

GAHC010273882023



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

Case No. : WP(C)/7013/2023

SIMANTA KUMAR DEKA
S/O- SRI KHAGESWAR DEKA, R/O- VILLAGE AND P.O. SARTHEBARI,
DISTRICT- BARPETA, ASSAM, PIN- 781307

VERSUS

THE STATE OF ASSAM AND ANR.
THROUGH THE SECRETARY TO THE GOVT. OF ASSAM, SCHOOL
EDUCATION DEPARTMENT, DISPUR, GUWAHATI- 781006

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-1

Advocate for the Petitioner : MR. I H SAIKIA

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

05.12.2023

Heard Mr. I.H. Saikia, learned counsel for the petitioner. Also heard Mr.
N.J. Khatanior, learned Standing Counsel, School Education Department.

2] This writ petition is filed by the petitioner putting into challenge the order dated 16.11.2023 whereby the petitioner was transferred and posted as an Inspector of School of the District of Elementary Education Officer, Golaghat. The petitioner is presently posted at Nalbari. Learned counsel for the petitioner referring to the guidelines issued by the State Government on 21.05.1997 has referred to the guidelines no.1 that where the spouses belong to the same State service the cadre Controlling Authority may post the spouses at the same station. Learned counsel for the petitioner submits that both the petitioner and his wife are working under the State Education Department and that apart, they are undergoing invitro-fertility treatment for which the transfer is not conducive for them. Learned counsel for the petitioner submits that the petitioner's wife has already filed an application before the Secretary, Government of Assam on 18.11.2023 which was received. However, no order has been passed on the said representation.

3] Mr. I.H. Saikia, learned counsel for the petitioner also refers to an order dated 28.11.2023 issued by the Department, whereby the transfer orders of other similarly situated persons were modified upon due consideration of their cases. He, therefore, submits that transfer order of the petitioner be interfered with and a direction be issued to the respondents to pass an appropriate order in terms of the guidelines adopted by the State.

4] Mr. N.J. Khatoniar, learned Standing Counsel, Elementary Education Department submits that he has no instructions.

5] Considering the fact that the writ petition has been filed with a limited purpose for consideration of the case of the petitioner and for modification of the transfer order and also for consideration of the representation dated 18.11.2023 filed by the petitioner's wife which is pending before the concerned authority, this Court is of the opinion that this writ petition need not be kept pending.

6] Accordingly, the writ petition stands disposed of permitting the petitioner to file a representation before the Secretary, School Education Department i.e. the respondent no.1 to reconsider the transfer order dated 16.11.2023 in so far as the writ petitioner is concerned after taking due consideration of the medical condition as urged before this Court as well as the guidelines issued under the Office Memorandum dated 21.05.1997, The representation will be filed within a period of 5 (five) days from today and the same shall be disposed of by the respondent no.1 within a period of 15 (fifteen) days from the date the representation is filed along with a certified copy of this order. Any other that may be passed by the respondent no.1 be served on the petitioner. Till disposal of the representation, the impugned transfer order dated 16.11.2023 so far as

the petitioner is concerned shall not be acted upon.

7] The writ petition stands disposed of in terms of the above.

JUDGE

Comparing Assistant