

GAHC010156072023



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

Case No. : WA/266/2023

SRI NYAMO RINA
S/O TUNYA RINA, RESIDENT OF TELAM VILLAGE, PO AND PS TELAM,
LOWER SIANG DISTRICT, ARUNACHAL PRADESH, 791101

VERSUS

THE STATE OF ARUNACHAL PRADESH AND 4 ORS.
REPRESENTED BY THE COMMISSIONER (EDUCATION) GOVERNMENT OF
ARUNACHAL PRADESH, ITANAGAR

2:THE COMMISSIONER (EDUCATION)
GOVERNMENT OF ARUNACHAL PRADESH
ITANAGAR
791120

3:THE UNDER SECRETARY (EDUCATION)
GOVERNMENT OF ARUNACHAL PRADESH
ITANAGAR
791120

4:THE DIRECTOR OF SECONDARY EDUCATION

GOVERNMENT OF ARUNACHAL PRADESH
ITANAGAR
791120

5:SRI PUBI LOMBI

PRESENTLY UNDER TRANSFER AS DEPUTY DIRECTOR OF SCHOOL
EDUCATION
BASAR
LEPARADA DISTRICT

ARUNACHAL PRADESH
79112

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : GA, AP

BEFORE
HONOURABLE THE CHIEF JUSTICE
HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Appellant : Mr. K. N. Choudhury,
Sr. Advocate assisted by.
Mr. N. Gautam, Advocate.

For the Respondents : Mr. B. D. Goswami, Addl. AG.
Arunachal Pradesh for respondent
No. 1 to 4.
Mr. H. K. Das, Advocate for
respondent No. 5.

Date of Hearing : 25.07.2023, 27.07.2023, 01.08.23

Date of Judgement : 22.09.2023

JUDGMENT & ORDER (CAV)

(A.D. Choudhury, J)

1. Heard Mr. K. N. Choudhury, learned Senior Counsel assisted by Mr. N. Gautam, learned counsel for the appellant/writ petitioner. Also heard Mr. B. D. Goswami, learned Additional Advocate General, Arunachal Pradesh representing the respondent Nos. 1 to 4 and Mr. H. K. Das, learned counsel for the respondent No. 5.

2. The present intra court appeal is directed against the judgment and order dated 11.07.2023 passed in WP(C) No. 199(AP)/2023 by the learned Single Judge, which was preferred by the appellant/ writ petitioner assailing the Transfer Modification Order No. 03/2023 dated 20.04.2023 issued by the Under Secretary (Education), Govt. of Arunachal Pradesh, Itanagar.

3. **The case of the appellant writ petitioner:-**

- I. The appellant/writ petitioner was serving as Principal, Government Higher Secondary School, Kanubari, Longding District. By an order dated 15.11.2022 (Annexure-3) came to be issued by the Education Department, Government of Arunachal Pradesh, as many as 11 (eleven) principals of Government Higher Secondary Schools and Deputy Director of School Education (DDSE) were transferred to different places, including the appellant/writ petitioner. The appellant was transferred and posted as Deputy Director of School Inspector at Leparada District with a condition that he will join the transferred post in the last part of April, 2023. Such condition was incorporated for the reason that the incumbent holding the post of DDSE, Leparada district would be superannuated in the last part of April, 2023.
- II. By the very same order dated 15.11.2022, the respondent No. 5 in the writ petition, namely, Shri Pubi Lombi who was holding the post of DDSE, Seppa, East Kameng District was transferred as Principal, Dani Kunia GHSS, Ziro.
- III. No condition/joining time was given in case of respondent No. 5 and accordingly, the respondent No. 5 joined at his transferred place of posting at Ziro.

