



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

Case No. : WP(C)/429/2023

Smti Yamang Tali (Taggu)
W/o Shri Tajom Taggu, R/o Boleng Town, PO/PS Boleng, Siang District, Arunachal Pradesh, Mob. No. 9383035853

VERSUS

The State of AP and 5 Others
represented by the Secretary (PWD), Govt. of Arunachal Pradesh, Itanagar.

2:The Chief Engineer

Age: 0

Occupation :

3:The Superintending Engineer

Age: 0

Occupation :

4:Executive Engineer

Age: 0

Occupation :

5:Executive Engineer

Age: 0

Occupation :

6:Ojing Tasing

Age: 0

Occupation

Advocate for the Petitioner : Adam Tatak

Advocate for the Respondent : GA (AP)

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner : Shri A. Tatak
Advocates for the respondents : Shri S. Tapin, Sr.GA, AP

Dates of hearing : **23.01.2024**
Date of Judgment : **23.01.2024**

JUDGMENT & ORDER

Heard Shri A. Tatak, learned counsel for the petitioner. Also heard Shri S. Tapin, learned Senior Government Advocate, AP.

2. Considering the subject matter involved and the fact that necessary pleadings have been exchanged, this writ petition is taken up for disposal at the admission stage.

3. The petitioner, who is a casual staff under the Office of the PWD has put to challenge two orders of transfer. The first order is dated 31.07.2023 whereby she has been transferred from Boleng Division to Yingkiong Division and by the subsequent order dated 16.08.2023, she has again been re-posted in the Tuting Sub-Division.

4. The learned counsel for the petitioner has submitted that apart from the fact that frequent transfers are not permissible in law, the impugned action is of the behest of the local MLA, who has also been made a party respondent in the present case. He submits that the entire action is triggered after filing of a writ petition being WP(C)/284/2023 by a group of persons which included the husband of the petitioner in connection with a Hydel Power Project and the contentions was that the local villagers were not consulted and the Project

would adversely affect their life. It is further submitted that this Court had also passed an interim order in that case. It is projected that since the local MLA was interested in the project, he took a grudge against the petitioners in that case and since the husband of the present petitioner was one of the party, the petitioner is now having required to face the brunt.

5. It is submitted that there is no public interest attached with the impugned transfer inasmuch as, within a very short time of 3 to 4 days of joining, the Yingkiong Division pursuant to the first order of transfer dated 31.07.2023, the petitioner was

again re-posted to Tuting Sub-Division vide an order dated 16.08.2023. It is also submitted that apprehending some penal action, the petitioner had joined the Yingkiong Division whereafter the second impugned order was passed.

6. Shri Tatak, learned counsel for the petitioner has however informed that vide an order dated 29.08.2023, this Court while issuing notice had stayed both the impugned orders of transfer pursuant to which, the petitioner is continuing her service as Casual Staff at the Boleng Division.

7. The learned counsel for the petitioner has however fairly conceded that the petitioner has completed more than 7 years at Boleng Division but that factor was not the consideration for her transfer which has been done according to the petitioner with *mala fide* intention.

8. *Per contra*, Shri S. Tapin, learned Senior Government Advocate, AP by referring to the affidavit-in-opposition filed on 30.10.2023 has submitted that there is no allegations at all of violation of any Rules governing the service condition in connection with the impugned orders of transfer. It is submitted that the petitioner has completed about 8 years at Boleng Division and therefore, it is in the interest of public that the orders of transfer has been

passed which is also in accordance with the OM dated 13.08.2007. The learned State Counsel has specifically referred to clause 12 of the said OM which relates to transfer and posting.

9. With regard to the submission of frequent transfer, the learned State Counsel has clarified that Boleng Division and Yingkiong Division of the PWD falls under the Boleng Circle and the order of transfer dated 31.07.2023 was issued by the competent authority namely, the Superintending Engineer of the Circle. Shri Tapin clarifies that the subsequent order dated 16.08.2023 is not an order of transfer but only an order of posting of the petitioner in Tuting which is Sub-Division under the Yingkiong Division and that order has been passed by the competent authority namely, the Executive Engineer of the Yingkiong Division.

10. Countering the allegation of *mala fide* by which the petitioner has tried to rope in the role of the local MLA, learned State Counsel submits that in WP(C)/284/2023 which has been stated the root cause, the concerned MLA was not made a party. It is further submitted that the allegations of involvement of the MLA which have been put in paragraphs 12 and 13 of the writ petition are absolutely vague. He submits that allegations of *mala fide* is to be demonstrated by materials from which such allegations become apparent and simply relying upon some stray allegations would open a flood gate of litigations wherein on such basis any order of administration can be put to challenge. The learned State Counsel finally submits that there is no *mala fide* involved in the instant process of transfer of the petitioner, who has otherwise completed about 8 years of service at Boleng Division.

11. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

12. The law regarding transfer is well settled. Unless an order of transfer is in violation of the Statutory Rules or the same has been done in *mala fide* exercise of powers, such orders of transfer which are mainly done for the exigency of service are not liable to be interfered with by a Court. It is also trite law that prerogative and discretion should be left with the administration as to how the services of its employees are to be best utilized within the framework of law. Of course, the same would not mean that such discretion can be exercised without any application of mind or with an intention to penalize.

13. In the instant case, the fact that the petitioner has been serving at Boleng Division for the last 8 years is not disputed and therefore, it is in fact ripe for transferring the petitioner which would be in the interest of justice. The contention raised about frequent transfer cannot be countenanced in view of the fact that Tuting is the Sub-Division under Yingkiong Division and therefore re-posting of the petitioner at Tuting Sub-Division after her joining at Yingkiong Division cannot be held to be a separate transfer but has to be construed to be a part & parcel of the principal order of transfer dated 31.07.2023. The competency of the Officers passing the orders dated 31.07.2023 and 16.08.2023 are not the subject matter of challenge and in fact this Court has noticed that those orders are passed by the Competent Authority.

14. This brings this Court to examine the aspect of allegation of *mala fide* vis-à-vis the role of MLA, who has also been impleaded as the respondent no. 6 in this petition. The allegation is that the husband of the petitioner was one of the petitioners in a writ petition being WP(C)/284/2023 which was filed against the Hydel Power Project and there was a stay order in the said writ petition. The averments made in this regard are found mainly in paragraphs 12 and 13. On a reading of the said averments, this Court cannot come to the conclusion that the allegations of *mala fide* have got any substantial basis with the order of

transfer. As rightly contended by the learned State Counsel, though an allegation of *mala fide* may not be able to be proved beyond all reasonable doubts, there has to be substantial materials so as to enable the Court to come to a conclusion that there is a perceived motion of *mala fide* which can be demonstrated by the materials on record. The pleadings with regard to the allegation made in this writ petition do not meet the said standard and therefore it is difficult on the part of this Court to accept the allegation of *mala fide* in connection with the impugned orders of transfer.

15. In view of the aforesaid discussions and also taking into consideration that transfer being an exigency of service and the petitioner has already been served about 8 years at the Boleng Division, the impugned orders of transfer are not interfered with.

16. Accordingly, the writ petition is dismissed and the interim order passed on 29.08.2023 stands vacated.

17. No order as to cost.

JUDGE

Comparing Assistant