

(2023) 09 GAU CK 0035
In the Gauhati High Court
Case No : Writ Appeal No. 219 Of 2023

Duken Kato

APPELLANT

Vs

State Of Arunachal Pradesh And 6 Ors

RESPONDENT

Date of Decision : 22-09-2023

Acts Referred:

Constitution Of India, 1950 — Article 77(1), 77(2), 166(1), 166(2)

Citation : (2023) 09 GAU CK 0035

Hon'ble Judges : Sandeep Mehta, CJ; Arun Dev Choudhury, J

Bench : Division Bench

Advocate : D. Mazumder, C. Gogoi, B. D. Goswami, D. Das, R. B. Phookan, D. Kamduk

Final Decision : Allowed

Judgement

A.D. Choudhury, J

1. Heard Mr. D. Mazumder, learned Senior Counsel assisted by Mr. C. Gogoi, learned counsel for the appellant. Also heard Mr. N. N. B. Choudhury, learned Additional Advocate General, Government of Arunachal Pradesh representing the respondent Nos. 1 to 4, Mr. D. Das, learned Senior Counsel assisted by Mr. R. B. Phookan, learned counsel for the respondent No. 5 and Mr. D. Kamduk, learned counsel for the respondent No. 6.

2. The present intra court appeal is directed against the judgment and order dated 28.09.2022 passed in WP(C) No. 292(AP)/2022 by the learned Single Judge, which was preferred by the appellant/ writ petitioner assailing the order of transfer dated 21.07.2022, issued on 29.07.2022 as well as the speaking order dated 24.08.2022, passed by the Commissioner (Education), Govt. of Arunachal Pradesh.

3. The case of the appellant writ petitioner:-

I. The appellant/writ petitioner filed a representation dated 13.01.2021 before his

employer that he has been outside his home district for about 17 years and to enable him to take care of his ailing mother who was 90 years old then, requested his posting at Aalo, West Siang district. Considering the same, the department by an order dated 04.05.2021 transferred the appellant from Itanagar, Directorate office to Aalo, West Siang District as DDSE. The appellant joined there on 10.05.2021 and he has been working there since then.

II. By the impugned transfer order dated 29.07.2021, the appellant was again transferred from Aalo to Itanagar and respondent No. 5 was transferred from Yomcha, West Siang District to Aalo, West Siang District as DDSE.

III. Being aggrieved, the appellant approached this Court by filing a writ petition being WP(C) No. 264 (AP)/ 2022 assailing the said transfer order, which was disposed of by this Court under its order dated 04.08.2022 directing the department to consider of the representation filed by the appellant on 01.08.2022, within 10 days and to maintain status quo till disposal thereof. The appellant then produced the copy of the order to Commissioner (Education) along with another representation raising the issue of his ailing mother, the fact that he has not completed his tenure of 2 years at Aalo as per the transfer guidelines, and also raised the plea that the transfer order was never mooted on file by the Departmental authorities but the same is actuated by the malafide exercise of power at the instance of political functionaries.

IV. However, the Commissioner, Department of School Education vide a speaking order dated 24.08.2022 rejected appellant's representation holding that the transfer order was issued in public interest and such transfer does not adversely affect the service condition etc. of the appellant and that the respondent No. 5 has already joined at Aalo.

V. Being aggrieved, the appellant filed an another writ petition being WP(C) 292(AP)/2022 assailing the transfer order on the ground that there is no public interest involved in his transfer, secondly, the departmental authority mooted and proposed transfer of as many as 11 (eleven) officers including respondent No. 5, Yage Kakki from Lika Bali and Smt. Oye Borang. Though name of the appellant did not figure in the said proposal, yet respondent No. 6 i.e. Minister (Education) approved the transfer of appellant from Aalo to Itanagar and the transfer of respondent No. 5 from Yomcha, West Siang district to Aalo, West Siang district as DDSE in place of the appellant.

