

GAHC010030722023



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

Case No. : WP(C)/806/2023

SMTI. SUDARSHANA BATSHAH
W/O DR. DHRUBA JYOTI SARMA, ASSISTANT TEACHER, KADONG HIGH
SCHHO, P.O.-KADONG, DIST-BARPETA, ASSAM, PIN-781314

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY ITS COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, EDUCATION (SECONDARY) DEPARTMENT, DISPUR,
GUWAHATI-6

2:THE MISSION DIRECTOR
SAMAGRA SIKSHA
ASSAM
KAHILIPARA
GUWAHATI-21

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

4:THE INSPECTOR OF SCHOOL
BDC
BARPETA
P.O. AND DIST-BARPETA
ASSAM
PIN-781301.4

5:THE INSPECTOR OF SCHOOLS
KDC
KAMRUP

P.O.-AMINGAON
DIST-KAMRUP
ASSAM
PIN-781031

6:THE PRINCIPAL
BEZERA HS SCHOOL
BEZERA

7:ABU SUFIYAN SIDDIQUE
S/O LATE ABU BAKKAR SIDDIQUE
R/O VILL-GOROIMARI SATRA
P.O.-TUKRAPARA
DIST-KAMRUP
ASSA

Advocate for the Petitioner : MR. R SARMA

Advocate for the Respondent : SC, SEC. EDU.

Linked Case : WP(C)/489/2023

ABOU SUFIYAN SIDDIQUE
S/O- LATE ABU BAKKAR SIDDIQUE

RESIDENT OF VILLAGE- GOROIMARI SATRA

P.O.- TUKRAPARA

DIST.- KAMRUP
ASSAM.

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DISPUR
GUWAHATI-6.

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SAMAGRA SHIKSHA
ASSAM

KAHILIPARA
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ASSISTANT TEACHER
KADONG HIGH SCHOOL

P.O.- KADONG
DIST.- BARPETA

ASSAM
PIN- 781314.

Advocate for : DR. B AHMED
Advocate for : SC
SEC. EDU. appearing for THE STATE OF ASSAM AND 5 ORS.

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 13.02.2023 _

Heard Mr. A.K. Azad, the learned counsel for the petitioner in W.P.(C) No. 489/2022 and Mr. R. Sarma, the learned counsel appearing on behalf of the

petitioner in W.P.(C) No. 806/2023. I have heard Mr. R. Mazumdar, the learned standing counsel appearing on behalf of the Secondary Education Department and Mr. P. Nayak , the learned counsel appearing on behalf of the Samagra Shiksha Abhijan.

2. Both these writ petitions arises out of a request being made by the petitioner in W.P.(C) No. 806/2023 seeking transfer to a school in the home district i.e. Kamrup(Metro) or Kamrup(Rural) of the same service category (57 NSQF School) under Samagra Shiksha Abhijan on various grounds including the safety and security of a female teacher.

3. It appears that pursuant to the application submitted before the Chief Minister, Assam as well as the Mission Director, Samagra Shiksha Abhijan, the Additional Deputy Commissioner, Education, Barpeta upon perusal of the report of the Superintendent of Police, Barpeta and the Inspector of Schools, BDC, Barpeta in respect to the petitioner in W.P.(C) No. 806/2023 observed that the said petitioner could apply for transfer. It appears that subsequent thereto, the order dated 21/1/2023 was issued whereby the petitioner in W.P.(C) No. 806/2023 was transferred from Kadong H.S. School, Barpeta to Bezera H. S. School, Kamrup and the petitioner in W.P.(C) No. 489/2023 was transferred from Bezara H.S. School, Kamrup to Kadong High School, Barpeta. The said order of 21/1/2023 has been put to challenge in W.P.(C) No.489/2023.

4. A perusal of the pleadings in W.P.(C) No. 489/2023 would show that the impugned transfer order dated 21/1/2023 has been assailed on the ground that it was passed in violation to the provisions of the Assam Elementary and Secondary School Teachers' (Regulation of Posting and Transfer) Act, 2020(for short "the Act of 2020").

5. It is the case of the petitioner in W.P.(C) No. 489/2023 that the impugned transfer order is an inter district transfer of teachers of secondary schools and in terms with the provisions of the Act of 2020, it is required that there has to be a recommendation by the Competent Authority in terms with Section 5(2) of the Act of 2020. The further case of the petitioner is that the State Level Committee shall be the Competent Authority for recommending inter district transfer of teachers of secondary schools in accordance with the Act of 2020 and said committee consists of Mission Director, Samagra Shiksha Abhijan, Assam and the Director, Secondary Education, Assam. It is the case of the petitioner that as there is no compliance to the said provisions, the said impugned order is liable to be interfered with.

