-1998 on contractual basis only on consolidated remuneration. I find no other material in the record to come to the conclusion otherwise. So, on the basis of such reason, this issue is decided in affirmative.

Issue No. 12.

27. Whether the claim of the plaintiff is imaginary, false, frivolous , vexatious, and tends to abuse of process of law and whether allowing such claim would amount to unjust enrichment of the plaintiff?

In regards to the issue, it is found from the discussion of foregoing issues that the plaintiff is not entitled to the pensionary benefit, gratuity and leave encasement as claimed by him because, he had withdrawn the amount of Rs. 2,07,976/- as opted by him being one third of his contribution towards the LIC and he has suppressed the said fact in the plaint. So it can be held that there is no ground and the plaintiff has failed to establish that he was given the pensionary benefit in arbitrary manner. So, it is found that if the claim of plaintiff is allowed then it will be amount to unjust and enrichment of plaintiff though, it can not be stated that the plaintiff is imaginary, false, frivolous , vexatious, and tends to abuse of process of law.

So, this issue is decided partly in negative and party in affirmative.

Issue No. 13.

28. Whether the suit is properly valued and whether lawful court fees has been paid thereon?

In regards to this issue, though the plaintiff has raised the plea that the suit is not properly valued and required court fee has not been paid but the defendant has failed to substantiate such

fact by sufficient oral and documentary evidence so, it can be held that the suit is not properly valued and requisite court fee has not been paid. On the basis of such reason this issue is decided in affirmative.

Issue No. 14.

29. Whether the suit is merely for declaration without any consequential relief and whether maintainability of such suit is barred under the provision of Sec. 34 of Specific Relief Act ?

In regards to this issue, it has already been found from the discussion of Issue No.1 that the suit is maintainable in its present form.

In view of the provision of Section 34 of Specific Relief Act, the suit is not barred as the plaintiff has filed the suit for declaration as well for monetary relief and in view of above reason, this Issue is decided in negative.

Issue No. 15.

30. Whether the suit is liable to be dismissed with exemplary cost as envisaged under the provisions of Section 35 A of the CPC ?

In regards to this issue, it is found that the plaintiff has filed the suit for declaration that the defendant's action regarding the payment of pension, gratuity to the plaintiff is unfair, illegal and arbitrary and considering the material on record in its entirety, I do not find any genuine ground to hold the opinion that the suit is required to be dismissed with exemplary cost as envisaged under the provisions of Section 35 A of the CPC for that reason, this issue is decided in negative.

Issue No. 16.

31. Whether the plaintiff is entitled to the reliefs claimed in the suit ?

In regards to this issue, it is found from the foregoing discussion that the plaintiff is not entitled to relief as claimed in the suit as he has failed to substantiate his contention by reliable, documentary as well as oral evidence and for that reason, this issue is also decided in negative.

Issue No. 17.

32. To what other relief or reliefs are the parties entitled ?

In regards to this issue, it is found from the foregoing discussion of different issues, the suit is liable to be dismissed on contest without cost.

O R D E R

- 33.** The suit is dismissed on contest without cost.
Prepare decree accordingly.
- 34.** Judgment is pronounced in an open court, written on separate sheets and enclosed with the case record.
- 35.** Given under my hand and seal of this court, I have signed and delivered this judgment on this 8th day of June, 2012.

(M. Kalita)
Civil Judge,
Sonitpur, Tezpur

Dictated and corrected
by me .

(M. Kalita)
Civil Judge,
Sonitpur, Tezpur

Typed by me

(R. Hazarika)
steno