

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

ITANAGAR PERMANENT BENCH

(1) WP (C) 277 (AP) 2018

1. Sri Baba Bagang

.....petitioner

-VERSUS-

1. The State of Arunachal Pradesh,

Through the Secretary, Department of Town Planning and
ULB's, Government of Arunachal Pradesh, Itanagar.

2. The Deputy Secretary,

Department of Town Planning Department of Town Planning
and ULB's, Government of Arunachal Pradesh, Itanagar.

3. The Director,

Department of Town Planning and ULB's, Government of
Arunachal Pradesh, Itanagar.

4. The Secretary,

Power, Government of Arunachal Pradesh, Itanagar.

5. The Itanagar Municipal Council, represented by the
Chief Municipal Executive Officer, Naharlagun.

.....respondents.

(2) WP(C)292(AP)2018

1. Sri Baba Bagang

.....petitioner

-VERSUS-

1. The State of Arunachal Pradesh,

Through the Secretary, Department of Town Planning and
ULB's, Government of Arunachal Pradesh, Itanagar.

2. The Deputy Secretary,

Department of Town Planning Department of Town Planning
and ULB's, Government of Arunachal Pradesh, Itanagar.

3. The Director,

Department of Town Planning and ULB's, Government of
Arunachal Pradesh, Itanagar.

4. The Secretary,

Power, Government of Arunachal Pradesh, Itanagar.

5. The Itanagar Municipal Council, represented by the
Chief Municipal Executive Officer, Naharlagun.

.....respondents.

(3) WP (C) 325 (AP) 2018

1. Sri Baba Bagang

.....petitioner

-VERSUS-

1. The State of Arunachal Pradesh,

Through the Secretary, Department of Town Planning and
ULB's, Government of Arunachal Pradesh, Itanagar.

2. The Deputy Secretary,

Department of Town Planning Department of Town Planning
and ULB's, Government of Arunachal Pradesh, Itanagar.

3. The Director,

Department of Town Planning and ULB's, Government of
Arunachal Pradesh, Itanagar.

4. The Secretary,

Power, Government of Arunachal Pradesh, Itanagar.

5. The Itanagar Municipal Council, represented by the
Chief Municipal Executive Officer, Naharlagun.

.....respondents.

(4) Contempt Case(C)26(AP) 2018

1. Sri Baba Bagang

.....petitioner

-VERSUS-

1. The State of Arunachal Pradesh, Through the Secretary, Department of Town Planning and ULB's, Government of Arunachal Pradesh, Itanagar.

2. The Deputy Secretary, Department of Town Planning Department of Town Planning and ULB's, Government of Arunachal Pradesh, Itanagar.

3. The Director, Department of Town Planning and ULB's, Government of Arunachal Pradesh, Itanagar.

4. The Secretary, Power, Government of Arunachal Pradesh, Itanagar.

5. The Itanagar Municipal Council, represented by the Chief Municipal Executive Officer, Naharlagun.

.....respondents.

(5) Contempt Case(C)20(AP) 2018

1. Sri Baba Bagang

.....petitioner

-VERSUS-

1. The State of Arunachal Pradesh, Through the Secretary, Department of Town Planning and ULB's, Government of Arunachal Pradesh, Itanagar.

2. The Deputy Secretary, Department of Town Planning Department of Town Planning and ULB's, Government of Arunachal Pradesh, Itanagar.

3. The Director, Department of Town Planning and ULB's, Government of Arunachal Pradesh, Itanagar.

4. The Secretary, Power, Government of Arunachal Pradesh, Itanagar.

5. The Itanagar Municipal Council, represented by the Chief Municipal Executive Officer, Naharlagun.

.....**respondents.**

By Advocates:

For the **petitioners:**

Mr.T. Pertin

For the **respondents:**

Mr. S. Tapin

:::BEFORE:::

HON'BLE MRS. JUSTICE RUMI KUMARI PHUKAN

Date of hearing : 16.08.2018

Date of Judgment : 24.08.2018

JUDGMENT & ORDER

Heard Mr. T. Pertin, learned counsel appearing for the petitioner and also heard Mr. S. Tapin, learned Senior Government Advocate appearing for the State respondents.

2. All the matters pertain to the same parties on the same issue so same are taken together for disposal by this common order.

