



GAHC010158292021

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

Case No. : WP(C)/1376/2019

CHAM CHUN NAHAR AHMED AND 8 ORS.
WIFE OF DR. ABDUS SALAM
RESIDENT OF HOUSE NO. 2(A)
HEMGIRI PATH
LALMATI
GANDHIBASTI
GUWAHATI
KAMRUP(M)
ASSAM.

2: UTTAM CHANDRA BORO
SON OF LATE MOHAN CHANDRA BORO
RESIDENT OF BATAKUCHI
CHAYGAON
KAMRUP
ASSAM.

3: BIPUL BAISHYA
S/O. LATE KANGSHA RAM BAISHYA
RESIDENT OF RUDRESWAR
KAMRUP
ASSAM
PIN- 781030.

4: UTPALA PHUKAN
WIFE OF SRI RAMANI PHUKAN
RESIDENT OF HOUSE NO. 29
SARUMOTORIA
DISPUR
GUWAHATI- 781006.

5: PRAKASH SARMA
S/O. LT. PRAFULLA KUMAR SARMA
RESIDENT OF BIRUBARI



JANAKPUR
GUWAHATI- 781016.

6: UTTAM KUMAR BARMAN
S/O SRI RAJENDRA NATH BARMAN
RESIDENT OF KUNDIL NAGAR
RAJGARH BYE LANE NO. 11
P.O. ULUBARI
DIST. KAMRUP
ASSAM.

7: DULAL DUTTA
S/O LATE DWIJEN CHANDRA DUTTA
RESIDENT OF KAMAKHYA COLONY
HOUSE NO. 44
P.O. PANDU
DIST. KAMRUP
ASSAM.

8: MANASHE SOREN
S/O. LATE BIJU SOREN
R/O. ADINGIRI HILLS
MALIGAON
PIN- 781011
KAMRUP
ASSAM.

9: TIKOK KONWAR
S/O. LATE PRABHAT KONWAR
RESIDENT OF HOUSE NO. 21
YUBANAGAR
FOREST GATE
NARENGI
GUWAHATI- 781026
KAMRUP(METRO)
ASSAM.

VERSUS

THE GAUHATI HIGH COURT AND 47 ORS.
REP. BY THE REGISTRAR GENERAL
GUWAHATI- 781001.

2:THE REGISTRAR GENERAL
GAUHATI HIGH COURT
GUWAHATI-781001.



3:THE REGISTRAR (ADMINISTRATION)
GAUHATI HIGH COURT
GUWAHATI-781001.

4:THE REGISTRAR (ESTABLISHMENT)
GAUHATI HIGH COURT
GUWAHATI-781001.

5:NIROD SARMA
SECRETARY (OFFICIATING) TO THE HONOURABLE CHIEF JUSTICE
GAUHATI HIGH COURT
GUWAHATI-781001.

6:BIDYUT BIKASH GOSWAMI
PROTOCOL OFFICER (OFFICIATING)
GAUHATI HIGH COURT
GUWAHATI-781001.

7:PHANIDHAR DEV GOSWAMI
ADMN. OFFICER (J)
S/O. LATE LAKSHMI DEV GOSWAMI
R/O. SEUJBAN PATH
FATASHIL AMBARI
GUWAHATI-25.

8:SURJYA KANTA RAMCHIARY
ADMN. OFFICER (J)
S/O. MEGHARAM RAMCHIARY
DAIMUGURI
FATASHIL AMBARI
GUWAHATI-25.

9:HARI PRASAD MEDHI
ADMN. OFFICER (J)
S/O. LATE CHANDRA NATH MEDHI
R/O. KRB ROAD
BHARALUMUKH
GUWAHATI-781009.

10:SARFUL HAQUE
ADMN. OFFICER (J)
S/O. LATE SYED ALI
R/O. LAKHYADHAR CHOUDHURY PATH
HATIGAON CHARIALI
GUWAHATI-781038.

11:SAFIQUR RAHMAN
ADMN. OFFICER (J)



S/O. MAHIBUR RAHMAN
R/O. VILL. AND P.O. DAMPUR
NEAR DAMPUR HIGHER SECONDARY
PIN-781102.

12:NARENDRA NARAYAN NATH
ADMN. OFFICER (J)
S/O. LATE HARENDRA NARAYAN NATH
R/O. DAKSHINCHUBURI
P.O. SIPAJHAR
DIST. DARRANG.

13:GREGORY DAIMARI
ADMN. OFFICER (J)
S/O. ELIAS DAIMARI
R/O. VILL. NIZ GHOPABARI
P.O. PANERI
DIST. UDALGURI
ASSAM.

14:NEWMAN SANGMA
ADMN. OFFICER (J)
C/O. SUDHIR J SANGMA
R/O. BIRUBARI
GOPINATH NAGAR
GUWAHATI-781016.

15:AJIT KR. KULI
ADMN. OFFICER (J)
S/O. SRI GANESH CHANDRA KULI
R/O. 8TH MILE GARO BASTI
P.O. AMERIGOG
P.S. BASISTHA
DIST. KAMRUP (METRO)
GUWAHATI-23.

16:GANDHI RAM KATHAR
ADMN. OFFICER (J)
S/O. LATE SUKURA KATHAR
R/O. VILL. CHAKANIBARI KHAT
TETELIA
P.O. GANDHINAGAR
DIST. KAMRUP (M)
PIN-782403.

17:CHRISTELLYN S. MARAK
ADMN. OFFICER (J)
D/O. LATE J S MARAK



R/O. SOUTH SARANIA
BAIKUNTHA PATH
H/NO. 1
GUWAHATI-7.

18:PRADIP SINHA
ADMN. OFFICER (J)
S/O MANABENDRA SINHA
R/O. BORBARI
GUWAHATI-781036.

