

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.324 of 2025

Debashish Roy,

Son of Late Swadesh Ranjan Roy,

Resident of College Tilla, Adarsha Palli, Agartala, West Tripura,
PIN- 799004, (Age-50 years).

.....Petitioner(s)

- V e r s u s -

1. The State of Tripura (to be represented by),

The Principal Secretary, Education (School) Department,
Government of Tripura, New Secretariat Building, New Capital
Complex, Kunjaban, P.S. New Capital Complex, Agartala, West
Tripura, PIN- 799010.

2. The Principal Secretary, Education (School) Department,

Government of Tripura, New Secretariat Building, New Capital
Complex, Kunjaban, P.S. New Capital Complex, Agartala, West
Tripura, PIN- 799010.

3. The Special Secretary, Education (School) Department,

Government of Tripura, New Secretariat Building, New Capital
Complex, Kunjaban, P.S. New Capital Complex, Agartala, West
Tripura, PIN- 799010.

4. The Additional Secretary, Education (School) Department,

Government of Tripura, New Secretariat Building, New Capital
Complex, Kunjaban, P.S. New Capital Complex, Agartala, West
Tripura, PIN- 799010.

5. The Director of Elementary Education, Government of

Tripura, Shiksha Bhawan, Office Lane, Agartala, West Tripura,
PIN- 799001.

6. The Director of Secondary Education, Government of

Tripura, Shiksha Bhawan, Office Lane, Agartala, West Tripura,
PIN- 799001.

7. The Director, State Council of Educational Research &

Training, SCERT Office, Abhoynagar, Agartala, West Tripura, PIN-
799005.

..... Respondent(s)

For the Petitioner(s)	:	Mr. Purusuttam Roy Barman, Sr. Advocate. Mr. Dipjyoti Paul, Advocate.
For the Respondent(s)	:	Mr. Saktimoy Chakraborty, Adv. General. Mrs. Pinki Chakraborty, Advocate.
Date of hearing and delivery of Judgment & Order	:	01st August, 2025.
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER (Oral)

Heard Mr. Purusuttam Roy Barman, learned senior counsel appearing for the petitioner and Mr. Saktimoy Chakraborty, learned Advocate General appearing for the respondents.

2. The case of the petitioner is that he is presently posted as OSD, SCERT (State Council of Educational Research & Training), and simultaneously, he is also holding the post of General Secretary of one Officers' Association, namely, Gazetted Officers' Sangh (GOS). Vide notification dated 20.05.2025, issued by the Additional Secretary to the Government of Tripura, he has been transferred from Agartala to Khowai as Inspector of Schools. Challenging the said transfer order, the present writ petition has been filed on the ground that the State Government, vide memorandum dated 28.02.1994 formulated certain guidelines regarding the transfer of office bearers at both State Level and Sub-Divisional Level of recognized employees' association putting down that 3(three) State Level Office Bearers by designation and 2(two) Sub-Divisional Level Office Bearers by designation of any recognized employees' association or its constituent unit shall be given special privilege in the matter of transfer to the extent that their transfer when warranted by administrative requirements, shall be issued only with the approval of the Departmental Minister concerned. The relevant notification dated 28.02.1994 is entirely extracted hereunder for better understanding:

**"GOVERNMENT OF TRIPURA
APPOINTMENT AND SERVICES DEPARTMENT
NO.F.23(24)-GA/93 Dated, the 28th Feb, 94**

The Undersigned is directed to state that henceforth, 3(three) State level office bearers, by designation and 2 (two) Sub Division level officer bearers, by designation of any recognised employees association or its constituent unit shall be given special privilege in the matter of transfer to the extent that their transfers

when warranted by administrative requirements, shall be issued only with the approval of the departmental Minister concerned.

2. It is also clarified that administrative requirement shall be paramount and the privilege conferred on certain categories of office bearers by this memorandum shall not override the prerogative of the Government to transfer any of its employees,

3. It is also clarified that the reference to state level committee shall not include state level office bearers in every Directorate or Department but a total of three office bearers, by designation of each Association/constituent unit based at Agartala. It is also clarified that the total members of office bearers of each recognised Association/constituent unit at the Sub-Division level for the purpose of this Memorandum shall be 2(two) at each Sub-division and not 2(two) in each office located at the same time at Sub-Division.

