

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM:NAGALAND:MIZORAM AND ARUNACHAL PRADESH)

ITANAGAR BENCH**WP (C) No. 233 (AP) 2014**

Shri Tami Nikja,
Assistant Engineer, PWD,
Sub-Division-II, Dumporijo,
PO. & P.S. : Dumporijo,
District - Upper Subansiri, Arunachal Pradesh.

..... Petitioner.

– *Versus* –

1. The State of Arunachal Pradesh,
Represented by the Commissioner, PWD,
Government of Arunachal Pradesh, Itanagar.
2. The Chief Engineer, Central Zone, PWD,
Government of Arunachal Pradesh, Itanagar.
3. The Executive Engineer, PWD, Dumporijo Division,
Government of Arunachal Pradesh.
4. Mr. Lardik Kare, Assistant Engineer, PWD,
PWD, Sub-Division 5, CD/B,
Government of Arunachal Pradesh, Itanagar.

..... Respondents.

Advocate for the petitioner : Mr. Kento Jini, Advocate.

Advocate for the Respondents : Ms. Geeta Deka,
Addl. Sr. Govt. Advocate,
Arunachal Pradesh
for Respondent Nos. 1, 2 & 3.

Mr. Duge Soki, Advocate,
for Respondent No. 4.

B E F O R E**THE HON'BLE MR. JUSTICE M. R. PATHAK**

Date of hearing : 03-12-2014

Date of Judgment & Order : 05-02-2015

JUDGMENT & ORDER (CAV)

Heard Mr. Kento Jini, learned counsel for the petitioner. Also heard Ms. Gita Deka, learned Addl. Sr. Govt. Advocate, Arunachal Pradesh for the State respondent Nos. 1 to 3 and Mr. Duge Soki, learned counsel appearing for the private respondent No. 4.

2] The petitioner stated that while he was serving as an Assistant Engineer (AE, in short) at Koloriang Sub-Division, Sangram PWD Division, Kurung Kumey District of the State and the Commissioner PWD, the respondent No. 1 vide his order No. SPWD-198/2013 dated 20.06.2014 transferred the petitioner and 42 other Assistant Engineers of the Department including the respondent No. 4 and posted the petitioner in the same capacity at Baririjo Sub-Division vice Sri Konam Bayor. Pursuant to the said order dated 20.06.2014, the Executive Engineer (EE, in short) Sangram Division released the petitioner from Koloriang on 09.07.2014 enabling him to join in his new place posting at Baririjo. The petitioner submitted that he joined at Baririjo on 12.07.2014 by submitting his joining report before the EE (PWD, Dumporijo Division) and there after he was attending his duties at Baririjo.

3] Subsequently, the PWD Commissioner vide his order No. SPWD/2008/PT-V dated 11.07.2014 transferred the petitioner and 14 other AE's of the PWD of the State and by the said order, the petitioner was posted in the Dumporijo Sub-

Division-II, PWD in the same capacity vice one Sri Lardik Kari, (the respondent No. 4). In the said order dated 11.07.2014, the petitioner was shown that he has been transferred from Koloriang Sub-Division. However the petitioner did not object to the said transfer order dated 11.07.2014 and stated that he joined as an AE in the Dumporijo Sub-Division-II, PWD 14.07.2014.

4] The petitioner submitted that after his joining as an AE at Dumporijo Sub-Division-II, the EE of PWD, Dumporijo on 14.07.2014 issued an order directing the respondent No. 4, Sri Lardik Kari to hand over the charge to the petitioner with immediate effect and as the said respondent No. 4 deliberately remained out of station and did not hand over the charge to the petitioner; the EE, Dumporijo PWD Division vide order dated 16.07.2014 directed the petitioner to assume ex-parte charge of the said Sub-Division-II with immediate effect and the petitioner on 19.07.2014 assumed the charge as an AE of the said Dumporijo Sub-Division-II in terms of the said order of the EE dated 16.07.2014.

