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

Case No.: WP(C)/1507/2026

SMT. POLLY KOCH
D/O LATE PHANIDHAR KOCH
R/O JAPORIGOG
P.O.- DISPUR
P.S.- DISPUR
DIST- KAMRUP (M)
PIN-781005
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM
LABOUR WELFARE DEPARTMENT
DISPUR
GUWAHATI-781006
ASSAM

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
LABOUR WELFARE DEPARTMENT
DISPUR
GUWAHATI-781006
ASSAM

3:THE PRESIDING OFFICER (I/C)
INDUSTRIAL TRIBUNAL
DIBRUGARH
PIN-786001
DIBRUGARH
ASSAM

4:THE PRESIDING OFFICER
LABOUR COURT

GUWAHATI
PIN-781001
GUWAHATI
ASSAM

5:BIDYUT KUMAR DAS
REGISTRAR
INDUSTRIAL TRIBUNAL
DIBRUGARH
DIST- DIBRUGARH
ASSAM
PIN-786001

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

For the Petitioner(s) : Mr. M. K. Choudhury, Sr. Advocate
Mr. M. Sarmah, Advocate

For the Respondent(s) : Mr. M. Chetia, Govt. Advocate
Mr. S. Dutta, Sr. Advocate
Mr. P. Sengupta, Advocate
Mr. H. K. Das, SC, GHC
Mr. N. K. Sarmah, Advocate

Date on which judgment is reserved : NA

Date of pronouncement of judgment : 25.06.2026

Whether the pronouncement is of the
Operative part of the judgment? : Yes

Whether the full judgment has been
Pronounced? : Yes

JUDGMENT AND ORDER (ORAL)

Heard Mr. M. K. Choudhury, the learned Senior Counsel assisted by Mr. M. Sarmah, the learned counsel for the Petitioner.

Mr. M. Chetia, the learned counsel appears on behalf of the Labour Department of the Government of Assam; Mr. S. Dutta, the learned Senior Counsel assisted by Mr. P. Sengupta, the learned counsel appears on behalf of the Respondent No.5.

2. The writ petition has been filed by the Petitioner being aggrieved that the Notification dated 11.03.2026 whereby the writ Petitioner was transferred from the post of Registrar, Labour Court, Guwahati to the post of Registrar, Industrial Tribunal, Dibrugarh and the Respondent No.5 was transferred from the post of Registrar, Industrial Tribunal, Dibrugarh to the post of Registrar, Labour Court, Guwahati. The contents of the said impugned Notification being relevant, is reproduced herein under:-

"GOVERNMENT OF ASSAM
LABOUR WELFARE DEPARTMENT
DISPUR ::: GUWAHATI-6
Block-D, Third Floor, Janata Bhawan; e-mail id: labourwelfaredept@gmail.com
ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Dispur the 11th March 2026

***ECF No. 651294/69** : In compliance of the Hon'ble Gauhati High Court Single Judge Bench Order dated 2.12.2025 in WP(C) No. 3585/2025 read with Division Bench Order dated 18.12.2025 in WA/409/2025 and in the interest of public Service, Ms Polly Koch, Registrar, Labour Court, Guwahati is hereby transferred and posted as Registrar, Industrial Tribunal, Dibrugarh with immediate effect.*

***ECF No. 651294/70:** In compliance of the Hon'ble Gauhati High Court Single Judge Bench Order dated 2.12.2025 in WP(C) No. 3585/2025 read with Division Bench Order*

dated 18.12.2025 in WA/409/2025 and in the interest of public Service Shri Bidyut Kumar Das, Registrar, Industrial Tribunal, Dibrugarh is transferred and posted as Registrar Labour Court, Guwahati with immediate effect.

Further, Ms Polly Koch, Registrar, Labour Court, Guwahati and Shri Bidyut Kumar Das, Registrar, Industrial Tribunal, Dibrugarh are hereby stand released to enable their joining against their new places of posting. They are directed to join their new places of posting on or before 15.3.2026.

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GYANENDRA DEV TRIPATHI
Date: 11-03-2026 13:43:13

Principal Secretary to the Govt. of Assam,
Labour Welfare Department"

3. A perusal of the above quoted Notification would show that the said Notification was issued in compliance to the order dated 02.12.2025 passed in WP(C) No. 3585/2025 read with the Division Bench order dated 18.12.2025 in Writ Appeal No.409/2025 and further uses the expression, "in the interest of public service". It is under such circumstances necessary for detailing out of the facts which led to the passing of the order dated 02.12.2025 in WP(C) No.3585/2025 as well as the order passed by the learned Division Bench of this Court dated 18.12.2025 in WA No.409/2025.

