



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

Case No. : WP(C) 461/2022

1: Pokter Rime

Presently under transfer as Principal, Govt. Higher Secondary School, Namsai,
Namsai District, Arunachal Pradesh.
Phone No. 8413063031

VERSUS

1: THE STATE OF AP and 4 Ors.

Represented by the Commissioner (Education), Govt. of Arunachal Pradesh, Itanagar.

2: The Commissioner (Education)

Govt. of Arunachal Pradesh
Itanagar.

3: The Under Secretary (Education)

Govt. of Arunachal Pradesh
Itanagar.

4: The Director

of Secondary Education
Govt. of Arunachal Pradesh
Itanagar.

5: Yade Nasi

Presently posted as Deputy Director of School Education
Upper Subansiri District
PO Daporijo
Arunachal Pradesh

Advocates

For the petitioner	:Mr. D.Panging
For the respondent nos. 1 to 4	: Mr. T. Jamoh
For the respondent No. 5	: Mr. D. Soki
Date of hearing	: 22.06.2023
Date of order	: 30.06.2023

**BEFORE
HON'BLE MR. JUSTICE KARDAK ETE
JUDGMENT AND ORDER(CAV)**

Heard Mr. D. Panging, learned counsel for the petitioner. Also, heard Mr. T. Jamoh, learned standing counsel for the Education Department representing the respondent Nos. 1 to 4 and Mr. D. Soki, learned counsel appearing for private respondent No. 5.

2. By filing this writ petition, the petitioner has challenged the order No. 15/2022 dated 21.11.2022, issued on 22.11.2022, by which the Commissioner of Education, Government of Arunachal Pradesh, had partially modified the transfer and posting order no. DSE-13011/14/2021 dated 15.11.2022, by which the petitioner, who was posted as the Principal, GHSS, Namsai was transferred as Deputy Director of Secondary Education (DDSE for short), Daporijo, Upper Subansiri, is sought to be retained at GHSS, Namsai as Principal and the respondent no.5, who was the principal of GHSS, Ligu was transferred and posted as DDSE, Daporijo, Upper Subansiri District.

3. The case of the petitioner is that he was transferred vide order dated 15.11.2022 from GHSS, Namsai, to Daporijo, Upper Subansiri District, as DDSE. After completion of necessary formalities, the petitioner was released on 18.11.2022 by the Deputy Commissioner, Namsai. Thereafter, the petitioner had joined as DDSE, Daporijo, Upper Subansiri District on 21.11.2022.

4. Accordingly, the Extra Assistant Commissioner for the Deputy Commissioner, Upper Subansiri District on 21.11.2022 sent a WT Message to the Commissioner (Education) as well as the Director of Secondary Education apprising that the petitioner had joined his duty as DDSE, Upper Subansiri District on 21.12.2022. Consequent to the joining of the petitioner as DDSE, Upper Subansiri District, the petitioner took charge as the DDSE on 21.11.2022 itself from the In-Charge DDSE. Thereafter, the petitioner issued the circular dated 21.11.2022 apprising all the concerned that he had taken over the charge as DDSE, Upper Subansiri District.

5. The impugned order dated 21.11.2022 has been issued by the Commissioner (Education), Government of Arunachal Pradesh) signed on 22.11.2022 by which the earlier transfer order dated 15.11.2022 was partially modified in respect of the petitioner and the petitioner was retained as Principal, GHSS, Namsai and the private respondent No. 5 was posted as DDSE, Upper Subansiri District in place of the petitioner.

6. The petitioner on being aggrieved of the impugned order dated 21.11.2022 submitted a representation to the Commissioner (Education) apprising that the petitioner had already joined and taken charge as DDSE, however, the petitioner was informed that the impugned order would not be reviewed as the same has been done on the request of all the four Members of Legislative Assembly of Upper Subansiri District and as such being left no option the petitioner has filed

this present petition.

