

GAHC010210852022



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

Case No. : WP(C)/6708/2022

ABHIRAM DAS
S/O- ANANDA MOHAN DAS ,
R/O- KAWATIKA,
P.O- KAWATIKA, P.S- BIJNI,
DIST- CHIRANG, ASSAM, PIN-783390

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY,REVENUE AND
DISASTER MANAGEMENT , DEPARTMENT, ASSAM, DISPUR, GUWAHATI-
781006

2:THE BODOLAND TERRITORIAL COUNCIL
REP. BY THE PRINCIPAL SECY.
KOKRAJHAR
DIST- KOKRAJHAR
ASSAM

3:THE PRINCIPAL SECRETARY
BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR

4:THE DEPUTY SECRETARY
BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR

5:THE DIRECTOR OF LAND RECORDS AND SURVEYS
BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR

6:THE DEPUTY COMMISSIONER BONGAIGAON

BONGAIGAON
ASSAM

7:BIGRAI MUCHAHARY
LAT MONDAL
BARAMA REVENUE CIRCLE
DIST- BASKA
ASSAM
PIN-78134

For the Petitioner : Mr. D. Choudhury, Advocate.
For the Respondent (s) : Mrs. R.B. Borah, SC, BTC.

Date of hearing & Judgment : **10.11.2023**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
JUDGMENT AND ORDER(ORAL)

The instant writ petition has been filed by the Petitioner challenging the order dated 26.09.2022 whereby the Petitioner was transferred from Bijni Revenue Circle to Barama Revenue Circle and the Respondent No. 7 was transferred from Barama Revenue Circle to Bijni Revenue Circle.

2. The facts involved in the instant case is that the Petitioner was initially appointed as Lot Mandal in the year 2006 in the District of Tinsukia. Thereupon the Petitioner at his request was transferred to his home District i.e. Bongaigaon in the year 2007 itself. Subsequent thereto, with the formation of the BTAD, the Petitioner started functioning as a Lot Mondal in the District of Chirang and have been functioning therein for the last 16 years. Vide the order dated 26.09.2022 which have been impugned in the instant proceedings, the Petitioner have been transferred from the Chirang District to the Baksa District i.e. from Bijni Revenue

Circle to Barama Revenue Circle. The grounds on which the Petitioner have challenged the order of transfer are two folds. The first ground on which the Petitioner have challenged the transfer order is that the transfer of the Petitioner was contrary to the settled principles of law as laid down in the case of **Kamini Kr. Brahma and Ors. Vs. State of Assam & Ors.** reported in **2013 (5) GLT 668** inasmuch as in the said judgment, the Coordinate Bench of this Court had categorically held that unless exceptional circumstances exists, the Lot Mandals should not be transferred to another district in a routine manner. The second ground on which the Petitioner have challenged the transfer order is that the Petitioner's parents are 90 years old and it would be difficult on the part of the Petitioner to look after his parents if he is transferred to Baksa District.

3. Mrs. R.B.Borah, the learned counsel appearing on behalf the BTC submits that the said judgment in the case of **Kamini Kr. Brahma**(supra) is not applicable to the instant case for two reasons. The first reason is that the judgment in the case of **Kamini Kumar Brahma**(supra) was rendered when candidates from other districts could not participate in the selection process of Lot Mandals in respect to a particular district which however is not applicable. Secondly, the said judgment is not applicable to the instant case in view of the fact that the Petitioner was appointed at Tinsukia and at his own request he was transferred to Bongaigaon and as such the Petitioner cannot claim the benefits on the basis of the said judgment. As regards the ground taken that the Petitioner's parents are aged, it is the submission of the learned counsel appearing on behalf of the BTC that the distance between the Petitioner's present place of posting to the transferred location would require travelling of around 1 ½ hours to 2 hours and as such the ground on which the Petitioner is seeking that he should not be transferred is totally misconceived. She further

submits that the Petitioner have been in the same Revenue Circle for the last 16 years and as such on account of administrative exigency, the Petitioner had been transferred.

