

GAHC010271632022



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

Case No. : WP(C)/8456/2022

SMT. THANGCHOLA NUNISA
W/O SHRI RONEN WARISA, R/O DIHANGI TINALI, P.O./P.S.-DHANGI, DIST-
DIMA HASAO, ASSAM, PIN-788819

VERSUS

THE NORTH CACHAR HILLS AUTONOMOUS COUNCIL AND 2 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY (N), HAFLONG, DIST-DIMA
HASAO, ASSAM, PIN-788819

2:THE DISTRICT PRIMARY EDUCATION OFFICER
NORTH CACHAR HILLS AUTONOMOUS COUNCIL
HAFLONG
DIST-DIMA HASAO
ASSAM
PIN-788819

3:THE CIRCLE INSPECTOR OF SCHOOLS
DIHANGI CIRCLE
DIHANGI
DIST- DIMA HASAO
ASSAM
PIN-78881

Advocate for the Petitioner : MR H K SARMA

Advocate for the Respondent : SC, NCHAC

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 23.01.2023

Heard Mr.B.D. Das, the learned senior counsel assisted by Mr. D. Thaosen, the learned counsel appearing on behalf of the petitioner as well as Mr. R.M. Das, the learned counsel appearing on behalf of the respondent Nos. 1, 2 and 3.

The instant writ petition has been filed challenging the action of the respondent authorities in transferring the petitioner from the post of Head Teacher of Dehangi Tiniali L.P. School to the post of Assistant Teacher at Moti Lampu Mahur Circle with immediate effect vide the impugned order dated 01/12/2022.

The learned counsel appearing on behalf of the petitioner submits that the Assam Elementary and Secondary Education Teachers' (Regulation of Posting and Transfer) Act, 2020 (in short 'the said Act of 2020) regulates the transfer and posting of school teachers of Elementary and Secondary Schools in Assam. In terms with the said Act of 2020 there is a procedure provided in Section 5 which stipulates that a competent authority has to recommend for transfer of teacher as per the PTR norms. The learned counsel has referred to Section 5(5) and 5(6) of the said Act which stipulates that the District Level Committee shall be the competent authority for recommending the school transfer of teachers within the district.

It is the specific case of the petitioner that there is no recommendation being made in terms to Section 5(5) of the said Act of 2020 and sans any recommendation, any transfer so made would be in violation to the Act of 2020.

On the other hand, Mr. R.M. Das, the learned counsel appearing on behalf of the respondent Nos. 1, 2 and 3 submitted that the petitioner ought to be transferred on account of various irregularities being committed by him and in that regard has referred to the enquiry report submitted by the Circle Inspector of Schools, Gunjung

and Dehangi Circle which would clearly show that there were various complaints made against the petitioner by the SMC President and three others and the Goanburah of Dehangi village against the petitioner. He submitted that it is under such circumstances that the impugned order of transfer was passed on 01/12/2022 in the exigency of service.

On a specific query being made upon the learned counsel appearing on behalf of the respondent Nos. 1, 2 and 3 as to whether the mandate of the said Act of 2020 has been followed, the learned counsel with all fairness submitted that the same, however, has not been taken note of. In view of the fact that the regulation and posting of teachers are regulated by the Act of 2020 and the Act having not been followed in passing the impugned order, this Court therefore sets aside the impugned order dated 01/12/2022.

It is however, made clear that the setting aside of the impugned order dated 01/12/2022 shall not preclude the respondent authorities to take appropriate steps if deemed necessary in terms with the said Act of 2020.

With the above observations and directions, the instant petition stands disposed off.

JUDGE

Comparing Assistant