GAHC010167972020

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

Case No. : WP(C)/4950/2020

SANGHITA PAUL
W/O- SRI ANUP KR. NATH, R/O- VILL- JOGIPARA, P.O. GUWAHATI AIRPORT, P.S. AZARA, DIST.- KAMRUP (M), ASSAM, PIN- 781015

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION (SECONDARY) DEPTT., DISPUR, GHY-6, ASSAM

2:THE DIRECTOR OF SECONDARY EDUCATION

3:THE INSPECTOR OF SCHOOLS

4:THE INSPECTOR OF SCHOOLS

5:THE HEADMASTE

Advocate for the Petitioner : MR. D K SARMAH
Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

Date : 27-11-2020

JUDGMENT & ORDER (ORAL)

Heard Mr. DK Sarmah, learned counsel for the petitioner, Mr. R Mazumdar, learned counsel for the Secondary Education Department of the Government of Assam.

2. The petitioner, who is presently serving as an Additional Science Teacher in the Hatikhal High School in the Cachar district is seeking for a transfer to Sankardev High School, Bangara in the Kamrup (M) district. It is stated that the husband of the petitioner is also a teacher, who is presently serving in Rani High School at Kamrup district. As the claim of the petitioner was not given a due consideration, the petitioner instituted WP(C) No.2960/2018, wherein by the order dated 16.07.2019, a direction was issued that the respondents may pass an appropriate order relating to the claim of the petitioner for transfer. It was also provided that the exercise be taken within a period of 45 days from the date of receipt of the certified copy of the order. In the resultant situation, the order dated 09.09.2019 was passed by the Director of Secondary Education, Assam. The effective portion of the order 09.09.2019 is extracted below:-

> "*Now, in compliance of the Hon'ble High Court's order dated 16.07.2019 passed in WP(C) No.2960/2018 filed by Sanghita Paul –vs- State of Assam & Others, district-Cachar, the petitioner Smti Sanghita Paul is directed to submit formal proposal of transfer along with all relevant documents including duly filled in and authenticated transfer format, which is required for the purpose, through the concerned Inspector of Schools.*
>
> *After receipt of the proposal through the Inspector of Schools, necessary follow up action will be initiated as per procedure, as per decision of the Government, to be taken on the matter of transfer and posting of teachers."*

3. The purport of the order of 09.09.2019 is that as the Government vide letter dated 14.06.2019 had decided to kept in abeyance of such claims for inter school/inter district transfer till the finalization of the policy of transfer of teachers. Therefore, as an interim measure the particulars were called for from the petitioner with an understanding that the decision would be taken once the policy is finalized. Subsequent thereto, the order dated 15.09.2020 had been passed by the Director of Secondary Education, Assam, of which the relevant portion is extracted below:-

> "*Meanwhile, Government in the Education Department has already notified the Assam Elementary and Secondary School Teachers Regulation of Posting and Transfer Act, 2020 regarding transfer and posting of teachers of the Secondary and Elementary Schools. However, till date, Rules of transfer have not been notified and software/portal for online transfer and posting has not yet been developed by the Government."*

4. The meaning of the extracted portion of the order dated 15.09.2020 is that the policy had been adopted and the relevant statutory Act had also been notified, i.e. the conditional keeping in abeyance

of considering the cases of claims for transfer is now no longer available and it is for the authorities to decide on every claim. But the order of 15.09.2020 further provides that as the Rules under the Assam Elementary and Secondary School Teachers Regulation of Posting and Transfer Act, 2020 had not been framed, therefore, the claim of the petitioner cannot be considered.

5. We are of the view that the Director is going beyond what is required to be done pursuant to the order of this Court in WP(C) No.2960/2018 dated 16.07.2019. We understood that initially the Director was apprehensive not to take any final call as because a policy decision was being awaited. But once the policy decision is taken and the relevant statutory Act has been notified, we do not see any reason as to why the Director would not take a final decision on the claim of the petitioner. The relevant provisions of the Assam Elementary and Secondary School Teachers Regulation of Posting and Transfer Act, 2020 clearly provides under what circumstances transfers are to be effected and without waiting for the rules to be framed, the Director can easily apply the law and examine the claim of the petitioner and pass the reasoned order thereon.

6. Accordingly, the matter is remanded back to the Director of Secondary Education, Assam by setting aside the order dated 15.09.2020 for taking an appropriate decision on the claim of the petitioner. In doing so, the Director shall also take note of the circular dated 12.06.1997 which provides that to the extent possible if the husband and wife are both working in the same Department, an endeavour shall be made to provide them with a same place of posting as far as possible or within or near the same place. Admittedly, the petitioner and her husband are both serving as Assistant Teachers in the Secondary Education Department and therefore, they deserve a consideration under the provision of the said circular dated 12.06.1997.

7. The requirement be done by the Director of Secondary Education, Assam within a period of one month from the date of receipt of a certified copy of this order.

In terms of the above, the writ petition stands disposed of.

JUDGE

Comparing Assistant