- IV. Thereafter, by an order dated 19.04.2023, the Deputy Commissioner, Longding District, Longding, released the writ appellant from GHSS, Kanu Bari in terms of the order dated 15.11.2022 to enable him to join at his transferred place of posting and accordingly, the appellant submitted his joining report dated 20.04.2023 before the Deputy Commissioner, Leparada District, Basar.
- V. Thereafter, the order dated 15.11.2022 was partially modified by the impugned order No. 03/2023 dated 20.04.2023, whereby the appellant was retained as Principal at GHSS, Kanubari, Longding District and respondent No. 5 was transferred from DKGHSS, Ziro to, Leparada District, Basar as DDSE. Such order was challenged before the learned Single Judge.
- VI. Such order was primarily challenged on the ground that the impugned order was issued only on the basis of U.O. Note issued by the local MLA of 29 Basar, LAC, and there is neither any public interest in issuing such transfer order nor there is any exigency of service. The further contention was that the appellant has been discriminated and the order of transfer impugned in the writ petition is a result of arbitrary and colorable of exercise of power.

4. **The stand of the respondent Department:-**

The State Education Department, while referring to the U.O. Note, took a stand that the U.O. Note itself reflects that there was public interest in issuing the impugned order by modifying the earlier order dated 15.11.2022. The State in support of its decision relied on the Judgment of the Hon'ble Apex Court in ***Mohd. Masood Ahmed –Vs- State of UP***

reported **2007 8 SCC 150**.

5. **The stand of the respondent No. 5:-**

The Respondent No. 5 took a stand that he had served four months at Dani Kunia GHSS, Ziro, pursuant to the order dated 15.11.2022 and thereafter only he has been posted as DDSE, Leparada District in the exigencies of services and in public interest and therefore, such decision made in exigencies of services cannot be subjected to judicial review in exercise of power under Article 226 of the Constitution of India.

6. **The decision of the learned Single Judge:-**

The learned Single Judge relying on the decision of **Mohd Masood Ahmed** (supra) held that the U.O. Note dated 28.02.2023 put up by the Member of the Legislative Assembly, 29-Basar (ST) Assembly Constituency requesting the competent authority for transfer of respondent No. 5 cannot be faulted with and such transfer on the basis of U.O. Note cannot be held to vitiate the impugned order dated 20.04.2023 inasmuch as no allegation of malafide exercise of power has been made by the appellant/writ petitioner. The learned Single Judge further held that the transfer order having been issued by a competent authority without violating any statutory provision and in absence of allegation of malafide exercise of power, such transfer order cannot be interfered with.

7. **Argument advanced by Mr. K. N. Choudhury, learned Senior Counsel.**

Mr. Choudhury, learned Senior Counsel placed the following arguments to buttress the case of the appellant :-

- i. The learned Single Judge misconstrued the decision of the Hon'ble

Apex Court in ***Mohd. Masood Ahmed*** (supra) inasmuch as it is not an absolute authority for the proposition that transfer made on recommendation of MLA is valid in all situations. It would all depend upon the facts of each case. But the learned Single Judge failed to notice the paragraph 8 of ***Mohd. Masood*** (supra) wherefrom it will be evident that there were complaints against the appellant Mohd. Masood Ahmed. In the aforesaid circumstances, the Hon'ble Apex Court did not interfere with the order of transfer in that case, whereas the facts of the present case are totally different.

- ii. The learned Single Judge failed to appreciate that for cancellation / modification of an order of transfer passed in public interest, must be supported by sufficient reasons. Therefore, what to speak of any overriding public interest, the note-sheets even do not disclose any other plausible reasons for cancelling/modifying the transfer order dated 15.11.2022.
- iii. The respondent No. 5 is prima facie guilty of making false statement on oath to the effect that pursuant to the transfer order, he joined at Leparada, Basar on 21.04.2023. Interestingly, the respondent No. 5 also seeks to contend that he joined as DDSE, Leparada on 28.04.2023 inasmuch as his joining at Leparada on 28.04.2023, the distance between Ziro and Basar is more than 300 KMs. and even assuming that respondent No. 5 was released in the forenoon he could not have reached Basar to submit his joining report during the office hours in a terrain like Arunachal Pradesh. Under the circumstances, the projection of the respondent No. 5 appears to be highly improbable and prima facie false.

iv. In view of the aforesaid fact, the impugned order dated 20.04.2023 whereby the transfer order dated 15.11.2022 qua the appellant has been cancelled/modified is arbitrary and the decision-making process is vitiated for not taking note of relevant considerations, concludes Mr. K. N. Choudhury, learned Senior Counsel.

