

GAHC020005502023



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

Case No. : I.A.(Civil)/126/2023

SHRI N. KEWISI CHAWANG AND 19 ORS
LDA-CUM-COMPUTER ASSISTANT ,
OFFICE OF THE DISTRICT AGRICULTURAL OFFICER, PEREN,
NAGALAND

2: SMTI. KERININO NAKHRO
LDA-CUM-COMPUTER ASSISTANT
OFFICE OF THE DISTRICT AGRICULTURE OFFICER
KOHIMA
NAGALAND

3: SHRI SOWALEMBA LONGKUMER
LDA-CUM-COMPUTER ASSISTANT
OFFICE OF THE DISTRICT AGRICULTURAL OFFICER
MOKOKCHUNG NLD

4: SHRI YARENTHUNG T ERUI
LDA-CUM-COMPUTER ASSISTANT
OFFICE OF THE DISTRICT AGRICULTURAL OFFICER
WOKHA NAGALAND

5: SMTI. ATOLIMI ZHIMOMI
LDA-CUM-COMPUTER ASSISTANT
OFFICE OF THE DISTRICT AGRICULTURAL OFFICER
AGRI EXPO
DIMAPUR
NAGALAND

6: SHRI C. NYEANG KONYAK
LDA-CUM-COMPUTER ASSISTANT
OFFICE OF THE DISTRICT AGRICULTURAL OFFICER
MON. NAGALAND

7: SHRI C. ISAAC
LDA-CUM-COMPUTER ASSISTANT
OFFICE OF THE DISTRICT AGRICULTURAL OFFICER
WOKHA NAGALAND

8: SMTI. MENNYU W.
LDA-CUM-COMPUTER ASSISTANT
OFFICE OF THE DISTRICT AGRICULTURE OFFICER
MOKOKCHUNG NAGALAND

9: SHRI YANBOTHUNG MOZHUI
OFFICE OF THE SUB-DIVISIONAL AGRICULTURAL OFFICER
NOKLAK NAGALAND

10: SHRI P. DOMINIC
OFFICE OF THE SUB-DIVISIONAL AGRICULTURAL OFFICER NIKLAK
NAGALAND

11: SMTI. INALI
OFFICE OF THE SUB-DIVISIONAL AGRICULTURAL OFFICER
SATAKHA NAGALAND

12: SHRI WELHI KAPFO
OFFICE OF THE SUB-DIVISIONAL AGRICULTURAL OFFICER
PHEK NAGALAND

13: SMTI. KEHUSELU
OFFICE OF THE SUB-DIVISIONAL AGRICULTURAL OFFICER
PFUTSERO NAGALAND

14: SHRI MICHAEL YANTHAN
LDA-CUM-COMPUTER ASSISTANT
OFFICE OF THE DISTRICT AGRICULTURAL OFFICER
BAGHTY NAGALAND

15: SHRI MERENNUKSHI
LDA-CUM-COMPUTER ASSISTANT
OFFICE OF THE DISTRICT AGRICULTURAL OFFICER
WOKHA NAGALAND

16: SHRI ODIRENBA JAMIR
LDA-CUM-COMPUTER ASSISTANT
OFFICE OF THE DISTRICT AGRICULTURAL OFFICER
MON NAGALAND

17: SHRI BOKUTO T. TUCCU
LDA-CUM-COMPUTER ASSISTANT

OFFICE OF THE DISTRICT AGRICULTURAL OFFICER
TUENSANG NAGALAND

18: SMTI. ILIKA G.
LDA-CUM-COMPUTER ASSISTANT
OFFICE OF THE DISTRICT AGRICULTURAL OFFICER
MON NAGALAND

19: SMTI. LOVIKALI H. CHIKHE
LDA-CUM-COMPUTER ASSISTANT
OFFICE OF THE DISTRICT AGRICULTURAL OFFICER
TOBU NAGALAND

20: SMTI. SORILA YIMCHUNGER
LDA-CUM-COMPUTER ASSISTANT
OFFICE OF THE DISTRICT AGRICULTURAL OFFICER
SHAMATOR NAGALAND

VERSUS

SMTI. DZUVI-U AND 5 ORS
LDA-CUM-COMPUTER ASSISTANT (CASUAL) ,
INTEGRATED EXTENSION TRAINING INSTITUTE (IETC),
MEDZHIPHEMA, NAGALAND