6. This Court vide an order dated 1/2/2023 had issued notice making it returnable on 8/2/2023. On the said date Mr. R. Mazumdar, the learned standing counsel appearing on behalf of the Secondary Education Department submitted that the provisions of the Act of 2020 would not be applicable to those schools coming under the Samagra Shiksha Abhijan. This Court thereupon directed the matter to be listed on 8/2/2023 and issued further directions that the status-quo be maintained as regards the impugned transfer order as on 1/2/2023.

7. On 8/2/2023 when the matter was listed before this Court, Mr. B. Choudhury, the learned counsel appearing on behalf of the Samagra Shiksha Abhijan submitted that the provisions of the Act of 2020 also applies to schools coming under the Samagra Shiksha Abhijan and the respondents were bound to follow the Act of 2020 while passing the impugned transfer order dated 21/1/2023. He further submitted that as per the instructions received from the Mission Director, Samagra Shiksha Abhijan, Assam, it was decided to cancel/withdraw the impugned transfer order dated 21/1/2023. However, since

this Court had directed the maintenance of status-quo, no order to cancel/withdraw the impugned transfer order dated 21/1/2023 was passed. It is also relevant to note that the petitioner in W.P.(C) No. 806/2023 is the respondent No. 6 in W.P.(C) No. 489/2023. On that day the learned counsel for the respondent No.6 sought for an accommodation. Accordingly, this Court therefore, fixed the matter today and the status-quo order as directed in the order dated 1/2/2023 was further directed to be maintained. It was however observed that the order of status-quo so passed shall not bar the respondents to cancel/withdraw the impugned transfer order dated 21/1/2023. The instructions so produced by Mr. B. Choudhury, was kept on record and marked with the letter 'X'.

8. It is under such circumstances that W.P.(C) No. 806/2023 was filed by the respondent No. 6 in W.P.(C) No. 489/2023 with a prayer for setting aside the communication marked with the letter 'X' and for a direction not to cancel the impugned order dated 21/1/2023.

9. Mr. P. Nayak, the learned counsel appearing on behalf of Samagra Shiksha Abhijan submitted that although the liberty was granted by this Court vide the order dated 8/2/2023 in W.P.(C) No. 489/2023 but the transfer order dated 21/1/2023 has not yet been cancelled or withdrawn. Be that as it may, he submits on instructions that the said transfer order dated 21/1/2023 is in violation to the mandate of the Act of 2020 inasmuch as the necessary requirement of obtaining the recommendations from the Competent Authority have not been complied with while passing the impugned order of transfer dated 21/1/2023.

10. On the other hand, Mr. R. Sarma, the learned counsel appearing on behalf of the petitioner in W.P.(C) No. 806/2023 submitted that in terms with Section 9

of the Act of 2020 the Deputy Commissioner has the power to make recommendations for transfer and upon such recommendations the appointing authority has therefore rightly issued the transfer order dated 21/1/2023. He submitted that the petitioner in W.P.(C) No. 806/2023 had initially submitted applications before the Chief Minister, Assam on 12/9/2022 and thereafter before the Education Minister on 19/10/2022 requesting for transfer to either the home district i.e. Kamrup(Metro) or Kamrup(Rural) district on various grounds including the ground of safety and security of the female teacher. Subsequent thereto the petitioner in W.P.(C) No. 806/2023 also submitted a representation to the Mission Director, Samagra Shiksha Abhijan on 26/10/2022 enclosing various documents. He further mentioned that on 30/11/2022 the Additional Deputy Commissioner(Edu), Barpeta on the basis of a report of the Superintendent of Police, Barpeta and the Inspector of Schools, BDC, Barpeta had issued a certificate stating inter alia that the petitioner can apply for transfer. Subsequent thereto the petitioner again applied before the Mission Director, Samagra Shiksha Abhijan, Assam on 3/1/2023. He therefore submitted that in pursuance to those applications the order dated 21/1/2023 was issued whereby the petitioner in W.P.(C) No.489/2023 was transferred from Bezara H.S. School, Kamrup to Kadong High School, Barpeta and the petitioner in W.P.(C) No.806/2023 was transferred from Kadong High School, Barpeta to Bezara H.S. School, Kamrup. He further submitted that in pursuance to the said transfer order dated 21/1/2023, the Headmaster of Kadong High School, Kadong had already released the petitioner on 27/1/2023 on her transfer to Bezara H.S. School, Kamrup. Subsequent thereto the petitioner also went to Bezara High School to join on 30/1/2023, but she could not join as the Principal had not come to the school. This aspect of the matter was brought to the attention of

the Inspector of Schools by a Communication dated 30/1/2023. Thereupon the petitioner on coming to learn about the order dated 1/2/2023 as well as the order dated 8/2/2023 passed in W.P.(C) No. 489/2023 and the stand which have been taken by the respondent/Samagra Shiksha Abhijan has filed the instant writ petition.

