

GAHC010018842022



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

Case No. : WP(C)/781/2022

CHANDAN JYOTI DEKA
S/O- TILAK CHANDRA DEKA, R/O- NORTH GUWAHATI, MADHYAM
KHANDA, P.O. AND P.S. NORTH GUWAHATI, PIN- 781030.

VERSUS

THE ASSAM STATE COMMISSION FOR WOMEN AND 2 ORS.
ASCU, BELTOLA, MAIDAMGAON, GAUHATI-28.

2:THE COMMISSIONER
LAC
ASCW

BELTOLA
MAIDAMGAON
GAUHATI-28

3:JAHNABI DAS
C/O- CHANDAN JYOTI DEKA
R/O- MADHYAM KHANDA
P.S. NORTH GUWAHATI
P.O. NORTH GUWAHATI
DIST.- KAMRUP(M)
ASSA

Advocate for the Petitioner : MR S BORTHAKUR

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

10.02.2022

Heard Mr. S. Borthakur, learned counsel for the petitioner.

The petitioner has approached this Court by this writ petition under Article 226 of the Constitution of India assailing an order dated 18.12.2021 passed by the Assam State Commission for Women in ASCW Case no. 53/2021.

Mr. Borthakur, learned counsel for the petitioner has submitted that by the said impugned order dated 18.12.2021, the respondent no. 1 i.e. the Assam State Commission for Women [‘the ASCW’ and/or ‘the Commission’, for short] has directed the employer of the petitioner to deduct an amount of Rs. 10,000/- per month from the salary of the petitioner and to deposit the same in the bank account of the respondent no. 3. He has submitted that the respondent no. 3 is the wife of the petitioner with whom the marriage of the petitioner was solemnized on 21.04.2018. The Commission has directed the petitioner to appear before it on 19.12.2021 for the purpose of hearing of the case, ASCW no. 53/021. He has further highlighted that the respondent no. 3 alleging cruelty, had already lodged a First Information Report [FIR] against the petitioner before the Officer In-Charge, North Gauhati Police Station and the same has been registered as North Gauhati Police Station Case no. 175/2021 for the offence under Section 498A, Indian Penal Code [IPC]. It is his submission that the Commission, a statutory body does, not have the authority and jurisdiction to pass an order of maintenance. It is a judicial forum who, either under the provisions of Section 125, Code of Criminal Procedure, 1973 [CrPC] or under the provisions of the Protection of Women from Domestic Violence Act, 2005, can pass such an order of maintenance. Thus, the impugned order dated 18.12.2021 passed by the Commission is void *ab initio*.

Issue notice, returnable on 14.03.2022.

The petitioner shall take steps for service of notice upon the respondent nos. 1, 2 and 3 by registered post with A/D within 3 [three] working days.

The Commission is a statutory body constituted under Section 3[1] of the Assam State

Commission for Women Act, 1994 [‘the Act, 1994’, for short]. Section 10 of the Act, 1994 has provided for the functions which can be performed by the Commission. There appears to be no provision therein which has clothed the Commission to pass an order for grant of maintenance, as has been passed by the impugned order dated 18.12.2021. *Prima facie* it appears to this Court that there is no authority and jurisdiction vested in the Commission to pass the impugned order dated 18.12.2021 directing pay an amount of Rs. 10,000/- as maintenance amount. In such view of the matter, the impugned order dated 18.12.2021 passed by the Commission is stayed until further orders.

List the case on 14.02.2022.

JUDGE

Comparing Assistant