

GAHC040006442023



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

Case No. : WP(C) 239/2023

Shri Otem Tayeng, S/o Late Ajep Tayeng, a permanent resident of Village –
Motum, P.O. & P.S. - Mebo, District – East Siang, Arunachal Pradesh. 791104.

.....Petitioner

By Advocates:

Rintu Saikia
Ninnong Ratan
Keeke Loya
Idak Bam
Jumge Karbak
Tamo Taggu

-Versus-

1. The State of Arunachal Pradesh represented by the Chief Secretary, Govt. of Arunachal Pradesh Itanagar.
2. The Commissioner(Education), Government of Arunachal Pradesh, Itanagar.
3. Shri Kadhing Perme, Joint Director of Elementary Education(Jt. DEE), Government of Arunachal Pradesh, Itanagar.

.....Respondents

By Advocates:

GA, Arunachal Pradesh
Tagum Jamoh, standing counsel(Education)
Taba Tagum
L Tabin
Rage Koyu

:::BEFORE:::

HON'BLE MR. JUSTICE NANI TAGIA

Date of hearing : 23-05-2023

Date of Judgment & Order : 23-05-2023

ORDER(oral)

Heard Mr. Rintu Saikia, learned counsel for the petitioner.

Also heard Mr. Tagum Jamoh, learned standing counsel, Department of Education, Government of Arunachal Pradesh, appearing on behalf of respondent No. 2; and Mr. Taba Tagum, learned counsel, appearing on behalf of private respondent No. 3/caveator. However, none appears on behalf of State Respondent No. 1.

2. This writ petition is directed against the order, dated 12.05.2023, issued by the Commissioner, Education, Government of Arunachal Pradesh, Itanagar, on 17.05.2023, vide Memo. No. DSE-13011/2/2023, whereby the petitioner, herein, who is a Director of Elementary Education, Government of Arunachal Pradesh, has been entrusted to look after the charge of Director, Mission Shiksha/OSD to Education Department, Government of Arunachal Pradesh, and in his place, the respondent No. 3 viz. Shri Kadhing Perme, who is a Joint Director of Elementary Education, has been directed to function as the in-charge, Director of Elementary Education, Government of Arunachal Pradesh, in his own scale of pay, till further order.

When this writ petition was taken-up on 22.05.2023, on being informed by Mr. R. Koyu, learned counsel appearing on behalf of Mr. Taba Tagum, learned counsel, who has entered his appearance on behalf of respondent No. 3 by filing a caveat petition being Caveat Petition No. 57(AP)2023, that he is arguing a case in the Court of Chief Judicial Magistrate, Yupia; this matter was directed to be listed today with an interim

order that till 23.05.2023; the impugned order, dated 12.05.2023, shall not be given effect to.

3. Today, when this matter has been listed for motion column, Mr. Tagum Jamoh, learned standing counsel, Department of Education, Government of Arunachal Pradesh, submits that this writ petition may be disposed of at the motion stage itself on the basis of the instruction he has received from the Department concerned and also on the basis of the arguments that he would be advancing before the Court.

Mr. Taba Tagum, learned counsel appearing on behalf of respondent No. 3; has also agreed to the proposal made by Mr. Tagum Jamoh, learned standing counsel, Department of Education, Government of Arunachal Pradesh for disposal of this writ petition on merit today itself on the basis of the arguments advanced by the parties.

Accordingly, this writ petition is taken-up for disposal at the motion stage itself with the consent of the learned counsels for the respondents.

4. The short and precise contention of the petitioner in assailing the impugned order, dated 12.05.2023, issued by the Commissioner, Education, Government of Arunachal Pradesh, Itanagar, on 17.05.2023, vide Memo. No. DSE-13011/2/2023, whereby the petitioner, herein, who is a Director of Elementary Education, Government of Arunachal Pradesh, has been entrusted to look after the charge of Director, Mission Shiksha/OSD to Education Department, Government of Arunachal Pradesh is that the petitioner is in the cadre post of Director of Elementary Education, Government of Arunachal Pradesh as is provided in the Arunachal Pradesh Education Act, 2010, and the Rules made pursuant thereto, i.e. Arunachal Pradesh Education Rules, 2010.

