

## Shri. Welferson G. Momin Vs The State of Meghalaya

**Court:** MEGHALAYA HIGH COURT

**Date of Decision:** Sept. 8, 2016

**Citation:** (2016) LIC 4637 : (2017) 2 NEJ 378

**Hon'ble Judges:** Mr. S.R. Sen, J.

**Bench:** Single Bench

**Advocate:** Mr. K. Barua, GA, for the Respondent; Mr. S. Dey, Advocate, for the Petitioner

**Final Decision:** Allowed

### Judgement

Mr. S.R. Sen, J. (Oral)â€”Heard Mr. S.Dey, learned counsel for and on behalf the petitioner as well as Mr. K.Barua, learned GA on behalf of

the State respondents.

2. Brief facts of the case is that:

The Petitioner above named is a citizen of India and as such he is entitled to all the rights and privileges guaranteed under the Constitution of India

and the Laws framed there-under.

In the year 1994 the Petitioner has completed his Bachelor of Science from Tura Government College, Tura and on the same year he was

appointed in Manikganj Deficit Secondary School after the post was advertised by the Managing Committee of the said School. After he was

appointed in the Manikganj Deficit Secondary School, thereafter he was directed by the authority to teach Science and Garo subject, the said

School was under Resubelpara, but it is located near by Mendipathar and at present it is under North Garo Hills District. The Petitioner was

appointed just after he passed out his BSc exam. In the year 1998, the Meghalaya Public Service Commission (MPSC) conducted an exam for

the appointment of Assistant Science teacher, the Petitioner appeared in the said exam and he was declared as a successful candidate in the said

exam. Thereafter the Petitioner got appointed as an Assistant Science Teacher in the Resubelpara Government Secondary School in the year

1999.

After the Petitioner was appointment in the Resubelpara Government Secondary School, the Petitioner was teaching in the said School to his best

ability and knowledge from the year 1999 to 2010, the students of the said School was happy with the Petitioner, for his teaching capability, it is

not only the students community but also the people of the entire area of Resubelpara was happy with his service, moreover after the Petitioner

joint in the said School, the result of the students also improved.

In the year 2008 the Education Department advertised the post of the Sub-Inspector of School, as per the advertisement the Petitioner applied for

the said post and thereafter he has appeared in the said interview conducted by the Education department as per the advertisement.

As per the departmental interview result the Petitioner was also appointment as the Sub-Inspector of School in the year 2010 and thereafter he

was posted to Baghmara, South Garo Hills District, Meghalaya in the Office of the Sub-Divisional School Education Officer.

Under the Kharkutta Block there are 257 approved Schools, where Mid-day meal for the students of the said Schools is supplied as per the

sanction of the Government. The Petitioner married one Smti Gracetolin K Sangma and out of their wedlock they are bless with three children, the

eldest son is studying outside the State of Meghalaya, and the other two minor son are studying at St. Peter's National Academy, Bakhrahutti

Dudhnoi (Master Mark Ezer K Sangma) in Class VII, he is aged about 13 years; and the Petitioner's youngest son is about 6 years and he is the

student of Ramke Memorial Secondary School, Kharkutta North Garo Hills, Meghalaya, Class K.G.

In the year 2014 the Petitioner's wife namely Smti Gracetolin K Sangma meet with an accident at her resident at Kharkutta while she was carrying

water and was badly injured, thereafter she was shifted to near by Hospital however after preliminary investigation it was found that her right knees

was fractured and moreover the ligaments of the legs were torn and she was not in a position to use her legs for walking. The Petitioner with very

little resources tried his best to give her the finest treatment. In the Dispur Polyclinic & Nursing Home (Assam) the treatment of the Petitioner's

wife is going on from 11.10.2014 till date, but unfortunately the Petitioner's wife developed semi-paralyse in her legs and at present she is not in a

position to move her right legs without the help of other person. Every three months the Petitioner is taking his wife to Dispur Polyclinic & Nursing

Home for her treatment of Orthopaedic to that effect the Doctors of the said Clinic vide prescription dated 11.10.2014; 02.05.2015 and

30.04.2016 prescribed medicine to his wife.

The Petitioner was shocked to receive a letter dated 29th July 2016 from the Respondent Director of School Education & Literacy, Meghalaya,

Shillong whereby it was informed that in the interest of the Public Service the Petitioner was transferred to the Office of the Sub-Divisional School

Education and in his place one Shri Rajendra Kr. Hajong was to charge immediately. It is to mention herein that prior to the issuing of the said

transfer order, the local MLA of the area approached the Petitioner for appointing his people in the school under the jurisdiction of the Petitioner,

however the demand of the said MLA was not fulfil by the Petitioner since it was not as per law, henceforth the said transfer order was issue under

the instruction of the said local MLA, and the same was done only to take out the frustration of the said MLA. It is further to mention herein that

neither the department nor the Office of the Petitioner received any complaint against him, unfortunately without any complaint the Petitioner was

targeted personally and transfer order was issued in midst of the year, however till date the Petitioner is serving in the said Office and the

Respondent No.5 is yet to take charge from the Petitioner.

