

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

ITANAGAR PERMANENT BENCH

1. WP(C)147(AP)2016

Smt. Pakpi Karlo Nguso,
Block Development Officer
Kaying Payum Block, Rural Development Department
PO/PS - Kaying, District - Siang, Arunachal Pradesh.

.....Petitioner

By Advocates:

Mr. Kento Jini
Mr. D. Loyi
Mr. B. Picha
Ms. S. Ketan
Mr. G. Bam
Ms. M. Rime

-Versus-

1. State of Arunachal Pradesh represented Commissioner, RD, Government of Arunachal Pradesh, Itanagar.
2. The Director, RD, Government of Arunachal Pradesh, Itanagar.
3. Smt. Misa Gamlin, Block Development Officer, Directorate(RD), Itanagar, District - Papum Pare, Arunachal Pradesh.
4. Mr. Tamiyo Taga, MLA, 32-Constituency, Rumgong, Siang District, PO/PS- Rumgong, Arunachal Pradesh.

.....Respondents

By Advocates:

Mr. Subu Tapin, Senior Government Advocate.
Mr. Tadu Bayor, standing counsel, RD Department.
Mr. Pritam Taffo, counsel for Respondent No. 3.

2. IA(WP)153(AP)2016

Smt. Misa Gamlin
BDO Kaying Payum
S/o late S. Gamlin, Resident of Kaying Town,
PO/PS- Kaying, West Siang District, Arunachal Pradesh.

.....Applicant

By Advocates:

Mr. Pritam Taffo
Mr. S. Tsering
Ms. Bissomoti Lego
Mr. D. Zirido
Mr. J. Singh
Mr. T. Lamgu

Versus

Smt. Pakpi Karlo Nguso

Block Development Officer, Kaying Payum Block,
Rural Development Department, PO/PS- Kaying, District- Siang,
Arunachal Pradesh.

.....*opposite party*

By Advocate:

Ms. Sonia Ketan

:::BEFORE:::

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

Date of hearing : 16-11-2016

Date of Judgment & Order: 24-11-2016

JUDGMENT & ORDER(CAV)

Heard Mr. Kento Jini, learned counsel for the petitioner.

Also heard Mr. Subu Tapin, learned Senior Government Advocate, for Respondents No. 1, Mr. Tadu Bayor, learned standing counsel for Respondent No. 2; and Mr. Pritam Taffo, learned counsel for private Respondent No. 3.

2. Petitioner's case, in brief, is that, petitioner has been transferred from Kaying Payum Block to the Directorate of Rural Development Department, Government of Arunachal Pradesh, Itanagar (for short, 'Directorate of RD'), vide impugned order dated 16.03.2016 i.e. even though the petitioner had worked for only 8(eight) months in Kaying Payum Block.

3. Petitioner's counsel submits that the impugned order dated 16.03.2016 is in violation of the policy guidelines on transfer laid down by the State Government, in its order dated 19.03.2008, issued by the Chief Secretary to Government of Arunachal Pradesh.

Petitioner's counsel further submits that the petitioner had been transferred from Daporijo CD Block to the Directorate of RD, vide order dated 07.07.2014; 2(two) months later, i.e. on 16.09.2014, the petitioner was transferred from the Directorate of RD to Pangin Block. Six months later, she was transferred from Pangin CD Block to the Directorate of RD, vide order

dated 02.03.2015. Thereafter, on 06.07.2015, the petitioner was transferred to Kaying Payum Block. 8 months later, the petitioner was again transferred to the Directorate of RD vide impugned order dated 16.03.2016.

Petitioner's counsel further submits that the impugned order dated 16.03.2016 has been made on the orders of MLA of 32-Rumgong(ST) Assembly Constituency. Petitioner's counsel submits that the transfer has been done only to ensure the Respondent No. 3 is posted back at Kaying Payum Block. Learned counsel also submits that transfer of the petitioner, not having been done, in public interest or due to administrative exigencies, the same should be set aside.

4. Mr. Taffo, learned counsel for private Respondent No. 3, submits that transfer of the petitioner and the Respondent No. 3 has been done in public interest and due to administrative exigency. He also submits that Apex Court has already held that a transfer order cannot be said to be vitiated even if the same has been made on the recommendation of an MLA.

Learned counsel further submits that Respondent No. 3 had been transferred on 06.07.2015 from Kaying Payum Block to the Directorate of RD, prior to issuance of the impugned order dated 16.03.2016. The private Respondent No. 3 had filed WP(c)320(AP) 2015 before this Court, challenging the order dated 06.07.2015. The said writ petition was dismissed as infructuous vide order dated 02.08.2016, in view of the fact that the impugned transfer order dated 16.03.2016 had been issued by the competent respondent authority.

Learned counsel for the private Respondent No. 3 also submits that Directorate of RD, had written a letter dated 30.07.2015, in pursuance to this Court's order dated 15.07.2015 passed in WP(c)392(AP)2015 wherein it was stated that petitioner's transfer on 06.07.2016 was a temporary arrangement and that the respondent No. 3 may be posted back on completion of the inquiry.

Respondent No. 3 also submits that the instant writ petition should be dismissed as there has been no allegation of *mala fide* being cast by the petitioner.

5. Mr. Tapin, learned Senior Government Advocate, has submitted that the transfers have been done in public interest and due to administrative exigencies. He also submits that a perusal of the official records placed before this Court, would go to show that there had been no *mala fides* or unfairness in issuing the impugned order dated 16.03.2016.