3. Let us take up, at the first three writ petitions for discussion together as all are interlinked.

4. The petitioner, who was working as a Junior Engineer (JE) in the Department of Rural Works Department, Government of Arunachal Pradesh, Itanagar, was subsequently posted on deputation basis for the period of two years by an order dated 03.11.2016 and accordingly, the petitioner joined before the Chief Municipal

Executive Officer, Itanagar, Municipal Council at Naharlagun(IMC) on 07.11.2016. After serving for one and half year in the IMC, the Secretary, Department of Town Planning and ULB's, Govt. of Arunachal Pradesh by an order dated 24.05.2018 transferred him from IMC, Naharlagun to Pasighat, Municipal Council. Being aggrieved and not satisfied for un-timely transfer, without completing the period of deputation, the petitioner has preferred the Writ Petition NO. 277(AP)2018, challenging the aforesaid transfer order dated 24.05.2018 on the ground that such a transfer has been made to accommodate some other person and such transfer could have been avoided by the authorities by last leg of the deputation period of 6(six) months. Otherwise also as per the Circular No. APPTT-19/90 dated 02.06.1998 issued by the Department of Personnel, Government of Arunachal Pradesh, normal tenure of posting is three years however, same has been now reduced to 2 years by the Circular dated 19.12.2008. It has been challenged that the impugned transferred order is issued in violation of the Transfer Policy Guideline and without valid reason and necessity.

5. This Court at the time of motion stage made an interim order dated 11.06.2018, that till next date fixed, the petitioner shall be allowed to continue as Municipal Assistant Engineer in Itanagar Municipal Council, if not already released in terms of impugned order dated 24.05.2018.

6. In the meantime, by an order dated 14.06.2018, the Deputy Commissioner-cum-Administrator, Itanagar, Municipal Council released the petitioner from aforesaid post to facilitate him to join at Pasighat Municipal Council.

7. Challenging the aforesaid order, the petitioner again preferred the Writ Petition No.292(AP)2018 that the Deputy Commissioner-cum-Administrator, IMCC cannot pass such release order. In said writ petition, by an order dated 20.06.2018, this Court passed an interim direction to stay the order dated 14.06.2018 until such further order that may be pass in WP(C)277(AP)2018.

8. During the pendency of aforesaid two petitions, the petitioner herein again transferred to the Establishment of Executive Engineer, IMCC at Naharlagun by the order dated 26.06.2018 passed by the Deputy Commissioner-cum-Administrator, Itanagar. Challenging the aforesaid transfer order, the petitioner come up before this Court by the third round of litigation by way of Writ Petition No.325(AP)2018 with

the contention that the Deputy Commissioner-cum-Administrator has no authority to pass such transfer order despite specific direction of this Court in the earlier writ petitions inasmuch as the Deputy Commissioner-cum-Administrator has no power to effect the transfer and posting of the official under Municipal Council.

9. In response to the notice served upon the respondent, all the respondents enter their appearances through Government Advocate and respondent the Secretary, Department of Town Planning and ULB of Government of Arunachal Pradesh and the Chief Municipal Executive Officer, Naharlagun, Itanagar Municipal Council file affidavit-in-opposition in WP(C)277(AP)/2018 separately and to which petitioner has also filed reply by way of affidavit. In WP(C)292(AP)2018 the Secretary to the Government filed the affidavit with the same contention and in the last WP(C)325(AP)2018 no separate affidavit has been filed with the submission that the earlier affidavit will cover all the cases.

10. The impugned order dated 24.05.2018 was passed by the respondent No. 1 in his capacity as the Secretary to the Government and in his affidavit, it has been submitted that with due approval of the Government of Arunachal Pradesh, department of Town Planning, Urban Local Bodies and on recommendation of the Secretary to the Government for borrowing officers' to the IMC and PMC, several officers were brought on deputation to the Itanagar Municipal Council. As per record there is assistant engineer posted under the IMC were eight as against only two Assistant Engineers working in the Pasighat Municipal Council. As there is acute shortage of Assistant Engineer under PMC, therefore, Sri Baba Bangang, Assistant Engineer, IMC (the petitioner) was transferred and posted under PMC as there was excess Assistant Engineer in the IMC against the Assistant Engineer posted in the PMC. Accordingly, it is submitted that the transfer order was issued on the public interest and urgency of the service.

