
(1993) 12 GAU CK 0011
In the Gauhati High Court
Case No : Civil Rule No. 1947 of 1993

Nupur Sarma

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 22-12-1993

Acts Referred:

Assam Public Service (Ad-hoc) Appointment Rules, 1986 — Rule 3, 3(1)
Assam Public Service Commission (Limitation of Functions) Rules, 1951 — Rule 3
Constitution of India, 1950 — Article 226

Citation : (1994) 1 GLR 303

Hon'ble Judges : D.N. Baruah, J

Bench : Single Bench

Advocate : N.M. Lahiri, N. Choudhury and H.S. Thangkhiew, for the Appellant;
A.M. Majumdar, S.S. Dey and M. Nath, Govt. Advs. for Assam, for the Respondent

Final Decision : Allowed

Judgement

D.N. Baruah, J.—The Petitioner in this writ petition under Article 226 of the Constitution prays for issuance of a Mandamus or any other appropriate writ or directions. He also challenges Annexure 4 Notification No. B(2)H. 793/92/Pt-I/17-A dated 15.7.93 issued by the Deputy Secretary to the Government of Assam, Education Department. The facts of the case may be briefly slated as follows:

Petitioner is a holder of Master Degree in Botany. On 29.10.79 he was appointed subject teacher in Botany in Koliabor Higher Secondary School. He served in the said school for two years and thereafter, he was transferred to Puranigram Higher Secondary School. Again on 30.10.86, he was transferred to Doboka Higher Secondary School where he served about three years. Thereafter he was appointed Senior Lecturer in D.I.E.T. at Samaguri.

? 4th Respondent issued advertisement on 25.11.89 inviting applications for filling up some posts of Inspector of Schools, Deputy Director and District Elementary Education Officer in the Assam Education Service Class I on ad-hoc basis under Rule 3(1) of the Assam Public Service Commission (Adhoc)

Appointment rules, 1986. Petitioner being qualified and eligible for the said posts submitted application for the same before the 4th Respondent. Thereafter, he was asked to appear before an interview Board on 5.6.90. The Board after taking interview found the Petitioner suitable for appointment and accordingly selected him by Annexure-I Notification dated 4th August, 1990. This Notification was issued in continuation of the Education Department's Notification No. EPG. 291/90/38 dated 5.7.90. After appointment the Petitioner was asked to undergo training. He accordingly underwent training. On completion of the aforesaid training, Petitioner was released and by the aforesaid Annexure-1 Notification he was appointed Inspector of Schools against a permanent vacancy and posted at Barpeta where he joined on 8.9.90. However, by a subsequent Annexure 2 Notification dated 11th March, 1992 the appointment made under Rule 3(1) of the Assam Public Service Commission (Adhoc) Appointment Rules, 1986 was converted to Rule 3(f) of the Assam Public Service Commission (Limitation of Functions) Regulation, 1951 until appointment for 4 (four) months and this was extended from time to time.

3. On 24.4.92 the Petitioner was again transferred and posted to Silchar, Cachar District Circle and accordingly on transfer he joined at Silchar on 14.5.92. Since then he had been continuing in his service. Meanwhile, the Petitioner's wife Smt. Minati Sarma was also posted and transferred to Udharbond as a Lecturer on 1.8.92. After such transfer the Petitioner's children were admitted in a school at Silchar and they had been studying in the said school. Meanwhile, the 3rd Respondent by Annexure 4 Notification dated 15th July, 1993 transferred the Petitioner and posted him as District Elementary Education Officer, Bongaigaon vide Anil Dutta, Inspect for of Schools and the 5th Respondent was allowed to hold charge of the Inspector of Schools, C.D.C. Silchar in his place.

4. According to the Petitioner the transfer was made when all transfers and postings were banned by the Government of Assam by Annexure 5 Notification dated 25th May, 1993 By Annexure 6 Notification dated 10th December, 1984 Government adopted a policy that transfer should on normal occasions, be effected in such a manner that the academic session of the children of the transferred employee is not wasted. By Annexure 7 Office Memorandum dated 25th February, 1991 all Administrative Departments were asked to direct Heads of Departments to ensure that Government instructions with regard to the transfer of officers were strictly followed and report the names of officers both gazetted and non gazetted who were continuing for more than three years in the same place of posting to the Senior Advisor to the Governor of Assam through the Departmental Commissioner. Annexure-5 Notification specifically mentioned that on careful consideration the Government decided that there would be a complete ban on transfer and posting of officers and employees of all categories of all departments mentioned in the said Notification. However, it was also specifically mentioned that in case of emergency the matter might be referred to the Chief Minister with a note justifying the necessity of any deviation from this order, From Annexure-5 it is evident that transfer of officers of all categories mentioned

in the said Notification was banned for a period from 1.6.93 to 31.3.94. The transfer can however be made only with the prior approval of the Chief Minister in case of emergent situation.