8. **Per contra, Mr. H. K. Das, learned counsel for the respondent No. 5 argues the following:-**

- a) The desire of MLA explicitly demonstrated that the recommendation of transfer of respondent No. 5 was made because of his previous experience in service as DDSE and appraisal of the general public for transfer and posting of respondent No. 5 as DDSE, Leparada. The documents produced by the respondent No. 5 during the course of hearing on 27.07.2023 also unequivocally demonstrated that the background of recommendation of MLA was based on representations from members of Zila Parishad, Student's Union etc. Therefore, it is established from the records that the recommendation of the MLA was not on his personal request; rather his recommendation was founded on the request of the local people. Therefore, there existed definite public interest in issuing modified order of transfer dated 20.04.2023.
- b) The local MLA and Minister of the concerned department are competent authority to initiate and decide transfer and posting of officers. In support of his contention, Mr. Das, learned counsel relied on a decision of the Division Bench of this Court in the case of ***Nyakpu Yangfo –Vs- State of Arunachal Pradesh*** reported in ***2019 (2) GLT 600***, and argues that, merely because the transfer was made on the recommendation of MP and MLA, such an order of transfer does not

get vitiated automatically. For vitiating an order of transfer something more is required i.e. element of malafide in such recommendation. In ***Nyakpu*** (supra) vide U.O. Note dated 14.05.2017, the Parliamentary Secretaries only expressed their views which is similar to the recommendation of MLA in the instant case, wherein the MLA had only expressed his desire recommending transfer and posting of respondent No. 5, which was the wish of the public at large. The members of the Zila Parishad as well as Students Union are definitely the representatives of local people as well as students of Basar. Since there was no allegation of malafide by the appellant, therefore, only because the MLA recommended and on the basis of such recommendation, the modified order dated 20.04.2023 was issued, the order does not get vitiated.

- c) In support of his contention, Mr. Das, learned counsel also relied the decision of the Division Bench of this Court in the case of ***Redan Jini – Vs- State of Arunachal Pradesh*** reported in ***(2011) 2 GLR 639***.
- d) Relying on the decision of the Hon'ble Apex Court in the case of ***Shilpi Bose (Mrs.) Vs- State of Bihar***, reported in ***1991 Supp (2) SCC 659***, it is urged by the learned counsel that this Court may not interfere with a transfer order which is made in public interest and for administrative reasons and not issued in violation of any mandatory statutory rule or on the ground of malafide.
- e) Relying on the decision of the Hon'ble Apex Court in the case of ***State of U.P. –Vs- Gobardhan Lal***, reported in ***(2004) 11 SCC 402***, the learned counsel argues that the writ courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of malafide

when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere askance or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

f) The learned counsel for the respondent No. 5 relying on the decision of this Court in the case of ***Tractor Farm Equipment Ltd. –Vs- Secretary to the Government of Assam, Department of Agriculture and others*** reported in ***(2004) 2 Gau LR 56***, submits that writ appeal is an appeal on principle and judgment of Single Judge can be set aside only when there is patent error on the face of the records or the judgment is against the established and settled principles of law. The present case is not such a case and the learned Single Judge has dismissed the writ petition relying on the settled propositions of law.

