

GAHC010175352023



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

Case No. : I.A.(Civil)/2344/2023
In WP(C) No. 3558/2023

AMIYA BHUSHAN BARUAH
S/O- LATE SASHI BHUSHAN BARUAH,
SENIOR ASSISTANT,
O/O THE EXECUTIVE ENGINEER MANGALDAI AND DALGAON
TERRITORIAL ROAD DIVISION,
P.O- MANGALDAI, DIST- DARRANG, ASSAM, PIN-784125

VERSUS

SABITA SAUD AND 3 ORS
W/O- PADMADHAR NATH, R/O- HOUSE NO- 3, HUB, BHARALU LINK
ROAD, (DEWAN PATH), P.O- DISPUR, DIST- KAMRUP (M), ASSAM

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PUBLIC WORKS ROADS DEPARTMENT DISPUR
GUWAHATI- 781006 (ASSAM).

3:THE CHIEF ENGINEER
PUBLIC WORKS ROADS DEPARTMENT (PWRD) CHANDMARI
GUWAHATI-781003

4:THE EXECUTIVE ENGINEER
PUBLIC WORKS ROADS DEPARTMENT (PWRD)
MANGALDAI AND DALGAON TERRITORIAL ROAD DIVISION
P.O- MANGALDAI
DIST- DARRANG
ASSA

Advocate for the Petitioner : MR. B CHAKRABORTY

Advocate for the Respondent : MR. A R BHUYAN

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

08-09-2023

Heard Shri B. Chakraborty, learned counsel for the applicant who is arrayed as the respondent no. 4 in the writ petition.

The application has been filed for vacation / modification / alteration of the interim order dated 30.06.2023 passed by this Court in IA(C) No. 1871/2023 arising out of WP(C) No. 3558/2023. The primary challenge in the writ petition is with regard to a seniority list of Senior Assistant (UDA) in the establishment of the PWD (R), Mongaldoi and Dalgaon Road Division. It is the contention of the writ petitioner that the benefit of past service of the petitioner was not extended to her while determining the *inter se* seniority of the candidates.

It is specific case as contended by Shri A. R. Bhuyan, learned counsel for the writ petitioner that the period in which the petitioner has served on transfer has not been counted only on account of the fact that such transfer was on her own request and there is a citation according to which, the seniority has to be reckoned even for such period.

On the other hand, Shri Chakraborty, the learned counsel for the applicant has submitted that initially the interim relief was not granted and it was only on filing of IA(C) No. 1879/2023 that the interim prayer has been granted.

The aforesaid contention however has been clarified by Shri Bhuyan, learned counsel by submitted that on 21.06.2023 while notice of motion was issued, the observation of this Court was only for deferment of the hearing on the interim relief which was accordingly done and granted. The operative parts of the interim order dated 30.06.2023 reads as follows:-

“6. Accordingly, this Court is of the view that any proposal that may be initiated for promotion of the private respondent from the post of Senior Assistant to the post of Head Assistant in terms of the proposal dated 22.06.2023 shall not be given effect to

till the next returnable date.

9. Steps on opposite party/ respondent no.4 be effected through registered post with A/D within a period of 1 (one) week from today. Since this order has been passed ex-parte the respondent No.4, liberty is granted to file any application for vacating or modification of the order passed."

It is the contention of Shri Chakraborty, the learned counsel for the applicant that the interim order is benefitting none and public interest is being adversely affected as a post is lying vacant.

Shri Bhuyan, the learned counsel for the writ petitioner however submits that if the post is filled up by promoting the respondent no. 4, he will suffer immense prejudice.

This Court has noticed that an interim order passed was an *ex parte* one with further observation that the respondent no. 4 may come up for modification.

In the opinion of this Court, the contention advanced by Shri Chakraborty, the learned counsel for the applicant appears to have some force as the interim order is benefitting none. At the same time, the apprehension raised by Shri Bhuyan is also required to be taken into consideration.

Therefore by balancing the equities, this Court is of the view that the interim order dated 30.06.2023 is liable to be modified in the following manner.

The embargo contained in the interim order dated 30.06.2023 not to give effect to the process of promotion of the private respondents to the post of Senior Assistant is to be lifted with a further observation that any promotion made to the respondent no. 4 or any other person except the writ petitioner would be subject to the outcome of the writ petition and no claim whatsoever can be made by such beneficiary later on in the event the writ petition is allowed.

The IA accordingly stands disposed of.

JUDGE

Comparing Assistant