According to the petitioner, as per Rule 55(i) of the Arunachal Pradesh Education Rules, 2010, the Director of School Education shall normally be a post of the departmental promotion from among the Joint Director of School Education who have completed 5(five) years of regular service in the Grade and possessing 2nd Division Master Degree with B.Ed., or, as per the norms of Central/State Government notification, and as per Rule 55(iii); in case of bifurcation of existing Directorate of School Education, there shall be 2(two) Directors, namely, (a) Director of Elementary Education, and (b) Director of Secondary Education, which shall be the posts for departmental promotion from among the Joint Director of School Education who have completed 5(five) years of regular service in the Grade and possessing 2nd Division Master Degree with B.Ed., or, as per the norms of Central/State Government notification.

In terms of the aforesaid provision of the Arunachal Pradesh Education Rules, 2010; the Commissioner, Education Department, Government of Arunachal Pradesh, had issued an order, dated 28.10.2010, vide Memo. No. SEDN/46/2003, whereby, the Directorate of School Education, Government of Arunachal Pradesh, was bifurcated into 2(two) separate Directorates, consisting of: (a) The Directorate of Elementary Education[D.E.E.] and (b) The Directorate of Secondary Education[D.S.E.].

The petitioner, on recommendation of the Departmental Promotion Committee (DPC) held on 27.05.2022, was appointed as Director of Elementary Education, Government of Arunachal Pradesh, vide order, dated 07.06.2022, issued by the Commissioner, Education Department, Government of Arunachal Pradesh, Itanagar, vide File No. DSE-13012/3/2021-DSE-Directorate of Secondary Education.

Thus, the petitioner contends that he belongs to a definite cadre post of Director of Elementary Education, Government of Arunachal Pradesh, as per the Arunachal

Pradesh Education Act, 2010, and the Arunachal Pradesh Education Rules, 2010, and he, therefore, cannot be transferred to a post outside the cadre post.

The action of the respondent authorities in issuing the impugned order, dated 12.05.2023, by the Commissioner, Education, Government of Arunachal Pradesh, Itanagar, entrusting the writ petitioner to look after the charge of Director, Mission Shiksha/OSD to Education Department, Government of Arunachal Pradesh; is an order transferring him outside the cadre post which is impermissible under the law and the same is, accordingly, liable to be interfered with by the Court.

In addition thereto, it has been further contended that the petitioner has been replaced by the Respondent No. 3, a Joint Director of Elementary Education, Government of Arunachal Pradesh, who is not eligible to be posted as Director of Elementary Education, Government of Arunachal Pradesh, for want of completion of 5 years of regular service in the post of Joint Director of Elementary Education, Government of Arunachal Pradesh, as prescribed in the Arunachal Pradesh Education Rules, 2010.

In support of his contention; Mr. Rintu Saikia, learned counsel for the petitioner, has relied on a decision rendered by this Court in the case of ***Bijendra Pratap Singh v. State of Arunachal Pradesh & ors.***, reported in **2004 (Suppl.) GLT 827**, wherein, in paragraph No. 38, it has been held as under:

“38. Let me, now, come to the question as to whether the writ petitioner could have been transferred to the post of OSD, APSERC. While dealing with this aspect of the matter, it is of utmost importance to note that the Recruitment Rules of 1993 do not, admittedly, cover the post of OSD, APSERC. Thus, the post of OSD aforementioned is an ex-cadre post. To an ex-cadre post, an employee cannot be sent without his or her consent. Transfer of a person to an ex-cadre post basically can be only on deputation and if he has to be sent on deputation, his consent is required to be obtained. In the case at hand, no consent whatsoever of the writ petitioner was, admittedly, obtained and no such consent exists on record. Thus, the impugned order transferring the writ petitioner to an ex-cadre post, such as OSD, APSERC, is wholly

illegal and cannot be sustained in law. Reference made by Mr. BC Das, in this regard, to Tilak Raj Vs. State of Punjab, reported in 1988 LIC 167, is not wholly misplaced inasmuch as in Tilak Raj(supra), the Apex Court has laid down to the effect that a Government servant cannot, against his wishes, be transferred to a post outside the cadre of his service."

