

GAHC010156812021



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

Case No. : WP(C)/5130/2021

PHANINDRA JIDUNG
S/O- LT. T.P.JIDUNG, R/O- RUKMINI NAGAR, P.S. DISPUR, GHY-06

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM, SECONDARY
EDUCATION DEPTT., DISPUR, GHY-6

2:THE JOINT SECRETARY
GOVT. OF ASSAM
SECONDARY EDUCATION DEPTT.
DISPUR
GHY-6

3:MAMATA HOJAI
THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-1

Advocate for the Petitioner : MR B SINHA

Advocate for the Respondent : SC, SEC. EDU.

**BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR**

ORDER

Date : 16.02.2023

Heard Mr. M.K.Choudhury, learned senior counsel assisted by Mr. B.Sinha, learned counsel for the petitioner. Also heard Mr. R.Mazumdar, learned standing counsel, Secondary Education for the respondent Nos. 1 and 2 and Mr. P.Nayak, learned counsel appears on behalf of respondent No.3.

2. The petitioner belongs to the ST(H) of the State of Assam and was appointed in the cadre of Inspector of Schools. Thereafter, petitioner was appointed to officiate as Joint Director of Secondary Education, Assam by a Notification dated 12th May, 2010. The petitioner by another Notification dated 14th March, 2012 was again promoted temporarily to the post of Additional Director of Hills against existing vacant post. The promotion of the petitioner to the post of Additional Director was regularized by a Notification dated 29th May, 2013. By another Notification dated 2nd March, 2016, the service of the petitioner was regularized as Director of Higher Education w.e.f the date of taking overcharge.

3. In the meantime, the Principal Secretary to the Govt. of Assam, Secondary Education Department issued a Notification dated 22nd September, 2021 transferring and posting the petitioner as Director of Bodo Medium and Other Tribal Languages, Assam w.e.f the date of taking overcharge. The respondent No.3 who was serving as Additional Director was allowed to hold the Charge of

Director of Secondary Education. Being aggrieved with the Notification dated 22nd September, 2021, petitioner is before this Court by way of this present writ petition.

4. By a Notification dated 16th August, 2005, issued by the Principal Secretary to the Govt. of Assam Administrative Reform and Training Department, the Education Department was trifurcated into three separate Departments namely, (a) Higher Education Department; (b) Secondary Education Department; and (c) Elementary Education Department.

5. By another Notification dated 4th September, 2021, issued by the Commissioner and Secretary to the Govt. of Assam, Education (Secondary and Elementary) Department, a new Directorate namely, 'Director of Bodo Medium and Other Tribal Languages' was created and in the organizational structure contained in the said Notification, it is provided that the Director of Bodo Medium and Other Tribal Languages will be headed by a Director in the rank and position of Additional Director of Education.

By another Notification dated 22nd July, 2021, issued by the Principal Secretary to the Govt. of Assam, Secondary Education Department, the Governor of Assam was pleased to notify the post of Director of Bodo Medium and Other Tribal Languages in the rank of full-fledged Director.

6. After the issuance of the impugned transfer order dated 22.09.2021, the Principal Secretary to the Govt. of Assam, Secondary Education Department

issued another Notification dated 27th September, 2021 encadring the post of Director of Bodo Medium and Other Tribal Languages in Schedule I (under Rule 4) of the Assam Education Service Rules, 1982, subject to amendment of Schedule I (under Rule 4) of Assam Education Service Rules, 1982 (hereinafter Rules of 1982 in short).

7. It is the case of the petitioner that under Rule 3 (1) of the Rules of 1982, only the Director of Public Instructions is encadred and no other Director under the School Education including the post of Director of Bodo Medium and Other Tribal Languages has been encadred and therefore, petitioner cannot be transferred to a post which is not an encadred post. It is the further case of the petitioner that the petitioner is the only regular Director and posting him to a post which is not encadred under the Rules of 1982, would amount to sending him on deputation without taking his consent and therefore, the impugned transfer order dated 22.09.2021 deserve to be set aside and quashed.

8. The learned senior counsel for the petitioner also submits that the impugned transfer order dated 22.09.2021 has been issued only to accommodate the respondent No.3.

9. Mr. R.Mazumdar, learned standing counsel, Secondary Education on the other hand submits that when the petitioner was allowed to hold the charge of Director of Higher Education, he had no complaints with regard to the non-encadrement of the post of Director of Higher Education and it is only when the petitioner has been posted as Director of Bodo Medium and Other Tribal

Languages that petitioner is alleging non-encadrement of the said post. Learned standing counsel therefore submits that it is only an indirect way of challenging transfer order of the petitioner to a post which he is not interested to join. He also submits that the transfer order dated 22.09.2021 is passed without any *mala fide* intention and the authority who issued the order had the jurisdiction to do so and therefore, interference of this Court is not required in the impugned order dated 22.09.2021.

10. I have considered the submissions forwarded by the learned counsel for the parties.

11. The Rules of 1982 has been considered by this Court. Rule 3 provides the class and cadre of the Assam Education Service and Rule 3 (1) (a) prescribes the cadre strength of class I Officers.

Rule 3 (2) provides that the service may also include (i) any post equivalent to a post in any of the cadres mentioned in Sub-Rule (1); and (ii) any cadre or post declared by Government to be a cadre of service.

12. The Notification dated 27th September, 2021 by which the post of Director of Bodo Medium and Other Tribal Languages has been encadred in Schedule I of the Rules of 1982, has also been considered by this Court. A reading of the Notification dated 27th September, 2021 and also Rule 3(2) of the Rule of 1982 would clearly indicate that the post of Director of Bodo Medium and Other Tribal Languages is an encadred post under the Rules of 1982.

13. The only point of contention left is with regard to the transfer order dated 22.09.2021 which is assailed by the petitioner in the present writ petition. It is to be kept in mind that there is limited scope for judicial review while considering transfer matters by this Court. An order of transfer of an employee is a part of the service conditions and such order of transfer cannot be interfered unless this Court finds that the said order is *mala fide* or that the service rules prohibits such transfer or that the authorities who issued the order did not have the competence to do so. None of the ingredients are attracted in this present writ petition.

14. In the present case in hand, the petitioner has been transferred as Director of Bodo Medium and Other Tribal Languages. He has not been transferred out of Guwahati and he is only to be shifted to a different room under the same roof. The petitioner has no legal right to insist for being posted at a particular place or to a particular post. The petitioner holds a transferable post and unless specifically provided in the service conditions, he has no choice in the matter of posting. In the present case, it is not the case that the service condition does not permit the petitioner to be posted to any other Directorate.

15. In that view of the matter, this Court finds no merit in the writ petition and is accordingly dismissed. No costs.

JUDGE

Comparing Assistant