11. In the backdrop of the above facts, let this Court therefore take into consideration the issues which arise for consideration:-

- (i) Whether the impugned transfer order dated 21/1/2023 is liable to be interfered with ?
- (ii) If the impugned order dated 21/1/2023 is interfered with, is the petitioner in W.P.(C) No. 806/2023 entitled to any relief ?

12. Let this Court first take into consideration as to whether the impugned order dated 21/1/2023 is liable to be interfered with. The Act of 2020 was an Act enacted to provide for the responsibility of the State Government to manage posting and transfer of teachers of Elementary and Secondary Schools according to the requirement of teachers in the school in order to maintain proper pupil teacher ratio.

Section 2(a) defines the term 'Appointing Authority' to mean the Appointing Authority of a teacher according to the provisions of the relevant service Rules for the time being in force.

Section 2 (c) of Section 5 defines the term "competent authority" to mean the State Level Committee or the District Level Committee as mentioned in Sub-Sections (1), (2) and 5 of Section 5 of the Act of 2020.

Section 5 is in relation to the competent authority for recommending transfer of teachers as per the PTR norms. In terms with Sub-Section (1) of

Section 5, the State Level Committee which comprises of the Mission Director, Samagra Shiksha Abhijan, Assam and the Director, Elementary Education, Assam shall be the competent authority for recommending inter district transfer of teachers of Elementary Schools in accordance with the said Act of 2020.

In terms with Sub-Section (2) of Section 5 the State Level Committee i.e., the Mission Director, Samagra Shiksha Abhijan, Assam and the Director, Secondary Education, Assam shall be the competent authority for recommending inter district transfer of teachers of Secondary Schools in accordance with the provisions of the Act of 2020.

Sub-Section (4) of Section 5 categorically mandates that the senior most Secretary of the Elementary or the Secondary Education Department as the case may be shall accord approval for issue of the inter district transfer order of the teachers by the respective appointing authority on the basis of the recommendation of the State Level Committee on being satisfied that the recommendation is made in accordance with the provisions of Section 4 of the Act of 2020.

Sub-Section (5) of Section 5 is in respect to recommendations to be made for inter school transfer of teachers within the district which shall be done by the District Level Committee comprising of the Additional Deputy Commissioner(Education) of the district being the Chairman; the District Elementary Education Officer or Inspector of Schools of the district-- the Member Secretary all Deputy Inspector of Schools of the District as members and the concerned Block Education Officers as member.

Sub-Section (6) of Section 5 categorically mandates that the appointing authority shall issue the inter school transfer order of teachers within the district

on the basis of the recommendations of the District Level Committee, on being satisfied that the recommendations is made in accordance with the provisions of Section 4 of the Act of 2020.

Section 7 stipulates the inter district transfer norms of the teachers. The norms being relevant more particularly in the instant case which relates to inter district transfer, Section 7 is quoted herein below :

“7. The Government and the competent authority shall be guided by the following norms in respect of inter district transfer of Teachers :-

- (a) A Teacher working in a district continuously for 10 (ten) years or more can apply for transfer to his or her home district or to a nearest contiguous district.
- (b) A differently Abled Teacher can apply after working two years in a district for transfer to his or her home district or to a nearest contiguous district.
- (c) The application for transfer by a Teacher has to be addressed to the State Level Committee and submitted through the District Elementary Education officer or the Inspector of Schools, as the case may be, in such Form as may be prescribed, who shall place the Application before the State Level Committee.
- (d) On receipt of application, the State Level Committee shall examine the application and on being satisfied with the grounds or reasons stated in the application, shall identify vacant posts in Low PTR schools of the district to which the transfer is applied for by the Teacher, in consultation with the Appointing Authority of the district.
- (e) The effect of all the transfers shall have to be done during the period of summer vacation in order to minimize academic loss.
- (f) The District Elementary Education Officers or the inspector of Schools and the State Level Committee shall take action for transfer and posting of Teachers in schools in accordance with the provisions of this Act, so that the transfer orders can be issued within the summer vacation, by the concerned appointing authority.
- (g) In case of more than one application for transfer, the procedure as provided in Section 6(d) of this Act shall mutatis-mutandis, apply.”

Section 9 gives the power to the Deputy Commissioner in case of exigency for maintenance of proper academic atmosphere in a school or for maintaining peace and tranquility or safety and security of a female teacher. Section 9 being

relevant is quoted herein below :-

“9. In case of exigency for maintenance of proper academic atmosphere in a school or for maintaining peace and tranquility or safety and security of a female Teacher, the Deputy Commissioner of a district, after observing such formalities as may be prescribed, if satisfied that transfer of a Teacher is essential for any one of the said grounds, may refer to the Competent Authority for transfer of a teacher, even from a low PTR school. The Competent Authority shall immediately consider such proposals of the Deputy Commissioner and recommend to the concerned Appointing Authority for issue of transfer order :

Provided that on transfer of such a Teacher from Low PTR school, the Appointing Authority shall immediately post a Teacher in that school to maintain the PTR norms as per provisions of this Act, either by direct recruitment of through transfer from the High PTR school.”