Mr. Rintu Saikia, learned counsel for the petitioner, has also relied on a decision of the Meghalaya High Court rendered in the case of **Salgira R. Marak v. State of Meghalaya & ors.**[AIR Online 2020 Meg 40], to contend that there cannot be a transfer of an employee to an ex-cadre post and that the statutory rules framed should strictly be adhered to.

5. Mr. Tagum Jamoh, learned standing counsel, Education Department, Government of Arunachal Pradesh, has produced before the Court, the instruction received by him from the Department concerned which contains the Note of the Hon'ble Minister(Education, Cultural Affairs, etc.), Government of Arunachal Pradesh, dated 04.05.2023, and which also, is the basis of the impugned order, dated 12.05.2023, by the Commissioner, Education, Government of Arunachal Pradesh, Itanagar, on 17.05.2023, vide Memo. No. DSE-13011/2/2023.

For ready reference, the Note, dated 04.05.2023, is reproduced hereinbelow:

"ARUNACHAL PRADESH

The office of Minister Education is in need of efficient and experienced senior officer to assist and advice for the improvement of Education Department it is learnt that, Shri OtemTayeng is well versed and experienced senior officer in the department.

Hence, Commissioner Education is directed to issue order in respect of Shri OtemTayeng, DEE to act as OSD of Education Department/Director Mission Shiksh. Shri Kadhing Perme Jt. DEE will look after the Elementary Education as incharge Director till further order.

Sd/-

(Er. TabaTedir)

Minister (Education, Cultural Affairs etc)

Commissioner Education, GoAP.

HM(EDN)-07/2023/B-201

Itanagar, 04th May 2023"

By referring to the instruction received from the Department concerned, which is quoted hereinabove; Mr. Tagum Jamoh, learned standing counsel, Education Department, Government of Arunachal Pradesh, has advanced the following arguments in written form titled 'brief of the instructions', which is quoted herein below:

“BRIEF OF THE INSTRUCTIONS

Year 2021 was declared Education year wherein the Government took a policy decision to run the Mission Shiksha to suitably monitor the entire flagship programme running in the Education Department through Single Window for effective implementation of all the flagship program. This is a policy decision of the Government, but it could not be executed in its full scope for want of funds. Very few fields of the policy decision is being monitored by the Mission Shiksha at present, viz; Inter village Schools, overseeing the infrastructural position of the DIETS/Teachers training institutes etc.

One of the most important ambits proposed by the government to be monitored by the Mission Shiksha is to develop proper infrastructure of the DIETS, Schools, Colleges etc.

Mission Shiksha is in infant stage, no proper guidelines, no modalities etc. Proper shaping and streamlining of the Mission requires an experienced officer like the Petitioner. Hence, the Govt has decided to take the service of the Petitioner to give a proper thrust to the Mission Shiksha at his own grade as Director.

If this Hon'ble Court interferes in the policy decision at this stage, the ambitious Mission Shiksha will be frustrated. The Government being the employee of the Petitioner has the prerogative to take his service in such ambitious missions in the interest of public Interest without disturbing his rank.

The Petitioner shall draw salary in the same capacity, same rank and same time scale of pay. In no case his benefits, rank and capacity is affected.

Court should not interfere in the Policy Decision of the government and this posting has been done in the interest of the public.

Court should not interfere under Art.226 of the constitution of India any transfer and posting order unless it is malafide or issued in violation of any statutory rule or issued by any authority competent to issue such transfer order.”

A copy of the 'brief of the instructions', dated 23.05.2023, submitted by Mr. Tagum Jamoh, learned standing counsel, Education Department, Government of Arunachal Pradesh, shall be retained as a part of the record and marked as Annexure 'X' for identification.

