

GAHC010218932019



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

Case No. : I.A.(Civil)/2948/2023

LEGAL REMEMBRANCER AND SECRETARY TO THE GOVT. OF ASSAM
JUDICIAL
GOVERNMENT OF ASSAM
JUDICIAL DEPARTMENT
DISPUR
GUWAHATI-781006
ASSAM

VERSUS

ANOWAR HUSSAIN
S/O- LT. MOKSHED ALI
PRESENTLY A RESIDENT OF VILLAGE- HASILAPARA
P.O. GOALPARA
P.S. AND DIST.- GOALPARA
ASSAM
PIN- 783101.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GUWAHATI- 781006
ASSAM.

3:THE PRINCIPAL ACCOUNTANT GENERAL (A AND E)
MAIDAMGAON
BELTOLA
GUWAHATI
ASSAM
781029.

4:THE REGISTRAR GENERAL
GAUHATI HIGH COURT
GAUHATI HIGH COURT BUILDING

NEW BLOCK
GUWAHATI- 781001.

5:THE DISTRICT AND SESSIONS JUDGE
BONGAIGAON
DIST.- BONGAIGAON
ASSAM
PIN- 783380.

6:THE DEPUTY REGISTRAR
APPOINTMENT
GAUHATI HIGH COURT
GAUHATI HIGH COURT BUILDING
NEW BLOCK
GUWAHATI- 781001.

7:THE MUNSIFF
NORTH SALMARA
ABHAYAPURI
DIST.- BONGAIGAON
ASSAM
PIN- 783384.

Advocate for : MR. D NATH
Advocate for : MR. A I UDDIN appearing for ANOWAR HUSSAIN

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 06.10.2023

Heard Mr. D. Nath, learned Senior Government Advocate, Assam for the applicant; Mr. A.I. Uddin, learned counsel for the opposite party no. 1-writ petitioner; Mr. B. Gogoi, learned Standing Counsel, Finance Department for the opposite party-respondent no. 2; Ms. A. Lala, learned counsel representing Mr. B. Chakravarty, learned Standing Counsel, Accountant General [A&E], Assam for the opposite party-respondent no. 3; and Mr. U.K. Nair, learned Senior Standing Counsel, GHC for the opposite party-respondent nos. 4, 5, 6 & 7.

2. The instant interlocutory application is preferred seeking alteration/modification of an Order dated 19.09.2022 passed in the connected writ petition, W.P.[C] no. 6765/2019. The

operative part of the Order dated 19.09.2022 [supra] contained in Paragraph 3 thereof reads as under :-

3. It is stated that in the above circumstance, the authorities are unable to proceed with the final pension of the petitioner. But, however as it is an admitted position that the petitioner did serve as a Copyist in the office of the learned Munsiff at Abhyapuri and that the post of Copyist is otherwise is a pensionable post, in the circumstance, as required under Rule 22 of the Assam Services [Pension] Rules, 1969, the learned Munsiff at Abhyapuri is directed to process for payment of provisional pension to the petitioner at any rate as may be determined and the provisional pension be paid from 01.11.2022 onwards. The Judicial Department shall also do the needful as may be required for the purpose. As regards the requirement to submit a proposal for a retrospective creation of the post, the same be done by the learned Munsiff as per the requirement.

3. The instant interlocutory application is preferred with the following prayer :-

In the premises as aforesaid it is humbly prayed that Your Lordship[s] may be pleased to admit this application and after hearing the parties be further pleased to do the necessary modification / clarification of the Order dated 19.09.2022 in so far as the direction for retrospective creation of post with creating supernumerary post with retrospective effect and consequential direction thereof and/or be pleased to pass any such order[s] as Your Lordship[s] may deem fit and proper.

4. Mr. Nath, learned Senior Government Advocate, Assam appearing for the applicant-respondent no. 1 has drawn attention to the statements and averments made in Paragraph no. 7 of the instant interlocutory application. In Paragraph no. 7, it is averred that on receipt of the Order dated 19.09.2022, a proposal was submitted from the office of the opposite party no. 7 to the State Government in the Judicial Department. The Judicial Department had accordingly examined the matter vis-à-vis the extant rules and guidelines of the State Government. During such examination, it was noticed that the matter of regularisation of the service of an incumbent from the date of his joining had to be considered in terms of an

Office Memorandum bearing no. FSI.36/2018/2-3 dated 11.12.2018 of the Finance [SIU] Department. In view of the Office Memorandum of the Finance Department, instead of a proposal for creation of a regular post from a retrospective date, a proposal for creation of a supernumerary post specifically indicating the period for which such post is required to facilitate an expeditious consideration of the opposite party no. 1-writ petitioner as there is no system of creating regular post with retrospective effect. As there is already a procedure for creating supernumerary post with retrospective effect in vogue, the required relief to the opposite party no. 1-writ petitioner can be extended without exceeding the sanctioned working strength/creation of additional post, by creation of supernumerary post with retrospective effect for the purpose of the case in hand.

5. The interlocutory application is preferred seeking modification of the direction contained in the operative part of the Order dated 19.09.2022 [supra] by modifying to the extent that the proposal should be for creation of a supernumerary with retrospective effect. Mr. Nath has further submitted that in the event such modification is made, there would be no prejudicial effect as regards the financial benefits to be received by the opposite party no. 1-writ petitioner.

6. Mr. A.I. Uddin, learned counsel for the opposite party no. 1-writ petitioner has submitted that since there would be no prejudicial effect as regards the financial benefits to be received by the opposite party no. 1-writ petitioner, he has no objection to such modification, as prayed for.

7. The learned counsel for the other parties have also advanced submission in support of the modification.

8. Having regard to the above fact situation and considering the fact that as per the Office Memorandum no. FSI.36/2018/2-3 dated 11.12.2018 of the Finance [SIU] Department, it is possible to create a supernumerary post with retrospective effect for the purpose of giving the appropriate relief to the opposite party no. 1-writ petitioner, the direction contained in the Order dated 19.09.2022 stands modified to the extent that the said respondents shall

process a proposal for creation of a supernumerary post with retrospective effect for the purpose of giving appropriate relief to the opposite party no. 1-writ petitioner.

9. The instant interlocutory application stands allowed to the extent indicated above.

JUDGE

Comparing Assistant