19:SAHIDUL HAQUE
ADMN. OFFICER (J)
S/O. LATE MAHTAB ALI
R/O. JYOTI PATH BYE LANE
GRC ROAD
NIZARAPAR
NOONMATI
GUWAHATI-781020.

20:TOMIJUDDIN AHMED
COURT MASTER
S/O. LATE TAHARUDDIN AHMED
R/O. H/NO. 6
SIX MILE
VIP ROAD
MAHAPURUSH MADHABDEV PATH
GUWAHATI-781022.

21:HEMANTA KR. DEKA
SR. JUDICIAL ASSTT.
S/O. LATE KAMESWAR DEKA
R/O. VILL. AND P.O. MANAHKUCHI
P.S. HAJO
KAMRUP (RURAL)
ASSAM.

22:BORTHAN THAOSEN
SR. JUDICIAL ASSTT.
S/O. LATE SOBENDRA THAOSEN
R/O. H/NO. 4
SWARAJ PATH
NEAR IIBM
KHANAPARA
GUWAHATI-22.

23:PRADIP SARMA
COURT MASTER



S/O. LATE ROHINI KUMAR SARMA
R/O. H/NO. 4
KANDURA RABHA PATH
ODALBAKRA
GUWAHATI-34.

24:HITESH CH. DAS
COURT MASTER
S/O. JOYDRATH CHANDRA DAS
R/O. SILPUKHURI
NABAGRAHA NATUN NAGAR
H/NO. 321
GUWAHATI-3.

25:APORNA DAS
COURT MASTER
W/O. BHABENDRA NATH DAS
R/O. KAMAKHYA NATUN PARA
P.O. KAMAKHYA
P.S. JALUKBARI
DIST. KAMRUP (METRO).

26:DHRUBA DAS
COURT MASTER
S/O. SRI JAGAT DAS
JATIA
R/O. SWAHEED PATH
H/NO. 1
KAHILIPARA ROAD
GUWAHATI-781019.

27:JITUMONI HAZARIKA THAKURIA
W/O. LATE HARINATH THAKURIA
R/O. KRISHNA NAGAR HOUSING COLONY
BUILDING NO. 3
UNIT-3
CHANDMARI
GUWAHATI-3.

28:JITENDRA KR DEURI
S/O. LATE JAMADAR DEURI
R/O. GAUHATI HIGH COURT STAFF QUARTER
MALIBAGAN
P.O. KHARGHULI
GUWAHATI-781004.

29:DHRUBA JYOTI GOSWAMI
SR. JUDICIAL ASSTT.



S/O. PRABHAT CHANDRA GOSWAMI
R/O. AMBARI FATASIL (TINIALI)
GUWAHATI-25.

30:ROBERT L. NAMPUII
SR. JUDICIAL ASSTT.
S/O. DAVID S. NAMPUII
R/O. GOLDLAND VILLA
HAFLONG
DIMA HASAO-788819.

31:BHABENDRA NATH DAS
COURT MASTER
S/O. LATE BIPIN CHANDRA DAS
R/O. KAMAKHYA NATUN PARA
P.O. KAMAKHYA
P.S. JALUKBARI
DIST. KAMRUP (METRO).

32:ABDUL JABBAR
SR. JUDICIAL ASSTT.
S/O. TILAK DAS
R/O. VILL. AND P.O. BORKHOPA
P.S. TAMULPUR
DIST. BAKSA
BTAD
PIN-781367.

33:HEMEN DEKA
COURT MASTER
S/O. SHRI ADITYA DEKA
R/O. VILL. MOUKUCHI
P.O. PUTHIMARI
P.S. KAMALPUR
DIST. KAMRUP (RURAL)
PIN-781380.

34:DIPAK PRASAD
COURT MASTER
S/O. LATE JAGADISH PRASAD
R/O. GAUHATI HIGH COURT STAFF QUARTER
MALIBAGAN
P.O. KHARGHULI
GUWAHATI-781004.

35:RAMEN SARMA
COURT MASTER
S/O. LATE RATNESWAR SARMA



R/O. NAYANPUR
P.O. JAPORIGOG
GUWAHATI-5.

36:GAUTAM KR. DAS
COURT MASTER
S/O. TILAK DAS
VILL. AND P.O. BARKHOPA
P.S. TAMULPUR
DIST. BAKSA
BTAD
PIN-781367.

37:CHANDAN DAS
COURT MASTER
S/O. DEBENDRA PRASAD DAS
R/O. HOUSE NO. 24
NAYANPUR ROAD
LINE NO. 3
P.O. AND P.S. DISPUR
GUWAHATI-781005.

38:RITUPARNA DAS
SR. JUDICIAL ASSTT. S/O. LATE MOHAN CHANDRA DAS
R/O. VILL. GOPALPUR
P.O. MIRZA
DIST. KAMRUP (RURAL)
PIN-781125.

39:GEETANJALI MAYOUR
COURT MASTER
W/O. MAYOUR JYOTI SARMA
R/O. PUB SARANIA
BYE LANE (WEST)
HOUSE NO. 5
GUWAHATI-3.

40:KRISHNA SAIKIA
S/O. LATE DIMBESWAR SAIKIA
R/O. VILL. KAWOIMARI
P.O. BIHPURIA
DIST. LAKHIMPUR
ASSAM.

41:RUPAM SARMA
COURT MASTER
S/O. LATE HARENDRA KR. SARMA
R/O. BISHNU RABHA PATH



SHANTIPUR
P.O. BIDYAPUR
DIST. NALBARI-781335.

42:ANJUM BORAH
S/O. LATE GUNA KANTA BORAH
R/O. SHREE OLIVIA
HOUSE NO. 11
B-2
2ND FLOOR
ASHOK PATH
JATIA
KAHILIPARA ROAD
GUWAHATI-781006.