6. I have perused the contents of the official records.

There is nothing to show in the records that transfer of the petitioner and the Respondent No. 3 was done due to any *mala fides* or that it was made against public interest. The records also contain the orders/recommendations of the MLA for transfer of petitioner and Respondent No. 3.

No doubt, transfers should not be interfered with unless the person concerned is visited with any adverse impact or with penal consequences. However, the fact that remains in the instant case is that the petitioner has been transferred 5(five) times, within a short span of 1 and ½ half years. As per the policy guidelines for transfer as laid down by the State Government order dated 19.12.2008, the normal tenure of posting of a government servant is 2 years.

7. In the case of ***Mohd. Masood Ahmad v. State of U.P. & ors.***, reported in **(2007) 8 SCC 150**, the Apex Court has held that transfer on the recommendation of the MLA does not vitiate the transfer order. The Apex Court has also held that transfer orders should not be interfered with unless it is *mala fide* or service rules prohibit such transfers.

In the case of ***Pramod Ch. Sarma v. State of Assam***, reported in **2007 (1) GLT 212**, the Division Bench of this Court has held that a transfer can be interfered with by the Court if the same has not been issued in public interest or administrative exigency.

In the case of *Union of India & Ors. v. S. L. Abbas*, reported in **(1993) 4 SCC 357**, the Apex Court has held that guidelines for transfers are not legally enforceable. The Apex Court has held that when ordering a transfer, there is no doubt that the authority must keep in mind the guidelines issued by the Government on the subject. Similarly, if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigency of the administration.

In the case of *Sarvesh Kumar Awasthi v. U.P. Jal Nigam & ors.*, reported in **(2003) 11 SCC 740**, the Apex Court has held that transfer of officers is required to be effected on the basis of set norms or guidelines. For better appreciation, **Paragraph No. 3** is quoted herein:

"3. In our view, transfer of officers is required to be effected on the basis of set norms or guidelines. The power of transferring an officer cannot be wielded arbitrarily, mala fide or an exercise against efficient and independent officer or at the instance of politicians whose work is not done by the officer concerned. For better administration, the officers concerned must have freedom from fear of being harassed by repeated transfers or transfers ordered at the instance of someone who has nothing to do with the business of administration."

In the case of *T. S. R. Subramanian & ors. v. Union of India & ors.* reported in **(2013) 15 SCC 732**, the Apex Court has held that civil servants do not have stability of tenure particularly in the State Governments, where transfers and postings are made frequently at the whims and fancies of political heads of the executive and not in public interest. The Apex Court also observed that necessity of minimum tenure has also been endorsed and implemented by the Union Government and 13 States have already accepted the minimum tenure for civil servants.

The Apex Court also held that repeated shuffling or transfer of government official is deleterious to good governance. The Apex Court also held that there should be a minimum assured service tenure to ensure increased efficiency in service.

8. On a perusal of the decisions of the Apex Court, it can be gathered that there is a thrust towards the fact that transfer of officers is required to be effected on the basis of certain set of norms and guidelines.

9. In the present case, the State Government has issued a policy guidelines for transfer wherein the normal tenure of posting in a particular place is 2 years. Keeping this in view, it becomes quite clear that the impugned transfer order dated 16.03.2016 is not proper as the petitioner's and Respondent No. 3's last transfer orders prior to the impugned transfer order, was issued on 06.07.2015 i.e. 8(eight) months earlier. In that view of the matter, the impugned order dated 16.03.2016 does not seem to have been done for proper reasons.

10. On a further perusal of the records brought before this Court, I find that complaints have been made by the public against the petitioner as well as private Respondent No. 3 in respect of their functioning as Block Development Officers in Kaying Payum Block. The allegations made against Respondent No. 3 has been investigated by the SIC(Vigilance) and the enquiry has ended by with the finding that the allegations made against the Respondent No. 3 has been found to be incorrect.

Further perusal of the records goes to show that subsequent to an enquiry made against the petitioner, an official report has been submitted in respect of the allegations against the private Respondent No. 3. The final report states that an explanation needs to be sought from the petitioner due to some discrepancies in her work.

11. By taking into account the judgment of the Apex Court in **S. L. Abbas**(supra), **Sarvesh Kumar Awasthi**(supra), **T. S. R. Subramanian**(supra) and the policy guidelines for transfer laid down by the State Government, it is quite clear that there has been a number of transfers made with regard to the petitioner, which is not in consonance with the transfer policy.

12. In view of the above, this Court, at first blush, is of the view that the transfer of the petitioner vide impugned order dated 16.03.2016 needs to be interfered with. However, on perusal of the records and the Inquiry Report

dated 28.10.2016, which concludes with the finding of discrepancies in the functioning of the petitioner at Kaying Payum CD Block, which needs to be explained by the petitioner, this Court is of the view that transfer of the petitioner has been done due to administrative exigency.

13. In view of the above reasons, this Court is not inclined to exercise its discretion by exercising its writ jurisdiction. Accordingly, this writ petition is hereby dismissed.

14. The Inquiry Report dated 28.10.2016 and the letter dated 04.11.2016 issued by the Additional Deputy Commissioner, Siang District, Rumgong, is made a part of the record and is marked as Annxeure 'X'.

15. In view of the above, the connected interlocutory application accordingly stands disposed of.

JUDGE

Bhask