

GAHC010096092024



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

Case No. : Review.Pet./33/2024

THE STATE OF ASSAM
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM
TRANSPORT DEPARTMENT
DISPUR GUWAHATI 06

VERSUS

GANESH CHANDRA PATHAK

S/O LATE GARJEN CHANDRA PATHAK

RESIDENT OF VILLAGE MOUTUPRI
PO HOWLY
DIST BARPETA
ASSAM 781316

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT OF ASSAM
FINANCE DEPTT
DISPUR

GHY- 06

3:THE COMMISSIONER AND SECRETARY
TO THE GOVT OF ASSAM
PENSION AND PUBLIC GRIEVANCES DEPTT
DISPUR

GUWAHATI- 06

4:THE ASTC
REP. BY ITS MD
PALTAN BAZAR
GUWAHATI

ASSAM

PIN- 08

5:THE DIVISIONAL SUPERINTENDENT

ASTC
BONGAIGAON
ASSAM
PIN- 780080
6:THE STATION SUPERINTENDENT
ASTC
BARPETA
DIST- BARPETA
ASSAM
PIN- 781301
7:THE PRINCIPAL ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI- 28

Advocate for : MS. M D BORAH
Advocate for : SC
A S T C appearing for GANESH CHANDRA PATHAK

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

24.07.2024

Heard Ms. MD Bora, learned Standing Counsel, Transport Department for the review applicant. Also heard Shri SK Medhi, learned Standing Counsel, Accountant General, Assam and Ms. A. Lodha, learned Standing Counsel, ASTC.

2. The instant review application has been preferred by the State Government through the Department of Transport with regard to the judgment and order dated 10.12.2021 passed in WP(C)/5063/2019. The stand of the review applicant represented by Ms. MD Bora, learned Standing Counsel is primarily on the ground that the services rendered by the petitioner was under the ASTC and was not covered by the Rules and Regulations concerning the Department. There is a separate Office Memorandum for the employees of the ASTC and this

vital aspect could not be pointed out before the Court while disposing of the writ petition.

3. The matter has however taken a completely different turn on filing of an I.A. being IA(C)/1410/2024 by which one Smt. Parul Pathak has sought for impleadment. The said incumbent who claims to be the wife of the writ petitioner has stated in the I.A. that her husband has passed away on 08.06.2019. This Court in its order dated 05.06.2024 passed in IA(C)/1410/2024 having noticed that the writ petition was filed on 18.07.2019 and coming to a conclusion that it was instituted in the name of a dead person had directed an enquiry to be caused by the Registry. Accordingly, the Registrar Judicial had made an enquiry and has submitted the report dated 21.06.2024 in a sealed cover which has been opened. The statements of the concerned Advocates, Notary and the Advocates Clerks have also been recorded. The enquiry report in clear terms has recorded that there are gross anomalies while filing the writ petition as admittedly the filing was done on 18.07.2019 in the name of one Ganesh Chandra Pathak, who had already passed away on 08.06.2019.

4. Though various grounds have been taken for review, this Court is of the opinion that when it is not in dispute that the writ petition was instituted in the name of a person who had already passed away before such institution, the writ petition was not maintainable from the very inception. This Court is also intrigued by the fact that the writ petition which was instituted in the year 2019 was continued till the final judgment and order was passed on 10.12.2021. It is absolutely shocking as to how the conducting counsel had continued with the writ petition which was admittedly instituted in the name of a dead person. It is also wholly unbelievable as to how the person could be identified and he was shown to have sworn the affidavit in presence of the Notary.

5. In view of the aforesaid facts and circumstances, this Court is of the opinion that the order dated 10.12.2021 is otherwise also cannot be termed as a valid order as this Court was presented with wholly incorrect facts leading to passing of the said order. Accordingly, the aforesaid order stand reviewed. Consequently, the writ petition is dismissed.

6. This Court also directs the Registry to furnish a copy of the enquiry report dated 21.06.2024 with other particulars to the respective authorities of all such persons who were involved in filing and conducting of WP(C)/5063/2019 so that a proper enquiry can be made and consequent action be taken in accordance with law. Such action is required to maintain the sanctity and decorum of this Court and the legal process.

JUDGE

Comparing Assistant