

GAHC010069072023



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

Case No. : Review.Pet./45/2023

RASHMI PHUKAN
W/O PULAKESH RAI CHOUDHURY,
R/O PIYOLI PHUKAM PATH, WEST JYOTINAGAR, GUWAHATI- 781021,
ELECTRICAL INSPECTOR, (SR. GRADE), OFFICE OF THE CHIEF
ELECTRICAL INSPECTOR CUM ADVISER ASSAM, HOUSEFED COMPLEX,
DISPUR, LAST GATE, GUWAHATI- 06.

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE PRINCIPAL SECRETARY, GOVERNMENT OF ASSAM, POWER
(ELECTRICITY) DEPARTMENT , DISPUR GUWAHATI- 781006.

2:THE COMMISSIONER AND SECRETARY
GOVERNMENT OF ASSAM
POWER (ELECTRICITY) DEPARTMENT
DISPUR GUWAHATI-06

3:THE JOINT SECRETARY

GOVERNMENT OF ASSAM
POWER (ELECTRICITY) DEPARTMENT
DISPUR GUWAHATI-06

4:THE CHIEF ELECTRICAL INSPECTOR
CUM ADVISER
ASSAM
HOUSEFED COMPLEX
DISPUR
LAST GATE
GUWAHATI-06

5:BHABANANDA PATHAK
S/O- LATE SADANANDA PATHAK
R/O- MILAN PATH
KALAHAPAR
GUWAHATI
DIST- KAMRUP (M)
PIN-781016
ASSAM

Advocate for the Petitioner : MR. N BARUAH

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 21-04-2023

Heard Mr. R.J. Das, learned counsel for the review petitioner. Also heard Mr. D.R. Gogoi, learned counsel for the writ petitioner/ opposite party. Mr. J.K. Goswami, learned Addl. Sr. Govt. Advocate, Assam has appeared for the official respondent.

This review petition has been filed with a prayer to review the order dated 28-02-2023 passed by this Court in W.P.(C) No. 4205/2022 and the subsequent order dated 16-03-2023 passed in the same proceeding whereby, a direction has been issued to the concerned authority to pass a fresh order on the question of appointment of Member-Secretary in the Electrical Licensing Board (ELB). This Court was of the view that both the writ petitioner as well as the respondent No. 5 did not meet the eligibility conditions as per the rules, for appointment as Member-Secretary. Whereas the writ petitioner did not have the qualification of B.E. in Electrical Engineering or its equivalent from a recognized

university, the respondent No. 5 was also not holding the post of Sr. Electrical Inspector, which was an essential requirement under the rules. However, while dictating the order, it was also mentioned that the respondent No. 5 was not posted in the Headquarters, which was another requirement under the rules, for appointment to the post Member-Secretary of the ELB.

Mr. Das submits that although it is correct that the respondent No. 5/ review petitioner is not holding the post of Sr. Electrical Inspector, she is in fact posted in the Headquarters and therefore, the order dated 28-02-2023 as well as the subsequent order dated 16-03-2023 calls for review/ clarification.

The learned counsel for the respondents have not disputed the above claim of the review petitioner.

After hearing the submission of learned counsel for the parties what is evident on the face of the record that the respondent No. 5 was also not eligible under the rules for being appointed as the Member-Secretary of ELB since she was not holding the post of Sr. Electrical Inspector. Therefore, even it is true that the review petitioner/ respondent No. 5 was posted in the Headquarters, even then, it was evident that her appointment as such, was in relaxation of rules. Taking note of such facts, this Court had passed the order dated 16-03-2023 directing the respondents to consider the candidature of the writ petitioner also, if necessary by relaxing the rules by keeping in mind the fact that he had much longer period of experience in the department and the fact that he had earlier held the post of Member-Secretary of ELB on temporary basis. Moreover, the writ petitioner was also due for retirement w.e.f. the month of August, 2023.

Therefore, even if the review petitioner was posted in the Headquarters, the import of the order dated 16-03-2023 would substantially remain unaltered. It is, therefore, clarified that the observation that the review petitioner was not posted in the Headquarters stands deleted from the orders dated 28-02-2023 and 16-03-2023.

With the above clarification, this review petition stands disposed of.

JUDGE

GS

Comparing Assistant