
(2008) 09 GAU CK 0040

In the Gauhati High Court

Case No : Writ Petition (C) No. 266 (AP) of 2008

Kago Tabiyo

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 12-09-2008

Acts Referred:

Citation : (2009) 2 GLR 368 : (2011) 2 GLT 235

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Advocate : B. Habung, for the Appellant; R.H. Nabam and Tony Pertin, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Musahary, J.—Heard Mr. B. Habung learned Counsel for the Petitioner, Mr. R.H. Nabam, learned senior Govt. advocate for the State Respondents and also Mr. T. Pertin, learned Counsel for the Respondent No. 3.

2. In this writ petition, the Petitioner has challenged the order dated 16.6.2008 passed by the Commissioner-cum-Secretary (RWD), Government of Arunachal Pradesh, Itanagar transferring the Petitioner who has been working as S.E. at Rupa Circle to the office of the C.E. (RWD), Itanagar vice Shri R.K. Srivastava transferred.

3. Earlier to this transfer order, the Petitioner was also transferred from Rupa Circle to Pasighat Circle by an order dated 22.4.2008 vice Shri Tangir Tamut, S.E (present private Respondent No. 3) issued by the Commissioner-cum-Secretary (RWD) and in compliance of the said transfer order dated 22.4.2008, the Petitioner handed over the charge of S.E, RWD, Rupa Circle and submitted his joining report at Pasighat on 16.6.2008 with due information to the Chief Engineer, RWD (Annexure-VII to the writ petition).

4. It is contended by the learned Counsel for the Petitioner that while the Petitioner joined his duties at Pasighat, he received the impugned order of

transfer dated 16.6.2008 (Annexure-VIII to the writ petition) on 17.6.2008 whereby he was transferred to Itanagar vice Shri R.K. Srivastava. The Petitioner contends that the impugned transfer order, although, dated 16.6.2008, was signed on 17.6.2008, which has been reflected in the copy of the said order sent to the Petitioner under the signature of Deputy Secretary (RWD) to the Government of Arunachal Pradesh.

5. The Petitioner alleges that he has been subjected to frequent transfer and the aforesaid impugned order dated 16.6.2008 has been passed/ issued only after he joined at Pasighat on 16.6.2008 at the instance of some vested interest. Mr. Habung, learned Counsel for the Petitioner submits that the impugned transfer order is arbitrary, illegal and unreasonable inasmuch as the same has been issued after the Petitioner joined at Pasighat in compliance to the earlier transfer order dated 22.4.2008 (Annexure-IV to the writ petition).

6. In order to substantiate the case of the Petitioner that he had already joined at Pasighat before the impugned order was passed/issued, Mr. Habung has drawn the attention of this Court to the correspondences in forwarding the charge report addressed to the C.E., RWD on 13th June, 2008 (Annexure-V to the writ petition) accompanied by copy of duly filled up certificate for transfer of charge in the form GFR 33 along with details of no dues certificate, surrender certificate as regard his ration card and also the joining report dated 16.6.2008 addressed to the Chief Engineer, RWD. According to Mr. Habung, all these are sufficient materials to show that he has been working at Pasighat since 16.6.2008 and is still working there at Pasighat, even after he received the aforesaid impugned transfer order on 17.6.2008.

7. With regard to the frequent transfer, the learned Counsel for the Petitioner, Mr. Habung submits that by an order dated 19.12.2007 (Annexure-III to the writ petition) issued by the Secretary, RWD, the Petitioner was earlier transferred from Rupa Circle to Itanagar vice Shri R.K. Srivastava and this order was challenged by the Petitioner in WP(C)/01 (AP)/2008. This Court was pleased to issue notice on 7.1.2008 with an interim order that the status quo with regard to posting of the Petitioner is ordered to be maintained till 31.3.2008 i.e., pending return of notice and the said writ petition was disposed of on 21.7.2008 as infructuous. But the Respondent authorities were band upon to transfer and post him again at Itanagar to avenge him which smacks mala fide intention on the part of the Respondent authorities and as such, the impugned transfer order dated 16.6.2008 is liable to be quashed.

8. The aforesaid submissions of the learned Counsel for the Petitioner have been countered by Mr. Nabam, learned senior Govt. advocate appearing for the official Respondents. It has been assertively submitted that the Petitioner was never subjected to frequent transfer. The Petitioner was once transferred from Rupa Circle to Miao Circle vice T.K. Tagin, S.E. vide order dated 14.11.2007 but he was again retained at Rupa on the request of some public representatives. Thereafter, he was transferred from Rupa Circle to Itanagar vide order dated 19.12.2007 by

superseding the earlier transfer order dated 14.11.2007. The said transfer order dated 19.12.2007 was challenged by the Petitioner in WP(C)/01 (AP)/2008 and he was allowed to continue at Rupa in terms of the interim order dated 7.1.2008 passed by this Court. Although, he was allowed to remain at Rupa Circle till 31.3.2008 only by virtue of this Court's order he continued to remain at Rupa till he was transferred to Itanagar vide impugned order dated 16.6.2008.