In support of his contention, Mr. Tagum Jamoh, learned standing counsel, Education Department, Government of Arunachal Pradesh, has relied on the following decisions of the Hon'ble Supreme Court:

(i). *State of Orissa & ors. v. Gopinath Dash & ors.*, reported in (2005) 13 SCC 495, [paragraphs No. 5, 6 & 7]

- “5. While exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit the Court to direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power.(See *Asif Hameed v. State of J&K* and [*Shri Sitaram Sugar Co. Ltd. v. Union of India.*](#)) The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court, it cannot interfere.
6. The correctness of the reasons which prompted the Government in decision-making taking one course of action instead of another is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation.
7. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown the Courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government.”

- (ii). **National Hydroelectric Power Corporation Ltd. v. 1. Shri Bhagwan 2. Shri Shiv Prakash**, reported in (2001) 8 SCC 574, [paragraph No. 5]

“5. On a careful consideration of the submissions of the learned counsel on either side and the relevant Rules to which our attention has been invited to, we are of the view that the High Court was not justified in interfering with the impugned orders of transfer. It is by now well-settled and often reiterated by this Court that no government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they are the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned. On the facts and circumstances of the cases before us, we are also unable to agree with the learned counsel for the respondents that Rule 4.1.1 of the Seniority Rules interdicts any transfer of the employees from one office or project or unit to any one of the other as long as the seniority of such an employee is protected based on the length of service with reference to the date of promotion or appointment to the grade concerned irrespective of the date of transfer. We also consider it to be a mere submission in vain, the one urged on the basis of alleged adverse consequences detrimental to their seniority resulting from such transfer. In the facts of the present cases, at any rate, no such result is bound to occur since the Project undertaken to which the respondents have been transferred is itself a new one and, therefore, we see no rhyme or reason in the alleged grievance.”

- (iii). **State of Maharashtra & ors. V. Prakash Prahlad Patil & ors.** reported in (2009) 12 13 SCC 159, [paragraphs No. 5 & 6]

“5. The scope for judicial review has been examined by this Court in several cases. It has been consistently held that the power of judicial review is not intended to assume a supervisory role or don the robes of the omnipresent. The power is not intended either to review governance under the rule of law nor do the courts step into the areas exclusively reserved by the suprema lex to other organs of the State. A mere wrong decision, without anything more, in most of the cases will not be sufficient to attract the power of judicial review. The supervisory jurisdiction conferred upon a court is limited to see that the authority concerned functions within its limits of its authority and that its decisions do not occasion miscarriage of justice.

6. The courts cannot be called upon to undertake governmental duties and functions. Courts should not ordinarily interfere with a policy decision of the State. While exercising power of judicial review the court is more concerned with the decision-making process than the merit of the decision itself.”

(iv). Shilpi Bose(Mrs.) & ors. V. State of Bihar & ors. reported in 1991 Supp(2) SCC 659, [paragraphs No. 4 & 5]

“4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders.

5. We accordingly allow the appeal, set aside the order of the High Court and dismiss the petition filed by the respondents. The appellants should be posted to the places to which they had been transferred under the orders impugned before the High Court. There will be no order as to costs.”

6. Mr. Taba Tagum, learned counsel, appearing on behalf of Respondent No. 3, on the other hand, while endorsing the submissions advanced by Mr. Tagum Jamoh, learned standing counsel, Education Department, Government of Arunachal Pradesh, submits that the impugned order, dated 12.05.2023, issued by the Commissioner, Education, Government of Arunachal Pradesh, Itanagar, on 17.05.2023, vide Memo. No. DSE-13011/2/2023, strictly speaking, is not a transfer as such, but, it is merely an internal arrangement made within the Department concerned for the efficient discharge of the duties insofar as it relates to Mission Shiksha and therefore, when the Government has made such an internal arrangement for the better functioning of the Mission Shiksha; this Court in exercise of writ jurisdiction, should not interfere with such an internal arrangement made by the respondent authorities vide impugned order, dated 12.05.2023, issued by the Commissioner, Education, Government of Arunachal Pradesh, Itanagar, on 17.05.2023.

