

GAHC010065942024



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

Case No. : WP(C)/1800/2024

NEENA BARUAH
W/O- DR. MANOJ DEORI, R/O- HOUSE NO. 06, KALYANPUR BYE LANE-2,
GANESHGURI, DISPUR-06, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, INFORMATION, PUBLIC RELATIONS, PRINTING
AND STATIONARY DEPARTMENT, ASSAM, DISPUR, GUWAHAT-06.

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
INFORMATION
PUBLIC RELATIONS
PRINTING AND STATIONARY DEPARTMENT
ASSAM
DISPUR
GHY-06.

3:THE DIRECTOR OF INFOEMTION
PUBLIC RELATIONS
ASSAM
LAST GATE
DISPUR
GHY-06.

4:TRIDIP NANDAN BORAH
DDIPR
HQ
OFFICE OF THE DIRECTOR OF INFORMATION
PUBLIC RELATIONS
ASSAM

LAST GATE
DISPUR
GUWAHATI-06

Advocate for the Petitioner : MS M DAS

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

Date : 01.04.2024

Heard Ms. M. Das, learned counsel for the petitioner. Also heard Mr. T.C.Chutia, learned Additional Senior Government Advocate.

2] This writ petition is filed by the petitioner being aggrieved by the order dated 07.03.2024 vide Memo eCF No.278084/29-C issued by the Secretary, Information, Public Relations, whereby the petitioner was transferred from DDIPR, Headquarter, Dispur to Regional Office, Jorhat.

3] The petitioner is working as a Deputy Director under the Information, Public Relations Department (Headquarter) w.e.f. 19.09.2023. The learned counsel for the petitioner was transferred to the present place of posting which is Guwahati only on 19.09.2023. That apart, the son of the petitioner is a permanently disabled child and certified to be having 75% disability. The husband of the petitioner is also working outside the State of Assam and therefore, petitioner is the only care giver of her disabled child. Under such circumstances, the petitioner represented before the respondent authorities requesting for reconsideration of the impugned transfer order. However, the said representation was not disposed of but instead vide order dated 08.03.2024 the petitioner was directed to join in her place of posting as Regional Officer,

Information and Public Relations, Jorhat with immediate effect. Being aggrieved, the present writ petition has been filed.

4] It is submitted by the learned counsel for the petitioner that the impugned transfer order was issued by the respondents violating the Office Memorandum dated 12.11.2009 issued by the Government of Assam, whereby ordinarily Government employee are not required to be transferred out before completion of 3 years. In the event of such a transfer to be ordered before completion of 3 years, the same must be issued after proper justification in writing and only after securing the approval of the Chief Minister of the State. Learned counsel for the petitioner submits that the transfer order was issued in violation of the conditions stipulated in the Office Memorandum dated 12.11.2009. Under such circumstances, Ms. M. Das, learned counsel for the petitioner submits that the impugned order of transfer be interfered with and set aside and the respondents be directed to permit the petitioner to work in her present place of posting.

5] Learned counsel for the respondent submits that there is no infirmity in the transfer order passed. It is however submitted that he has no further instructions as on date.

6] Learned counsel for the parties have been heard. While it is true that transfer is an incidence of service and ordinarily writ Courts would not interfere with any such transfer orders issued unless it is in violation of the procedures and the guidelines issued by the respective department or has been issued on grounds not bonafide, however as per the Office Memorandum dated 08.10.2018 issued by the department of Ministry of Personnel, Public Grievances and Pensions, department of Personnel and Training, Government of India, ordinarily parents who were care givers to disabled children are ordinarily

exempted from the routine transfers. Although such OM is issued by the Government of India however, taking into consideration the provisions of the Right of Persons with Disabilities Act, 2016 read with the Rules and the various Orders and Notifications issued by the Government from time to time in the interest of persons with disability, it is seen that the impugned order while rejecting the representation did not take into consideration these aspects. More particularly, the fact that the petitioner is a care giver parent of a child having 75% certified disability. The respondent authorities are duty bound in law to take into consideration such facts and circumstances before the disposing or rejecting the representation of the writ petitioner.

7] Taking into consideration the facts and circumstances as discussed above, this Court is of the opinion that this writ petition can be closed at this stage directing the Commissioner and Secretary, Information, Public Relations Department i.e. the respondent no.1 to consider the representation dated 08.03.2024, which was filed by the petitioner and pass a speaking order thereon after taking due consideration of the grievances of the petitioner as urged before this Court as well as the Office Memorandum dated 12.11.2009.

8] The Commissioner and Secretary, Information, Public Relations Department i.e. the respondent no.1 will decide the representation within a period of 15 (fifteen) days from the date of receipt of a certified copy of this order and disposed of the representation considering the claims of the writ petitioner. Any such order that is passed, copy thereof will be served on the writ petitioner. While deciding the representation, the authority will take into consideration the various Office Memorandums issued by the Government of Assam from time to time regarding transfer and posting of Government employees and if the claims are found to be genuine and acceptable then

necessary orders may be passed by the Secretary in terms of the Office Memorandums dated 12.11.2009 as well as 08.10.2018.

9] Till such disposal as directed the impugned transfer order dated 07.03.2024 shall remain stayed.

10] With the above observation, the writ petition stands disposed. No order as to cost.

JUDGE

Comparing Assistant