

**NON-REPORTABLE****IN THE HIGH COURT OF MANIPUR****AT IMPHAL****WP(C) No. 906 of 2023**

Shri Brahmacharimayum Sonamani Sharma, aged about 58 years, S/o B. Iboyaima Sharma, a resident of Nongmeibung Purana Rajbari-I, P.O. & P.S. Imphal, Imphal East District, Manipur, Pin-795005.

..... Petitioner/s

- Versus -

1. The State of Manipur, through the Principal Secretary (SW), Government of Manipur, New Secretariat Building, Babupara, P.O. & P.S. Imphal, District Imphal West, Manipur-795001.
2. The Director, Social Welfare Department, Government of Manipur, Ragailong, Imphal West, Manipur-795001.

.....Respondent/s

3. K. Devananda Meitei, CDPO, ICDS Project, Machi, Tengnoupal District, Manipur, Pin-795135.
4. Shri Modun Maring, CDPO, ICDS Machi, Tengnoupal Dist, Manipur-795135. *[impleaded vide order dated 27.12.2023 in MC(WP(C))No.481 of 2023]*

....Private Respondent/s

With

MC(WP(C) No. 463 of 2023

Shri Brahmacharimayum Sonamani Sharma, aged about 58 years, S/o B. Iboyaima Sharma, a resident of Nongmeibung Purana Rajbari-I, P.O. & P.S. Imphal, Imphal East District, Manipur, Pin-795005.

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....*Private Respondent/s*

B E F O R E
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the petitioners	::	Mr. Y. Nirmolchand, Sr. Adv & Mr. L. Raju, Adv.
For the respondents	::	Mr. S. Nepolean, G.A., Mrs. RK. Emily, Dy.G.A., Mr. H.S. Paonam, Sr. Adv. & Mr. Arunkumar, Adv.
Date of Hearing	::	05.09.2024/17.12.2024
Date of Order	::	31.01.2025

ORDER (CAV)

[1] Heard Mr. Y. Nirmolchand, learned senior counsel assisted by Mr. L. Raju, learned counsel for the petitioner, Mr. S. Nepolean, learned G.A. assisted by Mrs. RK. Emily, learned Dy. G.A. for the State respondent and Mr. H.S. Paonam, learned senior counsel assisted by Mr. A. Arunkumar, learned counsel for respondent Nos. 3 & 4.

[2] The brief fact of the case is that vide order dated 22.08.1995, the petitioner was initially appointed as Statistical Assistant in the Department of Social Welfare, Government of Manipur and he was posted at District ICDS Cell, Churachandpur vide order dated 09.10.1995. The petitioner was again posted at ICDS Cell, Ukhrul vide order dated 09.10.2001 and the petitioner was transferred and posted as in-charge, CDPO, ICDS Project, Jiribam vide order dated 02.03.2020 with the subsequent corrigendum dated 03.03.2020.

[3] The petitioner got promoted to the post of Child Development Project Officer (CDPO) on the recommendation of the Departmental Promotion Committee Meeting held on 09.03.2022 vide order dated 09.03.2022 and subsequent corrigendum dated 28.04.2022. After being



promoted, the petitioner was transferred as CDPO, Sawombung, ICDS Project from Chingai ICDS Project from Ukhrul District, ICDS Cell vide order dated 10.02.2023.

[4] By the impugned transfer order dated 15.12.2023, the petitioner was transferred and posted as i/c PO (ICDS), District ICDS Cell, Imphal East on the condition that his salary shall be drawn from CDPO, ICDS Project, Jiribam and respondent No. 3, namely Shri K. Devananda Meitei was transferred as CDPO, ICDS Project, Imphal East-1 and CDPO, Sawombung ICDS Project is also termed as CDPO, ICDS Project, Imphal East-I.

[5] The petitioner is at the verge of retirement i.e. 58 years on attaining the age of superannuation and desires to retire from the hometown however as on today, no charge was handed over to the private respondent and impugned order dated 28.07.2023 was made available to him on 31.07.2023.

[6] It is stated that by the impugned transfer order dated 15.12.2023, the petitioner was made i/c Project Officer as though the petitioner is a CDPO and the post of CDPO is to be manned by respondent No. 3 and the petitioner's salary will be drawn as CDPO, ICDS Project, Jiribam. The petitioner is facing difficulties in drawing salaries and updation of CMIS/MGEL database as posting place and place of drawal for salary is of different district and he already faced problems in getting the monthly salary for many months together. As such, the petitioner approached this Court by filing the present writ petition.

[7] In the counter affidavit of State respondent Nos. 1 & 2, it is denied that the impugned order dated 15.12.2023 conferring in-charge PO to the petitioner does not amount to transfer and as such the Transfer Guidelines issued vide Notification dated 12.05.2022 will not be applicable. It is stated that by the impugned order, the charge of CDPO/IE was removed from the petitioner by retaining the in-charge of PO/IE and hence



the petitioner has not been transferred from Imphal East to Jiribam and he is still in Imphal East. It is further stated that getting salary from Jiribam does not amount to transfer as the petitioner is still posted in Imphal East in a higher post. The apprehension of the petitioner of difficulty in getting salary from Jiribam has already been taken care by the department as suggested by this Court and now he is getting regular salary.

