

(2023) 05 MAN CK 0014

In the Manipur High Court

Case No : Writ Petition (C) No. 388, 389 Of 2021

Moirangthem Kunjahari Singh

APPELLANT

Vs

State Of Manipur Represented By The Commissioner
(Education/S), Government Of Manipur, Imphal - 795001 &
Ors

RESPONDENT

Date of Decision : 16-05-2023

Acts Referred:

Citation : (2023) 05 MAN CK 0014

Hon'ble Judges : Ahanthem Bimol Singh, J

Bench : Single Bench

Advocate : T. Rajendra, Shakir Khan, A. Vashum

Final Decision : Dismissed

Judgement

Ahanthembimol Singh, J

[1] Heard Mr. T. Rajendra, learned senior counsel assisted by Mr. Shakir Khan, learned counsel appearing for the petitioner and Mr. A. Vashum, learned GA appearing for the respondents.

[2] WP(C) No. 388 of 2021 had been filed challenging the order dated 13-01-2021 issued by the Director of Education (S), Manipur effecting transfer and posting of the petitioner from Ngaikhong High School to Ngaikhong Junior High School. WP(C) No. 389 of 2021 had been filed challenging the order dated 13-01-2021 issued by the Director of Education (S), Manipur appointing the respondent No. 3 as Headmaster-in-charge of Ngaikhong High School as a stopgap arrangement till a regular Headmaster/ Mistress is posted at the school. As the parties in the two writ petitions are the same and the issues involved in the two writ petitions are interrelated, the present two writ petitions are disposed of by this common order.

[3] The case of the petitioner is that he was initially appointed as Assistant Science Graduate Teacher on 02-12-1987 in the Department of Education (S),

Government of Manipur and he was posted at Sumkhohen Junior High School, Churachandpur District. After serving for about thirteen years in the said school, the petitioner was transferred to Thinungei Phubala High School in Bishnupur District. Thereafter, the petitioner was again transferred to Ngaikhong High School in Bishnupur District on 28-12-2013. After serving for about seven years in Ngaikhong High School, the petitioner was again transferred to Ngaikhong Junior High School in Bishnupur District on 13-01-2021 vide order dated 13-01-2021 issued by the Director of Education (S), Manipur. On the same day of issuing the last transfer order of the petitioner, the Director of Education (S), Manipur issued another order dated 13-01-2021 appointing the respondent No. 3 as Headmaster-in-charge of Ngaikhong High School at his Grade Pay without any extra remuneration and as a stopgap arrangement till a regular Headmaster/Mistress is posted at the school. Having been aggrieved by the said two orders, the petitioner assailed the same by filing the present two writ petitions.

[4] Mr. T. Rajendra, learned senior counsel appearing for the petitioner submitted that the previous Headmistress of the Ngaikhong High School retired from service on 30-12-2020 and on her retirement, the Ngaikhong High School was without a Headmaster and that in the absence of a regular Headmaster and if a temporary arrangement is to be made, the seniority position of the employees who are to be considered is very much required to be examined. It has also been submitted that the petitioner is senior to respondent No. 3, however by neglecting the seniority position of the petitioner, the Director of Education (S) issued the impugned order dated 13-01-2021 appointing the respondent No. 3 as the Headmaster-in-charge of the said school. According to the learned senior counsel, the said appointment is in violation of the State Government's Guidelines contained in its Office Memorandum dated 03-10-2020 for appointing the senior most person amongst the cadre/ officials belonging to the feeder post of the said particular post. The learned senior counsel vehemently submitted that only to escape from their arbitrary, malafide act of appointing the respondent No. 3 instead of the petitioner as the in-charge Headmaster of Ngaikhong High School, the authorities resorted to the most unfair, unjust and unexpected action and transferred the petitioner to Ngaikhong Junior High School. It has also been submitted that the impugned transfer order has not been issued in public interest but only to appoint the respondent No. 3 as Headmaster-in-charge of Ngaikhong High School and to prevent and shut the mouth of the petitioner from raising any claim in such appointment. According to the learned senior counsel, such action of the authorities is mala fide, discriminatory and arbitrary and as such, both the impugned transfer order and impugned in-charge arrangement order are liable to be quash and set aside.

