



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

Case No. : WP(C)/467/2023

Shri Gyati Pushang
Age: 49
Occupation :
Address:Block Development Office
Ziro-II
Yachuli
Lower Subansiri District
Arunachal pradesh
Mobile No. 9612560243

VERSUS

The State of AP and 2 Ors.
Age: 0
Occupation :
Address:represented by the Secretary
Rural Development
Government of Arunachal Pradesh
Itanagar
Itanagar.
2:The Director Rural Development Department
Age: 0
Occupation :
Address:Government of Arunachal pradesh
Itanagar.

3:Shri Taro Blange
Age: 0
Occupation :
Address:Block Development Officer
Jengging Block
Yingkiong
District Upper Siang
Arunachal pradesh

Advocate for : Khoda Tari

Advocate for : Binter Picha appearing for The State of AP and 2 Ors.: Advocate ,
 , appearing for 2,
 3, respectively.

B E F O R E
HON'BLE MR. JUSTICE KARDAK ETE

JUDGMENT & ORDER(Oral)

Date : 22.11.2023

Heard Mr. K. Tari, learned counsel for the petitioner. Also heard Mr. B. Picha, learned Standing counsel for the Rural Development Department, representing the respondents no. 1 & 2 and Mr. T. T. Tara, learned counsel for the private respondent no. 3.

2. By filing this writ petition, the petitioner has challenged the impugned order No. DRD-11012/2/2021-DRD-RD/51 dated 22.09.2023, issued by the Secretary (Rural Development), Government of Arunachal Pradesh, Itanagar, whereby, the petitioner is sought to be transferred from Ziro II(Yachuli) to Jengging and the respondent no. 3 is sought to be brought in in place of the petitioner.

3. The brief fact, in a nutshell, is that the petitioner who is working as Block Development Officer (BDO) was transferred and posted to the Office of the Directorate (RD) Itanagar from Daporijo in the year 2021 vide order dated 28.07.2021. Vide order dated 17.06.2022, the petitioner was posted from Directorate (RD) Itanagar to Ziro-II (Yachuli). Accordingly, the petitioner joined at his posting place at Ziro-II (Yachuli). While serving at Ziro-II (Yachuli) the impugned transfer order dated 22.09.2023 has been issued whereby the petitioner is sought to be transferred from Ziro-II (Yachuli) to Jengging and the

private respondent has been brought in his place in violation of the guidelines of the transfer and posting of the officers and staff in the State of Arunachal Pradesh, which is a professed norms followed in the State at the behest of Hon'ble Minister (Education) unconnected with the affairs of the Department.

4. Mr. K. Tari, learned counsel for the petitioner submits that as per the transfer and posting guidelines, the tenure of posting in a particular place is 2 (two) years and the petitioner is sought to be transferred before completion of tenure of 2 (two) years. He submits that the impugned order is the third order whereby, the petitioner has been transferred after completion of only one year which amounts to frequent transfer without there being any public interest or administrative exigency.

5. Mr. K. Tari, learned counsel for the petitioner submits that the impugned order dated 22.09.2023 has been issued at the behest of the Hon'ble Education Minister, who has nothing to do with the affairs of the Department of Rural Development. The respondent authority has acted on the UO note of the Hon'ble Minister whereby the private respondent no. 3 has been brought in place of the petitioner. The impugned action of the respondent authority not only amounts to frequent transfer but an act of mortgaging the decision making authority and colourable exercise of power which is clearly *malafide*. Therefore, the impugned order dated 22.09.2023 may be set aside and quashed.

6. In support of his submission, Mr. K. Tari, learned counsel has placed reliance on **B. Varadha Rao vs. State of Karnataka and Ors.**, reported in **(1986) 4 SCC 131**, wherein the Hon'ble Supreme Court, while referring to the constitution Bench judgement of E. P. Royappa vs. State of Tamil Nadu and Anr., reported in (1974) 4 SCC 3 held that for the positivistic view that 'equality is antithetic to arbitrariness' and held that the observations equally apply to the

policy regarding the transfer of public servants. It observed:

It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best judge to decide how to distribute and utilise the services of its employees. However, this power must be exercised honestly, bona fide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power. Frequent transfers, without sufficient reasons to justify such; transfers, cannot, but be held as mala fide. A transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, than is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration, that even administrative actions should be just and fair.