[8] Respondent No. 3 filed counter affidavit stating that the writ petitioner is not maintainable due to non-joinder of necessary party, Shri Modun Maring, who has taken charged of the post held by respondent No.3 at Machi. It is also stated that the petitioner is still posted in Imphal East as PO and is not a case of transfer. It may be noted that vide order dated 27.12.2023 in MC(WP(C)) NO. 481 of 2023, Shri Modun Maring was impleaded as respondent No.4. Additional affidavit dated 03.09.2024 was filed to bring on record subsequent event that respondent No.4 retired from service on superannuation and one L. Sunitibala Devi, Supervisor has been transferred and posted as i/c CDPO, Machi ICDS Project vide order dated 04.03.2024 and as such she will be a necessary party and writ petition may be dismissed on this ground alone.

[9] Mr. Y. Nirmolchand, learned senior counsel for the petitioner draws the attention of this Court to the opening para of impugned order dated 15.12.2023 which states as “The Governor of Manipur is pleased to allow the transfer and posting of the following officers/officials of Social Welfare Department...” to emphasise that the impugned order is nothing but a transfer order and hence the Notification date 12.05.2022 issued by the Government of Manipur (DP) prescribing guidelines for transfer will be applicable in the present case. The senior counsel refers to Para III General Conditions specially sub para (i), (ii) and (iii) and Para V: Power to relax by Chief Minister. It is stipulated that minimum tenure at a place is 1 year 6 months and maximum 3 years; no transfer before completion of 1 year 6 months except for compelling reasons and not more than 9 years posting in hill areas throughout the entire service period. Any deviation



from the stipulations should be with the approval of the Chief Minister in writing. It is pointed out that vide order dated 10.02.2023, the petition was transferred and posted as CDPO, Sawombung ICDS Project, Imphal East from Chingai and the impugned transfer order dated 15.12.2023 was issued within 10 months in violation of sub para (i) & (ii) of Para III and the same was done without the approval of CM as contemplated under Para V. Para III(vii) provides that within 2 years of retirement, an employee be given option for posting in home district and as the petitioner is 58 years of age, he ought to be posted in Imphal East. The impugned transfer order in effect is transferring him to Jiribam. It is vehemently submitted that impugned order transferring the petitioner as PO, Imphal East from CDPO, Imphal East with salary to be encashed from Jiribam is nothing but transferring the petitioner to Jiribam in violation of Para III (i), (ii), (iii) & (vii) and V of the Notification dated 12.05.2023 and the same is liable to be quashed.

[10] On the other hand, Mr. S. Neplean, learned GA submits that the present case is not an instance of transfer. In fact, it is a case of in charge appointment of the petitioner to a higher post of Programme Officer (PO) in the same district Imphal East. It is pointed out that by the impugned order 15.12.2023, the petitioner has been divested the charge of CDPO/IE by retaining the i/c PO/IE from his dual post of CDPO/IE and i/c PO/IE. It is urged that the same cannot be termed as transfer. It is pointed out that transfer is from post to another equivalent post and Notification dated 12.05.2022 will not be applicable. Drawing salary from Jiribam cannot be considered as instance of transfer, as the petitioner is not posted in Jiribam and the same is in administrative exigency for smooth payment of salary. Mr. H S Paonam, learned senior counsel for respondent No.3 also supports the submission of learned GA to the point that posting to a higher post on in charge basis is not a transfer.

[11] On the perusal of the case record and on consideration of submissions of the party, this Court frames the point involved for



adjudication in the present case as: “Whether posting of the petitioner holding dual charge of CDPO, Imphal East and in charge PO, Imphal East as PO, Imphal East is an instance of transfer or not?”.

[12] It is the settled proposition of law that transfer is an instance in service jurisprudence where an employee is posted to another location to a post of same nature or to an equivalent post. Transfer and posting to a higher post is effected only after promotion of an employee to a higher post or by making in charge appointment/arrangement to the higher post. The caption of order may not always be a determining factor.

[13] In the present case, it will be clear from a bare perusal of the impugned order dated 15.12.2023 at serial number 9 that the petitioner was having substantive post of CDPO, Imphal East with i/c PO, Imphal East prior to the impugned order and he has been posted as i/c PO, Imphal East by divesting the post of CDPO. It is also mentioned that he will draw salary from Jiribam.

[14] This Court is of the opinion that posting of the petitioner from CDPO in Imphal East to PO, Imphal East cannot be considered as instance of transfer. Rather, it is posting to a higher post on in charge basis. Accordingly, the Notification dated 12.05.2022 with regard to norms of transfer will not be applicable in the present case. Drawing salary from Jiribam without physical posting will not be sufficient to constitute a transfer in service parlance. In the circumstances, the writ petition along with pending application is dismissed. No cost.

JUDGE

FR/NFR

Kh. Joshua Maring

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by KH. JOSHUA
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