7. Mr. D. Panging, learned counsel for the petitioner submits that the petitioner came to know that the impugned order has been passed at the intervention of four MLA's of Upper Subansiri District vide a file being File No. 24490, DSE 13011/14/2001 was put up wherein it was categorically mentioned that on the request of the four MLA's of Upper Subansiri District, the file for posting the respondent No. 5 in place of the petitioner is being put up and the same was consequently approved leading to the issuance of the impugned order dated 21.11.2022.

8. Mr. D. Panging, learned counsel submits that the very fact that the respondent no. 5 was able to get as many as 4 MLAs to make U.O. note in her favour makes it evident that the respondent No. 5 was again able to bear political pressure upon the respondent authorities for posting as DDSE, Upper Subansiri district and the impugned order was not issued in public interest but just to accommodate the respondent no. 5 as such, the respondent authorities have mortgaged their conscience and have succumbed to political pressure while issuing the impugned order.

9. Mr. D. Panging, learned counsel submits that by the order dated 15.11.2022 as many as 11 officers were posted to different schools and offices in the interest of public service after elaborate exercise was carried out to determine as to who should be transferred where in the exigencies of administration and public interest, same cannot be taken away by cryptic order modifying or keeping in abeyance of the transfer order on some non-existent grounds, the same ceases to be in public interest and as such liable to be interfered with. He further submits that once the transfer order is made in public interest, subsequent orders cancelling or superseding earlier transfer order must be

supported with sufficient reasons, however, in the instant case, the respondent No. 5 was posted as DDSE, Upper Subansiri District without any cogent reason on the interference of political functionaries.

10. He further submits that the State being a model employer has to take care of the grievances of all its employees and all has to be treated equally, however, in the instant case, the respondent authorities did not even consider the fact that the petitioner was already released from GHSS, Namsai and had joined as DDSE, Upper Subansiri district.

11. In view of the facts and circumstances narrated, Mr. D. Panging, learned counsel submits that it has been amply demonstrated that the action of the respondent authority are fraught with arbitrariness and illegality and the action of the respondent authority in issuing the impugned order without assigning any reason is totally illegal and bad in the eye of law. Therefore, this Hon'ble Court may interfere and set aside the impugned order dated 21.11.2022.

12. Mr. D. Panging, learned counsel for the petitioner has relied on the judgments of the High Court in the case of **Ruokuolhoulie Angami Vs. State of Nagaland and Ors** reported in 1997 (1) GLT 140 and the case of **Deepak Tayeng Vs. State of Arunachal Pradesh and Ors** reported in 2020 (3) GLT 275 in support of his submissions.

13. Mr. T. Jamoh, learned Standing counsel for the Education Department for respondent nos. 1 to 4 submits that the impugned order dated 21.11.2021 has been issued after consideration of the representation of the respondent No. 5 on the grounds that she is on the verge of retirement and on compassionate ground. He admitted that there is a U.O. note submitted by the MLA's of the Upper Subansiri District for posting of the respondent no. 5 as DDSE, Upper

Subansiri District as she is on the verge of retirement and considering her age and she being a lady officer of the Department. Therefore, submits that the grounds of the transfer of respondent no. 5 in place of the petitioner cannot be faulted.

14. Mr. D. Soki, learned counsel for the respondent no. 5 submits that as per policy guidelines on the transfer and posting of the Teachers vide notification dated 10.02.2022 namely Teacher's Transfer and Posting Policy 2019-2022(Education) wherein it provides the types of transfer which includes transfer on request which shall be effected based on the request of Teachers and eligibility as per the policy besides the administrative transfer where the department order Suo-Moto in exigencies of service and on public interest or on administrative grounds. It also provides that teachers having 24 months or less than that before retirement shall generally not be transferred though they have completed their five years in the same school as it may otherwise affect preparation of pension papers etc, unless the teacher herself/himself has sought transfer. It also provides for preference on the basis of age and gender, which provides the teachers who is the oldest by age shall be given priority and the female teacher shall be given preference.

