

GAHC020004042024



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

Case No. : I.A.(Civil)/109/2024

MS. JOYEE SEN
AGED ABOUT 54 YEARS,
D/O DR.S.SEN, RESIDENT OF 62, DUNCAN BASTI, DISTRICT-DIMAPUR,
NAGALAND, PHONE NO-9612749127

VERSUS

THE STATE OF NAGALAND AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY, DEPARTMENT OF
INDUSTRIES AND COMMERCE, GOVERNMENT OF NAGALAND, KOHIMA,
NAGALAND 2:THE NAGALAND INDUSTRIAL DEVELOPMENT CORPORATION
LIMITED

(A GOVERNMENT OF NAGALAND UNDERTAKING)
REPRESENTED BY ITS MANAGING DIRECTOR
IDC HOUSE
DIMAPUR-797112
NAGALAND

3:TEMJENYANGER JAMIR

GENERAL MANAGER
NAGALAND INDUSTRIAL DEVELOPMENT CORPORATION LIMITED
IDC HOUSE
DIMAPUR-797112
NAGALAN

Advocate for the Petitioner : A. ZHIMOMI,

Advocate for the Respondent : GOVT ADV NL,

**BEFORE
HON'BLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

11.11.2024

Heard Mr. A. Zhimomi, learned counsel for applicant/writ petitioner, Mr. Taka Masa, learned Senior Counsel for the respondent No. 3 and Mr. L. Iralu, learned counsel for the respondent No.1 and 2.

2. This Interlocutory Application has been filed praying for amendment of the writ petition and seeking inclusion of a new paragraph and amendment of the prayer in the writ petition.

3. The challenge made in the writ petition is with regard to the appointment of respondent No.3 and the consequential seniority. Both the petitioner and private respondent are employees of Nagaland Industrial Development Corporation Limited and are working as General Managers. In the writ petition, the petitioner has made the following prayers:

“In the premises aforesaid, it is most respectfully prayed that Your Lordships would graciously be pleased to admit this petition, call for the records, issue a Rule calling upon the respondents to show cause/causes as to why a writ of Certiorari and/or Mandamus and/or any other appropriate writ or direction of the like nature should not be granted and upon cause or causes being shown be pleased to

make the Rule absolute in the following terms:

A. Quash and set aside

i) Order No P&A/G-2/93/582-87 dated 23.03.2010, regularising the service of the respondent No 3 as Assistant Manager (Annexure -9)

ii) Order No. P&A/G-2/93/1212-18 dated 16.08.2012, appointing the respondent No 3 to the post of Deputy Manager (Annexure -10)

iii) Order No. P&A/G-10/2001/Vol-xi/922-32 dated 19.06.2017, promoting the respondent No 3 to Manager. (Annexure -5)

iv) Letter No P&A/G-10/2001/Vol-XII/807 dated 01.09.2020, promoting the respondent No 3 to Deputy General Manager. (Annexure -11)

v) Minutes of the proceedings of the Departmental Promotion Committee held on 10.03.2023. (Annexure -26)

vi) Letter No P&A/G-10/2001/Vol-XII/1212 dated 15.03.2023, promoting the respondent No. 3 to General (Annexure -12)

Manager.

vii) Notification No. P&A/G-136/2001/Vol-II/1240 dated 15.03.2023 promoting the respondent No 3 to General Manager. (Annexure -27)

viii) Circular No. P&A/G-193/2003/1360 dated 21.4.2023. (Annexure -29)

B. Direct the respondents to rectify the seniority list issued vide Circular No. P&A/G-193/2003/1360 dated 21.04.2023.

And in the interim, pending disposal of the application, be pleased to stay the operation of the Office Circular No.P&A/G-193/2003/1360 dated 21.04.2023, in so far as it relates to the petitioner and the respondent No 3. And /or pass any such further or other order/orders, as Your Lordships may deem fit and proper in the facts and circumstances of the case.

4. Learned counsel for the applicant submits that in response to the contentions in the writ petition filed by the petitioner, in the counter affidavit filed by the respondent Nos. 1 and 2 an averment was made that the order No. P&A/G-2/93 dated 16.08.2012 appointing the respondent No.3 to the post of the Deputy Manager was made pursuant to the 185th meeting of the Board of Directors of the Nagaland Industrial Development Corporation Limited held on 13.08.2012. Since the challenge is made only to the consequential order appointing the private respondent, the respondent Nos. 1 and 2 objected that the order which resulted in the consequential order giving appointment to the respondent No.3 namely Temjenyanger Jamir namely the 185th meeting of the Board of Directors of the Nagaland Industrial Development Corporation Limited held on 13.08.2012 is not under challenge.

5. Pursuant to the affidavit being filed by the respondent Nos. 1 and 2 containing inter alia the said averment, the petitioner has filed

this application seeking amendment to the writ petition seeking the following amendments:

“I. Inclusion of new paragraph:

25(a) That the petitioner had no occasion to be furnished with a copy of the minutes of the 185th meeting of the Board of Directors held on 13.08,2012. The petitioner received a copy of the same through the affidavit-in-opposition filed by the respondent No.3 in the instant case. The decision of the Board of Directors in relation to the Respondent No. 3 is contained in Resolution No. 185/8 of the said Minutes. The said resolution in so far as it relates to the respondent No. 3 is in violation of the Rules and liable to be quashed and set aside.