5] The PWD Commissioner of the State vide order No. SPWD-198/2013/Pt. dated 21.07.2014 issued another order in the interest of Public service with immediate effect and until further order posting the petitioner as an Assistant Surveyor of Works (ASW, in short) in the Dumporijo Division against an existing vacancy and retained the respondent No. 4, Lardik Kari at Dumporijo Sub-Division-II as an AE showing that the petitioner has been transferred from Koloriang Sub-Division as an Assistant Engineer.

6] Being aggrieved with the said action of the respondent No. 1 dated 21.07.2014, the petitioner filed the present writ petition challenging the same and prayed before this Court to set aside and quashed the said order dated 21.07.2014 passed by the Commissioner, PWD and further to allow the petitioner to continue to work as AE Dumporijo Sub Division-II in the district of Upper Subansiri till completion of his tenure as per earlier transfer order dated 11.07.2014.

7] The petitioner submitted that the State Government in the Department of Personnel, Administrative Reforms and Training issued an Office Memorandum being No. OM-11-/2006 dated 13.02.2007 specifying that – ‘in case where the relieved officers do not hand over the charge to the relieving officer when he comes to join, the relieving officer will assume charge of the Office unilaterally/ex-parte for implementing the Govt. order enabling the officer to discharge and his responsibilities without delay and that the relieved officer will stand automatically relieved once relieving officer assumes charges of the office. The petitioner also stated that after his transfer vide order dated 20.06.2014, he has withdrawn his son Mr. Mite Nikja who was studying in Class-II in Koloriang and also withdrew one of his Sisters, who is staying with him, and studying in Class-IX at Koloriang, in order to admit them at Dumporijo. The petitioner also stated that he submitted a representation before the respondent No. 1, the Commissioner, PWD on 22.07.2014 and the same is yet to be disposed of. The petitioner also submitted that the State respondent issued the impugned order dated 21.07.2014 retaining the respondent No. 4 as Assistant Engineer, PWD at Dumporijo Sub-Division-II at the request of the President and Vice president of the Tagin Cultural Society in terms of their communication dated

17.07.2014, by which it was informed that the respondent No. 4 is the Secretary General of their said society and his presence in the Si-Donyi celebration including Mega Si-Donyi celebration is necessary and requested the authority to retain him in his said place of posting up-to March, 2015 in the greater interest of the society.

8] The State respondents Nos. to 1 to 3 filed their affidavit in the matter and submitted that initially, the petitioner was transferred from Koloriang PWD Sub-Division vide order dated 20.03.2014 issued on 23.06.2014 and posted him at Baririjo Sub-Division as an Assistant Engineer and thereafter by the order dated 11.07.2014, the petitioner was transferred from Koloriang Sub-Division to Dumporijo Sub Division-II vice the respondent No. 4, who was transferred and posted as an AE at Sub-Division-5, CD/B under the Capital Division vide the order dated 23.06.2014. The State respondents submitted that both the aforesaid transfer orders dated 23.06.2014 and 11.07.2014 were at the initiative of the local MLA and to that extent the State respondents have annexed two U.O. Notes dated 17.06.2014 and 24.06.2014 of the sitting MLA of the 26th Dumporijo Assembly Constituency. However, the State Government in the PWD Department, after due consideration of the matter, vide order dated 21.07.2014, transferred the petitioner as an Assistant Surveyor of Works (ASW, in short) and posted him at Daporijo Division against an existing vacancy, retaining the respondent No. 4 as an Assistant Engineer, PWD, Dumporijo Sub Division-II. The State respondents submitted that the transfer and posting of a Govt. Employee is incidental to the Govt. Service and such transfer and posting is the prerogative of the Government and all transfer and posting order is being issued in the interest of

public service considering the exigencies of the work of the Department, performance of the particular incumbent and in the interest of the public of that locality and therefore, the question of down grading the petitioner by the impugned order does not arise. The state respondents submitted that the petitioner has not made out a case fit to be interfered by the Hon'ble Court involving extra ordinary jurisdiction and as such, submitted that the present petition of the petitioner is liable to be dismissed.

