



GAHC010163382023

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

Case No. : WP(C)/4203/2023

JYOTISH DAS
S/O LT. SONA RAM DAS R/O SHANT9IPUIR MASZID ROAD P.O. AND PS
BHARALUMUKH DIST. KAMRUP (M) PIN 781009 ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE ADDITIONAL CHIEF SECRETARY TO THE GOVT OF ASSAM
FOOD AND CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPTT. DISPUR
GUWAHATI 781006

2:THE SECRETARY
TO THE GOVT. OF ASSAM FOOD AND CIVIL SUPPLIES AND CONSUMER
AFFAIRS AND LEGAL METROLOGY ASSAM ULUBARI GUWAHATI 7

3:THE COMMISSIONER
FOOD AND CIVIL SUPPLIES AND CONSUMER AFFAIRS AND LEGAL
METROLOGY ASSAM ULUBARI GUWAHATI 7

4:THE DEPUTY COMMISSIONER
KAMRUP (RURAL)
GUWAHATI 3

Advocate for the Petitioner : MS. B BHUYAN

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

Date of hearing : 28.07.2023.

Date of judgment : **28.07.2023.**

JUDGMENT & ORDER (Oral)

Heard Ms. B. Bhuyan, learned senior counsel assisted by Ms. R. S. Deuri, learned counsel appearing for the writ petitioner. Also heard Mr. R. Dhar, learned Additional Senior Government Advocate, Assam appearing on behalf of the respondents.

2. The writ petitioner herein is serving as Deputy Director of Food & Civil Supplies and Consumer Affairs and is presently posted at Kamrup Sadar in the District of Kamrup(M). Assailing the transfer order dated 21.07.2023 by means of which, he has been transferred and posted at Haflong, the instant writ petition has been filed *inter-alia* contending that this is a case of premature transfer in as much as the petitioner is yet to complete two years in his present place of posting. The other grounds urged by the petitioner's counsel are that the petitioner is due for retirement on attaining the age of superannuation with effect from 30.04.2025 and therefore, he has less than two years to go for his retirement. Under the circumstances, in order to avoid any delay in finalization of his pension, the petitioner ought to be posted in his home district i.e. Kamrup(M), which has not been done in the present case. Finally, Ms. Bhuyan has argued that the petitioner is facing certain personal difficulties as a result of which he is unable to shift out of Guwahati at this stage. The learned counsel submits that highlighting the difficulties faced by the petitioner, his wife Smt. Sabita Das had submitted a representation before the departmental Secretary on 25.07.2023 (Annexure-G) but the same has not been considered till today. It is also the



submission of Ms. Bhuyan that a premature transfer could not have been effected without the approval of the Chief Minister, Assam.

3. By relying upon a decision rendered by the High Court of Judicature at Rajasthan in the case of **Smt. Rani Jain Vs. Secretary and Transport Commissioner, Govt. of Rajasthan & others** rendered in **Civil Writ Petition No.6971/2019** Ms. Bhuyan has argued that an order of transfer, shifting the incumbent out of the home district just before retirement, is liable to be interfered with on such count alone.

4. Taking note of the submissions made by the petitioner's counsel, this Court had passed order dated 26.07.2023 directing the Government Advocate, Assam to obtain instruction and also to produce the relevant records. In the meantime, *status-quo* was directed to be maintained. Accordingly, the petitioner is continuing in his present place of posting till today.

5. When the matter is called up before this Court today, Mr. Dhar, learned Addl. Sr. Govt. Advocate, Assam appearing for the respondents has produced written instructions along with supporting documents to submit that as per the policy decision of the Government as many as 142 officers in the department of Food & Civil Supplies, Government of Assam have been transferred with the help of a randomized application of the NIC. Mr. Dhar has further submitted that the transfer orders have been issued under the direction and with the approval of the Hon'ble Chief Minister, Assam. The learned departmental counsel has also placed the relevant documentary evidence in support of his contention that this is a case of series transfers effected in the exigencies of public service based on system operated

orders without any human intervention. Mr. Dhar has also invited the attention of this Court to the policy decision of the Government to transfer officers rendering two or more years of service in a particular place by shifting them to a different zone and also not to allow any officer to remain in his home district. According to Mr. Dhar, the exercise of reshuffle is aimed at enhancing the efficiency of the departmental machinery and therefore, there is no good ground for this Court to interfere with the transfer order. Mr. Dhar has also produced a copy of the Gradation List of Assistant Directors, Food & Civil Supplies and Consumer Affairs Department, as on 20.09.2021, to show that the home district of the petitioner is Kamrup.

