

GAHC010066632023



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

Case No. : WP(C)/1776/2023

THE UNION OF INDIA AND 3 ORS.
REPRESENTED BY THE SECRETARY, GOVT OF INDIA, MINISTRY OF
COMMUNICATIONS AND IT, DEPARTMENT OF POSTS,
NEW DELHI- 110001.

2: THE DIRECTOR GENERAL PA - ADMIN
DEPARTMENT OF POSTS
PA WING
DAK-BHAWAN
NEW DELHI- 110001

3: THE CHIEF POSTMASTER GENERAL
ASSAM CIRCLE
GUWAHATI- 781001.

4: THE SUPERINTENDENT OF POST OFFICES
CACHAR DIVISION
SILCHAR
PIN- 788001

VERSUS

SHRI TAPAS KUMAR CHAKRABORTY
SO SRI HEMENDRA KUMAR CHAKRABORTY,
THE THEN ASSISTANT SUPERINTENDENT OF POSTS (HQ), CACHAR
DIVISION,
SILCHAR- 788001 (SINCE RELEASED AND POSTED AS ASP(PG), DARRANG
DIVISION).

Advocate for the Petitioner : MR. K K PARASAR

Advocate for the Respondent : MR S CHOUDHURY

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 16.06.2023

(Michael Zothankhuma, J)

1. Heard Mr. K.K. Parasar, learned counsel for the petitioners and Mr. M. Chanda, learned counsel appearing for the sole respondent.
2. The matter pertains to the challenge made by the respondent to his transfer order dated 29.09.2020, by which he has been transferred from Cachar Division to Darrang Division.
3. The respondent had made a challenge to the transfer order by filing O.A. No.222/2020 before the learned Central Administrative Tribunal (CAT), Guwahati. The learned Tribunal thereafter passed a stay order dated 16.10.2020, on the ground that the respondent's son was studying in Class-XII in Kendriya Vidyalaya, Silchar and would be appearing in the Class-XII CBSE Board Examination in March, 2021. As the petitioners had in the meantime released the respondent from his post vide order dated 01.10.2020, they did not allow the respondent to rejoin his earlier post in the Cachar Division.
4. The petitioners thereafter filed M.A. No.26/2021 on 22.02.2021 praying for vacation of the stay order. Though M.A. No.26/2021 was listed on 18.03.2021 and 07.04.2021, the matter was not taken up by the learned Tribunal. In the meantime, the respondent filed a Contempt Petition, i.e. C.P. No.10/2021, alleging that the respondent had not been allowed to rejoin his

post, despite the stay order dated 16.10.2020 passed in O.A. No.222/2020. M.A. No.26/2021 was thereafter dismissed by the learned Tribunal on 10.02.2023.

5. The petitioners have now approached this Court, challenging the order dated 16.10.2020 passed by the learned Tribunal in O.A. No.222/2020 and the order dated 10.02.2023 passed in M.A. No.26/2021.

6. Mr. M. Chanda, learned counsel for the respondent submits that the respondent had challenged the transfer order, not only on the ground that the respondent's son was undergoing his Class-XII Academic Session, but also due to the fact that in terms of the O.M. dated 30.09.2009, husband and wife were to be posted in the same station. He further submits that the respondent has not been paid his salary from January, 2021 till date, as he has not been allowed to rejoin his post in the Cachar Division despite the stay order dated 16.10.2020 passed by the learned Tribunal.

7. It is clear that the respondent's son is not studying in Class-XII as on date. In the case of Union of India and Ors.–Vs- S. L. Abbas, 1993 4 (SCC) 357, the Apex Court has held that guidelines for transfer are not legally enforceable.

8. Mr. K.K. Parasar, learned counsel for the petitioners submits that the learned Tribunal has fixed 04.09.2023 as the date on which hearing would be held for disposal of O.A. No.222/2020 as well as C.P. No.10/2021. He also submits that pleadings are complete in both the cases.

9. Mr. K.K. Parasar, learned counsel for the petitioners submits that the respondent has got no right to remain in Cachar Division as he has been in the said division since 09.06.2016. He also submits that as the petitioners' post is a transferable one, the continuation of the respondent in the same post in the

Cachar Division for such a long time is not proper. He submits that the issue is urgent and the date of hearing fixed by the learned Tribunal may be interfered with and a shorter date be fixed by this Court for disposal of the cases pending before the learned Tribunal.

10. The learned counsel for the respondent does not have any objection to the submission made by the learned counsel for the petitioners' counsel, for fixing a date for disposal of the above cases by the learned Tribunal.

11. In view of the consent of the parties and as the issue pertains to a transfer order, the same, in our view, should be disposed off expeditiously. Accordingly, it is directed that the learned Tribunal shall dispose of O.A. No.222/2020 and C.P. No.10/2021 at the earliest and preferably within a period of 3(three) weeks from the date of receipt of a certified copy of this order.

12. The Writ Petition is, accordingly, disposed of.

JUDGE

JUDGE

Comparing Assistant