Explanation (1) : For the purpose of this memorandum 3(three) State Level Office Bearers by designation of any recognized and Employee's Association or its constituent unit based at Agartala shall mean the following, namely:-

- (a) President or Chairman, or by any (other designation),**
- (b) Secretary General or General Secretary or Secretary by any other designation,**
- (c) Treasurer, Cashier or by any other designation,**

as may be applicable to the concerned Association or constituent unit based at Agartala.

Explanation (2) : For the purpose of this memorandum, 2(two) Sub-Divisional Level Office Bearers, by designation of any recognised Employee's Association or its constituent unit at Sub-Divisional Level shall mean the following, namely:-

- (a) President or Chairmen or by any other designation**
- (b) General Secretary or Secretary or by any other designation**

as may be applicable to the concerned Association or its constituent unit at Sub-Divisional Level.

4. This Memorandum is issued in supersession of all Memorandum and instructions issued in the behalf the including the following Memorandum and instructions:-

- (i) No.F.3(16)-CM/PS/79 dated 21.6.1979**
 - (ii) No.F.3(16)-CM/PS/79 dated 28.6.1979**
 - (iii) No.F.3(16)-CM/PS/79 dated 5.7.1979**
 - (iv) No.F.3(16)-CM/PS/79 dated 11.7.1979**
- of C.M's Secretariat**

**Sd/-
(R.K. Vaish)
Commissioner-cum-Secretary
Govt of Tripura"**

3. Mr. Purusuttam Roy Barman, learned senior counsel argues that already 2(two) Office Bearers i.e. the President and Treasurer of Gazetted Officers' Sangh have already been transferred and the third one is the present petitioner, who being a General Secretary is entitled to enjoy the privilege as provided in said notification dated 28.02.1994

but in utter violation of the same, he has been transferred. Referring to the file note concerning to such transfer, Mr. Barman, learned senior counsel, also contends that the fact that the petitioner was a State Level Office Bearer of said association, was not brought to the notice of the concerned Minister of the Department. Therefore, though the approval of the Minister of the Department was obtained in the file note, it was not actually a conscious decision of the concerned Minister in terms of said memorandum dated 28.02.1994.

4. Learned senior counsel also submits that the petitioner has been transferred as Inspector of Schools at Khowai, which post is already held by another person, and therefore, 2(two) persons cannot be accommodated against a single post. Further contention of the learned senior counsel is that, with the approval of the Department, the petitioner is also holding the charge of Secretary, Managing Committee of Mahatma Gandhi Memorial H.S. School, Agartala, in addition to his normal duty and such transfer order would affect the administrative requirements of his service to be rendered in that management committee. Finally, learned senior counsel submits that, after raising all the facts and grievances, the petitioner submitted one representation on 21.05.2025 (Annexure-12 to the writ petition) to respondent No.5 and the President of their Association also wrote to respondents No.5 & 6 in this regard, but no response was received from said respondents there against. Learned senior counsel strongly addresses that the transfer order was issued in gross violation of the guideline dated 28.02.1994, as framed by the State itself, and therefore, the transfer order is liable to be quashed.

5. Mr. Saktimoy Chakraborty, learned Advocate General on the other hand submits that as per the said guideline dated 28.02.1994 itself, the administrative requirement is of paramount consideration of

the transfer than any other factor including the privileges conferred on certain Office Bearers under the said guidelines, and the guidelines cannot override the prerogative of the government to transfer its employee at any other place in the need of public interest. In the present case, learned Advocate General, submits that the transfer order itself would show that it was issued in public interest, which otherwise indicates existence of administrative necessity for such transfer. Learned Advocate General also contends that, before issuing the transfer order in terms of said guidelines, necessary approval from the Departmental Minister was obtained, and therefore, there was no violation of the said guideline.

