

GAHC040005292023



IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)
ITANAGAR PERMANENT BENCH:: YUPIA
WP(C)199(AP)2023

Shri Nyamo Rina, Son of Tunya Rina, aged about 56 years,
permanent resident of Telam Village, P.O /P.S. Telam,
Lower Siang District, Arunachal Pradesh. Phone No. 8413854520.

.....Petitioner

By Advocates:

Mr. Dicky Panging
Ms. Diana Tamuk
Mr. Marconi Doji
Mr. Doge Lona
Mr. Kirmar Ado

-Versus-

1. The State of Arunachal Pradesh represented by the Commissioner(Education), Government of Arunachal Pradesh Itanagar.
2. The Commissioner(Education), Government of Arunachal Pradesh Itanagar.
3. The Under Secretary(Education), Government of Arunachal Pradesh Itanagar.
4. The Director of Secondary Education, Government of Arunachal Pradesh, Itanagar.
5. Shri Pubi Lombi, presently under transfer as Deputy Director of School Education, Basar, Leparada District, Arunachal Pradesh.

.....Respondents

By Advocates:

Mr. Tagum Jamoh, standing counsel(Education)
Mr. Tadup Tana Tara
Mr. Duksor Loyi
Mr. Jungam Jini
Mr. Gamken Bam
Mr. Terji Kamchi

Mr. Khoda Apa

Mr. Kirmani Lollen

:::BEFORE:::

HON'BLE MR. JUSTICE NANI TAGIA

Date of hearing : 11-07-2023

Date of Judgment & Order: 11-07-2023

JUDGMENT & ORDER(ORAL)

Heard Mr. Dicky Panging, learned counsel for the petitioner. Also heard Mr. Tagum Jamoh, learned standing counsel, Education Department, Government of Arunachal Pradesh, appearing on behalf of State Respondents No. 1 to 4; and Mr. Tadup Tana Tara, learned counsel, appearing on behalf of private Respondent No. 5.

2. This writ petition is directed against the order, dated 20.04.2023, issued by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar, under Order No. 03/2023; whereby, the writ petitioner has been retained as Principal, Government Higher Secondary School, Kanubari, Longding District, in modification of the earlier order of transfer, dated 15.11.2022, issued by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar, whereby, he was transferred from the post of Principal, Government Higher Secondary School, Kanubari, Longding District, as the Deputy Director of School Education, Government of Arunachal Pradesh, Leparada.

3. The facts leading to filing of the present writ petition by the petitioner, briefly stated, are as follows:

The petitioner who has been working as a Principal, Government Higher

Secondary School, Kanubari, Longding District, since 2013, was transferred as the Deputy Director of School Education, Government of Arunachal Pradesh, Leparada, vide the order of transfer, dated 15.11.2022, issued by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar, under Order No. 14/2021, indicating that he will join in the last part of April, 2023.

By the aforesaid order of transfer, dated 15.11.2022, issued by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar; the private respondent No. 5 who was working as a Deputy Director of School Education, Government of Arunachal Pradesh, Seppa, East Kameng District, was also transferred as a Principal, Dani Kunia, Government Higher Secondary School, Ziro.

According to the petitioner, pursuant to the order of transfer, dated 15.11.2022, issued by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar, he was released vide order, dated 19.04.2023, issued by the Deputy Commissioner, Longding District, Longding, w.e.f. 19.04.2023, enabling him to join at his new place of posting as Deputy Director of School Education, Government of Arunachal Pradesh, Leparada.

Pursuant to that, the petitioner had joined at Leparada, as the Deputy Director of School Education, Government of Arunachal Pradesh, Leparada, on 20.04.2023, by submitting his joining report to the Deputy Commissioner, Leparada.

While the petitioner had joined as the Deputy Director of School Education, Government of Arunachal Pradesh, Leparada, on 20.04.2023, on the same date; the impugned order, dated 20.04.2023, was issued by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar, whereby, he has been retained as the Principal, Government Higher Secondary School, Kanubari, Longding District, and the

private respondent No. 5 who was by then working as the Principal, Dani Kunia Government Higher Secondary School, Ziro, has been posted as the Deputy Director of School Education, Government of Arunachal Pradesh, Leparada.