Alternatively, Mr. Taba Tagum, learned counsel for Respondent No. 3, contends that even if the impugned order, dated 12.05.2023, issued by the Commissioner,

Education, Government of Arunachal Pradesh, Itanagar, on 17.05.2023, vide Memo. No. DSE-13011/2/2023, is considered as a transfer order; this Court should not interfere with the order of the transfer made because it is the prudence of the State authorities which is the best judge as to which of the employee(s), should be placed at which position.

In support of his contentions, Mr. Taba Tagum, learned counsel for Respondent No. 3, has relied on the decision of the Hon'ble Supreme Court rendered in the case of ***Union of India & ors. v. S.L. Abbas***, reported in **(1993) 4 SCC 357**, wherein, in paragraph No. 7, it has been held as under:

“7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right.”

Mr. Taba Tagum, learned counsel for Respondent No. 3, also contends that the order of transfer are not amenable to interference by this Court except when the transfer order is issued in *mala fide* exercise of power and the material supporting the *mala fide* exercise of power by the State authorities in issuing the transfer order, is distinctly brought to the notice of the Court. He also contends that this Court cannot substitute the decision of the State authorities in the matter of transfer and posting of an employee.

In support of his above contention, Mr. Taba Tagum, learned counsel for Respondent No. 3, has relied on the decision of the Hon'ble Supreme Court rendered

in the case of ***State of U.P. & ors. V. Gobardhan Lal*** reported in **(2004) 11 SCC 402**, wherein, in paragraph No. 8, it has been held as under:

“8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.”

7. Rival contentions advanced by the learned counsels appearing for the parties have received due consideration of this Court.

8. Upon hearing the learned counsels appearing for the parties and on perusal of the materials in the writ petition; there is no dispute that vide order, dated 28.10.2010, issued by the Commissioner, Education Department, Government of Arunachal Pradesh; the Directorate of School Education has been bifurcated into 2(two) Directorates i.e. (a) Directorate of Elementary Education[DEE], and (b) Directorate of Secondary Education[DSE].

The petitioner, on being promoted as Director of Elementary Education, Government of Arunachal Pradesh, from the post of Joint Director of Elementary Education, Government of Arunachal Pradesh, on being recommended by the Departmental Promotion Committee(DPC) held on 27.05.2022, vide order, dated 07.06.2022, issued by the Commissioner, Education Department, Government of Arunachal Pradesh, Itanagar, vide File No. ; is serving as a Director of Elementary Education, Government of Arunachal Pradesh, since then.

As per Rule 55(i) and (iii) of the Arunachal Pradesh Education Rules, 2010; the Director of Elementary Education, Government of Arunachal Pradesh, is a post for departmental promotion from amongst the Joint Director of Elementary Education, Government of Arunachal Pradesh, who have completed 5 years of regular service in the Grade and possessing 2nd Division Master Degree with B.Ed.. The petitioner was promoted in terms of the aforesaid provision of the Arunachal Pradesh Education Rules, 2010, vide order, dated 07.06.2022, which is not in dispute.

It may also be referred to herein that the petitioner has filed an additional affidavit to indicate that the private respondent No. 3 has not completed 5 years of regular service in the Grade of Joint Director of Elementary Education, Government of Arunachal Pradesh, which fact, has also not been disputed neither by Mr. Tagum Jamoh, learned standing counsel, Education Department, Government of Arunachal Pradesh, nor, by Mr. Taba Tagum, learned counsel for Respondent No. 3, and, thus, the Respondent No. 3 is not eligible to hold the post of Director of Elementary Education, Government of Arunachal Pradesh, under the Arunachal Pradesh Education Rules, 2010.