43:MAITREYI DEVI
COURT MASTER
W/O. DR. PARTHA PRATIM TALUKDAR
R/O. H/NO. 115
NIZARAPAR
BIRUBARI
GUWAHATI-16.

44:RAKESH DAS
S/O. LATE JOYDEV DAS
R/O. H/NO. 21
AJODHYA PATH
JANAKPUR
JATIA
GUWAHATI-781019.

45:PARTHA SAIKIA
COURT MASTER
S/O. SONTI RAM SAIKIA
R/O. KANAKLATA PATH
BISHNURABHA NAGAR
MALIGAON
GUWAHATI-781011.

46:BENUDHAR BEZ
SR. JUDICIAL ASSISTANT
S/O. LATE DHANI RAM BEZ
R/O. LACHIT NAGAR
GUWAHATI-7.

47:AHMADUL ALA
ACCOUNTANT
S/O. LATE ABDUL KADER



R/O. H/NO. 31
ANUPAM NAGAR
HATIGAON
GUWAHATI-38.

48:MANOJ KR. GOSWAMI
COURT MASTER
S/O. LATE KAMINI MOHAN GOSWAMI
R/O. H/NO. 25
SIVADHAM PATH
PATARKUCHI
P.O. AND P.S. BASISTHA
GUWAHATI-781029.

Advocate for : MR. K N CHOUDHURY

Advocate for : SC
GHC appearing for THE GAUHATI HIGH COURT AND 47 ORS.

Linked Case : WP(C)/3845/2021

SAFIQUR RAHMAN AND 19 ORS.
S/O MAHIBUR RAHMAN
VILL AND P.O.-DAMPUR
NEAR DAMPUR HIGHER SECONDARY SCHOOL
PIN-781102

2: SURJYA KANTA RAMCHIARY
S/O MEGHARAM RAMCHIARY
DAIMUGURI
FATASHIL AMBARI
GUWAHATI-25

3: HARI PRASAD MEDHI
S/O LATE CHANDRA NATH MEDHI
KRB ROAD
BHARALUMUKH
GUWAHATI-781009

4: TILOK KONWAR
S/O LATE PRABHAT KONWAR
HOUSE NO. 21
YUBANAGAR
FOREST GATE
NARENGI



GUWAHATI-781026

5: GREGORY DAIMARI
S/O ELIAS DAIMARI
VILL-NIZ GHOPRABARI
P.O.-PANERI
DIST-UDALGURI
ASSAM

6: NEWMAN SANGMA
S/O SUDHIR J SANGMA
BIRUBARI
GOPINATH NAGAR
GUWAHATI-781016

7: AJIT KR KULI
S/O SRI GANESH CHANDRA KULI
8TH MILE GARO BASTI
P.O.-AMERIGOG
P.S.-BASISTHA
DIST-KAMRUP (M)
GUWAHATI-23

8: GANDHI RAM KATHAR
S/O LATE SUKURA KATHAR
VILL-CHAKANIBARI KHAT
TETELIA
P.O.-GANDHINAGAR
DIST-KAMRUP(M)
PIN-782403

9: CRISTELLYN S MARAK
D/O LATE J S MARAK
SOUTH SARANIA
BAIKUNTHA PATH
HOUSE NO. 1
GUWAHATI-7

10: NEIL JONGSKE SANGMA
S/O SUDHIR J SANGMA
BIRUBARI
GOPINATH NAGAR
GUWAHATI-781016

11: PRADIP SINHA
S/O MANABENDRA SINHA
BORBARI
GUWAHATI-781036



12: SAHIDUL HOQUE
S/O LATE MAHTAB ALI
JYOTI PATH BYE LANE
GRC ROAD
NIZARAPAR
NOONMATI
GUWAHATI-781020

13: TOMIZUDIIN AHMED
S/O LATE TAHARUDDIN AHMED
HOUSE NO. 6
SIX MILE
VIP ROAD
MOHAPURUSHMADHABDEV PATH
GUWAHATI-781022

14: BORTHAN THAOSEN
S/O LATE SOBENDRA THAOSEN
HOUSE NO. 4
SWARAJ PATH
NEAR IIBM
KHANAPARA
GUWAHATI-22

15: PRADIP SARMA
S/O LATE ROHINI KR SARMA
HOUSE NO. 4
KANDURARABHA PATH
ODALBAKRA
GUWAHATI-34

16: APORNA DAS
W/O BHABENDRA NATH DAS
KAMAKHYA NATUN PARA
P.O.-KAMAKHYA
P.S.-JALUKBARI
DIST-KAMRUP(M)

17: JITUMONI HAZARIKA THAKURIA
W/O LATE HARINATH THAKURIA
KRISHNA NAGAR HOUSING COLONY
BUILDING NO. 3
UNIT-3
CHANDMARI
GUWAHATI-3



18: ROBERT LALPIANGA NAMPUII
S/O DAVID S. NAMPUII
GOLDLAND VILLA
HAFLONG
DIMA HASAO-788819

19: DIPAK PRASAD
S/O LATE JAGADISH PRASAD
GAUHATI HIGH COURT STAFF QUARTER
MALIBAGAN
P.O.-KHARGULI
GUWAHATI-781004

20: RAJ KUMAR KALITA
S/O LATE JATIN CHANDRA KALITA
R/O BHUTNATH
MILAN PATH
HOUSE NO. 3
P.O.-BHARALUMUKH
GUWAHATI-781009
VERSUS

THE GAUHATI HIGH COURT AND 4 ORS.
REPRESENTED BY THE REGISTRAR GENERAL
GUWAHATI-781001

2:THE REGISTRAR GENERAL
GAUHATI HIGH COURT
GUWAHATI-781001

3:THE REGISTRAR (ADMINISTRATION)
GAUHATI HIGH COURT
GUWAHATI-781001

4:THE REGISTRAR (ESTABLISHMENT)
GAUHATI HIGH COURT
GUWAHATI-781001

5:NIROD SARMA
SECRETARY TO THE HON'BLE CHIEF JUSTICE
GAUHATI HIGH COURT
GUWAHATI-781001

Advocate for : MR. K N CHOUDHURY

Advocate for : SC
GHC appearing for THE GAUHATI HIGH COURT AND 4 ORS.

