

GAHC010080982022



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

Writ Petition (C) No.2829/2022.

SRI ASHIT DAS.

..... PETITIONER.

-Versus-

THE STATE OF ASSAM & FOUR OTHERS.

..... RESPONDENTS.

Advocate for the petitioner : Mr. A.R. Talukdar, Advocate.

Advocate for the respondents : Ms. M. Bhattacharjee, Addl. Sr. Govt. Advocate & Mr. M. Khan, Advocate.

– **B E F O R E** –

HON'BLE MR. JUSTICE KARDAK ETE

Date of hearing & judgment : 22.05.2024.

JUDGMENT & ORDER

Heard Mr. A. R. Talukdar, learned counsel for the petitioner. Also heard Ms. M. Bhattacharya, learned Additional Senior Government Advocate and Mr. M. Khan, learned counsel for the respondent No. 7.

2. By filing this application, the petitioner has assailed the transfer and posting order dated 28.03.2022 issued by the Deputy Commissioner, Karimganj, whereby the petitioner is sought to be transferred and posted from R.K. Nagar Revenue Circle to Food, Civil Supplies and Consumer Affairs Branch, in the D.C. Office, Karimganj, as Senior Assistant, vice Shri Prakash Sakachep, Senior Assistant, respondent No.7 herein.

3. The case projected, shorn of unnecessary details, is that the petitioner is a Senior Assistant, who was last posted at R.K. Nagar Revenue Circle, from the Magistracy Branch vide order dated 20.05.2021. While serving at R.K. Nagar revenue Circle, the impugned order dated 28.03.2022 has been issued by the Deputy Commissioner, Karimganj, by which the petitioner is sought to be transferred and posted from R.K. Nagar Revenue Circle to Food, Civil Supplies

and Consumer Affairs Branch, in the D.C. Office, Karimganj, as Senior Assistant, vice Shri Prakash Sakachep, Senior Assistant, respondent No.7 herein, within a period of 10 (ten) months.

4. The challenge is basically on the ground that the impugned order has been issued in violation of the Office Memorandum dated 12.11.2009, issued by the Government of Assam, Department of Personnel, a policy guideline, which regulates the transfer and posting of the Government Officers/officials in the State of Assam. It is contended that the impugned transfer order dated 28.03.2022, has been issued within a period of 10 (ten) months, whereas the police guidelines provides a tenure of 3 (three) years.

5. Mr. A. R. Talukdar, learned counsel for the petitioner, referring to the Office Memorandum dated 12.11.2009, submits that the office memorandum clearly provides that no officer/official to be transferred before completion of 3 (three) years in a particular place of posting, unless it is on promotion. In case the circumstance requires, the transfer of any officer before 3 (three) years in the exigency or for other reasons, the approval of the Hon'ble Chief Minister should invariably be obtained before such transfer. He submits that the transfer order of the petitioner is clearly in the teeth of the Office Memorandum as the petitioner has been sought to be transferred within a period of 10 (ten) months before which is evidently before completion of 3 (three) years normal tenure.

6. Mr. Talukdar, learned counsel, further submits that there is no public interest involved in transferring the writ petitioner, rather it is purely at the

behest of someone and to accommodate the respondent No.7, on extraneous consideration. Therefore, the transfer order is liable to be set aside and quashed and the petitioner be allowed to continue in the present place of posting at R.K. Nagar Revenue Circle, Karimganj.

7. Mr. Talukdar, learned counsel, has placed reliance on the judgment of this Court in the case of Jibeswar Thakuria vs. State of Assam, reported in **2004 (1) GLT 4347**, to project that the Office Memorandum dated 12.11.2009 has been issued, pursuant to the judgment of this Court in the above case. He submits that since the above office memorandum, which regulates the transfer and posting of the Officers and Officials in the State of Assam has been framed in pursuant to the aforesaid judgment of this Court, it is akin to a law, which is enforceable.

8. On the other hand, Ms. M. Bhattacharya, learned Addl. Senior Government Advocate, while strongly refuting the submissions of learned counsel for the petitioner and referring to the affidavit filed on behalf of the respondent No.2, submits that the impugned transfer order dated 28.03.2022 has been issued to cope up with the huge volume of works for acute shortage of staff in the office of Food & Civil Supplies and Consumer Affairs Branch. She submits that since the petitioner is one of the senior-most Senior Assistants and the incumbent in the office was due to retire on 31.03.2022, the petitioner had to be transferred purely in the interest of public service. She further submits that the Branch Office in the Food & Civil Supplies and Consumer Affairs deals with providing services related to essential commodities and for smooth functioning of the Branch, the petitioner being one of the senior-most Senior Assistants, his duty is

highly indispensable and therefore, the petitioner had to be transferred to the said office.

9. Ms. Bhattacharya, the learned Addl. Senior Government Advocate, submits that the transfer of employee in the instant case from one office to another office in the same District without changing the nature of work is a matter for the employer to consider, depending upon the administrative necessity and the extent of solution of the problem faced by the Administration. She further submits that no employee has a right to claim for being posted in a particular place of posting of his choice.