II. Substitution of prayer ii:

ii a. Resolution No. 185/ 8 in so far as interrelates to the promotion/ appointment of the respondent No. 3 to the post of Deputy Manager.

b. Order No. P&A/G-2/93/1212-18 dated 16.08.2012, appointing the respondent No.3 to the post of Deputy Manager.”

6. Notice in the I.A. was issued on 13.09.2024. Pursuant to the notice being issued, the respondent No.3 has filed its objection opposing the prayer for amendment of the writ petition.

7. Learned Senior counsel appearing on behalf of the opposite party/ respondent No.3 strenuously argued that the petitioner has waived his right for seeking an amendment in view of the stand

taken by the petitioner in the affidavit in reply filed by the petitioner to the affidavit filed by the respondent Nos.1 and 2. Referring to paragraph 21 of the reply affidavit filed by the petitioner to the affidavit filed by respondent Nos. 1 and 2, the learned Senior Counsel for the respondent No.3 referring to the opening lines in the paragraph submits that the petitioner has made the averment that *"the statements made in paragraph 33.4 of the affidavit in opposition are misleading and liable to be rejected"*.

8. Referring to this paragraph the learned Senior Counsel has strongly objected to the prayer made in the I.A. seeking amendment. He submits that there is no valid ground seeking an amendment at this stage of the matter when all the pleadings are completed and the matter is ripe for hearing. He further submits that the prayer in the I.A. is only for seeking amendment of the writ petition but there is no prayer seeking amendment of the affidavit in reply filed by the petitioner to the affidavit in opposition filed by respondent Nos. 1 and 2. Under such circumstances, he submits that the Interlocutory Application should be rejected and the prayer for amendment should be declined by this Court and the writ petition should be heard in its present form.

9. Learned counsel for respondent Nos. 1 and 2 does not object to the prayer seeking amendment by the applicant.

10. Heard learned counsel for the parties also perused the interlocutory application and the objections filed as well as the pleadings available in the writ petition as referred to by the counsels of the Bar have been carefully perused.

11. Although strictly speaking the Civil Procedure Code is not

applicable in its strictest terms to proceedings under the writ petition under 226 of the Constitution of India, nevertheless the spirit of CPC is required is generally applied to writ proceedings. Order 6. Rule 17 of the CPC provides for amendment of the plaint. The consistent view of this Court as well as the Apex Court is that prayers seeking amendment should to the extent possible be considered liberally and allowed with the only exception that it does not change the nature of the suit or the litigation.

12. In the present proceedings the challenge is made to the appointment vide letter of appointment No. P&A/G-2/93 dated 01.04.2005 whereby the private respondent No.3 was appointed as Assistant Manager and subsequently as General Manager under Nagaland Industrial Development Corporation Limited pursuant to the decisions taken by the Board of Directors which admittedly has not been the assailed in the present proceedings and therefore the application seeking amendment has been filed. Whether without putting challenge the decision of the Board of Directors effective orders can be passed by the court in the event the Court finds merit in the contentions of the writ petitioner and thereby seeks to interfere with the orders of appointment/promotion of respondent No.3, is to be decided by the Court upon final hearing of the matter. In any event there is always an inherent power of the Court to mould the relief sought for so that substantial justice can be meted out to the litigants before the Court. Under such circumstances, this Court is of the view that considering the principle culled out in the various judgments rendered by this Court as well as by the Apex Court the applications seeking amendment under Order 6, Rule 17 can be permitted as the matter is yet to be finally heard, subject of

cause to the exception that it does not change the nature of the suit or the proceedings. In the facts of the present case at this stage, allowing the interlocutory application in the considered view of the Court will not have the effect of changing the nature of the proceedings. The appointment/promotion orders of the respondent No.3 have already been assailed and it is open to the Court at the time of hearing to call for the relevant reports and examine the matter and thereafter pass appropriate orders as deemed fit and proper.

13. As have been discussed in the present proceedings the hearing in the matter has not yet commenced. No prejudice will be caused to the respondent if the amendment is allowed. In any view of the matter it is imperative for a Court of law to examine all related issues so that the matter can be addressed in its entirety and substantial justice can be caused to the parties before the Court. Under such circumstances this Court is inclined to allow the prayers made in this I.A.

14. This Court is of the view that the prayer for amendment of the writ petition sought for will not change the nature and structure of the present proceedings. The objections raised by the respondent No.3 does not merit acceptance in the considered view of the Court.

15. The interlocutory application therefore stands allowed. The petitioner is permitted to bring the necessary amendments within a period of 10 days from today. The amended writ petition will be served accordingly within a period of 10 days on the respondents. The respondents are also at liberty to file additional counter affidavits countering the amendments brought in if they are so

advised.

16. Accordingly Interlocutory application stands allowed and disposed of.

JUDGE

Comparing Assistant