4. The stand of the respondent Department:-

The State Education Department, while referring to the U.O. Note, took a stand that the U.O. Note itself reflects that there was public interest in issuing the impugned order for modifying the earlier order dated 21.07.2022. The State in support of its decision relied on the Judgment of the Hon'ble Apex Court in Mohd Massod Ahmed vs. State of UP reported 2007 8 SCC 150.

5. The stand of the respondent No. 5:-

The respondent No.5 filed affidavit before the learned Single Judge and denied the allegation and took a stand that pursuant to the order, he has already been released though the appellant has not handed over him charge. Another stand was taken to the effect that the transfer is an incidence of service and also alleged that the appellant has made a wrong statement that he has only two year to attain superannuation rather it is more than two years. It was further contended that the U.O. Note of MLA, Dirang requested transfer of the respondent No. 5 as DDSE, Upper Subansiri District and same was not materialized. According to the respondent No. 5, as the vacancy of West Siang fell vacant, he was transferred and the said order was issued in administrative exigencies.

6. The decision of the learned Single Judge:-

The learned Single Judge held that on the allegation of malafide against the respondent No. 6, there was no material to show nor any argument was advanced that there is violation of any statutory rules. The learned Single Judge further held that the scope of judicial review is very limited in case of challenge to a transfer order. It was further held that some assessment as regard suitability of the employees were made including the appellant and the respondent No. 5 and the appellant has been found to be suitable for posting as DDSE in the office of DDE, Itanagar having regard to his experience. Therefore the Court cannot interfere in this regard. Regarding the ground of the illness of the mother of the appellant, relying on the decision of the Hon'ble Apex Court in the case of State of Madhya Pradesh vs S. S. Kourav. Reported in 1995 3 SCC 270, the learned Single Judge has held that hardship of an employee in the matter of transfer and posting cannot be gone into by a Court.

7. Argument advanced by Mr. D. Mazumder, learned Senior Counsel.

Mr. Mazumder, learned Senior Counsel placed the following arguments to buttress the case of the appellant:-

i. Although there was no proposal of the Department for transfer of the appellant yet, he was transferred at the instance of respondent No. 6 to wreak vengeance on the appellant because earlier the appellant rejected a recommendation made by respondent No. 6 to award a work supply of school uniforms to Shri Benya Ado worth Rs. 27,00,000/- for which a prompt was issued by MLA-Cum-Advisor to the appellant on 14.03.2022 and the same was forwarded by respondent No. 6 to the appellant by an endorsement as "For appropriate action". Besides the appellant had earlier turned down the request of respondent No. 6 to allow one Shri Ripin Taba, T.G.T. to continue at Lower Siang district although he was drawing salary from West Siang.

ii. The appellant has only completed 1 (one) year at Aalo, the respondent No. 5 has been at West Siang district and now transferred from Yomcha to Aalo both at West Siang district where he was posted for about 34 years now.

iii. The appellant obtained the file notings through an application under the RTI Act, 2005 which revealed that there was no proposal for his transfer and the note No. 170 will reveal that it is Yage Kakki who was proposed to be transferred from Lika Bali to Itanagar. But the Minister (respondent No. 6) called for the file and putting up a note and himself approved, without prior proposal of the department, the transfer of appellant to Itanagar.

iv. The above facts clearly demonstrate that there is no public interest involved in the transfer of the appellant and it is because of the malafide exercise of power by the authority under the influence of respondent No. 6 for the reasons stated above, the appellant was transferred from Aalo to Itanagar. As such, the impugned transfer order is not sustainable in law.

v. The impugned judgment and order passed by the learned Single Judge is liable to be interfered with inasmuch as the appellant has clearly established from the past events based on documents that the respondent No. 6 developed an ill will against the appellant and for such malice-in-fact he had influenced the department by approving transfer of the appellant and also to accommodate respondent No. 5 in the district of West Siang itself. From the record, it is now crystal clear that there is absolutely no material to show that the department even proposed to transfer the appellant out of Aalo.

