

GAHC010114472023



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

**Case No. : WP(C)/3053/2023**

KISHOR ROY  
S/O- TARUN CHANDRA ROY, R/O- TATLAPARA,  
P.O- THAMNA, DIST- BAKSA, ASSAM, PIN-781377

VERSUS

THE STATE OF ASSAM AND 5 ORS  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.  
OF ASSAM, ELEMENTARY EDUCATION DEPARTMENT , DISPUR,  
GUWAHATI-06

2:THE BODOLAND TERRITORIAL COUNCIL  
THROUGH THE PRINCIPAL SECRETARY  
KOKRAJHAR  
ASSAM

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

4:THE SECRETARY  
EDUCATION  
BODOLAND TERRITORIAL COUNCIL  
KOKRAJHAR  
ASSAM

5:THE DIRECTOR OF EDUCATION  
BTC  
KOKRAJHAR  
ASSAM

6:THE DEPUTY INSPECTOR OF SCHOOLS  
BAKSA  
MUSHALPUR  
BT

**Advocate for the Petitioner** : MR. SURAJIT DAS

**Advocate for the Respondent** : SC, ELEM. EDU

**BEFORE**  
**HON'BLE MR. JUSTICE DEVASHIS BARUAH**

31.05.2023

Heard Mr. S. Das, the learned counsel for the petitioner and Mr. P. N. Sarma, the learned counsel appearing on behalf of the respondent Nos.1 & 3 as well as Mr. S. Borah, the learned counsel appearing on behalf of the respondent Nos.1, 4, 5 & 6.

2. The instant writ petition is taken up for disposal at the motion stage itself taking into account the facts involved.

3. In the instant writ petition, it is seen that the petitioner was appointed on 27.06.2016 by the Director of Elementary Education Department as an Assistant Teacher of Mowatary LP School, Dhubri. Thereupon, the petitioner joined his service on 29.06.2016. Subsequently, the petitioner applied for transfer to the district of Baksa through online process on 26.10.2022 as it is the home district of the petitioner. It is relevant to take note of that the Block Elementary Education Officer, Baksa, Mushalpur had written a letter dated 30.01.2023 to the District Elementary Education Officer, Baksa, Mushalpur that his Office has no objection to the transfer of the petitioner. Thereupon, the District Elementary Education Officer, Baksa, Mushalpur has also written to the Director of Education, BTC, Kokrajhar thereby forwarded the request

of the petitioner for transfer. Subsequent thereto, the Director of Education, BTC, Kokrajhar forwarded the letter to the Secretary to the Government of Assam, School Education Department vide the communication dated 21.02.2023. However, as the relevant NOC has not been issued by the Secretary to the Government of Assam, School Education Department, the instant writ petition has been filed for a direction upon the respondents to consider the application of the petitioner seeking transfer which is pending for grant of NOC by the BTC authority.

4. Mr. S. Borah, the learned counsel appearing on behalf of the BTC authority has drawn the attention to Section 7 of the Assam Elementary and Secondary School Teachers' (Regulation of Posting and Transfer) Act, 2020 wherein the inter-district transfer norms of the teachers have been mentioned. It is the requirement of Section 7(a) of the Act of 2020 that the teacher working in a district continuously for 10 years or more can apply for transfer to his or her home district or to the nearest contiguous district.

5. In view of the mandate under Section 7 of the Act of 2020, this Court cannot issue a direction directing the respondents to consider the application of the petitioner. Relevant herein to refer to the judgment of the Supreme Court in the case of ***Union of India vs. Ashok Kumar Agarwal***, reported in ***(2013) 16 SCC 147*** wherein at paragraph No.18, the Supreme Court observed as follows:-

*“18. A representation may be considered by the competent authority if it is so provided under the statutory provisions and the court should not pass an order directing any authority to decide the representation for the reason that many a time, unwarranted or time-barred claims are sought to be entertained before the authority. More so, once a representation has been decided, the question of making second representation on a similar issue is not allowed as it may also*

*involve the issue of limitation, etc. (Vide Rabindranath Bose v. Union of India, ESI Corpn. v. All India ITDC Employees' Union, A.P. SRTC v. G. Srinivas Reddy, Karnataka Power Corpn. Ltd. v. K. Thangappan, Eastern Coalfields Ltd. v. Dugal Kumar\_and Udai Shankar Awasthi v. State of U.P.)"*

6. Considering the above and taking into consideration that the petitioner as per Section 7 (a) of the Act of 2020 is not eligible to apply for transfer, this Court cannot issue direction to the concerned respondent authorities to consider the case of the petitioner for which the instant petition stands dismissed.

7. It is, however, observed that the petitioner would be at liberty to apply for transfer after completion of 10 years, if so advised.

**JUDGE**

**Comparing Assistant**