

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

ITANAGAR BENCH.

WP (C) 402 (AP) 2016

**Er. Sosar Takam,
S/o Shri Sosar Tatek,
Assistant Engineer,
C/o Executive Engineer,
Water Resources Division, Sagalee,
RWD Colony, Itanagar,
PO/PS Itanag,
Arunachal Pradesh.**

By Advocate

Mr. R. Sonar.

-Versus-

- 1. The State of Arunachal Pradesh,
Represented by Chief Secretary to the Govt. of
Arunachal Pradesh, Itanagar.**
- 2. The Secretary, Water Resources Department,
Govt. of Arunachal Pradesh,
Itanagar.**
- 3. The Executive Engineer,
Water Resources Division, Sagalee.**
- 4. Smti Debia Sita,
W/o Shri Neelam Taje,
R/o C-Sector, Itanagar,
PO/PS-Itanagar,
Papum Pare District,**

Arunachal Pradesh.

→ Respondents.

By Advocate:

Ms. G. Deka, Sr. Govt. Advocate.

Mr. D. Choudhury, for respondent No. 4.

BEFORE

THE HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

Date of hearing : 04.08.2016

Date of Judgment & Order : 05.08.2016

JUDGMENT & ORDER (CAV)

Heard Mr. R. Sonar, learned counsel, appearing on behalf of the petitioner. Also heard Ms. Geeta Deka, learned Sr. Govt. Advocate, for State respondent Nos. 1 to 3; and Mr. Dilip Choudhury, and Mr. Neelam Taje, learned counsels, for private respondent No. 4.

2] Petitioner's counsel submits that the petitioner was posted at Seppa WR Division, as an Assistant Surveyor of Works (ASW), since 05.06.2016. Thereafter, the petitioner was transferred and posted as an Assistant Engineer in Sagalee W.R. Division, vice private respondent No. 4, who was, in turn, transferred as an Assistant Engineer in the office of the Chief Engineer (WZ), Water Resources Department, Govt. of Arunachal Pradesh, Itanagar, vide order dated 24.06.2016.

3] The petitioner was released as an Assistant Surveyor of Works, Seppa W.R. Division, w.e.f. 01.07.2016, and he joined in his new place of posting at Seppa W.R. Division, on 04.07.2016.

4] The Assistant Engineer, Sagalee W.R. Division, thereafter, issued an order dated 20.07.2016 directing the private respondent No. 4 to hand-over the complete charge of Sagalee W.R. Sub-Division, to the petitioner. Thereafter, order dated 21.07.2016 was issued by the Secretary to the Govt. of

Arunachal Pradesh, Water Resources Department, Itanagar, wherein the earlier transfer order dated 24.06.2016 was cancelled and the petitioner as well as private respondent No. 4 were retained at their respective earlier places of posting.

5] Petitioner's counsel submits that reasons for transfer of private respondent No. 4, in pursuance to the transfer order dated 24.06.2016, is due to the fact that private respondent No. 4 has completed her normal tenure of 2 years at Sagalee W.R. Division.

6] Petitioner's counsel further submits that in view of transfers being made in normal exigencies of service, the cancellation order dated 21.07.2016 whereby the earlier transfer order was cancelled, is liable to be set aside and quashed.

7] Petitioner's counsel also submits that transfer of private respondent No. 4 vide order dated 24.06.2016 having been made in normal exigencies of service, attempt by the State respondents, now to base the transfer order dated 24.06.2016 on the basis of an alleged false complaint, should not be accepted by this Court.

8] Mr. Choudhury, learned counsel for the private respondent No. 4, on the other hand, submits that the transfer of the petitioner from Seppa W.R. Division to Sagalee W.R. Sub-Division, was made at the behest of a MLA of Palin Assembly Constituency, who wrote a letter dated 02.04.2016 to the concerned Minister.

9] Private respondent No. 4's counsel also submits that the petitioner having posted at Seppa W.R. Division only w.e.f. 05.06.2016, the petitioner has not completed 2 years of normal tenure. As such, transfer of the petitioner vide transfer order dated 24.06.2016, cannot be said to be in normal exigencies of service.

10] Private respondent No. 4's counsel further submits that the transfer of private respondent No. 4 had been done on the basis of a false letter dated 08.04.2016 allegedly written by the ZPMs and ASMs. However, the said ZPMs and ASMs had, thereafter, lodged an FIR dated 02.07.2016 to the Officer-in-Charge of Sagalee Police Station, which is to the effect that they had not written the false letter dated 08.04.2016 against the private respondent No. 4 and the signatures appended to the said complaint letter, were forged.

11] Private respondent No. 4's counsel submits that the transfer of the petitioner had been done on the basis of a recommendation of a MLA while the transfer of private respondent No. 4 vide transfer order dated 24.06.2016 was made on the basis of a false and fabricated complaint.

12] Private respondent No. 4's counsel also submits that the State respondents on coming to learn that the transfer of the private respondent No. 4 had been effected on the basis of a false complaint, had accordingly cancelled the earlier transfer order dated 24.06.2016 vide cancellation order dated 21.07.2016.

13] Private respondent No. 4's counsel further submits that there is no wrong committed by the State respondents in cancelling the transfer of private respondent No. 4 as it had been initially made on the basis of a false complaint.

14] With regard to the question of a person being transferred on the recommendation of a MLA, the same has been clarified by the Apex Court in the case of **Md. Masood Ahmed-vs- State of U.P. & ors.**, reported in **(2007) 8 SCC 150** wherein **Paragraph No. 8** it has been clearly stated that a transfer order should not be interfered with unless it is *mala fide* or service rules prohibits such transfer.

15] On perusing of the official records, I find that, though, transfer of the private respondent No. 4 had not been done on the basis of the forged letter dated 08.04.2016, there is a complaint made against the respondent No. 4 by a Youth Club President stating her incapability of discharging her duty as AE, Sagalee.

16] Be that as it may, transfer is an exigency of service.

17] On perusing the records, I do not find any arbitrariness in the decision of the said respondents in cancelling the transfer order. In fact, the transfer of the petitioner, who had not completed his 2 years of normal tenure of service as Assistant Surveyor of Works, Seppa WR Division is not informed by reasons. The only reason for his transfer seems to be due to the recommendation of an MLA. The transfer of the petitioner is not in the normal exigency of service and in view of the above, I am of the view that the petitioner does not have an enforceable right that the transfer order dated 24.06.2016 should be made to stand and that the cancellation of the transfer order vide order dated 21.07.2016 should be set aside. Also, the petitioner has not been able to show, as to what right of his, has been violated due to the cancellation of the transfer order.

18] In view of the reasons stated above, I am not inclined to allow the writ petition and the same is accordingly dismissed.

JUDGE

Talom