4. The records more particularly the order dated 02.12.2025 passed in WP(C) No.3585/2025 show that the Respondent No.5 herein had submitted a representation expressing personal

hardship relating to his ailing mother and child, and therefore, sought for transfer to Guwahati. The said representation so submitted by the Respondent No.5 was examined by the Authorities and was approved on 06.06.2025 at 8.04 PM by the Additional Chief Secretary. Subsequent thereto, the concerned Minister of the Department granted the approval on 13.06.2025 by putting his digital signature at 6.03 PM. Thereupon, the transfer order was passed on 20.06.2025.

5. The said transfer order dated 20.06.2025 was challenged in WP(C) No.3585/2025 by the Petitioner herein on the ground that the said transfer order was not in the interest of public service.

6. The learned Coordinate Bench of this Court while passing the order dated 02.12.2025 not only took into account the respective pleadings, but also took note of the records which were placed before the learned Coordinate Bench. This aspect could be seen from a reading of paragraph Nos.9, 10, 11 & 12 of the order dated 02.12.2025 which is reproduced herein under:-

> "*9. Learned counsel for the parties have been heard and pleadings available on record have been carefully perused. Judgments pressed into service have also been carefully noted. The records pertaining to the order of transfer upon being directed to be placed are also placed before the Court.*
>
> *10. Having perused the records, it is seen that the initiation of*

transfer was on the basis of a representation issued, submitted by the private respondent No. 3, expressing personal hardships relating to his ailing mother and his child. His ailing mother is in Nagaon and, therefore, transfer to Guwahati will necessarily ameliorate his grievances. The petitioner, on the other hand, pursuant to the issuance of the transfer order also represented before the authorities praying for recall of the transfer order.

11. A careful perusal of the extract of the records placed before the Court, including the note sheets, reflect that the representation of the respondent no.3 was examined in detail and was put up for necessary orders by the higher authorities. Subsequently, the higher authorities approved the order. It is shown to be digitally signed on 06-06-2025 at 08.04 pm by the Additional Chief Secretary. Subsequent endorsement, bearing the digital signature of the concerned Minister of the Department, was obtained on 13-06-2025 shown to be digitally signed at 06.03 pm. Thereafter, steps were taken to issue the transfer order and subsequently, on 20-06-2025, the transfer order was issued.

12. A perusal of the note sheets and the accompanying documents available in the extract of the records placed before the Court does not reflect any reasons from the authorities which will support the contention of the respondent Authorities that the transfer order dated 20-06-2025 was issued in exigencies of service or because of administrative reasons. The entire proposal was based on the request made by the private respondent no.3 which came to be approved and the transfer order was issued. The records also do not

reflect any reference to any provision of the Rules or any office Memorandum or notification which lays down the parameters of transfer."

7. The learned Coordinate Bench further taking into account the settled principles of law, came to a categorical finding that the impugned transfer order was not issued in public interest. This aspect would appear from paragraph Nos.20, 21 and 22 of the order dated 02.12.2025, which is reproduced herein under:-

"*20. From the judgments referred above, it is clear that for malice in law to be attributed, it is not enough to show that the person acted ignorantly or innocently. So where any act is done in contravention of law or without sufficient reasons, in support of such actions, then such action can be treated to be malice in law and it need not be specifically alleged. It can be inferred by a Court from the facts and circumstances of the case.*

21. Under such circumstances, while this Court does not dispute with the proposition that transfer is an incident of service and ordinarily interference with transfer orders ought not to be encouraged in judicial review, the peculiar facts which have been placed before the Court reveal that the impugned transfer order dated 20-06-2025 is not a transfer order issued in public interest. Such interpretation cannot be given to a transfer order which was issued or initiated on the basis of a request made by the individual Officer. Ordinarily, when a transfer order is made on request, the seniority of the person concerned at the place of posting where the

choice is indicated, if such a seniority list is maintained, is normally at the bottom of such seniority list although such is not case here. The facts remains that the reasons placed before the Court by the Department do not inspire confidence to return a finding that the impugned transfer order dated 20-06-2025 was issued in public interest/public service.

22. Accordingly, the writ petition stands allowed. Impugned transfer order dated 20-06-2025 stands interfered with and set aside. Concerned Department shall pass consequential order forthwith."

