

**THE HIGH COURT OF TRIPURA
AGARTALA**

WP(C). No. 208 of 2013

Sri Tarun Debbarma,
Son of late Birmani Debbarma,
Subash Chowdhury Para, Vill: Belchara, P.S. Khowai, Dist: Khowai.

.....**Petitioner**

- VERSUS -

1. The State of Tripura,
(to be represented by the Secretary, Department of School Education, Government of Tripura). New Secretariat Complex, Agartala, New Capital Complex, Kunjaban, Agartala, West Tripura, PIN:799006.
2. The Secretary,
Department of School Education, Government of Tripura
New Secretariat Complex, Agartala, New Capital Complex, Kunjaban, Agartala, West Tripura, PIN:799006.
3. Director of School Education,
Government of Tripura, old Secretariat Building, Akhura Road, Agartala, West Tripura, PIN:799001.
4. The Inspector of School,
Khowai Inspectorate, P.S. Khowai, P.O. Khowai, District: Khowai.
5. The Head Master,
Debendra Chowdhury Para, Senior Basic S. B. (Pry.), School, Debendra Chowdhury Para, P.O. Khowai, District: Khowai

.....**Respondents.**

**B E F O R E
THE HON'BLE MR. JUSTICE U. B. SAHA**

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| For the petitioner | : Mr. P. Roy Barman, Advocate. |
| For the respondents | : Mr. D. C. Nath, Advocate. |
| Date of hearing & delivery of judgment and order | : 30.04.2016. |
| Whether fit for reporting | : No. |

Judgment and Order (Oral)

The instant writ petition is filed by the petitioner challenging the order of transfer and release dated 17.05.2013
(Annexure-4 to the writ petition) issued by the Directorate of

School Education, Government of Tripura, the respondent No. 3 herein, whereby and whereunder, the petitioner was transferred from Debendra Chowdhury Para S. B. School (Pry. Sec.), under Inspector of Schools, Khowai, West Tripura to Gachiram Para High School (Pry. Sec.), under Inspector of Schools, Kanchanpur, North Tripura, as Kokborok Teacher.

[2] The grievance of the petitioner is that the petitioner was initially appointed as Kokborak Teacher under the Directorate of School Education, Government of Tripura and posted to Ratanpur H.S. (Pry.) School under the Inspector of Schools, Khowai and served there up to 2006. Thereafter, the petitioner was transferred to Debbarma Para J. B. School under the Inspector of Schools, Kailashahar. While, the petitioner was serving as Kokborak Teacher being posted at Debbarma Para J.B. School under the Inspector Schools, Kailashahar, the petitioner was again transferred to Chinibagan High School (Pry. Sec.), under the Inspector of Schools, Kailashahar.

[3] Thereafter, the petitioner was transferred on his own request from Chinibagan High School (Pry. Sec.), under the Inspector of Schools, Kailashahar, Unakoti, Tripura to Debendra Chowdhury Para S. B. School (Pry. Sec.), under the Inspector of Schools, Khowai as his mother was old and ailing. While the petitioner was in Debendra Chowdhury Para S. B. School (Pry. Sec.), he was all on a sudden transferred to Gachiram Para High

School S. B. School (Pry. Sec.), in the name of public interest within 4 months. Hence the writ petition.

[4] The respondents' byway of filing counter affidavit mainly stated that the petitioner was transferred from Debendra Chowdhury Para S. B. School (Pry. Sec.) to Gachiram Para High School S. B. School (Pry. Sec.), for public interest and for shortage of teachers in the Gachiram Para High School S. B. School.

[5] It is also stated in Para-9 of the writ petition, that the petitioner had submitted an application for transfer from Chinibagan High School (Pry. Sec.), under I/S Kailashahar to a School near his residence due to his family affairs. Considering the transfer application, the Secretary and Director of School Education issued the transfer order in respect of the petitioner from Chinibagan High School, (Primary Section) to Debendra Para S. B. School (Primary Section), meaning thereby, the authority thus considered the needs of the petitioner in his own place.

[6] The respondents nowhere stated that how many teachers were available at Gachiram Para High School (Primary Section) while the petitioner was transferred to that School and whether the service of the petitioner is so essential, that in his absence the school cannot run.

[7] This Court at the time of admission, particularly, on 22.07.2013, while considering the stay application stated as follows:

"Heard Mr. P Roy Barman, learned counsel for the petitioner.

This application is filed for staying the impugned transfer and release order dated 17.05.2013 issued by the Director of School Education, respondent No. 3 herein, whereby and whereunder the petitioner has been transferred to Debendra Choudhury Para S.B. School (Pry Sec) from Chinibagan High School under Inspector of Schools, Kailashahar. Petitioner's case is that after serving seven years under the Inspector of Schools, Kailashahar he has been transferred to Debendra Choudhury S.B. School (Pry Sec) under Inspector of Schools, Khowai on his own request on 04.12.2012 and he was released on 01.01.2013. But after five months he has been transferred to Gachiram Para High School (Pry Sec) under Inspector of Schools, Kanchanpur from his existing place of posting in the name of public interest.

Let a notice be issued calling upon the respondents to show cause as to why an interim order shall not be passed as prayed for; and/or why such further and other order(s) shall not be passed as to this Court may deem fit and proper.

Notice is made returnable on 20.08.2013.

As Ms AS Lodh, learned Addl. GA appears and accepts notice for all the respondents, no formal notice need be issued.

Normally a transfer order is not interfered with by this Court but in the instant case it appears that the petitioner was transferred on his own request only six months back and he was allowed to join on 01.01.2013 but just after completion of 5 months he has been again transferred and in place of the petitioner no other teacher has been posted. There is no doubt that the employer has the right to transfer an employee but the said right has to be exercised for public interest. Mere using the word 'public interest' would not suffice the grounds of transfer. The authority has to consider the real purpose which serves the public interest.

In view of the above, till the returnable date the impugned order of transfer and release dated 17.05.2013 (Annexure P4 to the writ petition) shall remain stayed.

Copy of this order be furnished to the learned counsel for the parties".

[8] Against the said order of stay, the respondents filed an application for vacating the interim order. But subsequently, the said application being **C. M. Appl. No. 386 of 2013** was disposed of as not insisted.

[9] There is no doubt that transfer is an incident of public service and the power of transfer is available to be exercised by the employer, unless express bar is there. Normally, Court cannot interfere with valid transfer but obviously an order of transfer of an employee can be set aside, if it is found to be *mala fide*. Frequent transfer can constitute evidence of such *mala fide*, particularly,

when such frequent transfer is not justified by the Administrative Authority or in the public interest.

[10] In the instant case, admittedly, the petitioner was transferred on his own request in his own place but within 4 months of such transfer he was again transferred in the name of public interest which, according to this Court, is not proper and valid. Thus, the said transfer order is interfered with.

[11] The respondents also did not show any reason for public interest except using the words 'public interest'. The instant writ petition was filed in 2013 and by this time almost 3 years have elapsed. Therefore, this Court is of the considered opinion that the petitioner by virtue of the stay order passed by this Court has already served in his home place for about 3 years. As the impugned order was passed within 4 months from the date of his transfer in his home place, according to this Court, the impugned order is bad in law and the same is accordingly quashed.

[12] However, as the petitioner got opportunity for staying in his home place for about 3 years therefore, the authority is at liberty to take any decision, in accordance with law.

With the aforesaid, the writ petition is disposed of.

JUDGE