

GAHC040005752022



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

Case No. : WP(C) 187/2022

1:Dayum Davi
Presently serving as DFDO, Pasighat, PO and PS Pasighat, East Siang District,
Arunachal Pradesh.

VERSUS

1:THE STATE OF AP and 5 Ors.
Represented by the Commissioner, Department of Fisheries, Govt. of Arunachal
Pradesh, Itanagar

2:The Director Fisheries
Govt. of Arunachal Pradesh Itanagar
PO Itanagar Arunachal Pradesh.

3:The Deputy Commissioner East Siang District Pasighat
PO Pasighat Arunachal Pradesh.

4:Kaling Moyong 38 S.T. Assembly Constituency
MLA cum Advisor to Minister for UD
Municipal Administration and Govt. Estate and Town Planning and Transport
Govt. of Arunachal Pradesh East Siang District Arunachal Pradesh.

5:Ninong Ering MLA 37 S.T. Assembly Constituency Pasighat
PO and PS Pasighat District East Siang Arunachal Pradesh

6:Kakoty Borang serving as In Charge DFDO Hawaii
Anjaw District Arunachal Pradesh

Advocate for the Petitioner : Abhai Kumar Singh

Advocate for the Respondent : GA (AP)

**BEFORE
HONBLE MR. JUSTICE NANI TAGIA**

ORDER

Date : 19.01.2023

Heard Mr. N. Kakum, learned counsel for the petitioner. Also heard Ms. Tsering Wangmo, learned Government Advocate, appearing on behalf of Respondents No. 1 to 3; and Mr. B. Padu, learned counsel appearing on behalf of Respondent No. 4.

Office Note, dated 18.01.2023, indicates that Respondent No. 6 has also been duly served.

This writ petition under Article 226 of the Constitution of India, is directed against the order, dated 28.02.2022, issued by the Commissioner, Fisheries, Government of Arunachal Pradesh, Itanagar, vide File No. DOF-11011/1/2021, to the extent it seeks to transfer the petitioner Shri Dayum Davi, DFDO, from Pasighat, East Siang District, to Hawaii, Anjaw District, as DFDO, and in his place, private respondent No. 6 Shri Kakoti Borang, i/c DFDO, Hawaii, Anjaw District, has been brought in as in-charge, DFDO, Pasighat, East Siang District.

The primary ground of challenge made to the impugned order, dated 28.02.2022, to the extent, as indicated hereinabove, is that the substantive post of private respondent No. 6 is Extension Officer in the Department of Fisheries, Government of Arunachal Pradesh, and he has been allowed to hold the post of in-charge, DFDO, Hawaii, Anjaw District, as a stop gap arrangement; and, accordingly, since the petitioner and the private respondent No. 6 are not similarly placed Officers; the writ petitioner cannot be, thus, replaced by the private respondent No. 6.

In support of the contention raised by the petitioner, a reliance has been placed on a decision of this Court rendered in ***Hibu Tama v. State of Arunachal Pradesh & anr.***

reported in **2020(4) GLT 503**, wherein, it has been held that the inter-se transfer of employee(s) can only be made between the employee(s) who are similarly placed.

In the affidavit-in-opposition filed by the State Respondents No. 1 & 2, the fact that the private respondent No. 6 is only an in-charge, DFDO, posted at Hawai, Anjaw District, and his substantive post is Extension Officer in the Department of Fisheries, Government of Arunachal Pradesh; has not been denied or disputed by the State Respondents.

Since the contention raised by the petitioner that the Respondent No. 6 is not a regular DFDO but only an in-charge, DFDO, posted at Hawai, Anjaw District, and his substantive post is Extension Officer in the Department of Fisheries, Government of Arunachal Pradesh; has not been denied or disputed by the State Respondents in the affidavit-in-opposition filed by the Respondents No. 1 & 2, in view of the law laid down by this Court in the decision rendered in the case of **Hibu Tama**(supra) whereby, it has been held that the inter-se transfer of employee(s) can only be made between the employee(s) who are similarly placed in the Department; I am of the considered view that while transferring the petitioner from Pasighat, East Siang District, to Hawai, Anjaw District, as DFDO, vide the impugned order, dated 28.02.2022, issued by the Commissioner, Fisheries, Government of Arunachal Pradesh, Itanagar, vide File No. DOF-11011/1/2021, the petitioner could not have been replaced by the private respondent No. 6 who is not a regular DFDO but only an in-charge, DFDO, posted at Hawai, Anjaw District, and he has been allowed to hold the post of in-charge, DFDO, Hawai, Anjaw District, as a stop gap arrangement and his substantive post is Extension Officer in the Department of Fisheries, Government of Arunachal Pradesh.

In view of the above, this writ petition succeeds and the impugned order, dated 28.02.2022, issued by the Commissioner, Fisheries, Government of Arunachal

Pradesh, Itanagar, vide File No. DOF-11011/1/2021, is hereby set aside and quashed, to the extent, it seeks to transfer the petitioner Shri Dayum Davi, DFDO, from Pasighat, East Siang District, to Hawaii, Anjaw District, as DFDO, and in his place, the private respondent No. 6 Shri Kakoti Borang, i/c DFDO, Hawaii, Anjaw District, has been posted as in-charge, DFDO, Pasighat, East Siang District.

The writ petition accordingly stands disposed of, in terms above.

JUDGE

Comparing Assistant