4. I have heard the learned counsels for the parties and have also perused the materials on record. I have also perused the judgment of the Coordinate Bench in the case of Kamini Kumar Brahma (supra). From a perusal of the said judgment and more particularly paragraph Nos. 29, 30 and 31, it reveals that the Coordinate Bench of this Court had duly taken note of the advertisement which did not stipulate that preference would be given to the local candidates of the district or that once appointed, a Mandal would not be able to seek transfer to outside the district. It was also observed that the transfer and posting of the Government servants is within the realm of the administration. This Court therefore finds it relevant to quote paragraph Nos. 29, 30 & 31 of the said judgment as hereinunder : -

“29. Thus, from a close scrutiny of the aforesaid advertisement it can be Seem that it was an open advertisement for all Indian citizens. The advertisement did not indicate that preference would be given to local candidates of the district or that once appointed, & Mandal would not be able to seek transfer to outside the district.

30. While it is true that Mandals are grass-root level revenue officers. and, therefore, knowledge of local conditions is very essential, however, respondents have themselves admitted that in recent times, recruitment to the post of Mandal in various districts were made from candidates from outside the districts. If that be so, putting an embargo on inter district transfer of Mandals without any exception will not only be harsh en the concerned Mandals but will also be arbitrary, In certain circumstances, it may become oppressive. Transfer and posting of Government servants is within the realm of administration. Transfer is an incidence of service. Therefore, the State cannot be denuded of its power to transfer a Government servant in the exigencies of

administration. Likewise, the Government servant also cannot be denied, an opportunity to seek transfer. However, considering the nature of employment of a Mandal, such inter-district transfer of a Mandal cannot be resorted to in a routine manner. It would be in the nature of an exception to the employment as Mandal. Therefore, such inter-district transfer of Mandal may be considered only in exceptional cases. However, the contention of the petitioners that clause 3A of the Government notification dated 5.9.1985 which forms part of the Assam Land Records Manual cannot be amended or cancelled by way of a subsequent policy cannot be accepted inasmuch as Assam Land Records Manual do not have statutory character being merely executing instructions and, therefore, those can be amended by subsequent executive instructions — see Sapon Borah v. State of Assam.

31. While it is true that the courts are ordinarily reluctant to interfere with policy decision of the Government but if such policy is found to be arbitrary and violative of Article 14, the court can certainly interfere in such policy, more so, when such policy has been framed on orders of the court.”

5. From a perusal of the above quoted paragraphs, it would be seen that on account of administrative exigencies, the State had the power to transfer a Government servant and it was only mentioned that inter-district transfer of a Mandal cannot be resorted to in a routine manner. However, in the instant case, the Petitioner at his own volition have sought for transfer from Tinsukia to his home district and thereupon have been functioning in the same Revenue Circle for the last 16 years. The transfer of the Petitioner by the impugned order cannot therefore be said to be in a routine manner for which it is the opinion of this Court that the order of transfer cannot be said to be contrary to the law laid down by the Coordinate Bench of this Court in the case of **Kamini Kr. Brahma** (supra).

6. The second ground which has been alleged is that inconvenience would be caused to the Petitioner on account of the Petitioner having aged parents. The said ground though may seem attractive but that cannot be a reason for exercising the jurisdiction under Article 226 of the Constitution to thwart a transfer order inasmuch as exercising of jurisdiction under Article 226 of the Constitution in respect to transfer matters is very limited. Under such circumstances, this Court therefore is of the opinion that the impugned order does not require any interference under Article 226 of the Constitution.

7. Accordingly, this Court therefore finds no merit in the instant writ petition for which the instant writ petition stands dismissed. The interim order passed earlier stands vacated.

8. Be that as it may, this Court before concluding, finds it relevant also to observe that the Petitioner after acting on the transfer order and joining the place of posting would be at liberty to file a representation before the Respondent Authorities for consideration and the Respondent Authorities taking into account its administrative exigency may consider the representation of the Petitioner for transfer to a nearby location if permissible.

JUDGE

Comparing Assistant