

GAHC010259462023



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

Case No. : WA/423/2023

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

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

Advocate for the Petitioner : MR. D CHOUDHURY

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

18-11-2023

(M.R.Pathak, J)

Heard Mr. Diganta Das, learned senior counsel assisted by Mr. Dibakar Choudhury learned counsel for the appellant and Mr. Jogen Handique, learned Standing counsel, Revenue and Disaster Management Department, Assam for the respondent No. 1. Also heard Mr. Santanu Bora learned Standing counsel, Bodoland Territorial Council (BTC in short) for the respondent Nos. 2 to 5 and Mr. P. Sharma, learned Additional Senior Government Advocate, Assam for the respondent No. 6.

2) The appellant Abhiram Das, Lot Mandal of Bijni Revenue Circle under the BTC as a petitioner preferred the Writ Petition being WP(C) No. 6708/2022 challenging the order dated 26.09.2022 passed by the Director of Land Records & Surveys, BTC, Kokrajhar under Memo No. BTC/DLR-4/2008/ pt-I/203 by which he was transferred from Bijni Revenue Circle to Barama Revenue Circle, also under the BTC and further transferred the respondent No.7, Lot Mandal of Barama Revenue Circle and posted him in Bijni Revenue Circle in place of said petitioner.

3) After hearing the parties, the learned Single Judge by Judgment and Order dated 10.11.2023 dismissed the said WP(C) No. 6708/2022. Being aggrieved the said petitioner Abhiram Das as appellant has filed this appeal assailing the said Judgment & Order dated 10.11.2023.

4) On perusal of the memo of the appeal we have seen that the appellant earlier preferred a Writ Petition being WP(C) No. 6617/2022 challenging the said order of his transfer from Bijni Revenue Circle to Barama Revenue Circle passed by the Director of Land Records & Surveys, BTC,

Kokrajhar under Memo No. BTC/DLR-4/2008/pt-I/203 dated 26.09.2022. The Court by order dated 29.09.2022 disposed of the said WP(C) No. 6617/2022 directing the petitioner to submit a fresh comprehensive representation within a period of three days from the date of the said order, i.e., 29.09.2022, further directing the Director of Land Records & Surveys, BTC, Kokrajhar to dispose of said representation by passing a reasoned order within a period of fifteen days from the date of such submission by the petitioner, observing that till passing of such reasoned order by the Director, the status-quo to be maintained pertaining to the said transfer order of the petitioner dated 26.09.2022 vis-à-vis the respondent No.7. The Court in the said order dated 29.09.2022 passed in WP(C) No. 6617/2022 also observed that in the event the petitioner did not submit any representation within three days, there shall be no requirement by the Director and that the interim order passed shall not be held to be good.

5) Pursuant to the said order of the learned single judge dated 29.09.2022, the appellant on 30.09.2022 submitted his representation before the Director of Land Records & Surveys, BTC, Kokrajhar, who by an order under No. BTC/DLR-4/2008/Pt-I/ 1053 dated 10.10.2022 disposed of the said representation of the appellant dated 30.09.2022 upholding his said transfer order dated 26.09.2022 from Bijini Revenue Circle to Barama Revenue Circle to be justified.

6) Being aggrieved with said rejection order of his representation dated 10.10.2022 as well as his said transfer order dated 26.09.2022, both passed by the Director of Land Records & Surveys, BTC, Kokrajhar, the appellant preferred his second Writ Petition i.e., W.P.(C) No. 6708/2022, which was dismissed on 10.11.2023 and is assailed in this appeal.

7) The contention of the petitioner before the learned single judge was that both of his parents are very old 92 years and 80 years, respectively, suffering from various old age ailments, there is no one to look after them and that his father cannot be moved to Barama and as his job requires regular attendance in office as well as field visits, it will not be possible on his part to regularly visit Barama from Bijni to attend his office. He also stated that his daughters are minors and since the schools are in mid of the academic session, it will be difficult for his daughters to get admission in the schools at Barama.

8) The petitioner before the learned single judge also stated that inter-district transfer of a Mandal is not resorted in a routine manner in as much as inter-district transfer of a Mandal is required to be considered only in exceptional cases and that there was no such exceptional

circumstances for his transfer from Bijni Revenue Circle to Barama Revenue Circle. In that regard on behalf of the appellant/petitioner, Mr. Das, learned Senior Counsel relied on the decision in the case of *Kamini Kr. Brahma -Vs- State of Assam & Others*, reported in (2013) 5 GLR 668 as well as the provisions of the Assam Land Records Manual relating to 'Recorders' (Mandal) where such Recorders can be transferred only by the Deputy Commissioner of the district concerned from one Lot to another within his district.

9) On perusal of the impugned judgment and order dated 10.11.2023, passed in WP(C) No. 6708/2022 challenged in this appeal, we have seen that the learned single judge considered the decision of said *Kamini Kr. Brahma*, where the Court duly took the note of the advertisement that did not stipulate of giving preference to the local candidates of the district or that once a Mandal is appointed, he would not be able to seek transfer to outside the district and it was observed therein that the transfer and posting of the Government servants are within the realm of the administration.

10) It is seen that on the recommendation of the Selection Board, the Deputy Commissioner, Tinsukia on 04.07.2006 initially appointed the appellant as Recorder (Mandal) under the said authority. The learned single Judge in its judgment and order dated 10.11.2023 considered the fact that on his own volition the appellant sought for his transfer from Tinsukia district to his home district and on his such transfer, he was continuously functioning in the same Revenue Circle for the last 16 years, for which the transfer of the petitioner (dated 26.09.2022) cannot be considered to be contrary to the law laid down in the case of said *Kamini Kr. Brahma*.

11) The learned single Judge in the impugned judgment dated 10.11.2023 also considered the fact that the ground of having aged parents cannot be a reason for exercising the jurisdiction under Article 226 of the Constitution to thwart a transfer order since the exercise of jurisdiction under Article 226 of the Constitution in respect of transfer matters is very limited.

12) However, while dismissing the said WP(C) No. 6708/2022 on 10.11.2023, the learned single Judge observed that after acting on transfer order (dated 26.09.2022) and joining his place of posting, the petitioner/ appellant herein is at liberty to file a representation before the Respondent Authorities for consideration and the Respondent Authorities taking into account of his administrative exigency may consider his representation for his transfer to a nearby location if

permissible.

13) From the reading of the impugned judgment and order dated 10.11.2023 passed by the learned single Judge in WP(C) No. 6708/2022 as well as the memo of the appeal and the relevant documents annexed with it, we are of the considered opinion that the said judgment and order dated 10.11.2023 passed by the learned single Judge in WP(C) No. 6708/2022 does not call for any interference.

14) At this stage, Mr. D. Das, Das, learned senior counsel on instruction prayed before the Court to allow the appellant to remain and serve at Bijni Revenue Circle for a further period of three months only. Mr. S. Bora, learned standing counsel BTC on instruction submitted that to that extent the authority concerned has no objection.

15) Considering the same, the respondent authorities shall not give effect to the order of transfer of the appellant issued by the Director of Land Records & Surveys, BTC, Kokrajhar under Memo No. BTC/DLR-4/2008/pt-I/ 203 dated 26.09.2022 transferring him from Bijni Revenue Circle to Barama Revenue Circle up to 29.02.2024 and he shall be released from said Bijni Revenue Circle under the BTC on 29.04.2024 enabling him to join the Barama Revenue Circle in terms of said order of his transfer dated 26.09.2022, subject to the condition that during this period he continues to serve in accordance with law.

16) This appeal accordingly stands dismissed, except the concession granted above.

JUDGE

JUDGE

Comparing Assistant