

GAHC010240352023



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

Case No. : WP(C)/6186/2023

SHRI ANUP KALITA
S/O LATE BHADRESWAR KALITA
R/O VILL- IRRIGATION COLONY,
P.O. AND P.S. BISWANATH CHARIALI,
DIST. BISWANATH, ASSAM
PIN-784176

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, IRRIGATION DEPARTMENT, DISPUR, GUWAHATI, ASSAM, PIN-
784006

2:THE CHIEF ENGINEER

OFFICE OF THE CHIEF ENGINEER

IRRIGATION
GUWAHATI
ASSAM

PIN-781003

3:THE EXECUTIVE ENGINEER

BISWANATH CHARIALI DIVISION
(IRRIGATION)
BISWANATH CHARIALI
ASSAM
PIN-78417

Advocate for the Petitioner : MR. P K DEKA

Advocate for the Respondent : SC, IRRIGATION

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

**JUDGMENT
(ORAL)**

Date : 10-11-2023

The instant writ petition had been filed by the petitioner challenging the order dated 12.10.2023, issued by the Chief Engineer, Irrigation, Assam, whereby the petitioner was transferred and posted in the office of the Assistant Executive Engineer, Ratabari Sub Division, Irrigation, Ramkrishna Nagar, under the office of the Executive Engineer, Ratabari Patharkandi Sub Division, Irrigation, Patharkandi, against vacant post.

2. A perusal of the petition reveals that the petitioner herein had been discharging his duties as Junior Assistant in the office of the Executive Engineer, Biswanath Behali Division, Irrigation, Biswanath Chariali. On 12.10.2023, the Executive Engineer, Biswanath Behali Division (Irrigation) had issued a Show Cause notice to the petitioner stating *inter alia* that one Shri Dhruba Lahkar, Head Assistant in the office of the Executive Engineer, Biswanath Behali Division (Irrigation) had submitted an Earned Leave application dated 09.10.2023. The said Earned Leave Application was kept on the table of the Executive Engineer and was available in Dak File without sign and signature of any office personnel. It was further mentioned that the Chief Engineer, Irrigation, Assam, had informed that the said Shri Dhruba Lahkar had filed a petition where he had also submitted a copy of the Earned Leave Application received by the petitioner. It

was alleged that the petitioner had made a photocopy of the original Earned Leave Application without informing the Executive Engineer and had handed over the same to Shri Dhruba Lahkar, Head Assistant. It was further alleged that the petitioner had committed a fraud by providing such document to Sri Dhruba Lahkar without informing the Executive Engineer and it is under such circumstance the said Show Cause notice was issued asking the petitioner as to why disciplinary proceedings should not be initiated against him thereby giving him two days' time to reply. On the very day itself, the impugned transfer order was also issued by the Chief Engineer, Irrigation, whereby the petitioner was transferred from the office of the Executive Engineer, Biswanath Behali Division, Irrigation, Biswanath Chariali, to the office of the Assistant Executive Engineer, Ratabari Sub Division, Irrigation, Ramkrishna Nagar.

3. It is the contention of the petitioner that the said order impugned in the instant proceedings suffers from malice in law, punitive and without any basis and it is under such circumstance that the instant writ petition was filed challenging the impugned order of transfer dated 12.10.2023.

4. This Court, vide order dated 18.10.2023 had duly observed that *prima facie* it appeared that the impugned transfer order dated 12.10.2023 was issued by way of punishment and, as such, had directed the Standing Counsel, Irrigation Department, to produce the records. This Court, in the interim, had also stayed the impugned order of transfer dated 12.10.2023 till today.

5. Today, when the matter was called out, Mr. N. Upadhyay, learned counsel appearing on behalf of the Irrigation Department had produced the records. Surprisingly, the records do not spell out any reasons or even the basis for which the impugned order of transfer dated 12.10.2023 was issued. A perusal of the records only shows that a draft notification was directed to be prepared for

the purpose of transfer of the petitioner and on the basis of which the impugned order of transfer was issued.

6. This court has duly heard the learned counsel for the parties.

7. It is well settled principle of law that transfer being an incidence of service, the jurisdiction to interfere with transfer orders under Article 226 of the Constitution is limited. Exercise of jurisdiction under Article 226, as regards orders of transfer, can only be undertaken when an order suffers from malice in law, or malice in facts, as well as on the basis of arbitrariness and unreasonableness. Taking into account the fact that the records are completely silent as to why the petitioner is required to be transferred, coupled with the fact that on the day when the impugned transfer order was issued to the petitioner, a Show Cause notice was also issued to the petitioner on the very same day, this Court is of the opinion that the impugned transfer order suffers from malice in law. Consequently, the impugned transfer order violates the mandate of Article 14 of the Constitution for which the same stands set aside and quashed.

8. With the above observations and directions the instant writ petition stands disposed of.

JUDGE

Comparing Assistant