7. On the other hand, Mr. B. Picha, learned Standing counsel for the Rural Development, while referring to the record submits that the respondent authority has issued the impugned order dated 22.09.2023 on the consideration of the request made by the Hon'ble Minister, Education, Cultural Affairs due to administrative exigencies. He submits that even if an officer is transferred on the recommendation of an MLA, that by itself will not vitiate the transfer so made and it is the duty of the representative of the people in the legislature to express the grievances of the people and there can be no hard and fast Rule that every transfer at the instance of an MLA would be vitiated with arbitrariness. He submits that in the present case, though the transfer has been affected on the recommendation of the local MLA who is the Hon'ble Minister Education, same cannot be said to be an act of *malafide*. He further submits

that the guideline of transfer and posting has no statutory force rather is mere guidelines. An officer can be transferred before completion of 2 (two) years in the exigency of service. He further submits that since the Hon'ble Minister has not been impleaded as a party respondent to the present proceedings, the allegation of *malafide* against the said Minister cannot be maintained.

8. In support of his submissions, Mr. Picha, learned Standing counsel for the Rural Development Department has placed reliance on the following judgments:

(i). **Kemo Lollen vs. State of Arunachal Pradesh and Ors.**, reported in **(2018) 5 GLR 21**.

(ii). **Mohd. Masood Ahmad vs. State of U. P. &Ors.**, reported in **(2007) 8 SCC 150**.

(iii). **Dr. J. N. Banavalikar vs. Municipal Corporation of Delhi and Anr.**, reported in **1995 Supp (4) SCC 89**.

9. Mr. T. T. Tara, learned counsel appearing for the private respondent no. 3, submits that the UO note of the Hon'ble Minister indicates that a request has been made to the Hon'ble Minister, RD & Panchayati Raj for initiation of early transfer and posting of the private respondent to Ziro-II CD Block, Yachuli without there being any indictment to the petitioner. The Hon'ble Minister being the local MLA has every authority to request for transfer and posting of an officer to the concerned authority as he being the representative is bound to act for the interest of the public at large. Such request to the concerned authority for transferring of an officer to his constituency by itself will not vitiate the transfer order, more so the transfer order is not stigmatic.

10. Mr. T. T. Tara, learned counsel by placing heavy emphasis on fundamental Rule, submits that no employee has an indefeasible right to seek transfer in a particular place of his choice. Once appointed, government servants are at the

disposal of the Government.

11. Mr. Tara in his usual form while relying on the case of State of **Haryana and Ors. vs. Kashmir Singh and Anr.**, reported in **(2010) 13 SCC 306** submits that that the Hon'ble Supreme Court has clearly held that the Courts should not interfere with purely administrative matters except where absolutely necessary on account of violation of any fundamental or other legal right of the citizen. After all, the State administration cannot function with its hands tied by judiciary behind its back.

12. Mr. Tara has also placed reliance on the judgment of Hon'ble Supreme Court in the case of **Punjab and Sind Bank and Ors. vs. Durgesh Kuwar**, reported in **(2020) 19 SCC 46**, wherein the Hon'ble Supreme Court has held which is reproduced hereinbelow:

“...17. We must begin our analysis of the rival submissions by adverting to the settled principle that transfer is an exigency of service. An employee cannot have a choice of postings. Administrative circulars and guidelines are indicators of the manner in which the transfer policy has to be implemented. However, an administrative circular may not in itself confer a vested right which can be enforceable by a writ of mandamus. Unless an order of transfer is established to be mala fide or contrary to a statutory provision or has been issued by an authority not competent to order transfer, the Court in exercise of judicial review would not be inclined to interfere. These principles emerge from the judgments which have been relied upon by the appellants in support of their submissions and to which we have already made a reference above. There can be no dispute about the position in law.”