9] The respondent No. 4 by filing his affidavit in the matter submitted that the Deputy Chairman (SPB) Itanagar on 12.03.2013 requested the Minister of the PWD, Finance and Planning, Government of Arunachal Pradesh for mutual transfer and posting of the respondent No. 4, an AE, from Daporijo PWD Sub-Division to PWD Division Dumporijo No.-II and another namely, Sri Tumkek Nalo, AE-II from Dumporijo PWD Sub Division to Daporijo-II in place of the respondent No. 4 and accordingly, the matter was considered, processed and respondent. 4 was posted as an AE at Dumporijo Sub Division-II vice said Sri T. Nalo by the order dated 12.04.2013 issued by the Commissioner, PWD. It is submitted that the respondent No. 4 has not completed the normal tenure of 2 (two) years as per State Government notification while issuing the transfer order dated 20.06.2014 transferring the respondent No. 4 from Dumporijo Sub-Division and posting him as an AE under the Sub Divisions-5, CD/B, Capital Division-B, Itanagar. The respondent No. 4 submitted that the Office of the EE, PWD, Dumporijo was closed on 12.07.2014 being Saturday, a holiday in the State of Arunachal Pradesh and as such the petitioner could not have join as an AE at Baririjo on the said date. The respondent No. 4 placed the relevant documents including the

joining reports of the petitioner in terms of the transfer order dated 20.06.2014 issued on 23.06.2014 before the EE, Dumporijo which shows that the date as 14.07.2014 only and the concerned Executive Engineer received the same on 14.07.2014 directing the Head Assistant of the Office to put up the file for asking the incumbent AE (the respondent No.4) to hand over the charge. The respondent No. 4 also furnished a copy of the Dak Received Register of the Division Office to show that on 24.07.2014 the Office received the Joining report of the petitioner dated 14.07.2014 vide serial No. 217. The respondent No. 4 also contended that the Dumporijo and Itanagar are at a distance of about 400 KMs., and it is not possible for the petitioner, who claimed to be serving at Dumporijo, to file representation before the Commissioner, PWD on 22.07.2014 i.e. on the very next day of issuing the impugned order dated 21.07.2014. Moreover, the respondent No. 4 has submitted that from the service book of the petitioner, obtain through RTI, it is learnt that the petitioner has only one son, who is now aged about 25 years and as such question of his son's studying in Class-II does not arise. The respondent No. 4 also obtain the information from various Schools of Dumporijo with regard to student having the name Mr. Mite Nikja and Kumari Meme Nikja studying in Class-II and Class-IX respectively in the session 2014-15. But all the schools at Dumporijo have certified that there is no students by such names in their schools and also submitted ther is no one by surname 'Nikja'. The respondent No. 4 also submitted that the present post of posting of the petitioner by the impugned order dated 21.07.2014 i.e. Daporijo Division is only about 12 Kilometers from his earlier place of posting of the petitioner i.e. Dumporijo issued pursuant to the earlier transfer

order dated 11.07.2014 and no harm has been caused to the petitioner by the impugned transfer order.

