

GAHC010092532023



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

Case No. : WP(C)/2436/2023

MIHIR RANJAN DHAR
S/O- LATE MONORANJAN DHAR,
RESIDENCE OF SARISHA (NEAR KALIBARI),
P.O.- SARISHA, DISTRICT- KARIMGANJ,
ASSAM, PIN- 788713.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT,
DISPUR, GUWAHATI- 781006.

2:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
GOVT. OF ASSAM
PANJABARI
JURIPAR
GUWAHATI- 781037.

3:THE CHIEF EXECUTIVE OFFICER
KARIMGANJ ZILLA PARISHAD

KARIMGANJ
DISTRICT- KARIMGANJ

ASSAM
PIN- 788710.

4:THE DEPUTY COMMISSIONER
KARIMGANJ
DISTRICT- KARIMGANJ

ASSAM
PIN- 788710.

5:THE BLOCK DEVELOPMENT OFFICER
SOUTH KARIMGANJ DEVELOPMENT BLOCK
DISTRICT- KARIMGANJ

ASSAM
PIN- 788720.

6:ANGSHUMAN GUPTA
OFFICE OF THE BLOCK DEVELOPMENT OFFICER
SOUTH KARIMGANJ DEVELOPMENT BLOCK

SIRAJDHIPUR
DISTRICT- KARIMGANJ

ASSAM
PIN- 788720

Advocate for the Petitioner : MR. S BISWAS

**Advocate for the Respondent : MR. N. K. DEBNATH
: MR. C. S. HAZARIKA**

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 10-05-2023

Heard Mr. S. Biswas, the learned counsel appearing on behalf of the petitioner and Mr. N. K. Debnath, the learned Standing counsel appearing on behalf of the Panchayat and Rural Development Department. I have also heard Mr. C. S. Hazarika, the learned Standing counsel appearing on behalf of the Deputy Commissioner, Karimganj.

2. For the order which this Court proposes to pass at this motion stage, this Court does not deem the presence of the respondent No.6 is necessary.
3. The instant writ petition is taken up for disposal at the motion stage itself.
4. A perusal of the materials on record reveals that vide an order dated 05.11.2022, the petitioner was transferred and posted at Lumding Development Block under Hojai District from the post of the Assistant Accounts Officer of South Karimganj District. This order was put to challenge before this Court in WP(C) No.7685/2022. This Court vide the order dated 30.11.2022 had disposed of the said writ petition. It appears from the order dated 30.11.2022 that the petitioner had raised 3 (three) grounds to challenge the transfer order dated 05.11.2022. The first ground which was taken was that the petitioner was yet to complete two years in his place of posting. The second ground was that the petitioner will be retiring on 30.11.2024 and therefore at the fag end of his career, hardship would be caused to him if he is transferred to a place 300 kms away from South Karimganj Development Block. Further his spouse was serving in Cachar District.
5. This Court after duly taking note that the petitioner approached this Court by filing a writ petition challenging the order dated 05.11.2022 without submitting a representation had therefore directed the petitioner to make a representation before the respondent No.2 within a period of 1 (one) week from the date of the said order and the respondent No.2 was directed upon receipt of the said representation to consider and dispose of the same by a speaking order in accordance with law and also by taking into account the Office Memorandums dated 19.09.1992 and 22.05.2002. It was also directed that the said representation be disposed of within a period of 3 (three) weeks from the date

of the receipt of the representation and till such time, the transfer order dated 05.11.2022 shall remain suspended.

6. It further reveals on record that on 06.12.2022, the petitioner submitted a representation to the Commissioner, Panchayat and Rural Development, Government of Assam. Subsequent thereto, on 12.04.2023, the said representation was disposed of and taking into account that the Office Memorandums dated 19.09.1992 and 22.05.2002 was modified whereby the period of 3 (three) years which were mentioned was reduced to 2 (two) years and further taking into account that the petitioner joined as an Assistant Accounts Officer in the South Karimganj Development Block on 22.06.2020 and the transfer order was issued on 05.11.2022 which is after the completion of 2 (two) years, the Commissioner, Panchayat and Rural Development, Government of Assam directed the petitioner to report as per the transfer order dated 05.11.2022. This order dated 12.04.2023 has been put to challenge by way of the instant writ petition.

