

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

**ITANAGAR BENGH**

1. WP(C) No. 263 (AP) 2013
2. WP(C) No. 264 (AP) 2013

**In WP(C) 263 (AP) 2013**

**Mr. Jummar Ete,  
Junior Engineer, Tuting WRD Section,  
District-Upper Siang,  
PO & PS-Tuting,  
Arunachal Pradesh**

**..... Petitioner**

**By Advocates:**

**Mr. K. Jini,  
Mr. D. Kamduk,  
Mr. T. Gadi,  
Mr. D. Loyi.  
Mr. B. Picha  
Mr. O. Tatak**

**-Versus-**

1. **The State of Arunachal Pradesh represented by  
the Secretary, Water Resource Department,  
Government of Arunachal Pradesh,  
Itanagar.**
2. **The Chief Engineer, Water Resource (WZ)  
Department, Government of Arunachal Pradesh,  
Itanagar, District-Papum Pare, (AP),  
Itanagar.**
3. **The Superintending Engineer, Water Resource  
Department Circle Itanagar,  
District-Papum Pare,  
Government of Arunachal Pradesh,  
Itanagar.**
4. **Mr. Tumpe Ete,  
Zilla Parishad Member (ZPM),  
30<sup>th</sup> Aalo West, West Siang District, Aalo,  
PO/PS-Aalo, Arunachal Pradesh.**

**.....Respondents.**

**By Advocates:**

**Mr.R.H. Nabam, Sr. G.A.  
Mr. D. Panging, for resp No.4.**

**In WP(C) No. 264 (AP) 2013**

**Mr. Jumge Ete,  
Junior Engineer, Monigong WRD Section,  
District-West Siang,  
PO & PS-Tuting,  
Arunachal Pradesh**

**..... Petitioner**

**By Advocates:**

**Mr. K. Jini,  
Mr. D. Kamduk,  
Mr. T. Gadi,  
Mr. D. Loyi.  
Mr. B. Picha  
Mr. O. Tatak**

**-Versus-**

- 5. The State of Arunachal Pradesh represented by the Secretary, Water Resource Department, Government of Arunachal Pradesh, Itanagar.**
- 6. The Chief Engineer, Water Resource (WZ) Department, Government of Arunachal Pradesh, Itanagar, District-Papum Pare, (AP), Itanagar.**
- 7. The Superintending Engineer, Water Resource Department Circle Itanagar, District-Papum Pare, Government of Arunachal Pradesh, Itanagar.**
- 8. Mr. Tumpe Ete, Zilla Parishad Member (ZPM), 30<sup>th</sup> Aalo West, West Siang District, Aalo, PO/PS-Aalo, Arunachal Pradesh.**

**.....Respondents.**

**By Advocates:**

**Mr.R.H. Nabam, Sr. G.A.  
Mr. D. Panging, for resp No.4.**

**BEFORE  
THE HON'BLE MR. JUSTICE NISHITENDU CHAUDHURY**

Date of hearing: 23-06-2014  
Date of judgment: 23-06-2014

**JUDGMENT (ORAL)**

Two Junior Engineers, Jummar Ete and Jumge Ete, have approached this Court by filing two separate writ petitions, challenging an order dated 12-07-2013, whereby the petitioners were transferred from

their present places of posting WP (C) No. 262 (AP) 2013 has been filed by Jummar Ete and W P (C) No. 264 (AP) 2013 has been preferred by Jumge Ete. Since both the writ petitions have arisen out of the same impugned order and are based on same background facts, both the writ petitions are taken up together for disposal and are accordingly disposed of by a common judgment.

2. The aforesaid Junior petitioners were working respectively at Tuting and Monigong WRD Section as Junior Engineers. During the last Panchayat Election, both the petitioners are alleged to have participated in the electioneering of candidates of their choice and incidentally against the returned candidate who, on turn, is a member of the ruling party. After the election was over, the returned candidate out of his vengeance sought to transfer the petitioners out of his constituency and with that end in view representation was filed against the petitioners alleging of their involvement in electioneering activities. The move being originated from epicentre having political affiliation, there was a corresponding representation as well for retaining the service of the petitioners in the present places of postings. Situated thus, the matter reached up to a Parliamentary Secretary who on appreciation of the both batch of representations opined that the matter be left as it is without any action. Be that as it may, ultimately, the force exerted by the opponents of the petitioners prevailed on the Government and there upon the impugned order dated 12-07-2013 was passed. By that order, the petitioner, Jumge Ete, stood transferred from Mongigong to Jamiri and the petitioner, Jummar Ete, was transferred from Tuting to Namsai Circle. The petitioners immediately filed the aforesaid two writ petitions and this Court at the time of motion hearing granted interim stay pending response from by the State respondents. The impugned stay order was extended from time to time and it is in force till today.

