

GAHC010212452023



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

Case No. : WP(C)/5558/2023

RAHUL HALOI
S/O- PRAFULLA HALOI,
R/O- VILL DAKHINSUPA,
P.O- DHANBIL,
P.S- BARBARI,
DIST- BAKSA, ASSAM, PIN-781343

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM, WOMEN AND CHILD DEVELOPMENT DEPARTMENT (EARLIER
SOCIAL WELFARE DEPARTMENT), DISPUR, GUWAHATI-6, ASSAM.

2:THE STATE PROJECT DIRECTOR
POSHAN ABHIYAAN CELL

WOMEN AND CHILD DEVELOPMENT
ASSAM
(EARLIER SOCIAL WELFARE DEPARTMENT)
UZAN BAZAAR
GUWAHATI-1
ASSAM.

3:THE DISTRICT COORDINATOR
POSHAN ABHIYAAN
BAKSA MUSHALPUR

BODOLAND TERRITORIAL REGION
ASSAM
PIN-781372

4:THE SECRETARY
WOMEN AND CHILDREN DEVELOPMENT

(EARLIER SOCIAL WELFARE DEPARTMENT)

BODOLAND TERRITORIAL COUNCIL SECRETARIAT
BODOFA NWGWR
KOKRAJHAR
ASSAM

5:THE DISTRICT SOCIAL WELFARE OFFICE
BAKSHA MUSHALPUR

BODOLAND TERRITORIAL REGION
PIN-781372

6:THE CHILD DEVELOPMENT PROJECT OFFICER
WOMEN AND CHILD DEVELOPMENT DEPARTMENT
(EARLIER SOCIAL WELFARE DEPARTMENT)

JALAH ICDS PROJECT
BAKSA
BODOLAND TERRITORIAL REGION

ASSAM
PIN-78132

Advocate for the Petitioner : MR G BAISHYA

Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

22-09-2023

Heard Mr. G. Baishya, learned counsel for the petitioner and Mr. C.S. Hazarika, learned Government Advocate, Assam for the respondent Nos. 1 & 2. Also heard Ms. P. Das, learned Standing counsel, BTC for the respondent Nos. 3 to 6.

2. The State Project Director, POSHAN Abiyan-cum-Secretary to the Government of Assam in the

Social Welfare Department by Notification No. SMPU(POSHAN)/Dist.Rect/17/2019/361 dated 20.07.2019 engaged the petitioner to the post of Block Project Assistant on contractual basis @ Rs. 15,000/- of fixed salary per month in the District of Baksa. Pursuant to the same, the petitioner joined his service on 22.07.2019 under the District Social Welfare Officer, Baksa and he was posted at Jalah ICDS Project, District - Baksa.

3. While he was serving at Jalah ICDS Project, the District Social Welfare Officer, Baksa by order under No. DWCD0(BKS)POSHAN/35-A/ESTB/2021/173/613 dated 31.05.2023, transferred the petitioner from Jalah ICDS Project and posted him at Goreswar ICDS Project. By the same order dated 31.05.2023, the District Social Welfare Officer, Baksa also transferred one Bikash Das, Block Project Assistant (POSHAN Abhiyaan), Goreswar and posted him at Jalah ICDS Project in place of the petitioner.

4. The petitioner stated that his brother Nayan Haloi is mentally retarded person and to that extent, he annexed the Disability Certificate issued in favour of his said brother by the concerned Medical Authority, Baksa, Assam on 14.06.2022 specifying that said Nayan Haloi is suffering from Mental Illness, diagnosed with Mental Retardation having 60 (sixty)% permanent disability.

5. The petitioner submitted a representation on 29.08.2023 before the District Social Welfare Officer, Mushalpur, Baksa requesting the said authority not to give effect to the said transfer order dated 31.05.2023 by which he has been transferred from Jalah ICDS Project to Goreswar ICDS Project submitting the details about his said mentally retarded permanently disabled brother and also about his own two months old newly born baby girl.

