
(1994) 02 GAU CK 0007
In the Gauhati High Court
Case No : Writ Appeal No. 217 of 1993

Surendra Nath Saikia

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 21-02-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Government of India Act, 1935 — Section 241(2)

Citation : (1994) 2 GLR 482

Hon'ble Judges : S.N. Phukan, J; A.K. Patnaik, J

Bench : Division Bench

Advocate : A.K. Bhattacharyaa and R.D. Lal, for the Appellant; D.P. Chaliha, G.A. for Assam and B. Banerjee, for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—This is an appeal against the judgment of the learned single Judge in Civil Rule No. 2366 of 1992 dismissing the writ petition under Article 226 of the Constitution of India, wherein the Appellant had challenged the order dated 24.9.92 of the Director of Elementary Education, Assam, (Respondent No. 2) transferring the Appellant from the post of U.D. Asstt. from District Elementary Education Officer's office to the office of the Principal, Normal Schools Nagaon

2. The brief facts for the purpose of deciding this appeal are that the Appellant was working as U.D. Asstt. in the office of the District Elementary Education Officer. Nagaon (Respondent No. 2 in Civil Rule No. 2366/92), while the Respondent No. 4 was working in the office of the Principal, Normal School, Nagaon under the Director of State Council of Education Research and Training, Assam, (Respondent No. 3). On the basis of a representation made by the Respondent No. 4, by impugned order dated 24.9.92, the Appellant was (sic) in the interest of public service from the office of the District Elementary Education Officer to the office of the Principal, Normal School, Nagaon and the Respondent

No. 4 was transferred from the office of the Principal, Normal School, Nagaon to the office of the District Elementary Education Officer, Nagaon by the Respondent No. 2. The said order dated 24.9.92 of the Respondent No. 2 is annexed to the Civil Rule as Annexure-I.

3. Thereafter on 11.10.92, the Minister of State, Veterinary and Minority Affairs, Assam, addressed a DO letter dated 11.10.92 to the Minister of Education stating therein that the Appellant was a very popular person amongst all sections of people particularly the teachers and the local people are very happy with the performance of the Appellant, and that his services are very essential and requested the Minister Education, Assam, to cancel the transfer order issued by the Respondent No. 2 in the interest of public as well as in the interest of teachers. A xerox copy of the said DO letter dated 11.10.92 of the Minister of State, Veterinary and Minority Affairs, Assam, is annexed to the Civil Rule as Annexure-2. It appears that on the said DO letter, the Minister of State Education addressed a note to the Respondent No. 2 to cancel the transfer order. On 27.10.92 the Minister of State Veterinary and Minority affairs, Assam again addressed a DO letter to the Minister, Education, Assam, requesting him to cancel the transfer order of the Appellant in the interest of public service. In the said DO letter dated 27.10.92 it was stated that the Minister, Education, Assam had passed an order dated, 13.12.90 to cancel the transfer order of the Appellant, but the Respondent No. 2 has not yet implemented the said order. A xerox copy of the said DO letter dated 27.10.92 has been annexed to this Civil Rule as Annexure-3. On a reading of the said xerox copy of the said DO letter dated 27.10.92 (Annexure-3) it appears that the Minister, Education, Assam, has made an endorsement thereon to the Respondent No. 2 requesting him to implement the order passed by the Minister Education. Despite the said endorsement of the Minister, Education, Assam, the Respondent No. 2 did not cancel the impugned order of transfer of the Appellant from the District Elementary Education Officer's office Nagaon to the office of the Principal, Normal School, Nagaon. Unable to get relief from the authorities, the Appellant filed Civil Rule No. 2366/92 for quashing the said order of transfer dated 24.9.92 of the Respondent No. 2 (Annexure-1. to the Civil Rule), But the said writ petition was dismissed by the learned single Judge by judgment dated 26.8.93. Aggrieved by the said judgment of the learned single Judge, the Appellant has filed this writ appeal.

4. Mr. A.K. Bhattacharjee, learned Counsel for the Appellant, submits that the only point that, was raised in the writ petition was that the Respondent No. 2 had no jurisdiction to pass orders for transfer of the Government servants working under him from his Directorate to another Directorate. Mr. Bhattacharjee, further states that since by a notification dated 3.4.91 all matters relating to Normal School had been withdrawn from the administrative control of the Respondent No. 2 and placed under the disposal of the Respondent No. 3, the Respondent No. 2 could not have passed the impugned order transferring the Appellant, to Normal School, Nagaon, which is under the administrative control of the

Respondent No. 3 and similarly, the Respondent No. 2 could not have transferred the Respondent No. 4 from Normal School, Nagaon to the office of the District Elementary Education Officer, Nagaon by the impugned order. While conceding the power of the State Government to transfer Government employees such as the Petitioner, Mr. Bhattacharjee submits that in case of an inter directorate transfer, the transfer order can be passed by the State Government but not by the Respondent No. 2. Mr. Bhattacharjee further submits that in the impugned judgment, the learned single Judge has not examined this point with regard to the jurisdiction of the Respondent No. 2 to effect an inter directorate transfer.