11. The stand taken by the other respondent i.e. Deputy Commissioner-cum-Administrator is on complete different footing. Although the aforesaid transfer order was made under the signature of the respondent No. 1 who is the authority to effect transfer and posting and the respondent Deputy Commissioner was given in-charge of the CMEO as administrator of IMC much after the order was passed has assigned different reasons for such transfer. According to the respondent/Deputy Commissioner one Lapung Kumar was posted in place of the petitioner prior to his

posting, so the petitioner has suppressed the said aspect in his petition that without any reliever, the petitioner was released from his post. Further he stated that due to several complaints against the petitioner about his misconduct by some NGO's/SHG of the concerned ward where the petitioner was working and also for his bad behavior coupled with assault to some workers/staffs of sanitation, drivers, the authority has taken the decision to transfer him, as he did not respond to the warning given by the authority. Another submission is that the as per standing order dated 19.12.2008 Paragraph No. 3 SL NO. C, "the head of the office concerned shall release the officer so transferred by the first half of the May" and he has been transferred accordingly by the impugned order dated 24.05.2018 which is as per the guideline and the transfer has been in the interest of the public service.

12. On the next it has been submitted that the petitioner was released from the establishment of the IMC on 14.06.2018 enabling him to join to the new place of posting and he was never communicated about the interim order so passed by this Court. The respondent being the administrator has discharge his duties while releasing the petitioner and the approach of the petitioner is not clean and fair. The transfer and posting of an officer is the prerogative of the State authority and the same cannot be interfered unless good reasons is shown. Some documents regarding complaint against the petitioner and the minutes of meeting conducted in the office, has been annexed, vide annexure 3, 4 & 5.

13. The respondent No. 1, while submitting their affidavit in WP(C)292(AP)2018 as on 23.07.2018 (i.e. subsequent to filing of WP(C)325 (AP)2018 dated 03.07.2018 wherein challenge to the transfer dated 26.06.2018 was made) has submitted that the administrator appointed can exercise the power of CMEO and the Secretary under Rule 32, 33, 41, 47 & 48 of the Rules Arunachal Pradesh Business Rules 2015, has the power to assign/reassign /deploy various staffs within the concerned municipal area. Accordingly, the release order dated 14.06.2018 has been recalled by way of reassignment order dated 26.06.2018 by the respondent NO. 4. Further the reassignment order dated 26.06.2018 has also been recalled by further reassignment of duty vide order dated 10.07.2018 whereby the petitioner has been kept under ISD III IMC in terms of the interim order dated 11.06.2018 passed in WP©277(AP)/2018 and hence all the writ petitions became infructious, vide annexure 8.

14. The learned counsel for the petitioner has vehemently opposed the contention raised by the State respondents that there is no bonafide in the impugned transfer order dated 24.05.2018. The first bone of contention of learned counsel for the petitioner Mr. Pertin, is that if there was excess of person in IMC due to which the petitioner was transferred to PMC on 24.05.2018, then what will be the justification for bringing another person Langpu Kumar to the IMC as on 01.04.2018 ? Second contention that has been raised is that the petitioner was never given any opportunity of being heard about such complaint to explain on his part prior to decision held by the committee. According to the learned counsel for the petitioner the performance of the petitioner was appreciated by the same Deputy Commissioner, Mr. Prince Dawan on 25.10.2017 by issuing certificate by expressing his sincere appreciation for extraordinary efforts rendered by the petitioner for effective implementation of the works, vide note of appreciation dated 25.10.2017 issued by the respondent No. 4, award of excellence dated 08.06.2018 issued by CMEO, IMC, note of appreciation dated 27.02.2018 issued by CMEO, IMC but suddenly, petitioner has been blamed for certain conducts that too without giving an opportunity of being heard. Thus, it contends that all the impugned transfer order dated 24.05.2018 as well as release order dated 14.06.2018 and subsequent transfer order dated 26.06.2018, are not bonafide but punitive.

15. *Per contra*, the learned counsel for the respondent Mr. S. Tapin, Sr. Govt. Advocate has contended that as the impugned order was passed by the respondent No. 1 in his capacity as a Secretary to the Government of Arunachal Pradesh, department of Town Planning and ULB, so his submission will be relevant in respect of the transfer and posting of the petitioner. The other respondents Deputy Commissioner, has been appointed as administrator to the IMC with effect from 11.06.2018 to perform and exercise all the power and function vested to the Municipal authorities under the Act, as the election to the said Municipal Council was cancelled by State Election Commission, Arunachal Pradesh with further direction that when the Municipal election is held and the Municipalities constituted, the administrator shall automatically denuded of his power and responsibilities vide order Memo No. MUN/ESTT-39/2018-2019, dated 28.05.2018, annexure VI.