vi. In course of hearing of the matter, as directed by this Court, the respondent government filed an affidavit on 31.07.2023 confirming the allegation of the appellant that while there are only 3 (three) sanctioned posts of DDSE at Itanagar, Directorate office, in fact 6 (six) DDSEs are posted at Itanagar and the appellant was the fifth person to be brought at Itanagar. This only lends support to the contention of the appellant that the department did not and also could not have proposed the transfer of the appellant to Itanagar.

vii. The appellant never abandoned the plea of malafides as submitted by the respondents referring to paragraph 14 of the impugned judgment and order and even otherwise the appeal being a continuation of the writ petition, he can argue the point.

viii. The respondent No. 6 although appeared before the learned Single Judge did not refute the allegations of malafide by filing any counter and in paragraph 9 of the impugned judgment, it is mentioned that the standing counsel for the department did not dispute the contention of the appellant on pleaded facts.

ix. In support of his contentions, Mr. Mazumder, learned Senior Counsel relied on the decision of the Hon'ble Apex Court in the case of Rajneesh Khajuria –Vs– Wockhardt Ltd reported in (2020) 3 SCC 86, Bongaigaon Refinery –Vs– Girish Chandra Sharma reported in (2007) 7 SCC 206 and Purtabpore Co. Ltd. –Vs– Cane Commissioner of Bihar reported in (1969) 1 SCC 308.

8. Per contra, Mr. Das, learned Senior Counsel for the respondent No. 5 argues the following:-

a) The learned Single Judge has rightly dealt with the matter in paragraph 16 of the Judgment and Order, by holding that the Court cannot make an objective assessment of an employee who is fit to be transferred and posted at a particular place, as the same is not in the domain of this Hon'ble Court. The decision of the learned Single Judge can be appreciated by relying on the Apex Court Judgment in the case of *Rajendra Singh & Ors -Vrs- State of U.P. & Ors*, reported in 2009 (15) SCC 178.

b) There is no statutory rule in force for posting of employees in a particular place for a fixed period of time. In relation to above subject matter, this Court in *Pratmath Ch. Sarma -Vs- State of Assam & Ors*, reported in 2007 (1) GLT 212 has clearly held that an employee cannot maintain a writ petition for enforcement of such guidelines.

c) The learned Single Judge has rightly dealt with the matter by relying on the judgment of the Hon'ble Apex Court in *S. S. Kourav & Ors*, (supra), wherein the Hon'ble Apex Court has clearly held that hardship cannot be a ground for interfering with transfer and posting order. Further, in similar facts, on the issue of 70 years old ailing mother, the Hon'ble Apex Court in *Gujarat Electricity Board & Anr -Vs-Atmaram Sungomal Poshani*, reported in 1989 (2) SCC 602, held that transfer is an incidence of service and the employee cannot insist for being posted at one particular place.

d) As regards the allegation of malafide intent behind the U.O Note dated 14.03.2023, the authorities were directed to provide the record, so as to ascertain whether the work order was issued to Mr. Benya Ado or any other person. The record as produced by the authorities revealed that the amount was directly transferred in the account of students.

e) Regarding the transfer and posting Note of the department, it is true that from Note No. 143 to Note No. 164, the name of the appellant never appeared, as because his prayer was already considered by the minister. Nevertheless, due to vacancy occurring owing to proposed transfer and posting of Smti Oye Borang Tatak, Note No. 165 was initiated for want of sincere and dedicated DDSE. Following which a deployment list of DDSE was placed for consideration where the name of the appellant was reflected. It is noteworthy that, in Note No. 170, the name of Shri Yage Kakki as DDSE at Directorate was put forth for approval, however, by virtue of Note No. 171, the proposal was reversed by the Minister with a remark that "the department is in need of experienced senior DDSE at DSE office. The service of Shri Duken Kato, DDSE, Aalo, will be of great assistance to the department. His service and experiences are required by the headquarter". It is only after exhaustive internal deliberation, the authority concerned had approved the transfer order in Note No. 172.