5. The power to transfer a Government servant from one post to another is vested in the State Government under the Fundamental Rules framed by the Government of Assam u/s 241(2)(b) of the Government of India Act, 1935. FR-15 of the said Fundamental Rules is quoted herein below:

F.R. 15. (a) The State Government may transfer a Government servant from one post to another provided that except-

- (1) on account of inefficiency or misbehaviour, or
- (2) on his written request,

a Government servant shall not be transferred, substantively to, or, except in a case covered by Rule 49, appointed to officiate in a post carrying less pay than the pay of the permanent post on which he holds a lien or would hold a lien had his lien not been suspended under Rule 14.

(b) Nothing contained in Clause (a) of this rule or in Clause (13) of Rule 9 shall operate to prevent the re-transfer of a Government servant to the post on which he would hold a lien had it not been suspended in accordance with the provisions of Clause (a) of Rule 14.

The aforesaid power of the State Government to transfer a Government servant from one post to another, however, can be delegated by the State Government to any of its officers under FR-6 of the said Fundamental Rules which is quoted herein below:

F.R. 6. The State Government may delegate any of its powers to any of its officers subject to any conditions which it may think fit to impose and to such extent as may be required for the convenient and efficient despatch of public business.

It appears from the Subsidiary Rules (SR-1) that the State Government, Assam, has delegated some of its powers under different Fundamental Rules to its officers as per details in Appendix-1 to the said Rules. A reading of the said Appendix-1 would show that the powers of the State Government to transfer a Government Servant from one post to another under FR-15 has not been delegated to any of its officers, Proviso to SR-1, however, makes it clear that nothing contained in Appendix-1 is to operate as a restriction on the powers

conferred upon such authority by any other rules framed under the Act.

6. In view of the aforesaid provisions in the Fundamental Rules and the Subsidiary Rules, we called upon Mr. D.P. Chaliha, GA, Assam, to produce before us any rule or order by which the State Government has delegated its powers to the Director of Elementary Education, Assam, (Respondent No. 2) to effect inter directorate transfer of the Government servants and in fact after the hearing was completed on 21.2.94 we also recorded the statement of Mr. Chaliha that the relevant Government file would be produced by 25.2.94. Although more than 2 months have passed thereafter, the learned Government Advocate, Assam, has not been able either to produce any order of the State Government delegating or any rule conferring the power to make inter (sic) transfers in favour of the Director of Elementary Education, Assam, nor the relevant Government file. Since no Rule or Order has been produced by the learned Government Advocate, Assam before us to show that the power of to State Government under Fundamental Rules to transit a Government servant from one post to another has been delegated to or vested in the Respondent No. 2 and in view of the controversy raised in this case with regard to the powers of the State Government vis-a-vis the Respondent No. 2 with regard to transfer of Government servants belonging to two different directorates, we have no option but to hold that the Respondent No. 2 had no jurisdiction to transfer the Petitioner from the office of the District Elementary Education Officer, Nagaon and the Respondent No. 4 from the office of the Principal, Normal School. Nagaon to the office of the District Elementary Education Officer, Nagaon.

7. While upholding the aforesaid order of transfer of the Respondent No. 2, the learned single Judge has taken into consideration the facts that there was a common gradation list for both the Directorates under the Respondent Nos. 2 and 3 and that the consent of Respondent No. 3 (the other Director) had been taken by the Respondent No. 2 while issuing the order of transfer, but in our opinion, a common gradation list of employees working under both the Directorates and the consent of the Respondent No. 3. would not vest jurisdiction on the Respondent No. 2 to make the transfers under the impugned order if under FR-15 the power to transfer a Government servant is vested in the State Government and there was no express delegation of power either by an order of the State Government or by any rule in favour of the Respondent No. 2 to make inter directorate transfers in accordance with FR-6 of the Fundamental Rules.

8. We also find from the impugned judgment of the learned single Judge that the learned single Judge relied upon a decision of the Supreme Court reported in *Rajendra Roy Vs. Union of India (UOI) and Another*, wherein it has been held that unless an order of transfer is passed malafide or in violation of the rules of service and guidelines for transfers without any proper justification the Court and the Tribunal should not interfere with the order of transfer. In the present case, since the transfer order has been passed by the Respondent No. 2 contrary to FR-15 of the Fundamental Rules vesting the power of transfer on the State

Government and no express order or rule has been brought to our notice whereunder the said power of the State Government under FR-15 has been delegated in favour of the Respondent No. 2 in respect of inter directorate transfers, this Court can interfere with the impugned order of transfer in accordance with the law laid down by the Apex Court in the said decision,

9. In the result, the impugned order of transfer (Annexure-1 to Civil Rule No. 2366/92) is quashed and the judgment of the learned single Judge dated 26.8.93 in Civil Rule No. 2366/92 is set aside. Appeal is allowed, but there shall be no order as to costs.