9. The learned State Counsel has reiterated his arguments as urged before the learned Single Judge.
10. Before dealing with the impugned transfer order as well as the decision of the learned Single Judge, let this Court briefly summarize the principles of law as enunciated by the Hon'ble Apex Court since the decision in ***E.P.Royappa Vs State of Tamil Nadu*** reported in ***1974 4 SCC 3***, and to the decision in ***Union of India –Vs- S.L. Abbas*** reported in ***1993 4 SCC 357*** and ***State of Haryana Vs Kashmir Singh***, reported in ***2010 13 SCC 306*** including the judgments of the Hon'ble Apex Court as relied on by the respective counsels, more particularly Mr. Das, learned counsel for the respondent No. 5, which are as follows:-

- I. *Transfer being an incidence of service, the same is within the domain of the employer to post a person as per exigencies of services and therefore, an employee shall have no vested and concluded right to get posted in a particular place or to continue in a particular place.*
- II. *The transfer policy or guidelines issued by the employer do not have any statutory force and therefore, such guidelines do not confer any enforceable right upon an employee.*
- III. *The scope of judicial review of a transfer order is very limited and restricted and such order can be interfered in exercise of the power of judicial review only when such order is in contravention of statutory rules or issued in malafide exercise of power or adversely affect the status of the transferred employee.*
- IV. *It is also well settled and presumed that transfer orders are passed in public interest and / or in administrative exigencies and therefore, such exercise of power should not be arbitrary or for any extraneous consideration or to favour any specific employee and such order should not be passed under any vested interest/political pressure.*

11. The Hon'ble Apex court while dealing with decision of transfer order of a judicial officer issued by the Full Court of Madhya Pradesh High Court in ***Ms. X –Vs- Registrar General, High Court of Madhya Pradesh*** reported in ***2022 SCC OnLine SC 171***, also extensively dealt with concept of arbitrariness and malafide exercise of power relating to order of transfer. At paragraph 58 of the judgment, the Hon'ble Apex court held that the State is under the obligation to act fairly without ill will or malice-

in fact or law. It further went to hold that 'legal malice' or malice in law means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It was further held that when an order is not based on any factor germane for passing an order for transfer and the order is based on an irrelevant ground, such an order would not be sustainable in law.

12. It was also held in the said decision that the transfer policies and guidelines are formulated to regulate the policy of the Government / employer. Such policy generally includes the tenure of posting, the different conditions of transfer etc., which are formulated on the basis of the need of the department. Therefore, such policies and guidelines are judicially declared to have not created any enforceable right upon an employee. The Hon'ble Apex court in the case of ***Registrar General, High Court of Madhya Pradesh*** (supra) dealing with a transfer policy of Madhya Pradesh High Court and recognizing the principle that the transfer policies and the guidelines are not having any enforceable right, relying on earlier decisions of the Honble Apex court, held that though mere reasonable or legitimate expectation of a citizen may not by itself be a distinct enforceable right but failure to consider and to give due weight to it may render the decision arbitrary. It was further held that requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness which is a necessary concomitant of rule of law. Finally, the Hon'ble Apex Court held that though transfer policy may not be enforceable in law but when such transfer policy has been framed every officer will have a legitimate expectation that such a policy should be

given due weightage, when cases of transfer of officers are being considered.

13. The State of Arunachal Pradesh in Education Department notified a transfer policy by the name "Teachers transfer and posting policy, 2019-2020 (Education)". Such policy was applicable in terms of Clause -2 not only to teachers but also to all administrative cadres including the Principal/Vice Principal Director etc.

In the said policy, transfer has been categorized into two parts i.e. administrative transfer and transfer on request. The administrative transfer is to be ordered Suo moto in exigencies of services and public interest or on administrative grounds. The transfer on request is to be effected on the request of a teacher and subject to eligibility as per the policy. The posting has been termed as hard, middle and soft. As per transfer calendar, the transfer is to be effected at different points of time. The general guideline of the transfer provides that incumbent having 24 months or less service before retirement, shall not be transferred even if they complete the tenure of 5 year in the same post.

The Clause-XXI of the General Guideline for transfer provides that any attempt by a teacher to bring any political or outside influence for transfer shall be treated as misconduct and such teacher shall be liable to disciplinary proceeding as per rule.

