

GAHC010004892023



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

Case No. : WP(C)/166/2023

DEBAKANTA BARUAH
SON OF SRI BAIKUNTHA SEAL,
RESIDENT OF P.O. AND VILLAGE- MAROWA,
P.S. AND DISTRICT- NALBARI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
REVENUE AND DISASTER MANAGEMENT DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE DEPUTY COMMISSIONER
NALBARI
P.O.- NALBARI
ASSAM.

3:TRIDIP BARMAN
LOT MANDAL
LAND ACQUISITION BRANCH

OFFICE OF THE DEPUTY COMMISSIONER
NALBARI

P.O. AND DISTRICT- NALBARI

ASSAM
PIN- 781335

Advocate for the Petitioner : MR. D P BORAH

Advocate for the Respondent : SC, REVENUE

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 09-02-2023

Heard Mr. D.P. Borah, learned counsel for the writ petitioner. Also heard Mr. H. Sarma, learned Addl. Sr. Govt. Advocate, Assam appearing for the respondent No. 2 and Mr. S. Dutta, learned standing counsel, Revenue & Disaster Management, Assam appearing for the respondent No. 1. None has appeared for the respondent No. 3.

2. This writ petition has been filed by the petitioner assailing the transfer order dated 28-12-2022 by means of which, the petitioner, who is presently posted in the Banekuchi Revenue Circle has been transferred and posted in the Land Acquisition Branch in the District of Nalbari. It is to be noted herein that transfer of the writ petitioner is within the same district of Nalbari. The primary ground of challenging the order of transfer is that the order has been issued within a period of 10 months of his joining at the Banekuchi Revenue Circle and therefore, the same was in violation of the transfer guidelines applicable in case of Govt. employees.

3. Mr. Borah submits that no approval of the superior authority was taken before issuing the transfer before completion of normal tenure of 03 years.

4. Responding to the above, Mr. Sarma has pointed out that the petitioner was earlier arrested in connection with Nalbari P.S. Case No. 523/2021 registered under Section

120(B)/420/401/407 IPC. In view of his arrest the petitioner was also placed under suspension by the order dated 11-10-2021. However, subsequently, by the order dated 31-01-2022 passed by the learned Single Judge in W.P.(C) No. 72/2022 the order of suspension has been interfered with and a direction was issue to reinstate the petitioner forthwith. However, in the order dated 31-01-2022, liberty has been granted to the respondents to post the petitioner wherever they want in the exigencies of service. Mr. Sarma submits that the impugned transfer order has been issued in the exigencies of public service and in terms of the leave granted by the learned Single Judge. Similar is the stand of Mr. Dutta, learned standing counsel, Revenue & Disaster Management, Assam.

5. It is no doubt correct that there is a policy of the Govt. of Assam that before completion of the normal tenure of 03 years at one place of posting an employee shall not be ordinarily transferred without obtaining the approval of the highest authority. However, such guidelines are not mandatory but directory in nature and have been merely issued to prevent arbitrary orders of transfer. Moreover, it is also not a case where the writ petitioner has been transferred from one district to another.

6. In the present case, the transfer of the petitioner is within the same district and therefore, it does not disrupt his family life in any manner. Moreover, the order of transfer is also apparently issue in terms of the leave granted by this Court by the order dated 31-01-2022. Therefore, having regard to the facts and circumstances of the case in its totality, I am of the view that no case has been made out for interference of this Court with the order of transfer under challenge.

7. Law is well settled that transfer is an incident of service and the scope for the writ court to interfere to such order of transfer in exercise of jurisdiction under Article 226 of the Constitution is very limited. It is only when the order is found to have been issued in malafide exercise of power or in violation of statutory provisions or the conditions of service of the incumbent that an order of transfer is interfered with. As noted above, no such ground has either been urged or established by the petitioner. Consequently, this writ petition is held to be devoid of any merit and the same is accordingly dismissed.

Interim order passed earlier stands vacated.

Writ petition stands disposed of.

JUDGE

GS

Comparing Assistant