10] Perused the records placed before the Court by the State respondents. From the original Diary Register (Dak Receive Register of the Dumporijo PWD Division), containing entries from 19.11.2012 to 29.11.2014, it is seen that the concerned Office received the joining report of the petitioner Mr. Tame Nikja with reference No. Nil dated 14.07.2014 vide serial No. 217 dated 24.07.2014. It is also seen from the record that File No. DMJ/E-4/13-14 with regard to correspondences regarding all kinds of leave of the Office of the EE, PWD Division, Dumporijo that the petitioner on 28.07.2014, took 6 (six) days Casual leave w.e.f. 30.07.2014 to 04.08.2014 and the respondent No. 4 on 26.07.2014 took 6(six) days casual leave w.e.f. 28.07.2014 to 02.08.2014 with station leave permission on 27.07.2014 with the Office order dated 26.07.2014 by which the respondent No.4 directed one Sri Tako Yudik, Junior Engineer (HQ) of the office of the AE, PWD, Sub Division-II, Dumporijo to look after routine nature of works until he returns to the same station. It is seen from the records that the petitioner Sri Tami Nikja on his promotion to the post of Assistant Engineer was posted at Koloriang vide order No. SPWD-289/2008/Pt-VI/311-18 issued by the Commissioner, PWD dated 12.04.2013. It is also seen from the records that by the same order dated 12.04.2013, the respondent No. 4 was placed as an Assistant Engineer in the Dumporijo Sub-Division vice one Sri T. Nalo. Records reveals that that the sitting MLA of the 26th Dumporijo Constituency Assembly gave a U.O. Note on 17.06.2014 requesting the concerned PWD Minister of the State to immediately transfer and post the petitioner Sri Tami Nikja from Sangram Division to Dumporijo Division stating that

the petitioner has completed his tenure at Sangram. On receipt of the said note of the said MLA, the concerned PWD Minister of the State forwarded it to the Commissioner, PWD and accordingly Commissioner, PWD by his order No. SPWD-198/2013 dated 20.06.2014, issued on 23.06.2014 transferred the petitioner from Koloriang Sub-Division to Baririjo Sub-Division under Dumporijo Sub-Division of PWD. By the said order 42 (forty two) other Assistant Engineers of the PWD were transferred and posted at various places on promotion and on regular posts, including the respondent No. 4 Sri Lardik Kari transferring him from Dumporijo Sub-Division-II to Sub Division-V CD/B under Capital Division vice Sri Golo Tagar.

11] It is also seen from the records that the sitting MLA of the 26th Dumporijo Constituency Assembly on 24.06.2014 gave another U.O. Note to the concerned PWD Minister of the State, requesting him to partially modify the earlier transfer and posting order dated 23.06.2014 and to place the present petitioner at Sub Division-I Dumporijo instead of Baririjo Sub Division as in his earlier note he did not mention specific Sub Division for the posting of the petitioner. The concerned PWD Minister on receipt of aforesaid note of the said MLA, forwarded the same to the Commissioner, PWD and accordingly, the Commissioner, PWD on 11.07.2014 passed another transfer order transferring the petitioner from Koloriang Sub-Division to Dumporijo Sub Division-II vice the respondent No. 4. However, from the records it is seen that the Government, after consideration of the matter, passed the impugned order dated 21.07.2014 retaining the respondent No. 4 in the Dumporijo Sub Division-II and placed the writ petitioner at Daporijo Division as an Assistant Surveyor of Works against an existing vacancy. The Government of Arunachal Pradesh in the

Department of Personnel vide No. PERS-126/2004 dated 19.12.2008 earlier issued an order modifying the earlier circular dated 02.06.1998 regarding policy guidelines on transfer and posting of all categories of officers and staffs in Arunachal Pradesh and ordered that the tenure of posting in all the Government posts shall be 2 (two) years instead of 3 (three) with immediate effect. The said order was signed and issued by the Chief Secretary of the State and it is still in force in the State. As stated above, it is seen that by the order No. SPWD-289/2008/Pt-VI dated 12-04-2013 issued by the Commissioner, PWD, the Government of Arunachal Pradesh promoted the petitioner to the post of Assistant Engineer and posted him in the Koloriang Sub-Division against an existing vacancy. The petitioner is completely silent with regard to his said promotion and posting order dated 12.04.2013 in this petition. As noticed above, the petitioner has been transferred at the instance of the sitting MLA of the 26th Dumporijo Assembly Constituency without even completion of his normal tenure of two years. The said MLA on 19.06.2014 requested the PWD Minister of the State for transfer of the petitioner from Koloriang Sub-Division to Dumporijo PWD Sub-Division. Record also reveals that after the PWD Commissioner vide his order dated 20.06.2014 issued on 23.06.2014 transferred the petitioner from Koloriang Sub-Division and posted him at Baririjo Sub-Division, the concerned sitting MLA of the 26th Dumporijo Assembly Constituency again issued an U.O. note on 24.06.2014 to the PWD Minister of the State, requesting him to transfer the petitioner from Koloriang Sub-Division to Dumporijo Sub-Division-I instead of Baririjo Sub-Division and the PWD Minister of the State this time also forwarded the same to the PWD Commissioner and thereafter, the PWD Commissioner issued another order dated 11.07.2014