7. I have heard the learned counsels for the parties.

8. Mr. S. Biswas, the learned counsel appearing on behalf of the petitioner duly submitted that the representation which was submitted by the petitioner contained various grounds however it was only on the ground that the petitioner having completed more than 2 (two) years in that particular post, the representation so submitted by the petitioner was rejected. He submitted that in an Office Memorandum of the Government of Assam, it has been mentioned that the Government servants ought to be allowed to stay at their home station on the eve of their retirement and such policy and procedure is followed on sound principles that the posting of the Government servant at his home station

in the last year of the service allows to set his life upon retirement smoothly but the respondent authorities did not take into consider the said aspect of the matter. He further submitted that the wife of the petitioner who is also serving in the Cachar District needs constant medical support as she is suffering from serious hypertension and serious stomach problems and the petitioner's son is a student who is pursuing his studies at NIT Silchar staying at the hostel.

9. The learned counsel appearing on behalf of the petitioner further submitted by drawing reference to a judgment passed by a Coordinate Bench of this Court in the case of ***Makibar Rahman Vs. State of Assam & Others reported in 2018 (4) GLT 78*** wherein it has been mentioned that when a representation is directed to be disposed of, such direction should not be reduced to an empty formality. Further, reference has been drawn to another judgment of this Court in the case of ***Pallavi Chowdhury Vs. State of Assam & Others reported in 2008 (3) GLR 628*** wherein there is a reference that as per the policy guidelines of the State Government, the husband and the wife are required to be posted at the same place of posting as far as practicable.

10. I have perused the materials on record and have also gone through the judgments which have been placed by the learned counsel for the petitioner. Before further dealing with those two judgments, this Court finds it relevant to refer to a judgment of the Supreme Court in the case of ***Public Services Tribunal Bar Association Vs. State of U.P. & Another reported in (2003) 4 SCC 104*** wherein the Supreme Court has laid down the scope of judicial review in matters pertaining to transfer. In paragraph No.37 of the said judgment, the Supreme Court held that transfer being an incident of service and is made in administrative exigencies, normally it is not to be interfered with by the Court. It

was also observed that it has been the consistent view that orders of transfer should not be interfered with except in rare cases where the transfer has been made in a vindictive manner. The above will therefore show that the power to be exercised under Article 226 of the Constitution in respect to a transfer is limited and circumscribed.

11. Now, coming to the judgments which have been referred by the learned counsel for the petitioner, it would be seen that the facts involved therein are completely different and distinct from the facts involved in the instant proceedings. In a recent judgment of the Supreme Court in the case of ***Kotak Mahindra Bank Limited Vs. A. Balakrishnan and Another*** reported in (2022) 9 SCC 186, the Supreme Court had categorically observed at paragraph No.64 of the said judgment that one additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts. In the judgments which have been referred by the learned counsel for the petitioner as the facts therein were different and distinct from the facts involved in the instant proceedings, the ratio as laid down therein cannot be made applicable to the present case.

12. Taking into account the same, this Court is not inclined to interfere with the order dated 05.11.2022 or for that matter, the order dated 12.04.2023 in as much as the petitioner failed to show any grounds which would justify interference. As observed by the Supreme Court in the case of ***Public Services Tribunal Bar Association (supra)***, the scope of interference is very limited and in rare cases such interference can be made if the transfer has been a result of a vindictive attitude of the respondents. The Office Memorandums referred to are mere policies which are to be implemented as far as practicable and as such the

said do not confer any vested right upon the petitioner to challenge the transfer order more so when no discrimination has been made out by the petitioner.

13. However, before parting with the records, this Court finds it relevant to take into consideration the submissions made by the learned counsel for the petitioner that in the nearby District of Karimganj, there are 3 (three) posts which are vacant and the petitioner is to retire on 30.11.2024 and as such, the respondent authorities can consider the case of the petitioner for transferring him to a post in a nearby District than to transfer him to a location which is 300 km away from the present place of posting of the petitioner.

14. This Court after giving anxious consideration to the matter, gives the liberty to the petitioner upon joining his place of posting in terms with the transfer order dated 05.11.2022 to submit a representation to the Commissioner, Panchayat and Rural Development Department taking into account that the petitioner is going to retire on 30.11.2024 and the Commissioner, Panchayat and Rural Development Department is requested to consider the representation of the petitioner and if possible, bring him to a nearby District of Karimganj so that the petitioner can spend his last year of service with his family.

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

JUDGE

Comparing Assistant