

GAHC010258762022



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

Case No. : I.A.(Civil)/3732/2022

JAGAMOHAN BASUMATARY
S/O LATE RUPENDRA BASUMATARY, EXECUTIVE ENGINEER, SOUTH
SALMARA DISTRICT TERRITORIAL ROAD DIVISION, MANKACHAR,
DISTRICT SOUTH SALMARA, ASSAM, PIN 783131.

VERSUS

THE STATE OF ASSAM AND 26 ORS .
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM, DISPUR, GUWAHATI-781006 (ASSAM)

2:THE COMMISSIONER AND SPECIAL SECRETARY TO THE GOVERNMENT
OF ASSAM
PUBLIC WORKS ROADS DEPARTMENT
DISPUR
GUWAHATI-781006 (ASSAM)

3:THE SECRETARY
PUBLIC WORKS DEPARTMENT
GOVERNMENT OF ASSAM
DISPUR
GUWAHATI-781006

4:THE COMMISSIONER AND SPECIAL SECRETARY TO THE GOVT OF
ASSAM
PUBLIC WORKS (BUILDING AND NH) DEPTT.
DISPUR
GUWAHATI-781006

5:THE DEPUTY SECRETARY TO THE GOVT. OF ASSAM
PUBLIC WORKS ROADS DEPTT.
DISPUR

GUWAHATI-781006

6:THE ADDITIONAL CHIEF SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT FOR THE WELFARE OF PLAIN TRIBES AND BACKWARD
CLASSES (WPT AND BC)
DISPUR
GUWAHATI-781006 (ASSAM)

7:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (B) DEPTT
DISPUR
GUWAHATI-781006

8:THE CHAIRPERSON AND MEMBERS OF THE DPC MEETING
HELD ON 28.9.2021 FOR PROMOTION TO THE RANK OF SUPERINTENDING
ENGINEER UNDER THE PUBLIC WORKS DEPARTMENT
GOVT. OF ASSAM
TO BE SERVED UPON THE COMMISSIONER AND SPECIAL SECRETARY TO
THE GOVERNMENT OF ASSAM
PUBLIC WORKS (ROADS
BUILDING AND NH) DEPARTMENT
DISPUR
GUWAHATI-781006

9:SANTOSH KUMAR ROY
UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED
THROUGH NO. 4 ABOVE

10:WAZID HUSSAIN
UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED
THROUGH NO. 4 ABOVE

11:NIRUPAM BORTHAKUR
UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED
THROUGH NO. 4 ABOVE

12:SAIFUL ISLAM
UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED
THROUGH NO. 4 ABOVE

13:SANJIB KR. BHATTACHARJEE
UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED
THROUGH NO. 4 ABOVE

14:BIKASH SINGHA
UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED
THROUGH NO. 4 ABOVE

15:DILIP KR DAS
UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED
THROUGH NO. 4 ABOVE

16:MISS MADHUMITA DEY
UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED
THROUGH NO. 4 ABOVE

17:SMTI MITALI CHOUDHURY
UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED
THROUGH NO. 4 ABOVE

18:AKLASUR RAHMAN BORBHUYAN
UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED
THROUGH NO. 4 ABOVE

19:PRATIM BARUA
UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED
THROUGH NO. 4 ABOVE

20:ANAND PRASAD SARMA
UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED
THROUGH NO. 4 ABOVE

21:JOGENDRA DAS
UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED
THROUGH NO. 4 ABOVE

22:MD. NURUL ISLAM
UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED
THROUGH NO. 4 ABOVE

23:DWIJEN PATGIRI
UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED
THROUGH NO. 4 ABOVE

24:RATHINDRA BIJOY CHAKRABORTY
UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED
THROUGH NO. 4 ABOVE

25:ANUPAM KHARGHARIA
UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED
THROUGH NO. 4 ABOVE

26:KALYAN KR SARMA
UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED
THROUGH NO. 4 ABOVE

Advocate for the Petitioner : Ms. R. R. BORAH

Advocate for the Respondent : MR. D K DAS

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

ORDER

18.01.2023

Heard Mr. K.N. Choudhury, learned Senior Counsel assisted by Mr. I. Alam, learned counsel for the applicant/respondent no.27. Also heard Mr. D. Mazumdar, learned Additional Advocate General for the State respondents and Mr. D.K. Das, learned counsel appearing for the opposite party/writ petitioner.

2. By filing this Interlocutory Application, the applicant seeks the modification/alteration/vacation of the interim order dated 03.03.2022 passed by this Court in WP(C) No.1567/2022 on the ground that the DPC which sat on 28.02.2022 after considering his case along with the other eligible candidates has recommended him for promotion to the post of Superintending Engineer (Civil) on the basis of merit-cum-seniority and that his name appears at Sl. No.1 for the vacancy in the year 2021. The learned Senior Counsel submits that the applicant like the writ petitioner belongs to reserved category of ST(P) and therefore, the interim order passed earlier should be either modified, vacated or altered.

3. To this submission, Mr. D.K. Das, learned counsel for the writ petitioner submits that the applicant/respondent no.27 no doubt is senior to the writ

petitioner but the larger issue regarding implementation of the Mandate of Article 16(4A) of the Guidelines envisaged in the Office Memorandum dated 12.03.2022 is pending final decision before a Coordinate Bench of this Court and therefore, the interim order may not be disturbed at this stage. Mr. D.K. Das further submits that the representation dated 22.09.2022 filed by the respondent no.27/applicant before the Commissioner & Secretary to the Government of Assam, Public Works Department (Roads) is still pending disposal despite the direction passed by this Court in WP(C) No.7052/2022, vide order dated 07.01.2022 and that the same may be directed to be disposed of.

4. The learned Additional Advocate General, Assam submits that since there is no dispute regarding the seniority position of the respondent no.27/applicant vis-à-vis the writ petitioner, court may consider accordingly and pass appropriate orders as may be fit.

5. Upon considering the submission made, the Court is of the considered view that in view of the fact that there is no dispute regarding the seniority position of the applicant vis-à-vis the writ petitioner, there is no impediment in modifying the interim order dated 03.03.2022 passed by this Court in WP(C) No.1567/2022 to the effect that there shall be no bar for processing the promotion of the respondent no.27/applicant in terms of the DPC Minutes dated 28.02.2022.

6. In view of the order passed today there would be no impediment upon the respondent authority concerned in considering disposing of the representation dated 22.09.2022 as expeditiously.

7. The Interlocutory Application stands disposed of.

JUDGE

Comparing Assistant