BEFORE
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioners : Shri KN Choudhury, Sr. Adv.
Shri J. Patowary

Advocates for the respondents : Shri UK Nair, Sr. Adv., High Court
Shri MP Sarma
Shri KK Mahanta, Sr. Adv.
Shri A. Chamuah, R-5.

Date of hearing : **08.12.2022**
Date of Judgment : **05.01.2023**

JUDGMENT & ORDER

The writ jurisdiction of this Court has been sought to be invoked by the petitioners by questioning the legality and validity of initially the officiating arrangement of the private respondent no. 5 as the Secretary to the Hon'ble the Chief Justice of this Court (hereinafter HCJ) and the subsequent order of regularization of the services of the respondent no. 5 in the said capacity. The challenge is mainly based upon the lack of eligibility and qualification of the said respondent no. 5 in both the aforesaid processes.

2. Before going to the issue which has arisen for determination in these cases, it would be convenient to state the facts in brief.

3. In the first writ petition, registered as WP(C)/1376/2019, there are 9 numbers of petitioners, who at the time of filing of the writ petition were serving as Administrative Officers (Judicial) in the Principal Seat of this Court. Such service was in substantive capacity which they have reached from the post of LDA which they were earlier holding on the strength of their selection in the period 1988 to 1997. It is the

case of the petitioners that the post of Administrative Officer (Judicial) is one of the feeder post for Secretary to the HCJ as per the Rules holding the field. There is no dispute that the concerned Rules are the Gauhati High Court (Service) Rules, 1967 (hereinafter the Rules). The respondent no. 5 was appointed as a Lower Divisional Assistant in the Gauhati High Court on 13.12.2004 and thereafter, was promoted to the cadre of Senior Judicial Assistant (SJA) which he is holding in a substantive capacity. The said post of SJA is in the feeder cadre to the post of Administrative Officers (Judicial), which the petitioners were holding. On 25.11.2016, the respondent no. 5 was appointed as Protocol Officer temporarily. Thereafter, vide an order dated 10.09.2018, the said respondent no. 5 was appointed as Secretary to the HCJ on officiating basis. In both the orders of promotion, it was, however recorded that the respondent no. 5 shall maintain his seniority in the original cadre, i.e. Senior Judicial Assistant and his future promotion will be made on that basis. The aforesaid order dated 10.09.2018 is the subject matter of challenge in the first writ petition WP(C)/1376/2019.

4. During the pendency of the first writ petition wherein, the officiating promotion of the respondent no. 5 as Secretary to the HCJ is under challenge, one out of two posts of Protocol Officer had fallen vacant. Accordingly, on 14.09.2018, a Notice Inviting Options from intending Senior Judicial Assistant was issued to fill up one vacant post of Protocol Officer in the Principal Seat. The petitioners alleged that the notice dated 14.09.2018 was issued with an ulterior motive of regularizing the officiating appointment of the respondent no. 5 as Secretary to the HCJ as in case of appointment of someone as the Protocol Officer, there would be no option for the respondent authorities to revert back the respondent no. 5 to the post of Protocol Officer and in the process, his service as the Secretary to the HCJ can be regularized.

5. As per the petitioners, by flouting all rules and regulations, the officiating arrangement of the respondent no. 5 as the Secretary to the HCJ was regularized vide an order dated 24.08.2020. As the representation dated 24.09.2020 submitted against

the aforesaid order dated 24.08.2020 was not considered, the second writ petition WP(C)/3845/2021 has been filed. In the second writ petition, there are 20 numbers of petitioners, who are serving as Administrative Officers (Judicial) in the Principal Seat in their substantive capacity.

6. It may be mentioned that in WP(C)/1376/2019, an application for impleadment of party respondents was filed which was registered as IA(Civil)/1577/2019. The 42 numbers of applicants in that IA support the case of the petitioners. This Court vide order dated 22.05.2019 had allowed the application by impleading the applicants as Interveners nos. 1 to 42. Further, in WP(C)/3845/2021, an application was filed by the applicants / writ petitioners praying for a direction to restrain from bestowing further promotional benefits to the respondent no. 5. This Court vide order dated 25.10.2021 had directed maintenance of *status quo* as regards the service of the respondent no. 5. The interim order was extended from time to time and it is not in dispute that as on date, the respondent no. 5 is still holding the post of Secretary to the HCJ.

7. I have heard Shri J. Patowary, learned counsel for the petitioners. I have also heard Shri UK Nair, learned Senior Counsel assisted by Shri MP Sarma, learned counsel for the High Court and Shri KK Mahanta, learned Senior Counsel assisted by Shri A. Chamuah, learned counsel for the respondent no. 5. The records in original produced by Shri Sarma, learned counsel have been carefully examined.

8. Referring to the Rules, Shri Patowary, learned counsel for the petitioners has submitted that from the cadre of SJA, one is normally promoted to the post of Administrative Officer (Judicial) in which cadre, all the petitioners as well as the interveners are placed. While the cadre of Administrative Officer (Judicial) is a feeder cadre for the Secretary to the HCJ, there is another stream for such consideration. An incumbent, who is a SJA, can be promoted to the rank of Court Officer and Protocol Officer and both the aforesaid posts are also the feeder posts to the rank of Secretary to the HCJ. In other words, the Secretary to the HCJ can be promoted from

Administrative Officer (Judicial), Court Officer and Protocol Officer. In the instant case, the substantive appointment of the respondent no. 5 is Senior Judicial Assistant. However, vide order dated 25.11.2016, the respondent no. 5 was temporarily appointed as Protocol Officer. The said order was however accompanied by a rider as per which, the said respondent no. 5 would maintain his seniority in the original cadre of Senior Judicial Assistant and his further promotion will be considered on that basis. Shri Patowary, learned counsel has contended that in the Gradation List of SJA, the position of the respondent no. 5 is 45 and is below than those of the petitioners at the time when they were holding the said post.

