

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(C) No.1124 of 2022

Nongthombam Sanaton, aged about 50 years, S/o N. Ibopishak Meitei, resident of Nongmeibung Ayangpalli, Porompat, P.O. & P.S. Porompat and District Imphal East, Manipur – 795005.

...Petitioner

-Versus-

1. The State of Manipur, through the Principal Secretary/Commissioner/Secretary, (Revenue Department), Govt. of Manipur, Imphal West District, Manipur -795001.
2. The Under Secretary (Revenue), Govt. of Manipur, Secretariat Building, Babupara, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.
3. T. Nandakumar Singh, UDC, LA/Sub-Registrar, office address – SDO Office Moirang, P.O. Moirang, P.S. Moirang, Bishnupur District, Manipur – 795133.

...Respondents

JUDGMENT AND ORDER
(CAV)

This writ petition has been filed by the petitioner to quash the impugned order dated 26.12.2022 and to direct the respondents to allow the petitioner to continue to work at LA/SDC(HQ)/SDC office, Lamsang.

2. The case of the petitioner is that the petitioner was initially appointed as Process Server in the Revenue Department on 10.6.1996. While he was serving as look after SDC/Sub-Registrar (Zilladar) at the office of the SDO, Porompat, the petitioner was transferred to the office of LA/Sub-Registrar, Thoubal vide order dated 7.1.2021. Subsequently, five transfer orders were issued in respect of the petitioner and vide impugned order dated 26.12.2022, the petitioner was transferred and posted at SDO office, Moirang as LA/Sub-

Registrar/SDC(HQ) merely two months after he was last transferred. Challenging the impugned order, the petitioner has filed the present writ petition.

3. The respondents 1 and 2 filed affidavit-in-opposition stating that the impugned transfer order was issued mainly on the criteria of having thorough knowledge and experience of National Generic Document Registration System (NGDRS), which was made mandatory in the valley districts of Manipur vide notification dated 4.11.2022 of the Revenue Department. There is no malafide on the part of the State authority in issuing the impugned transfer order and it was issued for effective implementation of NGDRS as the private respondent is more experienced in respect of the same and on the other hand, the petitioner is less experienced in order to start the operation of NGDRS in Lamsang Sub-Division, which has a large territorial jurisdiction. It is stated that the impugned transfer order was issued with the approval of the Hon'ble Chief Minister of Manipur with an objective for implementation of NGDRS in larger public interest. The department has never violated any rules or transfer policy. Hence, prayed for dismissal of the writ petition.

4. Assailing the impugned transfer order, the learned counsel for the petitioner submitted that barely two and half months from his previous transfer order dated 4.10.2022, the impugned transfer order dated 26.12.2022 came to be passed, which is in gross violation of all extant norms, rules and regulations, more particularly, it is in clear violation of the transfer policy of the State issued under notification dated 12.5.2022.

5. Mr. Anjan Prasad Sahu, the learned counsel further submitted that the official respondents claimed that the transfer order had taken place due to the position in Lamsang requiring an expert in NGDRS which the petitioner has not equipped to handle. However, no documents have been submitted that the third respondent who was chosen to take over the charge from the petitioner in Lamsang is an expert in NGDRS.

6. According to Mr. Anjan Prasad Sahu, the learned counsel for the petitioner, Lansang consists of only two Assembly Constituencies, whereas Moirang consists of three Assembly Constituencies. The question of transferring the petitioner from an area with smaller territorial jurisdiction

(Lamsang) to an area with a larger territorial jurisdiction (Moirang) vitiates the whole plea of the petitioner being a non-expert in the NGDRS.

7. Drawing this Court's attention to the notification dated 12.5.2022, the learned counsel for the petitioner submitted that the normal tenure of posting of an officer in a post will be minimum of one year and six months and maximum of three years in a place of posting and no transfer may be effected unless the concerned employee has completed one year and six months in a post, unless there are compelling reasons to do so.

8. Adding further, the learned counsel for the petitioner submitted that the only reason the petitioner had been patiently going to the last four places of posting every single time without any complaints is because of the petitioner's firm belief on the sanctity of administrative exigency and incidence of service that every Government employee has to abide by. But the impugned order has been the last nail on the coffin, as the petitioner has barely had time to acclimatize in the position, he was charged with in Lamsang. In fact, the impugned transfer order has been passed in order to favour the third respondent

and not in public interest. The fact also remains that the third respondent has been in the same office for the past 20 years previously as LDC upto 2021. Even the third respondent's previous antecedent of having been accused of selling an agricultural land without the owner's consent is a concealed fact and is now facing the case. In support, the learned counsel for the petitioner placed reliance upon the following decisions:

- (i) *B.Varadha Rao v. State of Karnataka and others, (1986) 4 SCC 131.***
- (ii) *Prasanna Kumar Nath v. State of Assam and others, 2005 (3) GauLR 269.***
- (iii) *Thounaojam Jamini Devi v. State of Manipur and others, 2019 (3) GLT (MN) 78.***

9. Per contra, Mr. H. Debendra, the learned Deputy Advocate General for the respondents 1 and 2 submitted that the reason/justification for transfer of Government employees are not similar and the transfer and posting of the third respondent at the office of the SDO, Lamsang was done in exigency of service for effective implementation of NGDRS and there is no malafide in the impugned transfer.