10. Ms. M. Bhattacharjee, learned Addl. Senior Government Advocate, submits that in the present petition, the ground of challenge to the transfer order is only on the alleged violation of the Office Memorandum dated 12.11.2009, which is a transfer posting guidelines, which has no enforceability under the law. She further submits that there is no plea of *mala fide* by the petitioner in challenging the impugned transfer order or any other extraneous consideration. It is sought to be made by the learned counsel for the petitioner only at the time of hearing without there being any pleading to that effect. Therefore, she submits and prays that the writ petition may be dismissed.

11. Mr. M. Khan, learned counsel appearing for the respondent No.7, while adopting the submissions made by the learned Addl. Senior Government Advocate, Assam, submits that the petitioner has filed a representation for reconsideration of the impugned transfer order, which has been disposed of by

the respondent authorities. Since the disposal order, whereby the representation of the petitioner has been rejected, has not put to challenge, the Writ Petition is not maintainable as the grievances raised by the petitioner with regard to the impugned transfer order has been considered and rejected. Therefore, he submits that since the rejection order has not been put to challenge by the petitioner, no relief can be granted to him.

12. Due consideration has been extended to the submissions of learned counsel for the parties.

13. Indisputably, the petitioner has been transferred within a period of 10 (ten) months from the last posting from R.K. Nagar Revenue Circle to the Branch Office of the Food, Civil Supplies and Consumers Affairs, Karimganj. The transfer within the same district of Karimganj.

14. The Office memorandum dated 12.11.2009, issued by the Commissioner & Secretary to the Government of Assam, Department of Personnel (B), *inter-alia* provides that all the Administrative Departments are advised to ensure that no Officer is transferred without completing the 3 (three) years in the particular place of posting, unless it is on promotion and in other cases, where the transfer is requires before the completion of 3 (three) years, the approval of the Chief Minister is should invariably be obtained before such transfer.

15. It is settled proposition of law that transfer and posting is an incidence of service and the employee has no indefeasible right to be posted in the particular

place of posting and on his own choice. The employees are appointed and engaged to serve the public and being a Government employee, every employee must serve the public and yield to the public interest. If an employee of the Government is transferred and posted one should be ready to abide by such transfer and posting unless it is issued in violation of the statutory rules or malafide. It is also a settled position of law that normally the transfer and posting is not to be interfered with by the Court, unless the transfer and posting is in violation of statutory provisions of law or is passed malafide.

16. No doubt, State has the authority to framed a policy guidelines to regulate transfer and posting of the Officers and the Officials, whether such a guideline is enforceable under the law is the moot question which is no longer *res integra* that a transfer and posting guideline is not enforceable. The policy of the State regulating the transfer and posting by way of office memorandum is a set guidelines which is normally followed, however, same is not enforceable in view of the catena decisions of the Supreme Court as well as the High Court.

17. In the case of **Union of India Vs. S. L. Abbas** reported in **(1993) 4 SCC 357**, the Hon'ble Supreme Court has held that that unless the transfer and posting is established to be vitiated by malafide or is made in violation of the statutory provisions the same shall not be interfered easily by the Court.

18. Coming back to the present case, as noticed above, though the petitioner has been transferred within a period of 10 (ten) months after his last posting, the respondent authorities could show that the transfer and posting of the petitioner is in the interest of public service and administrative exigency as the

reasons shown by the petitioner is the huge load of work in the office of the Food, Civil Supplies and Consumer Affairs Branch of the Deputy Commissioner's Office and the same is within the same district at Karimganj, Assam. That apart, the earlier incumbent was due to retire (and by now has retired) the petitioner being the Senior Assistant in the Department should not shirk away from the responsibilities entrusted to him as a Government Employee.

19. Normally the petitioner ought not to have been transferred before the completion of normal tenure of 3 (three) years, however, since the transfer and posting is shown to be due to administrative exigency, considering the work load and the nature of the work sought to be assigned to the petitioner in the Food, Civil Supplies and Consumer Affairs Branch of the Deputy Commissioner's Office, in the considered view of this Court, no interference is called for to the impugned transfer order dated 28.03.2022.

20. I have perused the judgment and order in the case of **Jibeswar Thakuria** (Supra) referred to by the learned counsel for the petitioner. On bare perusal, I find the submissions made by the learned counsel to the affect that the transfer and posting guidelines issued vide office memorandum dated 12.11.2009 has been issued pursuant to the order of this Court in the above judgment, totally misconceived as the paragraph relied on by the petitioner at page- 4 and 5 is an extract of the earlier guidelines dated 22.05.2002. That apart, a perusal of the aforesaid judgment goes to show that same pertains to a case where the writ petitioners in those cases were transferred at the behest of the Minister, unconnected with the Departments and accordingly the Court had interfered with the transfer order as the Minister on whose instance the transfer and posting were affected had no relation with the concerned Department. Thus,

same is not applicable.

21. In view of the discussion made hereinabove, I am of the considered view that the petitioner has miserably failed to make out a case for interference as there is no allegation of malafide or violation of any statutory provisions in transferring the petitioner. Therefore, this Court is not inclined to interfere with the impugned transfer order dated 28.03.2022.

22. Accordingly, Writ petition stands dismissed. No order as to costs.

JUDGE

Comparing Assistant