

GAHC010146542023



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

Case No. : WP(C)/3877/2023

MANOJ KUMAR CHATURVEDI AND 7 ORS.
S/O- LATE HARI SHANKAR CHATURVEDI, VILL.- BADRI BASTI, P.O.
KORAIKANDI, P.S. LAKHIPUR, DIST. CACHAR, ASSAM, PIN- 788001.

2: ASIT RANJAN DAS
S/O- LATE RASHMOHAN DAS
VILL.- OLD FIELD COLONY
P.O. BADARPUR
DIST. KARIMGANJ
ASSAM
PIN- 788006.

3: BISWAJIT DEY
S/O- LATE BIRENDRA CHANDRA DEY
VILL.- SARAT PALLY
P.O. LINK ROAD
DIST. CACHAR
ASSAM
PIN- 788006.

4: BIRMANGAL SINGHA
S/O- LATE BRAJAMOHAN SINGHA
VILL.- JOYPUR PT-II
P.O. JAYPUR RAJA BAZAR
DIST. CACHAR
ASSAM
PIN- 788107.

5: MEHERAJ HUSSAIN BARBHUIYA
S/O- LATE AJI UDDIN BARBHUIYA
VILL.- KANAKPUR PT-II (WARD NO. 14)
P.O. RANGIRKHARI
DIST. CACHAR
ASSAM

PIN- 788005.

6: RINKU BHOWMIK
S/O- LATE BIPIN CHANDRA BHOWMIK
VILL.- JOYPUR PART-II
P.O. JOYPUR RAJA BAGAN
DIST. CACHAR
ASSAM
PIN- 788107.

7: SANDIP KUMAR PATOA
S/O- LATE GANGA SAGAR PATOA
VILL.- ITKHOLA
GANDHI NAGAR ROAD
P.O. SILCHAR
DIST. CACHAR
ASSAM

8: ALOK KUMAR GHOSH
S/O- LATE RAMDAYAL GHOSH
VILL.- SHILLONG PATTY
P.O. SILCHAR-1
DIST. CACHAR
ASSA

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT, DISPUR, GUWAHATI-06.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI-06.

3:THE SECRETARY TO THE GOVT. OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI-06.

4:THE COMMISSIONER

PANCHAYAT AND RURAL DEVELOPMENT
ASSAM
PANJABARI
JURIPAR
GUWAHATI-37.

5:THE DEPUTY COMMISSIONER

CACHAR
SILCHAR
P.O. SILCHAR-01
DIST. CACHAR
ASSAM

6:THE CHIEF EXECUTIVE OFFICER

CACHAR ZILA PARISHAD
P.O. SILCHAR
DIST. CACHAR
ASSAM
PIN- 788001

Advocate for the Petitioner : MR. M K CHOUDHURY

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

14.11.2023

1. Heard Mr. M. Khan, learned counsel for the petitioners and Mr. Pavlov Handique, learned counsel appearing on behalf of Mr. K. Konwar, learned counsel for the P&RD Department.

2. The petitioners herein have challenged the impugned order dated 22.05.2023 issued by the Deputy Commissioner, Cachar transferring the petitioners, who are Gaon Panchayat Secretaries. The petitioners' case is that the delegation of the power to transfer Gaon Panchayat Secretaries from Director, P&RD, now designated as Commissioner, P&RD to the Deputy

Commissioner, vide the Notification dated 17.05.2023 issued by the Secretary to the Government of Assam, P&RD Department, has to be set aside, as the power to transfer cannot be delegated to the Deputy Commissioner of a District in terms of Section 30(1) read Section 138(1) of the Assam Panchayat Act, 1994 (hereinafter referred to as "the 1994 Act").

3. The counsel for the petitioners submits that in terms of Section 30(1) of the 1994 Act, the Director of P&RD Department, who has now been designated as Commissioner of P&RD Department, is the Appointing Authority of the provincialised Gaon Panchayat Secretaries. He submits that in view of the above Section 30(1) of the 1994 Act, it is only the Director/Commissioner, P&RD Department, who can transfer Gaon Panchayat Secretaries and not the Deputy Commissioner.

4. The learned counsel for the petitioners further submits that in view of Section 138 of the 1994 Act, wherein it has been stated that "except where expressly provided to the contrary", the power of delegation has been given to the Government. However, the Government does not have the power to transfer the power of the Director/Commissioner, P&RD Department to transfer Gaon Panchayat Secretaries to the Deputy Commissioner, in terms of the 1994 Act. Thus, as the Government has no power to delegate the power of transfer of the Director/Commissioner, P&RD Department to the Deputy Commissioners, the impugned order dated 22.05.2023 and Notification dated 17.05.2023 should be set aside.