5. According to the Petitioner his transfer was neither necessary nor in case of a real emergency. The transfer order was also not passed in the public interest. He further submitted that the transfer was neither considered by the Chief Minister nor any approval was given at the time when the order was passed. Therefore, 1st to 4th Respondents acted illegally and arbitrarily by issuing Annexure 5 Notification dated 25th May, 1993. According to the Petitioner, in view of the above and the specific provisions contained in Annexure 5, actions of the Respondents are arbitrary, illegal and contrary to the guidelines given in the said Annexure and therefore the impugned transfer order cannot be given effect to.

6. I heard both sides. Mr. Lahiri, learned Counsel appearing on behalf of the Petitioner strenuously argued that in view of the Annexure 5 Notification without there being any emergent situation for transfer and without the prior approval of the Chief Minister, the impugned order of transfer could be passed. According to Mr. Lahiri this order was passed just to accommodate Respondent No. 5 and it was not in the interest of Public Service, He also asserted that no prior approval was obtained from the Chief Minister in passing the impugned transfer order. The learned Government Advocate appearing on behalf of 1st to 4th Respondents tried to support the action of the Government. Mr. A.M. Mazumdar, learned Counsel appearing on behalf of the 5th Respondent also supported the impugned order of transfer. According to him the Chief Minister's approval was obtained. The learned Government Advocate has placed the connected case records before me.

7. On the rival contentions of the parties, it is to be seen whether the impugned order Annexure 4 Notification transferring the Petitioner is sustainable in law. The admitted fact is that the Government totally banned the transfer for the period from 1.6.93 to 31.3.94 by Annexure 5 Notification and this transfer order, Annexure 4, was passed on 15th July, 1993. Therefore, the order was passed when the ban imposed for transfer by Annexure 5 was still in force. Therefore, the only point to be seen is whether the transfer order was passed in a real emergency as mentioned in Annexure 5. Annexure 4 Notification is absolutely silent regarding the emergent situation for which we Petitioner was required to be transferred during the period of ban and in the midst of academic session of the children of the Petitioner.

8. I have gone through the records of the case placed before me. At page 27 there is a note given by the Commissioner, Education to the Joint Secretary to the Chief Minister. In the note the Commissioner informed to the Joint Secretary that a writ petition was filed before this Court alleging "the Honourable Chief Minister has (sic) considered the matter nor has approved of transfer in the mid session." He further mentioned that the Petitioner had stated in the write petition that the 1st to 4th Respondents had acted arbitrarily in issuing the impugned

order dated 15.7.93 without following informed to the joint Secretary to Chief Minister that this Court had to be informed as to the whether the transfer of Nupur Sarma and placing Sri Jalaluddin Mazumdar as in-charge Inspector of Schools, Silchar had the approval of the Chief Minister. In the said note there is endorsement as follows:

"Approved" Signature illegible Date 25.8.93.

Even assuming this approval was given by the Chief Minister, but the note does not indicate that the transfer of the Petitioner was for emergent situation. Besides, this approval was given on 25.8.93 long after filing of the writ petition.

9. Respondent Nos. 1 to 4 filed an affidavit-in-opposition. In paragraph 3 of the affidavit the said Respondents stated that the "Petitioner was holding a transferable post and the transfer order dated 15.7.93 was made in the interest of public service and in administrative exigencies. In a transferable post an order of transfer is a normal consequence and hence the writ petition is liable to be dismissed. Again in paragraph 4 of the affidavit it is mentioned that "the Hon^{ble} Chief Minister had considered the matter and the transfer order had his approval." In the affidavit-in-opposition also nowhere it is mentioned that the transfer order was passed during the period of ban in an emergent situation. The only contention of the Respondents 1 to 4 was that the Petitioner was holding a transferable post and he cannot complain. This is not the answer to the point raised by the Petitioner. As per the Circular the transfer was banned and only in an emergent situation order of transfer could be effected. I do not find anywhere that the transfer order was effected because of emergent situation with the prior approval of the Chief Minister.

10. In view of the above, I find sufficient force in the submissions of the learned Counsel for the Petitioner and accordingly I allow the petition and set aside the impugned transfer order dated 15.7.93 issued under Notification No. B(2)H. 793/92/Pt-I/17-A. In the facts and circumstances of the case, I make no order as to costs.