

REPORTABLE

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

WP(C) No. 667 of 2023

Smt. Th. Lakhipriya Devi aged about 58 years, W/o Ibotombi Namoiyam a resident of Yaiskul Chingakham Leirak, Imphal West, Manipur

..... Petitioner/s

- Versus -

1. The State of Manipur represented by the Additional Chief Secretary (Social Welfare), Government of Manipur, New Secretariat Building, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.
2. The Joint Secretary (SW), Government of Manipur, New Secretariat Building, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.

.....Official Respondents

3. Smt. Pratibha Khoyumthem, CDPO, ICDS Project, Chandel, C/o Director of Social Welfare, Government of Manipur, 2nd M.R. Gate, opposite to D.M. University, P.O. Imphal, P.S. City, Imphal East District, Manipur-795001.

.....Private Respondent/s

MC(WP(C) No. 267 of 2023

Smt. Th. Lakhipriya Devi aged about 58 years, W/o Ibotombi Namoiyam of Yaiskul Chingakham Leirak, Imphal West, Manipur.

..... Applicant/s

- Versus -

1. The State of Manipur represented by the Additional Chief Secretary (Social Welfare), Government of Manipur, New Secretariat Building, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.
2. The Joint Secretary (SW), Government of Manipur, New Secretariat Building, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.
3. Smt. Pratibha Khoyumthem, CDPO, ICDS Project, Chandel, C/o Director of Social Welfare, Government of Manipur, 2nd M.R. Gate, opposite to D.M. University, P.O. & P.S. Imphal, Imphal East District, Manipur-795001.

..... Respondent/s

MC(WP(C) No. 88 of 2024

1. The State of Manipur represented by the Additional Chief Secretary (Social Welfare), Government of Manipur, New Secretariat Building, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.
2. The Joint Secretary (SW), Government of Manipur, New Secretariat Building, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.

.....Applicant/s

Versus.

1. Smt. Th. Lakhipriya Devi aged about 58 years, W/o Ibotombi Namoiijam of Yaiskul Chingakham Leirak, Imphal West, Manipur.

.....Principal Respondent

2. Smt. Pratibha Khoyumthem, CDPO, ICDS Project, Chandel, C/o Director of Social Welfare, Government of Manipur, 2nd M.R. gate, opposite to D.M. University, P.O. & P.S. Imphal, Imphal East District, Manipur-795001.

.....Proforma Respondent/s

B E F O R E

HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the petitioner	::	Mr. HS. Paonam, Sr. Adv., Mr. BR. Sharma, Adv.
For the respondents	::	Mr. M. Rarry, Adv., Ms. Nikita, Adv., Mrs. O. Momota Devi, Adv. & Ms. Merina, Adv.
Date of Hearing	::	13.03.2024
Date of Order	::	05.08.2024

JUDGMENT & ORDER (CAV)

[1] Heard Mr. HS. Paonam, learned senior counsel assisted by Mr. BR. Sharma, learned counsel for the petitioner, Mr. M. Rarry, learned Special State counsel assisted by Ms. Nikita, learned counsel for respondent Nos. 1 & 2 and Mrs. Momota Devi Oinam, learned counsel assisted by Ms. Merina, learned counsel for respondent No. 3.

[2] The present writ petition has been filed by the petitioner praying for setting aside/quashing the impugned transfer order dated 27.09.2023 issued by the Joint Secretary (Social Welfare), Government of Manipur on the ground that the petitioner has been subjected to frequent transfer, as many as three transfers within a period of 18 months without any valid reasons. Vide order dated 03.10.2023, this Court issued notice and stayed the impugned transfer order dated 27.09.2023 till next date and the interim order has been extended from time to time and is subsisting till pronouncement of final order.

[3] The brief facts of the case are that the petitioner is presently working as Child Development Project Officer (CDPO), ICDS Project, in the Social Welfare Department, Government of Manipur. Vide transfer order dated 24.03.2022 issued by the Deputy Secretary (SW), Government of Manipur, the petitioner (who is at Serial No. 20) was transferred from Imphal City ICDS Project to Nungba ICDS Project on promotion and the respondent No.3 was also posted and transferred from ICDS Project Chakpikarong as CDPO, Chandel ICDS Project on promotion. Just after completion of 6 (six) months, the Deputy Secretary (SW), Government of Manipur, again issued another transfer order dated 13.10.2022 in which the petitioner (who is at Serial No. 4) was transferred from CDPO, ICDS Project Nungba to CDPO, ICDS Project Imphal City. Vide impugned transfer order dated 27.09.2023 (issued within 11 months of the previous posting) issued by the Joint Secretary (SW), Government of Manipur, the petitioner was again transferred from CDPO, ICDS Project, Imphal City to CDPO, ICDS Project Chandel with additional charge of i/c Programme Officer (ICDS) Cell, Chandel. By the impugned transfer order dated 27.09.2023, the private respondent was also transferred from Chandel to CDPO, ICDS Project, Imphal City and the posting of the petitioner and private respondent has been inter-changed in public interest.

