

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

WP(C) 461 (AP) 2018

1. Dr. Nyage Geiyi

S/o Lt. Tomnya Geiyi,
R/o Karbak Geyi village, P.O. & P.S. Kamba,
District West Siang,
Arunachal Pradesh.

.....petitioner

-VERSUS-

1. The State of Arunachal Pradesh

Represented by the Chief Secretary, Government of
Arunachal Pradesh.

2. The Commissioner, (Health & Family Welfare),

Government of Arunachal Pradesh,
Itanagar.

3. The Director of Health Services, Government
of Arunachal Pradesh, Naharlagun.

4. Dr. Moli Riba, presently serving as Deputy
Director of Health Services (Establishment),
Government of Arunachal Pradesh, Naharlagun.

.....respondents

By Advocates:

For the petitioner : Mr. N. Ratan
Mr. L. Nochi
Mr. K. Loya
M. Ninu
T. Taggu

For the respondents: Government Advocate (Arunachal Pradesh)
Mr. T. Tagum, SC (Health)
Mr. R. Saikia
Mr. T. Zirido
R. Bori
B. Riba
B. Taipodia
Mr. J. Das
Mr. M. Linggi

:::BEFORE:::
HON'BLE MR. JUSTICE NELSON SAILO

Date of hearing : **20.11.2018.**

Date of Judgment : **26.11.2018**

JUDGMENT & ORDER (CAV)

Heard Mr. N. Ratan, the learned counsel for the petitioner and Mr. T. Tagum, the learned standing counsel for the Health Department. I have also heard Mr. R. Saikia, the learned counsel for the private respondent No. 4.

2. The grievance of the writ petitioner is that by order dated 20.08.2018, issued by the Commissioner to the Government of Arunachal Pradesh, Health and Family Welfare Department, he has been transferred out from the post of District Medical Officer (DMO), Aalo held by him and directed to report to the Directorate of Health Services for further posting. By the same order the respondent No. 4 has been posted in his place. The petitioner contends that he was posted as District Medical Officer (DMO), Aalo from Daporijo vide order dated 15.05.2017. However, even before he completed hardly 13 (thirteen) months of tenure at Aalo, he has been posted out by the impugned order dated 20.08.2018.

3. Mr. N. Ratan, the learned counsel appearing for the petitioner submits that the State Government in the Department of Health and Family Welfare has formulated the guidelines for transfer and posting of the employees working under the Department, vide notification dated 19.06.2018. He submits that as per the said guidelines, the minimum tenure of posting at a particular place is for 2 (two) years and therefore, since the petitioner did not complete 2 (two) years of his tenure in Aalo, he could not have been transferred by the impugned order dated 20.08.2018. As such, the impugned order may be set aside and the petitioner be allowed to continue as DMO, Aalo.

4. Appearing for the respondent Health Department, Mr. T. Tagum, the learned standing counsel, submits that the impugned transfer order has been issued pursuant to the policy decision of the State Government to fill up the post of Junior Administrative Grade on the basis of seniority cum fitness as per the

Arunachal Pradesh Health Services Rules, 2000 (Rules of 2000). The Government decided to do away all out of turn promotion/officiating promotion so as to streamline the administrative system in the Department of Health and Family Welfare. The policy decision was notified vide Office Memorandum dated 11.02.2016. Therefore, the transfer and posting policy issued vide notification dated 19.06.2014, will not be applicable. Even otherwise, the notification dated 19.06.2014 does not debar the Government from issuing the order of transfer and posting on the basis of the policy decision mentioned in the Office Memorandum dated 11.02.2016. He further submits that several reminders have been issued to the authorities concerned pursuant to the Office memorandum dated 11.02.2016, from time to time and in fact, the Arunachal Pradesh Doctors Association submitted a two point Memorandum to the State Government for streamlining the appointment of Junior Level Administrative Officer as per seniority and to do away the process of pick and choose method of appointing persons to these posts. He further submits that the matter was considered at the highest level in the State Government under the Chairmanship of the Hon'ble Chief Minister wherein it was decided to list out the DMOs/DRCHOs who have been appointed on officiating basis in various districts by superseding their seniors and to revert them back to their respective posts. Thereafter, a fresh proposal was initiated for posting of DMOs/DRCHOs as per the seniority of the officers. Accordingly, vide order dated 01.05.2018, a four member board including the Chairman was constituted to prepare the list of eligible officers to fill up the mid-level and Junior level Administrative post strictly based on seniority. It was pursuant to the recommendation of the constituted board and the approval of the State Government that the petitioner was transferred out from Aalo beside others vide the impugned order dated 20.08.2018. Therefore, under the circumstances, the writ petitioner cannot have any grievance and the writ petition should be dismissed.