8. On the basis of the above conclusions, the learned Coordinate Bench of this Court interfered with the transfer order and directed the Respondent Authorities to pass consequential orders forthwith. This direction for passing consequential orders forthwith is relevant when this Court would deal with the directions which have been passed by the learned Division Bench of this Court in the order dated 18.12.2025.

9. The records reveal that being aggrieved, the Respondent No.5 preferred a Writ Appeal against the order dated 02.12.2025. The said Writ Appeal was registered and numbered WA No.409/2025. The learned Division Bench of this Court categorically observed that vide the impugned order, i.e. the order dated 02.12.2025, a fresh order of transfer was required to be passed accommodating both the Appellants (the Respondent

No. 5 herein) and the Respondent No.1 (the Petitioner herein), and as such, directed that such an order be passed notwithstanding the pendency of the Appeal.

10. In the above context, let this Court now analyze the Notification dated 11.03.2026. The transfer order dated 20.06.2025 was interfered by the learned Coordinate Bench of this Court vide the order dated 02.12.2025. While interfering with the said transfer order dated 20.06.2025, the learned Coordinate Bench further made it clear that there would be a necessity of passing consequential directions, which meant that the specific administrative orders have now to be issued in view of the interference with the transfer order dated 20.06.2025. The learned Division Bench of this Court neither did stay the directions so passed in the order dated 02.12.2025, rather made it explicitly clear that as the learned Coordinate Bench of this Court had directed for passing of consequential order, such order be passed irrespective of the pendency of the Appeal.

11. In the above context, if this Court now takes note of the Notification dated 11.03.2026 which is impugned in the instant proceedings, it is surprising and shocking to take note of that the Principal Secretary to the Government of Assam, Labour Welfare Department failed to appreciate the directions passed in the order dated 02.12.2025 as well as, the direction passed by the

learned Division Bench dated 18.12.2025. Though it is mentioned in the impugned Notification that it is in compliance to the directions passed by the learned Coordinate Bench in the order dated 02.12.2025 as well as the learned Division Bench dated 18.12.2025, but on the other hand, it again reiterates the transfer order dated 20.06.2025. The impugned Notification in the opinion of this Court, is contrary to the directions passed in the order dated 02.12.2025 by the learned Coordinate Bench as well as the order passed by the learned Division Bench dated 18.12.2025. Rather, it is in violation to the directions passed by this Court.

12. The directions which were passed by the learned Coordinate Bench as well as the learned Division Bench were explicitly clear and the impugned Notification which has been passed by the Principal Secretary to the Government of Assam, Labour Welfare Department is on the face of it transgresses upon the directions.

13. Consequently, it is therefore the opinion of this Court that the impugned Notification dated 11.03.2026 cannot be sustained in law.

14. This Court finds it relevant to take note of another aspect which touches on the jurisdiction of the Labour Department to

even issue the impugned Notification. The Labour Courts as well as the Industrial Tribunals come within the ambit of Subordinate Courts as mentioned in Chapter VI of Part VI of the Constitution. As the Industrial Tribunals and the Labour Courts are construed by settled principles of law to be Subordinate Courts and this aspect is duly recognized aspect, it is difficult to comprehend how the Labour Department could have at all exercised the jurisdiction to issue the transfer Notification without taking into consideration Article 235 of the Constitution. It is only the Gauhati High Court in exercise of powers under Article 235 of the Constitution who would have the control in respect to posting of the persons belonging to the judicial service which include the Officers and Ministerial Staff of the Labour Court/Industrial Tribunal. The impugned Notification on the face of it was without jurisdiction. In this regard, this Court finds it relevant to take note of the judgment of this Court in the case of ***Dilip Kumar Devasarma vs. State of Assam & Ors.,*** reported in ***2026: GAU-AS:7158*** wherein this Court held that the post of the Registrar, Industrial Tribunals/Labour Courts would come within the ambit of officers and staff of the Subordinate Courts and therefore under the control of the Gauhati High Court in terms with Article 235 of the Constitution. Paragraph Nos.64, 65 and 74(B) and 74(C) being relevant are quoted herein below:-

64. From the above quoted paragraphs, it is clear that the Labour Courts and Industrial Tribunals come within the ambit of Article 235 of the Constitution. Now applying the principles laid down by the Supreme Court in the case of R. Perachi (supra) and R. M. Gujjar (supra), the ministerial staff would come within the preview of Article 235 of the Constitution.