The post of Director, Mission Shiksha/OSD to Education Department, Government of Arunachal Pradesh, to which post, the petitioner has been entrusted to look after vide the impugned order, dated 12.05.2023, issued by the Commissioner, Education, Government of Arunachal Pradesh, Itanagar, on 17.05.2023, has also been admitted by Mr. Tagum Jamoh, learned standing counsel, Education Department, Government of Arunachal Pradesh, that it is neither, a sanctioned post, nor, a cadre post under the Arunachal Pradesh Education Act, 2010, as well as under the Arunachal Pradesh Education Rules, 2010.

In view of the above; it has remained undisputed that the petitioner who is a Director of Elementary Education, Government of Arunachal Pradesh, is sought to be moved out of the post of Director of Elementary Education, Government of Arunachal Pradesh vide the impugned order, dated 12.05.2023, issued by the Commissioner, Education, Government of Arunachal Pradesh, Itanagar, on 17.05.2023, as the Director, Mission Shiksha/OSD to Education Department, Government of Arunachal Pradesh, which is, neither, a sanctioned post, nor a cadre post under the Arunachal Pradesh Education Act, 2010, as well as under the Arunachal Pradesh Education Rules, 2010.

In other words, vide the impugned order, dated 12.05.2023, issued by the Commissioner, Education, Government of Arunachal Pradesh, Itanagar, on 17.05.2023; the petitioner has been moved out of his cadre post of Director of Elementary Education, Government of Arunachal Pradesh, to an ex-cadre and non-sanctioned post and he has been replaced by the private respondent No. 3, a Joint Director of Elementary Education, Government of Arunachal Pradesh, who, otherwise, is not eligible to hold the post of Director of Elementary Education, Government of Arunachal Pradesh, as per Rule 55(iii) of the Arunachal Pradesh Education Rules, 2010.

9. There is no quarrel with the proposition of law laid down by the Hon'ble Supreme Court in the decisions relied on by Mr. Tagum Jamoh, learned standing counsel, Education Department, Government of Arunachal Pradesh, and by Mr. Taba Tagum, learned counsel for Respondent No. 3, that the policy decision of the executive is out of the scope of judicial review of this Court except where such a policy decision transgresses the constitutional limits or statutory power. The scope of judicial inquiry in the matter of policy decision is confined to the question whether the decision taken by the Government is against any statutory provision or it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution of

India.

There is equally no quarrel with the proposition of law laid down by the Hon'ble Supreme Court, relied on by Mr. Tagum Jamoh, learned standing counsel, Education Department, Government of Arunachal Pradesh, and by Mr. Taba Tagum, learned counsel for Respondent No. 3, that the order of transfer should not be interfered with by this Court unless the order of transfer is issued in violation of the statutory provision; issued in arbitrary and *mala fide* exercise of power and that the same should be left to the best judgment of the employer of the State authorities.

10. The issue for determination in this writ petition, however, is not whether the impugned order, dated 12.05.2023, by the Commissioner, Education, Government of Arunachal Pradesh, Itanagar, on 17.05.2023, has been issued in *mala fide* and arbitrary exercise of power by the respondent authorities but, whether vide the impugned order, dated 12.05.2023, issued by the Commissioner, Education, Government of Arunachal Pradesh, Itanagar, on 17.05.2023, whereby the writ petitioner has been entrusted to look after the charge of the Director, Mission Shiksha/OSD to Education Department, Government of Arunachal Pradesh, is an assignment or transfer, outside his cadre post, he is holding.

11. As has been discussed hereinabove that the petitioner is a Director of Elementary Education, Government of Arunachal Pradesh in the cadre of Director of Elementary Education, Government of Arunachal Pradesh, as provided under Rule 55(iii) of the Arunachal Pradesh Education Rules, 2010, which is a promotional post for the persons holding the post of Joint Director of Elementary Education, Government of Arunachal Pradesh, having completed 5 years of regular service in the Grade with 2nd Division Master Degree with B.Ed.. The Director, Mission Shiksha/OSD to Education Department, Government of Arunachal Pradesh, admittedly is not a

cadre post under the Arunachal Pradesh Education Rules, 2010, wherein, a Director of Elementary Education, Government of Arunachal Pradesh can also be transferred or posted or entrusted to look after the work of Director, Mission Shiksha/OSD to Education Department, Government of Arunachal Pradesh.