f) The Constitution bench in *Bachhittar Singh -Vs- State of Punjab*, reported in AIR 1963 SC 395 in para 9, 10 and 11 had held that mere noting on the file does not amount to an order and as long as matter was under consideration of the

minister, he could well score out his remarks or minutes on the file and write fresh ones. The minister, after expressing one opinion about a particular matter at a particular stage may express quite a different opinion, one which may be completely opposed to the earlier opinion. It was further held that until the order is communicated to the person affected by it, it would be open to Minister to consider the matter over and over again and, therefore, till its communication, the order cannot be regarded as anything more than provisional in character.

g) In a subsequent decision, the Hon'ble Apex Court in the case of Shanti Sports Club & Anr -Vs- UOI & Ors, reported in 2009 (15) SCC 705, held that "A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with Article 77 (1) and (2) or Article 166 (1) and (2). The noting in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77 (2) or Article 166 (2). A noting or even a decision recorded in the file can always be reviewed/ reversed/ overruled or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review".

h) Based on the above Apex Court decisions, it was argued that noting is an internal deliberation, which can be reviewed/ reversed/ overruled or overturned, as has been done in Note No. 170 to Note No. 171 and thereafter approved in Note No. 172. Thus, there are no infirmities in the note.

i) In respect of surplus officials posted at headquarter beyond sanctioned posts, the learned Senior Counsel for the respondent No. 5 argued that the issue was never a pleaded case of the appellant in his writ petition or in the writ appeal. It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be considered. Without an amendment of the pleadings, the Court is not entitled to entertain the relief not sought for and no prayer was ever made to amend the pleading so as to incorporate in it as an alternative/ additional ground of challenge case. In support of such contention, Mr. Das, relies on the case of Messrs. Trojan & Co. Ltd. -Vs- Rm. N. N. Nagappa Chettiar, reported in AIR 1953 SC 235.

j) On the issue regarding 6 (six) DDSE against 3 (three) sanctioned posts at headquarter, it is argued by Mr. D. Das, learned Senior Counsel that it would be the internal arrangement of the Department due to exigency of service and heavy work load, which this Court should not delve into so as to make a roving enquiry without particular pleading.

k) There is no perversity in the judgment and order dated 28.09.2022 passed by the learned Single Judge, and since there is no patent error in the judgment and order, it was argued that, this Court should refrain to interfere with the judgment and order dated 28.09.2022, for the only reason that there can be two views of the matter, and for that the respondent No. 5's counsel relied on decision of Division Bench of this Court passed in Tractor and Farm Equipment Lt. -Vs- Secretary to the Govt. of Assam, Department of Agriculture & Ors, reported in 2004 (1) GLT 117, para-26.

9. The learned State Counsel has reiterated his arguments as urged before the learned Single Judge.

10. Before dealing with the impugned transfer order as well as the decision of the learned Single Judge, let this Court briefly summarize the principles of law as enunciated by the Hon'ble Apex Court since the decision in E.P.Royappa Vs State of Tamil Nadu reported in 1974 4 SCC 3, and to the decision in Union of India - Vs- S.L. Abbas reported in 1993 4 SCC 357 and State of Haryana Vs Kashmir Singh reported in 2010 13 SCC 306 including the judgments of the Hon'ble Apex Court as relied on by the respective counsels, more particularly Mr. Das, learned counsel for the respondent No. 5, which are as follows:-

I. Transfer being an incidence of service, the same is within the domain of the employer to post a person as per exigencies of services and therefore, an employee shall have no vested and concluded right to get posted in a particular place or to continue in a particular place.

II. The transfer policy or guidelines issued by the employer do not have any statutory force and therefore, such guidelines do not confer any enforceable right upon an employee.

III. The scope of judicial review of a transfer order is very limited and restricted and such order can be interfered in exercise of the power of judicial review only when such order is in contravention of statutory rules or issued in malafide exercise of power or adversely affect the status of the transferred employee.

