

GAHC010063522024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1731/2024

GOBINDA PAUL
(ACCOUNTANT, BARKHETRI EDU. BLOCK),
S/O- LATE HIMANGSHU PAUL,
VILL. AND P.O- NAHERBARI,
P.S- GHOGRAPAR, DIST- NALBARI, ASSAM, PIN-781349

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, ELEMENTARY EDUCATION DEPARTMENT, DISPUR,
GUWAHATI-06.

2:THE MISSION DIRECTOR

SAMAGRA SIKSHA ABHIJAN
ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER CUM DISTRICT
MISSION COORDINATOR
SSA

NALBARI
ASSAM
PIN-781335

4:THE DISTRICT COMMISSIONER

NALBARI
ASSAM

PIN-781335

5:THE ADDL. DISTRICT COMMISSIONER

(EDUCATION)
NALBARI
ASSAM
PIN-781335

6:HEMANTA BARMAN
BLOCK ACCOUNTANT
PUB-NALBARI EDUCATION BLOCK
UNDER THE BLOCK MISSION COORDINATOR
SSA
PUB-NALBARI
DIST- NALBARI
ASSAM
PIN-78133

Advocate for the Petitioner : MR. A MANNAF

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

10-05-2024

Heard Shri A. Mannaf, learned counsel for the petitioner. Also heard Shri B. Choudhury, learned Standing Counsel, SSA whereas the private respondent no. 6 is represented by Dr. P. K. Goswami, learned counsel.

2. The challenge in this petition is with regard to an order of transfer dated 16.03.2024 issued by the Addl. District Commissioner (Education) Nalbari by which the petitioner has been transferred as the Block Accountant from the Barkhetri Education Block, Nalbari to Pub-Nalbari Education Block vice the respondent no. 6.

3. Shri A. Mannaf, learned counsel for the petitioner has submitted that the aforesaid transfer is in violation of the existing norms and Office Memoranda holding the field. The learned counsel has referred to the joint application submitted by the petitioner and one Rafiqul Islam for mutual transfer. In the said application dated 04.03.2024, it has been stated that while the petitioner was serving as a Block Accountant in the Barkhetri Education Block and the said Rafiqul Islam was serving in the said capacity in the Borigog Banbhag Education Block, their services should be mutually transferred. However, instead of making the mutual transfer, vide the impugned order of transfer dated 16.03.2024, the petitioner has been transferred to the Pub-Nalbari Education Block.

4. The learned counsel submits that the petitioner has been serving at Barkhetri only for a period of 8 months 10 days and therefore there was no occasion for transferring him to the Pub-Nalbari Block.

5. The learned counsel has also cited that the private respondent was serving at Pub-Nalbari Block for similar period and therefore the transfer order has been passed prior to the completion of the minimum duration of 2 years.

6. The learned counsel has also submitted that though there is an order of *status quo* passed by this Court, he has not been allowed to continue at his initial place of posting at Barkhetri.

7. *Per contra*, Shri Choudhury, the learned Standing Counsel, SSA has submitted that transfer being an incidence of service and there being a request for transfer by the petitioner, the impugned order dated 16.03.2024 is not liable to be interfered with. It is also submitted that the petitioner cannot have a decisive say as regards to the place where he is to be posted as his services are

to be utilized in the post where it best serves the public interest.

8. Dr. P. K. Goswami, learned counsel for the private respondent no. 6 has submitted that in terms of the transfer order dated 16.03.2024 the respondent no. 6 had joined the new place of posting at Barkhetri Block on 19.03.2024 whereas the order of *status quo* has been passed on 27.03.2024 and therefore effectively there is no stay order as such.

9. The rival contentions have been duly considered.

10. An order of transfer is passed in exigency of service and such orders are not liable to be interfered with in a routine manner and only when a case of violation of the statutory norms holding the field or a case of *mala fide* exercise is made out, such orders may be the subject matter of interference.

11. In the instant case, there is no doubt that the petitioner along with one Rafiqul Islam had made a joint application on 04.03.2024 for their mutual transfer. As observed above, the petitioner is serving as a Block Accountant, SSA in the Barkhetri Education Block whereas the said Rafiqul Islam is working in the same capacity in the Borigog Banbhag Education Block. The document annexed to the petition at Annexure-5 would show that a verification exercise was undertaken on the aforesaid application for mutual transfer and reports were called for. As per the said report, it is apparent that the petitioner, before his present posting at Barkhetri was serving in the Borigog Banbhag Education Block for a period of more than 12 years. Similarly, the incumbent Rafiqul Islam was serving at Barkhetri for a similar duration of more than 12 years. It also appears that even before completion of 1 year at their respective places of posting, the petitioner and the incumbent Rafiqul Islam had made the joint

application for their transfer to the earlier places of postings where they had served for an inordinate long period of more than 12 years.

12. When the petitioner himself had opted for a transfer immediately even before completion of a year at his place of posting at Barkhetri, he cannot make any grievance on the said ground regarding his transfer by the impugned order to Pub-Nalbari. In fact the petitioner would be estopped from taking the said ground as on his own volition he wanted a transfer from Barkhetri to Borigog Banbhag where he had served for more than 12 years.

13. The order of transfer being the prerogative of the employer and such exercise not appearing to be *mala fide*, this Court is not inclined to interfere with the impugned order dated 16.03.2024. This Court has also noticed that transferring and posting of the petitioner back to Borigog Banbhag Education Block would not have been in the interest of public service inasmuch as the petitioner had served in Borigog Banbhag Education Block for an inordinate period of 12 years prior to his posting at Barkhetri in June, 2023.

14. In view of the aforesaid discussion, writ petition is dismissed.

15. The order of *status quo* is vacated.

JUDGE

Comparing Assistant