9. The petitioners contend that, as on principle, they are not aggrieved by the order of 25.11.2016 as options were called for from other SJA at that time. The grievance arose by the subsequent action of issuing an order dated 10.09.2018 when the respondent no. 5 who was temporarily holding the post of Protocol Officer was appointed as Secretary to the HCJ on officiating basis. The learned counsel however submits that the same rider is also attached to the order dated 10.09.2018 that the respondent no. 5 shall maintain his seniority in his original cadre i.e. Senior Judicial Assistant and his further promotion will be made on that basis. Thereafter, vide the subsequent order dated 24.08.2020, the officiating arrangement of the respondent no. 5 as Secretary to the HCJ was regularized w.e.f., 04.07.2020.

10. Shri Patowary, learned counsel for the petitioners submits that appointment to the post of Secretary to the HCJ is a promotional post and cannot be made by way of regularizing an officiating arrangement. He submits that the concept of regularization of the post of Secretary to the HCJ is alien to the Rules of 1967. He further submits that not only the rights of the petitioners for a fair consideration for promotion to the rank of Secretary to the HCJ have been violated, the respondent no. 5 has been given undue favour both in appointing him as Secretary to the HCJ on officiating basis and regularizing the aforesaid arrangement. The learned counsel submits that the basic requirement to be beneficiary of such action is to be a member in the feeder cadre on

substantive basis. In the instant case, it is submitted that the respondent no. 5 is still in the substantive capacity of SJA as his promotion to the post of Protocol Officer was on temporary basis and from such temporary arrangement, the scope of further promotion would lead to a situation of lawlessness.

11. Shri Patowary, learned counsel for the petitioners submits that even otherwise, the impugned action cannot be sustained inasmuch as, both the orders dated 25.11.2016 and 10.09.2018 are conditional orders whereby a condition is attached that the seniority of the respondent no. 5 in his original cadre of SJA would be maintained and his further promotion would be considered on that basis.

12. In support of his submissions, Shri Patowary, learned counsel for the petitioners has placed reliance upon the following case laws-

i. 2000 (1) GLT 36 [Laishram Randhoni Devi Vs. Gauhati High Court and Ors.]

ii. (2011) 12 SCC 137 [Registrar General, High Court of Judicature of Madras Vs. R. Perachi and Ors.]

iii. (2011) 14 SCC 187 [State of West Bengal Vs. Debasish Mukherjee and Ors.]

13. This Court in the case of ***Laishram Randhoni Devi (supra)***, while dealing with Rules of 1967 had laid down that though Rule 63A confers powers to the HCJ to relax age or qualification for appointment to the service of the High Court in appropriate cases according to his discretion, such powers are to be exercised in a reasonable manner. The relevant part of the aforesaid judgment is extracted hereinbelow:

“8. ... The other point which is highlighted in the affidavit in opposition is that the Rule 63 and 63-A give wide powers to the Chief justice in this matter and in view of that the decision of the Chief Justice cannot be challenged. Let us have

a look at Rule 63 and 63-A which are quoted below:

63. ...

63-A...

The said power cannot be used by the Chief justice in an arbitrary or capricious manner and he cannot have one practice or procedure for one Outlying Bench and another norm for another Outlying Bench....

9. The Supreme Court considered the power of the Chief Justice under Article 229 of the Constitution in (1971) 2 SCC 137 {N. (sic.M) Gurumoorthy-Vs-Accountant General}, (1989) 4 SCC 187 {Supreme Court employees' Welfare Association-Vs-Union of India} and (1997) 5 SCC 1 {The State of u. P.-Vs-C. L Agarwal}. No doubt that the Chief Justice has the overall power to deal with his employees in the manner as provided by the Rules, but the discretion cannot be according to the length of the foot of the Chancellor. It cannot be allowed that one Chief Justice will take one view and another will set it at naught. This may amount to unreasonable exercise of power and may even amount to discrimination."

14. The case of ***R. Perachi (supra)***, is in connection with Article 235 of the Constitution of India wherein it has been held that the expression "control" of the High Court over the Subordinate Courts is of comprehensive sense and includes the control of Superintendence over the Subordinate Courts and the persons manning them, both on the judicial and the administrative side.

15. In the case of ***Debasish Mukherjee (supra)***, the issue is with regard to higher pay scales conferred to a particular employee of the Calcutta High Court. The Hon'ble Supreme Court, in clear terms has laid down that though in orders of such nature the scope of judicial review may be narrow and limited, there is no doubt that such orders are justiciable. For ready reference, the relevant paragraphs are extracted hereinbelow:

“36. The fact that in regard to certain types of action or orders of Chief Justice, the scope of judicial review may be very narrow and limited is different from saying that an order of the Chief Justice granting certain relief to High Court employees whose service conditions are governed by Rules, is not justiciable. Such orders are justiciable.

...

...

44. It is therefore clear that the Chief Justice has the power and authority to grant premature increments in exceptional circumstances. But the Chief Justice cannot grant such relief in an irrational or arbitrary manner. If the Rules provide that premature increments could be granted in exceptional circumstances, there should be a reference to the existence of exceptional circumstances and application of mind to those exceptional circumstances. When neither the recommendation considered by the Chief Justice nor the order of the Chief Justice referred to any exceptional circumstances and did not even refer to the Rule relating to grant of relief in exceptional circumstances, the question of assuming exceptional circumstances does not arise. The order dated 13.2.2003 is justiciable.”

