
(2004) 08 GAU CK 0034
In the Gauhati High Court
Case No : WP (C) No. 4635 of 2004

Nazma Khatun Barbhuiya

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 13-08-2004

Acts Referred:

Citation : (2005) 3 GLR 199

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : N. Saikia, A. Borah and S. Sarmah, for the Appellant; J. Singh and R. Chakraborty, for the Respondent

Final Decision : Allowed

Judgement

B.K. Sharma, J.—By this writ petition, the petitioner has assailed the legality and validity of the Annexure-5 order dated 23.6.2004 issued by the Director of Health Services (FW) Assam transferring the petitioner from Sonai PHC under the control of the Joint Director of Health Services, Cachar and posting and placing her in the same capacity at Dalu Sub-centre under Borkhola PHC under the same establishment against an existing vacancy. As per the said order, an earlier order of transfer issued in respect of the respondent No. 3 would remain in force.

2. Shortly stated the facts leading to filing of the instant writ petition are that, by an order dated 30.8.2003, the petitioner was transferred and posted at Sonai PHC against a retirement vacancy to be occurred on 30.9.2003 directing her to join the new place of posting on 1.10.2003. The petitioner joined at Sonai PHC on 1.10.2003. After such joining of the petitioner, she could come to know that the respondent No. 3 was also transferred to the same place by another order dated 22.9.2003. However, the petitioner joined the new place of posting before the respondent No. 3 could join there. Certain allegations have been made against the respondent No. 3 to the effect that she had been working at Salchapara PHC in the district of Cachar and by order dated 22.8.2003 and although she was transferred and posted at Bailicherra Sub-centre under the Sub-

Divisional Medical & Health Officer, Lala in the District of Hailakandi, she remained absent from duty without joining the new place of posting and could manage the order dated 22.9.2003 posting her at Sonai PHC to which place the petitioner was already transferred by order dated 30.8.2003.

3. When the matter rested thus, the Deputy Secretary to the Government of Assam in the Health & Family Welfare (A) Department, by his WT message dated 22.4.2004 issued to the Joint Director of Health Services, Cachar, conveyed the decision to cancel the earlier WT message dated 30.1.2004 by which the transfer order in respect of respondent No. 3 was directed to be carried out. By the said WT message dated 22.4.2004, it was intimated, that the case of the respondent No. 3 would be considered by the Joint Director of Health Services, against a suitable vacant post.

4. Being aggrieved by the aforesaid WT message dated 22.4.2004, the respondent No. 3 approached this Court by filing a writ petition being WP(C) No. 1578/2004. The writ petition was disposed of by hearing both the parties by order dated 28.5.2004. The operative part of the order is quoted below :

"Without entering into the merit of the writ petitions, we dispose of this writ petition with the directions to the Director of Health Services (Family Welfare) Assam to examine the entire matter and pass fresh order as regards the place of posting of the two petitioners Smt. Nurjahan Begum Choudhury and Smt. Nazma Khanam Barbhuiya and we also direct the Joint Director Health Services, Cachar to act accordingly. The two petitioners are also given the liberty to file their individual representations before the Director of Health Service (Family Welfare) Assam. The representations will be filed within a period of 15 days from today and thereafter the entire matter shall be disposed of within a further period of four weeks.

The status quo as on today shall be maintained till the matter is finally disposed of by the Director of Health Services (Family Welfare) Assam."

5. The impugned order dated 23.6.2004 has been issued pursuant to the aforesaid order dated 28.5.2004. I have heard Ms. N. Saikia, learned counsel for the petitioner and Mr. J. Singh, learned senior counsel for the respondent No. 3. I have also heard Ms. R. Chakraborty, learned State Counsel appearing for the official respondents. Ms. N. Saikia, learned counsel for the petitioner submitted, that the impugned order has been issued only to favour the respondent No. 3 and not in any public interest. On the other hand Mr. J. Singh, learned senior counsel appearing for the respondent No. 3 supported the impugned order. He submitted that the matter having been remanded back by this Court as per the order passed in the earlier writ proceeding, the petitioner is not entitled to bring those matters already adjudicated upon in the earlier writ proceeding and that the competent authority passed the impugned order taking into account all the relevant factors. Ms. R. Chakraborty, learned State counsel producing the records made submissions supporting the action of the official respondents. She

submitted that the impugned order being in tune with the order passed by this Court, no interference is called for to the same.