[4] The impugned transfer order dated 27.09.2023 is challenged mainly amongst the following grounds:

- (i) The petitioner has been frequently transferred without giving sufficient reasons in as much as 3 times in less than 18 months on the verge of attaining the age of superannuation.
- (ii) All the impugned orders issued by the respondents are non-application of mind, arbitrary and illegal and not in public interest and the impugned order is mala fide only to bring the private respondent into the place of posting of the petitioner.
- (iii) The impugned transfer order in respect in respect of the petitioner has violated all the O.M.s and Transfer Policy dated 12.05.2022 for Transfer and Posting of the Government Employees of the State of Manipur, particularly Para III (ii), (vii) & (xi) and Para V.
- (iv) The transfer order is also in violation of the general condition of para III (vii) of the transfer policy dated 12.05.2022 whereby an employee is given an option of retirement in the Home District within 2 (two) years before retirement. The petitioner is about to retire within one year and four months from the date of transfer.
- (v) The frequent transfer of the petitioner is punitive in nature as she was transferred for not attending the meeting called by Deputy Commissioner, Imphal West when she was attending official training in another course on the same day.

[5] In the Counter affidavit filed by the State respondent, it is stated that the petitioner was serving in the ICDS Project at Imphal City/Valley District since October, 2008. On the contrary, the private respondent has been posted in ICDS Project located in Hill District since October, 2009 and hence, a proposal for transfer and posting of CDPO was made on 14.09.2023. It is further stated that the petitioner made serious dereliction of duty of unbecoming a Government Servant as she failed to attend District Review Committee Meeting chaired by Deputy Commissioner, Imphal West for monitoring relief camps and vide order dated 14.09.2023, the DC, Imphal West sent a letter to the Commissioner (Social Welfare), Government of Manipur for initiating necessary action against the petitioner for not attending the Review Meeting. It is also stated that on 14.09.2023, the department has taken up initiative for transfer and posting of CDPOs in the Social Welfare Department and for exemption. It is stated that with the approval of the Hon'ble Chief Minister in terms of Para V of the transfer policy dated 12.05.2022, the transfer and posting of the various Officers in the Social Welfare Department was made. It is stated that the impugned transfer order is in terms of the transfer policy laid down by the State. On merit, it is stated that the petitioner has wrongly alleged that it is a case of frequent transfer. It is clarified that one of the transfers (from Nungba to Imphal) was made on her request, but the same has not been disclosed in the petition. The first transfer order dated 24.03.2022 was due to promotion of the petitioner and the second transfer order dated 13.10.2022 was at her insistence and the third transfer order dated 27.09.2023 was made in public interest. The State respondent has also filed misc. Application being MC(WP(C)) No. 88 of 2024 for vacation of the

interim order dated 03.10.2023. Similar averments have been made in the counter affidavit.

[6] The petitioner filed a reply to the misc. application being MC(WP(C) No. 88 of 2024 wherein it is stated that by the present application the State respondent is trying to mislead the Court. It is stated that the petitioner was attending three-day programme of Gram Panchayat Development Plan (GPDP) from 14.09.2023 to 16.09.2023 as nominated by the Director (Social Welfare), Government of Manipur vide his letter dated 12.09.2023 and that is the reason why the petitioner could not attend the Review Meeting chaired by Deputy Commissioner (DC), Imphal West on 14.09.2023. On 13.09.2023, the petitioner informed the ADM, Imphal West that the petitioner would be attending GPDP Meeting from 14.09.2023 to 16.09.2023 and could not be able to attend the review meeting. There was no material on record to show that the transfer was approved by the Hon'ble Chief Minister in terms of the transfer policy framed by the State. The averment of initiating for transfer in public interest on 14.09.2023 is after-thought to camouflage the punitive transfer on the recommendation of the DC, Imphal West for failure to attend meeting on 14.09.2023. It is stated that the State respondent has not denied that the petitioner is retiring within 2 (two) years from the date of transfer order. It is pointed out that the process for transfer was initiated on 14.09.2023 itself, the day the DC/IW requested the Commissioner (SW) to initiate action against the petitioner for failure to attend a meeting chaired by him.