2:THE STATE OF NAGALAND THROUGH THE CHIEF SECRETARY
THROUGH THE GOVERNMENT OF NAGALAND NAGALAND
KOHIMA

3:THE COMMISSIONER AND SECRETARY
TO THE GOVERNMENT OF NAGALAND
PERSONNEL AND ADMINISTRATIVE REFORMS DEPARTMENT
NAGALAND
KOHIMA

4:THE AGRICULTURAL PRODUCTION
COMMISSIONER AND COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF NAGALAND
DEPARTMENT OF AGRICULTURE
NAGALAND
KOHIMA

5:THE DIRECTOR
DIRECTORATE OF AGRICULTURE
NAGALAND KOHIMA

6:THE PRINCIPAL INTEGRATED EXTENSION TRAINING INSTITUTE
(IETC) MEDZHIPHEMA NAGALAND

Advocate for the Petitioner : TONGPOK PONGENER

Advocate for the Respondent :

Linked Case : WP(C)/38/2021

SMTI. DZUVI-U
LDA-CUM-COMPUTER ASSISTANT(CASUAL)
INTEGRATED EXTENSION TRAINING INSTITUTE(IETC)
MEDZIPHEMA
NAGALAND

VERSUS

THE STATE OF NAGALAND AND 24 ORS
THROUGH THE CHIEF SECRETARY TO THE GOVT. OF NAGALAND
NAGALAND
KOHIMA

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF NAGALAND

PERSONNEL AND ADMINISTRATIVE REFORMS DEPARTMENT
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TOBU
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25:SMTI. SORILA YIMCHUNGER

LDA-CUM-COMPUTER ASSISTANT
OFFICE OF THE SUB-DIVISIONAL AGRICULTURE OFFICER
SHAMATOR
NAGALAND

Advocate for : I. IMTI LONGCHAR
Advocate for : GOVT ADV NL
appearing for THE STATE OF NAGALAND AND 24 ORS

BEFORE

HON'BLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 17-11-2023

Heard Mr. Tongpok Pongener, learned counsel for the applicants-respondent nos. 6 – 25; Mr. I. Imti Longchar, learned counsel for the opposite party no. 1; and Mr. Moa Imchen, learned Senior Government Advocate, Nagaland for the opposite party nos. 2 - 6.

2. The instant interlocutory application has been preferred by the respondent nos. 6 - 25 in the connected writ petition, W.P.[C] no. 38/2021, as applicants seeking vacation/modification and/or alteration of an interim order dated 25.08.2022.

3. Mr. Tongpok Pongener, learned counsel for the applicants has submitted that the Court while passing the interim order, had also observed that the respondent nos. 6-25 would be at liberty to file applications for vacation/modification/alteration of the said interim order, if so advised. He has contended that the one of the grounds on which the instant interlocutory application has been preferred is that the interim order dated 25.08.2022 was passed without there being any such interim prayer made in the writ petition by the opposite party no. 1 as the writ petitioner. He has contended that the applicants were rendering services in their respective positions since several years prior to filing of the writ petition.

4. In the order dated 25.08.2022, the Court had recorded the respective stands of the opposite party no. 1-writ petitioner and the State respondents, as have emerged from the writ petition and the counter affidavit filed on behalf of the respondent nos. 1 – 5, in the following manner:-

“6..... Assailing the appointment of respondents no. 6 to 25 in the post of LDA-cum Computer Assistant in the Department of Agriculture,

Government of Nagaland; the writ petitioner has put forward the following contentions:

[i]. In paragraph no. 8 of the writ petition, insofar as the appointment of respondents no. 6 to 13 are concerned, it has been stated that the impugned order of appointment, dated 02.01.2018, appointing the respondents no. 6 to 13 in the post of LDA-cum-Computer Assistant in the Department of Agriculture, Government of Nagaland, have been issued without following any norms of recruitment by undertaking a process of selection and that the respondents no. 6 to 13 have been directly appointed without following any procedure of selection.

