

GAHC040010692024

2024:GAU-AP:1115



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

Case No. : WP(C)/350/2024

Wangdam Jomoi

Son of Late Khomway Jomoi, resident of Laktong New Sabban Village, Changlang,
PO, PS and District Longding, Arunachal Pradesh.

VERSUS

The State of AP and 4 Ors

represented by the Chief Secretary, Govt of Arunachal Pradesh, Civil Secretariat,
Itanagar, Papumpare District, Arunachal Pradesh 791111

2:The Deputy Commissioner

Age: 0

Occupation :

Office of the Deputy Commissioner
Changlang

PO

PS and District Changlang
Arunachal Pradesh 792120

3:The District Medical Officer

Age: 0

Occupation :

Office of the DMO
Changlang

PO

PS and District Changlang
Arunachal Pradesh 792120

4:The Circle Officer

Age: 0

Occupation :

Office of the Deputy Commissioner

Changlang
PO
PS and District Changlang
Arunachal Pradesh 792120

5:Nipen Roy
Age: 0
Occupation :
UDC
Office of the DMO
Changlang
PO
PS and District Changlang
Arunachal Pradesh 79212

Advocate for the petitioner : Mr. N. Sarma.
Advocate for the respondents : Mr. S. Tapin, for respondent Nos. 1, 2 & 4;
Mr. T. Tagum, for respondent No. 3.

Date of hearing : 04.12.2024
Date of judgment : 11.12.2024

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

JUDGMENT & ORDER (CAV)

Heard Mr. N. Sarma, learned counsel for the petitioner and Mr. S. Tapin, learned Senior Government Advocate for the respondent Nos. 1, 2 and 4. Also heard Mr. T. Tagum, learned Standing Counsel for the respondent No. 3, Health Department.

2. In this petition, under Article 226 of the Constitution of India, the petitioner, namely, Sri Wangdam Jomoi, has prayed for setting aside and quashing the order dated 23.07.2024, issued by the respondent No. 2, Deputy Commissioner, Changlang, vide No. C/ESTT-210/88/(Vol-IV)/3845-49 (Annexure-

11) and to allow the petitioner to join the Office of the District Medical Officer, Changlang, respondent No. 3, in terms of the order dated 22.07.2024, issued by the respondent No. 2, vide No. C/ESTT-210/88/(Vol-IV)/89/3707-711 (Annexure-6).

3. The background facts, leading to filing of the present petition, are briefly stated as under:

“The petitioner is serving as Upper Division Clerk (UDC) in the Office of the Deputy Commissioner, Changlang/respondent No. 2. On 16.07.2024, he had filed one representation to the respondent No. 2, requesting to transfer him to the Office of the District Medical Officer (DMO), Changlang/respondent No. 3 on medical ground. It is the pleaded case of the petitioner that he has been suffering from Tuberculosis and he was strictly advised to remain on medication for few months. Upon such representation, the Deputy Commissioner, Changlang/respondent No. 2 had issued an order, vide No. C/ESTT-210/88/(Vol-IV)/89/3707-711, dated 22.07.2024, transferring the petitioner from the Office of the Deputy Commissioner, Changlang to the Office of the DMO, Changlang and in his place, the respondent No. 5 was transferred from the Office of the respondent No. 3 to the office of the respondent No. 2, and thereafter on 22.07.2024, vide order No. C/ESTT/PF/WJ/2024/3712-714, the respondent No. 2 had released him from his office. On such release, the petitioner had submitted his joining report before the DMO, Changlang/respondent No. 3. However, the respondent No. 3 did not accept his joining report and issued a letter, bearing Memo No. CMD/Estt-1/FS/2024-25, dated 23.07.2024, informing the respondent No. 2 about non-acceptance of the joining report of the petitioner, without assigning any reason. Thereafter,

the petitioner made a representation, dated 24.07.2024, before the respondent No. 2, intimating him about the non-acceptance of his joining report by the respondent No. 3 and prayed for confirming his transfer to the Office of the respondent No. 3 and to give effect of the transfer order dated 22.07.2024. Thereafter, the petitioner was served with the impugned order dated 23.07.2024, vide No. C/ESTT-210/88/(Vol-IV)/3845-49, whereby his transfer order, issued on 22.07.2024, was cancelled with immediate effect and he was directed to join the Office of the respondent No. 2 immediately. It is also the case of the petitioner that the impugned order, dated 23.07.2024, whereby the transfer order of the petitioner was cancelled, is *mala-fide* and issued arbitrarily, at the whim and caprice of the respondent authorities, particularly respondent Nos. 2 and 3 and therefore, the petitioner has approached this Court by filing the present petition."