12. That the transfer and posting can and should ordinarily be made within the same cadre, is well settled and the only exception for posting the employee outside the cadre, is by way of a deputation.

13. The above principle of law has been reiterated by this Court in the case of ***Bijendra Pratap Singh***(supra), wherein, in paragraph No. 8 thereof, while dealing with the similar kind of issue, it has been held that “***while dealing with this aspect of the matter, it is of utmost importance to note that the Recruitment Rules of 1993 do not, admittedly, cover the post of OSD, APSERC. Thus, the post of OSD aforementioned is an ex-cadre post. To an ex-cadre post, an employee cannot be sent without his or her consent. Transfer of a person to an ex-cadre post basically can be only on deputation and if he has to be sent on deputation, his consent is required to be obtained. In the case at hand, no consent whatsoever of the writ petitioner was, admittedly, obtained and no such consent exists on record. Thus, the impugned order transferring the writ petitioner to an ex-cadre post, such as OSD, APSERC, is wholly illegal and cannot be sustained in law.***”

14. Likewise, in the instant case, the post of Director, Mission Shiksha/OSD to Education Department, Government of Arunachal Pradesh, as stated by Mr. Tagum Jamoh, learned standing counsel, Education Department, Government of Arunachal Pradesh, is found to be, neither, a sanctioned post, nor, a cadre post under the Arunachal Pradesh Education Rules, 2010, whereas, the petitioner is in the cadre post of Director of Elementary Education, Government of Arunachal Pradesh. Therefore, the petitioner, ordinarily, could not have been entrusted to look after the charge of

Director, Mission Shiksha/OSD to Education Department, Government of Arunachal Pradesh, by divesting him of his cadre post of Director of Elementary Education, Government of Arunachal Pradesh coupled with the replacement by an Officer who is not eligible to hold the post of Director of Elementary Education, Government of Arunachal Pradesh, as per Rule 55(iii) of the Arunachal Pradesh Education Rules, 2010.

15. There is no dispute at the Bar that the entrustment of the petitioner to look after the charge of Director, Mission Shiksha/OSD to Education Department, Government of Arunachal Pradesh, vide the impugned order, dated 12.05.2023, issued by the Commissioner, Education, Government of Arunachal Pradesh, Itanagar, on 17.05.2023; has not either been made on a deputation.

16. In view of the above, and for all the reasons recorded hereinabove; I am of the considered view that the impugned order, dated 12.05.2023, issued by the Commissioner, Education, Government of Arunachal Pradesh, Itanagar, on 17.05.2023, vide Memo. No. DSE-13011/2/2023, entrusting the petitioner to look after the charge of Director, Mission Shiksha/OSD to Education Department, Government of Arunachal Pradesh, and in his place, allowing the private respondent No. 3 to function as an in-charge, Director of Elementary Education, Government of Arunachal Pradesh, in his own scale of pay, who, otherwise, is not eligible to hold the post of Director of Elementary Education, Government of Arunachal Pradesh, in terms of Rule 55(iii) of the Arunachal Pradesh Education Rules, 2010, has not been issued in accordance with law.

17. Consequently, the impugned order, dated 12.05.2023, issued by the Commissioner, Education, Government of Arunachal Pradesh, Itanagar, on 17.05.2023, vide Memo. No. DSE-13011/2/2023, whereby the petitioner, the Director

of Elementary Education, Government of Arunachal Pradesh, who has been entrusted to look-after the charge of the Director, Mission Shiksha/OSD to Education Department, Government of Arunachal Pradesh, and in his place, allowing the respondent No. 3 viz. Shri Kadhing Perme, a Joint Director of Elementary Education, to function as the in-charge, Director of Elementary Education, Government of Arunachal Pradesh, in his own scale of pay, till further order; is hereby set aside and quashed.

18. With the above directions, the writ petition stands disposed of at the motion stage itself.

JUDGE

Comparing Assistant