[ii]. Insofar as the appointment of respondents no. 14 to 18 are concerned; the writ petitioner in paragraph no. 9 of the writ petition, has stated that the impugned order, dated 02.01.2018, which regularizes the service of respondents no. 14 to 18 is illegal because the respondents no. 14 to 18 are junior to the petitioner in the post of LDA-cum-Computer Assistant in the Department of Agriculture, Government of Nagaland, on casual basis.

To substantiate that the respondents no. 14 to 18 are junior to the petitioner whose initial appointment as LDA-cum-Computer Assistant in the Department of Agriculture, Government of Nagaland, on casual basis, is 04.05.2005; the writ petitioner has stated that the respondents no. 14 to 18 were appointed as LDA-cum Computer Assistant in the Department of Agriculture, Government of Nagaland, on casual basis, on 01.01.2006; 01.01.2006; 05.10.2007; 01.01.2008; and 03.10.2009; respectively.

[iii] Insofar as the appointment of respondent no. 19 is concerned; it has been stated in paragraph No. 14 of the writ petition that the respondent No. 19 was appointed in the post of LDA-cum-Computer Assistant in the Department of Agriculture, Government of Nagaland, vide order, dated 08.03.2019, against the vacancy caused by the promotion of one Shri Nchumo Lotha and the said appointment was made on the recommendation of the Director of Agriculture, Government of Nagaland, Kohima, without following any norms for such an appointment.

[iv]. Insofar as the appointment of respondents no. 20 to 25 in the

post of LDA-cum-Computer Assistant in the Department of Agriculture, Government of Nagaland, vide impugned order, dated 08.02.2019, is concerned; the writ petitioner in paragraph No. 15.1 to 15.5 of the writ petition, has stated as follows:

“15.1. R.20 Shri Merennukshi whose application for the post of LDA-cum-Computer Assistant without specific establishment was directly appointed in the Office of DAO, Wokha.

Merit:- “Recommended by Hon’ble Minister, Agri & Coop.”

15.2. R.21 Shri Odirenba Jamir who was kept in the waiting list no.1 with roll no.2453 in the Notification, dated 14-09-2018, was directly appointed LDA-cum-Computer Assistant in the office of the DAO, Mon. It is stated from the Notification dated 14-9-2018, all the 13 [thirteen] selected candidates have accepted/joined the post hence, bringing him in the subsequent vacancy is totally illegal.

Merit:- “Roll no.2453, waiting list no.1.”

15.3. R.22 Shri Bokuto K. Tuccu who applied against the promotion of T. Monnon Konyak LDA in the office of DAO, Mon was appointed in the Office of the DAO, Tuensang directly.

Merit:- “Recommended by Hon’ble Minister Agri & Coop.”

15.4. R.23 Smti Ilika G. who applied against one Yangkong Chang, LDA under DAO, Tuensang was directly appointed as LDA in the office of the DAO, Mon.

Merit:- “Recommended by Hon’ble Minister, Agri & Coop.”

15.5. R.24 Smti. Lovikali H. Chikhe was directly appointed under SDAO, Tobu.

Merit:- “Recommended by Hon’ble Minister, Agri & Coop.”

The State respondents have filed their counter affidavit by and on behalf of the respondents no. 1, 3, 4 and 5, wherein, the State respondents, in defence, of the appointment made to the respondents no. 6 to 25, have stated in paragraphs no. 7 and 9 of the counter affidavit, as hereunder:

“7. That with regard to the statements made in paragraph 7, 8 and 9 of the Writ petition, the deponent states that basing on the availability of vacancies of different categories of post the

Department has sent proposal to the Government for regularization on compassionate ground and work-charged/casual employees and on the strength of the approval of the Government, appointment/regularization orders were issued by the Department.

9. That with regard to the statements made in paragraph 12, 13, 14 and 15 of the writ petition, it is respectfully stated that the department has sent proposal to the government for filling up 8(eight) posts of LDA-cum-Computer Assistant including the petitioner and issued appointment orders on the strength of the approval of the Government.”

