

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

ITANAGAR PERMANENT BENCH

WP(c) NO. 39(AP)2019

Smt. Senthung Tesia
W/o Wanglem Thingnok
PRT(ISSE), PO & PS – Deomali
Tirap District, Arunachal Pradesh.

.....*Petitioner*

- *Versus* -

1. The State of Arunachal Pradesh, represented by the Secretary (Education), Government of Arunachal Pradesh, Itanagar.
2. The Secretary(Education)-cum-State Project Director(ISSE), Government of Arunachal Pradesh, Itanagar.
3. The Deputy Director of School Education, Government of Arunachal Pradesh, Tirap District, Khonsa, Arunachal Pradesh.
4. The Principal, Government Higher Secondary School, Khonsa, Tirap District, Arunachal Pradesh.

.....*Respondents*

Advocates for the petitioner :

Mr. Dicky Panging
Mr. Vijay Jamoh
Ms. Diana Tamuk
Mr. Marconi Doji
Ms. Elina Perme
Ms. G. Basar
Mr. M. Noshi
Mr. O. Tayeng
Mr. M. Doji
Ms. Y. Komut
Mr. B. Padung
Mr. A. Modi
Mr. T. Tayeng

Advocates for the respondents: Mr. Tagum Jamoh, standing counsel

:::B E F O R E:::
HON'BLE MR. JUSTICE NANI TAGIA

Date of hearing : **11.02.2019**
Date of Judgment & order : **11.02.2019**

JUDGMENT AND ORDER(ORAL)

Heard Mr. Dicky Panging, learned counsel, appearing on behalf of the petitioner. Also heard Mr. Tagum Jamoh, learned standing counsel, Education Department, Arunachal Pradesh, appearing on behalf of all the respondents.

2. By this petition preferred under Article 226 of the Constitution of India, the petitioner, who is presently serving as PRT(ISSE) in the Government Upper Primary School, Old Doidam, has challenged the impugned order of transfer, dated 16.01.2019, issued by the Deputy Director of School Education, Government of Arunachal Pradesh, Tirap District, Khonsa(Respondent No. 3, herein), whereby the petitioner has been transferred from the said School, to Government Higher Secondary School Khonsa, as Hostel Warden.

3. The petitioner's case, as projected in the said writ petition, is that, the writ petitioner came to be posted at Government Upper Primary School at Old Doidam, vide order, dated 27.07.2018, passed by the Deputy Director of School Education, Government of Arunachal Pradesh, Tirap District, Khonsa and since then, the petitioner has been serving in the said School with all sincerity. Barely about 5½ months thereafter that the impugned transfer order has been issued in violation of the normal tenure of posting of 2 years as provided under the Government Notification, dated 19.12.2018, issued by the Chief Secretary to the Government of Arunachal Pradesh, vide PERS-126/2014 which had modified or amended the earlier Government Circular, dated 02.06.1998, issued by the Department of Personnel, Government of Arunachal Pradesh, prescribing 3 years tenure of posting at a place.

4. Assailing the impugned order of transfer, Mr. Dicky Panging, learned counsel for the petitioner, has submitted that the examination schedule of Class V and VIII pertaining to the Arunachal Pradesh State Board Examination has already been notified vide 03.01.2019 showing the commencement of the examination with effect from 12.02.2019 and therefore, no public interest is

involved in the present case, requiring the transfer of the petitioner as indicated in the impugned order of transfer.

5. On the other hand, Mr. Jamoh, learned standing counsel, Education Department, appearing on behalf of all the respondents, have, on instruction, submitted that the impugned transfer of the writ petitioner has been effected, as is evident from the impugned order, dated 16.01.2019, as per the need-based of the School.

6. Mr. Jamoh, learned standing counsel, further submitted that the impugned order of transfer had to be issued after ascertaining the requirement of the Hostel Warden at Government Higher Secondary School Khonsa, for which the appropriate authority thought it expedient to post the writ petitioner as Hostel Warden of Government Higher Secondary School Khonsa, resulting in the issuance of the impugned order of transfer of the writ petitioner from Government Higher Secondary School Khonsa to Government Upper Primary School, Old Doidam. He, therefore, submitted that there is no illegality in the impugned order of transfer as the transfer and posting of the employee is within the domain of the employers.

7. Mr. Jamoh, learned standing counsel, Education Department, Arunachal Pradesh, has also submitted, on instruction, that Government Higher Secondary School, Khonsa, starts from Class VI onwards and there are no primary sections in the Government Higher Secondary School, Khonsa.

8. After having heard the learned counsels for the parties, it has remained undisputed that the writ petitioner is a primary teacher appointed under ISSE which is an appointment meant for looking after the academic activities of Class I to V only.

9. From the very nature of the appointment of the writ petitioner, it appears that the writ petitioner's duty can only be confined to a school with establishment of primary sections. In view thereof, if at all the writ petitioner had to be

transferred, she could have only been transferred to a school with establishment of primary sections.

10. In the instant case, the writ petitioner has been transferred as a Hostel Warden to the Government Higher Secondary School, Khonsa, which has no primary sections rather the said School starts with Class-VI and therefore, the writ petitioner could not have been posted in the School, aforementioned, which had no primary section.

11. This is apart from the fact that the writ petitioner has been transferred within a period of about 5 ½ months from the last posting effected at Government Upper Primary School, Old Doidam.

12. For the reasons and discussions made above, I am of the considered opinion that the transfer order of the writ petitioner has not been effected in accordance with the professed norms as well as in fair manner after taking into consideration the relevant facts and circumstances of the case.

13. In view thereof, the impugned order, dated 16.01.2019, transferring the petitioner from Government Upper Primary School, Old Doidam to Government Higher Secondary School Khonsa, issued by the Respondent No. 3 i.e. Deputy Director of School Education, Government of Arunachal Pradesh, Tirap District, Khonsa, is accordingly set aside and quashed.

14. With the above directions, the writ petition stands allowed and disposed of accordingly.

JUDGE

Bikash