14. Before proceeding further to record our decision and determination, this Court thinks it fit to record the conduct of the State respondents inasmuch as the arguments were finally heard and the judgment was reserved on 27.07.2023, however, in the intervening period, this Court was informed by

the learned Senior Counsel for the appellant that during the said period, a fresh order of transfer dated 27.07.2023 was issued in supersession of the earlier order dated 20.04.2023 and the appellant was again transferred to Namsai as Principal of GHSS, Namsai. In view of such development, even after the matter was reserved for judgment, this Court was compelled to direct the matter to be posted in the category "to be mentioned" on 01.08.2023. On that date, a query was made to the learned Additional Advocate General, State of Arunachal Pradesh, about the aforesaid order and in response, the learned Additional Advocate General, place on record an order dated 28.07.2023, whereby the transfer order dated 27.07.2023 was recalled. Though this Court does not appreciate the conduct of the respondent authorities in the manner the subsequent transfer order dated 27.07.2023 was issued, however, as the same has already been withdrawn, this Court restrains itself from making any comment on such conduct of the respondent authorities.

15. Coming back to the matter on merit, now let this Court examine the present case in its factual backdrop.
16. The learned Additional Advocate General, produced the record pertaining to the transfer order issued.
17. The record reveals the following facts:-
 - I. The record more particularly Note. 90 of the File No. DSE 13011/1/2022 dated 16.02.2023, Directorate of Secondary Education (Computer No. 74914) reflects that as many as six transfer and posting proposals of DDSE's were initiated on the basis of proposals received from Minister's/MLAs and person concerned on various

grounds which were detailed in a tabular form in the aforesaid Note. 90.

- II. The name of respondent No. 5 was placed at SL No. 6 and the brief reflects that such proposal of transfer of the respondent No. 5 from DK-GHSS, Ziro as DDSE, Basar was given by the MLA of 29- Basar Legislative Constituency citing a reason that the respondent No. 5 is a very sincere and good administrator in Education sector. Against such proposal, a remark was put by the Administrative Department that the petitioner/appellant is already under order of transfer and posting as DDSE, Basar vide order dated 15.11.2022.
- III. Note No. 92 dated 23.03.2023 dealt with the six proposals as discussed hereinabove. It is reflected in the Note. 92 that the administrative department opined that the respondent No. 5 has applied for DDSE Basar, however, the petitioner/appellant is already under order of transfer as DDSE, Basar and therefore, the file is required to be endorsed to Hon'ble Minister Education for obtaining a decision.
- IV. The Note No. 96, further reflects that a request was forwarded by Under Secretary to take a decision for consideration of the proposal at SL No. 1, 2, 3, and 5 mentioned at Note No. 92 and so far, relating to Note 6 (which involved the appellant herein), with the observation that the appellant was already under order of transfer to Leparada District as DDSE and therefore, file was submitted for decision of the competent authority.
- V. Similar Note was put by the Commissioner of the Administrative

Department under Note No. 98.

VI. Thus, from the aforesaid, it was clear that except the proposal against SL No. 6 in reference to the U.O. Note of MLA, Basar, requesting transfer of the respondent No. 5, the Administrative Department has raised no objection, however, in case of respondent No. 5, the opinion of the Administrative Department including the Administrative Head i.e. the Commissioner had opined that the appellant is already under order of transfer to the said post for which the U.O. Note by MLA, Basar was issued.

VII. Thereafter, The Hon'ble Minister put Note No. 105 to the following effect:-

“Sri Pubi Lombi Principal GHSS, Zero is transferred to DDSE, Basar, Sri Nyamo Rina, Principal GHSS, Kanubari to continue at Kanubari GHSS”.

18. Thus, from the aforesaid, it is seen that the issue raised by the Administrative Department that the appellant was already under transfer was not dealt and no reason has been given for changing the earlier order of transfer.

19. As discussed hereinabove, the whole proposal of transfer including the impugned transfer order were initiated on the basis of request and U.O. Note initiated by different political personalities including MLAs and Ministers and others.