IV. It is also well settled and presumed that transfer orders are passed in public interest and / or in administrative exigencies and therefore, such exercise of power should not be arbitrary or for any extraneous consideration or to favour any specific employee and such order should not be passed under any vested interest/political pressure.

11. The Hon'ble Apex court while dealing with decision of transfer order of a judicial officer issued by the Full Court of Madhya Pradesh High Court in Ms. X - Vs- Registrar General, High Court of Madhya Pradesh reported in 2022 SCC OnLine SC 171 also extensively dealt with concept of malafide exercise of power relating to order of transfer. At paragraph 58 the Hon'ble Apex court held that the State is under the obligation to act fairly without ill will or malice-in fact or law. It further went to hold that 'legal malice' or malice in law means something done

without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It was further held that when an order is not based on any factor germane for passing an order for transfer and the order is based on an irrelevant ground, such an order would not be sustainable in law.

12. The transfer policies and guidelines are formulated to regulate the policy of the Government / employer. Such policy generally includes the tenure of posting, the different conditions of transfer etc., which are formulated on the basis of the need of the department. Therefore, such policies and guidelines are judicially declared to have not created any enforceable right upon an employee. The Hon'ble Apex court in the case of Registrar General, High Court of Madhya Pradesh (supra) dealing with a transfer policy of Madhya Pradesh High Court and recognizing the principle that the transfer policies and the guidelines are not having any enforceable right, relying on earlier decisions of the Honble Apex court held that though mere reasonable or legitimate expectation of a citizen may not by itself be a distinct enforceable right but failure to consider and to give due weightage to it may render the decision arbitrary. It was further held that requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness which is a necessary concomitant of rule of law. Finally, the Hon'ble Apex Court held that though transfer policy may not be enforceable in law but when such transfer policy has been framed, every officers will have a legitimate expectation that such a policy should be given due weightage, when cases of transfer of officers are being considered.

13. The State of Arunachal Pradesh notified a transfer policy by the name "Teachers transfer and posting policy, 2019-2020 (Education)". Such policy was applicable in terms of Clause -2 not only to teachers but also to all administrative cadres including the Principal/Vice Principal etc.

In the said policy, transfer has been categorized into two parts i.e. administrative transfer and transfer on request. The administrative transfer is to be ordered suo moto in exigencies of services and public interest or on administrative grounds. The transfer on request is to be effected on the request of a teacher and subject to eligibility as per the policy. The posting has been termed as hard, middle and soft. As per transfer calendar, the transfer is to be effected at different points of time. The general guideline of the transfer provides that incumbent having 24 months or less service before retirement, shall not be transferred even if they complete the tenure of 5 year in the same post.

The Clause-XXI of the General Guideline for transfer provides that any attempt by a teacher to bring any political or outside influence for transfer shall be treated as misconduct and such teacher shall be liable to disciplinary proceeding as per rule.

14. Taking note of the aforesaid propositions of law, this court is conscious of the fact that the scope of judicial review of a decision involving transfer of Govt.

employee is very narrow and this court cannot sit in an appeal over such decision. Accordingly, let this Court examine the present case and its factual backdrop, whether this is a fit case or not to exercise the power of judicial review.

15. The learned Additional Advocate General, produced the record pertaining to the transfer order issued and we have perused the same.

16. The record reveals the following sequence of events:

I. The appellant preferred a representation before the Hon'ble Minister of Education on 13.01.2021 to transfer him to the post of DDSE in West Siang District, Aalo primarily on the ground that the appellant has been serving the Education department for more than 30 years in different capacities and undergone various training and also obtained diploma in Education and Planning and Administration therefore, the appellant is qualified to hold the post of DDSE.

II. The further contention made was that for the last 16 years, he has not been posted at his home town and as his mother is ailing seriously and therefore, he may be posted at West Siang District as DDSE.

III. Such representation was considered by the Administrative Department and an order dated 04.05.2021 was issued whereby the appellant was transferred as DDSE, Alo, West Siang district viz Sri Eto Ete, DDSE, West Siang was transferred in place of the appellant.

