

GAHC010058892024



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

Case No. : WP(C)/1627/2024

DR. BINIT CHANDRA MORAL
S/O- LATE SATYARAM MORAL,
R/O- VILLAGE- BHATUPARA, P.O- SUALKUCHI, DIST- KAMRUP,
P.S- SUALKUCHI, ASSAM, PIN-781103

VERSUS

THE STATE OF ASSAM AND 8 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM, DISPUR, GUWAHATI-781006

2:THE COMMISSIONER AND SECRETARY
TO THE GOVERNMENT OF ASSAM
TRANSFORMATION AND DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI-781006

3:THE ADDITIONAL CHIEF SECRETARY
TO THE GOVERNMENT OF ASSAM
TRANSFORMATION AND DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI-781006

4:THE SECRETARY
TO THE GOVERNMENT OF ASSAM
TRANSFORMATION AND DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI-781006

5:THE SENIOR PRINCIPAL SECRETARY
TO THE GOVERNMENT OF ASSAM
TRANSFORMATION AND DEVELOPMENT DEPARTMENT

DISPUR
GUWAHATI-781006

6:THE DISTRICT COMMISSIONER
AMINGAON
KAMRUP-781103

7:THE DISTRICT COMMISSIONER
NALBARI
BERPETA-781308

8:SOMIOUR RAHMAN
DO (SDO I/C)

O/O- DC
KAMRUP(M)-781006

9:BISWAJIT DAS
DO (SDO I/C)

O/O- DC
BERPETA-78130

Advocate for the Petitioner : MR. B D KONWAR SR. ADV.

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA
ORDER

08.04.2024

Heard Mr. B.D. Konwar, learned senior counsel assisted by Ms. P. Gupta, learned for the petitioner. Also heard Mr. T.C. Chutia, learned Addl. Sr. Government Advocate for the respondents.

2. The grievances of the petitioner is the order of transfer dated 28.02.2024 which was issued to the petitioner transferring the petitioner from his present place of posting to Kamrup (Metro). This order came to be modified by subsequent order which is annexed to the writ petition being order dated

15.03.2024 from where he was shown to be transferred to the office of the Deputy Commissioner, Nalbari in place of Deputy Commissioner, Kamrup(Metro).

3. The learned counsel for the petitioner submits that if this transfer order was indeed issued under the ECI Guidelines then the same appear to be in conflict with the ECI Guidelines itself as the new place of posting in Barpeta is the parent Electoral district of the writ petitioner. That apart, by communication dated 23.02.2024 issued by the Deputy Commissioner, Kamrup, Amingaon, no duties are shown to be entrusted to the present petitioner as against the duties entrusted to other officers mentioned in the order. The learned counsel for the petitioner submits that he is retiring within nine months and therefore at this stage transferring the petitioner in conflict with the ECI guidelines and that too without allotting any electoral duties does not satisfy the requirement of law as prescribed under the ECI Guidelines. It is evident that orders have been issued without proper appreciation of fact and without due application of mind. He therefore submits that these impugned orders be interfered with and set aside.

4. Mr. T.C. Chutia, learned Addl. Sr. Government Advocate on the other hand submits that the transfer is issued in terms of the ECI guidelines and the petitioner is not covered under the exemptions under the ECI guidelines as he is retiring within nine months. Therefore, the authorities concerned considered it appropriate to have the petitioner transferred because of the ensuring election. He however, submits that the petitioner may approach the authorities by filing a representation and the competent authority will examine and pass necessary orders if required.

5. Such prayer is not objected to by the learned Sr. counsel for the petitioner.

6. Accordingly, the writ petition stands closed permitting the petitioner to file

a representation before the respondents No. 2 & 3 namely the Commissioner and Secretary, Transformation & Development Department, Dispur and Addl. Chief Secretary, Transformation & Development Department, Dispur, ventilating his grievances in respect of the impugned transferred orders.

7. The respondent authorities will examine the matter keeping in view the ECI guidelines as well as the various other Office Memorandum and Circulars issued from time to time read with the law laid down by the Courts of the country. The respondent authorities thereafter will pass a speaking order on such representation that may be filed and in the event the grievances of the petitioner regarding his transfer orders are found to be genuine then consequential orders be passed thereon modifying the transfer order earlier passed.

8. In terms of the above, the writ petition stands disposed of. The petitioner will file the representation within one week from today along with the certified copy of this order. Any such speaking order that is passed, a copy thereof shall be served on the writ petitioner.

9. Once the representation is filed, the respondent authorities will dispose of the same within a further period of two weeks from the date of receipt of certified copy of this order along with the copy of the representation as directed.

10. Till then, the impugned orders dated 28.02.2024 and 15.03.2024 shall remain stayed in so far as the writ petitioner is concerned.

11 In view of the above, the writ petition stands disposed of.

JUDGE

Comparing Assistant