

GAHC010023702024



2024:GAU-AS:12339

IN THE GAUHATI HIGH COURT

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

WRIT PETITION (C) NO. 567 OF 2024

Dr. Atul Bora,

S/o Late H.C. Bora,

Resident of Principal's Residence,

Assam Engineering College, Jalukbari,

Guwahati-781016, Assam.

..... **Petitioner**

- Versus -

1. The State of Assam,

Represented by the Additional Chief Secretary,

Higher Education Department, Government of

Assam, Dispur, Guwahati-781006, Assam.

2. The Commissioner and Secretary,

Higher Education Department, Government of

Assam, Dispur, Guwahati-781006, Assam.

3. The Director of Technical Education, Assam,
Kahilipara, Guwahati-781019, Assam.

..... **Respondents**

For the petitioners:

Mr. K.P. Pathak, Advocate,

For the respondents:

Mr. K. Gogoi, SC, Higher Education Department.

B E F O R E

HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR

Dates of hearing : 28.05.2024

Date of Judgment : 06.12.2024.

J U D G M E N T A N D O R D E R

1. Heard Mr. K.P. Pathak, learned counsel for the petitioner as well as Mr. K. Gogoi, learned standing counsel, Higher Education Department, for all the respondents.

2. An incident took place in the wee hours of 29th May, 2023, where 7

(seven) students of Assam Engineering College, Jalukbari lost their life in a tragic road accident. At that relevant point of time, the petitioner was serving as the Principal of the said Assam Engineering College. On account of the accident, the Secretary to the Government of Assam, Higher Education Department issued an order on 30.05.2023 causing an enquiry to be conducted into the allegations that the authorities of the Assam Engineering College has not been exercising due administrative control to curb such activities and in maintaining discipline in the said institution. The scope of the enquiry also included the system of hostel administration in all Engineering Colleges and Polytechnic Institutions under the Higher Education (Technical) Department, Government of Assam and the Director of Technical Education, Assam was directed to conduct the enquiry and submit a report within 15 days. The Enquiry Committee, accordingly, submitted its report on 31.05.2023. Thereafter, the Additional Chief Secretary to the Government of Assam, Higher Education Department issued a Notification dated 01.06.2023 appointing one Dr. Kalyan Kalita, Professor & HoD, Department of Mechanical Engineering, Assam Engineering College as the In-charge Principal of Assam Engineering College until further orders. By the same notification, the petitioner was directed to proceed on leave immediately until further orders. In terms of the Notification dated 01.06.2023, the petitioner handed over charge on 02.06.2023 and proceeded on leave.

3. The Additional Chief Secretary to the Government of Assam, Higher Education Department issued another Notification dated 03.06.2023 constituting a High Level Committee with three members including a retired High Court Judge to look into the reasons for the accident which took the

life of 7 (seven) students of Assam Engineering College, Jalukbari on 29th May, 2023 and the lack of administrative supervision in the Assam Engineering College, Jalukbari. The said Notification dated 03.06.2023 was modified by another Notification dated 25th July, 2023 issued by the Secretary to the Government of Assam, Higher Education Department, by replacing the earlier retired High Court Judge by another retired Judge of the High Court. The High Level Committee submitted its report on 31.10.2023.

4. Thereafter, the petitioner was issued a Show Cause Notice on 21.12.2023 by the Secretary to the Government of Assam, Higher Education Department under Rule-9 of the Assam Services (Discipline and Appeal) Rules, 1964 (Rules of 1964 in short) read with Article 311 of the Constitution of India as to why any of the penalties prescribed under Rule-7 of the Rules of 1964 should not be inflicted upon the petitioner. The petitioner replied to the Show Cause Notice on 05.01.2024. Thereafter, the Secretary to the Government of Assam, Higher Education Department issued another Notification dated 29.01.2024 transferring the petitioner as Principal of Jorhat Institute of Science & Technology (JIST), Jorhat with effect from the date of taking over the charge.

5. The petitioner, being aggrieved with the Notification dated 01.06.2023, by which he was directed to proceed on leave and the Notification dated 29.01.2024, by which he was transferred and posted as Principal of JIST, Jorhat, is before this Court challenging the said two notifications.

