

GAHC040000652024



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

Case No. : WP(C)/22/2024

Shahkhah Jomoh

Son of Sam Jomoh, presently serving as Assistant Engineer, Seppa Sub Division
under UD and Housing Department, PO Seppa, East Kameng District, AP

VERSUS

The State of AP and 3 Ors

represented by the Commissioner (Urban Affairs) Department of UD and Housing,
Govt of AP, Itanagar 2:The Under Secretary

Age: 0

Occupation :

3:The Executive Engineer

Age: 0

Occupation :

4:Hage Nobin

Age: 0

Occupation

Advocate for the Petitioner : Abhai Kumar Singh

Advocate for the Respondent : GA (AP)

-BEFORE-

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

22.01.2024

Heard Shri A. K. Singh, learned counsel for the petitioner. Also heard Ms. K. Wangmo, learned State counsel representing State respondent Nos. 1, 2 & 3.

In view of the orders which is purposed to be passed, notice is not required to be issued to respondent No. 4.

The petitioner has put to challenge an order, dated 09.01.2024, by which the petitioner, who is an Assistant Engineer in the Department of Urban Development and Housing has been transferred from the Seppa Sub-Division and posted as ASW, office of the Chief Engineer (UD), Itanagar vice the respondent No. 4.

The challenge is structured on the ground that though the petitioner has completed the minimum tenure, such transfer is not sustainable in law inasmuch as, there is a proceeding pending against the petitioner vide a Show-Cause Notice has been issued and the same is annexed with the writ petition.

It has also been submitted that the private respondent No. 4 is substantially holding the post of Junior Engineer and is only acting as an In-charge Assistant Engineer and therefore, an *inter-parte* transfer is not permissible in law.

It is further submitted that the petitioner has a child of 5 years and by drawing the attention of this Court to the Circular/ guidelines governing the transfers, it is submitted in the last 3 months of the financial year, transfer should not be done.

On the other hand, the learned State counsel has submitted that transfer being an incidence of service, unless there is a violation of the statutory rules or such transfer is vitiated by any bias which can be prima facie demonstrated, a writ Court should be loathe in interfering such administrative decision.

It is submitted that the transfer order has been made in exigency of services and in the public interest.

This Court has been informed that the petitioner was posted at Seppa vide an order, dated 22.06.2021 and therefore, there is no dispute to the fact that the petitioner has completed the minimum tenure of 2 years at Seppa and this fact has also been candidly admitted by the learned counsel.

With regard to the grounds urged, though it appears that there is a Show-Cause Notice against the petitioner, this Court is of the view that the guidelines which have been relied upon, namely, that instead of transfer, an officer against whom there are serious complaints should be proceeded against the Department, such guidelines would not be applicable in the instant case as the transfer is not a consequence of the complaints and rather for the complaints, a Show-Cause Notice has already been issued. In any case, the aforesaid guidelines in serial No. F can be construed to be only directory in nature.

With regard to the allegation that the respondent No. 4 is substantially a Junior Engineer, this Court has noticed that the said respondent No. 4 is presently an in-charge Assistant Engineer, therefore, this Court is of the opinion that in absence of any allegation of bias or *mala fide*, such examination at the instance of an incumbent who has been transferred after expiry of minimum

tenure may not be called for.

Shri Singh has relied on a decision of this Court reported in (2020) 4 GLT 503 (***Hibu Tama-vs- State of Arunachal Pradesh***). A bare perusal of the said case would show that the transfer order was interfered on the ground that there were extraneous and political consideration. Therefore, the facts are distinguishable.

In view of the aforesaid discussions, this Court is of the opinion that no case for interference is made out and the writ petition is accordingly dismissed.

At this stage Shri A. K. Singh, learned counsel for the petitioner submits that he has submitted a representation on 15.01.2024 which is still lying unattended.

Dismissal of this petition shall not be a bar for consideration of the aforesaid representation submitted by the petitioner which may be done and disposed of by a speaking and reasoned order expeditiously.

JUDGE

Comparing Assistant