10. The learned Deputy Advocate General further submitted that the transfer was proceeded after due consideration and by executing the power of relaxation issued in Government transfer notification dated 12.5.2022 because of exigency of service for effective implementation of NGDRS. The third respondent is having thorough knowledge and experience of NGDRS and because of his expertise, NGDRS was effectively implemented in Moirang Sub Division of Bishnupur District.

11. Mr. A. Romenkumar, the learned senior counsel for the third respondent submitted that in order to meet the urgent requirements, the third respondent has been posted in the place of the petitioner in public interest, more particularly, in order to carry out and implement the decision of the State Government for registration through the NGDRS. Only the official who is trained and expert in the subject is required to be posted in the office of the SDO/Lamsang in the rank of LA/Sub-Registrar/SDC(HQ), SDC office, Lamsang.

12. The learned senior counsel further submitted that the impugned transfer order was not issued under the pressure of the third respondent and the same was issued in an

administrative exigency and in public interest to implement the scheme, which cannot be questioned by the petitioner. Thus, a prayer has been made to dismiss the writ petition. In support, the learned senior counsel for the third respondent placed reliance upon the following decisions:

- (i) Chief Commercial Manager, South Central Railway, Secunderabad and others v. G.Ratnam and others, (2007) 8 SCC 212.**
- (ii) Dr. Nagorao Shivaji Chavan v. Dr. Sunil Purushottam Bhamre and others, AIR 2019 SC 189.**
- (iii) Bobby Laishram v. State of Manipur and others, 2022 (1) MnLJ 249.**
- (iv) Thanglemsang Khongsai v. Union of India and others, 2022 (2) MnLJ 384.**

13. This Court considered the rival submissions and also perused the materials available on record.

14. The petitioner assails the impugned transfer order mainly on the ground that two months after his earlier transfer, the impugned order has been passed, which is in clear violation

of the rule made by the Government of Manipur. It is also the plea of the petitioner that the transfer had taken place not once but five times already and on the face of it, the impugned transfer order is clearly illegal and void *abi-initio*.

15. Coming to the merits of the impugned transfer, the petitioner contends that there is no document to support the third respondent's expertise in NGDRS and in fact, he is facing legal action based on the complaint lodged by one Ningthoujam Laphoijao Singh that the third respondent conspired to commit wrong deeds by selling the property of the complainant being gift deed No.70, Tairenpokpi area of .62 acres.

16. On the other hand, the plea of the respondents 1 and 2 is that there is no malafide on the part of the State authority in issuing the impugned transfer and it was issued for effective implementation of NGDRS as the third respondent is more experienced in respect of the same and on the other hand, the petitioner is less experienced in order to start the operation of NGDRS in Lamsang Sub-Division, which has a large territorial jurisdiction.

17. First of all, the petitioner being a Government employee ought to understand the fact that transfer is an

incidence of service and no employee has any right to be posted at a particular place. According to the official respondents, the criteria of having thorough knowledge and experience of NGDRS is mandatory in the valley districts of Manipur and the petitioner is less experienced than the third respondent to start the operation of NGDRS in Lamsang Sub Division. When that being the ground for transferring the petitioner from the office of the SDO, Lamsang to the office of the SDO, Moirang, the plea of the petitioner that Lamsang consists only two Assembly Constituencies whereas the Moirang is a larger territorial jurisdiction consisting three Assembly Constituencies cannot be ground to invalidate the impugned transfer order. On the face of it, the impugned transfer is made in public interest.

18. Though the petitioner contends that as per the Policy for Transfer and Posting of Government Employees of the State of Manipur, the normal tenure of posting of an employee in a post will be minimum one year and six months and maximum of three years in a place of posting and no transfer may be effected unless the concerned employee has completed one year and six months in a post, the said Transfer Policy dated 12.5.2022 stipulates relaxation clause, which reads thus:

“V. Power to relax: Notwithstanding anything contained in the policy, the State Government, with the prior approval of the Chief Minister, Manipur shall be competent to transfer an employee to any place in relaxation of any or all of the above provisions after recording reasons justifying such relaxation.