13. A perusal of the above Section 9 would categorically show that in case of exigency for maintaining of proper academic atmosphere in a school or for maintaining peace or tranquility or safety and security of a female teacher, the Deputy Commissioner of a District, after observing such formalities as may be prescribed, if satisfied that the transfer of a teacher is essential for one of the said grounds may refer to the Competent Authority as defined under Section 2 (c) of the Act of 2020 for transfer of a teacher even from a Low PTR school. The competent authority shall immediately consider such proposals of the Deputy Commissioner and recommend to the concerned Appointing Authority as defined under Section 2(a) of the Act of 2020 for issue of the transfer order.

14. In the instant case admittedly there has been no recommendation made by the Competent Authority in pursuance to any proposal being submitted by the Deputy Commissioner or otherwise, on the basis of which, the Appointing Authority has issued the impugned transfer order dated 21/1/2023. Therefore the respondent authorities, more particularly the Mission Director, Samagra Shiksha Abhijan, Assam had duly acknowledged the fact that the impugned transfer order dated 21/1/2023 is contrary to the Act of 2020 and have

therefore decided to cancel and/or withdraw the said impugned transfer order. This Court taking into account the provisions of Act of 2020 and the admitted stand of the respondent authorities, more particularly the Mission Director of the Samagra Shiksha Abhijan, Assam that the Act of 2020 had not been complied with and the said authority in spite of the liberty being granted have not yet withdrawn/cancelled the said impugned transfer order dated 21/1/2023, sets aside the said impugned transfer order dated 21/1/2023 on the ground of non-compliance to the provisions of the Act of 2020.

15. Consequently in view of setting aside of the impugned transfer order, the order of release dated 27/1/2023 is therefore non-est in the eye of law. Taking into account that the petitioner in W.P.(C) No. 806/2023 was released in view of the impugned transfer order dated 21/1/2023 which has been set aside and the said petitioner has acted on the basis of the said order issued by the official and this Court having rendered the release order dated 27/1/2023 nonest, the petitioner in W.P.(C) No. 806/2023 shall be deemed to have continued in her post as the Vocational Teacher (Retail Teacher) of Kardong High School, Barpeta, provided the petitioner joins the Kardong High School, Barpeta within 10 days of the instant order.

16. During the course of hearing, it has been submitted by the learned counsel appearing on behalf of the Secondary Education Department that on the grounds referred to in Section 9 of the Act of 2020, the Deputy Commissioner can make a recommendation to the Competent Authority and the Competent Authority thereupon shall consider and make recommendation to the Appointing Authority. The same is required to be done in terms in manual mode. It has also been brought to the notice of this Court to the Rules framed under the Act of 2020 which is the Assam Elementary and Secondary Teachers

(Regulation of Posting and Transfer), Rules 2022(for short 'the Rules of 2022'). In terms with Rule 11, apart from there being an application in the manual mode, there is also a process of applying for transfer in an online mode.

17. The learned counsel for the petitioner in W.P.(C) No. 806/2023 submitted that apart from applying in the manual mode the said petitioner had also applied in the online mode on 30/11/2022 and the said Application Number is Inter/SE-002-0002778.

18. Taking into account the application so made both under the manual mode as well as the online mode by the petitioner in W.P.(C)No. 806/2023 and further taking into consideration that grounds exist for transfer in terms with Rule 9 as has been certified by the Additional Deputy Commissioner, Barpeta district in its certificate dated 30/11/2022, this Court directs the Deputy Commissioner of the Barpeta District to verify as to whether any of the grounds mentioned in Section 9 still exists in the case of the petitioner in W.P.(C) No. 806/2023 and if it so exists, refer the same to the Competent Authority under Section 5 (2) of the Act of 2020 and the Competent Authority thereupon is further directed upon such reference being made by the Deputy Commissioner to consider the proposal of the petitioner. In the eventuality the Competent Authority deems fit, the said Competent Authority shall recommend to the Appointing Authority for issuance of the transfer order. The Appointing Authority upon being satisfied with the recommendation, shall pass appropriate order for transfer. The said exercise may be carried out in terms of Section 9 of the Act of 2020 or Rule 11 of the Rules of 2022 as expeditiously as possible and not later than 45 days from the date a certified copy of this order is served upon the Deputy Commissioner, Barpeta.

19. With the above observations and directions, both the writ petitions stands disposed off.

JUDGE

Comparing Assistant