According to the petitioner, the impugned order, dated 20.04.2023, has been issued by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar, on the basis of the U.O. Note, dated 28.02.2023, put up by the Member of Legislative Assembly, 29-Basar(ST) Assembly Constituency, which was acted upon by the competent State authorities when the same was put up before it.

The petitioner, therefore, contends that the impugned order, dated 20.04.2023, issued by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar, in modification of the earlier order of transfer, dated 15.11.2022, cannot be sustained in law as the same has been issued at the behest of the Member of Legislative Assembly, 29-Basar(ST) Assembly Constituency, without assigning any reason.

4. The State Respondents No. 1, 2, 3 & 4 as well as the private respondent No. 5 have filed their respective affidavits-in-opposition.

In the affidavit-in-opposition filed by the State Respondents No. 1, 2, 3 and 4; the fact that the impugned order, dated 20.04.2023, was issued by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar, on the basis of the U.O. Note, dated 28.02.2023, put up by the Member of Legislative Assembly, 29-Basar(ST) Assembly Constituency, have not been disputed.

5. Mr. Panging, learned counsel for the petitioner, while assailing the impugned order, dated 20.04.2023, issued by the Commissioner(Education), Government of

Arunachal Pradesh, Itanagar, submits that once the petitioner has been transferred-out from the Government Higher Secondary School, Kanubari, Longding District, as the Deputy Director of School Education, Government of Arunachal Pradesh, Leparada, vide the earlier order of transfer, dated 15.11.2022, issued by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar; the aforesaid earlier order of transfer, dated 15.11.2022, issued by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar, could not have been modified by the impugned order, dated 20.04.2023, issued by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar, without assigning any adequate and justified reasons for such modification.

Mr. Panging, learned counsel, further submits that the U.O. Note, dated 28.02.2023, put up by the Member of Legislative Assembly, 29-Basar(ST) Assembly Constituency, which have been acted upon by the State respondent authorities by issuing the impugned order, dated 20.04.2023, cannot be a reason, adequate and justifiable, for modification of the earlier order of transfer, dated 15.11.2022, issued by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar.

In support of his contention, Mr. Panging, learned counsel, places reliance on the following decisions of the Hon'ble Supreme Court as well as this Court:

- (i). ***Tarlochand Sharma v. State of Punjab & ors.***, reported in **(2001) 6 SCC 260**;
- (ii). ***Roukuolhoulie Angami v. State of Nagaland & ors.***, reported in **1997 (1) GLT 140**;
- (iii). ***Zakir Hussain v. State of Assam & ors.***, reported in **2001 (3) GLT 67**;
- (iv). ***Deepak Tayeng v. State of Arunachal Pradesh & ors.***, reported in **2020(3) GLT 275**; and

(v). ***Toheli Sumi v. State of Nagaland & ors.***, reported in ***2009 (2) GLT 956***.

6. Mr. Tagum Jamoh, learned standing counsel, Education Department, Government of Arunachal Pradesh, on the other hand, submits that the writ petitioner has been retained as Principal, Government Higher Secondary School, Kanubari, Longding District, and the private respondent No. 5 has been posted as the Deputy Director of School Education, Government of Arunachal Pradesh, Leparada, vide the impugned order, dated 20.04.2023, issued by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar, in modification of the earlier order of transfer, dated 15.11.2022, issued by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar, on the ground that the Respondent No. 5 has been found to be more experienced in administration at the district level as he had already served as the Deputy Director of School Education, Government of Arunachal Pradesh, in the district level for many years.