6. The third contention, as raised by learned Advocate General, is that in no way, even despite existence of any such guidelines, an employee who is transferred by its employer under public interest can claim quashing of the transfer order just because of violation of some guidelines, unless there is any mala fides imputed on the transferring authority or there is any flagrant violation of a statutory provision. Learned Advocate General also relies on a decision of a Co-ordinate Bench of this Court, decided on 08.10.2020, in the case between **Dr. Bithika Choudhury vs. State of Tripura and others, WP(C) No.663 of 2020**, and from the said order as it reveals that, on the verge of her retirement, the petitioner of said case was transferred and she was also an office bearer of a recognized employees' association. When the matter was challenged before this Court, it was observed by the Court that the said transfer order was issued after concurrence and clearance by the concerned Minister and, moreover, the Court would not normally interfere unless the transfer order was shown to be mala fide or was opposed to the statutory provision. Further observation was also made therein that the transfer guidelines did not confer any legally justifiable

right upon any employee. In that case also the claim of the petitioner was based on the present office memorandum dated 28.02.1994. Learned Advocate General submits that the said decision of the learned Co-ordinate Bench was also affirmed by the Division bench of this Court.

7. This Court has given due consideration to the rival contentions of both sides and has considered the relevant documents meticulously. Law is settled that unless there is mala fide or a violation of any statutory provision, the Court does not interfere with the transfer order. In the case of **Union of India and others vs. S.L. Abbas, AIR 1993 SC 2444**, it has been categorically observed by the Hon'ble Supreme Court that who should be transferred where, is a matter of appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. However, additionally it was also observed that while ordering the transfer, the authority must keep in mind that the guidelines issued by the Government on the subject. The entire relevant paragraph No.7 of the said decision is extracted hereunder:

"7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right."

8. In view of the above position of law, the petitioner cannot claim quashing of the transfer order as a matter of his legal right even if said guidelines are violated by the concerned Department as there is no allegation of any mala fide or violation of statutory provision. However, simultaneously it has also been the obligation of the transferring authority to keep in mind the guidelines issued by the State in this

regard and thereafter to take proper decision. The concerned file note (Annexure-R/1 to the writ petition) as submitted from the side of respondents shows that by a general note of routine nature, total 14 Nos. of persons were proposed to be transferred at different places. The relevant portion of said file note is excerpted below:

"Note

This is regarding transfer proposal of Officers under Secondary Education, Elementary Education and SCERT.

Following officers of Education Department are working in different capacities like OSDs in Directorate of Secondary Education, Elementary Education, SCERT and some schools for long time. So these officers under Education Department are proposed to be transferred to the new locations....."

9. Thereafter, the approval of Departmental Minister was taken thereon. As it appears, there was no mention of the existence of said guidelines dated 28.02.1994 in the said file note, nor the fact that the petitioner was also working as an office bearer of a recognized Employees' Association, namely, Gazetted Officers' Sangh, was brought to the notice of the Minister for consideration before taking such approval. Therefore, there was no scope for the Departmental Minister to apply his mind on that point and to take a conscious decision thereon. As per the guidelines, it is only for the concerned Minister to take the decision on that issue. As already indicated earlier, it is not the case of the petitioner that there was mala fide or violation of any statutory provision in the impugned transfer order, therefore, Court is not inclined to set aside the same. However, as per the object of the said guidelines itself, all the related facts were/are required to be placed before the Departmental Minister for his conscious decision on this issue and in the present case, all these facts are already agitated by the petitioner in the above said representation. Therefore, if the said representation is placed before the Departmental Minister, his decision on the said representation will serve the purpose of obtaining his conscious decision/views on this issue.

10. Considering all these aspects and based on the discussion made hereinabove, the writ petition is disposed of with a direction to respondent No.5 to place the above said representation dated 21.05.2025 (Annexure-12 to the writ petition) before the Departmental Minister within 7(seven) days from today for his decision in this regard. Meanwhile, release order of the present petitioner shall not be given effect until the decision of the concerned Minister is obtained and conveyed to the petitioner.

With such observations and directions, the writ petition is disposed of.

Pending application(s), if any, shall also stand disposed of.



JUDGE

**SATABDI
I DUTTA**
Digitally signed
by SATABDI
DUTTA
Date: 2025.08.03
13:13:35 +05'30'
Dinashree