16. Furthermore, it has also been contended by the learned counsel for the state respondent Mr. Tapin that the aforesaid transfer and release order never made malafide, rather it was in the exigency of the service in the establishment and an

employee cannot resist such order of transfer only on the ground of his own convenience, what has been pleaded in the present case. The sole contention of the petitioner rest on the point that his transfer could not have been affected while six months remains for his deputation period and he has personal difficulties as his children studying at Itanagar and he could have smoothly function from the present place of posting. It contends that on such personal ground, a transfer order cannot be resisted, which is made for public interest.

17. In support of their plea, that the respondent authority has not acted malafide and there is no illegality in transfer orders and the same is not affected, as punitive, the learned counsel for the state respondent has place reliance upon the following decisions.

i. 1991 Supp (2) SCC 659 in Mrs. Shilpi Bose and Others vs. State of Bihar and Others

ii. AIR 2004 Supreme Court 2165 in Case of State of U.P. and Ors vs. Gobardhan Lal

iii. (2004) AIR (SCW) 955 in Union of India and Ors. vs. Sri Janardhan Debanath and Anr.

iv. (2009) 15 Supreme Court Cases 178 in the case of Rajendra Singh and Ors vs. State of Utter Pradesh and Ors.

i. In Mrs. Shilpi Bose and Others vs. State of Bihar and Others (supra) held as follows:

2. In our opinion, the Courts should not interfere with a transfer Order which are made in public interest and for administrative reasons unless the transfer Orders are made in violation of any mandatory statutory rule or on the ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place of the other, he is liable to be transferred from one place to the other. Transfer Orders issued by the competent authority do not violate any of his legal rights. Even if a transfer Order is passed in violation of executive instructions or Orders, the Courts ordinarily should not interfere with the Order instead affected party should approach the

higher authorities in the Department. If the Courts continue to interfere with day-to-day transfer Orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest.

ii. The Supreme Court in *State of U.P. and Ors vs. Gobardhan Lal* (supra) held as follows:

7. It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a malafide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by malafides or is made in violation of any statutory provisions.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of malafide when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out or conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

iii. In the case of Union of India and Ors. vs. Sri Janardhan Debanath and Anr. (supra) held as follows:

12. That brings us to the other questions as to whether the use of the expression 'undesirable' warranted an enquiry before the transfer. Strong reliance was placed by learned counsel for the respondents on a decision of this Court in Jagdish Mitter vs. the Union of India (UOI), to contend that whenever there is a use of the word 'undesirable' it casts a stigma and it cannot be done without holding a regular enquiry. The submission is clearly without substance. The said case relates to use of the expression 'undesirable' in an order affecting the continuance in service by way of discharge. The decision has therefore, no application to the facts of the present case. The manner, nature and extent of exercise to be undertaken by Courts/Tribunals in a case to adjudge whether it casts a stigma or constitutes one by way of punishment would also very much depend upon the consequences flowing from the order and as to whether it adversely affected any service conditions – status,, service prospects financially and same yardstick, norms or standards cannot be applied to all category of cases. Transfer unless they involve any such adverse impact or visits the persons concerned with any penal consequences, are not required to be subjected to same type of scrutiny, approach and assessment as in the case of dismissal, discharge, reversion or termination and utmost latitude should be left with the department concerned to enforce discipline, decency and decorum in public service which are indisputably essential to maintain quality of public service and meet untoward administrative exigencies to ensure smooth functioning of the administration.

14. The allegation made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any mis-behavior is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was mis-behaviour or conduct unbecoming of an employee is unnecessary and on the contemporary reports about the occurrence complained of and if the requirements, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other.

iv. Lastly, in Supreme Court Cases in Rajendra Singh (supra), while examining scope of judicial review in respect of transfer of an employee it has been observed

"that a government servant has no vested right to remain posted at a place of his choice nor he can insisted that he must be posted at one place or the other because no Government servant can function in such manner. The Government servant is liable to be transferred in administrative exigencies from one place to other. Further held transfer of an employee is not only an incident inherent in terms of appointment but also implicit as an essential condition of service in the absence of specific indication to the contrary."