5. Mr. R. Saikia, the learned counsel for the respondent No. 4 by adopting the argument of Mr. T. Tagum, the learned Standing Counsel Health Department submits that pursuant to the impugned Transfer Order, dated 20.08.2018, the incumbent to replace the respondent No. 4, joined the Directorate the Health Services at Itanagar where the respondent No. 4 was posted. On her joining, the respondent No. 4 was released vide Order, dated 21.09.2018 to enable him to join his place of posting as DMO, Aalo. The respondent No. 4 on reaching Aalo,

submitted his joining report to the Deputy Commissioner of West Siang District at Aalo on 25.09.2018. But however, in view of the interim order passed by this Court on 24.09.2018, the Deputy Commissioner did not accept his joining letter. Consequently, the petitioner having been left in the lurch has filed IA(C)188(AP)/2018 prayed for vacating/modification/alteration of the interim order dated 24.09.2018. Instead of vacating the interim order, this Court on 11.10.2018 modified the interim order by directing the parties to maintain status quo as on the date of the Order. Mr. Saikia submits that presently, the respondent No. 4 has been rendered without any post to join and therefore, he is not getting his monthly salary. He further submits that in view of the policy decision taken by the State Government to streamline the transfer and posting of officers in terms of the seniority, the duly constituted committee made its recommendation and it was pursuant to their recommendation that the impugned transfer order dated 20.08.2018 was issued. The petitioner is admittedly junior to the respondent No. 4 and therefore, he cannot claim to remain posted as DMO, Aalo indefinitely. Since the State Government has taken a policy decision in the above manner, Court may not interfere with the impugned Transfer Order. He also submits that it is a settled law that transfer being an incident of service as well as an essential condition of service, the scope of Court's interference is very limited. Unless the order of transfer is found to be issued in exercise of malafide or in violation of the statutory provisions of law Court may not interfere. He thus submits that the writ petition may be dismissed and the respondent no. 4 be allowed to join as DMO, Aalo.

6. In response to the submissions made by the learned counsels for the respondents, Mr. Ratan, the learned counsel for the petitioner submits that from the stand taken by the State respondents, it can be seen that the respondent No. 4 was one of the member of the Board that was constituted to identify DMOs/DRCHOs who were appointed on officiating basis in various districts by superseding their seniors. While identifying such officers, the Board amongst others, has recommended the transfer and posting of the petitioner and the respondent No. 4. The respondent No. 4 could not have recommended his own posting being one of the Board member and as such, the interference of this Court is warranted. He further submits that the respondent authorities without holding a selection process for considering promotion of eligible officers from the post of Senior Medical Officer (Selection Grade) to the post of District Medical

Officers in terms of the Rules of 2000 cannot deprive the petitioner from his current posting. Although, the respondent No. 4 may be senior to the petitioner but the fact remains that both of them are in the same grade and in the same pay scale. The respondents therefore cannot claim implementation of the policy taken by the Government as set out in the Office Memorandum, dated 11.02.2016 by transferring the petitioner from Aalo even before he has completed two years tenure as DMO, Aalo. He submits that the guidelines on transfer and posting issued vide notification, dated 19.06.2014, clearly provides two years as the minimum tenure and the same having been acknowledged by this Court in the case of *K K Hazarika Vs. State of Arunachal Pradesh & Ors.* reported in *2014 (2) GLT 514*, the impugned transfer order dated 20.08.2018 should be set aside.

7. I have heard the submissions advanced by the learned counsels for the rival parties and I have perused the materials on record. From the case projected by the petitioner and the respondents, the point to be decided is as to whether the impugned order of transfer and posting dated 20.08.2018 can be sustained under the facts and circumstances of the case. As rightly pointed out by the learned counsel for the respondent No. 4, the subject matter of transfer and posting should be left to the wisdom of the State Administration and its machineries. Unless there is a malafide exercise of power in directing the transfer or the statutory guidelines have not been followed, there is little scope for the Court to interfere in the matter. In the present case, the State Government in the Health and Family Welfare Department have formulated a guidelines with regard to transfer and posting wherein, two years of tenure has been provided as the minimum period of posting in particular place. The petitioner admittedly has not completed two years of tenure as DMO Aalo. Besides the guidelines, the State respondents in order to streamline posting of officers at the administrative level took a decision to post senior officers against such posts. As per the Rules of 2000, the post of DMO, DDHS and SMO (Selection Grade) carry the same pay scale. Further, the post of DMO is a promotion post from the post of DDHS and SMO (Selection Grade). Admittedly both the petitioner and the respondent No. 4 are in the same grade. The petitioner is holding the charge of DMO while the respondent No. 4 was holding the charge of DDHS at the Directorate of Health Services at Itanagar. The respondent No. 4 was promoted as SMO (Selection Grade) on 15.01.2002, while

the petitioner was promoted as such on 03.03.2004 as can be seen from the combined seniority list of Medical Officers notified on 08.05.2017 which is annexed as Annexure 3 to the States' Counter Affidavit. As earlier noticed, the post of DMO being a promotional post, the same ought to have been filled up by the State respondents from amongst the officers in the Junior Administrative Grade or by promoting officers who are in the feeder grade such as the petitioner and the respondent No. 4. However, without adopting such procedure the petitioner vide the impugned order has been sought to be replaced by the respondent No. 4. Having regard to the fact that the guidelines on transfer and posting as notified vide notification dated 19.06.2014, is holding the field as on date, I am of the considered view that the ends of justice will be served if the representation of the petitioner which was submitted on 20.09.2018 (Annexure 4) is considered and disposed of by the Commissioner to the Government of Arunachal Pradesh, Health and Family Welfare Department (respondent No. 2) within a period of 1 (one) month from the date of receipt of a certified copy of this order by taking into account the observations made herein above.

8. It is ordered accordingly.

9. Till the representation of the petitioner is disposed of by the respondent No. 2 as directed herein above, status quo as on date shall be maintained. Since the respondent No. 4 has already been released from his previous posting as DDHS in the Directorate of Health Services at Itanagar, the respondent authorities shall also make appropriate arrangement so that he is not left without drawing his monthly salary.

10. With the above observation and direction, the writ petition stands disposed of. No cost.

JUDGE

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