courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 06/11/2025

(2016) 08 GAU CK 0027

GAUHATI HIGH COURT

Case No: WP(C) No. 812 of 2016.

Manoj Kumar Baishya - Petitioner @HASH State of Assam and Others — APPELLANT

Vs

RESPONDENT

Date of Decision: Aug. 12, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2016) 4 GauLT 896

Hon'ble Judges: Manojit Bhuyan, J.

Bench: Single Bench

Advocate: Mr. A. Ahmed, Advocate, for the Petitioner; Mr. P. Hazarika and Ms. S. Bhuyan, Advocates, for the Respondents

Final Decision: Dismissed

Judgement

Mr. Manojit Bhuyan, J. - Heard Mr. A. Ahmed, learned counsel for the petitioner as well as Mr. P. Hazarika, learned counsel representing Respondent Nos.1, 2, 3, 4 & 5. Ms. S. Bhuyan, learned counsel represents Respondent No.6.

2. The petitioner was initially appointed under Regulation 3(f) of the Assam Public Service Commission (Limitation of Functions) Regulations, 1951, as Demonstrator of Forensic Medicine and posted at the Gauhati Medical College & Hospital (GMCH). Consequent upon recommendation made by the Assam Public Service Commission (APSC) vide Notification dated 03.02.2016, the petitioner along with persons similarly situated were appointed on regular basis vide Notification of like date i.e. 03.02.2016, issued by the Government of Assam in the Health & Family Welfare (B) Department. Petitioner is aggrieved that while regularising his service as Demonstrator of Forensic Medicine, he was shown to be posted at Tezpur Medical College & Hospital (TMCH), Tezpur.

3. Mr. Ahmed submits that the posting of the petitioner at TMCH amounts to transferring him from his original place of posting i.e. GMCH and the same is contrary to the transfer policy guidelines regulated by the Office Memorandum dated 04.02.2016. Mr. Ahmed further submits that according to the guidelines, both the GMCH and the TMCH fall within Zone A and transfer can only be effected upon completion of 7(seven) years of continuous service in the same institution. In this respect, Mr. Ahmed refers to Clause 4.1 of the Office Memorandum dated 04.02.2016. As regards the date of effect of the transfer guidelines, Mr. Ahmed refers to Clause 6.1 to show that the guidelines was made effective from 1st of February, 2016. The date of effect of the guidelines is urged to say that since the petitioner became regular employee with effect from 14.12.2015, the Office Memorandum squarely covers his case. The same is the case of the private respondent no.6 who served at TMCH during the period under Regulation 3(f) and was regularised along with the petitioner. Having regard to Clause 4.1, it is contended that there is apparent violation of the transfer guidelines requiring interference in the posting of the petitioner as a Demonstrator of Forensic Medicine at TMCH and that of the private respondent no.6 at GMCH.

4. On the other hand, Mr. P. Hazarika submits that the Office Memorandum dated 04.02.2016 is not applicable to the petitioner as because the appointment made on 03.02.2016 is a fresh appointment and in view of Clause 4.3 thereof, discretion is available to the respondent authority to post Faculty members, freshly recruited to Medical Colleges falling under Zone A2/A3, B2 and C2. In the present case, the petitioner has been posted at TMCH, which fall under Zone A3, like GMCH. The further argument advanced is that the applicability of the Office Memorandum dated 04.02.2016 vis-a-vis the persons regularly appointed vide Notification dated 03.02.2016 had been considered by this Court in WP(C) 1085/2016 and WP(C) 1086/2016. In the said two cases, this Court have categorically held that the Office Memorandum dated 04.02.2016 is not applicable to the petitioner and the private respondents therein. The writ petitions filed by persons aggrieved were accordingly dismissed.

5. I have heard the learned counsel for the parties and have also perused the materials on record. The primary point for determination is whether the petitioner is entitled to the benefits and/or is governed by the Office Memorandum dated 04.02.2016. Apparently, the said Office Memorandum is a Transfer Policy of the Government of Assam in the Health & Family Welfare (B) Department, regulating transfer and posting of Teaching Faculties. Although the service of the petitioner as Demonstrator of Forensic Medicine was regularised with effect from 14.12.2015, the nature of appointment as per Notification dated 03.02.2016 is a fresh appointment with place of posting at TMCH. Going by the Office Memorandum, the transfer of the petitioner can only take place in terms of Clause 4.1 of the Office Memorandum dated 04.02.2016, that is, on his promotion from one grade to another or on completion of 7(seven) years of continuous service in the institution, whichever event takes place earlier. In other words, the appointment of the petitioner as Demonstrator of Forensic Medicine, following recommendation by the

APSC, being a fresh recruitment, the applicability of the Office Memorandum dated 04.02.2016 in so far as the petitioner is concerned, will only come into operation as per Clause 4.1 thereof. Furthermore, the applicability of the Office Memorandum has already been considered by this Court in WP(C) 1085/2016 and WP(C) 1086/2016 holding that the Office Memorandum dated 04.02.2016 is not applicable to persons similarly situated like that of the present petitioner. Accordingly, this Court holds that the Office Memorandum dated 04.02.2016 is not applicable to the petitioner nor any benefits thereof can be extended on this date.

6. In view of the above, I find no ground to interfere with the posting of the petitioner at TMCH and/or the posting of the private respondent no.6 at GMCH. This writ petition being devoid of merits, stands accordingly dismissed. Interim order passed earlier, stands accordingly vacated. No costs.