16. *Per contra*, Shri Nair, learned Senior Counsel for the High Court submits that there is no illegality or irregularity in the impugned orders dated 10.09.2018 and 24.08.2020. Drawing the attention of this Court to the prayer made in the first writ petition WP(C)/1376/2019, it is submitted that it is the order dated 10.09.2018 by which the respondent no. 5 was made the Secretary to the HCJ on officiating basis which was under challenge along with another order pertaining to another incumbent, who was appointed as Protocol Officer. The said incumbent had however left the said post and the only challenge remaining was the order dated 10.09.2018. The learned Senior Counsel submits that the appointment of the respondent no. 5 as Protocol Officer vide order dated 25.11.2016 is however not under challenge. According to the

learned Senior Counsel, the said order is a substantive appointment.

17. The learned Senior Counsel for the High Court submits that Protocol Officer being one of the posts in the feeder cadre for promotion to the rank of the Secretary to the HCJ, there was no illegality in the order dated 10.09.2018.

18. As regards the submission of the petitioners that there was a pre-conceived notion to give the benefit of substantive appointment to the respondent no. 5, options were invited from SJA to fill up one vacant post of Protocol Officer, Shri Nair, the learned Senior Counsel submits that the notice dated 14.09.2018 was issued only to maintain transparency. The learned Senior Counsel however could not elaborate on the effect of the rider accompanying the order on officiating basis dated 10.09.2018.

19. The learned Senior Counsel for the High Court further submits that the Rules being silent on filling up of the post of Protocol Officer which however is to be regarded as a feeder cadre for the post of Secretary to the HCJ coupled with the fact that powers of relaxation have been conferred upon the HCJ, the orders impugned are not to be interfered with. The learned Senior Counsel has referred to Article 229 of the Constitution of India which gives the absolute power to the HCJ to make appointments. Reference has also been made to Section 63A as per which, the HCJ has the power to relax the qualification and eligibility in case of any appointment. He accordingly submits that the present writ petitions be dismissed. Shri MP Sarma, learned counsel assisting Shri Nair has produced the records in original pertaining to the present issue.

20. Shri KK Mahanta, the learned Senior Counsel for the respondent no. 5 has endorsed the submissions made on behalf of the High Court. The learned Senior Counsel concedes that the decision making process is of the High Court which has been ably defended and he is only supporting the said defence. At the same time, he submits that since the appointment of the respondent no. 5 is the subject matter of challenge, he would advance the necessary arguments against the writ petitions. At

the outset, Shri Mahanta, the learned Senior Counsel submits that the order dated 25.11.2016 of appointment of the respondent no. 5 as Protocol Officer is not under challenge. The said appointment, according to the respondent no. 5 is substantive appointment as along with the petitioners all eligible officers were considered. He further submits that it is not in dispute that the respondent no. 5 had served in the said capacity as Protocol Officer for more than two years. Therefore, there is no illegality in considering the case of regularization of the service of the respondent no. 5 to the exclusion of the others. While admitting that the respondent no. 5 is not a LLB degree holder, the learned Senior Counsel submits that Rule 63A of the Rules gives adequate powers to the HCJ to relax the Rules. He submits that when a discretionary power have been conferred upon an authority, the scope of judicial review should be minimal and therefore, both the writ petitions are required to be dismissed.

21. Shri Mahanta, the learned Senior Counsel for the respondent no. 5 has placed reliance upon the following case laws-

- i. (1971) 2 SCC 137 [M. Gurumoorthy Vs. Accountant-General, Assam and Nagaland and ors].***
- ii. (1979) 2 SCC 34 [Chief Justice of Andhra Pradesh and Ors. Vs. L.V.A. Dixitulu and Ors.]***
- iii. (1980) 4 SCC 226 [Baleshwar Dass and Ors. Vs. State of U.P. and Ors.]***
- iv. (1996) 7 SCC 37 [OS Singh and Anr. Vs. Union of India and Anr.]***
- v. (1998) 3 SCC 72 [High Court of Judicature for Rajasthan Vs. Ramesh Chand Paliwal and Anr.]***
- vi. (2000) 8 SCC 25 [Rudra Kumar Sain and Ors. Vs. Union of India and Ors.]***

vii. (2001) 1 SCC 637 [Ramesh K. Sharma and Anr. Vs. Rajasthan Civil Services and Ors.]

viii. 2021 SCC Online TS 1252 [K. Shailendra Moses Vs. State of Telangana]

22. In the case of **M. Gurumoorthy (supra)**, the issue was the interference of the Executive with the powers exercised by the HCJ under Article 229 of the Constitution of India. The said authority, perhaps would not be applicable to the facts of the instant case where a judicial review is sought for. Similar is the case of **Chief Justice of Andhra Pradesh (supra)** wherein the control over the Subordinate Judiciary vested in the High Court under Article 235 was also held to be exclusive in nature wherein, interference from the Executive is not warranted.

23. In the case of **Baleshwar Dass (supra)**, it has been held that if an incumbent was appointed substantively to a temporary or permanent post, he becomes a member of the Service. The touchstone is the *substantive capacity*. The said observation was made on completion of probation of an incumbent. However, in the instant case the respondent no. 5 was not appointed in substantive capacity.

24. In the case of **OS Singh (supra)**, the Hon'ble Supreme Court explained the distinction between substantive appointment and officiating appointment. It has further been held that since a person cannot be treated as officiating on a post after he has been substantively appointed on that post, the said expression cannot be construed as referring to the period of officiation subsequent to the date of substantive appointment. The facts of the instant case are however distinguishable as, at no point of time, the respondent no. 5 was substantively appointed either in the post of Protocol Officer or in the post of Secretary to the HCJ on officiating basis.

