

GAHC040014632024

2024:GAU-AP:1025



IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM & ARUNACHAL PRADESH)

ITANAGAR PERMANENT BENCH (YUPIA)

WP(C)495(AP)2024

Shri Jummar Ete,
S/O Lt. Kijum Ete,
Permanent Resident of Village - Bene,
P.O./P.S. – Aalo, West Siang District,
Arunachal Pradesh

Petitioner.

– ***VERSUS*** –

1. The State of Arunachal Pradesh, represented by the Secretary, Department of Water Resources (WRD), Govt. of Arunachal Pradesh, Itanagar.
2. The Deputy Secretary, Department of Water Resources (WRD), Govt. of Arunachal Pradesh, Itanagar.
3. The Executive Engineer, Water Resource Division (WRD) Kanubari, District – Longding, Arunachal Pradesh.

4. Shri Punyo Laling, Assistant Engineer, Water Resources Sub-Division Kanubari, District - Longding, Arunachal Pradesh.

..... Respondents.

Advocate for the Petitioner : Mr. K. Lollen

Advocate for the Respondents: Mr. R. H. Nabam, Addl. A.G.

Mr. M. Batt.

:::BEFORE:::

HON'BLE MR. JUSTICE KARDAK ETE

JUDGMENT & ORDER (Oral)

22.11.2024

Heard Mr. K. Lollen, learned counsel for the petitioner. Also heard Mr. R. H. Nabam, learned Additional Advocate General for the State respondents No. 1 to 3 and Mr. M Batt, learned counsel for the private respondent No. 4.

2. Challenge made in this writ petition is to the impugned modified transfer and posting order vide No.SWRD/E-22/2015/2107/113, dated 28.10.2024, issued by the Secretary (WRD), Govt. of Arunachal Pradesh, Itanagar, whereby in partial modification of earlier transfer order dated 08.10.2024, the petitioner has been transferred and posted to Kharsang WRD Sub-Division, Changlang District, and the private respondent No.4 has been retained for the second time at Kanubari WRD Sub-Division as an Assistant Engineer in place of the petitioner.

3. The case of the petitioner, in brief, is that the petitioner is presently serving as Assistant Engineer in the Water Resource Development Department, Govt. of Arunachal Pradesh and he was last posted at WRD Sub-Division, Longding vide order dated 08.07.2022. Thereafter, on completion of normal tenure, the petitioner was transferred as Assistant Engineer, WRD Sub-Division, Kanubari, Longding District and the respondent No.4 was transferred to Office of the SE, Daporijo Circle as AE (P&D). Pursuant thereto, the petitioner has joined at WRD Sub-Division, Kanubari on 09.10.2024.

4. It is contended that even after joining of the petitioner, the private respondent No.4 was reluctant to hand over the charge to the petitioner. When the respondent No.4 has refused to hand over the charge, the petitioner vide intimation letter dated 14.10.2024 and certificate of transfer of charges, assumed *ex-parte* charge of Assistant Engineer at WRD Sub-Division Kanubari in terms of the Office Memorandum dated 13.02.2007, which entailed automatically released of the private respondent No. 4 from the office of the WRD Sub-Division Kanubari.

5. It is further contended that while the petitioner was discharging as Assistant Engineer at WRD Sub-Division Kanubari, vide the impugned order dated 28.10.2024, the Secretary (WRD), Govt. of Arunachal Pradesh has issued the impugned transfer order, purportedly, in partial modification of earlier transfer dated 08.10.2024, whereby the petitioner is sought to be transferred to Kharsang Sub-Division, Changlang District and the private respondent No.4 is sought to be retained for the second time at Kanubari Sub-Division as Assistant Engineer.

6. The petitioner contends that on the information received through RTI, it is clear that the retention of the respondent No.4 for successive time as Assistant Engineer, Kanubari WRD Sub-Division is on the basis of the two U.O. Notes dated 21.07.2024 and 08.10.2024 issued by the local MLA and the Hon'ble Minister, Agriculture, Arunachal Pradesh.

