



<u>Serial No.04</u>

<u>Supp. List</u>

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C). No. 396 of 2023

Date of Decision : 29.08.2024

Shri. Moksedur Rahman

...Petitioner

-Versus-

1. State of Meghalaya represented by the
Commissioner and Secretary,
Agriculture Department,
Government of Meghalaya, Shillong.
2. The Director of Agriculture,
Meghalaya, Shillong.
3. The Joint Director of Agriculture,
Garo Hills, Tura,
Meghalaya.
4. The District Agriculture Officer,
Tura, West Garo Hills,
Meghalaya.
5. The Sub-Divisional Agriculture Officer,
Dadenggre, West Garo Hills,
Meghalaya.
6. Shri. Mominur Islam, son of Shri. Azad Ali,
Resident of village – Askikandi, P.O.
Bhaitbari, P.S. Phulbari,
West Garo Hills, Meghalaya.

...Respondents

Coram:



Hon'ble Mr. Justice H.S.Thangkhiew, Chief Justice (Acting)

Appearance:

For the Petitioner/Applicant(s) : Mr. S.K.Hassan, Adv.
Ms. M.Rahman, Adv.

For the Respondent(s) : Mr. N.Syngkon, GA and
Mr. J.N.Rynjah, GA for R 1-5.
Mr. S.A.Shiekh, Adv. for R 6.

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| i) | Whether approved for reporting in
Law journals etc: | Yes/No |
| ii) | Whether approved for publication
in press: _ | Yes/No |

JUDGMENT AND ORDER (ORAL)

1. The writ petitioner being aggrieved with a series of orders with regard to his transfer and posting has by way of the instant writ petition questioned the actions of the respondents and it is asserted that the orders passed are bereft of any reason and was based on totally extraneous considerations.

2. The brief facts are that the writ petitioner by the order dated 31-03-2023, issued by the respondent No. 2 as part of a routine transfer of Agricultural Inspectors, was transferred from the District Agricultural Office at Tura to the Sub-Divisional Agriculture Office at Dadenggre, to the post held by the respondent No. 6. However, the order of transfer was kept in abeyance as far as the petitioner was concerned by an order dated



03-04-2023, issued by the respondent No. 2, whereas, for the other Officers named in the routine transfer order dated 31-03-2023, no such orders were passed. Thereafter, by an order dated 16-11-2023, the respondent No. 2 withdrew the order dated 03-04-2023 keeping the transfer of the petitioner in abeyance, after which the petitioner as per the materials on record had joined to his new place of posting on 21-11-2023. However, by another order dated 22-11-2023, the respondent No. 2 then withdrew the order dated 16-11-2023, whereby the stay of the transfer of the writ petitioner that had been kept in abeyance had been withdrawn, which had resulted in the writ petitioner serving in the original place of posting i.e., Garobadha A.D.O. Circle inspite of the routine transfer dated 31-03-2023.

3. Mr. S.K.Hassan, learned counsel for the petitioner submitted that the action of the respondents in firstly, transferring the writ petitioner, then keeping the same in abeyance, withdrawing the stay order, and again cancelling the same is highly arbitrary and without any reasons being ascribed. He submits that the action of the respondents being totally alien to the normal and due course of government business is liable to be interfered with, and the writ petitioner be allowed to join his new place of posting as per the order dated 31-03-2023. Reliance has been placed in this regard by the learned counsel for the writ petitioner on a decision of the



Supreme Court in the case of East ***Coast Railway & Anr. vrs. Mahadev Appa Rao & Ors.*** reported in ***(2010) 7 SCC 678*** in support of his case.

4. Mr. N.Syngkon, learned GA appearing for the respondents No. 1-5 has submitted that the decision taken by the respondent No. 2 was due to administrative exigencies and also due to the fact that certain task of seed distribution were yet to be completed. It is further submitted that the last order keeping in abeyance the transfer of the writ petitioner, was also due to the fact that the respondent No. 6 had made an appeal as he was on the verge of retirement and had to look after his aged parents. In support of his submissions, learned GA has relied upon a decision of the Supreme Court in the case of ***SK Nausad Rahaman & Ors. vrs. Union of India & Ors.*** reported in ***(2022) 12 SCC 1***, wherein he submits that the Supreme Court has held that no employee can assert a vested right or a fundamental right to transfer.

5. Mr. S.A.Shiekh, learned counsel appearing for the respondent No. 6 has submitted that he is on the verge of retirement and is due to retire on 31-01-2026 and as such, had filed a representation before the respondents for consideration which was allowed in view of these genuine grounds. He further submits that it is a principle of law that an employee does not have a fundamental right to be posted at a place of his choice and that it is only the official respondent who has the authority to decide as to the posting of



any employee thereof. He further submits that the petitioner to the proposed place of posting i.e., Dadenggre, had already served for 25 years therein and as such, deserves no further consideration. Reliance has also been placed by learned counsel in the case of *N.K.Singh vrs. Union of India & Ors.* reported in *(1994) 6 SCC 98* and the case of *State of M.P. & Anr. vrs S.S.Kourav & Ors.* reported in *(1995) 3SCC 270*.

6. Heard learned counsel for the parties. Without dwelling on the facts in detail and as to what period and time the respondent No. 6 had occupied other posts, what is before this Court is to examine the action of the respondents and to determine as to whether the same was due to administrative exigencies or passed totally on extraneous consideration without any sound reasoning.

7. It is settled law that in matters of transfer, Courts and Tribunals are slow to interfere, inasmuch as, the same is an incidence of service and transfers are made in administrative exigencies. As submitted, it is also correct that the Courts do not sit in appeal over transfer orders made by the administrative authorities in the normal course of business. However, what is present in the instant case is a strange sequence of events, which is clearly reflected in the orders which have been annexed to the writ petition. As observed earlier, a routine transfer order had been issued on 31-03-2023, whereby the petitioner along with other employees, were



transferred, but the same was then stayed by an order dated 03-04-2023 only with regard to the petitioner. The stay of the transfer then was withdrawn by an order dated 16-11-2023, and the release orders were also passed in pursuance thereto, but thereafter, by another order dated 22-11-2023, the order withdrawing the stay of the transfer stood cancelled. A cursory perusal of the orders would show that no reason whatsoever has been ascribed to justify the actions of the respondents. It can be understood that on administrative exigencies, perhaps a transfer that has been issued may be kept in abeyance to allow for other contingencies, but however, in the instant case, it appears that after the routine transfer order has been issued on 31-03-2023, what happened after that is nothing but a comedy of errors. In this entire episode of events, even after perusal of the reasons given on affidavit, no justification has been made out, apart from the reason put up that the writ petitioner was yet to complete seed distribution, but curiously further, is the fact that the State respondents maintain that the orders were passed also on account of the appeal made by the respondent No. 6. In this regard, the judgment placed by the learned GA i.e., ***SK Nausad Rahaman & Ors. (Supra)*** would come into play, inasmuch as, at para 21.1 thereof, it has been held that no employee can assert a vested right, or a fundamental right to transfer. This also holds true for the respondent No. 6, who it appears on his appeals, his transfer was interfered



with. The entire decision making process which is under judicial review from the orders appended and from the reasons shown in the affidavit, leave no doubt in the mind of the Court that the same have been arrived at bereft of any reasoning and without any application of mind.

8. In view of the facts and circumstances thereof, the last impugned cancellation order dated 22-11-2023 is hereby quashed and set aside and the routine transfer order dated 31-03-2023, is directed to be given effect to by the respondents immediately, preferably within a period of three weeks from today.

9. With the above direction, writ petition accordingly stands allowed and is disposed of.

Chief Justice (Acting)