20. From the Note, as discussed hereinabove, so far relating to the transfer of the appellant, it was remarked that the appellant is already under order of transfer, though an U.O. Note was given by the MLA, Basar. Such remarks

as discussed hereinabove continued up to the Commissioner of the department i.e. the administrative head. It is also clear from the Notes as discussed hereinabove, the administrative authority had raised no objections regarding proposal Nos. 1 to 5, however, they again repeated that so far relating to proposal No. 6, proposing transfer of respondent No. 5, the appellant is already under an order of transfer.

21. There is no quarrel on the proposition that the elected representative can make such proposals for transfer of an employee but the proposal should be genuine and for cogent reasons. It is also well settled that the administrative authority is not bound by such proposal and must apply its own independent mind while considering the proposal of such MLAs/elected representatives inasmuch as the transfer orders are issued in public interest and in exigencies of administration.
22. In the case in hand, the administrative department time and again through their Notes placed on record remarked that the appellant is already under order of transfer as DDSE, Basar though the U.O. Note for transfer of the respondent No. 5 was given by the local MLA. However, from the record, it is crystal clear that while approving the transfer proposal mooted by the MLA, Basar, neither the remark of the administrative department was considered nor it is reflected anywhere that there was an independent application of mind in issuing the impugned transfer order which could co-relate it to either public interest or being in exigencies of services.
23. In the facts of the present case it is very clear that while issuing the impugned transfer order, the same was done without even any proposal initiated by the administrative department and rather in place of the appellant, the respondent No. 5 was transferred and the record reflects that

transfer of respondent No. 5 was requested by the local MLA. Thus, the transfer order impugned is not based on any factor germane for taking recourse to such a course of action. Therefore, in the considered opinion of this court the impugned transfer order is hit by arbitrariness and non application of mind inasmuch as the record reveals that such act has been done without citing any reason what to say of any reasonable or plausible cause. In view of aforesaid determination, this court holds that the impugned order of transfer is bad for the reason of being issued in arbitrary exercise of power. However, the learned Single Judge has failed to appreciate such fact and principles of law while refusing to interfere with the impugned order.

24. Yet another aspect of the matter is that the transfer policy as discussed hereinabove, was formulated to regulate the transfers of government employees in Education department of the State of Arunachal Pradesh, which covers all administrative cadres including Principal and Director etc. Such policy included the tenure of posting as 5 years and also includes different condition/considerations of transfer including hard posting etc. In the case of ***Registrar General, High Court of Madhya Pradesh*** (supra), it was held that though such policy and guidelines do not create any enforceable right, however, the employees shall have legitimate expectation for proper implementation of such policy and that though such legitimate expectation is not by itself distinct and enforceable right however, failure to consider and to give due weightage to it may render the decision to be arbitrary. In the considered opinion of this Court, in the given facts of the present case the above decision squarely covers the controversy at hand inasmuch as the appellant was transferred and posted

after due consideration, however, while modifying the transfer order, as reflected from the record, no consideration under the transfer policy was made nor any exigencies of services are discernible for such exercise of power by the administrative department and therefore, such exercise of power is nothing but an arbitrary exercise of power. The Hon'ble Apex Court in the case of **Poonam Verma –VS- Delhi Development Authority** reported in **(2007) 13 SCC 154** also had expressed a view that though the transfer guidelines are advisory in nature, however, same can be judicially reviewed when deviation of such transfer policy involves arbitrariness or discrimination. The reason given by the MLA that the respondent No.5 is efficient and has experience also finds no mention in the note of approval inasmuch there is nothing on record to show that the respondent number 5 is a better administrator than the appellant and therefore, the modification was required.

25. Surprisingly, in the case in hand, not to say the enforceability of any guidelines or policy of transfer, all the transfer orders including the transfer order under challenge were not initiated on the basis of any policy of transfer, guideline and also not by the Administrative Department on its own, rather at the behest of different political entities including MLAs.
26. There is no quarrel on the concept that the people's representative will have right to make such request, however, it is the bounden duty of the Administrative Department while acting on such request / recommendations, to apply its own mind taking note of its own policy, the exigencies of services and the paramount public interest. However, surprisingly in the case in hand, this court, as discussed hereinabove, finds no independent application of mind, rather the existing order of transfer

issued by the department based on objective consideration has been cancelled without citing any reason, only on the basis of proposal of the local MLA. In the considered opinion of this court, such course of action on the part of the Administrative Department is nothing but an arbitrary exercise of power.