Having taken note of the contentions raised by the writ petitioner that the respondents no. 6 to 25 have been appointed in the post of LDA-cum-Computer Assistant in the Department of Agriculture, Government of Nagaland, without following the established norms for such appointment, as recognized under the constitutional scheme of appointment to the public post, when the justification given by the State respondents in paragraphs no. 7 and 9 of their counter affidavit is perused; it does not indicate in any manner that the appointment of respondents no. 6 to 25 was made by following the Recruitment Rules or in accordance with any norms for making such an appointment in the post of LDA-cum-Computer Assistant in the Department of Agriculture, Government of Nagaland, or by following the constitutional scheme for making such an appointment.

It is no longer a res-integra that an appointment to a public post is required to be made by the State in terms of the constitutional scheme by providing equality of opportunity to the citizens who are eligible to be considered for such an appointment.

In the case of Secretary, State of Karnataka & Ors. V. Uma Devi [3] & Ors., in paragraph no. 2, thereof; the Hon'ble Apex Court, insofar as the manner in which the public employment is to be made by the State authorities, has been held as under:

“2. Public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made thereunder. Our constitutional scheme envisages employment by the Government and its

instrumentalities on the basis of a procedure established in that behalf. Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated as equals. Thus, any public employment has to be in terms of the constitutional scheme.”

Under the circumstances, this Court is of the prima facie view that the appointment of respondents no. 6 to 25 in the post of LDA-cum-Computer Assistant in the Department of Agriculture, Government of Nagaland, vide the impugned orders of appointment mentioned hereinabove, have not been made in accordance with law by following the constitutional scheme of making such an appointment in the public posts.

Accordingly, this Court is of the further view that the writ petitioner has been able to make-out a prima facie case for passing of an interim order.

In that view of the matter, till disposal of the writ petition; [1]. Letter, dated 18.12.2017, written by the Joint Secretary to the Government of Nagaland, Kohima, vide Memo. no. AGR/ESTT-36/2004, insofar as approval for appointment/regularization of services of respondents no. 6 to 18 are concerned; [2]. Order, dated 02.01.2018, issued by the Director of Agriculture, Government of Nagaland, Kohima, vide Memo. No. AGR/ESTT-83/[Pt-I]/2017-18/4351-66; [3]. Order, dated 02.01.2018, issued by the Director of Agriculture, Government of Nagaland, Kohima, vide Memo. No. AGR/ESTT83/[Pt-I]/2017-18/4330-50; insofar as Serial nos. 7 to 11 are concerned; [4]. Letter, dated 27.02.2019, written by the Joint Secretary to the Government of Nagaland, Kohima, vide Memo. no. AGR/ESTT-51/2003/722, insofar as Serial No. 2 to 8, are concerned; [5]. Order, dated 08.03.2019, issued by the Director of Agriculture, Government of Nagaland, Kohima, vide Memo. no. AGR/ESTT-83/[Pt-I]/2017-18/9610- 20; and [6]. Order, dated 08.03.2019, issued by the Director of Agriculture, Government of Nagaland, Kohima, vide Memo. no. AGR/ESTT-83/[Pt-I]/2017-18/9621- 31s; insofar as respondents No. 20 to 25 are concerned; shall remain stayed.”

5. After passing of the interim order on 25.08.2022, the applicants

have preferred the instant interlocutory application on 11.10.2023, after elapse of more than a year. It has been submitted on behalf of the applicants that notices were duly served upon them, subsequent to 25.08.2022.

6. Mr. Longchar, learned counsel for the opposite party no. 1-writ petitioner has submitted that the State respondents did not initially implement the direction made in the interim order dated 25.08.2022 and it was after filing of a contempt petition, COP[C] no. 15/2023, the opposite party no. 3 had passed an order on 05.07.2023 in compliance of the order dated 25.08.2022. He has, thus, contended that the applicants as respondent nos. 5 to 26 were very much aware of the interim order dated 25.08.2022 and till it was not implemented, they were sitting as fencesitters.