4. The respondent Nos. 2 and 4 have filed their affidavit-in-opposition. In the said affidavit, they have taken a stand that reshuffling or adjustment of the staff within the Office is routine affairs and is conducted solely in the interest of efficient administration and public service by exercising its discretionary power, and the reshuffling order dated 22.07.2024, was issued in public interest and after due consideration of the relevant facts with the objective of ensuring smooth and efficient functioning of various departments and branches within the Office of the Deputy Commissioner, Changlang. It is also the contention of the respondent Nos. 2 and 4 that on the basis of administrative exigencies, the petitioner's transfer order was cancelled, and that the DMO did not accept the petitioner's joining report and returned the same to the respondent No. 2's Office and after re-examination, the decision was taken to cancel the earlier

transfer order for smooth functioning of the office. They have also denied the allegation made in the writ petition by the petitioner and that the order dated 22.07.2024, was passed at his own request and due to administrative reason, the DMO, Changlang did not accept his joining report and in *bona-fide* exercise of authority, the respondent No. 2 had cancelled the transfer order dated 22.07.2024, and that the petitioner has failed to establish a prima facie case for interference with the impugned order and therefore, it is contended to dismiss the petition.

5. Mr. Sarma, learned counsel for the petitioner submits that presently, the petitioner is working in the Judicial Branch of the Office of the respondent No. 2 and that he has been suffering from Tuberculosis, for which he has been advised to strictly follow the instruction of remaining on medicine, and that the workload in the Judicial Branch of the Office of the respondent No. 2 is high and he is unable to cope up with the said workload, on account of his health condition and he has less than seven months to retire from service and that the workload in the Office of the respondent No. 3 was much less and there the petitioner would be able to handle the workload and therefore, it is contended to set aside the impugned order dated 23.07.2024. In support of his submission, Mr. Sarma has referred to the following decisions:

(i) **Ms X vs. Registrar General, High Court of Madhya Pradesh and Anr.**, reported in (2022) 14 SCC 187.

(ii) **Duken Kato vs. State of Arunachal Pradesh, through the Commissioner (Education) and Ors.**, reported in 2023 SCC OnLine Gau 3528.

(iii) **Dubom Bagra vs. State of Arunachal Pradesh and Ors.**, reported in 2013 5 GauLR 277.

6. Per contra, Mr. Tapin, learned Senior Government Advocate for the respondent Nos. 1, 2 and 4 submits that the Office of the DMO, Changlang is situated within the same premises of the Office of the Deputy Commissioner, Changlang/respondent No. 2 and that the petitioner is posted in the Judicial Branch of the Office of the respondent No. 2 and the contention of the petitioner that the workload in the Judicial Branch is high, is incorrect, in as much as, the judiciary has already been separated in the said district and all the judicial works are looked after by the District Judiciary there, and that transfer is a condition of service and the transfer order of the petitioner was cancelled in the public interest. Mr. Tapin also submits that here in this case, the petitioner has alleged *mala-fides* against respondent Nos. 2 and 3, but they have not been impleaded in the petition as a party by name and unless they are made party, this Court cannot adjudicate the issue of *mala-fide*. In support of his submission, Mr. Tapin has referred to a decision of Hon'ble Supreme Court in the case of **State of Bihar and Anr. Vs. P.P. Sharma, IAS and Anr.**, reported in **1992 Supp (1) SCC 222**. Under the given facts and circumstances, Mr. Tapin has contended to dismiss this petition.

7. On the other hand, Mr. Tagum, learned Standing Counsel for the respondent No. 3, submits that the petitioner was in the Office of the DMO, Changlang for a long period and only a few months back, he was transferred to the Office of the respondent No. 2, on account of pendency of large numbers of files, which the petitioner could not able to handle and as the workload in the Office of the DMO, Changlang was high and as during the tenure of the petitioner in the said office, there was huge pile up of files, the petitioner was transferred to the Office the respondent No. 2 at the behest of the respondent No. 3, and that one UDC/respondent No. 5 is there and after transfer of the

petitioner, the piled up matters had been cleared and if the petitioner is transferred again to the Office of the respondent No. 3, then again the matters would pile up, and though he had been transferred to the Office of the respondent No. 3 in public interest, yet, the same would not serve the public interest and therefore, the respondent No. 3 had not accepted his joining report and returned the same with a report to the respondent No. 2 and then the respondent No. 2, in public interest, had cancelled the earlier order, vide impugned order dated 23.07.2024. Further, Mr. Tagum submits that the Office of the DMO, Changlang is within the same premises of the Office of the respondent No. 2 and it is incorrect to say that there is heavy workload in the Judicial Branch of the respondent No. 2 and therefore, Mr. Tagum has contended to dismiss the petition. In support of his submission, Mr. Tagum has referred to the following decisions:

- (i) **Dilip Kr. Saikia vs. State of Assam**, reported in **2005 (4) GLT 371**.
- (ii) **State of Assam vs. Ranjit Chandra Barman**, reported in **2008 (2) GLT 786**.
- (iii) **State of Assam vs. Dilip Kumar Sarma and Ors.**, reported in **2011 (4) GLT 724**.

8. Having heard the submissions of learned Advocates of both the parties, I have carefully gone through the petition and the documents placed on record and also perused the impugned order dated 23.07.2024, and also gone through the decisions referred by the learned Advocates of both the parties.