6. I have considered the submissions advanced at the bar and have also gone through the materials available on record.

7. Law is firmly settled that, transfer being an incident of service, the scope for the Writ Court to interfere with an order of transfer is extremely limited. A transfer order is generally interfered with by the Court only when it is found that the same has been issued in violation of statutory provisions or with a malafide intent to cause injury to the concerned officer or when it is found that the transfer order has been issued prematurely, without the approval of the competent authority and in violation of the transfer policy of the State. From a careful scrutiny of the materials placed before this Court, I find that none of the above conditions are fulfilled in this case for interfering with the impugned transfer order. Since the transfer order has been issued under the direction and with the approval of the Chief Minister of the State and in terms of a discrete policy of the Government, the same cannot be termed as arbitrary or illegal.

8. In so far as the arguments advanced by Ms. Bhuyan on the strength of a decision of the Rajasthan High Court rendered in the case of **Smt. Rani Jain** (supra) is concerned, I find that that was a case where the transfer was made only six months prior to the date of retirement of the officer. According to Rule 80 of the Rajasthan Civil Service (Pension) Rules, 1996 proceedings were required to be initiated for preparing pension papers of an employee who is due for retirement within two years. Relying on the said rules, the decision in **Smt. Rani Jain** (supra) had been rendered. However, no such provision of the Pension Rules is available in the present case. Although Ms. Bhuyan has tried to draw an analogy in the Rules by referring to Rule 95 of the Assam Services (Pension) Rules, 1969 to make a similar argument, yet, I find that Rule 95 merely requires the departmental authority to have a superannuation statement prepared on the 1st day of January of each year showing a list of all officers, gazette or non-gazetted, who will attain the age of retirement in course of the next calendar year. Such a recourse under Rule 95 is required to be taken in order to avoid any delay in finalization of the pension and other retirement dues of the officer. Rule 95, however, does not create any embargo with regard to transfer of an officer outside his home district before his retirement nor does it enjoin any duty upon the Government to give posting to an officer in his home district before his retirement. Ms. Bhuyan, learned senior counsel for the petitioner, has also submitted in her usual fairness that to her knowledge, there is no circular issued by the Government of Assam requiring a Government employee to be posted in his home district prior to his retirement. If that be so, the decision of the Rajasthan High Court rendered in the case of **Smt. Rani Jain** (supra), in the opinion of this Court, would have no relevance



in the facts of the present case. Therefore, this Court does not find any good ground to interfere with the impugned transfer order on the grounds urged in the writ petition.

9. Coming to the representation submitted by the wife of the petitioner, on perusal of the same, it appears that the family members of the petitioner would face some difficulties if the petitioner is transferred to Haflong. Whether the difficulties expressed in the representation are sufficient to modify the order of transfer of the petitioner or not is a matter for the departmental authorities to decide. However, if the family member of an employee approaches the departmental authority with a grievance, the same ought to be considered and responded to by the authorities, which has not been done in the present case.

10. Therefore, while declining the challenge made by the petitioner to the impugned transfer order dated 21.07.2023 for the reasons stated herein above, this writ petition stands disposed of by directing the respondent No.2 to examine the representation submitted by Smt. Sabita Das i.e. the wife of the petitioner on 25.07.2023 (Annexure-G) and dispose of the same by a reasoned order, within two weeks from the date of receipt of a certified copy of this order.

Interim order dated 26.07.2023 stands modified accordingly.

The writ petition stands closed.

There would be no order as to cost.

JUDGE

Comparing Assistant