

GAHC040004572020



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

Case No. : WP(C)/161/2020

Oni Taching
W/O SHRI TABOM TAGGU, R/O C SECTOR, ITANAGAR, PO/PS ITANAGAR,
DIST. PAPUM PARE, AP.

VERSUS

THE STATE OF AP AND 4 ORS.
REPRESENTED THROUGH THE CHIEF SECRETARY, GOVT. OF AP,
ITANAGAR.

2:THE SECRETARY Department of Tourism Government of Arunachal Pradesh,
itanagar
Age: 0
Occupation :

3:THE DIRECTOR Department of Tourism Government of Arunachal Pradesh,
itanagar
Age: 0
Occupation :

4:THE SECRETARY Department of Finance, Government of Arunachal Pradesh,
itanagar
Age: 0
Occupation :

5:PAPANG LADA LDC, Office of DTO(Tourism), Yingkiong, PO/PS Yingkiong
District Upper Siang, Arunachal Pradesh
Age: 0
Occupation

Advocate for the Petitioner : Lissing Perme
Advocate for the Respondent : GA (AP)

**BEFORE
HONBLE MR. JUSTICE NANI TAGIA**

ORDER

Date : 18.07.2023

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Heard Mr. Lissing Perme, learned counsel for the petitioner.

Also heard Mr. Ito Riram, learned Addl. Senior Government Advocate, appearing on behalf of respondents No. 1 & 4; and Mr. Nalo Pada, learned standing counsel, Tourism Department, Government of Arunachal Pradesh, appearing on behalf of respondents No. 2 & 3.

However, none has appeared on behalf of respondent No. 5 despite service of notice as indicated in the Office Note, dated 15.07.2023.

Though Mr. Pada, learned standing counsel, Tourism Department, Government of Arunachal Pradesh, has prayed for adjourning this matter for filing of an additional affidavit to bring on record that the petitioner is now working in the Secretariat and also on the ground that he does not have a copy of the affidavit-in-opposition which was earlier filed by the Government Advocate on behalf of the Department of Tourism, Government of Arunachal Pradesh, but, having regard to the nature of the issue raised in this petition; the writ petition is taken-up for disposal.

This writ petition is directed against the order, dated 16.06.2020, issued by the Secretary, Tourism, Government of Arunachal Pradesh, Itanagar, vide Memo. No. TOU(Estt)112/96, insofar as the petitioner and private respondent No. 5 are concerned; whereby, the petitioner who is an Assistant in the Directorate of Tourism,

Itanagar, has been transferred to the Office of the District Transport Officer(DTO), Upper Siang District, Yingkiong, along with her post and in her place, the respondent No. 5 who is a Lower Division Clerk(LDC) serving in the Office of the District Transport Officer(DTO), Upper Siang District, Yingkiong, has been brought in, by posting the respondent No. 5 at the Directorate of Tourism, Itanagar.

The contention of the writ petitioner is that she was appointed as an Assistant in the Directorate of Tourism, Itanagar, vide order, dated 19.08.2003, issued by the Secretary, Tourism, Government of Arunachal Pradesh, Itanagar, under Memo. No. TOU(Estt)130/03, which post was created by the State Government vide order, dated 12.07.1996 under Memo. No. TOU(Estt)88/95, whereby, one post of Assistant was specifically created for the Headquarter which is the Directorate of Tourism, Itanagar(annexed as Annexure-1 to the writ petition).

Though the order, dated 12.07.1996, whereby, it has been contended to have created one post of Assistant for the Headquarter by the State Government does not contain the author of the order; the respondents No. 2 & 3 in the counter affidavit filed, have, however, not denied that one post of Assistant was created by the order, dated 12.07.1996, specifically for the Headquarter which is the Directorate of Tourism, Itanagar.

In view of the above, the petitioner contends that since she has been appointed as an Assistant in the post which was specifically created for the Headquarter which is the Directorate of Tourism, Itanagar, vide order, dated 12.07.1996; she could not have been transferred to the Office of the District Transport Officer(DTO), Upper Siang District, Yingkiong, as an Assistant along with the post.

The respondent No. 3 has filed an affidavit-in-opposition wherein, in Paragraph No. 10 of the affidavit-in-opposition filed; it has been stated that for transfer of an employee along with the post to other district in the same Department, no policy decision is required since it is purely an executive and administrative matter and the Department can do so in public interest and administrative exigency.

Apart from stating as above, the respondent No. 3 in the affidavit-in-opposition filed, has not indicated the very basis as to how, by an executive decision; the executive can transfer the post created for a particular place to elsewhere along with the personnel manning the post.

In the absence of any explanation provided by the respondent authorities, the very basis, on which the post created for a particular place, can be transferred to elsewhere by the Government; I am inclined to accept the contention of the writ petitioner that the post created for a particular place cannot be transferred along with the personnel manning the post to any other place by the respondent authorities.

In the instant case; the writ petitioner is found to have been appointed as an Assistant on 19.08.2003 in the Directorate of Tourism, Government of Arunachal Pradesh, Itanagar, in a post which was created vide order, dated 12.07.1996, specifically for the Headquarter which is the Directorate of Tourism, Itanagar.

In that view of the matter; I am of the considered opinion that the petitioner could not have been transferred to the Office of the District Transport Officer(DTO), Upper Siang District, Yingkiong, along with the post of Assistant which was occupied by her in the Directorate of Tourism, Itanagar.

Accordingly, the impugned order, dated 16.06.2020, issued by the Secretary, Tourism, Government of Arunachal Pradesh, Itanagar, vide Memo. No. TOU(Estt)112/96, insofar as the writ petitioner and the private respondent No. 5 is concerned; is hereby set aside and quashed.

The writ petition stands disposed of in terms above.

JUDGE

Comparing Assistant