3. Both the private respondents and the State respondents have submitted their affidavits-in-opposition in WP(C) No. 263 (AP) 2013. Since the statements made in the affidavits-in-opposition, referred to above, covered both the writ petitions, the same is considered for deciding both the writ petitions together. In para 12 of the affidavit-in-opposition filed on behalf of the respondent Nos. 1 to 3, namely, the official respondents, the stand has been taken that the petitioner in the said writ petition did participate in the electioneering process. The relevant part of the paragraph is quoted below:-

***“ ..... Action could have been initiated against him as per the lection rule and service rule. But since it is the prerogative of the authority, the authority has taken the action in a lighter way, just by displacing him from***

*his posting place. As he tried to retain himself taking influence of political leaders, Chief Engineer and Secretary has taken cognizance of his action in the file noting.”*

4. The private respondents have also submitted affidavit in the same breath making the allegations that the two petitioners being Govt. employees were not supposed to participate in the electioneering, but they did participate in the process and thus they committed misconduct.

5. I have heard Mr. K. Jini, learned counsel for the petitioners, Mr. D. Panging, learned counsel for the respondent No. 4 and Mr. R. H. Nabam, learned Sr. Govt. Advocate appearing on behalf of the State respondent Nos. 1 to 3.

6. An appraisal of the fact situation referred to above shows that admittedly the incident which triggered transfer of the petitioners from one place to another is their participation in the election campaign for their chosen candidates. Paragraph 7 of the affidavit submitted by the official respondents supports this position. Now the question arises whether on such allegation and/or on such satisfaction, a transfer order can be issued. Transfer, no doubt, is a condition of service and for issuing a transfer order normally appointing authority is not required to give hearing to the concerned employee if it is a transfer simpliciter without there being any stigma. Administrative exigency and public interest are the only two guiding principles for passing an order of normal transfer. Whether transfer order can be passed as a measure of punishment has been answered by various courts on umpteem number of occasions. **Lord Denning M R** had occasion to deal with the question in **Merricks V. Nott-Bower** reported in (1964) 1 All ER 717, criticized such transfer order. The relevant part of the case of **Merricks** (supra), is quoted below:-

*“..... the range of punishment does not include transfer from one place to another. There is no power to transfer by way of punishment.”*

7. The Hon'ble Supreme Court recognized this principle in the case of **State of U.P. and Others Vs. Jagdeo Singh** (AIR 1984 SC 1115). Even subsequently, in the case of **G.B.,St. Anthony's College Vs. Rev.Fr.Paul Petta**, the Hon'ble Supreme Court reiterated the same law. In this case, Principal of the college was transferred as a teacher in a Technical School of the same management. The Hon'ble Supreme Court found that exercise was aimed at punishing the respondent. Dismissing the SLP, Supreme Court held that such transfer order by its own operation was a punishment order and the same could be made only after complying with the principles of natural justice. Same view has been followed by

the Hon'ble Supreme Court subsequently, in the case of **Somesh Tiwari Vs. Union of India and Others**, reported in **(2009) 2 SCC 592**. In that case, there was an anonymous complaint against the Govt. Servant and the investigation was conducted only to find that there was nothing adverse to him yet he was transferred from Bhopal to Shillong. He resisted his transfer and did not move out of Bhopal. Subsequently, he was transferred to Ahmedabad. He continued his crusade against the transfer order and claimed that this exercise was not made bona fide. Considering the fact of this case, the Hon'ble Supreme Court held that an order of transfer is an administrative order and this being ordinarily an incident of service should not be interfered with unless it is vitiated by reasons like mala fide. Mala fide has been found to be of two kinds - one is malice in fact and the other is malice in law. It is held that when an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal. Thus in view of the discussions made hereinabove it appears to be settled position of law that transfer cannot be made by way of punishment without complying with the principles of natural justice.

8. Considering what has been discussed above, it transpires that once the foundation triggering the transfer of a Govt. Servant is other than administrative exigency and/or public interest, such transfer is an outcome of extraneous consideration including mala fide and consequently such transfer is vitiated. Even in the present case, it is clear from the pleadings of the parties that supporting a particular candidate during Panchayat election constituted the foundation for transfer in the present case. The transfer was ordered to teach the petitioners a lesson. Thus the very foundation for issuance of the order is extraneous in nature. In the affidavit-in-opposition submitted by the official respondents it is fairly stated that only to deal them with lenient action, the petitioners were subjected to transfer because of unbecoming act as a Govt. employee. So, obviously, this transfer order is penal in nature.

9. Having so found, there is no alternative but to hold that the transfer is vitiated and accordingly, the impugned transfer is liable to be set aside. It is accordingly, set aside.

10. It is needless to say that setting aside of the impugned order of transfer shall not be a bar for the Government to reconsider the matter and to pass an appropriate order if public interest and administrative exigency so requires.

Both the writ petitions are allowed. No costs.

**JUDGE**