13. Mr. Tara, learned counsel has further placed reliance on the judgment of this Court, in the case of **Pojom Pade vs. State of Arunachal Pradesh and Ors.**, reported in **2011 (2) GLT 186**, wherein, this Court has held which is reproduced hereinbelow:

“...(8) The instant writ petition is to be disposed of on the basis of the established service law particularly, law regarding transfer of employees. It is not necessary to elaborate or reiterate that Government servant has no vested right to remain posted at a place of his choice, nor can he insist that he must be

posted at one place or to other because no Government can function in such manner and the Government servant is liable to be transferred in public interest and administrative exigency from one place to other. The latest ruling by the Apex Court in *Rajendra Singh and Ors. Vs. State of U. P. and Ors.*, reported in (2009) 15 SCC 178 would be enough to illustrate the law wherein it is held amongst other that transfer of an employee is not only an incident inherent in terms of appointment but also implicit as an essential condition of service in absence of any specific indication to the contrary. The Court is not required to give a finding or conclusion whether the petitioner's transfer before the normal term of posting of 2 years, as laid down by the Government could be said as illegal, unjustified and arbitrary. The Court is concerned only with mala fide action and violation of statutory rules in passing the impugned transfer orders. The extent and manner in which the Court should exercise Judicial review in the matter of transfer of employees has been laid down in a large number of cases. It is felt unnecessary to refer all those cases. However, in *Rajendra Singh's* case (supra), it is held therein that at what place the employee should be posted is an exclusive prerogative of the State Government keeping in view administrative exigencies and the High Court would commit serious error if it decides the competence of the respondent authorities in exercising its power in ordering transfer and posting, for, it is not within the domain of the High Court. It would be uncalled for if the High Court issues any direction to post someone else in place of some employee and the Court should be reluctant to interfere with transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides."

14. Carefully perused and considered the above case laws relied on by the learned counsel for the parties. The case laws relied on by the parties are settled proposition of law and have been decided on the facts and circumstances of those cases. There is no quarrel. However, the present case is required to be considered on its attending factual contexts.

15. I have considered the rival submissions of the learned counsel for the parties and also perused the records.

16. On perusal of the record, the impugned order appears to had been issued in pursuant of the UO note dated 10.07.2023 by the Hon'ble Minister Education, wherein, the private respondent, namely, Taro Blange, BDO, has been recommended for transfer and posting from Jengging to Ziro-II Block Yachuli.

17. File No. DRD-11012/2/2021-DRD-RD has been perused. At Note # 168 it reflects that the Hon'ble Minister, Education, Cultural Affairs etc. has requested for transfer and posting of Shri Taro Blange, BDO from Jengging to Ziro-II (Yachuli) Block and Shri Gyati Pushang, BDO, Ziro-II (Yachuli) CD Block was posted in the Block vide order No. DRD-11012/2/2021-DRD-RD Dated 17.06.2022. At Note # 171 it states that U.O. Note received by the Hon'ble Minister, Education, Cultural Affairs etc. Secretary (RD) may kindly approve above please. At Note #180 it reflects that the cross transfer and posting in between Shri Taro Blang, BDO, Jengging to C.D. Block, Ziro-II(Yachuli) and Shri Gyati Pushang, BDO, Ziro-II(Yachuli) to Jengging C. D. Block may like to approve in the interest of public service. Note # 181 indicates that as mention above the transfer and posting is in between following officers: 1. Shri Taro Blang, BDO, Jengging to C.D. Block, Ziro-II(Yachuli) and 2. Shri Gyati Pushang, BDO, Ziro-II(Yachuli) to Jengging C. D. Block. Thus, Secretary (RD) may kindly approve please. Note #183 reflects approval of concerned Minister. Finally, the impugned transfer was approved by the Secretary (RD) at Note # 184 on 22.09.2023 and was issued on 25.09.2023.