6. By the earlier order dated 28.5.2004 passed by this Court, the matter was remanded back to the Director of Health Services providing liberty to both the parties to file their individual representations and for disposal of the entire matter by the said Director. It is pursuant to the said direction of this Court, the impugned order dated 24.6.2004 has been passed, without, however, assigning any reason. The matter was remanded back not for an empty formality but for a meaningful exercise towards a just and proper decision so as to resolve the dispute between the respondent No. 3 and the writ petition. The Director of Health Services simply by referring to the aforesaid order of this Court and the representations of the parties passed the impugned order providing transfer of the petitioner and maintaining the posting of the respondent No. 3 to Sonai PHC.

7. I have gone through the records as produced by the learned State counsel to ascertain the reasons if any towards passing the impugned order. Both the parties submitted their individual representations urging various grounds for their posting to Sonai PHC. In the records, there is no whisper of consideration of the representations in any manner. Except the draft copy of the impugned transfer order mentioning consideration of the representations, the records do not contain any reason. The Director of Health Services did not deal with the various grounds and contentions raised on behalf of the parties in their representations.

8. Assigning of reasons is one of the facets of the principles of natural justice. In the earlier writ proceedings, this Court after noticing the situation created the official respondents by their own conduct by way of issuing transfer orders in favour of both the parties transferring them to same place of posting directed the Director of Health Services to resolve the issue taking into account the representations to be submitted by the parties. The said Director except mentioning the said order of this Court and the representations, did not deal with the matter as was expected of him and passed the impugned order mechanically.

9. There is no gainsaying that the matter was remanded back to the competent authority by this Court for a proper and judicious decision in the matter and it was in that view of the matter, both the parties were provided with the liberty to submit their individual representations and the said authority was directed to consider and dispose of the same. However, the said representations have not been disposed of and instead simply by referring to them the impugned order of transfer has been issued without assigning any reason for the same.

10. The petitioner was transferred to Sonai PHC by order dated 30.8.2003 and she joined at Sonai on 1.10.2003. After issuance of such an order of transfer and without cancelling the same, the respondent No. 3 was favoured with the order of transfer dated 22.9.2003 posting her at the same place i.e. Sonai PHC. At one stage the Joint Director of Health Services, Cachar by his WT message dated

19.1.2004 highlighted as to how the respondent No. 3 refused to join at Hailakandi pursuant to her transfer there. Once again by WT message dated 24.2.2004 issued by the Deputy Secretary to the Government of Assam, Health & Family Welfare (A) Department, the Joint Director of Health Services, Cachar was intimated that the case of the respondent No. 3 would be considered for her posting against a suitable vacant post. Amidst such happenings the earlier writ proceeding was initiated in which this Court noticing the anomalous situation created by the official respondents themselves, provided them with the opportunity to resolve the issue upon consideration of the representations to be submitted by the respondent No. 3 and the petitioner. However, the Director of Health Services without attending to the relevant factors or for that matter any factor, simply by referring to the order of this Court and the representations submitted by the parties passed by impugned order. In my considered opinion, on the face of the impugned order, there is no compliance of the purpose behind remanding back the matter to him in its true import and purport.

11. The disposal of the matter as directed by this Court cannot be in a mechanical manner as has been done by the Director of Health Services, Assam. It has to be done according to Rules of reasons and justice and not according to private opinion. On the face of it the impugned order is arbitrary, mechanical, vague and fanciful. It is not legal and regular in absence of assigning any reason either in the impugned order or even in the records. The order has been passed adopting a mechanical approach without dealing with the contentions raised in both the representations. The entire exercise carried out by the Director of Health Services was an empty formality without understanding the purport and import of the aforesaid order of this Court. The Director of Health Services adopted a casual approach in dealing with the earlier order of this Court. The impugned order reflects a casual aberration and failure in exercise of power as was expected of him. Justice should not only be done but should manifestly be seen to be done.

12. For the foregoing reasons and discussions, I am constrained to set aside and quash and the impugned order dated 23.6.2004 (Annexure-5). The order has not been set aside on merit but has been set aside being in violation of the principles of natural justice and being not in conformity with the aforesaid order of this Court. There is no final decision of the matter and the matter stands once again remanded back to the Director of Health Services (FW), Assam for a fresh decision by a speaking order consistently with the observations made above. He will decide the matter taking into account all relevant factors and the representations submitted by parties, which are available on records. This shall be done within a period of two weeks from today. Till the fresh decision is arrived, at status quo as on today shall be maintained.

13. Writ petition stands allowed, subject, however, to the aforesaid directions. There shall be no order as cost.