

GAHC010145712024



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

Case No. : I.A.(Civil)/2174/2024
in
WP(C)/3507/2024

THE RUBBER BOARD (ADMINISTRATION DEPARTMENT) AND 3 ORS
REPRESENTED BY THE EXECUTIVE DIRECTOR, P.B. NO. 1122, SUB-JAIL
ROAD, KOTTAYAM-686002, STATE-KERALA

2: SECRETARY
RUBBER BOARD
P.B. NO. 1122
SUB-JAIL ROAD
KOTTAYAM-686002
STATE-KERALA

3: JOINT RUBBER PRODUCTION COMMISSIONER
RUBBER BOARD REGIONAL OFFICE
HOUSE FED COMPLEX
CENTRAL BLOCK II (FIRST FLOOR)
BELTOLA
BASISTHA ROAD
DISPUR-781006
GUWAHATI
ASSAM

4: DEPUTY RUBBER PRODUCTION COMMISSIONER
RUBBER BOARD REGIONAL OFFICE
HOUSE FED COMPLEX
CENTRAL BLOCK I (THIRD FLOOR)
BELTOLA
BASISTHA ROAD
DISPUR-781006
GUWAHATI
ASSA

VERSUS

KRISHNA DAS AND ANR
S/O LALIT MOHAN DAS, R/O VILL- CHANPARA, P.O.-DHANUBHANGA,
DIST-GOALPARA, ASSISTANT DEVELOPMENT OFFICER, REGIONAL
OFFICE GUWAHATI, HOUSE FED COMPLEX, BELTOLA, ASSAM-781006

2:MS NITESH NANDINI GAUTAM
C/O DEPUTY RUBBER PRODUCTION COMMISSIONER REGIONAL OFFICE
RUBBER BOARD
HOUSE FED COMPLEX
CENTRAL BLOCK I (THIRD FLOOR)
BELTOLA
BASISTHA ROAD
DISPUR-781006
GUWAHATI
ASSA

Advocate for the Petitioner : MR. D NATH, ,MR D KALITA

Advocate for the Respondent : MR. M J BARUAH,

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

05.08.2024

The instant I.A. has been preferred by the applicants, who are the respondent nos. 2 to 5 in the writ petition for vacation / modification / alteration of an order dated 11.07.2024 passed by this Court in WP(C)/3507/2024. By the aforesaid order, this Court while issuing notice had passed the interim order by which the transfer of the writ petitioner was stayed.

2. I have heard Shri D. Nath, learned counsel for the applicants whereas Shri MJ Baruah, learned counsel is present for the opposite party / writ petitioner.

3. Shri Nath, learned counsel for the applicants has submitted that the writ petitioner was working at Jorhat as Assistant Development Officer and as per norms, request are sought for regarding transfer. It is submitted that the writ petitioner had informed the respondents regarding his choice, as per which the

Regional Office at Guwahati was first choice and Agia was the second choice. The writ petitioner was accordingly transferred from Jorhat to Guwahati vide the order dated 28.06.2024 and he was released from Jorhat on 01.07.2024 whereafter he had joined at Guwahati on 02.07.2024. However, vide the impugned order dated 03.07.2024 he was again transferred from the Regional Office at Guwahti to Agia. Shri Nath, learned counsel has submitted that the writ petition was moved in the Vacation Bench on 11.07.2024 and in the meantime, on 05.07.2024, the writ petitioner was already released. It is submitted that though the writ petitioner has cited that he was on medical leave, the transfer order was sent to him by e-mail and the learned counsel has also drawn the attention of this Court to certain materials that even during the medical leave, he had come to the Court for swearing the affidavit, which may indicate that such medical cause was not existing. Though the petitioner has sought leave from 04.07.2024 to 10.07.2024, thereafter, there is no record by which the petitioner has sought for extension of leave.

4. By drawing the attention of this Court to the averments made in paragraph 5 of the IA, Shri Nath, the learned counsel has submitted that apart from the proximity in distance from the house of the writ petitioner, the transfer was made to facilitate certain investigation, which was in the Board and there were allegations against the writ petitioner and certain other Officers. The learned counsel accordingly submits that the interim order dated 11.07.2024 is required to be vacated in the interest of the justice. Shri Nath, the learned counsel has also drawn the attention of this Court to the averments made in paragraph 2 of the IA regarding the initiation of the preliminary investigation on certain plantation expansion activities in the NE Region and strong reasons to believe the writ petitioner's knowledge and / or involvement in the said allegation.

5. Shri Baruah, the learned counsel for the writ petitioner has, on the other hand, submitted that the writ petitioner was transferred on 28.06.2024 from Jorhat to Guwahati and he had released from the said Office on 01.07.2024, pursuant to which he had joined the Regional Office, Guwahati on 02.07.2024. He has submitted that the respondent no. 6 in the writ petition, in whose place the writ petitioner was transferred, is in Guwahati since the year 2011 and only to facilitate the said respondent, the petitioner has been again transferred within one day to Agia.

6. As regards the issue of taking leave, Shri Baruah, learned counsel for the writ petitioner has submitted that he has explained his position elaborately in the objection affidavit as well as the additional affidavit. He has submitted that the initial medical leave was sought for from 04.07.2024 to 10.07.2024 and thereafter, he has submitted for extension of the leave, which has not been paid any heed to. It is submitted that in spite of the order of stay, the petitioner has not been allotted any duties to perform at Guwahati.

7. At the outset, it is clarified that since this Court is considering only the IA, such consideration is confined to a *prima facie* satisfaction only. Though transfer, as such is a matter of exigency of service which is not lightly to be interfered with, it is also a settled law that transfer cannot be punitive in nature. The entire endeavour to have the interim order vacated is based on the aspect that there is a preliminary investigation on certain aspects in which the involvement of the writ petitioner is suspected. Apart from the fact that the petitioner was all along in Jorhat and had joined Guwahati only a day prior to the interim order of transfer, his presence at Guwahati, in the considered opinion of this Court such allegations can at best be connected to his posting at Jorhat. That apart, the applicants / respondents had taken a conscious decision to call for the options

as per the norms from the writ petitioner for his transfer at Regional Office, Guwahati, which was his first choice, which was also done vide the order of transfer dated 28.06.2024. After such a conscious decision being taken, this Court is of the *prima facie* opinion that there cannot arise any other consideration for again transferring him within a day after joining at Guwahati. The aspect of the transfer having the colour of a punitive measure has already been reflected above, which this Court would not elaborate in this order.

8. In view of the aforesaid facts and circumstances, this Court is of the opinion that the interim order dated 11.07.2024 is not liable to be vacated at this moment without full consideration of the matter. The instant I.A. is accordingly dismissed.

9. The applicants / respondents are accordingly directed to allot duties to the writ petitioner at Guwahati in accordance with law.

10. This Court however has not expressed any opinion on the prerogative of the Board to initiate any proceedings in accordance with law.

JUDGE

Comparing Assistant