15. Relying on the said policy guidelines of the department of Education, Mr. D. Soki, learned counsel submits that the transfer of the respondent no. 5 by the order dated 21.11.2022 has been initiated by the representation of the respondent no. 5 on the ground that she is on the verge of retirement having only one year period and on consideration of her age and gender, as supported by the policy guidelines, she has been transferred. He further submits that it is well settled that the High Court in exercise of its jurisdiction under Article 226 of the constitution can take cognizance of the entire facts and circumstances of the

case and pass appropriate order to give the parties complete and substantial justice. This jurisdiction of the High Court, being extraordinary, is normally exercisable keeping in mind the principles of equity. Since the powers are discretionary and equitable and are required to be exercised in the larger interest of justice while granting relief in favour of the petitioner, the court must take into account the balancing of interests and equities. While granting or withholding of relief may properly be dependent upon considerations of justice, equity and good conscience.

16. Mr. D. Soki, learned counsel has placed reliance on the following judgments of the Hon'ble Supreme Court and High Court:

(i) **Ramesh Chandra Sankla and Others Vs. Vikram Cement and Ors** reported in (2008) 14 SCC 58.

(ii) **State Bank of India Vs. Anjan Sanyal and Ors** reported in (2001) 5 SCC 508.

(iii) **National Hydroelectric Power Corporation Ltd. Vs. Shri Bagwan and Anr** reported in (2001) 8 SCC 574.

(iv) **Shilpi Bose (Mrs) and Ors Vs. State of Bihar and Ors** reported in 1991 Supp (2) SCC 659.

(v) **State of Assam and Ors Vs. Dilip Kumar Das and Anr** reported in (2003) 2 GLR 151.

(vi) **Jiten Bora vs. State of Assam and Ors** reported in (2015) 4 GLR 609.

17. On consideration of the submissions advanced by the learned counsel for the parties and materials available on record, it transpires that from the Note

No. 234 that against respondent no.5, the following observation is made in Column No.7, relating to brief/reason cited for seeking transfer which states that joint representation of U.O note from HMLAs requesting for transfer and posting of the incumbent as the current DDSE, Daporijo is going to retire soon. From the footnote of the said note, it appears that the same was made on 17.10.2022. It be noted that when the transfer order dated 15.11.2022 was passed in respect of the petitioner, the Director of Secondary Education was aware of the representation made by respondent no. 5. Similar note is also made as Note No. 242 prepared on 09.11.2022, and as per Note No. 258 prepared on 16.11.2022, it is mentioned that as directed by the HME, file is resubmitted for onward submission to HME. Further, at the Note No. 260 prepared on 19.11.2022 it is mentioned that on the request of all Hon'ble Minister & MLAs of Upper Subansiri District, Smti Yade Nasi, Principal GHSS, Ligu is posted as DDSE Upper Subansiri. Shri Pokter Rime, Principal, GHSS, Namsai will remain as Principal in the same school.

18. Thus, it appears that before any order was issued pursuant to Note No. 260, by virtue of the transfer order dated 15.11.2022, the petitioner was allowed to handover charge at GHSS, Namsai and he was allowed to proceed and join as DDSE, Daporijo, Upper Subansiri District on 21.11.2022.

19. Therefore, having taken a conscious decision to transfer the petitioner to his new place of posting, the Court is unable to approve the re-transfer of the petitioner to his earlier post on the basis of notes made and circulated by the political persons on 17.11.2022. This is not a case where the authorities had applied their own mind to pass the impugned order dated 21.11.2022 to transfer the respondent no. 5 and to retain the petitioner to his previous posting place at Namsai, thereby the respondent authorities had passed the impugned

order by mortgaging their decision making authority to political persons, who had influenced the decision of the respondent authorities.

