

IN THE GAUHATI HIGH COURT

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

ITANAGAR BENCH

ORAL
Judgment & Order

In

1. WRIT APPEAL NO.18 (AP) 2010
2. WRIT APPEAL NO.19 (AP) 2010

In WA No.18 (AP) 2010

Mr. Redam Jini
-Vs-
The State of A.P. & Ors.

And

In WA No.19 (AP) 2010

Mr. Redam Jini
-Vs-
The State of A.P. & Ors.

BEFORE

THE HON'BLE MR. JUSTICE I. A. ANSARI
THE HON'BLE MR. JUSTICE P.K. MUSAHARY

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<i>FR</i>	<i>NFR</i>

JUDGE

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IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,
TRIPURA, MIZORAM & ARUNACHAL PRADESH)
ITANAGAR BENCH.

1. **WRIT APPEAL NO.18 (AP) 2010**
2. **WRIT APPEAL NO.19 (AP) 2010**

In WA 18 (AP) 2010

Mr. Redam Jini,
Son of Mr. Hogre Jini,
Assistant Engineer, Aalo, Sub-Division-II,
PWD, District- West Siang,
PO & PS- Aalo,
Arunachal Pradesh.

.....Writ Appellant.

By Advocate:
Mr. K. Jini,

-Versus-

1. The State of Arunachal Pradesh
Represented by the Commissioner and
Secretary, to the Government of
Arunachal Pradesh, PWD, Itanagar,
Arunachal Pradesh.
2. The Chief Engineer (C/Z),
PWD, Government of Arunachal Pradesh,
Itanagar.
3. Mr. Dugjum Lona,
A.E, Aalo Circle, PWD Sub-Division-II,
PO & PS- Aalo, District- West Siang,
Arunachal Pradesh.

.....Respondents.

By Advocates:
Mr. R. H. Nabam, Sr. G.A.
Mr. P.K. Tiwari, Resp. No.3.

And

In WA 19 (AP) 2010

Mr. Redam Jini,
Son of Mr. Hogre Jini,
Assistant Engineer, Aalo, Sub-Division-II,
PWD, District- West Siang,
PO & PS- Aalo,
Arunachal Pradesh.

.....Writ Appellant.

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1. The State of Arunachal Pradesh
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Secretary, to the Government of
Arunachal Pradesh, PWD, Itanagar,
Arunachal Pradesh.
- 2, The Chief Engineer (C/Z),
PWD, Government of Arunachal Pradesh,
Itanagar.
3. Superintending Engineer, PWD, Aalo Circle,
District-West Siang, PO- Aalo,
Arunachal Pradesh.
4. The Under Secretary, PWD,
Government of Arunachal Pradesh,
Itanagar.
5. Executive Engineer, Aalo,
PWD Sub-Division-II, District- West Siang,
PO-Aalo, Arunachal Pradesh.
6. Mr. Dugjum Lona,
A.E, Aalo Circle, PWD Sub-Division-II,
PO & PS- Aalo, District- West Siang,
Arunachal Pradesh.

.....Respondents.

By Advocates:

Mr. R. H. Nabam, Sr. G.A.

Mr. P.K. Tiwari, Resp. No.6.

**BEFORE
THE HON'BLE MR. JUSTICE I.A. ANSARI
THE HON'BLE MR. JUSTICE P.K.MUSAHARY**

Date of hearing : 04-01-2011

Date of judgment and order : 04-01-2011

JUDGMENT & ORDER (ORAL)

(Ansari, J)

It is out of the common order, dated 09-09-2010, passed in
WP(C) 129(AP) 2010 and WP(C) 159 (AP) 2010, dismissing the two writ
petitions that the present writ appeals, namely, WA 18 (AP) 2010 and

WA 19 (AP) 2010 respectively, have arisen and we dispose of the same by this common judgment and order.

2. We have heard Mr. K. Jini, learned counsel for the writ appellant, and Mr. R.H. Nabam, learned Senior Govt. Advocate, appearing on behalf of the State respondents. We have also heard Mr. P.K. Tiwari, learned counsel for private respondent, namely, respondent No.3 in WP(C) 129 (AP) 2010 and respondent No.4 in WP(C) 159 (AP) 2010.

