

GAHC040013912023



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

Case No. : WP(C)/493/2023

Kenge Ori

S/o Shri Token Ori @Kirken Ori, R/o Aalo, P.O and P.S Aalo, West Siang District, Pin Code 791001, Arunachal Pradesh.

VERSUS

The Gauhati High Court and 6 Ors.

represented by its Registrar General, Guwahati 781001, Assam.

2:Registrar (Admin..)

Age: 0

Occupation :

3:Assistant Registrar (Admin.)

Age: 0

Occupation :

4:District and Sessions Judge

Age: 0

Occupation :

5:District and Sessions Judge

Age: 0

Occupation :

6:Chief Judicial Magistrate cum Civil Judge (Senior Division) Changlang

Age: 0

Occupation :

7:JMFC cum Civil Judge (Jr. Division)

Age: 0

Occupation

Advocate for the Petitioner : B Deka

Advocate for the Respondent : Muk Pertin, Senior Advocate

**BEFORE
HONBLE MR. JUSTICE BUDI HABUNG**

ORDER

Date : 19.07.2024

Heard Mr. B. M. Deka, learned counsel for the petitioner. I have also heard the learned senior counsel, Mr. M. Pertin, learned standing counsel for the Gauhati High Court Itanagar Permanent Bench, Yupia assisted by Ms. D. Riba, learned counsel for the representing the respondents.

2. The petitioner is presently working as Stenographer (Grade-II) in the Court of Chief Judicial Magistrate-cum-Civil Judge (Senior Division), Changlang. By filing this writ petition under Article 226 of the Constitution of India, the petitioner is seeking transfer from the Court of Chief Judicial Magistrate-cum-Civil Judge (Senior Division), Changlang to the Court of Judicial Magistrate, First Class-cum-Civil Judge (Junior Division), Pangin under the District and Sessions Judge, Pasighat.

3. The learned counsel for the petitioner submits that on 01.05.2023, younger brother of the petitioner met with a road accident and scummed to his injuries. After the death of his younger brother, there is no one to look after his old and

ailing parents at Aalo and it become difficult for him to cater their daily needs and look after their health. Therefore, the petitioner submitted a representation before the District and Sessions Judge, Khonsa, requesting for his transfer from Changlang to Pasighat.

4. It is submitted that the Court of Chief Judicial Magistrate-cum-Civil Judge (Senior Division), Changlang is running with surplus staff and presently all the staff of JMFC as well as CJM, Changlang are attached to the Court of CJM-cum-Civil Judge, Changlang and they have been accommodated in the same designated Court building at Changlang for the last one year due to non-posting of JMFC-cum-Civil Judge at Changlang. It is further submitted that there is a vacancy for the post of Stenographer (Grade-II) in the Court of JMFC-cum-Civil Judge (Junior Division), Pangin and submitted that it is at this vacancy post of Stenographer (Grade-II) in the Court of JMFC-cum-Civil Judge (Junior Division), Pangin the petitioner is seeking his transfer from Changlang.

5. It is further submitted that the said representation submitted before the Court of District and Sessions Judge, Khonsa was forwarded to the Registrar, Gauhati High Court, Itanagar Permanent Bench, Yupia for consideration.

6. The learned counsel for the petitioner further submits that on receipt of the said representation forwarded by the District and Sessions Judge, Khonsa, the Assistant Registrar (Admin), Gauhati High Court, Itanagar Permanent Bench, Yupia had forwarded the said representation to the Registrar (Admin), Gauhati High Court, Guwahati by its letter dated 15.06.2023. In the said forwarded letter, the Assistant Registrar, Gauhati High Court, Itanagar Permanent Bench, Yupia mentioned that it is reported by the District and Sessions Judge, Yupia

that the statement made by Shri Kenge Ori, Stenographer (Grade II), CJM Court at Changlang in his prayer dated 03.06.2023 and regarding the strength of working staff in the Court of CJM-cum-Civil Judge (Senior Division), Changlang is found to be correct. However, the said representation submitted by the petitioner, forwarded by the Assistant Registrar (Admin), Gauhati High Court, Itanagar Permanent Bench, Yupia on 15.06.2023 is still pending consideration. Hence, prays for a direction to consider the case of the petitioner for his transfer from Changlang to Pangin.

7. The learned senior counsel, Mr. M. Pertin, learned standing counsel for the Gauhati High Court, Itanagar Permanent Bench, Yupia while referring to the affidavit filed by the respondents submits that the transfer is an incidence of service and no body can claim transfer/posting as a matter of right. He further submits that the letter dated 26.05.2023 issued by the JMFC-cum-Civil Judge (Junior Division), Pangin, Siang District, Arunachal Pradesh asking for posting of Stenographer in the Court was an internal communication and it is for the administration to consider the request followed by decision thereof. As such, the said letter dated 26.05.2023, by no stretch of imagination, would give leeway to the petitioner to seek posting in the establishment of JMFC-cum-Civil Judge (Junior Division), Pangin.

8. The learned senior counsel further submits that although there is no transfer and posting vogue, however, recently a draft for transfer policy formulated by the Gauhati High Court for such inter cadre transfer wherein it is stated that such inter cadre transfer is impermissible without the approval of the High Court and even if approved, the incumbent will have to join on bottom seniority. Therefore, the petitioner has got no legal right to claim for his transfer

and it is in the strength of the said internal communication letter.

9. The said draft transfer policy at Clause (vii) provides that unless so directed by the Gauhati High Court, the transfer of staff shall be restricted within the Courts under the jurisdiction of the Judicial District to which such Courts belong so as to keep intact the inter-se seniority of staff. Further Clause (viii) provides that wherever a request for transfer from one district to another district is made by an employee and such request is acceded to, such an employee shall not carry his/her seniority to the establishment where he/she is transferred unless directed otherwise by the Hon'ble Gauhati High Court. Lastly, Clause (xii) provides that transfer on request may be considered by High Court, only if there exists any valid reason for such request, subject to vacancies in other District Headquarter or Sub-Divison or on mutual transfer. And in the instant case the petitioner submitted a representation for transfer from Changlang to pangin.

10. The learned senior counsel submits that it is well settled law laid by the Hon'ble Supreme Court in series of decision that who should be posted where is the prerogative of the administration. Accordingly, the case shall also be considered on the basis of the availability of the vacancies, if found the reason stated by the petitioner is valid.

11. Heard both the learned counsel for the parties.

12. Upon hearing the parties and on consideration of the materials placed on record and on prayer made by the learned counsel for the petitioner, this writ petition stands disposed of with a direction to the respondents, more particularly the respondent No. 2, Registrar (Admin), Gauhati High Court, Guwahati to dispose of the representation submitted by the petitioner on

03.06.2024, forwarded by the District and Sessions Judge, Khonsa on 05.06.2023 before the Registrar, Gauhati High Court, Itanagar Permanent Bench, Yupia and forwarded by the Assistant Registrar (Admin), Gauhati High Court, Itanagar Permanent Bench, Yupia before the Registrar (Admin), Gauhati High Court, Guwahati dated 15.06.2024, pending before the Registrar (Admin), Gauhati High Court, Guwahati shall be considered at the earliest, preparably, within a period of 45 (forty five) days from the receipt of the certified copy of this order.

13. With the above, this writ petition stands disposed of.

JUDGE

Comparing Assistant