18. On due consideration of deliberation of both the parties and keeping in mind the guideline set forth by the Hon'ble Apex Court regarding the scope of the judicial review, it is to be noted that the petitioner himself has not make out any case of malafide on the part of respondent authority while transferring him from one place to another, save and except that such an untimely transfer prior to completion of deputation period has caused certain difficulties to him as his children are studying at Itanagar and he could have smoothly function in the present place of posting. The respondent No. 1 who is the competent authority for affecting such transfer has submitted that due to lack of man power in the PMC in comparison to the IMC the petitioner was transferred from the present place of posting on administrative exigencies. The status as to the strength of employees in IMC and PMC is not disputed and their appears nothing on the part of the respondent No. 1 that he was actuated by any short of malafide while affecting such transfer order dated 24.05.2018. Now the only thing remains as about some revelation on the part other respondent No. 4/Administrator and according to him the authority was compelled to decide for such transfer of the petitioner for certain complaints about misconduct by the petitioner. The said respondent although try to set forth certain other reasons for such transfer as has been discussed above but this Court is not at all impressed with such exaggerated version of the respondent which is not supported by other respondent and totally in consistent with each other and his plea is outrightly rejected for the simple reason that he was not even born to the said institution IMC at the time of passing such order by the respondent No. 1/the Secretary to the Government. It is worth mentioning that the impugned order of transfer was made on 24.05.2018 by respondent No. 1 (and respondent No. 1 is silent as to any of such ground as stated by respondent No. 4) and the respondent No. 4 was appointed to the IMC by an order dated 28.05.2018 w.e.f., 11.06.2018 (subsequent thereto).

19. This Court is of view that there is no infirmaty, illegality in the order dated 24.05.2018 passed by the respondent No. 1. In the meantime the respondent No. 4

took over charge of the IMC and he submitted that, he affected the transfer order dated 24.05.2018 by releasing the petitioner on 14.06.2018 without knowing the interim order so passed by this Court on 11.06.2018. In that view of the matter, while the interim order that was not properly communicated, to the office of the respondent No. 4 which is at different place at Itanagar, than that of office of IMC at Naharlagun so the order dated 14.06.2018 cannot said to be an illegal order. Now regarding the order dated 26.06.2018, it has been submitted that this Court by its interim order dated 11.06.2018, has directed to retain the petitioner under the Itanagar Municipal Council, so the petitioner was retained in the same capacity under the establishment of IMC, Naharlagun under the same Municipal Council and the said arrangement was made bonafide. On due consideration of the matter, it would go to show that the by the impugned order dated 26.06.2018, the petitioner was shifted and retained at the same place at Naharlagun in the same capacity so the same cannot be, *per se* illegal. There may be some misreading, misunderstanding of the interim order passed by the Court, which cannot be viewed otherwise.

20. Now let us discuss with the contempt petitions arising out of the aforesaid writ petitions.

21. The contempt petition 20(AP)2018 was filed alleging willful disobedience of the interim order dated 11.06.2018 passed in WP(C)277(AP)2018 wherein this Court directed allow the petitioner to continue in the IMC in the same capacity. But he was released by the respondent authority on 14.06.2018. From the pleading of the parties as discussed above it is found that the respondent authority has denied to received such copy of order while releasing the petitioner. Pursuant to the submission and on examination of the documents it reveals that on 12.06.2018, the copy of said order communicated to the CMEO, Naharlagun whereas office of the respondent No. 4, the administrator-cum-DC is at Itanagar and there is nothing to show that the same was duly communicated to him so as to held about willful disobedience of the interim order.

22. The contempt Petition 26(AP)2018 was filed alleging willful disobedience of the order passed in WP(C)292(AP)2018 dated 20.06.2018. The respondent in his affidavit-in-opposition has submitted that as the Hon'ble Court directed to retain the petitioner as MAE in IMC so petitioner was accordingly retained in IMC under a bonafide belief and accordingly, order dated 26.06.2018 was passed in pursuant to

the interim order so passed dated 20.06.2018. By filling an additional affidavit the respondent has brought on record the order dated 10.07.2018 that by recalling all other previous orders, charter of duties the officers/staffs under the IMC are reshuffled and the present petitioner has been retained in his same post in the same place and which has redress all the grievances of the petitioner. In view of such last order dated 10.07.2018 there appears to be happy ending of the entire matter and the petitioner remain undisturbed. It has also been submitted that all the earlier order dated 14.06.2018 and 26.06.2018 has been recalled by the respondent authority and duty has been further reassigned to the respective officers including the petitioner by order dated 10.07.2018. The petitioner has few months of service and ultimately his service on deputation will end within a short span.

23. In view of all above, nothing survive in the contempt petition.

24. Taking into account all sequence of event discussed above, all the writ petitions and contempt petitions stands dismissed, however with a note of caution to the respondent No. 4, for making irresponsible statement in his affidavit which is sharply in consistent with the respondent No. 1/Secretary to the Government.

JUDGE

J.Bam