6. In that regard, the petitioner placed the Office Memorandum No. 42011/3/2014-Estt.(Res) dated 06.06.2014 as well as F. No. 42011/3/2014-Estt. (Res) dated 08.10.2018, both issued by the Government of India in the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, pertaining to "Posting of Government employees who have differently abled dependents" and "Exemption from the Routine exercise of transfer/rotational transfer", respectively, wherein it is specified by the Central Government that while transferring the incumbent during the routine exercise of transfer or rotational transfer, exemption should be given to the concerned government employee who is the care giver of dependent daughter/son/parents/spouse/brother/sister with Specified Disability as defined under the Rights of Persons with Disabilities Act, 2016, that also covers 'Mental Illness', amongst others.

7. It is stated that the petitioner is the care giver of his brother, Nayan Haloi who is suffering from 60% disability of Mental Retardation and further he is also the care giver of his new born baby

girl, he being the sole bread earner of his family that includes his aged parents suffering from several medical ailments, his wife, said minor daughter and disabled brother, noted above.

8. The petitioner has also placed reliance on the Judgment and Order of this Court passed by a Co-ordinate Bench in the case of *Dr. Netramoni Kakati Vs. State of Assam and 3 Others* [WP(C) No. 3091/2019] decided on 21.05.2019, wherein the Court observed that the care giver of a dependent specified disabled person under the Rights of Persons with Disabilities Act, 2016 must be considered for exemption from transfer where the concerned dependent suffers from benchmark disabilities.

9. In the said decision of *Dr. Netramoni Kakati* (supra), the Court also considered Section 2(d) of the Right of Persons with Disabilities Act, 2016 that relates to "care giver" which means any person including parents and other family members who with or without payment provides care, support or assistance to the Persons with Disabilities.

10. In said case of *Dr. Netramoni Kakati* (supra), the Court further held that during the process of judicial review, if the Court finds that the authority concerned had passed an order without taking into consideration of the relevant materials or factors as noted above, it shall be a ground for interference by the Court and accordingly, the Court in the said case set aside the transfer order of said *Dr. Netramoni Kakati* as her son was found suffering from Autism Spectrum Disorder with mental retardation.

11. In the said order dated 21.05.2019, in addition to the above, the Court also observed that till such Rules are framed by the State Government, those two Office Memorandums dated 06.06.2014 and 08.10.2018 of the Government of India in the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, pertaining to "Posting of Government employees who have differently abled dependents" and "Exemption from the Routine exercise of transfer/rotational transfer" respectively, shall be followed by the State Government.

12. During the deliberation of the matter, Mr. Baishya, learned counsel for the petitioner, on instructions, submitted that the petitioner has not yet been released from Jalah ICDS Project pursuant to his said transfer order dated 31.05.2023, noted above and he is still serving as Block Project Assistant at Jalah ICDS Project, Baksa.

13. Considering the above and after hearing the learned counsels for the parties, this writ petition is disposed of at the motion stage itself directing the petitioner to submit a fresh representation before the District Social Welfare Officer, Mushalpur, Baksa on or before 06.10.2023 stating his grievances and all the relevant details along with the certified copy of this order, copy of the Judgment and Order dated 21.05.2019 passed in the case of said *Dr. Netramoni Kakati* (supra) and the pertinent

documents of his disabled mental retarded brother Nayan Haloi, etc. obtaining necessary acknowledgment from the said authority, in that regard.

14. Thereafter, the District Social Welfare, Mushalpur, Baksa on or before 31.10.2023 shall dispose of the said representation of the petitioner pertaining to his prayer for cancellation of his transfer from Jalah ICDS Project to Goreswar ICDS Project vide order dated 31.05.2023 issued by the said authority, intimating him about the outcome of the same.

15. Subject to filing of said representation by the petitioner on or before 06.10.2023, as directed above, till disposal of the same; the status quo as on today with regard to the service of the petitioner as the Block Project Assistant, POSHAN Abiyaan at Jalah ICDS Project, District-Baksa, shall be maintained by the parties to this proceeding.

16. With the above observation and direction, this writ petition stands disposed of.

JUDGE

Comparing Assistant