18. On perusal of the record, it reveals no ground or reason for transferring the petitioner from Ziro-II, Yachuli to Jengging and bringing the respondent no. 3 in his place for any administrative exigency except the recommendation/request made by the Hon'ble Minister, Education.

19. In the considered opinion of this Court, the respondent authority appears to have mortgaged their own discretion and decision making authority at the behest of Minister not connected with the affairs of the Department by carrying out commands having no sanctity in law which would not be permissible under the scheme of Democratic Governance. No doubt transfer and posting is an incident of service and an employee/Government servant has no right to claim

that he/she should be posted in a particular place of his/her choice and for a particular period, the action of the authority has to confirm to the principle of non-arbitrariness and such action should be for administrative exigency and public interest.

20. I may profitably refer to the case of **Tarlochan Dev Sharma vs. State of Punjab and Ors.**, reported in **(2001) 6 SCC 260**, wherein the Hon'ble Supreme Court has held which is reproduced hereinbelow:

“...16. In the system of Indian Democratic Governance as contemplated by the Constitution senior officers occupying key positions such as Secretaries are not supposed to mortgage their own discretion, volition and decision making authority and be prepared to give way or being pushed back or pressed ahead at the behest of politicians for carrying out commands having no sanctity in law.”

21. The plea of non-impleadment of Minister as party respondent for alleging malafide raised by the learned counsel for the State Respondent is considered only for rejection as in the considered view of this court it is not a case of alleging malafide against any particular person so as to contend that such malafide exercise of power is the foundation. The impugned transfer order has been issued at the behest of Minister on extraneous consideration and the respondent authority has succumbed to the dictates of the Minister and only on his desire the impugned transfer order has been passed to accommodate the respondent no. 3 without any administrative exigency and public interest which is evidently a colourable exercise of power. In my considered view, on the facts admitted in the present case, the Minister is not a necessary party in as much as it is not the case of raising some disputed questions of fact alleging malafide on the part of Minister requiring his presence to answer the same.

22. In the present case, as noted above, the respondent authorities appears to have mortgaged the decision making authority by yielding to the recommendation made by the Hon'ble Minister so as to accommodate the

private respondent in place of the petitioner without there being any discernible administrative exigency/public interest.

23. This Court is not oblivious of the observation of the Hon'ble Supreme Court that if one is transferred on the recommendation of an MLA that by itself will not vitiate the transfer so made as it is the duty of the representative of the people in the legislature to express grievances of the people. In the present case, the recommendation by the Minister for a particular officer i.e. private respondent No. 3, against another officer i.e. petitioner, for transfer and posting without there being any public interest/administrative exigency on which the respondent authority has merely acted cannot be said to be an expression of grievances of the people. Nothing is reflected in the record that the respondent authority has acted in the interest of public service or for administrative exigency.

24. In view of the discussions made herein above, this Court is of the considered opinion that the impugned order dated 22.09.2023, issued by the Secretary (Rural Development), Government of Arunachal Pradesh, Itanagar vide Order No. DRD-11012/2/2021-DRD-RD/51, transferring the petitioner from Ziro II (Yachuli) to Jengging by bringing the respondent no. 3 in place of the petitioner is not sustainable in law. Accordingly, the impugned order dated 22.09.2023, issued by the Secretary (Rural Development), Government of Arunachal Pradesh, Itanagar vide Order No. DRD-11012/2/2021-DRD-RD/51 is hereby set aside and quashed.

25. In the result, writ petition is allowed and disposed of.

26. It is made clear that the respondent authority may take appropriate decision for transfer and posting of the petitioner and the respondent no. 3 after completion of 2 (two) years from the date of posting of the petitioner i.e. 17.06.2022, independent of any recommendation or representation, purely on

administrative exigency and public interest.

No order as to costs.

JUDGE

Comparing Assistant