

GAHC010176652023



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

Case No. : WP(C)/4582/2023

HAFIZUR RAHMAN AHMED
S/O- LATE JALAL UDDIN AHMED,
VILL- GERAMARI PART IV,
P.O- ALOMGANJ,
P.S- GAURIPUR,
DIST- DHUBRI, ASSAM, PIN-783339

VERSUS

THE STATE OF ASSAM AND 9 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVT OF ASSAM, SCHOOL
EDUCATION (SECONDARY) DEPARTMENT, DISPUR, GUWAHATI-6

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
CUM CHAIRMAN OF STATE LEVEL COMMITTEE
SWCONDARY EDUCATION

KAHILIPARA
GUWAHATI-781019

3:THE DEPUTY COMMISSIONER
CUM CHAIRMAN OF DISTRICT LEVEL COMMITTEE
DHUBRI

P.O- DHUBRI
DIST- DHUBRI
ASSAM
PIN-783301

4:THE INSPECTOR OF SCHOOLS
DHUBRI DISTRICT CIRCLE

P.O AND P.S- DHUBRI
DIST- DHUBRI
ASSAM
PIN-783301

5:ABUL KALAM MOLLAH
ASSTT. TEACHER OF F.A MEMORIAL HIGH SCHOOL
ALAMGANJ

P.O- ALAMGANJ

P.S- GAURIPUR

DIST- DHUBRI
ASSAM
PIN-783339

6:JOY KUMAR BHAGAT
ASSTT. TEACHER OF F.A MEMORIAL HIGH SCHOOL
ALAMGANJ

P.O- ALAMGANJ

P.S- GAURIPUR

DIST- DHUBRI
ASSAM
PIN-783339

7:PRIYA ROY
ASSTT. TEACHER OF F.A MEMORIAL HIGH SCHOOL
ALAMGANJ

P.O- ALAMGANJ

P.S- GAURIPUR

DIST- DHUBRI
ASSAM
PIN-783339

8:SUPORNA BISWAS
ASSTT. TEACHER OF F.A MEMORIAL HIGH SCHOOL
ALAMGANJ

P.O- ALAMGANJ

P.S- GAURIPUR

DIST- DHUBRI
ASSAM
PIN-783339

9:BISWAJIT SARKAR
ASSTT. TEACHER OF F.A MEMORIAL HIGH SCHOOL
ALAMGANJ

P.O- ALAMGANJ

P.S- GAURIPUR

DIST- DHUBRI
ASSAM
PIN-783339

10:JULFA BEGUM
ASSTT. TEACHER OF F.A MEMORIAL HIGH SCHOOL
ALAMGANJ

P.O- ALAMGANJ

P.S- GAURIPUR

DIST- DHUBRI
ASSAM
PIN-78333

Advocate for the Petitioner : MR. M R KHANDAKAR

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

10.08.2023

Heard Mr. M R Khandarkar, learned counsel for the petitioner and Mr. N J Khataniar, learned Standing counsel, Department of School (Secondary) Education, Assam for the respondent Nos. 1, 2 & 4. Also heard Mr. B Deuri, learned Government Advocate, Assam for the respondent No. 3.

- 2.** The Inspector of Schools, Dhubri District Circle, Dhubri by an order dated 21.11.2016 appointed the petitioner as an Assistant Teacher (Arts) in F.A. Memorial High School, Alomganj, District-Dhubri on compassionate ground against a vacant sanctioned post.
- 3.** Pursuant to the same, the petitioner joined his service as an Assistant Teacher (Arts) in F.A. Memorial High School, Dhubri on 22.11.2016 and since then is serving in the said school.
- 4.** Later, in pursuance of the Assam Elementary and Secondary School Teachers' (Regulation and Posting and Transfer) Rules, 2022 read with the Assam Elementary and Secondary School Teachers' (Regulation of Posting and Transfer) Act, 2020 and in terms of the Government Notification under E. File No. 216176 dated 13.12.2022 being communicated by the Directorate of Secondary Education, Assam vide letter No. DSE/GIS/Rationalisation/474/2022/4 dated 19.12.2022 and as per the approval of the District Level Committee, Dhubri as well as the State Level Committee, Assam, the Inspector of Schools (In-charge), Dhubri District Circle (DDC), Dhubri by order under Memo No. ISD/ PCA/ Rationalisation/2023/598-603 dated 04.08.2023 transferred the petitioner from F.A. Memorial High School, Alomganj, District-Dhubri in the same capacity as an Assistant Teacher (Arts) and posted him at Asharkandi High School, Dhubri on rationalisation.
- 5.** By the said order dated 04.08.2023, the Inspector of Schools, Dhubri transferred 122 Nos. of Assistant Teachers serving in different Secondary Schools in the district of Dhubri and posted them at different Secondary Schools of the same district on rationalisation with a view to improve the number of PTR (Pupil Teacher Ratio) compliant Schools so as to fill the need based vacancies and overall improvement in the quality of education, wherein the name of the petitioner figured at Sl. No. 64. Further, by the said order dated 04.08.2023, the Inspector of Schools, Dhubri directed all those 122 numbers of transferred Assistant Teachers to join their respective places of posting within a period of 7 (seven) days. The petitioner has annexed the said transfer order dated 04.08.2023 issued by the Inspector of Schools, Dhubri to this petition as Annexure-5.
- 6.** Being aggrieved with said order of his transfer dated 04.08.2023 issued by the Inspector of Schools, Dhubri transferring him from F.A. Memorial High School to Asharkandi

High School as its Assistant Teacher (Arts), the petitioner has preferred this writ petition.

7. The petitioner has annexed the Office Memorandum under No. 216176 dated 05.05.2023 issued by the Secretary to the Government of Assam in the Department of School Education to this petition as Annexure-4 that relates to Rationalisation of Teachers so as to maintain the Pupil Teacher Ratio where the most junior teacher in terms of the service tenure needs to be transferred first. It is stated by the petitioner that he is not the junior most teacher in said F.A. Memorial High School under Gauripur Education Block in the district of Dhubri.

8. Placing the Seniority List of F.A. Memorial High School, Dhubri issued by the Headmaster of the said school on 07.08.2023, the petitioner stated that there are three other Assistant Teachers of Arts junior to him serving in the said high school who joined in their services in February, 2021 and June, 2023 respectively and instead of transferring them on the ground of rationalization, in violation of the said O.M. dated 05.05.2023, noted above, the respondent authorities, more particularly, the Inspector of Schools, Dhubri District Circle, Dhubri by the impugned order dated 04.08.2023 transferred him from F.A. Memorial High School, Dhubri to Asharkandi High School, District-Dhubri.

9. From the impugned order of transfer of the petitioner on the ground of rationalization issued by the Inspector of Schools, Dhubri dated 04.08.2023, it is seen that there is no mention of the said O.M. dated 05.05.2023 of the State Government in the Department of School Education pertaining to rationalization of teachers and post of teachers to maintain the PTR.

10. Moreover, it is also seen that though the petitioner has been transferred out as an Assistant Teacher of Arts from F.A. Memorial High School, Dhubri to Asharkandi High School, Dhubri by the said order dated 04.08.2023, no other teachers from other secondary school of District-Dhubri has been substituted in his place. That itself indicates that there is a requirement of rationalization of teachers in other schools, considering PTR.

11. The Hon'ble Supreme Court in the case of *Shilpi Bose VS State of Bihar*, reported in (1991) Supp 2 SCC 659 have held that– *the Courts should not interfere with a transfer Order which are made in public interest and for administrative reasons unless the transfer Orders*

are made in violation of any mandatory statutory Rule or on the ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer Orders issued by the competent authority do not violate any of his legal rights. Even if a transfer Order is passed in violation of executive instructions or Orders, the Courts ordinarily should not interfere with the Order instead affected party should approach the higher authorities in the Department. If the Courts continue to interfere with day-to-day transfer Orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest.

12. A Co-ordinate Bench of this Court in the case of *Moni Dutta Vs. State of Assam* reported in 2006 (2) GLT 508 have held that– *the scope of judicial review by the High Court in exercise of the powers under [Article 226 of the Constitution of India](#) pertaining to an administrative action of the authority in passing an order of transfer is very limited and that an order of transfer can be challenged and interfered with if the same is not issued in the interest of public service or if not issued in the administrative exigencies or issued in violation of any statutory provision. Further, such transfer order can also be interfered with if the same amounts to changing the conditions of service of an employee or was passed in malafide exercise of power or by an authority, who is not competent to pass such transfer order.*

13. In the case in hand, by placing the O.M. dated 05.05.2023 and the impugned order of transfer of the petitioner dated 04.08.2023 issued by the Inspector of Schools, Dhubri, the petitioner though placed before the Court that the Government Notification dated 13.12.2022 as mentioned in the impugned order dated 04.08.2023 contains the same E-file No. 216174 as that of the O.M. dated 05.05.2023, therefore the transfer order dated 04.08.2023, noted above, is on the basis of said O.M. dated 05.05.2023.

14. Even if it is assumed that the O.M. dated 05.05.2023 pertaining to rationalization of teachers and post of teachers is applicable in the case of the petitioner, the same cannot be considered being an executive instruction, in terms of the law laid down by the Hon'ble Apex Court in the case of *Shilpi Bose (supra)* as well as the decision of the Co-ordinate Bench of this Court in the case of *Moni Dutta (supra)*.

- 15.** Violation of any such guidelines which has no statutory force cannot be a ground for challenge of an order of transfer.
- 16.** Accordingly, the Court is not inclined to interfere with the impugned transfer order of the petitioner dated 04.08.2023 issued by the Inspector of Schools, Dhubri District Circle, Dhubri, transferring him from F.A. Memorial High School, Dhubri to Asharkandi High School, Dhubri.
- 17.** Needless to say, the petitioner after joining his new place of posting at Asharkandi High School, District-Dhubri may submit representation before the competent authority for redressal of his grievances stating the reasons therein pertaining to his transfer from F.A. Memorial High School, Dhubri to Asharkandi High School, Dhubri.
- 18.** In the event of filing such representation by the petitioner before the competent authority, the authority concerned shall consider the same in accordance with law within a period of 90 (ninety) days from the date of its receipt.
- 19.** With the above observations and directions, this writ petition stands disposed of.

JUDGE

Comparing Assistant