9. Mr. Nabam, submits that the Petitioner's transfer to Itanagar has been made only to give effect to the earlier transfer order dated 19.12.2007 in terms of the submission made before this Court at the time of issuance of notice dated 7.1.2008 in WP(C)/01 (AP)/2008 and passing of the order to the effect that "the Petitioner is prepared to otherwise move out from Rupa RWD Circle notwithstanding the mala fide alleged in the writ proceeding after March, 2008 as in that case, the academic calendar of the students would not be disturbed". This assurance was given by the Petitioner himself and as such, he has now been posted at Itanagar and this being the position, the allegation of mala fide intention on the part of the Respondent authorities is baseless and liable to be rejected.

10. Mr. Nabam, learned Senior Govt. advocate, rebutting the submissions made by the learned Counsel for the Petitioner, further submits that the Petitioner did not join at Pasighat Circle on 16.6.2008. He has relied on the copies of the letters/correspondences annexed to the affidavit-in-opposition filed on behalf of the official Respondents. Mr. Nabam, learned Senior Govt. advocate has taken me through the copy of the report submitted by the Petitioner in the capacity of State Quality Coordinator (PMGSY) RWD Rupa dated 16.6.2008, the minutes of the review meeting held on 27-th & 28th June, 2008 at Itanagar submitted by Moto Gara, Executive Engineer (HQ) dated 7th July, 2008, a copy of which was forwarded to the Petitioner at his Rupa address (Annexure-D/3) along with list of the members who attended the said meeting in which the Petitioner's name appears at serial No. 3 designated as SOC & SE, Rupa and also a copy of the letter from Shri R.K. Srivastava, SE, HQ, RWD, Itanagar dated 7.8.2008 addressed to the Senior Govt. Advocate, Gauhati High Court, Itanagar Bench by which it was informed that "at present Sri T. Mamut is working as. Superintending Engineer, RWC, Pasighat". According to Mr. Nabam, all these records are sufficient to prove that the Petitioner continued in service at Rupa and at no point of time, he joined at Pasighat and this being the position, the Petitioner has no valid ground to challenge the impugned transfer order dated 16.6.2008.

11. Mr. Pertin, learned Counsel for the private Respondent No. 3 fully endorsed the submission made by the learned Senior Govt. Advocate, Mr. Nabam and relied upon the affidavit-in-opposition filed by the private Respondent No. 3. In para 6 of the said affidavit-in-opposition, it is categorically stated that the private Respondent No. 3 is still functioning and discharging his duties as S.E, RWD at Pasighat Circle and it is completely wrong to state that the Petitioner is

performing his duties as S.E., RWD at Pasighat Circle. It is further stated in para 5 of the said affidavit filed by the private Respondent No. 3 that the Petitioner had been making official correspondence on 16.6.2008 from Rupa by virtue of being State Quality Coordinator (PMGSY) and submitted the inspection report on various Schemes undertaken vide letter dated 16.6.2008 from Rupa and according to Respondent No. 3, the distance between Rupa and Pasighat is about 600 kms. and it is not possible to come to Pasighat from Rupa on the same day on his release from Rupa on 16.6.2008 and join at Pasighat on the same day because one has to travel by road only as no air connectivity between Rupa and Pasighat. is available.

12. The records as called for by this Court have been produced by Mr. Nabam, learned Senior Govt. advocate and on perusal of the said records, it is found that the Petitioner has been serving at Rupa, RWD Circle for more than 04 years. The Petitioner was once transferred from Rupa Circle to Miao Circle vice Shri T.K. Tagin, SE vide order dated 14.11.2007. After his transfer, one Tani Loffa, MLA made a request vide his letter dated 9.11.2007 for retention of the Petitioner at Rupa RWD Circle and the said request was acceded to by the hon'ble Chief Minister and accordingly, the Petitioner was retained at Rupa. Thereafter a request was made on 16.11.2007 by some public representatives including some MLAs for cancellation of the transfer of Shri T.K. Tagin and retaining him to Miao Circle for the greater public interest and smooth execution of works under Miao Circle. Similar request was also made by the Speaker of the Legislative Assembly, Arunachal Pradesh on 25.11.2007. On the other hand, a request was made by Tsering Gyurme, Principal Advisor to Chief Minister & Parliamentary Secretary (Horti & AH & DD) on 27.11.2007 to retain the SE, RWD Circle Rupa, i.e., the Petitioner at Rupa considering his active involvement in PMGSY schemes and strong public demand.

