

(2006) 11 GAU CK 0070
In the Gauhati High Court

Khonbrailakpam Shyama Devi

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 13-11-2006

Acts Referred:

Citation : (2007) 2 GLR 602 : (2007) 1 GLT 418

Hon'ble Judges : U.B. Saha, J

Bench : Single Bench

Judgement

U.B. Saha, J.—Present Writ Petition is directed against the order dated 23.10.2006 issued by the Commissioner Education (S), Govt. of Manipur whereby and whereunder the present petitioner is transferred from Lilashing Khongnangkhong High School to Takyel Khongbal Jr. High School and the private respondent, Shri P. Ibopishak Singh, is transferred from Oinam Sawombung Jr. High School to Lilashing Khongnangkhong High School where the petitioner was serving.

2. Heard Mr. I. Lalit Kumar, learned senior counsel assisted by Ms. Gectarani, learned Counsel as well as Mr. Th. Ibohal, learned G.A. for the state respondents.

3. Mr. I. Lalit Kumar, learned senior counsel appearing on behalf of the petitioner, submits that the petitioner is transferred by the impugned transfer order dated 23.10.2006 from Lilashing Khongnangkhong High School to Takyel Khongbal, Jr. High School and his main submission is that the present order was issued only to favour the respondent No. 4, who is junior to the petitioner in service, on query from this Court he admitted that the service of the petitioner is a transferable one and an Assistant Headmistress like the petitioner can be transferred to a Junior High School as Headmistress. In the same way, the respondent No. 4, who was the Headmaster of a Jr. High School can also be transferred to a High School as an Assistant Headmaster and he also admits that in this writ petition the petitioner has not made any allegation of mala fide against the respondents or any other authority. The main contention of the learned Counsel of the petitioner is that the petitioner, who is the senior to respondent No. 4 and working as

Assistant Headmistress in the High School, she cannot be transferred to a Jr. High School as Assistant Headmistress in place of the respondent No. 4 who is working in the Jr. High School before the order of transfer has been issued, meaning thereby the petitioner being the senior one she is to be retained in the High School where she was working before transfer. In support of his contention, he relied on a decision in the case of Government of A.P. and Another Vs. A.V. Venugopala Rao, .

4. This Court anxiously considers the submissions of learned senior counsel appeared for petitioner and case of Government of A.P. (supra) as relied by him and it appears from the submission and aforesaid decision of the Apex Court that the question involved in that case was relating to promotion, not the transfer of an employee and the facts of that case is totally different in nature than that of present case in hand. In that case, the authority, pending finalization of the seniority list, the in-charge arrangement was made to keep the senior-most in the provisional list of the respective Divisions, who are eligible for promotion to the post of Executive Engineer as in-charge so as to avoid heart-burning among the officers and that arrangement is being worked out satisfactorily, but the said arrangement done by the authority was interfered with by the A.P. Administrative Tribunal and being aggrieved by the said order of the Tribunal, the Government of A.P. and another went to Supreme Court and the Supreme Court held that the interim in-charge arrangement made by the State Govt. would continue till the disposal of the original application pending before the Tribunal meaning thereby the Apex Court allowed the senior most in the provisional list of the respective Divisions to be the in-charge Engineer, it is settled law that a senior person should always be allowed higher post on promotion either regularly or as in-charge if the said promotion is not to be made to a selection post. But, facts of the present case is totally different as stated earlier, this case is relating to transfer of public servant in nature. To see how and when a case law should be relied, this Court considers the cast of the The Regional Manager and Another Vs. Pawan Kumar Dubey, wherein the Apex Court said that it is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts.

5. This Court also considers the case of Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, wherein the Apex Court stated that the court should not place reliance on a decision without discussing how the factual situation fits into the facts and circumstances on which reliance is placed. One additional or different facts can make a world within conclusion of two cases.

6. Considering the aforesaid principles laid down by the hon"ble Supreme Court relating to application of ratio of a case, this court is of the opinion that the case referred to by the learned senior counsel appearing on behalf of the petitioner,

i.e. Govt. of A.P. (supra), has no application in the facts and circumstances of this case, particularly when the case relied on is based on promotion and question arises for decision in this case is relating to transfer. Moreover, transfer is an incident of service and who is to be transferred where is the matter within the domain of the employer, i.e., Govt. herein, provided the service is a transferable one. In the instant case, it is admitted by both the parties that the service is transferable. The only question is that whether a junior can be replaced by way of transfer to an institution where the senior is working. The argument of the learned senior counsel, if accepted by this court, then the employer Govt. will not be in a position to transfer any employee in near future and day-to-day work of the Govt. institution like school will be disturbed. Hence, the considered views of this Court is a junior can be transferred to an institution where the senior is working, if the service of the holder is transferable.

7. The learned senior counsel appearing on behalf of the petitioner, further, argues that the present petitioner made a representation to the Commissioner Education(s) on 6.11.2006 vide Annexure A/8 to the writ petition and till today the authority has not yet disposed of the representation. This Court expects that the authority should consider this type of representation as early as possible.

8. In the facts and circumstances, this Court holds that the order of transfer impugned is valid and legal. However, the Commissioner Education, Government of Manipur is directed to dispose the representation of the petitioner within 15 days from the date of receipt of this order. If the petitioner is released by the authority from the school from where she is transferred, she may be allowed to stay there till disposal of the representation and if she has already been released, she should not be allowed to work in that school any further. The petitioner is directed to produce the copy of this order before the Commissioner of Education(s), Government of Manipur to enable him to dispose the representation within four days from today.

9. With the above observation and direction, this writ petition is disposed of.