

GAHC010052442022



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

Case No. : WP(C)/1919/2022

DR HANIF MD. AFSAR ALAM LASKAR
(DGO), SR. M AND H.O-1, KACHUDARAM MODEL HOSPITAL (ATTACHED
AT S.M. DEV CIVIL HOSPITAL, SILCHAR), CACHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM,
DISPUR, GUWAHATI-6

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE DEPARTMENT
DISPUR
GUWAHATI-781006

3:THE DEPUTY SECRETARY TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE DEPARTMENT
DISPUR
GUWAHATI-781006

4:THE DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABARI
GUWAHATI-781036

5:THE JOINT DIRECTOR OF HEALTH SERVICES
CACHAR
SILCHAR
ASSAM
PIN-788001

6:THE DEPUTY COMMISSIONER-CUM-CHAIRPERSON

DISTRICT HEALTH SOCIETY
CACHAR
SILCHAR
ASSAM
PIN-788001

7:DR. BISWAROOP CHAKRABORTY
SR. MEDICAL AND HEALTH OFFICER-1 C/O S.M. DEV CIVIL HOSPITAL
SILCHAR
CACHAR
ASSAM
PIN-78800

Advocate for the Petitioner : MS. S B CHOUDHURY

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

Date : 26-05-2023

Heard Ms. S. B. Choudhury, the learned counsel appearing on behalf of the petitioners and Mr. H. Sharma, the learned Standing counsel appearing on behalf of the respondent Nos. 1 and 6. I have also heard Ms. S. Sharma, the learned Standing counsel appearing on behalf of the respondent Nos. 2, 3, 4 and 5.

2. The instant writ petition has been filed challenging the order of transfer dated 03.03.2022 issued by the Deputy Commissioner cum Chairperson, District Health Society, Cachar, Silchar specifically on the ground that the Deputy Commissioner cum Chairperson, District Health Society has no authority or jurisdiction to issue the said transfer order.

3. It appears on record that this Court vide an order dated 17.03.2022 sought for instructions from the respondent Nos. 1 to 6 and further stayed the orders dated 01.03.2022 and 03.03.2023 issued by the respondent No.6. The said interim order has been continued from time to time and the writ petition was last listed on 31.10.2022. It further appears on record that the respondent No.6 who issued the transfer order had filed an affidavit-in-opposition. In paragraph No.4 of the said affidavit-in-opposition, it was mentioned that due to clerical mistake in the order dated 01.03.2023 and the order dated 03.03.2023, it was mistakenly mentioned as "Transfer and posting" while it should have been "Allowed to work". In other words, the respondent No.6 duly admits that the said authority did not have the power to transfer the petitioner.

4. This Court at this stage finds it relevant to refer to the judgment of the Supreme Court in the case of ***Mohinder Singh Gill and Another Vs. Chief Election Commissioner, New Delhi, and Others*** reported in ***(1978) 1 SCC 405*** wherein at paragraph No.8, the Supreme Court observed that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. It was observed that otherwise an order bad in the beginning may, by the time it comes to the Court on account of a challenge get validated by additional grounds later brought out. Paragraph No.8 of the said judgment being relevant is reproduced hereinunder:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a

challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji:

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older.”

5. This Court further enquired with the learned Standing counsel for the Health Department as to whether the Deputy Commissioner-cum-Chairperson, District Health Society has the authority to transfer the petitioner. It was categorical submission of Ms. S. Sharma, the learned Standing counsel that it is only the Government of Assam in the Health and Family Welfare Department who can transfer and post and not the Deputy Commissioner-cum- Chairperson, District Health Society as has been done vide the orders impugned in the instant proceedings.

6. Taking into account the law laid down by the Supreme Court in the case of ***Mohinder Singh Gill (supra)*** wherein it has been categorically mentioned that when a statutory functionary authority makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise, the explanation given in paragraph No.4 of the said affidavit is nothing but an

attempt to legalize something which on the face of it is illegal and without authority. Accordingly, therefore the impugned order dated 03.03.2022 is set aside and quashed.

7. Before parting with the records, this Court further finds it relevant to observe that the instant order so passed by this Court is without notice to the respondent No.7 inasmuch as it is no longer res-integra that no person can claim a right on the basis of an order passed by an authority who has no competence to do so.

8. With above observations and directions, the instant petition stands disposed of.

JUDGE

Comparing Assistant