

GAHC010283622023



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

Case No. : WP(C)/7283/2023

DEEJIT SARKAR
S/O SACHINDRA CH. SARKAR R/O VILL. NARSINGBARI WARD NO 1 P.O.
AND P.S. GOALPARA DIST. GOALPARA ASSAM PIN 783101

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
HEALTH AND FAMILY WELFARE DEPTT DISPUR GUWAHATI 6

2:THE DIRECTOR OF HEALTH SERVICES ASSAM
HENGABARI GUWAHATI 6

3:THE JOINT DIRECTOR OF HEALTH SERVICES
GOALPARA
ASSAM 783101

4:THE JOINT DIRECTOR OF HEALTH SERVICES
HAILAKANDI
ASSAM 78815

Advocate for the Petitioner : MR B D DAS

Advocate for the Respondent : SC, HEALTH

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

15.12.2023

Heard Mr. B.D. Das, learned Senior Counsel, assisted by Mr. H.R. Das, learned counsel for the petitioner. Also heard Mr. D.P. Borah, learned Standing Counsel, Health Department.

This writ petition is filed by the petitioner, aggrieved by the impugned transfer order dated 07.10.2023 passed by the respondent no.2 issued on 04.10.2023, whereby the petitioner is transferred and posted as a Health Assistant under the Joint Director, Health Service, Hailakandi.

The petitioner was appointed as a Grade-IV employee under the Joint Director of Health Services, Goalpara and he was posted in the office of the Inspector of Drugs, Goalpara. During his service, a criminal proceeding was initiated against him and thereafter, he was arrested on 28.02.2023 in connection with Anti-Corruption Bureau (ACB) P.S. case No.05/2023 registered under Section 120B IPC read with Section 7(a) of the Prevention of the Corruption Act, 1988 as amended. Because of his arrest, by an order dated 10.04.2023 the petitioner was placed under suspension with effect from his date of arrest. Being aggrieved by the suspension order dated 10.04.2023, the petitioner filed a writ petition being WP(C)

No.4511/2023 before this Court and a Co-ordinate Bench of this Court by Judgment and Order dated 09.08.2023 disposed of the said writ petition by directing the Secretary to the Government of Assam, Health and Family Welfare Department to dispose of the petitioner's appeal dated 09.06.2023 within a period of 45 days from the date of receipt of a certified copy of the order. His suspension order was subsequently withdrawn by order dated 07.10.2023 and he was directed to work temporarily at Rongjuli BPHC, Goalpara by the order dated 25.10.2023 and thereafter, by order dated 06.11.2023 the petitioner was directed to work temporarily at NCD Cell under NHM, Goalpara. He was again allowed to work under the Joint Director of Health Services, Goalpara by order dated 04.11.2023. This order was then followed by the impugned order dated 04.11.2023, by which he was transferred to the Office of Joint Director Health Services, Hailakandi in his capacity as a Health Assistant.

Learned Senior Counsel for the petitioner submits that Grade-III employees ordinarily are not transferred out of the district. There is neither any departmental proceeding initiated against the petitioner as on date, nor is there any order imposed on the petitioner by way of punishment by the Department for which he is transferred from Goalpara to Hailakandi. Learned Senior Counsel for the petitioner has produced before this Court a communication dated 09.09.2021 in support his contention that the Grade-IV and Grade-III staff of all categories may be

transferred by the Deputy Commissioner, but within the district. It is submitted by the learned Senior Counsel for the petitioner that the services of the petitioner are governed by the Assam Ministerial Services Rules, 1964. Under the said Rules ordinarily the transfers are occasioned within the same district. Under such circumstances, the petitioner has approached the Director of Health Services by filing a representation dated 07.12.2023 requesting him to reconsider the transfer order issued to the petitioner on 04.11.2023 and transferring him from Goalpara to Hailakandi. However, the same has not been disposed of.

Mr. D.P. Borah, learned Standing Counsel, Health Department, appearing for the respondents submits that there is no illegality in the order dated 04.11.2023 issued by the Joint Director, Health Services, Goalpara transferring the petitioner from Goalpara to Hailakandi. He submits that the allegation against the petitioner is of accepting a bribe and because of this allegation, the petitioner has been transferred out of the district. He, however, submits that the services of the petitioner are governed by the Assam Ministerial Services Rules, 1964.

Considering the rival submissions made by the learned counsel for the parties and upon careful perusal of the pleadings on record and also in view that the petitioner's representation dated 07.12.2023, stated to be pending before the authorities concerned, this Court is of the considered opinion that the writ petition can be closed at this stage, directing the respondent no.2, namely, the Director of

Health Service, to dispose of the representation filed by the petitioner on 07.12.2023 within a period of 3 (three) weeks from the date of receipt of a certified copy of this order to be furnished by the petitioner. The petitioner will furnish a certified copy of this order within 7 (seven) days from today. The Director of Health Service will pass a speaking order on the representation dated 07/12/2023 by taking into account the Rules which govern the services of the petitioner and whether the said Rules permit inter district transfer for Grade-III posts. Until such an order is passed, the impugned transfer order dated 07.10.2023 passed by the respondent no.2 issued on 04.10.2023 will not be given effect to.

With the above observations, the writ petition stands disposed of.

JUDGE

Comparing Assistant