13. Considering the request so made by the public representatives, the hon'ble Chief Minister passed an order to the effect that Shri T. Tamut, SE, Pasighat be transferred to Rupa RWD Circle while Shri K. Tabiyo, SE, Rupa be posted at Pasighat RWD Circle. Accordingly, the order dated 22.4.2008 was issued transferring the Petitioner from Rupa to Pasighat Circle vice private Respondent No. 3, Shri T. Tamut. Thereafter again Mr. Jarbom Gamlin, Minister (Home, Vigilance etc.) by his note dated 23.4.2008 requested the Minister, RWD to retrain Shri T. Tamut at Pasighat RWD Circle in the interest of public service as a special case and the matter was placed before the Hon'ble Chief Minister, who approved the proposal submitted by the Minister (RWD) to retain Shri T. Tamut, present Respondent No. 3 at Pasighat and Shri K. Tabiyo, the present Petitioner to Head Quarter i.e., at Itahagar vice Shri R.K Srivastava, posted at Rupa.

14. In the service law transfer is accepted universally as an incident of service and the transfer and posting are made in the administrative, exigency. It is settled position that normally the court would not interfere with such transfer and postings except in rare cases where the transfer has been made in vindictive

manner or the transfer order has been vitiated by mala fide, or in violation of any statutory provisions or having been passed by an authority not competent to pass such order. In the case of State Bank of India Vs. Anjan Sanyal and Others, the Apex Court held that an order of transfer is not required to be interfered with lightly by the court of law in exercise of its discretionary jurisdiction unless the court finds that the order is mala fide or that the service rules prohibit such transfer or that the authorities who passed the order is incompetent to pass the order. The Apex Court, in the case of Union of India (UOI) and Others Vs. Sri Janardhan Debanath and Another, held that in the matter of transfer of an employee to different division, the employer is required to consider the administrative necessities and the extent of solution thereof.

15. In the present case, none of the exceptions is seen to be present. The present case is to be examined from the point as to whether the transfer and posting of the Petitioner and the private Respondent has been made on administrative exigency or in the interest of public service. The other point to be considered by this Court, in my considered view, is whether the transfer and posting of a public servant could be made at the instance/request or intervention of the public representatives like Ministers/MLAs.

16. From the records, it is found that Shri T. Aboh, Parliamentary Secretary (Agri), K. Lowang, MLA, Deputy Chairman, SPB, T. Wangham & P. Khimhun, MLA and other public representatives requested the hon'ble Chief Minister to retain Shri T.K. Tagin at Miao Circle for smooth execution of works under Miao Circle. His posting therefore can definitely be called as posting in the public interest. In case of the Petitioner, it is found that he has been transferred and posted at Itanagar in view of his desire expressed earlier and submission made before this Court during pendency of WP(C)/01 (APV2008 and also in his representation dated 26.12.2007 relating to earlier transfer order dated 19.12.2007 for allowing him to continue at Rupa till 31.3.2008 and his willingness/readiness to join in the Head quarter at Itanagar after 31.3.2008. Moreover, the Petitioner, being involved in the supervision of PMGSY Schemes as a State Quality Coordinator under PMGSY, is required to stay in the State Capital. His posting at Itanagar is, therefore, backed by the exigency of service and also the public interest. Such transfer and posting of the Petitioner and the private Respondent No. 3 cannot be faulted only on the ground of some irrelevant and inconsequential reasons. It is the public interest and the exigency of service which must be given due importance and priority. Looking at the notes given by the public representatives like Ministers & MLAs regarding the posting/retention of the Petitioner and the private Respondent No. 3, I find no element of mala fide intention or having any role of vested interest in the matter of transfer and posting of the parties concerned. The public representatives have only shown their anxiety and interest in the implementation of development schemes through the supervision of certain officers known to them. After all, in the democratic set up, the elected MLAs are the representatives of the people and they are to see that the development programmes are implemented. They are to see how best the

programmes for the development of the people could be achieved. So, they have definitely some say in the matter of transfer and posting of the officers, especially in the grass root. In the case of the State of Assam v. Dilip Kumar Das (2003) 2 GLR 151, a division Bench of this Court has rightly and aptly observed that Minister is to assess the capability and capacity of a particular officer to carry on a particular job and the court is not to sit over the judgment of the authority concerned. In another case of Kamsang Pangging v. The State of Arunachal Pradesh (1998) 2 GLT 493, this Court also observed that the govt. must strike a balance between the public need and the need of the officers in the matter of transfer and posting.

17. In absence of any substantiating material on alleged mala fide action or having any hand of the vested interest, I decline to interfere with the impugned transfer and posting order dated 16.6.2008. Both the Petitioner and the private Respondent No. 3 are bound to serve the public interest at their respective place of posting. I find no merit in this writ petition and accordingly, the same is dismissed. However, there shall be no order as to cost.