

GAHC010044762023



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

Case No. : WP(C)/1221/2023

JOMER UDDIN AHMED
S/O- LT. OSER UDDIN, R/O- VILL- HELAPAKHRI, P.O. BALADMARI CHAR,
P.S. MORNOI, DIST.- BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE SECY. TO THE GOVT. OF ASSAM, ELEMENTARY EDUCATION
DEPTT., DISPUR, GHY-06

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER (DEEO)
GOALPARA
ASSAM

4:THE BLOCK ELEMENTARY EDUCATION OFFICER
MATIA EDUCATION BLOCK
GOALPARA
ASSAM

5:THE HEAD TEACHER OF JANA SETANA L.P. SCHOOL
VILL- HELAPAKHRI
P.O. BALADMARI CHAR
P.S. MORNOI
DIST.- GOALPARA
ASSAM

6:MANIJA KHATUN

W/O-ABDUL MALEK
R/O- VILL- RAKHYASINI JUNGLE BLOCK
P.S. MORNOI
DIST.- GOALPARA
ASSAM
PIN- 78310

Advocate for the Petitioner : MR. M ALI

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

12.04.2023

Heard Mr. M. Ali, the learned counsel for the petitioner and Mr. P. N. Sarma, the learned counsel appearing on behalf of the Elementary Education Department.

The instant writ petition has been filed challenging the order dated 23.02.2023 whereby the Director of Elementary Education Department had allowed the petitioners to perform duties at Darogar Alga Char LP School, single teacher school with immediate effect. It has also been mentioned that the arrangement is purely temporary and may be withdrawn at any time without any reason thereof.

The learned counsel for the petitioner has submitted that the said action has been taken on the basis of some enquiry report submitted by some enquiry officer and a public complaint to which the petitioner was not given an opportunity of hearing. The learned counsel for the petitioner further submits that a bare perusal of the said order shows that it is an

order of transfer by way of punishment and is in complete derogation to the provision of the Assam Elementary and Secondary School Teachers' (Regulation of Posting and Transfer) Act, 2020.

On the other hand, Mr. P. N. Sarma, the learned counsel appearing on behalf of the Elementary Education Department submits that there are serious allegations against the petitioner for which in order to pacify the public, the petitioner has been directed to perform his duty at Darogar Alga Char LP School with immediate effect from 23.02.2023. The learned counsel for the respondents submits that the said order is not a transfer order per se, but the said order had to be passed taking into account the public grievances against the petitioner.

I have heard the learned counsel for the parties. It is no longer res integra that the authorities are required to take action as mandated under law and not on the basis of any public pressure. If there is any allegation of misconduct against the petitioner, the authorities would obviously be at liberty to take such action as deem fit under the provision of Assam Services (Discipline & Appeal) Rules, 1964. However, without taking resort to such provision of law, the petitioner cannot be directed to perform his duties in some other school which is nothing but a transfer from the school where the petitioner is presently working in another school. The order dated 23.02.2023 though has been camouflaged to be an order on account of administrative exigency, but the said order is nothing but a transfer order and this Court is of the opinion that the said order has been camouflaged in such a manner in order to avoid the rigors of the Assam Elementary and Secondary School Teachers' (Regulation of Posting and Transfer) Act, 2020. It is relevant to mention that the said Act of 2020

mandates as to how and when the posting and transfer of an Elementary and Secondary School Teacher can be done. It is also no longer res integra that when a power is given to do a certain thing in a certain way, the thing must be done in that way, to the exclusion of all other methods of performance or not at all. This principle of law has been laid down by the Privy Council in the case of ***Nazir Ahmed vs. Emperor, reported in AIR 1936 PC 253 (2).***

Taking into account the same, this Court, therefore, sets aside the impugned order dated 23.02.2023 issued by the District Elementary Education Officer, Goalpara.

Before parting with the record, this Court further deems it proper to observe that setting aside of the order dated 23.02.2023 shall not preclude the authorities to resort to such action as permissible under the Assam Elementary and Secondary School Teachers' (Regulation of Posting and Transfer) Act, 2020 as well as Assam Services (Discipline & Appeal) Rules, 1964, if so deemed fit.

With the above observation and direction, the instant writ petitions stands disposed of.

JUDGE

Comparing Assistant