20. In the case of *Roukuolhoulie Angami* (Supra), this Court held that for cancellation, modification or keeping in abeyance of the transfer order passed in public interest, it must be supported with sufficient reasons necessitating for passing such order. Once the transfer order is made in public interest, court normally do not interfere unless the order is passed with mala fide or against the statutory rules. The only way open to the aggrieved government servant is to file a representation before the competent authority to redress his grievances. But this court insist that for cancellation/modification or keeping it in abeyance of such order must be supported with sufficient reasons, because transfer of officers are always made in public interest and after elaborate exercise as to who should be transferred where in the exigency of administration. While processing the transfer order, various factors are taken into consideration. One such factor being the duration of the stationing of one officer in a particular station for a long time. If an officer is posted in a particular station for a long time, no doubt, that he also acquire a considerable knowledge about the administration of the area, but at the same time he also often establishes vested interest in the area because of his long association and to avoid such eventualities, timely posting is always called for. Therefore, if the transfer order made in public interest is allowed to be taken away by another cryptic order modifying/cancelling or keeping in abeyance of the transfer order without assigning any reasons, it ceases to be in public interest, therefore, it must be held that the order has been passed at the whims and caprice of the authorities exercising the power. Public interest would not be allowed to be sacrificed at the altar of the whims and caprice of the authority exercising the power. It must be grasped that public authority possess power to use it for

public interest.

21. In the case of ***Deepak Tayeng vs. State of Arunachal Pradesh*** (Supra), it has been held that modification of the order of transfer for accommodating some officer, the authorities are required to assign overwhelming public interest.

22. The Hon'ble Apex Court in the case of ***Shilpi Bose (Mrs) and Ors vs. State of Bihar*** (Supra), held that if the competent authority issued the transfer order with a view to accommodate a public servant to avoid hardship, the same cannot and should not be interfered by the court merely because the transfer orders were passed on the request of the employees concerned. 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 another. 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.

23. In the case of ***State Bank of India Vs. Anjan Sanyal*** (Supra), the Hon'ble Supreme Court has held that the order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a court of law in exercise of its discretionary jurisdiction unless the court finds that either the order is mala fide or that the service rule prohibit such transfer of that authorities, who issued the order, had not the competence to pass the order.

24. In the case of ***National Hydroelectric Power Corporation Ltd vs. Shri Bagwan***

(Supra), the Hon'ble Supreme Court has held that 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 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.

25. In the case of ***Jiten Bora*** (Supra), this Court held that though such administrative guidelines may not be enforceable in a court of law, nonetheless such guidelines have been framed by the administration for compliance of the administrative authorities. Administrative authorities cannot take the plea of unenforceability of the guidelines in a court of law to justify their non-adherence to such guidelines.

26. In the case of ***State of Assam Vs. Dilip Kumar Das*** (Supra), the Division bench of this Court has held that, in the facts and circumstances of that case, the competent authority has jurisdiction to transfer the employees, if it found the necessity that a particular officer be placed at a particular place, considering the exigency of business and in public interest. On having perused the records in that case, it was held that it is for the Minister to assess the capability and capacity of a particular officer to carry that job, therefore, the court is not to sit over the judgment of the authority concerned and it will be extremely slow in interfering with the discretion exercised by the authority who is supposed to know his job and the employees in a better manner.

27. In the case of ***Ramesh Chandra Sankla and Ors*** (Supra), the Hon'ble Supreme Court held that it is well settled that the High Court in exercise of its jurisdiction under Article 226 of the Constitution can take cognizance of the

entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. This jurisdiction of the High Court, being extraordinary, is normally exercisable keeping in mind the principles of equity. One of the ends of the equity is to promote honesty and fair play. If there be any unfair advantage gained by a party priorly, before invoking the jurisdiction of the High Court, the court can take into account the unfair advantage gained and can require the party to shed the unfair gain before granting relief. It also held that it has been rightly stated that the person who seeks equity must bow to equity and also held that granting or withholding of relief may properly be dependent upon considerations of justice, equity and good conscience.

28. This Court would 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 observed that 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.

29. On careful consideration of the above decisions and observations by the Hon'ble Apex Court and this High Court, there would not be any doubt on the proposition of law laid down above. However, each case has to be determined in the contextual facts of that case.