Mr. Jamoh, learned standing counsel, Education Department, Government of Arunachal Pradesh, further submits that the U.O. Note, dated 28.02.2023, put up by the Member of Legislative Assembly, 29-Basar(ST) Assembly Constituency, was also received by the Government but the U.O. Note, dated 28.02.2023, put up by the Member of Legislative Assembly, 29-Basar(ST) Assembly Constituency, was not the only ground on which the earlier order of transfer, dated 15.11.2022, insofar as the petitioner and Respondent No. 5 is concerned, was modified by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar, but the same was done on the overall consideration by the respondent authorities in the public interest and administrative exigencies having regard to the competency and experience of Respondent No. 5 as Deputy Director of School Education.

Mr. Jamoh, learned standing counsel, Education Department, Government of Arunachal Pradesh, also submits that it is the prerogative of the employer to transfer and post an employee wherever deemed fit and in the instant case, the reasons for modification of the earlier order of transfer, dated 15.11.2022, issued by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar, on the basis of the U.O. Note, dated 28.02.2023, put up by the Member of Legislative Assembly, 29-Basar(ST) Assembly Constituency, as well as taking into account the administrative experience of Respondent No. 5; was a justified reason in issuing the impugned order, dated 20.04.2023, by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar.

The learned standing counsel also submits that even if the respondent authorities had issued the impugned order, dated 20.04.2023, by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar, acting upon the U.O. Note, dated 28.02.2023, put up by the Member of Legislative Assembly, 29-Basar(ST) Assembly Constituency; the same will not vitiate the impugned order, dated 20.04.2023, issued by the Commissioner (Education), Government of Arunachal Pradesh, Itanagar, as the Member of Legislative Assembly as a representative of the public, has the right to express the grievances on behalf of the people.

In support of his contention, he places reliance on the decision of the Hon'ble Supreme Court in the case of ***Mohd. Masood Ahmad v. State of U.P. & ors.***, reported in ***(2007) 8 SCC 150***.

7. Mr. Tara, learned counsel for Respondent No. 5, while endorsing the arguments advanced by Mr. Jamoh, learned standing counsel, Education Department, Arunachal Pradesh, submits that the writ petitioner cannot have a right to be posted at a

particular place and which of the employee is to be posted where, is entirely within the domain of the employer and as such; the petitioner cannot have any right to be posted as the Deputy Director of School Education, Government of Arunachal Pradesh, Leparada.

Mr. Tara, learned counsel, further submits that since one of the grounds assailing the impugned order, dated 20.04.2023, issued by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar, is the U.O. Note, dated 28.02.2023, put up by the Member of Legislative Assembly, 29-Basar(ST) Assembly Constituency, and the said Member of Legislative Assembly having not been impleaded as the respondent in this case; the present writ petition is not maintainable.

8. Rival submissions advanced by the learned counsels appearing for the parties have received due consideration by this Court.

9. Upon consideration of the arguments advanced by the learned counsels for the parties and on perusal of the materials placed on record; it remains undisputed that the writ petitioner, who was serving as the Principal, Government Higher Secondary School, Kanubari, Longding District, was transferred as the Deputy Director of School Education, Government of Arunachal Pradesh, Leparada, by the earlier order of transfer, dated 15.11.2022, issued by the Commissioner (Education), Government of Arunachal Pradesh, Itanagar, and the Respondent No. 5 who was working as the Deputy Director of School Education, Government of Arunachal Pradesh, Seppa, East Kameng District, was transferred as the Principal, Dani Kunia Government Higher Secondary School, Ziro.

In the earlier order of transfer, dated 15.11.2022, issued by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar, it was

however provided that the petitioner will join in the last part of April, 2023.

There is also no dispute of the fact that the impugned order, dated 20.04.2023, issued by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar, whereby, the petitioner has been retained as Principal, Government Higher Secondary School, Kanubari, Longding District, and the Respondent No. 5 has been posted as the Deputy Director of School Education, Government of Arunachal Pradesh, Leparada, in modification of the earlier order of transfer, dated 15.11.2022, issued by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar, inter alia, having taken note of the U.O. Note, dated 28.02.2023, put up by the Member of Legislative Assembly, 29-Basar(ST) Assembly Constituency.