5. On the other hand, Mr. Pavlov Handique, learned counsel appearing on behalf of Mr. K. Konwar, learned counsel for the P&RD Department submits that FR 15 gives power to the State Government to transfer a Government servant from one post to another. He also submits that Section 138(1) of the 1994 Act allows for the State Government to delegate its power to transfer an employee to any Government officer of Gazetted rank. As the Deputy Commissioner is a Government servant of Gazetted rank, there is no infirmity with delegating the Government's power of transfer to the Deputy Commissioner. He also submits that there is nothing in the 1994 Act to show that the State Government has delegated the power of the Director/Commissioner, P&RD Department to transfer Gaon Panchayat Secretaries to the Deputy Commissioner, inasmuch as, the Government by itself has the power to transfer Gaon Panchayat Secretaries. He accordingly submits that there being no infirmity with the delegation of the Government power to transfer Gaon Panchayat Secretaries to the Deputy Commissioner, the writ petition should be dismissed.

6. I have the learned counsels for the parties.

7. For disposal of his case, the relevant provisions of the 1994 Act, i.e, Section 30, Section 138 and FR 15 are re-produced below :

“30. Staff of Gaon Panchayat - (1) *There shall be a Secretary, and other staff as may be prescribed by Government in every Gaon Panchayat who shall be appointed as provided in S. 140 (1) and/or deputed by Government from time to time. In respect of the provincialised employees, the Director of Panchayat and Rural Development shall be the appointing authority.*

(2) *The Secretary shall be in charge of the office of the Gaon Panchayat*

and shall perform and exercise all the powers and duties imposed or conferred upon him by or under this Act, any rules or bye-laws made thereunder.

(3) The salaries etc., of the employees of the Gaon Panchayat shall be paid in the manner as may be prescribed by the State Government.

(4) The Gaon Panchayat shall not appoint or engage any person for any post in the Gaon Panchayat.

(5) Regarding discipline and control, the Secretary shall act in all matters under the control of the President of the Gaon Panchayat through whom he shall be responsible to the Gaon Panchayat.

138. Delegation of powers to the Deputy Commissioner, Sub-divisional Officer or any other Gazetted officer -

(1) The State Government may delegate any of their powers under this Act or rules framed thereunder except where expressly provided to the contrary to any Government officer of Gazetted rank.

(2) Except where expressly provided to the contrary, the Government may delegate all or any of the powers of the Deputy Commissioner or the Sub-divisional Officer under this Act or rules framed thereunder to any Government officer of Gazetted rank.

(3) Except where expressly provided to the contrary, the Deputy Commissioner or the Sub-divisional Officer, as the case may be, may delegate all or any of their powers under this Act or rules framed under this Act to any Government officer of Gazetted rank.

(4) The delegation of power under sub-Ss. (1), (2), and (3) shall be an order in writing and such order may be modified or withdrawn at any time.

F.R.15. *(a) The State Government may transfer a Government servant from one post to another ; provided that except-*

(1) on account of inefficiency or misbehaviour, or

(2) on his written request,

a Government servant shall not be transferred, substantively to, or except in a case covered by Rule 49, appointed to officiate in a post carrying less pay than the pay of the permanent post on which he holds a lien or would hold a lien had his lien not been suspended under Rule 14.

(b) Nothing contained in Clause (a) of this rule or in Clause (13) of Rule 9 shall operate to prevent the re-transfer of a Government servant to the post on which he would hold a lien had it not been suspended in accordance with the provisions of Clause (a) of Rule 14.

Decision by the Government of Assam. - *Permanent transfers from a higher to a lower scale in anticipation of the abolition of a post are not transfers within the meaning of F.R. 15.*

8. A perusal of Section 30 and 138 of the 1994 Act and FR-15 shows that there is no specific provision which provides that only the Appointing Authority, i.e., the Director of P&RD Department, who has now been designated as the Commissioner of P&RD Department, has the power to transfer Gaon Panchayat Secretaries. In fact FR-15 shows that an order of transfer can be passed by an authority/Government and the power of transfer is not confined only to the Appointing Authority. Thus in the view of the above, the Government being a higher authority than the Director/Commissioner, P&RD, is competent to transfer Gaon Panchayat Secretaries. As such, keeping in view the provisions of FR 15 read with Section 30 of the 1994 Act, this Court is of the view that there is no bar for the Government to delegate its power to transfer Gaon Panchayat Secretaries to the Deputy Commissioner. Further, Section 138 of the 1994 Act provides that State Government may delegate any of its powers under the 1994 Act or Rules framed thereunder, except where expressly provided to the contrary, to any Government Officer of Gazetted rank. Thus power of the

Government under the 1994 Act can be delegated to a Government Officer of Gazetted rank, except where expressly provided to the contrary. In the present case, there is nothing to show that there is a bar on the State Government from transferring any Gaon Panchayat Secretary. Section 30 of the 1994 Act only provides that that Director/Commissioner of P&RD Department shall be the Appointing Authority and does not specifically bar the State Government to transfer any Gaon Panchayat Secretary. As such, on a combined reading of FR 15 and Section 138 of the 1994 Act, I am of the view that there is no bar for the State Government to transfer any Gaon Panchayat Secretary. As such, the delegation of power of the Government to transfer Gaon Panchayat Secretaries, vide the impugned Notification dated 17.05.2023, is not in violation of Section 138 of the 1994 Act. Consequently, this Court does not find any infirmity with the impugned order transferring the Gaon Panchayat Secretaries.

9. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant