

GAHC010192002023



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

Case No. : WP(C)/4988/2023

JUNMONI NATH
D/O- LATE JAGAT CH. NATH,
R/O- SOOTIA, P.S.- CHATIA,
DISTRICT- BISWANATH (SONITPUR),
ASSAM, PIN- 784175.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE CHIEF SECRETARY
TRANSFORMATION AND DEVELOPMENT DEPARTMENT,
GOVERNMENT OF ASSAM,
BLOCK -D, 3RD FLOOR, ASSAM SECRETARIAT,
DISPUR, GUWAHATI- 781006, ASSAM.

2:THE ADDITIONAL CHIEF SECRETARY
TRANSFORMATION AND DEVELOPMENT DEPARTMENT
GOVERNMENT OF ASSAM
BLOCK-D
3RD FLOOR
SECRETARIAT

DISPUR
GUWAHATI- 781006
ASSAM.

3:THE SUB-DIVISIONAL OFFICER (SDO) (CIVIL)
BISWANATH
ASSAM

Advocate for the Petitioner : MR. S SHARMA
Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

30-08-2023

Heard Mr. S. Sharma, learned counsel for the petitioner and Mr. R. Dhar, learned Government Advocate, Assam for the respondent Nos. 1 to 3.

2. The petitioner is a resident of Sootia, Biswanath. On being selected, she was appointed as a Research Assistant in the Office of the Sub-Divisional Officer (SDO) (Civil), Biswanath Development Branch, Biswanath in September, 2021. The Secretary to the Government of Assam in the Transformation and Development Department by Notification No. PDS.217360/DFA/275373 dated 31.07.2023, transferred the petitioner from the office of the SDO (Civil), Biswanath Development Branch to the office of the Deputy Commissioner, Lakhimpur Development Branch and she was released from the office of the SDO (Civil) Biswanath Development Branch vide order No. BNP. 33/2021/24 dated 01.08.2023 issued by the Additional District Commissioner, in-charge of Biswanath.

3. The petitioner on 02.08.2023 submitted a representation before the Additional Chief Secretary, Transformation and Development Department to reconsider her transfer and place of posting. However, said representation of the petitioner was rejected by the authorities in the Transformation and Development Department on 19.08.2023 directing the petitioner to join her new place of posting, i.e., the office of the Deputy Commissioner, Lakhimpur so as to comply with the order of her transfer dated 31.07.2023, noted above.

4. Being aggrieved with the said Notification dated 31.07.2023 regarding the transfer of the petitioner from the office of the SDO (Civil), Biswanath Development Branch to the office of the Deputy Commissioner, Lakhimpur Development Branch, the petitioner has preferred this writ petition.

5. The main contention of the petitioner is that she has been transferred from Biswanath to Lakhimpur without allowing her to complete a minimum period of two years of service at Biswanath.

6. On perusal of the impugned Notification dated 31.07.2023, noted above, it is seen that the transfer of the petitioner was in the interest of public service.

7. It is well settled that the scope of judicial review by the High Court of an administrative action of the authority in passing an order of transfer under Article 226 of the Constitution of India is very limited. An order of transfer can be challenged and interfered by the Writ Court if the same is not issued in the interest of public service or in administrative exigencies or in violation of any statutory provision. Further, such a transfer order can also be interfered with if the same amounts to changing the condition of service of an employee or passed in mala-fide exercise of power or by an authority who is not competent to pass such transfer order. Moreover, the violation of any guideline, which has no statutory force, cannot be a ground for challenge of an order of transfer. [Emphasis supplied - *Moni Dutta Vs. State of Assam and Others*, reported in 2006 (2) GLT 508].

8. The Hon'ble Supreme Court in the case of *Shilpi Bose (Mrs) and Others Vs. State of Bihar and Others*, reported in 1991 Supp (2) SCC 659 held that – *The Courts should not interfere with a transfer order which is 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 mala-fide. A Government Employee holding a transferable post has no vested right to remain posted at one place or the other, he/she is liable to be transferred from one place to other. Transfer orders issued by the competent authority do not violate any of his/her legal rights. Even if a transfer order is passed in violation of executive instruction or orders, the Courts ordinarily should not interfere with the order instead the affected party should approach the higher authorities in the Department. If the Courts continue to interfere with the 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.*

9. In the case in hand, the order of transfer of the petitioner dated 31.07.2023 was issued by the Secretary to the Government of Assam in the Transformation and Development Department in the interest of public service.

10. Considering the above, the Court is not inclined to interfere with the impugned Notification No. PDS.217360/DFA/275373 dated 31.07.2023 issued by the Secretary to the Government of Assam in the Transformation and Development Department, transferring the petitioner from Biswanath to Lakhimpur in the same capacity.

11. However, after joining her new place of posting pursuant to the said Notification dated 31.07.2023, noted above, the petitioner may submit an appropriate representation stating her grievances before the authority concerned.

12. In the event of filing any such representation by the petitioner after joining her new place of posting at Lakhimpur, the concerned respondent authorities in the Transformation and Development Department of the State shall dispose of such representation of the petitioner within a period of 60 (sixty) from the date of receipt of the same from the petitioner, in accordance with law, intimating her about the outcome of the said representation.

13. With the above observation, this writ petition stands disposed of.

JUDGE

Comparing Assistant