[5] Mr A. Vashum, learned Government Advocate appearing for the respondents submitted that before issuance of the impugned transfer order dated 13-01-2021, the petitioner was posted at Ngaikhong High School by an order dated 28-12-2013. After serving for about seven years in said Ngaikhong High School, the petitioner was transferred and posted at Ngaikhong Junior High

School, which is situated near the locality of the Ngaikhong High School, by the impugned transfer order dated 13-01-2021. The learned Government Advocate further submitted that the transfer and posting of the petitioner from Ngaikhong High School to Ngaikhong Junior High School had been effected as a general transfer and posting of teachers in the Department of Education (S) and the same had been carried out in the exigency of service and in public interest without any ulterior motive or without any malafide intention. The learned Government Advocate also submitted that the petitioner had failed to point out any arbitrariness in the State action or that the impugned transfer order issued by the competent authority has violated any of his legal rights. It is also pointed out by the learned Government Advocate that after the petitioner had been transferred to another school vide impugned transfer order dated 13-01-2021, he is no longer the senior most Graduate Teacher in Ngaikhong High School and hence, the question of the petitioner being the senior most Graduate Teacher in Ngaikhong High School does not arise at all and that there is no ground for interfering with the impugned order dated 13-01-2021 appointing the respondent No. 3 as Headmaster-in-charge of Ngaikhong High School as a stopgap arrangement till a regular Headmaster/Mistress is posted at the said school. The learned Government Advocate lastly submitted that the present writ petitions had been filed on the basis of misconceived facts and law and accordingly, the same are liable to be dismissed as being devoid of merit.

[6] I have heard the rival contentions of the learned counsel appearing for the parties at length and also carefully examined the relevant materials available on record. The admitted facts in the present cases is that, before issuance of the impugned orders dated 13-01-2021, the petitioner was posted at Ngaikhong High School by an order dated 28-12-2013 issued by the Director of Education (S), Government of Manipur. After serving for about seven years in the said Ngaikhong High School, the Director of Education (S) issued the impugned order dated 13-01-2021 thereby transferring and posting the petitioner to Ngaikhong Junior High School, which according to the learned Government Advocate is located in the vicinity of Ngaikhong High School. There is also no dispute with regard to the fact that the impugned transfer order had been issued by a competent authority and that the transfer order did not violate any statutory rules or executive instructions or orders issued by the Government.

The petitioner challenge the transfer order dated 13-01-2021 only on the ground of malafide by contending that he is the senior most Graduate Teacher in Ngaikhong High School and that he had been transferred out from Ngaikhong High School in order to appoint the respondent No. 3 as Headmaster-in-charge of Ngaikhong High School. On the other hand, the stand taken by the official respondents is that the impugned transfer order had been issued as a general transfer and posting of teachers serving in the Department of Education (S) and that the transfer order had been issued in the exigency of service and for administrative reasons and purely in public interest. It is also the stand of the respondents that the impugned transfer order did not violate any mandatory

statutory rules or executive instructions or orders issued by the Government and that the transfer order did not violate any of the petitioner's legal rights.

[7] In the case of "Rajendra Singh & ors. Vs. State of Uttar Pradesh & ors." reported in (2009)15 SCC 178, the Hon'ble Apex Court held as under:-

"8. A Government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires (see State of U.P. V. Gobardhan Lal, SCC p. 406, para 7)."

"9. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fide. In Shilpi Bose v. State of Bihar this Court held: (SCC p. 661, para 4)

"4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferrable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

"10. In N.K. Singh V. Union of India this Court reiterated that: (SCC p. 103, para 6)

"6. ... the scope of judicial review in matters of transfer of a government servant to an equivalent post without any adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides and violation of any specific provision...."

[8] Keeping in view the above well settled principle of law laid down by the Hon'ble Apex Court and also keeping in view the undisputed facts and circumstances of the present case, this Court is to examine whether the petitioner had been able to make out any case for interfering with the impugned transfer order. As stated hereinabove, the petitioner assailed his transfer order

only on ground of malafide action. It is a well settled principle of law that the onus of proving malafide action lies to the person who makes such allegation and that any allegation of malafide action needs to be specifically pleaded and proved by placing or producing sufficient credible and reliable evidence. In the present case except for the bald statement made by the petitioner that he is the senior most Graduate Teacher in Ngaikhong High School and that he had been transferred out from the said school to appoint the respondent No. 3 as Headmaster-in-charge, there is no other material available on record to substantiate the allegation that the authorities issued the transfer order with malafide intent. Accordingly, this Court is not inclined to interfere with the impugned transfer order only on the basis of the allegation raised by the petitioner that the said transfer order had been issued by the authorities with malafide intent. Consequently, this Court is also not inclined to entertain the plea made by the petitioner that the impugned order dated 13-01-2021, appointing the respondent No. 3 as Headmaster-in-charge of Ngaikhong High School as a stopgap arrangement till a regular Headmaster/ Mistress is posted at the school, is liable to be quashed and set aside for the reason that the petitioner is deemed to be no longer a teacher serving in Ngaikhong High School after issuance of the transfer and posting order dated 13-01-2021. In the result, the writ petitions fails and the same are accordingly dismissed as being devoid of merit. Earlier interim order stands vacated. In view of the facts and circumstances of the present case, there will be no order as to cost.