

(1998) 04 GAU CK 0013**Gauhati High Court****Case No:** Civil Rule No. 5651 of 1996

Ramen Talukdar

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision: April 30, 1998**Acts Referred:**

- Constitution of India, 1950 - Article 14, 16, 226

Citation: (1998) 2 GLT 82**Hon'ble Judges:** D. Biswas, J**Bench:** Single Bench**Advocate:** H. Das and N.S. Deka, for the Appellant; Govt. Advocate and R.L. Yadav, for the Respondent**Final Decision:** Allowed

Judgement

D. Biswas, J.

This petition under Article 226 of the Constitution of India has been preferred by the Petitioner assailing the order of transfer issued by the Inspector of Schools, Nalbari District Circle, Nalbari vide Memo No. EST-10/53/94/13588-96 dated 6.11.96. Shown of details, the Petitioner's case, in brief, is that he was appointed as Assistant Teacher in Samata High School and has been serving there since 27.3.89. He was upgraded to the post of Assistant Teacher in the graduate scale with effect from 31.3.93. Sometime in the month of February, 1996 he was served with an order of transfer to Bali High School in place of Shri Aswini Goswami who was transferred to Samata High School. The transfer order has been assailed as malafide on the ground that it was passed at the behest of Minister of Agriculture to oust him from the school for political reasons. Further the transfer has been challenged on the ground that his seniority will be affected adversely and it would mean a reduction in rank amounting to imposition of punishment. According to the Petitioner, no public interest is involved in his transfer which is passed in violation of all the established procedure of law.

2. In the counter affidavit filed by the private Respondent No. 4, the contention raised by the Petitioner has been denied in its entirety with the assertion that there was no malafide in issuing the transfer order. The allegation of influence by the local Minister has also been denied and it is averred further that his transfer order was issued on consideration of a representation submitted by him on the ground that he was advised by his physician not to move on bicycle to cover a distance of 12 kilometres to attend his school. The transfer of the Petitioner to the Bali High School will not affect his seniority in any manner as the seniority is always determined according to the length of service in the scale and not in the school. It is important to mention here that the Respondents Nos. 1, 2 and 3 have not filed any affidavit denying the allegations made.

3. The learned Counsel for the Petitioner at the initial stage of his argument referred to a note written by the Minister, Agriculture at Annexure-"B" wherein the Minister concerned requested the Inspector of Schools to transfer the Respondent No. 4 to Samata High School and vehemently argued that because of the interference of the Minister, the Petitioner was transferred to Bali High School and this action in no way can be construed to be in the interest of public service.

4. The representation submitted by the Petitioner seeking transfer is not made available before this Court. The affidavit is also not clear as to the nature of ailment of the Respondent No. 4. In this given situation, it is not possible for this Court to come to a conclusion that the grounds for his transfer were genuine. The language of the note given by the Minister concerned is almost in the form of an order directing the Inspector of Schools, Nalbari to transfer the Respondent No. 4 from Bali High School to Samata High School. In view of this, and in the absence of materials to justify the grounds of transfer of the Respondent No. 4, this Court has no option but to come to the conclusion that the transfer order was undoubtedly made at the behest of the Minister concerned. Although the words "Public Interest" occur in the transfer order, this Court is unable to appreciate as to the exigency of the public interest involved in this order because of the influence of the Minister. As such, the transfer order having not been proved to be in the interest of public service and made on the face of an order of the Minister can be relegated as malafide.

5. Mr. R.L. Yadav, learned Counsel for the Respondent No. 4 laid emphasis on the decision of the Apex Court in Union of India and Others Vs. S.L. Abbas, wherein the Supreme Court held as follows:

7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having

regard to the exigencies of administration.

6. The decision quoted above does not in any way salvage the impugned order of transfer. It is mainly because that the order of transfer was passed in view of the interference of the Minister, Agriculture. It is true that who is to be transferred and where is a matter exclusively in the domain of the appropriate authority and the Court shall not normally interfere with it unless the order is made in violation of the statutory provision or is vitiated with malafide. In the instant case as has already been held hereinbefore, the order is tainted and malafide because of external influence and, as such, cannot be sustained.

7. The learned Counsel for the Petitioner further argued that the order of transfer of the Petitioner from Samata High School to Bali High School will affect his seniority adversely and, as such, the transfer order cannot be sustained. In support of his argument, he has referred to a decision of Rajasthan High Court in Baldev Ram and Ors. v. State of Rajasthan and Ors. reported in 1982 (2) SLJ 74, wherein the Rajasthan High Court held as follows:

22. As would be clear from the answer to questions 1, and 2, there is no Statewise seniority list of teachers grade III, and their seniority list is Revenue Districtwise. Moreover the promotion of teachers from Grade III to Grade II are made on the basis of districtwise seniority. The above two answers amply show that serious consequences detrimental to the interest of a teacher can follow, if he is transferred from one district to another district. Firstly, the moment he is transferred from one district, the inter se seniority of that district would be disturbed. Secondly, the chances of promotion in the incoming district may be hampered and impaired, if earlier appointed teachers in that district are there, as they would claim seniority for promotion grade II teachers. In a given case, it may tantamount to deprive him of an opportunity of promotion and thereby denying him equal protection clause and equal opportunity granted by Article 16 of the Constitution. In that view of the matter unless a particular teacher, voluntarily requests for transfer outside district waiving his right of seniority in the earlier district and not claiming seniority over other employees of the incoming district, a transfer of teacher grade III would be violative of Articles 14 and 16 of the Constitution and I hold accordingly.

8. In the opinion of this Court, the above situation has not been arisen in the instant case. The seniority list in Assam is maintained districtwise and, therefore, the transfer of teachers from one school to another school within the district cannot in any way be detrimental to seniority position.

9. From the discussion made hereinbefore, it would appear that the impugned order of transfer is mala fide because of external influence and it cannot be sustained.

10. In the result, the writ petition is allowed. The impugned order No. EST.10/53/94/13588-96 dated 6.11.96 is hereby quashed. Necessary follow up action that may be required in view of the above order shall be initiated and completed by

the appropriate authority at an early date.