[7] During the course of hearing, Mr. HS. Paonam, learned senior counsel for the petitioner submits that the reply of the petitioner to the misc. application filed by the State respondent may be treated as rejoinder to the counter affidavit filed by the State respondent in the main petition. The private respondent also filed counter affidavit stating that during 27 years of her service, the respondent No. 3 was posted for 13 years in Chandel, 13 years in Sawombung, Imphal East and one year and six months in Chandel. For half of her career, she was posted in Hill Districts and it is submitted that her posting in Imphal may not be disturbed as she is entitled to be posted in valley. Learned senior counsel for the petitioner, further submits that vide order dated 24.03.2022, the petitioner as a Supervisor, Imphal City, ICDS Project was posted as CDPO, Nungba, ICDS Project on promotion and respondent No. 3 as a Supervisor in ICDS Project, Chandel was posted as CDPO, Chandel Project on promotion. Thereafter, vide order dated 13.10.2022, the petitioner was transferred as CDPO, ICDS Project, Nungba to CDPO, ICDS Project, Imphal City. However within one year and vide impugned order dated 27.03.2023, the posting of the petitioner and respondent No. 3 was interchanged as CDPO, ICDS Project, Chandel and Imphal City. In the circumstances, the petitioner was transferred from Imphal City to Chandel and respondent No. 3 was brought from Chandel to Imphal City, ICDS Project. It is informed that the date of birth of the petitioner is 01.02.1965 and hence, she is retiring on 31.01.2025. It is stated that the petitioner has been transferred from Home District, Imphal City to another district within 2 (two) years from the date of her superannuation and the same is in violation of the para III (vii) of the transfer policy dated 12.05.2022 issued by

the Government of Manipur. Para III (vii) reads as *“As far as possible, officials may be posted at their Home District, if the Official so Chooses, 2 (two) years before their retirement so as to facilitate ease in processing in processing pension matters”*. Learned senior counsel for the petitioner submits that the petitioner has not been given any option to choose Home District before the transfer order in terms of Para III sub-para (iii) & (vii) of the transfer policy. It is also stated that the posting of the petitioner in Imphal City till 24.03.2022 was in a lower cadre and on being promotion, she was transferred and posted to Nungba, ICDS Project and in the cadre of the CDPO, she is in Imphal City only from 13.10.2022 to 27.09.2023.

[8] It is specific case of the petitioner that the tenure in lower cadre cannot be counted towards the posting in the higher cadre of CDPO and as such, the petitioner was posted in Imphal in the cadre of CDPO for only 11 months prior to the impugned order. It is also stated that in the impugned order dated 27.09.2023, the first mover is not mentioned and as such, this is not an effective transfer order within the meaning of Para III(xi) of the transfer policy.

[9] Mr. HS. Paonam, learned senior counsel for the petitioner, further submits that the impugned transfer is punitive in nature and the same has been initiated upon the letter dated 14.09.2023 sent by the DC, Imphal West to the Commissioner (Social Welfare), Government of Manipur to take action against the petitioner for her failure to attend the Review Meeting on 14.09.2023. It is pointed out that a separate file for initiating transfer and posting on 14.09.2023 is to justify the transfer which is initiated as a punitive to be done in the public

interest. It is further submitted that relaxation is to be given by Hon'ble CM and not by the Department of Personnel. Since the petitioner is retiring on 31.01.2025 and in terms of Para III (vii) of the transfer policy dated 12.05.2022, the petitioner may be permitted to continue in Imphal City till her superannuation and to facilitate for processing of pension paper and for easy receipt of pensionary benefits after retirement. Approval under Para V is granted by DP and not by the Chief Minister.