No transfer and posting which is contrary to this Policy shall be made by any Department without the approval of the Chief Minister, Manipur.”

19. In the case on hand, the official respondents submitted that the impugned transfer order was issued with the prior approval of the Hon’ble Chief Minister with the object of implementation of NGDRS in larger public interest. Nothing has been produced by the petitioner to show that the impugned transfer is made without the approval of the Hon’ble Chief Minister.

20. In the decision relied upon by the learned counsel for the petitioner in the case of *B.Varadha Rao* (supra), the Hon’ble Supreme Court held that if the power is exercised mala fide, then obviously the order of transfer is liable to be struck down. In the case on hand, nothing has been produced by the

petitioner to show that the impugned transfer order was issued in exercise of malafide power.

21. The next decision relied upon by the learned counsel for the petitioner is in the case of *Prasanna Kumar Natha* (supra). The said case deals with the transfer order issued as per the desire of a particular MLA and having found that the order impugned therein is not based on any bonafide exercise of power involving any public interest but the same was issued as per the desire of the particular MLA, the Gauhati High Court set aside the order of transfer. As stated supra, in the present case, the transfer was made in public interest qua for implementation of NGDRS in Lamsang Sub-Division.

22. The next decision relied upon by the learned counsel for the petitioner is in the case of *Thounaojam Jamini Devi* (supra). The ultimate decision of this Court in the said case is that the petitioner therein does not accrue any legal right to question the transfer order and the transfer order dated 8.3.2019 was issued in public interest. In the facts and circumstances of the case, the decision in *Thounaojam Jamini* (supra) is not applicable to the case of the petitioner.

23. In *G.Ratnam* (supra) relied upon by the learned senior counsel for the third respondent, the Hon'ble Supreme Court held as under:

"20. It is well settled that the Central Government or the State Government can give administrative instructions to its servants how to act in certain circumstances; but that will not make such instructions statutory rules which are justiciable in certain circumstances. In order that such executive instructions have the force of statutory rules, it must be shown that they have been issued either under the authority conferred on the Central Government or the State Government by some statute or under some provision of the Constitution providing therefor. Therefore, even if there has been any breach of such executive instructions that does not confer any right on any member of the public to ask for a writ against the Government by a petition under Article 226 of the Constitution of India."

24. In *Dr. Nagorao Shivaji Chavan* (supra), the Hon'ble Supreme Court held:

"12. Notwithstanding the provisions contained in Section 3 which uses the expression that "ordinarily the tenure is three years", in our opinion in exceptional circumstances in a given case, or in the

case of administrative exigencies, transfer is permissible, and no absolute bar on transfer is created by virtue of the provisions contained in Section 3 read with Section 4. In the facts and circumstances of the case and also considering the past record of Respondent 1 of not joining the place where he was transferred for five years, no interference with the order of transfer is called for."

25. In *Bobby Laishram* (supra), this Court held:

"34. It is well settled that matters of transfers are best left to the discretion of the competent authority and should not be tinkered with, in the absence of a demonstrable violation of statutory rules, or an instance of mala fide on the part of the competent authority. In the case on hand, the respondent authorities have satisfactorily explained the reason for issuing the transfer and posting order to the petitioner."

26. In *Thanglemsang Khongsai* (supra), this Court held:

"[14] Admittedly, the order of transfer does not adversely affect the status or emoluments or seniority of the petitioner. The petitioner has no vested right to get a posting at a place of his choice. It is for the respondent authorities to

determine at which place and for how long the services of a particular employee are required. The transfer order has been passed considering the administrative exigency and not arbitrarily or for extraneous consideration or for victimization of the petitioner.”

27. The Government servant holding a transferable post has no vested right to remain posted at one place or other, and he/she is liable to be transferred from one place to another. Even if a transfer order is passed in violation of the executive instructions or orders, the Courts ordinarily should not interfere with the said order. It is for the authorities to determine at which place and for how long the services of a particular employee are required.

28. In the case on hand, the reason for transferring the petitioner to Moirang has been clearly spelt out by the official respondents. Further, the transfer of the third respondent to Lamsang Sub Division is mainly for effective implementation of NGDRS scheme. The matters of transfers are best left to the discretion of the competent authority and should not be tinkered with in the absence of a demonstrable violation of statutory rules or an instance of malafide on the part of the competent

authority. Merely because the petitioner was transferred five times before the impugned transfer, it cannot be contended that the impugned transfer order was issued in malafide exercise of power. Therefore, this Court finds no infirmity in the impugned transfer order. Accordingly, the writ petition fails.

29. In the result, the writ petition is dismissed. There will be no order as to costs.

ACTING CHIEF JUSTICE

FR/NFR

Sushil