30. Reverting back to the present case, it transpires that the petitioner was transferred and posted from GHSS, Namsai to Daporijo, Upper Subansiri District as DDSE by a common transfer order dated 15.11.2022 where as many as 11

officers were posted to different schools and offices in the interest of public service, pursuant to which the petitioner was released and joined as DDSE, Daporijo, Upper Subansiri District on 21.11.2022 and taken the charge from the in-charge DDSE and concerned authority had informed by sending a WT Message to the Commissioner (Education) as well as the Director of Secondary Education, Government of Arunachal Pradesh. As noted above, the impugned transfer order dated 21.11.2022 has been issued after the order of transfer dated 15.11.2022 was executed. It is also noted that the impugned transfer order has been issued on the representation by the respondent No. 5 with the support of U.O. note of 4 MLA's of Upper Subansiri District which initially was not accepted by the concerned Minister, however it appears that on the pressure of the 4 MLAs of Upper Subansiri District, it was ultimately approved by the Minister and the respondent No. 5 was transferred as DDSE, Upper Subansiri District in place of the petitioner by retaining the petitioner as Principal at GHSS, Namsai. It is also not discernible from the records filed on behalf of the State respondents that the case of the petitioner was considered on the basis of the policy guidelines of the Education Department. As noted above, it only states that on the joint representation of the U. O. note from the 4 MLA's requesting for transfer and posting of respondent no. 5 as incumbent DDSE simply mentioning that she is going to retire soon and finally it reflects that on the request of the Hon'ble Minister and the 4 MLAs of Upper Subansiri District, the respondent no. 5 be posted as DDSE, Upper Subansiri District and the petitioner be retained as Principal in the GHSS, Namsai.

31. In view of what has been discussed above, this Court is of the view that having taken the decision to issue common transfer order dated 15.11.2022, (the transfer of as many as 11 Officers) including the petitioner, the issuance of the impugned modified transfer order dated 21.11.2022, transferring the

respondent No. 5 to Daporijo as DDSE singly picking up the petitioner and that too at the behest of the MLA's of the District to accommodate the respondent No. 5 without there being any public interest is not permissible. It is not disputed that the impugned order has been issued at the behest of the MLA's of Upper Subansiri District, Daporijo, therefore, it cannot be considered that the respondent authority had applied their mind in passing the impugned order dated 21.11.2022 to transfer the respondent No. 5 to Daporijo as DDSE and retained the petitioner as the Principal, GHSS, Namsai which amounts to mortgaging the discretion of its decision making authority. This court also takes note of the fact that the impugned order dated 21.11.2022 has been passed to accommodate the respondent No. 5 at the behest of the 4 MLA's of Upper Subansiri District, therefore, the principle that a person who seek equity must do equity applies in the present case as the petitioner ought to have placed his grievance before the concerned authority for consideration of her genuine grievance, if any, to be considered by the concerned authority without there being any influence from the political functionaries.

32. From the submissions of the learned counsel for the parties as well as the materials available on record there is nothing to show that the impugned transfer order dated 21.11.2022 has been passed in administrative exigencies or in the interest of public. The learned counsel for the respondents have made an attempt to explain and justify the issuance of the impugned order dated 21.11.2022, however, this Court is of the view that the same is considered only for rejection in view of the principle of law that public order publicly made cannot be construed in the light of the explanation subsequently given by the author of the order. No reason has been assigned as to why the transfer order dated 15.11.2022 is required to be modified rather it clearly reflects that same has been issued only to accommodate the respondent No. 5 at the behest of the

political functionaries where the authority concerned has mortgaged their decision making authority.

33. In view of above conclusion, the impugned order dated 21.11.2022, issued on 22.11.2022, passed by the Commissioner (Education), Government of Arunachal Pradesh is not sustainable and hereby interfered with.

34. Accordingly, the impugned order dated 21.11.2022, issued on 22.11.2022, issued by the Commissioner (Education), Government of Arunachal Pradesh is hereby set aside and quashed.

35. However, in view of the fact that the respondent No. 5 is on the verge of retirement, the respondent authorities may pass appropriate order posting the respondent No. 5 to a place where she may not face any hardship in the preparation of her pension papers.

36. In the result, the writ petition is allowed and disposed off.

37. Parties to bear their own cost.

JUDGE

Comparing Assistant