6. Mr. K.P. Pathak, learned counsel for the petitioner, submits that after

the incident that took place in the early morning hours of 29th May, 2023, where 7 (seven) students of Assam Engineering College, Jalukbari lost their lives in a road accident, there was public hue and cry and under such circumstances, a Press Release was issued by the Chief Minister, Public Relation's Cell, Government of Assam on 01.06.2023 stating that the Hon'ble Chief Minister had directed the Education Department to constitute a High Level Enquiry to enquire into the circumstances leading to the accident and premature death of the students. The Press Release further stated that till the enquiry is completed and the report is examined by the Government, the petitioner and the Superintendent of the said Assam Engineering College would be asked to go on leave. Accordingly, on the same day, the impugned Notification dated 01.06.2023 was issued directing the petitioner to proceed on compulsory leave which is not known in service jurisprudence. The said notification was issued without any authority prescribed by law and therefore, the direction to the petitioner to proceed on compulsory leave should be set aside and quashed. It is also submitted that the Enquiry Committee, constituted by the Order dated 30.05.2023, had clearly stated in its report that the students involved in the accident had gone out without any permission/intimation to the hostel authorities, which is a gross violation of the rules and regulations for boarders of hostels of Assam Engineering College, Jalukbari. Further, the High Level Committee in its finding had come to the conclusion that the Scorpio vehicle was driven under the influence of alcohol and the accident had taken place due to rash and negligent driving on the part of the driver of the Scorpio vehicle. However, the High Level Committee also concluded that the petitioner had failed to take steps to implement the resolutions adopted in the Meeting

held on 24.08.2012 and that the petitioner had been lax in enforcing discipline in the college and had also failed to visit the accident site and homes of the victims.

7. It is submitted that thereafter a Show Cause Notice was issued to the petitioner on 21.12.2023, to which the petitioner replied on 05.01.2024. However, during the pendency of the disciplinary proceeding, the respondents issued the Notification dated 29.01.2024, by which the petitioner was transferred and posted as Principal of JIST, Jorhat. He submits that the transfer of the petitioner as Principal of JIST, Jorhat was not in public interest but is punitive in nature only to penalize the petitioner, particularly when the departmental proceeding against the petitioner was still inconclusive and in that view of the matter, the Notification dated 29.1.2024 should also be set aside and the respondents be directed to permit the petitioner to function as the Principal of Assam Engineering College, Jalukbari.

8. Per contra, Mr. K. Gogoi, learned standing counsel, Higher Education Department, submits that a Meeting was held on 24.08.2012 consisting of the high officials of the Higher Education Department as well as the representatives of the Assam Engineering College, Jalukbari, wherein several resolutions were adopted to improve the situation prevailing in the hostels and college administration of the Assam Engineering College under the leadership of the Principal. However, the petitioner, who was the then Principal of Assam Engineering College, Jalukbari, failed to take appropriate steps to implement the Resolutions at Point No. (g), (h), (i) & (j) adopted in the Meeting held on 24.08.2012, which poorly reflects on the leadership and

administration qualities on the part of the petitioner. It is also submitted that respondents, in the interest of administrative exigency, may direct the government servant to proceed on leave. Therefore, directing the petitioner to go on leave pending outcome of the High Level Enquiry was not ex-facie, arbitrary and illegal and was well within the prerogative of the respondents. It is also submitted that after the issuance of the Notification dated 29.01.2024 by which the petitioner was transferred and posted as Principal of JIST, Jorhat, the earlier Notification dated 01.06.2023 by which the petitioner was directed to proceed on leave automatically stands recalled inasmuch as the petitioner would not be able to function as Principal of JIST, Jorhat if he is still on leave. Learned standing counsel, Higher Education Department further submits that the petitioner had no grievance with the Notification dated 01.06.2023, by which he was asked to proceed on leave. However, it was only after the issuance of Notification dated 29.01.2024, by which the petitioner was transferred and posted as Principal of JIST, Jorhat that the petitioner had filed the present writ petition challenging both the notifications. He submits that the transfer of the petitioner was in administrative exigencies and there was no mala fide intention when the Notification dated 29.01.2024 was issued and therefore, the Notification dated 29.01.2024 may not be interfered with.