10. The U.O. Note, dated 28.02.2023, put up by the Member of Legislative Assembly, 29-Basar(ST) Assembly Constituency, is reproduced hereinbelow, for ready reference:

“ARUNACHAL PRADESH

Sub: **Regarding transfer and posting of Shri Pubi Lombi, Principal, DK GHSS, Hapoli (Ziro) to Leparada District as DDSE Leparada.**
Hon’ble Sir,

As stated above, I am initiating this UO note regarding transfer and posting of Shri Pubi Lombi who is presently posting as a Principal at DK Government Higher Secondary School (GHSS), Hapoli (Ziro) to Leparada District as a DDSE of Leparada District. Mr. Lombi is a very sincere and good administrator in education sector, moreover, he had already served as a Deputy Director of School Education (DDSE) in many districts under Arunachal Pradesh. Apart from the above, the general public of Leparada District also apprises me for the transfer and posting of Shri Pubi Lombi as a DDSE of Leparada District.

Hence, I fervently request the Hon’ble Chief Minister, Arunachal Pradesh to consider the transfer and posting of Shri Pubi Lombi, Principal, DK GHSS, Hapoli (Ziro) to Leparada District as a DDSE Leparada District on public interest.

Sd/-

(Gokar Basar)

MLA-29 Basar (ST) A/C

Hon’ble Chief Minister, Arunachal Pradesh.

UO No. MLA-29 BSR/45/2023

Dated Itanagar, the 28th Feb’ 2023”

On perusal of the U.O. Note, dated 28.02.2023, put up by the Member of Legislative Assembly, 29-Basar(ST) Assembly Constituency; it appears that the Member of Legislative Assembly, 29-Basar(ST) Assembly Constituency, had made a request to the Hon'ble Chief Minister, to consider transfer and posting of Respondent No. 5 as the Deputy Director of School Education, Government of Arunachal Pradesh, Leparada, on the ground that he is a very sincere and good administrator in Education sector and he had already served as Deputy Director of School Education, Government of Arunachal Pradesh, in many Districts under Arunachal Pradesh.

11. Apart from the above; it has also been expressed in the aforesaid U.O. Note, dated 28.02.2023, put up by the Member of Legislative Assembly, 29-Basar(ST) Assembly Constituency, that the general public of Leparada also apprises him for the transfer and posting of the Respondent No. 5 as the Deputy Director of School Education of the Leparada District.

Accordingly, on the basis of the above fact, a request appears to have been made for posting of the Respondent No. 5 as the Deputy Director of School Education, Government of Arunachal Pradesh, Leparada, on public interest.

12. Insofar as the transfer and posting of an employee is concerned, it is a settled position of law that an employee cannot have a right to be posted at a particular place of his choice and it is entirely within the domain of the employer as to who would be posted in which place. But when it comes to the modification of the earlier transfer order issued; the employer can modify the earlier order of transfer issued, only for the reasons, adequate and justified.

13. The present is one such case where by the impugned order, dated 20.04.2023, issued by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar;

the earlier order of transfer, dated 15.11.2022, issued by the Commissioner (Education), Government of Arunachal Pradesh, Itanagar, has been modified insofar as the petitioner and Respondent No. 5 is concerned.

14. The reason for modification of the earlier order of transfer, dated 15.11.2022, issued by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar, by the impugned order, dated 20.04.2023, issued by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar, is also not in dispute which is stated to be the U.O. Note, dated 28.02.2023, put up by the Member of Legislative Assembly, 29-Basar(ST) Assembly Constituency, requesting the competent authority to transfer the Respondent No. 5 as the Deputy Director of School Education of Leparada District.

15. In view of the above, what calls for determination by this Court is whether the U.O. Note, dated 28.02.2023, put up by the Member of Legislative Assembly, 29-Basar(ST) Assembly Constituency, for posting of the Respondent No. 5 as the Deputy Director of School Education, Government of Arunachal Pradesh, Leparada, was a reason, adequate and justified, for modification of the earlier order of transfer, dated 15.11.2022, issued by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar, by the impugned order, dated 20.04.2023, issued by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar, insofar as the writ petitioner and Respondent No. 5 are concerned.