7. The connected writ petition, WP[C] no. 38/2021 has been preferred seeking the following reliefs:

“PRAYER:

In the premises, it is most respectfully prayed your Lordship's may graciously be pleased to admit this premises, issue a Rule calling upon the respondents to show cause as to why the:-

i) Impugned Office Letter NO.AGR/ESTT-36/2004, dated 18-12-2017, written by the Joint Secretary to the Government of Nagaland, Agriculture department giving approval for appointment/regularization to R.6-18 in post of LDA-Cum-Computer Assistant.

ii) Impugned Office Order NO.AGR/ESTT-83(pt-I)/2017-18/4351-66, dated 02-01-2018, passed by the Director of Agriculture giving direct appointment to Respondent No. 6-13, viz:-

- (1). Smti. N. Kewisi Chawang,
- (2). Smti. Kerinino Nakhro,
- (3). Shri. Sowalemba Longkumer,
- (4). Shri. Yarenthung T. Erui,

- (5). Smti. Atolimi Zhimomi,
- (6). Shri. C. Nyeiang Konyak,
- (7). Shri. C. Isaac,
- (8). Smti. Mennyu W,

-And-

iii) Impugned Office Order NO.AGR/ESTT-83(pt-I)/2017-18/4351-66, dated 02-01-2018, passed by the Director of Agriculture giving regularization only in respect of Respondent No. 14-18:-

- (1). Shri Yanbothung Mozhui -----Sl. No. 7
- (2). Shri P.Dominic -----Sl. No. 8
- (3) Smti. Inali -----Sl. No. 9
- (4). Shri Welhi Kapfo -----Sl. No. 10
- (5). Smti Kehuselu -----Sl. No. 11

-And-

iv) Impugned Office Letter No.AGR/ESTT-51/2003/722, dated 27-02-2019 written by the Joint Secretary to the Government of Nagaland, Agriculture, Nagaland to the Director of Agriculture, Nagaland, Kohima illegally conveying approval for appointment of R.19 to 25 in the post of LDA-cum-Computer Assistant under Agriculture Department.

-And-

v) Impugned Office Order No. AGR/ESTT-83(Pt-1)/2017-17/9610-20, dated 08-03-2019 passed by the Director, Agriculture, Nagaland directly appointing Shri. Michael Yanthan, Respondent No. 19 to the post of LDA-cum-Computer Assistant in the Office of SDAO, Baghty

-And-

vi) Impugned Office Order No.AGR/ESTT-83(Pt-1)/2017-18/9621-31, dated 08-03-2017 passed by the Director, Agriculture, Nagaland appointment 6(six) LDA-Cum-Computer Assistants (Respondent No. 20-25) viz;

<u>Names</u>	<u>Office</u>
1. Shri Merennukshi	DAO, Wokha
2. Shri. Odirenba Jamir	DAO, Mon
3. Shri. Bokuto K. Tuccu	DAO, Tuensang
4. Smti. Ilika G.	DAO, Mon

5. Smti. Lovikali H. Chikhe

SDAO, Tobu

6. Smti. Sorila Yimchunger

SDAO, Shamator

Should not be quashed and set aside.

-And-

Direct the State Respondents to consider and regularize the service of the Petitioner in the post of LDA-cum-Computer Assistant from the date of initial appointment on 04-05-2005.

And on cause(s) being shown and on hearing the parties make the Rule absolute and/or passed any such other or further order or orders as to your Lordships may deem fit and proper in the facts and circumstances of this case.”

8. In support of the contentions so raised, the learned counsel for the applicants has referred to a decision of the Hon'ble Supreme Court in the case of Bharat Amratlal Kothari and another vs. Dosukhan Samadkhan Sindhi and others, reported in [2010] 1 SCC 234, to contend that a party cannot be granted a relief which is not claimed. The relevant facts in Bharat Amratlal Kothari [supra] were, that an animal rights activist with the help of the police, intercepted a group of trucks at a particular place. While three of the drivers of those trucks were arrested, others fled away. 1974 goats and sheep were found filled in the trucks in a congested manner without following the norms. Those animals were being taken to a *pinjrapole* house. While taking those goats and sheep, one of those trucks overturned causing the death of 99 [ninety-nine] animals. The remaining animals were kept in *pinjrapole* house. A case under various offences of the Prevention of Cruelty to Animals Act, 1960 and the Bombay Animal Preservation Act, 1954 was registered. 6 [six] persons filed a criminal complaint under Sections 451/457, CrPC 1973 before the Chief Judicial Magistrate claiming to be owners of the goats and sheep and seeking custody of those goats and sheep. The Court of the Chief Judicial Magistrate rejected the prayer and directed the Investigating Officer to take possession of the goats and sheep from one *pinjrapole* and to hand over the same to another *pinjrapole*. The said 6 [six] persons who earlier filed the application under Sections 451/457, CrPC 1973, filed a writ petition under Article 226 before the High Court claiming custody of the