3. Briefly stated, the material facts and various stages, which have led to the filing of the present appeals, are as under:-

The appellant herein, in the year 2007, came to be posted, at Aalo, as Assistant Engineer Aalo Sub-Division-I, and he remained in the said post until the time an order was made, on 17-08-2009, transferring him to Aalo Sub-Division-II as Assistant Engineer. The order, dated 17-08-2009, could not, however, take effect due to enforcement of code and conduct following the announcement of the Assembly Elections in the State of Arunachal Pradesh. On completion of the election process, the appellant, on 21-12-2009, joined Aalo Sub-Division-II. Having so joined, when the appellant was serving as Assistant Engineer at Aalo Sub-Division-II, an order was issued, on 12-04-2010, by the Commissioner (PWD), Government of Arunachal Pradesh, whereby the appellant was transferred to Daporijo PWD Division, Upper Subansiri District, as Assistant Surveyor of Works (in short, "ASW"). Feeling aggrieved by the order, dated 12-04-2010, the appellant filed a writ petition, under Article 226 of the Constitution of India, challenging his transfer on several grounds. Following the writ petition so filed, another order was made by the

Principal Secretary (PWD), Government of Arunachal Pradesh, on 04-05-2010, whereby the private respondent, namely, Shri Dugjum Lona, who was serving, at Aalo Circle, came to be posted, at Aalo Sub-Division-II, as Assistant Engineer, which was the post occupied by the appellant at the time, when the impugned order, dated 12-04-2010, was made transferring him to Daporijo PWD Division. It is the order, dated 04-05-2010, which came to be challenged by the appellant by filing a second writ petition, which gave rise to WP(C) 159 (AP) 2010. Both these writ petitions, as indicated above, have been dismissed by a common order, dated 09-09-2010, and hence, these two writ appeals.

4. Shorn off immaterial details, the principal grievances of the appellant are as under:-


- (i) Before issuance of the guidelines by the Government on 19-12-2008, the normal tenure of posting of a Govt. employee was three years and by the guidelines, issued on 19-12-2008, the normal tenure of posting of a Govt. employee has been reduced to two years. Though the order, transferring the writ petitioner from Aalo Sub-Division-I to Aalo Sub-Division-II, was made on 17-08-2009, the writ petitioner (i.e. appellant) could join Aalo Sub-Division-II only on 21-12-2009; but within a period of barely 4(four) months, the writ petitioner-appellant was transferred from Aalo Sub-Division-II to Daporijo PWD Division in Upper Subansiri District. Thus, the writ petitioner-appellant had worked barely for 4(four) months, when his tenure of posting, at Aalo Sub-Division-II, was brought to an end. Because of the fact that the writ petitioner has been transferred in about four months

from the date of his joining the post of Assistant Engineer at Aalo Sub-Division-II, his transfer order is contrary to the Government's guidelines governing the transfer and posting of a Govt. employee.

(ii) The writ petitioner-appellant's transfer was at the behest of one of the members of the Legislative Assembly of West Siang constituency, because the MLA wanted to place a person loyal to the MLA in the post of the writ petitioner-appellant. Thus, the appellant has been transferred, as indicated hereinbefore, in collusion with a political leader.

(iii) The appellant's wife is a District Veterinary Officer, she is sick, she has been subjected to surgery, she needs assistance of the appellant and on the ground of her ill-health, she has been transferred from Daporijo to Aalo and that she has remained under medical treatment and would continue to remain so, in future, as well.

5. While considering the grounds on which the order of transfer, dated 12-04-2009, stood challenged by the appellant, it needs to be noted that the guidelines, governing the normal tenure of transfer and posting of a Govt. employee, merely form broad policy decision of the Government and these guidelines are not statutory rules. These guidelines do not, therefore, vest in any Govt. employee any enforceable right, far less indefeasible right. Though the guidelines are, thus, not enforceable as rights, the guidelines cannot be violated by the Government or ignored by the Government with impunity. What, however, needs to be borne in mind is that there is no absolute bar in transferring a person even if he has not completed the normal tenure of posting of two years. So long as the transfer and



posting remain in public interest and such transfer is not actuated by *mala fide* or does not suffer from arbitrariness, the transfer order cannot be interfered with in exercise of High Court's extra-ordinary jurisdiction under Article 226 of the Constitution.

6. Similarly, though the guidelines, issued by the Government, require that both the spouses, if Govt. employees, should be posted at the same place, the fact remains that these guidelines are not statutory rules and do not confer any enforceable right in any of the Government employees enabling him to insist that both the spouses be posted at one and the same place. Transfer and posting involve complicated decision making process. A variety of reasons may require transfer. It is the employer, who is, ordinarily, the best judge of the situation and when the employer's decision is not arbitrary or actuated by *mala fide* or the employer does not take a decision to transfer an employee by deliberately ignoring the relevant factors, which are remediable by the employer, the omission to follow the guidelines would not *ipso facto* render the transfer order bad in law.