25. In the cases of **High Court of Judicature for Rajasthan (supra)**, and **Ramesh K. Sarma (supra)**, the Hon'ble Supreme Court had discussed regarding the High Courts' power under Articles 235 and 229 of the Constitution of India.

26. In the case of **Rudra Kumar Sain (supra)**, it has been laid down that to hold an appointment to be substantive in nature, though made as a stop-gap arrangement, the person should possess the requisite qualification. For ready reference, paragraph 20 of the judgment is extracted hereinbelow-

“20. In the Service Jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such appointment cannot be held to be "stop-gap or fortuitous or purely ad hoc".

It is seen that the essential requirement is to possess the requisite qualification which in the present is the degree of LLB.

27. In the case of **K. Sailendra Moses (supra)**, the Telangana High Court followed the law laid down by the Hon'ble Supreme Court in the cases of **OS Singh (supra)** and **RK Sain (supra)**.

28. In his reply, Shri Patowary, learned counsel for the petitioners submits that though the Rules holding the field give power to the HCJ to relax the qualification and criteria, he submits that such power needs to be exercised in a reasonable manner and only to overcome any difficulty or lacuna. The said power cannot be exercised to the prejudice of other eligible candidates. He submits that the respondent no. 5 is not an LLB degree holder which is an essential consideration and therefore, could not have come into the zone of consideration for promotion to the rank of Secretary to the HCJ.

29. To appreciate the issue involved, it would be appropriate to refer to the concerned Rule governing the appointment of the Secretary to the HCJ i.e. Rule 7(3A) of the Rules, 1967. The relevant extract is quoted hereinbelow-

“The Secretary to the Hon'ble Chief Justice shall be appointed from among the Gazetted Officers of the High Court's Services belong to Class-II(AA), Class-II(B) or Class-II(C), having a degree in Law, considered suitable by the Chief

Justice...”

30. An analysis of the Rule makes it apparent that the said appointment to the post of Secretary to the HCJ can be made on fulfillment of the following ingredients:

- i. From Gazette Officers of the High Court service
- ii. Such Gazette Officers should belong to Class-II(AA), Class-II(B) or Class-II(C).
- iii. The said Officer should have a degree in law.
- iv. This Officer has to be considered suitable by the HCJ.

31. The first three ingredients are objective in nature and only for the fourth ingredient namely, suitability, the element of subjective satisfaction would come in. There is also no dispute that the post of Protocol Officer belongs to Class-II(C). The aforesaid Rules are also to be read along with Rule 63A which gives discretion to the HCJ to relax the qualification for appointment. Rule 63A is quoted hereinbelow:

“The Chief Justice shall have powers to relax age or qualifications for appointment to the service of the High Court in appropriate cases according to his discretion.”

32. With the aforesaid backdrop of the concerned Rules and the interpretation thereof by various judicial pronouncements referred above, the records of the case which has been placed in original are required to be examined. The HCJ vide endorsement dated 04.09.2018 had recommended the name of the respondent no. 5, who was a Protocol Officer in Class-II(C) for appointment as the Secretary to the HCJ on officiating basis by endorsing the condition in the note that he will maintain seniority in his original cadre of SJA. Consequently, the notification dated 10.09.2018 was issued. The file further reveals that a subsequent exercise was done which was proposed vide a note dated 03.07.2020 on the issue of regularization of the post Secretary to the HCJ. The note also contains an observation that on an earlier

occasion, an incumbent was posted to the aforesaid post who did not have a degree in law and also that absolute discretion be given to the Chief Justice to appoint any suitable person to hold the post. The said note was approved by the HCJ on 04.07.2020. The approval was on the following considerations, which are required to be put on records:

“ORDER IN REFERENCE TO PRE-PAGE

Considering, (i) the consistently good work done by Mr. Nirod Sarma while attached with various Chief Justices as depicted from his ACR's;

(II) The efficiency, integrity, punctuality, dedication towards duties without taking break, knowledge of computer applications, thoroughness in performance of all tasks, searching judgments and preparing templates of judgments, quality of interaction with officers/officials within the institution and of other institutions, confidentiality maintained by him, his good and differential behaviour with the Registrars, as observed by me during his attachment as Secretary to the Chief Justice;

(iii) That Sri Sarma has attended office every single day of my tenure as Chief Justice of Gauhati High Court from 9.30 A.M., or earlier if required, till late night;

(iv) the earlier precedence of Sri Shailendra Choudhury;

(v) absolute discretion vested with the Chief Justice to appoint suitable person to hold the post of Secretary to the Chief Justice;

(vi) powers vested with the Chief Justice under Article 229 of the Constitution of India in this regard;

(vii) the law laid down by the Hon'ble Supreme Court of India as referred to in the note put up before me;

(viii) the fact that Mr. Sarma has been serving on temporary and officiating

basis as Secretary to Chief Justice of Gauhati High Court for the last over two years, and in case of such sensitive post ad-hocism is not good for managing and administering the Secretariat of the Chief Justice;

I hereby, by virtue of powers vested under Article 229 of the Constitution of India, read with Rule 63A of the Gauhati High Court Service Rules, 1967, exercise my discretion and relax the qualification for appointment to the post of Secretary to the Chief Justice, Gauhati High Court; and regularize the appointment of Sri Nirod Sarma as Secretary to the Chief Justice, Gauhati High Court.