transferring the petitioner from Koloriang Sub-Division and posted him as an Assistant Engineer in the Dumporijo Sub-Division-II vice the respondent No. 4. It is also seen that the respondent No. 4 was posted as an Assistant Engineer at Dumporijo Sub Division-II vide order dated 12.04.2013 vice Sri Tumkek Nalo on mutual understanding and the respondent No. 4 did not complete his normal tenure of posting of two years at Dumporijo in terms of the earlier transfer order dated 12.04.2013, when the Commissioner, PWD, Government of Arunachal Pradesh issued the aforesaid orders of transfer and posting dated 20.06.2014 issued on 23.06.2014 and 11.07.2014 respectively. Further the said two orders of the PWD Commissioner dated 20.06.2014 issued on 23.06.2014 as well as 11.07.2014 with regard to the petitioner herein are at the instance of the present sitting MLA of the 26th Dumporijo Assembly Constituency. Moreover, Respondent No. 4 stated that the Daporijo PWD Division, where the petitioner has been posted by the impugned order dated 21.07.2014, is quite near to the Dumporijo Sub Division-II, i.e. about 12 KMs, which has not been opposed by the petitioner. Further, the petitioner could not have join in his service on 12.07.2014 as it was a Saturday and the State of Arunachal Pradesh follows 'five working days in a week' since long as submitted. The petitioner also not rebutted the charge of the respondent No. 4 that not a single member of the petitioner, who is studying in Class-II and Class- IX in Dumporijo.

12] For the aforesaid reasons, the above noted transfer and posting orders of the petitioner dated 20.06.2014 issued on 23.06.2014 and 11.07.2014, both issued by the PWD Commissioner of the State being at the instance of the concerned local MLA from Dumporijo are not in any public

interest. Moreover, the petitioner did not complete the term of 2 (two) years at Koloriang PWD Sub-Division, after his joining there as per his promotion and posting order dated 12.04.2013, in terms of the order of the Personnel Department issued by the Chief Secretary of the State on 19.12.2008. As such, the aforesaid two transfer orders dated 20.06.2014 issued on 23.06.2014 and 11.07.2014 with regard to the petitioner are illegal and have no sanctity of law.

13] After going through the records and hearing the parties, the Court is of the considered opinion that the impugned transfer & posting order dated 21.07.2014 issued by the PWD Commissioner of the State retaining the respondent No. 4 in his earlier place of posting at Dumporijo Sub-Division-II enabling him to complete his normal tenure of 2 (two) years, in terms of transfer and posting order dated 12.04.2013 issued by the Commissioner, PWD, Government of Arunachal Pradesh as per Personnel Department's order dated 19.12.2008 and posting the petitioner as an Assistant Surveyor of Work (ASW), which is an equivalent post to that of an Assistant Engineer, at Daporijo Division, does not suffer from any illegality.

14] In view of the above, this petition being devoid of any merit stands dismissed. The interim order dated 25.07.2014 and the subsequent orders staying/suspending the impugned order dated 21.07.2014 is hereby recalled/stands vacated.

15] No order as to costs.

JUDGE

Talom