IV. Accordingly, the appellant joined at the transferred place of posting on 10.11.2021.

V. The note 143 in the record reveals that as many as eleven proposals for transfer and posting of DDSE were initiated on the basis of applications and U.O. notes from different MLAs, Ministers, Zilla Parishad Members etc. for posting different Principals as DDSE of District. Accordingly, note 145 was put by endorsing the file to the Government for obtaining further order as proposed.

VI. The name of respondent No. 5 finds a place at serial No. 6 of the proposal, which reflects that request was made by the Advisor to the Minister of PWD for posting him as DDSE, Daporijo against an anticipated vacancy of one Sri Tape Jerang who will retire on 31.10.2022.

VII. Such proposal does not find the name of the appellant for transfer to any other place.

VIII. The note 147 reflects that the proposal at serial No. 1,2,8,9 and 10 was endorsed to the Minister for decision and proposal at serial No. 6 involving respondent No. 5 was not endorsed.

IX. By note 149, the Minister asked the file to be routed through his advisor.

X. The note No. 165 reflects that the file was recalled by the respondent No. 6 (Hon'ble Minister, Education).

XI. The file was thereafter moved through different officers and by office note 165 file was recalled by the Hon'ble Minister, which was placed before him by office note 167.

XII. Subsequently, by office note 170, the transfer and posting case of one Marte Kayu and one Sri Tage Kake was put up for approval. In this note, there is no indication of any proposal of transfer of either respondent No. 5 or the appellant.

XIII. By office note 171, approval was granted by the Hon'ble Minister approving the transfer of Tage Kake and Marte Kayu and along with them the appellant was also transferred as DDSE, Itanagar from DDSE, West Siang and the respondent Yadak Yangu whose transfer was requested by the Advisor to the Minister of PWD was transferred and posted as DDSE, West Siang in place of the appellant.

XIV. Though there was no proposal for transfer of the appellant in the file, the appellant was purportedly transferred on the ground that the department needs an experienced senior DDSE at Director of School Education Office, Itanagar.

XV. The fact is also disclosed through additional affidavit filed by the state respondent that total strength of DDSE at the office of the Director of School Education, Itanagar is 3 (three) and the total persons holding the post of DDSE at Itanagar are 6 (six) i.e. more than sanctioned strength.

17. Now on the basis of such factual background, this court is to decide the validity of the transfer of the appellant again to Itanagar.

18. From the records one fact is very clear that the transfer proposals were initiated, not on the basis of any decision by the Administrative Department on its own, either in exigencies of services or for any administrative need, rather such transfer proposals were initiated either on the request of the individual employee or on the request of different political functionaries including MLAs and Advisor to Ministers etc.

19. The fact also remains that there was no proposal in the file for transfer of the appellant to the office of the DDSE, Itanagar.

20. Therefore in the aforesaid backdrop, we have to address the argument of Mr. D Mazumdar, learned Senior Counsel that the transfer of the appellant is a result of mala fide exercise of power inasmuch as same has been done to accommodate the respondent No. 5 as a DDSE in a district as per request of the Advisor of the Minister, PWD.

21. In the facts of the present case, it is very clear that the initial order of transfer of the appellant was issued citing definite reason though on the basis of a representation inasmuch as the transfer policy allows such course of action. However, while issuing the impugned transfer order, the same was done without even any proposal being initiated by the administrative department, and rather the record reflects that transfer of respondent No. 5 was initiated on the basis of a request by the Advisor to the Minister of PWD inasmuch as such course of

action is debarred under the transfer policy. Thus, the transfer order impugned is not based on any factor germane for taking recourse to such a course of action. Therefore, in the considered opinion of this court the impugned transfer order is hit by the principle of malice in law. In view of aforesaid determination, this court holds that the impugned order of transfer is bad for the reason of being issued in exercise of malafide and arbitrary exercise of power. However, the learned Single Judge has failed to appreciate such facts and principles of law while refusing to interfere with the impugned order.