7. It is submitted by Mr. K. Lollen, learned counsel for the petitioner, that as per the office file noting and disposition list of Assistant Engineers under WRD as on 11.09.2024, the private respondent No.4 has been posted as Assistant Engineer at Kanubari Sub-Division on 01.04.2015. Thereafter, the petitioner has got himself retained at Kanubari WRD Sub-Division vide order 02.08.2023 on the basis of U.O. Note issued by the said local MLA. The file noting clearly reflects that respondent authorities have made an observation that further retention of the private respondent No.4 may invite legal complicity. Even after the said observation, the impugned order dated 28.10.2024 has been issued retaining the private respondent No.4 and arbitrarily transferring out the petitioner, which is not sustainable as same is done without any reason but only to accommodate the private respondent No. 4.

8. Mr. Lollen, learned counsel submits that the impugned modified transfer order is actuated with arbitrariness and *mala fide* as the same has been passed at the behest of local MLA and only to oust the petitioner from Kanubari WRD Sub-Division, without there being any public interest. That apart, allowing the private respondent No.4 for more than 9 years in a particular place of posting at Kanubari WRD Sub-Division, is in violation of the transfer and posting guidelines. Therefore, he submits that the impugned transfer order dated 28.10.2024 be set aside and quashed and allow the petitioner to continue at

WRD Sub-Division, Kanubari.

9. Mr. R. H. Nabam, learned Additional Advocate General and Mr. M. Batt, learned counsel for the private respondent No.4 submits that transfer can be effected at any time in the interest of public service and the petitioner has no indefeasible right to be posted in a particular place of posting of his choice. However, in their usual fairness, they concede that the impugned transfer order dated 28.10.2024, appears to be not in public interest as transfer of petitioner by way of modification and retaining the private respondent No.4, which stated to be for more than 9 (nine) years in a particular place of posting at WRD Sub-Division, Kanubari does not disclose any reason. Therefore, they submit that the impugned transfer order dated 28.10.2024 is indefensible as no public interest is discernible.

10. Having considered the submissions of the learned counsel for the parties and considering that the petitioner has been transferred and posted to WRD Sub-Division, Kanubari on 08.10.2024 by common transfer and posting order pursuant to which, he has joined on 09.10.2024 and the private respondent No.4 has completed more than 9 years at Kanubari WRD Sub-Division as Assistant Engineer, I deem it appropriate to interfere with the impugned transfer order dated 28.10.2024, as no public interest is discernible in modifying the earlier transfer order and the same appears to be at the behest of local MLA which suffers from illegality. That apart, the learned counsel appearing for the respondents have fairly conceded that there is no element of public interest involved in passing the impugned modified transfer order dated 28.10.2024, which, in my view is a fair submission on the part of the learned counsel for the respondents as records do not reveal any reason whatsoever or any

administrative exigency.

11. Although Mr. K. Lollen, learned counsel for the petitioner has relied catena of judgments passed by this Court as well as the Hon'ble Supreme Court, in view of the settled principle of law, this Court refrains from discussing the said judgments as the same would be not necessary in the facts and circumstances of the present case.

12. Having viewed above, it would suffice to observed that the power of transfer and posting should be exercised *bona fide* and reasonably based on administrative exigency or public interest. The transfer and posting should not be made for extraneous consideration or to accommodate another officer. The authority should exercise the power of transfer for *bona fide* reasons and administrative exigency and should not mortgage their decision making authority at the behest of political authority without there being any administrative exigency.

13. In view of the above, this Court is of the considered opinion that the impugned modified transfer and posting order vide No. SWRD/E-22/2015/2107/113, dated 28.10.2024, issued by the Secretary (WRD), Govt. of Arunachal Pradesh, Itanagar, cannot be sustained and thus, warrants interference.

14. Accordingly, the impugned modified transfer and posting order vide No. SWRD/E-22/2015/2107/113, dated 28.10.2024, issued by the Secretary (WRD), Govt. of Arunachal Pradesh, Itanagar, is hereby interfered with and quashed.

15. Needless to observed that the respondent authorities to take appropriate

decision for transfer and posting of the respondent No.4 independent of any recommendation but purely on administrative exigency/public interest.

16. The writ petition stands allowed and disposed of.

17. Parties to bear their own costs.

JUDGE

Comparing Assistant