[10] Learned senior counsel for the petitioner refers to the decisions of the Hon'ble Supreme Court reported as (i) **(2009) 15 SCC 178** to the effect that if the transfer order is contrary to Rules framed by the competent authority and with malafide intention, it can be interfered being stigmatic in exercise of the power of judicial review; (ii) **(2009) 2 SCC 592**, the transfer order with malafide intention is liable to be set aside; (iii) **(2013) 15 SCC 732**, the transfer order cannot be issued without complying with the minimum tenure of posting; (iv) **(1986) 4 SCC 131**, the transfer order not in public interest for collateral purpose and with oblique motive is vitiated; (v) **In WA No. 2001 of 2023 of the Kerala High Court**, the transfer order or misbehaviour without any opportunity of being heard is in violation of principle of natural justice; and (vi) **(1985) 3 SCC 398 & (1998) 2 SCC 109**, in absence of rule, regulation framed by the State has binding effect. It is stated that the transfer policy dated 12.04.2022 is binding on the State and any transfer in violation of this policy will be vitiated. In the present case, the petitioner has been transferred within 2 years of retirement without affording the

option of choosing Home District and she has been transferred before the minimum tenure of one and half year.

[11] Mr. M. Rarry, learned special counsel for the State respondent, submits that the petitioner has been in Imphal for 16 years with effect from 2008 till she transferred to Chandel vide order dated 27.09.2023 while the respondent No. 3 was posted in the Hill Districts for 15 years since 2009. Learned special counsel for the State respondent draws the attention of this Court to Para III (iii) of the transfer policy dated 12.05.2022 where it is stated that an employee shall not be posted for more than 9 years in hill throughout the entire period of service and in the present case, the respondent No. 3 has been continually posted for 15 years in hills. It is stated that the transfer order was issued invoking power conferred under Para V (power to relax) by obtaining exemption from DP. It is also stated that the period of posting in lower cadre has to be considered in view of Para III of the transfer policy 12.05.2022. It is also submitted that the transfer order in public interest ought not to be interfered by the Court and the reason given by the Hon'ble CM for relaxation under Para V is not required to be mentioned in the transfer order but the same has been recorded in the file noting. Malafide in the transfer order cannot be proved by the petitioner.

[12] Learned Special Counsel for the State respondent relies on the judgment reported as (i) **(2009) 15 SCC 178** to the effect that a Government Employee has no vested right for posting in a particular area; (ii) **(2003) 4 SCC 739**, malice in law has to be shown that the State action is not bonafide and with malice in violation of the statutory provision; (iii) **(2005) 8 SCC 760**, when

malafide action is alleged, there is a heavy burden on the petitioner to proof as such; (iv) **(2007) 9 SCC 786**, malafide exercise of power should be in violation of the statutory provision in the name of public purpose to defeat right of an individual; (v) **(2020) 3 SCC 86**, transfer after 20 years of posting in the headquarter cannot be termed as malice in law; (vi) **WP(C) No. 8141 of 2020** dated 11.06.2020 passed by MP High Court that malifide intention and the malice in law for transfer order have to be proved. It is submitted that there is no malafide intention on the part of the State respondent in transferring the petitioner who has been in Imphal City for 16 years, whereas the respondent No. 3 was posted in Hill Districts for 15 continuous years. It is submitted that writ petition may be dismissed and interim order be vacated.

[13] Mrs. O. Momota, learned counsel for respondent No. 3, submits that throughout last 27 years of her service, the private respondent has been posted for almost 15 years in Hill Districts and by the present transfer order, she has been brought back to Imphal and there is no illegality in the impugned transfer order with respect to her case and her posting at Imphal may not be disturbed. Learned counsel for respondent No. 3 relies on the decision of the Hon'ble Supreme Court reported as (i) **(1993) 4 SCC 357** to the effect that transfer is an incidence of service in terms of FR 11 and unless the order of transfer is vitiated by malafide or one of the statutory provision, court cannot interfere the same; (ii) **(2001) 5 SCC 508** held that transfer of an employee is part of service condition and cannot be interfered likely by a Court unless it is malafide or in violation of the statutory rules; (iii) **(1989) 2 SCC 602**, stating that

no Government Servant has a vested right to be posted in a particular place and transfer from one place to another is necessary in public interest and efficiency in the administration; and (iv) **CA No. 7011 of 2008**, the Hon'ble Supreme Court held that unless the order of transfer is contrary to the statutory provisions or settlement, the same should not be interfered. Learned counsel for the respondent No. 3 submits that the petitioner has failed to show that the transfer is in violation of the statutory provisions or the same is malafide. In conclusion, she submits that the writ petition be dismissed being devoid of any merit.

