

GAHC010174212023



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

Case No. : I.A(Civil) 3354/2023 in WP(C)/4538/2023

RITUPARNA KAKATI
S/O LATE BIRENDRA NATH KAKATI
S.S. ROAD
TOWN ABHAYAPURI
P.O. AND P.S. ABHAYAPURI
DIST. BONGAIGAON
ASSAM
PIN 783384
ASSAM

VERSUS

THE STATE OF ASSAM AND 11 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM
INFORMATION AND PUBLIC RELATIONS
P AND S DEPARTMENT
DISPUR
GUWAHATI-6.

2:UNDER SECRETARY TO THE GOVT. OF ASSAM
INFORMATION AND PUBLIC RELATIONS
P AND S DEPARTMENT
DISPUR
GHY-6.
3:DIRECTOR

DIRECTORATE OF INFORMATION AND PUBLIC RELATIONS AND P AND S
DEPARTMENT
(DIPR)
GOVERNMENT OF ASSAM
LAST GATE
GHY-6.

4:REGISTRAR

DIRECTORATE OF INFORMATION AND PUBLIC RELATIONS AND P AND S
DEPARTMENT

(DIPR)

GOVERNMENT OF ASSAM

LAST GATE

GHY-6.

5:PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM

PERSONNEL DEPARTMENT

DISPUR

GHY-6.

6:SECRETARY

ASSAM PUBLIC SERVICE COMMISSION

JAWAHAR NAGAR

KHANAPARA-781022.

7:MOUCHUMI BHATTACHARYYA BARUAH

PRESS RESEARCH OFFICER (PRO)

DIRECTORATE OF INFORMATION AND PUBLIC RELATIONS AND P AND S
DEPARTMENT

(DIPR)

GOVERNMENT OF ASSAM

LAST GATE

GHY-6. ASSAM

8:HIMANGSHU LAHKAR

TRANSLATOR

DIRECTORATE OF INFORMATION AND PUBLIC RELATIONS AND P AND S
DEPARTMENT

(DIPR)

GOVERNMENT OF ASSAM

LAST GATE

GHY-6. ASSAM

9:MANOJ KALITA

DIRECTORATE OF INFORMATION AND PUBLIC RELATIONS AND P AND S
DEPARTMENT

(DIPR)

GOVERNMENT OF ASSAM

LAST GATE

GHY-6. ASSAM

10:RUBINA ISLAM

TRANSLATOR

DIRECTORATE OF INFORMATION AND PUBLIC RELATIONS AND P AND S
DEPARTMENT

(DIPR)

GOVERNMENT OF ASSAM

LAST GATE

GHY-6. ASSAM

11:SUMIT PAUL

S/O- K.C. PAUL
VILL. AND P.O. IRONGMARA (NEAR ASSAM UNIVERSITY
SILCHAR) LANE RADHA MADHAB ROAD-788001.
12:NEELAM SAIKIA

D/O- PITAMBAR SAIKIA
NEAR LGB COLLEGE
MISSION CHARIALI
PATIACHUBURI
TEZPUR-784001.

Advocate for : MR S BORTHAKUR
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 11 ORS

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 18.12.2023

Heard Mr. S Borthakur learned counsel for the applicant and
Mr. A Phukan learned counsel for the writ petitioner.

Though this interlocutory application was fixed in the month
of January, 2024 by this court under its order dated 06.12.2023,
however, the connected writ petition has been listed today and as the
matter is listed today, and as agreed by the learned counsel for the
parties, the I.A is taken up for consideration.

The present application is filed for impleadment of the
applicant as party respondent WP(C) No.4538/2023.

The writ petitioner amongst others has prayed for a writ to
recall, rescind and cancel a gradation list dated 13.12.2022 (Annexure
– 7 to the writ petition).

It is an admitted position that the name of the present applicant is included in the aforesaid gradation list. Accordingly Mr. Borthakur learned counsel for the applicant submits that in the event this writ petition is allowed by this court, a valuable right of the applicant shall be violated without hearing him.

Mr. A Phukan, learned counsel for the writ petitioner on the other hand has vehemently opposed such impleadment on the ground that the present applicant, in terms of the extant service rule is not having any right to the next higher promotion and therefore, he is not a necessary party and the twin test as laid down by the hon'ble Apex court in the case of ***Moresnar Yadaorao Mahajan Vs. Vyankatesh Sitaram Bhedi (D) and others*** reported in ***(2022) SCC Online SC 1307*** is not satisfied in the present case. According to Mr. Phukan the present application is required to be dismissed.

The determination made by the hon'ble Apex Court and relied on by Mr. A Phukan in the considered opinion of this court rather helps the case of the applicants. The hon'ble Apex court in no unambiguous term held that the twin test i.e., the right to some relief against such party in respect of the controversies involved in the proceeding is required to be satisfied and secondly, that no effective decree can be passed in absence of such party.

In the case in hand, the gradation list impugned in the writ petition figures the name of the applicant. Therefore, prima facie his employer has included his case for consideration of promotion to the next higher grade. Such gradation list is under challenge and by seeking interference with such gradation list, a relief has been sought

by the writ petitioner in the writ petition against the applicant, however, he has not made the applicant a party respondent.

That being the position, he shall definitely have a right to contest the present proceeding for the reason that in the event the writ petition is allowed, the applicant shall be deprived of his right alleged to have accrued by virtue of the inclusion of his name in gradation list in question inasmuch as this court at this stage cannot reject an impleadment petition entering into the merit of the case holding that the applicant is having no right to get promotion in terms of the extant service rule and therefore, he is not a necessary party. Such course of action is not permissible under law.

The second condition that no effective decree can be passed in absence of such party is also applicable in this case for the same reason that in the event an order is passed, same will violate the right of the applicant, without he being heard.

In that view of the matter the objection raised by Mr. A Phukan, learned counsel stands rejected and the present application stands allowed.

Registry to correct the cause title of the writ petition.

Accordingly, the instant interlocutory application stands disposed of.

JUDGE