This position is duly admitted by the State of Assam as would be seen from the communications dated 01.02.2006 and 23.08.2006, issued by the concerned officials of the State of Assam. It is also apposite to observe that the communications dated 18.12.2010 and 12.01.2011 read with the Notification dated 30.07.2012 also clearly indicate that the State of Assam had all along held that the Labour Courts and Industrial Tribunals are Subordinate Courts and had bestowed the benefits arising out of the Shetty Commission recommendations w.e.f. 01.04.2003 upon all ministerial officers and staff of the Labour Courts/Industrial Tribunals except the post of the Registrar.

65. The above analysis would therefore show that not only the Presiding Officers of the Labour Courts/ Industrial Tribunals but also the ministerial officers and staff would come under the control of the Gauhati High Court. This would include the post of the Registrar of the Labour Court/Industrial Tribunal in the State of Assam. In this regard, it is relevant to take note of the Resolution No. 5 of the Minutes of the Meeting dated 05.10.2012 of the Committee constituted by the Hon'ble Chief Justice for consideration of the Shetty Commission's recommendations on revision of pay scale etc.

of the Subordinate Courts staff of Assam wherein it was recommended that the post of the Registrar of the Industrial Tribunal/Labour Court should be granted the same Scale of Pay to that of the Sheristadar/Chief Administrative Officer of the establishment of the District Judges.

It is the opinion of this Court that as the Gauhati High Court has the absolute control vested upon it by Article 235 of the Constitution over the Subordinate Courts which includes the Ministerial officers and staff of the Labour Courts/Industrial Tribunals, it is only the Gauhati High Court on the administrative side who would be the competent authority to decide on the aspect pertaining to parity of employment and status of the post vis-a-vis another post both falling within the 'Subordinate Courts'. Neither the Finance Department nor the Assam Pay Commission can decide the said aspect. The aforesaid opinion of this Court finds support from the opinion expressed by the learned Division Bench of the Gujarat High Court, in the case of Industrial Courts Employees Association (supra) and more particularly, paragraph No. 10 which is quoted hereinbelow:-

> *"10. After the aforesaid decision of the Supreme Court, there is no scope of any further argument that the Labour and the Industrial Court would not constitute part of the judicial services. Thus, the labour and the industrial courts functioning within the State are all District Courts and consequently, the non-judicial staffs attached to those labour and industrial courts are the staffs of the District Court under the*

Supervision of the principal judge of the Industrial Court. Thus, their appointment and service shall also under the control of the High Court like other staff of the District Courts."

Under such circumstances, the rejection of the proposal which was made on the basis of the Resolution No. 5 of the Minutes of the Meeting dated 05.10.2022 by the Finance Department of the Government of Assam lacked competence and can be termed as an act of arbitrariness which violates the mandate of Article 14 of the Constitution.

74. (B) The non-judicial officers and staff of the Labour Courts/Industrial Tribunals in the State of Assam which includes the post of the Registrar, Industrial Tribunals/Labour Courts would come within the ambit of officers and staff of the Subordinate Courts and therefore under the control of the Gauhati High Court in terms with Article 235 of the Constitution.

(C) The post of the Registrar, Labour Courts/Industrial Tribunals would come under the control vested upon the Gauhati High Court under Article 235 of the Constitution irrespective of the fact that the person is appointed by the Judicial Department or the Labour Department."

15. Accordingly, the instant writ petition stands disposed of with the following observations and directions:-

(i) The impugned notification dated 11.03.2026 is contrary to the directions passed by the learned Coordinate Bench of

this Court dated 02.12.2025, passed in WP(C) No.3585/2025 as well as the order passed by the learned Division Bench dated 18.12.2025 passed in WA No.409/2025, and as such, the same is set aside and quashed.

(ii) This Court further observes and declares that the Petitioner herein (i.e. Smt. Polly Koch) would be deemed to be posted as the Registrar, Labour Court Guwahati and the Respondent No.5 shall be deemed to be posted as Registrar, Industrial Tribunal, Dibrugarh in view of setting aside and quashing the Notification dated 11.03.2026.

(iii) The power exercised by the Labour Department to transfer the Petitioner and the Respondent No.5 vide the impugned Notification dated 11.03.2026 and the earlier Notification dated 20.06.2025 were contrary to Article 235 of the Constitution and as such without jurisdiction and authority of law.

(iv) There shall be no order as to costs.

JUDGE

Pradip Kumar Kalita
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Date: 2026.06.26 11:26:44 +05'30'
Comparing Assistant