27. The appellant who was already under order of transfer is having a legitimate expectation to join and continue in the transferred place of posting. However, his transfer order was suddenly modified without any proposal being mooted by his employer but acting on the proposal of the Local MLA and in favour of respondent No.5. In the above backdrop, this court is of the considered opinion that such order of transfer is neither issued in the exigencies of service nor in public interest, rather the same is a result of arbitrary exercise of power.
28. This court is also of the view that while issuing the transfer order no plausible reason or principle is indicated nor is it discernible from the record that the impugned action is supported by any justifiable cause. The State of Arunachal Pradesh in Education Department has failed to justify its action as fair and reasonable and that being so, such action is hit by mandate of Article 14 of the Constitution of India and such exercise, therefore, is vitiated by arbitrariness. Such view of this court is based on the principles laid down by the Hon'ble Supreme Court in the case of ***Registrar General, High Court of Madhya Pradesh*** (supra).
29. This Court cannot approve such kind of sheerly lackadaisical administrative procedure adopted in the decision-making process inasmuch as the proper administration under the Constitutional scheme of

governance, every State action must be supported by reason. In the present case, the fact cannot be ignored that the appellant was already under order of transfer and he was released on 19.04.2023 and he joined at the place of transfer on 20.04.2023 and therefore, in the present case, it was further necessary to have the decision impugned supported by reason in cancelling the earlier transfer order that too when the proposal of transfer of respondent No. 5 was initiated not by the administrative department in public interest or in exigencies of services rather it was purely on the basis of U.O. Note given by local MLA. Therefore, in the considered opinion of this Court, the impugned order cannot be said to be an order of transfer in public interest or in exigencies of services.

30. Coming to the certification of the local MLA that the respondent No. 5 is a very efficient officer and therefore, he is required to be posted at Basar, the same cannot be treated as espousing public interest more particularly, for the reason that the public interest and exigencies of service are to be determined by the administrative department by applying its own mind and should not be based purely upon recommendations of the elected representatives more so in the given factual background of the present case whereas the appellant was already under order of transfer and the administrative department time and again highlighted such fact while considering and placing the U.O. Note of the local MLA. Nothing is discernible from the office note to support the proposition that the impugned transfer order was issued considering the efficiency and expertise of the respondent No. 5 as showcased in the MLA's recommendation. Therefore, this Court is of the view that transfer order was not issued in public interest or in exigencies of service.

31. Coming to the decision of **Mohd Masood Ahmed** (supra), the fact in the said case was that there were public complaints against Mohd Masood Ahmed and therefore, a recommendation was made by the local MLA for transfer and the ratio of Mohd Masood Ahmed's case was based on those peculiar facts. However, in the present case, in appreciation of the proposal for transfer of the appellant as mooted by the local MLA as discussed hereinabove, the administrative department has not applied its own mind rather the transfer order was issued sheerly on the proposal made by the MLA even ignoring the remarks of the administrative department. Therefore, in the given facts of the present case, in the considered opinion of this Court, the ratio laid down in **Mohd. Masood Ahmed** (supra) is not applicable in the present case.
32. In view of the aforesaid discussions, reasons, we find merit in this appeal. Resultantly, the impugned order dated 11.07.2023 passed in WP(C) No. 199(AP)/2023 by the learned Single Bench, is reversed. As a consequence, the transfer order dated 20.04.2023 issued by the Under Secretary (Education), Govt. of Arunachal Pradesh, Itanagar, in so far as the same pertains to the transfer and posting of the appellant and the respondent is hereby quashed and set aside.
33. The appeal is allowed in these terms. No order as to cost.

JUDGE

CHIEF JUSTICE

Comparing Assistant