CHIEF JUSTICE"

33. The aforesaid considerations in the opinion of this Court while exercising the powers under Rule 63A of the Rules cannot be termed to be adequate. Other than merely stating "the earlier precedence of Shri Shailendra Choudhury", there is absolutely no discussion regarding relaxation of the mandatory requirement of the incumbent to have an LLB degree. At this stage, the original records produced reveal that Shri Shailendra Choudhury, the earlier incumbent was a Class-II(B) Officer (Stenographer Stream) who was well versed with stenography and typing and this aspect played a very important role in his appointment as Secretary to the HCJ. As per the Rules, a post in Class-II(B) is a feeder post for the Secretary to the HCJ. In contradistinction, the respondent no. 5 does not possess any such qualification and therefore the case of Shailendra Choudhury could not have been cited as a precedent. There is absolutely no doubt in the mind of this Court that relaxation powers have been vested upon the HCJ for relaxing the age or qualification of an incumbent. But whether such discretionary power can be exercised to do away with an essential qualification is a debatable issue. However assuming that even a requirement which is mandatory in nature can be relaxed, there should be adequate discussion to show that there was application of mind to do away with such requirement. A perusal of the file

notings, however do not show any such application. As observed above, the case of Shri Shailendra Choudhury is not similar.

34. This Court is also of the opinion that the powers vested by Rule 63A, which is discretionary in nature, has to be exercised in a reasonable manner and for a situation of necessity. There was no dearth of eligible candidates in the feeder cadre having the requisite mandatory qualification to be considered for the post of Secretary to the HCJ. When there were a number of eligible candidates, there was no occasion at all to take recourse to the relaxation powers under Rule 63A to give a benefit to the respondent no. 5 who is otherwise not qualified to be appointed as the Secretary to the HCJ.

35. In course of his argument, the learned Senior Counsel for the High Court has drawn the attention of this Court to the averments made in paragraph 5 of the affidavit-in-opposition dated 29.03.2022, the said paragraph 5 is a reply to paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 of WP(C)/3845/2021. The said paragraph covers seven pages and there is no specific dealing with the averments and the replies are evasive in nature. Though towards the last part of the paragraph, the exercise of the discretionary powers by the HCJ have been tried to be incorporated, this Court finds force in the counter argument of Shri Patowary, learned counsel for the petitioners that the order has to stand on its own footing and cannot be improved by way of an affidavit. In this regard, reference may be made to the case of ***Mohinder Singh Gill & Anr. Vs. Chief Election Commissioner, New Delhi & Ors.***, reported in ***(1978) 1 SCC 405***, wherein the landmark case of ***Commissioner of Police, Bombay Vs. Gordhandas Bhanji***, reported in ***AIR 1952 SC 16*** was also relied upon. The following excerpts are of relevance and extracted herereinbelow:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the

reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. In Gordhandas Bhanji (AIR 1952 SC 16) (at p. 18):

"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older."

36. Another important factor which intrigues this Court is that the initial appointment of the respondent no. 5 as the Secretary to the HCJ on officiating basis vide order dated 04.09.2018 is itself clouded. In this connection, an argument was advanced on behalf of the High Court that since the respondent no. 5 was in the feeder cadre of Protocol Officer, there was no illegality in appointing him as the Secretary to the HCJ on officiating basis. This argument is not sustainable in view of the settled law that even for appointment on in-charge basis or officiating basis, the qualifications required cannot be done away with and the procedure laid down in the Rules has to be substantially followed.

37. An argument was sought to be advanced by Shri Nair, the learned Senior Counsel for the High Court that the order of appointment dated 25.11.2016 of the respondent no. 5 as Protocol Officer was substantive in nature. This argument however is difficult to be accepted in view of the rider attached to the order dated

25.11.2016 that the respondent no. 5 would maintain his seniority in his original cadre of SJA. If the promotion as Protocol Officer was made on substantive basis, the question of attaching such a rider to the promotion order dated 25.11.2016 would not have arisen.

38. The impugned action also appears not to be in consonance with law in view of the riders attached in both the orders dated 25.11.2016 and 10.09.2018. Vide the first order dated 25.11.2016, the respondent no. 5 was posted as a Protocol Officer and vide the second order dated 10.09.2018 he was appointed as the Secretary to the HCJ on officiating basis. Both the aforesaid orders had contained a clear rider to the following effect:

Shri Nirod Sarma shall maintain his seniority in his original cadre i.e. Senior Judicial Assistant and his further promotion will be considered / made on that basis.

39. The significance of the rider is that the arrangements were absolutely temporary where no right, whatsoever was conferred upon the respondent no. 5 either to continue as Protocol Officer or be considered for promotion to the rank of the Secretary to the HCJ.

40. This Court is fortified in being critical of the aspect of regularizing of the service of the respondent no. 5 as Secretary to the HCJ in view of the decision of the Hon'ble Supreme Court in the case of **(2006) 4 SCC 1 : [Secretary, State of Karnataka and Ors. Vs. Umadevi (3) and Ors.]**. The Hon'ble Supreme Court, in clear terms has laid down as follows:

“53. ... The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such

irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub-judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.”

However, in the instant case, none of the pre-conditions are seen to be fulfilled. The entry of the respondent no. 5 into the post of Secretary to the HCJ on officiating basis was not preceded by any discernible selection process, the incumbent was not in the feeder cadre in his substantive posting and he did not have the requisite qualification to hold the post on regular basis.

41. In view of the above, this Court is of the considered opinion that the impugned orders dated 10.09.2018 and 24.08.2020 by which the respondent no. 5 was first made the Secretary to the HCJ on officiating basis and subsequently regularized as such, are unsustainable in law and accordingly set aside. The respondent no. 5 is therefore required to be reverted back to the post of Protocol Officer if the High Court so desires or to his substantive post of Senior Judicial Assistant. To avoid causing of any prejudice to the respondent no. 5, it is provided that if the persons below the respondent no. 5 in the Gradation List are promoted to any higher post, the respondent no. 5 may also be considered for the same by giving retrospective effect so far as notional benefits are concerned.

42. Accordingly, both these writ petitions stand allowed.

43. The records of the case in original are returned back to Shri MP Sarma, the



learned counsel for the High Court.

44. No order as to cost.

JUDGE

Comparing Assistant