[14] This Court has considered the materials on record, submissions made by the learned counsel for the parties and decisions cited. The original files submitted by the State respondent have also been perused.

[15] On perusal of the transfer policy framed by the Department of Personnel, it is clear that Para III (i) says that the minimum posting will be one year and 6 months and maximum 3 years in the place of posting. Para III (ii) stipulates that no transfer be effected unless an employee has completed one year and 6 months except for compelling reasons. Sub para (iii) says that an employee shall not be posted in hill areas/difficult places during the entire service period for 9 years. Sub para (vii) says that a Government Servant retiring within 2 years shall have the option of choosing Home District to facilitate ease in processing pension matters. Sub para (xi) mandates that in the transfer order, the first mover and handing over of charge should be mentioned. Para V empowers the Chief Minister to transfer an employee to any places in relaxation of provisions after recording reasons justifying such relaxation. No transfer,

contrary with the policy, shall be made by any department without the approval of the Chief Minister.

[16] From the plain reading of the transfer policy dated 12.05.2022, it is undisputed position that the minimum tenure at the place of posting is one year and 6 months and maximum 3 (three) years in a place of posting. Minimum and maximum tenure are with respect to a posting at a place. A person should not be posted for more than 9 years in hill or difficult areas and a retiring employee shall have option to choose home district within 2 years from the date of retirement. The option of choosing Home District is to facilitate processing pension matters and any transfer in relaxation of the conditions laid down in the policy has to be done with the approval of the Chief Minister in writing with reasons of such relaxation in terms of Para V of the transfer policy.

[17] From the admitted fact of the present case, both the petitioner and respondent No. 3 are posted for 16 years and 15 years in Imphal and Hill Districts with some intermediate breaks.

[18] In the present case, the last posting of the petitioner at Imphal was vide order dated 13.10.2022 and the impugned transfer order dated 27.09.2023 was issued within one year of the last transfer order, thereby apparently violating provisions of para III (i) & (ii) of the transfer policy dated 12.05.2022. Respondent No. 3's last transfer and posting was at CDPO, ICDS Project, Chandel on promotion on 24.03.2022 and impugned transfer order dated 27.09.2023 is issued just after completion of one year and 6 months as stipulated in para III (i) & (ii) of the transfer policy and the same is in consonance with the policy. With

respect to the transfer of the petitioner, the impugned transfer order dated 27.09.2023 was issued within 2 years from the date of her superannuation without affording any opportunity of choosing Home District as stipulated under para III(vii).

[19] In terms of Para III (iii) & (vii) of the transfer policy and without going into the other aspect of the case, as to whether transfer was punitive/malafide or not, the impugned transfer order dated 27.09.2023 has violated the provisions of para III (i), (ii) & (vii) and para V with respect to the petitioner. Whereas in case of the private respondent No. 3, the transfer order is in tune with the provisions of Para III (i), (ii) & (iii).

[20] This Court has also perused the noting of the file submitted by the learned counsel for the State respondent. The file was put up to the Department of Personnel for obtaining of the approval of the Chief Minister for relaxation as mandated under Para V of the transfer policy. But the approval was given by the DP itself and in the file, there is no noting of the Chief Minister granting approval for transfer of the petitioner. However, without going to the aspect as to whether the transfer is punitive or malafide, this Court is of the opinion that the impugned transfer order with respect to the petitioner is in violation of the provisions of para III (i), (ii) & (vii) and para V. Transferring within 2 years from the date of retirement to non-home district without affording an option of choosing home district is in violation para III (vii) of the transfer policy and the same cannot be termed as in the public interest, when there is no approval from the Chief Minister in terms of Para V.

[21] Accordingly, writ petition is partly allowed and the impugned transfer order dated 27.09.2023 with respect to the petitioner from Imphal to Chandel is set aside, but upheld the transfer of the respondent No.3 from Chandel. However, since the same person cannot be posted at Imphal in a particular post, the State Government is directed to make an appropriate arrangement for posting the respondent No. 3 in any of the Valley Districts except for the post retained by the petitioner in terms of this order.

[22] Writ petition is disposed of in terms of the above directions that the petitioner be retained as CDPO, ICDS Project Imphal City and the respondent No. 3 may be posted as CDPO, ICDS Project in any appropriate place in the Valley Districts. No cost.

[23] All the misc. applications and the interim orders are disposed of in terms of the above directions. Return original files to the State Government.

JUDGE

FR/NFR

Kh. Joshua Maring