

GAHC010066672023



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

Case No. : WP(C)/1780/2023

SANKAR NATH
SON OF LT. MR. SADHAN NATH,
WARD NO. 8, LALA TOWN,
P.O. AND P.S.- LALA,
DIST.- HAILAKANDI, ASSAM,
PIN- 788163.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
SOCIAL WELFARE DEPTT., DISPUR,
GUWAHATI-6.

2:THE DIRECTOR OF SOCIAL WELFARE
UZANBAZAR
ASSAM, GUWAHATI-1.

3:THE PROGRAMME OFFICER
DIVISIONAL ICDS CELL
CACHAR
P.O.- SILCHAR
DIST.- CACHAR, ASSAM.

4:THE DISTRICT SOCIAL WELFARE OFFICER
HAILAKANDI, P.O. AND DIST.- HAILAKANDI
ASSAM, PIN- 788151.

5:THE CHILD DEV. PROJECT OFFICER
LALA ICDS PROJECT
DIST. HAILAKANDI
ASSAM, PIN- 788163.

6:THE CHILD DEV. PROJECT OFFICER

ALGAPUR ICDS PROJECT
DIST. HAILAKANDI
ASSAM

PIN- 788151

Advocate for the Petitioner : MR. S B LASKAR

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 12.04.2023

Heard Mr. S.B. Laskar, the learned counsel appearing on behalf of the petitioner. Mr. H. Sarma, the learned counsel appears on behalf of the respondents.

2. The case of the petitioner as it appears from the record is that the petitioner was initially transferred from Kalain ICDS Project to Lala ICDS Project vide an order dated 12.11.2012. Subsequent thereto, on 22.07.2019, the petitioner was again reverted back to Kalain ICDS Project, Cachar. Thereupon, it appears that the petitioner challenged the order dated 22.07.2019 before this Court in WP(C) No.5667/2019 and this Court vide an order dated 07.08.2019 stayed the order dated 22.07.2019. Thereupon, the Sub-Divisional Officer (Sadar) issued an order on 15.06.2020 whereby the petitioner's service was attached at Algapur ICDS Project and one Shri Kanu Das was directed to look after the works of the petitioner in Lala ICDS Project in addition to his normal duties. The petitioner was also directed to hand over the charge to the said Shri Kanu Das and take over the charge within 20.06.2020 at Algapur ICDS Project.

3. It further reveals that there was another writ petition filed by the

petitioner challenging the order dated 15.06.2020 which was registered and numbered as WP(C) No.2714/2020. This Court vide an order dated 14.07.2020 issued notice and directed that status quo with regard to the service of the petitioner be maintained. The said writ petition i.e. WP(C) No.2714/2020 was disposed of vide an order dated 20.11.2020 by this Court. This Court disposed of the said writ petition however without interfering with the order dated 15.06.2020.

4. It further appears that the writ petition which was initially filed by the petitioner challenging the order dated 22.07.2019 i.e. WP(C) No.5667/2019 was dismissed by this Court vide an order dated 20.11.2020. However, this Court directed the Director of Social Welfare to take note of the representation dated 26.07.2019 so submitted by the petitioner within 3 (three) weeks from the date of receipt of the copy of the said order. It is not on record as to whether the petitioner had served the copy of the said order dated 20.11.2020 passed in WP(C) No.5667/2019. It is also not known that taking into account that the writ petition was dismissed challenging the order dated 22.07.2019 as well as the order dated 15.06.2020, what was the status of the petitioner until an order was passed on 15.03.2023 wherein the petitioner was again brought back to the Lala ICDS Project exclusively and the said Shri Kanu Chandra Das who was given the additional charge of Lala ICDS Project was directed to perform his service at South Hailakandi ICDS Project.

5. It appears that the petitioner on 16.03.2023 joined the Lala ICDS Project. Immediately, on the next date i.e. on 17.03.2023, the order dated 15.03.2023 was cancelled. The petitioner therefore has challenged the order dated 17.03.2023 by way of the instant writ petition.

6. Mr. H. Sarma, the learned counsel appearing on behalf of the respondents

submitted that the reason for withdrawing the order dated 15/3/2023 by the District Social Welfare Officer on 17/3/2023 is due to the fact that the District Social Welfare Officer has no power to issue the order dated 15/3/2023. The learned counsel for the respondents further submitted that it is the Director of Social Welfare who being the appointing authority had the power to transfer the petitioner. However, vide a notification dated 9th of September, 2021 bearing **No. ABP.75/2021/01**, the power has been further delegated to the Deputy Commissioner of the districts (excluding 6th Schedule districts) to transfer Grade-III and Grade-IV staff of all categories including Junior Engineer and medical staff such as Nurse, Laboratory Assistant etc. from one place to another within the same district and same department in consultation with the District Head of the concerned line department of the district. It is therefore the submission of Mr. H. Sarma, the learned counsel that apart from the Director of Social Welfare, it is the Deputy Commissioner of the Hailakandi district who would have the power to transfer the petitioner. As the order dated 15/3/2023 was issued by the District Social Welfare Officer who had no power to do so, the said order dated 15/3/2023 was therefore withdrawn on 17/3/2023.

7. Taking into account the same, this Court finds no reason to interfere with the order dated 17/3/2023 inasmuch as the order which was passed on 15/3/2023 was an order passed by an officer who did not have the authority to do so and as such the order dated 15/3/2023 is nonest in the eyes of law.

8. The learned counsel appearing on behalf of the petitioner however submits that in the meantime, the petitioner had joined the ICDS Project, Lala on 16/3/2023 and at Algapur, ICDS Project where the petitioner was rendering his service prior to the order dated 15/3/2023, there is some other person who is presently functioning as the Statistical Assistant. Mr. H. Sarma, the learned

counsel appearing for the respondents submits that the said person have been working as Statistical Assistant at Algapur, ICDS Project since October, 2021. He further submits upon instructions that there is no impediment on the petitioner performing his duties as a Statistical Assistant in the ICDS Project, Algapur. Mr. H.Sarma upon instructions further submits that the petitioner is still rendering his service at Algapur, ICDS Project.

9. In that view of the matter, this Court does not see any reason for passing any direction that the petitioner should be accommodated at Algapur. However, this Court finds it relevant to observe and direct that the respondent authorities shall not take into account the petitioner's joining at ICDS Project, Lala on 16/3/2023. The petitioner shall be deemed to have been rendering service at the ICDS Project Algapur during the period from 15/3/2023 till date as the order dated 15/3/2023 is nonest in law as abserved herein above.

10. The instructions so place by Mr. H. Sarma during the course of hearing is kept on record and marked with the letter X.

11. With the above observations and directions, the instant writ petition stands disposed off.

JUDGE

Comparing Assistant