

GAHC010086012023



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

Case No. : MC/28/2023

LUTFUR RAHMAN
S/O LT. ESAB ALI A R/O R.R.B. ROAD, SOUTH HAIBARGAON, P.O.
HAIBARGAON, IN THE DIST. OF NAGAON, ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
HIGHER EDUCATION DEPARTMENT, DISPUR, GUWAHATI, PIN CODE-
781006, DIST. KAMRUP METRO, ASSAM.

2:THE DIRECTOR OF HIGHER EDUCATION

ASSAM
KAHILIPARA
GUWAHATI
PIN - 781019
DIST. KAMRUP METRO
ASSAM.

3:THE PRINCIPAL ACCOUNTANT GENERAL
A and E ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI
PIN - 781029
DIST. KAMRUP METRO
ASSAM.

4:RUPAHI COLLEGE
REP. BY ITS PRINCIPAL
HAVING HIS/HER OFFICES AT RUPAHI

NAGAON
ASSAM
PIN - 782125.

5:MADHAB CHOUDHURY COLLEGE

REP. BY ITS PRINCIPAL
HAVING HIS/HER OFFICERS AT BARPETA
ASSAM
PIN - 781301

Advocate for the Petitioner : MR.A A HUSSAIN

Advocate for the Respondent : SC, EDU

Linked Case : WP(C)/2902/2016

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Advocate for : MR.A A HUSSAIN
Advocate for : SC
AG appearing for THE STATE OF ASSAM AND 4 ORS

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 13/09/2023

Heard Mr. G.Z. Ahmed, learned counsel for the petitioner/applicant. Also heard Mr. K. Gogoi, learned standing counsel, Education department.

2. This application has been filed praying for re-called of the order dated 30.03.2023 passed by this Court in W.P(C)/2902/2016, by which the matter is dismissed for non-prosecution and for restoring the writ petition to file.

3. The learned counsel for the petitioner submits that for reasons beyond his control, he could not appear in the matter and therefore the matter came to be

dismissed for non-prosecution. The grounds urged in the I.A. in support of his contentions are as under:-

“3. That the applicant states that the counsel engaged by the writ petitioner in the connected writ petition had missed the item in the Hearing Cause List from 09.03.2023 to 28.04.2023 due to an oversight and as such they were unaware about the listing of the same in the said Hearing List. AS such, the engaged counsels were not present when the matter was called for by this Hon’ble Court for hearing on 23.03.2023 and 30.03.2023. Accordingly, this Hon’ble Court vide issue of an Order dated 30.03.2023 was pleased to dismiss the connected writ petition for non-prosecution.

4. That the applicant states that the counsel for the petitioner came to know about the issuance of the aforesaid Order dated 30.03.2023 only on 10.04.2023 when he saw the connected writ petition being listed in the disposed cases column of Ecourts Services Application installed in his android mobile phone while checking the case status of some other case in the said App. As such, there is no delay and/or delay in filing the instant interlocutory application and the same has been filed immediately after the fact of the dismissal of the writ petition on the ground of non-prosecution came to the notice of the counsel engaged by the applicant/writ petitioner.

5. That the applicant states that the writ petition has been filed seeking correction of his qualifying service for pension and/or enhancement of the pensionary benefits of the petitioner and in the event the same is dismissed for non-prosecution the petitioner therein wilt suffer irreparable loss and damages without any fault on his part and due to an unintentional mistake on the part of the advocate/s engaged by him.”

4. Upon hearing the learned counsels for the parties and upon perusal of the pleadings on record, this Court is of the view that the delay that had occurred has been sufficiently explained in the grounds urged.

5. Considering the grounds urged in the I.A, this Court is inclined to recall the order dated 30.03.2023 dismissing the writ petition being W.P.(C)No.2902/2016 for non prosecution.

6. The order dated 30.03.2023 passed in W.P.(C)No.2902/2016 is hereby

recalled. Consequently, the writ petition being W.P.(C)No.2902/2016 being restored to file.

7. Interlocutory Application accordingly stands allowed and disposed of.

JUDGE

Comparing Assistant