7. In the backdrop of the above position of law, when the facts of the present case are closely examined, we notice that the appellant came to be posted, at Aalo, way back in the year 2007 and even before the order, dated 17-08-2009, posting the appellant as Assistant Engineer, in Aalo Sub-Division-II, was passed, he had almost completed the normal tenure of two years. Thus, when the order, dated 17-08-2009, was made transferring the appellant as Assistant Engineer from Aalo Sub-Division-I to Aalo Sub-Division-II, which the appellant seeks to be maintained, the appellant had already completed two years of his normal tenure of posting.

8. Coupled with the above, what had really been done by the order, dated 17-08-2009, which the appellant seeks to get enforced, was that the appellant was transferred from Aalo Sub-Division-I to Aalo Sub-Division-II. In this regard, the State respondents' counter affidavit is very relevant inasmuch as it clearly discloses that both the divisions are situated in one and the same place. Thus, the transfer order, dated 17-08-2009, did not bring any change of place and was merely ornamental. Consequently, appellant's transfer by the impugned order, dated 12-04-2010, is on completion of his normal tenure of two years, which the guidelines issued, in this regard, on 19-12-2008, by the Government require. The allegation, therefore, that the appellant's transfer by the impugned order, dated 12-04-2010, is in violation of the Government's policy decision is not correct and tenable.

9. Turning to the appellant's grievance that his transfer is at the behest of one MLA, suffice it to point out that when the appellant has already completed almost 4 years of his posting at Aalo, the mere fact that his transfer has taken place at the behest of an MLA can have no bearing in the matter in the absence of any other materials on record. This apart, as rightly pointed out by the learned single Judge, while dismissing the writ petitions, the MLA, whose initiative had, according to the appellant, led to the making of the impugned order of transfer, was not made a party to the writ petition. In such a situation, the learned single Judge was correct in taking the view that the MLA concerned was a necessary party to the writ proceeding, more so, when there was specific allegation made against him, but when the MLA had not been made a party, no decision could be taken, on the allegation made against the MLA, in the absence of the MLA. This necessity, we may point out, flows from

the principles of natural justice, which do not permit condemning a person without being heard. This would apply to administrative decisions as well.

10. Referring to the decision of a Division Bench of this Court in **Ramzan Ali Ahmed Vs. Taiyab Ali Ahmed & Others**, reported in 1998(2) GLT 242, Mr. Jini, learned counsel, has pointed out that the Court has taken the view, in **Ramzan Ali Ahmed (supra)**, that even without impleading a person at whose behest, a transfer order is made, a writ petition can be maintained. It is necessary to point out in this regard that the decision in **Ramzan Ali Ahmed (supra)** was rendered in a case, wherein certain allegation was made and the person, against whom the allegation was made, had not been made a party. On the ground, however, that the allegation, which had been made, had not been controverted by the State respondent, the Division Bench interfered with the impugned order of transfer. In the case at hand, we have carefully examined the counter affidavit, which the State respondents had filed, and we notice that the allegation, made by the appellant that his transfer had been made on political reason, stood denied. In such circumstances, no decision, adverse to the interest of the MLA aforementioned, could have been taken by the court, when the MLA was not a party.

11. Coming to the appellant's grievance that since his wife is ill and she needs assistance of her husband, we may reiterate that the guidelines requiring the Government employees, who are spouses, to be posted at one and the same place may not be possible to be followed for a variety of factors. In the case at hand, since the appellant has already completed almost four years of service at Aalo, when his posting at Sub-Division-1 as well as Sub-Division-II is

combined together, we do not find that the writ court can direct the Government to keep the appellant at his present place of posting solely to enable him to look after his wife.

12. Because of what have been discussed and pointed out, we do not find the impugned order, dated 12-04-2010, transferring the appellant to Daporijo PWD Division, called for any interference in exercise of powers under Article 226 of the Constitution. As far the order, dated 04-05-2010, challenged by the appellant, whereby the private respondent has been posted at Aalo Sub-Division-II, is concerned, we do not find any reason to interfere with the said order too.

13. What crystallizes from the above discussion is that neither the order, dated 12-04-2010, whereby the appellant has been transferred to Daporijo PWD Division, nor the order, dated 04-05-2010, whereby the private respondent has been posted as Assistant Engineer, in Aalo Sub-Division-II, called for any interference by this Court in exercise of its powers under Article 226 of the Constitution of India. We do not find any merit in these two writ appeals. These appeals do not, therefore, succeed and shall accordingly stand dismissed.

14. There shall be no order as to cost.


JUDGE


JUDGE

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