
(2009) 03 GAU CK 0054
In the Gauhati High Court
Case No : Writ Petition (C) No. 60 (AP) of 2009

Obuk Mize

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 19-03-2009

Acts Referred:

Citation : (2009) 4 GLT 820

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Advocate : T. Siram, T. Jamoh, A. Mize, T. Taki and T. Tapak, for the Appellant;
G. Deka and I. Basar, for the Respondent

Judgement

P.K. Musahary, J.—Heard Mr. T. Jamoh, learned Counsel for the Petitioner, Ms. G. Deka, learned Addl. Senior Govt. Advocate, for official Respondents and Mr. R. Saikia, learned Counsel appearing for Respondent No. 2.

2. The Petitioner challenges the order dated 28.01.2009 (Annexure-V to the writ-petition) whereby the earlier transfer and posting issued vide Order No. FISH/E(TP)458/2004(Pt) dated 19.11.2008 has been cancelled and the present Petitioner has been again posted at the earlier place of posting at Yingkiong and directed to be released from Bomdila vice Respondent No. 2 retained at Bomdila.

3. The pleaded case of the Petitioner is that by an order dated 19.11.2008, he was transferred from Yingkiong, Upper Siang District, to Bomdila, West Kameng District, vice Sri Kenbom Chisi, Respondent No. 2. The Petitioner was released from Yingkiong, Upper Siang District, by the Deputy Commissioner, Upper Siang District, on 02.12.2008 and he joined at Bomdila on 05.12.2008 in pursuance of the aforesaid transfer order dated 19.11.2008. Upon his joining at Bomdila, the Petitioner found that the Respondent No. 2 was not willing to handover the charges to him and as such, he took over the charges unilaterally on 07.01.2009 vide Certificate of Transfer of Charges (Annexure-III to the writ-petition) and accordingly, he has been working as District Fisheries Development Officer

(D.F.D.O.) at Bomdila. Subsequent to this, the Respondent No. 2 filed a writ-petition being WP (C) 480(AP)2008 challenging the transfer order dated 19.11.2008 on 12.12.2008. This Court, by order dated 19.12.2008, issued notice of motion providing that the prayer for interim order shall be considered on the returnable date and the Respondent authorities in the meantime, may consider and dispose of the representation, if any, filed by the Petitioner (Respondent No. 2 herein). In compliance to the above order, the Respondent No. 1 considered the representation of Sri Kenbom Chisi and passed the impugned order dated 28.01.2009 retaining the Respondent No. 2 at Bomdila and releasing the present Petitioner therefrom with direction to report at Yingkiong.

4. Mr. Jamoh, learned Counsel for the Petitioner submits that the Petitioner has served for more than 4 years at Yingkiong and he was due for transfer in normal course therefrom and he was therefore, transferred to Bomdila. The Respondent No. 2 has also completed a period of 2 years at Bomdila and he is also due for transfer as per the Govt. Order No. PERS-126/2004 dated 19.12.2008. There is no valid ground for retaining the Respondent No. 2 at Bomdila by issuing the impugned order dated 28.01.2009. The Respondent authorities, on extraneous considerations, at the behest of some Ministers, and without considering the public interest, retained the Respondent No. 2 at Bomdila which is liable to be interfered with and quashed by this Court. A Division Bench of this Court held that transfer on extraneous consideration not germane to exigency of public service and at the behest of a Minister is liable to be struck-down. In this regard, he refers to *Pranabjyoti Deka (Dr.) v. State of Assam and Ors.* reported in 1998 (2) GLT 378.

It is further submitted by Mr. Jamoh, learned Counsel, that cancellation or supersession of transfer order passed in public interest by subsequent order without assigning any reason is unsustainable in law. In support of this submission, he relies on *Zakir Hussain v. State of Assam and Ors.* as reported in 2001 (3) GLT 67.

5. Mr. R. Saikia, learned Counsel appearing for Respondent No. 2, on the other hand, submits that the Respondent No. 2 was earlier posted at Khonsa as DFDO from 28.09.2006 and he was transferred from Khonsa by order dated 05.12.2006 to Bomdila within a period of 4 months. Thereafter, by order dated 19.11.2008, he was again transferred to Yingkiong, Upper Siang District. The Respondent No. 2 made a representation before the Commissioner (Fisheries), Government of Arunachal Pradesh, Itanagar, on 28.11.2008 requesting him to retain at Bomdila on the ground of examination of his children to be completed in the mid-April 2009 and accordingly, after considering the said representation, the impugned order dated 28.01.2009, was passed retaining him at Bomdila.

6. In support of the above submissions, Mr. Saikia, learned Counsel for Respondent No. 2, cites the cases of (i) *Smt. P. Sekhose v. State of Nagaland* as reported in 1995(2) GLT 101 (ii). *Rajendra Roy Vs. Union of India (UOI) and Another*, (iii) *Union of India and Others Vs. S.L. Abbas*, (iv) *Mohd. Masood Ahmad*

Vs. State of U.P. and Others, and (v). State of U.P. and Others Vs. Gobardhan Lal,

7. As directed by this Court, Ms. G. Deka, learned Addl. Senior Government Advocate has produced the relevant records. I have perused the same carefully.

8. From the records, it is found that both the Petitioner and Respondent No. 2 have completed their normal tenure at their respective places of posting and the Petitioner Sri Obuk Mize has already joined at Bomdila. It is also revealed that the local MLA of Bomdila made a request for retention of Respondent No. 2 at Bomdila for another period of 2 years and the said request was approved by the State Chief Minister. Both the Petitioner and Respondent No. 2 have completed their normal tenure of posting at their respective places of posting and both of them are due for transfer or posting at other places. The Petitioner has already moved from Yingkiong and joined at Bomdila and he is working thereat.

9. I have also gone through the Government Order No. PERS-126/2004 dated 19.12.2008 which provides that the tenure of posting in all government posts should be 2 years with immediate effect. The prayer of the Respondent No. 2 for allowing him to continue for another 2 years at Bomdila is not supported by the aforesaid Government Order. However, it is for the Government to allow him to continue for a short period at Bomdila so that his children could complete their annual school examinations in the mid April 2009.

10. In view of the above, the impugned order dated 28.01.2009, cannot be said to have been issued in consonance with the Government policy expressed in the aforesaid order dated 19.12.2008 since it goes against the very policy of the Government and as such, the impugned order dated 28.01.2009 is liable to be set aside and quashed and the same is accordingly quashed and set aside. However, considering the fact that the Respondent No. 2 is having children who are going to appear in the annual school examinations in the mid-April 2009 and the process of Parliamentary Election has also commenced in the State, the Respondent No. 2 is hereby allowed to continue to serve at Bomdila till the end of April 2009. The Respondent authorities shall make necessary arrangement allowing the Respondent No. 2 to serve at Bomdila till the end of April 2009. Needless to say that the Respondent authority shall pass necessary order posting the Respondent No. 2 against any available vacancy after the end of April, 2009, without disturbing the Petitioner.

11. With the aforesaid observations and directions, this writ petition stands allowed and disposed of. There shall be no order as to costs.