9. I have considered the submissions forwarded by the learned counsel for the parties. I have also considered the e-records submitted by the learned standing counsel, Higher Education Department.

10. The Notification, dated 01.06.2023 by which the petitioner was directed to proceed on leave, has been considered by this Court. The

respondents have not been able to convince this Court that under what provisions the petitioner was directed to proceed on leave. This Court is of the considered opinion that the application of leave by an employee of the State Government is voluntary in nature, provided such leave is available. There is no doubt that leave cannot be claimed as a matter of right when the exigencies of public service demands. However, it is not open to the Government/respondents to compel the petitioner to proceed on leave except at the request of the petitioner. The manner, in which the petitioner was directed to proceed on leave, does not find any credence before this Court particularly when the respondents have failed to show under what provisions of law the Notification dated 01.06.2023 has been issued. Accordingly, the Notification dated 01.06.2023 is set aside and quashed insofar as it concerns directing the petitioner to proceed on leave. The respondents are accordingly directed to make all necessary corrections in the Service Book of the petitioner with regard to the admissibility of leave of the petitioner.

11. This Court has considered the Report of the High Level Committee dated 31.10.2023. However, at this stage, this Court is not making any observation on the finding of the High Level Committee inasmuch as there is a disciplinary proceeding pending against the petitioner.

12. The next issue that is required to be considered by this Court is whether the Notification dated 29.01.2024, by which the petitioner is transferred and posted as Principal of JIST, Jorhat, is in public interest or punitive in nature as alleged by the petitioner. A perusal of the E-records submitted by the learned standing counsel, Higher Education Department

clearly indicates that the petitioner was transferred as Principal of JIST, Jorhat inasmuch as there were complaints against the In-charge Principal of JIST, Jorhat, namely Dr. Atanu Kumar Dutta and that the Director of Technical Education, Assam has constituted a Committee to enquire into the allegations against the said Dr. Atanu Kumar Dutta, In-charge Principal of JIST, Jorhat. The records further reveals that the respondents had followed all due procedures prior to the issuance of the Notification dated 29.01.2024.

13. In the present case, the petitioner has been transferred as Principal of JIST, Jorhat retaining him in the same cadre with the same pay as well as his seniority. Transfer of an employee is not only an incident inherent in terms of the appointment but also implicit as an essential conditions of service. Unless the said transfer order is shown to be an outcome of mala fide exercise of power or violative of any statutory provisions or the same has been passed by an authority not competent to do so, normally this Court cannot lightly interfere with such transfer order. As already stated hereinabove, the records clearly shows that as there were allegations against the then In-charge Principal of JIST, Jorhat, the respondents, after following all due procedures, had taken a decision to transfer the petitioner as Principal of JIST, Jorhat. The same in the considered opinion of this Court was done in public interest and the allegations of the petitioner that his transfer is punitive in nature is negated by the records produced before this Court.

14. In the case of ***Sri Pubi Lombi Vs. State of Arunachal Pradesh and others***, reported in ***2024 0 Supreme (SC) 225***, the Hon'ble Apex

Court has held as under:

“In view of the foregoing enunciation of law by judicial decisions of this Court, it is clear that in absence of (i) pleadings regarding mala fide, (ii) non-joining the person against whom allegations are made, (iii) violation of any statutory provision, (iv) the allegation of the transfer being detrimental to the employee who is holding a transferable post, judicial interference is not warranted. In the sequel of the said settled norms, the scope of judicial review is not permissible by the Courts in exercising of the jurisdiction under Article 226 of the Constitution of India.”

15. In view of the discussions made hereinabove, this Court does not see any reason to interfere with the Notification dated 29.01.2024, by which the petitioner has been transferred and posted as Principal of JIST, Jorhat and accordingly, the prayer of the petitioner is rejected.

16. The writ petition is, accordingly, partially allowed. No cost.

17. Return the e-records to the learned standing counsel, Higher Education Department.

JUDGE

Comparing Assistant