22. From the aforesaid facts as discussed above and from the record, it is crystal clear that the proposal of transfer of respondent was initiated on the basis of request/U.O. Note of the Advisor to the Minister of PWD. The record further reveals that no proposal was in fact initiated by the administrative department relating to the transfer of the appellant, however, suddenly he was transferred only by placing the respondent No. 5., in his place inasmuch as the fact remains that the petitioner was earlier transferred considering his representation and he has not completed the tenure in the said place of posting.

23. In the considered opinion of this Court, the Office Note clearly reveals that the motive of transferring the appellant is nothing but for the oblique purpose of accommodating the respondent No. 5 as DDSE. Such element of personal bias of the respondent No.6 is writ large from the office notes as discussed hereinabove and the respondent No. 6 has also not denied such allegation of malafide exercise of power by filing affidavit-in-opposition.

24. We are constrained to hold that the transfer order so far relating to the appellant is concerned, the same was done without any lawful reason inasmuch as no exigencies of services and public interest which led to such transfer is discernible from the record except the U.O. Note issued by the Advisor to the Minister, PWD, requesting the transfer of the respondent No.5 as DDSE. Therefore, this Court is of the unhesitant view that the impugned transfer is actuated by malafide exercise of power and issued without there being any public interest or exigencies of services.

25. Yet another aspect of the matter is that the transfer policy as discussed hereinabove, was formulated to regulate the transfers of government employee in Education department of the State of Arunachal Pradesh, which covers all administrative cadres including Principal and Director etc. Such policy included the tenure of posting as 5 years and also includes different condition/considerations of transfer including hard posting etc. In the case of Registrar General, High Court of Madhya Pradesh (supra), it was held that though such policy and guidelines do not create any enforceable right, however, the employees shall have legitimate expectation for proper implementation of such policy and that though such legitimate expectation is not by itself is a distinct and enforceable right however, failure to consider and to give due weightage to it may render the decision to be arbitrary. In the considered opinion of this Court, in the given facts of the present case the above decision squarely covers the

controversy at hand inasmuch as the appellant was transferred and posted after giving due weightage to his request including his date of superannuation, however, while transferring back, as reflected in the record no considerations, under the transfer policy was made nor any exigencies of services are discernible for such exercise of power and therefore, such exercise of power is nothing but an arbitrary exercise of power. The Hon'ble Apex Court in the case of Poonam Verma –VS-Delhi Development Authority reported in (2007) 13 SCC 154 also had expressed the view that though the transfer guidelines are advisory in nature, however, same can be judicially reviewed when deviation of such transfer policy involves arbitrariness or discrimination.

26. Surprisingly, in the case in hand, not to say the enforceability of any guidelines or policy of transfer, all the transfer orders including the transfer order under challenge were not initiated on the basis of any policy of transfer, guideline and also not by the Administrative Department on its own rather at the behest of different political entities including MLAs and Advisors to different Ministers.

27. The appellant who was already transferred on his request is having a legitimate expectation to continue in the transferred place of posting inasmuch as he is at the fag end of his career and the transfer policy permits such transfer. However, he was suddenly transferred without any proposal being mooted and in the aforesaid backdrop, this court is of the considered opinion that such order of transfer is neither issued in the exigencies of service nor in public interest, rather the same is a result of arbitrary exercise of power.

28. In view of the aforesaid discussions and reasons, we find merit in this appeal. Resultantly, the impugned order dated 28.09.2022 passed in WP(C) No. 292(AP)/2023 by the learned Single Bench, is reversed. As a consequence, the transfer order dated 21.07.2022 issued on 29.07.2022 as well as the speaking order dated 24.08.2022, passed by the Commissioner (Education), Govt. of Arunachal Pradesh, in so far as the same pertains to the transfer and posting of the appellant and the respondent is hereby quashed and set aside.

29. The appeal is allowed in these terms. No order as to cost.