goats and sheep to them. In the said writ petition, the High Court by an interim order directed the appellant, Bharat Amratlal Kothari [supra], the animal rights activist to shift the goats and sheep to another *pinjrapole*. The High Court had finally held the 6 [six] writ petitioners guilty under Section 11[1][d] of the Prevention of Cruelty to Animals Act, 1960, and punished each of them with a fine of Rs. 50,000/- [Rupees fifty thousand]. A number of other directions were made including a direction to the appellant no. 1 to pay the amount specified to the 6 [six] writ petitioners by way of compensation, etc. The 6 [six] writ petitioners were not accused in the concerned criminal case. It was in such fact situation the Hon'ble Supreme Court of India had observed that those who were not even remotely alleged to have committed offence, cannot be convicted at all either at the trial or while exercising so-called wide jurisdiction under Article 226 of the Constitution. In Bharat Amratlal Kothari [supra], FIR was not registered against any of the 6 [six] writ petitioners therein. The FIR was registered against 4 [four] accused persons who were not made parties in the writ petition nor they had approached for custody of the goats and sheep. It was in the context of conviction of the 6 [six] writ petitioners under Section 11[1][d] of the Prevention of Cruelty of Animals Act and imposition of fine of Rs. 50,000/- [Rupees fifty thousand] on them by the High Court, the Hon'ble Supreme Court had held that the direction made in the order was to be regarded as without jurisdiction, unauthorized and illegal and the order passed by the Hon'ble Court was set aside. It has been further observed in Bharat Amratlal Kotharis [supra] that normally, the Court shall grant only those prayers specifically prayed by the petitioner. Though the Court has very wide discretion in granting relief, the Court cannot ignore and keep aside the norms and principles governing grant of relief. The Court shall not grant a relief which is not even prayed for by the petitioner. Reference has also been made to a decision in Om Prakash vs. Ram Kumar, reported in [1991] 1 SCC 441. It is held therein that a party cannot be granted relief which is not claimed, if the circumstances of the case are such that the granting of such relief would result in serious prejudice to the interested party and deprive him of the valuable rights under the statute. It has further been observed that

the High Court has power to mould reliefs to meet the requirements of each case. It was further observed in *Bharat Amratlal Kothari* [supra] that the High Court ought to have examined only the validity of the order passed by the Chief Judicial Magistrate refusing to grant of custody of goats and sheep to the 6 [six] petitioners in the writ petition, filed under Article 226 of the Constitution of India.

7. As has been observed from the excerpts of the observations made in the order dated 25.08.2022, the Court before passing the interim order dated 25.08.2022, had taken note of the respective stands advanced on behalf of the petitioner and the State respondents. At that point of time, the applicants did not enter their appearance. The jurisdiction under Article 226 of the Constitution of India is discretionary, extraordinary and equitable. If a Court is of the *prima facie* view, at an interim stage and during the pendency of a writ petition, that for balancing the equities and for the purpose of preventing perpetuation of purported illegalities, any order is required to be passed as an interim measure, the Court has the jurisdiction to pass such order. If such interim relief is not in the form of a final relief, such an order as an interim measure can be passed. The fact of an interim order is dependent albeit, on the outcome of the writ petition resulting in either dismissal or allowing of the writ petition.

8. Having considered all the aspects, this Court finds that the facts and circumstances in *Bharat Amratlal Kothari* [supra] is not similar to the case in hand. The observations made in the context of the prayer in the writ petition in *Bharat Amratlal Kothari* [supra] is also found not directly applicable to the case in hand. Just because no interim relief has been sought for in the writ petition, the Court is not persuaded to observe that the Court would not be in a position to pass any interim order on the grounds indicated above, as an interim measure and during the pendency of the writ petition, which is not in the form of the final relief made in the writ petition.

9. In such view of the matter, this interlocutory application is found to

be bereft of any merit. The interlocutory application is accordingly dismissed.

Sd/-
JUDGE

Comparing Assistant