Since the respondent authorities in the affidavit-in-opposition filed, have not denied that one of the grounds for modification of the earlier order of transfer, dated 15.11.2022, issued by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar, was the U.O. Note, dated 28.02.2023, put up by the Member of Legislative Assembly, 29-Basar(ST) Assembly Constituency, which has been extracted hereinabove, may be examined.

By the aforesaid U.O. Note, dated 28.02.2023, extracted hereinabove; it is seen that the Member of Legislative Assembly, 29-Basar(ST) Assembly Constituency, has put up a Note requesting for transfer and posting of the Respondent No. 5 as the Deputy Director of School Education, Government of Arunachal Pradesh, Leparada, on the ground that the respondent No. 5 is a very sincere and good administrator in the Education sector and he has already served as Deputy Director of School Education, Government of Arunachal Pradesh, in many districts of the State of Arunachal Pradesh. Moreover, the general public of Leparada District, has also apprised the Member of Legislative Assembly, 29-Basar(ST) Assembly Constituency, that Respondent No. 5 be transferred and posted as the Deputy Director of School Education, Leparada District.

The Member of Legislative Assembly, 29-Basar(ST) Assembly Constituency, is stated to be a local Member of Legislative Assembly of the District.

16. In the case of **Mohd. Masood Ahmad**(supra), the Hon'ble Supreme Court has held that the recommendation made by the local MLAs/MPs by itself may not vitiate the order of transfer. The concerned MLA/MP being the representative of the people, it is their duty to ventilate the grievances on behalf of the people. There cannot be any hard-and-fast rule that every transfer at the instance of an MP or MLA shall be vitiated. It all depends on the facts and circumstances of an individual case.

17. Taking note of the law laid down by the Hon'ble Supreme Court in the case of **Mohd. Masood Ahmad**(supra); the U.O. Note, dated 28.02.2023, put up by the Member of Legislative Assembly, 29-Basar(ST) Assembly Constituency, requesting the competent authority for transfer of the Respondent No. 5 as Deputy Director of School Education, Government of Arunachal Pradesh, Leparada, cannot be faulted with.

Accordingly, even if the respondent authorities had modified the earlier order of transfer, dated 15.11.2022, issued by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar, vide the impugned order, dated 20.04.2023, issued by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar, acting on the U.O. Note, dated 28.02.2023, put up by the Member of Legislative Assembly, 29-Basar(ST) Assembly Constituency; that itself, cannot be held to vitiate the impugned order, dated 20.04.2023, issued by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar.

Apart from referring to the U.O. Note, dated 28.02.2023, put up by the Member of Legislative Assembly, 29-Basar(ST) Assembly Constituency, and the reasons not assigned while issuing the impugned order, dated 20.04.2023, issued by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar; there is no allegation of any mala fide exercise of power by the respondent authorities in issuing the impugned order, dated 20.04.2023, issued by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar.

18. It is again a well-settled position of law that insofar as the judicial review of an order of transfer and posting is concerned, unless the order is shown to be issued in the mala fide exercise of power or is issued in violation of any statutory provision and is not issued by a competent authority; an order of transfer and posting cannot be interfered with.

19. Accordingly, in the absence of any mala fide exercise of power by the respondent authorities or violation of any statutory provision in issuing the impugned order, dated 20.04.2023, by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar; I am, therefore, not inclined to interfere with the impugned order, dated 20.04.2023, issued by the Commissioner(Education), Government of Arunachal

Pradesh, Itanagar, in the facts and circumstances of the instant case, even if the aforesaid order, dated 20.04.2023, has been issued by the authority acting on the basis of the U.O. Note, dated 28.02.2023, put up by the Member of Legislative Assembly, 29-Basar(ST) Assembly Constituency, having regard to the law laid down by the Hon'ble Supreme Court in ***Mohd. Masood Ahmad***(supra).

20. In that view of the matter; I do not find any merit in this writ petition and the same is hereby dismissed.

21. Interim order passed by this Court, earlier, stands vacated.

JUDGE

Bhaskar