
(1997) 02 GAU CK 0003
In the Gauhati High Court
Case No : Writ Appeal No. 457 of 1996

M.Ajem Jamir

APPELLANT

Vs

State of Nagaland

RESPONDENT

Date of Decision : 04-02-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (1997) 1 GLJ 621 : (1997) 1 GLT 564

Hon'ble Judges : A.K.Patnaik, J and V.K.Khanna, J

Bench : Division Bench

Advocate : D.K.Mishra, N.Sinha, C.T.Jamir, Advocates appearing for Parties

Judgement

V. K. Khanna, C.J.—This appdal has been filed against the judgment of the learned Single Judge dated 27.8.96 passed in Civil Rule No. 16 (K) of 1996. Mr. DK Mishra, learned counsel appearing for the appellant and Mr. CT Jamir, learned Government Advocate, appearing for the Staterespondents have made a prayer that the hearing of the appeal itself may be done at the admission stage and it is in these circumstances that we are disposing of the present appeal after hearing the learned counsel for the parties. It may be noted that notice by

Registered A/D was sent to respondent No.3 on 30.10.96, Therefore, service on ssponent 3 will be presumed to be sufficient under the law. Tojlay neither the respondent 3 is present nor any one appeared on his behalf;

2. In the Civil Rule which had teen filed by the respondent No.3/writ petitioner, a challenge was made to the transfer order dated 14,2.96 posting the appellant/respondent No.3 as the Assistant Commissioner of Taxes, Mobile Squad at Dimapur in supersession of earlier order dated 5.12.95. Mr. DKMishra, learned counsel appearing for the appellant/respondent has urged that according to law laid down by the Apex Court the transfer order being an administrative , order it has not to contain the reasons and the impugned judgment quashing the impugned transfer order by the learned Single Judge on that ground suffers com

an error of law which requires interference in this appeal.

Mr. CT Jamir, learned Government Advocate, appearing for the State of Nagaland has also contended that the transfer order has not to contain the reasons in view of the decision of the Apex Court and as it is an administrative order passed on the ground of administrative exigencies and public interest.

3. After hearing the learned counsel for the parties, we are of the opinion that the Apex Court in a number of decisions has laid down that the transfer orders are amenable to the jurisdiction of the High Court under Article 226 of the Constitution when it has either been passed malafide or in contravention with any statutory provisions. In the present case, it has not been shown that the transfer order has either been passed malafide or in contravention with any statutory rules. As far as containing of reason is concerned, we are of the opinion that the transfer order being an administrative order, the same has not to contain reasons. However, it is being made clear that if a challenge is made before the Court in respect of transfer order on the ground of transfer order being either malafide or in contravention with any statutory rules, the Court will examine the cases of the parties and in case it arrives at a finding that the transfer order is either malafide or is in contravention with any statutory rules, the same can be quashed.

4. Mr. DK Mishra, learned counsel appearing for the appellant in this case has also urged that a queer situation has arisen in this case inasmuch as the appellant as well as the respondent No.3 are without any place of posting on account of the impugned judgment. In case this is so, we are of the opinion that the State Government will forthwith take a decision in this matter considering the administrative exigencies and in the public interest and will pass orders in accordance with law in respect of posting of the appellant and the respondent No.3 within a period of two weeks from today.

5. Subject to the aforesaid observations, the judgment of the learned Single Judge dated 27.8.96 passed in Civil Rule No. 16 (K) of 1996 is modified to the extent indicated above and the present appeal is finally disposed of in terms of the judgment given above. However, we make no order as to costs.

An authenticated copy of this judgment will be given to Mr. CT Jamir, learned Government Advocate, Nagaland, within 48 hours.