

GAHC010102062024



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

Case No. : WP(C)/2721/2024

SANKAB KAUSHIK DUTTA
SON OF SRI JAGANNATH DUTTA, RESIDENT OF VILLAGE- KACHARIHAT
BONGAON, P.O., P.S. AND DISTRICT- GOLAGHAT, ASSAM, PIN- 785621

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECREARY TO THE
GOVERNMENT OF ASSAM, PUBLIC WORKS ROADS DEPARTMENT
(P.W.R.D.), DISPUR, GUWAHATI-6

2:THE CHIEF ENGINEER
PWD (ROADS)
ASSAM
CHANDMARI
GUWAHATI-3

3:THE SUPERINTENDING ENGINEER
P.W.R.D.
GOLAGHAT ROAD CIRCLE
GOLAGHAT
ASSAM

4:THE EXECUTIVE ENGINEER
P.W.R.D.
GOLAGHAT AND KHUMTAI TERRITORIAL ROAD DIVISION
GOLAGHAT
ASSA

Advocate for the Petitioner : MR. M DUTTA

Advocate for the Respondent : SC, PWD

**BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 27-05-2024

Heard Mr. M. Dutta, learned counsel for the petitioner. And also heard Mr. R. Dhar, learned Standing Counsel, PWD, for all the respondents.

2. As the challenge made is to the transfer and posting of an employee, the writ petition is taken up for disposal at the motion stage.

3. By filing this application, the petitioner assails the transfer and posting order No. 21 of 2024 dated 03.05.2024, issued by the Superintending Engineer, PWRD, Golaghat Road Circle, whereby the petitioner is sought to be transferred from the Office of the Superintending Engineer, Golaghat, Road Circle, Golaghat to the Office of the Executive Engineer, PWRD, Golaghat and Khumtai Territorial Road Division, Golaghat.

4. The case projected is that the petitioner was initially appointed as a Junior Assistant on 09.07.2015 against the sanctioned post and place under the establishment of the Executive Engineer, PWD, Sarupathar Rural Road Division, Sarupathar. On 01.06.2021, the petitioner was attached to the Office of the Superintending Engineer, PWRD, Golaghat. Thereafter, the petitioner was promoted to the post of Senior Assistant on 21.06.2022 and attached to the office of the PWRD, Golaghat Road Circle, Golaghat.

5. By the impugned order dated 03.05.2024, the petitioner is sought to be

transferred from the Office of the Superintending Engineer in Golaghat, to the Office of the Executive Engineer, PWRD, Golaghat, Territorial Road Division. The petitioner has filed representation against the impugned transfer order on 13.05.2024, however, same is left unattended. Hence, this writ petition.

6. Mr. M. Dutta, learned counsel for the petitioner submits that the impugned order of transfer of the petitioner does not disclose any reason except mere mentioned of public interest. He submits that the impugned order has not been issued by the authority not competent to transfer the petitioner as the petitioner was appointed by the Executive Engineer PWRD, Sarupathar Rural Road Division. He further submits that there are twelve numbers of Senior Assistants in the office of the Executive Engineer, PWRD, Golaghat and the petitioner is the lone Senior Assistant working in the office of the Superintending Engineer, Golaghat Road Circle, Golaghat and there is no public interest or administrative exigency involved in transferring the petitioner.

7. Mr. M. Dutta, learned counsel for the petitioner, has placed reliance on the judgment of this Court in **Sunit Kumar Bardoloi vs. State of Assam and others**, reported in **2010 (2) GLT 786**, to project that any transfer order even though administrative in nature must be supported by reasons.

8. Mr. R. Dhar, learned Standing Counsel PWD, for the respondents, on the other hand, submits that the impugned transfer order has been issued by the Superintending Engineer, a competent authority to transfer the petitioner. The transfer of the petitioner is for the smooth functioning of the Departmental works. He submits that reasons are not required to be reflected in the transfer

order. It is within the domain of the competent authority to transfer and employee in the interest of public service and administrative exigencies. There is no allegation of malafide or violation of any Statutory Rules. The further challenge sought to be made is on the ground that since the petitioner was appointed by the Executive Engineer, he cannot be transferred by the Superintending Engineer, which is absolutely absurd. Therefore, he submits that the writ petition is liable to be dismissed and as such same may be dismissed.

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

10. On consideration of the averments and submissions of the parties, I find that there is no allegation of malafide or violation of any Statutory provisions. The challenges are to the effect that the impugned transfer order does not disclose any reason except mere mentioned of public interest and that the impugned order has not been issued by the authority competent to transfer the petitioner as the petitioner was appointed by the Executive Engineer PWRD, Sarupathar Rural Road Division.

11. The impugned order clearly reflects that the petitioner is sought to be transferred from the Office of the Superintending Engineer, Golaghat Road Circle, Golaghat to the Office of the Executive Engineer, PWRD, Golaghat and Khumtai Territorial Road Division, Golaghat, in the interest of public service and smooth functioning of the Departmental works.

12. This Court finds that the Superintending Engineer, PWRD, Golaghat is a

competent authority to transfer the petitioner. Merely because the petitioner was appointed by the Executive Engineer, it would not render the Superintending Engineer not competent.

13. Having regard to the submission made by the learned counsel for the petitioner that the transfer order is not supported by any reason, I am of the considered view that no reason is required to be mentioned in the transfer order as the same would be available in the relevant file. The authority has clearly reflected in the impugned order that the transfer is in the interest of the public service and smooth functioning of the Departmental works.

14. The interference by the court in an order of transfer at the instance of an employee holding a transferable post without there being any violation of statutory provisions or malafide, is impermissible. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from malafide.

15. In the case of **State of Uttar Pradesh vs. Gobardhan Lal**, reported in **(2004) 11 SCC 402**, the Hon'ble Supreme Court has held that a Government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to another. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the government servant insists that once appointed or posted in a particular place or position, he

should continue in such place or position as long as he desire.

16. The judgment relied on by the learned counsel for the petitioner, in the case of **Sunit Kumar Bardoloi (Supra)** is not applicable at all in the present case as in the said case the petitioner has been able to establish that he was transferred only to accommodate the other employee. That too, on a sudden request made by some political person before completion of normal tenure without any administrative exigencies. The above case does not come to the aid of the petitioner.

17. In the case in hand, there is no allegation of malafide or violation of any Statutory provisions. Nor transfer order has affected the service conditions of the petitioner. This court finds no flaw in transfer of the petitioner. It is difficult to fathom why and on what ground the impugned transfer order is required to be interfered with.

18. In view of the discussion made herein above, this Court is of the view that the petitioner has failed to demonstrate and establish a case for interference. Thus, I have no hesitation to hold that the impugned transfer dated 03.05.2024 does not suffer from any flaw and not vitiated by malafide or violation of any statutory provisions.

19. In the result, writ petition stands dismissed. No order as to costs.

However, dismissal of the writ petition shall not preclude the respondent authorities to consider and dispose of the representation dated 13.05.2024 filed

by the petitioner.

JUDGE

Comparing Assistant