9. It is well settled in a catena of decisions of Hon'ble Supreme Court that transfer is a condition of service and it is the prerogative of the respondent

authorities as to how, where and in what manner the service of the employee is to be utilized. In the case of **Ranjit Chandra Barman** (supra), a Division Bench of this Court has held that when the transfer is to another office in the same place or station and does not involve movement to a new place or station, judicial intervention may not be justified.

10. In the case of **K.B. Shukla and Ors. vs. Union of India and Ors.**, reported in (1979) 4 SCC 673, Hon'ble Supreme Court has held as under:

“The responsibility for good administration is that of the Government. The maintenance of an efficient, honest and experienced administrative service is a must for the due discharge of that responsibility. Therefore, the Government alone is best suited to judge as to the existence of exigencies of such a service, requiring appointments by transfer. The term "exigency" being understood in its widest and pragmatic sense as a Rule, the Court would not judge the propriety or sufficiency of such opinion by objective standards, save where the subjective process of forming it, is vitiated by *mala-fides*, dishonesty, extraneous purpose, or transgression of the limits circumscribed by the legislation.”

11. Again in the case of **P.P. Sharma, IAS** (supra), it has been held that determination of the plea of *mala-fide* involves two questions, namely, (i) whether there is a personal bias or an oblique motive; and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power. It has also been held that it is a well settled law that the person against whom *mala-fides* or bias was imputed should be impleaded co-nominee as a party respondent to the proceedings and has to be given an opportunity to meet those allegations. In his/her absence no enquiry into those allegations would be made. Otherwise it itself is violative of

the principles of natural justice, as it amounts to condemning a person without an opportunity.

12. In the instant case, from the pleadings of the parties and submissions of learned Advocates of both sides, following facts and circumstances have emerged:

- (i) The petitioner was earlier posted in the Office of the respondent No. 3 for several years.
- (ii) He was transferred and posted in the Judicial Branch of the respondent No. 2 a few months back.
- (iii) On his representation, he was transferred to the Office of the respondent No. 3 again on 22.07.2024.
- (iv) There is only one UDC in the Office of the respondent No. 3.
- (v) There is also heavy workload in the Office of the respondent No. 3.
- (vi) While the petitioner was working in the Office of the respondent No. 3, there was heavy pile up of works/files.
- (vii) The respondent No. 5, on his transfer to the place of the petitioner there, had cleared the piled-up files.
- (viii) While the petitioner was again transferred to the Office of the respondent No. 3, he had refused to accept the joining report of the petitioner and wrote a letter to the respondent No. 2.
- (ix) The respondent No. 2 thereafter cancelled the transfer order, vide impugned order dated 23.07.2024 and directed the petitioner to resume his duty.
- (x) The Office of the respondent No. 3 is situated in the same premises

in the Office of the respondent No. 2.

(xi) There is no change of place of posting and no movement involves to a new place or station except, however, the Office.

13. It is to be noted here that these facts and circumstances are not disputed by either of the parties.

14. In view of the given factual situation and also in view of the ratio laid down in the cases referred by Mr. Tapin, learned Senior Government Advocate for the respondent Nos. 1, 2 and 4, and in view of the decisions referred by Mr. Tagum, learned Standing Counsel for the respondent No. 3, I find sufficient force in the submission of Mr. Tapin and Mr. Tagum, learned counsel for the respondent authorities and the ratio laid down in the said cases referred by them also strengthened their submissions.

15. I have also considered the submission of Mr. Sarma, learned counsel for the petitioner and also gone through the decisions referred by him. And in view of the discussion and finding recorded herein above, the submission of Mr. Sarma left this Court unimpressed and the ratio laid down in the cases referred by him also would not help him, in as much as, the facts of the said cases are distinguishable from the facts of the present case. Though the allegation of *mala-fide* is levelled against the respondent Nos. 2 and 3, yet admittedly, they have never been made a party by name as respondent and on such count, this Court is unable to determine such a plea in view of the decision of Hon'ble Supreme Court in the case of **P.P. Sharma, IAS** (supra).

16. Thus, considering the fact that there is no change of station or movement to a new place and also taking note of the ratios laid down in the cases discussed herein above, I find that no legal right of the petitioner has been

violated by the impugned order and therefore, I find no ground to interfere with the same.

17. In the result, I find no merit in the present writ petition and accordingly, the same stands dismissed.

18. However, in view of the fact that the petitioner is suffering from Tuberculosis and also in view of the fact that he is at the fag end of his service career, this Court is inclined to direct the respondent No. 2 to consider the case of the petitioner in a sympathetic manner and utilize his service in a branch of his Office where the workload is not so high, so that with his frail health, the petitioner will be able to complete his service tenure smoothly.

19. The petitioner shall obtain a certified copy of this judgment and order and shall place the same before the respondent No. 2 within a period of two weeks from today.

20. The parties have to bear their own costs.

JUDGE

Comparing Assistant