On 3rd August 2016 the President of the Teacher Association of North Garo Hills District (Northern Zone) requested the Respondent No.2 and

enumerated the grievances that the Petitioner is very sincere and hard working and trying to bring School administration closer to the people and

thereby bridging the gap between the teachers and the student"s communities and as per the survey of the Association the people of the area is

very much in need of him. Under the circumstances prayer was made to revoke the transfer Order of the Petitioner, however till date the

application of the President of the said Association was not disposed by the said Respondent till the filing of the instant writ petition. The Petitioner

also filed an application vide letter dated 3rd August 2016 before the Respondent No. 2, whereby the Petitioner has prayer before the said

authority to revoke the said transfer order on humanitarian ground because of his wife health condition and since his children are still minor and

School going student and further in mist of the year it will be difficult for him to shift to Dadenggiri, West Garo Hills District which is approximately

more than 100km from the place at present he along with his family is residing. After filing the said application the Petitioner continues working in

the said Office without any hindrance, however due to political pressure the Petitioner may be forcefully ask to leave the Office. It is to mention

herein that the Respondent No.5 is ready to remain in the same Office where at present he is serving after coming to know that the Petitioner is

having serious problem to joint the said Office at Dadenggri. Till date the said Respondent did not dispose the application of the Petitioner dated

3rd August 2016 till the filing of this instant writ petition. It is to mention herein that the Petitioner is made victim due to his none cooperation with

his local MLA, the said transfer order is issued just to punished the Petitioner without any fault from his end. Hence this Petition.

3. Learned counsel on behalf of the petitioner submits that the petitioner is holding the post of Sub-Inspector of School and at present is posted at

Resubelpara, North Garo Hills District and all of a sudden he had been transferred to Dadenggiri, West Garo Hills District. Thereafter, petitioner

made a representation to re-consider his transfer on the ground that his wife is a patient of knee problem and is still undergoing treatment. Besides

that, he has 2(two) school going minor children, but the same was not considered. Learned counsel for the petitioner further contended that the

petitioner is ready to join his new place of posting after 31st December, 2016.

4. On the other hand, Mr. K. Barua, learned counsel on behalf of the State respondents submits that a new Officer i.e. respondent No.5 had

already come to join and take over the charge in place of the petitioner.

5. After hearing the submissions advanced by the learned counsels for the parties, though it is a fact that transfer is a part of service condition but in

special cases there must be some relaxation which needs to be considered on humanitarian ground. I have perused Annexure-11 which is a

representation of the petitioner addressed to the Director of School Education and Literacy, Meghalaya dated 3rd August, 2016 wherein he had

requested to re-consider his transfer on humanitarian ground. The representation is reproduced herein below for ready reference:

To

The Director of School Education & Literacy, Meghalaya, Shillong.

Dated Resubelpara the 3rd August, 2016

Sub: Stand by Order

Refs: DSEL/EL/GA/Appt/16/2016/Pt/2 Dated Shillong 29th 2016 July

Sir,

With reference to the subject, and the Office Order under reference, I have the honour to place few lines for my grievances for your kind

consideration and necessary action.

1. That sir, I am the permanent resident of Kharkutta PO Kharkutta PS Mendipathar District North Garo Hills, Meghalaya.

2. That as per the Office Order DSEL/EL/GA/Appt/16/2016/Pt/2 Dated Shillong 29th July 2016, I have been transferring to Dadenggiri, West

Garo Hills, School Education and Literacy, from my present posting place Resubelpara, North Garo Hills.

3. That as a human being I have a lot of family problem that facing at present as follows:

a) That my children are still very young and going to school and as a father I am the sole responsible for the children.

b) That my wife had a knee problem and undergoing treatment and at this unavoidable circumstance my family members need my present.

4. That I was serving as SI of Schools at Baghmara, South Garo Hills for some years and got transferred to serve to the people under my own

jurisdiction.

5. That, since North Garo Hills have been newly created District, has lot of challenges and as a true son of the soil, I want to do for the betterment

of our people in this region.

In view of the above stated facts and circumstances, you may be pleased to consider me on humanitarian ground by revoking the transfer Order

and allow me to take care my family members and to serve the people at North Garo Hills for the interest of the people in this region and for which

I as in duty bound shall ever pray.

Yours faithfully,

Sd/-

(Welfareson G Momin)

SI of Schools, North Garo Hills.

6. On perusal of the said representation, I am of the opinion that the petitioner has a ground to make such representation and the authority is bound

to re-consider the grounds raised by the petitioner. Besides that, learned counsel for the petitioner assured this Court that the petitioner is ready to

move to the new place of posting after 31st December, 2016. If it is so, I am of the view that the petitioner made out a case for consideration and

the same can be disposed of with the following direction:

Director of School Education & Literacy, Meghalaya, Shillong is hereby directed to allow the petitioner to continue his service in the present place

of posting i.e. Resubelpara, North Garo Hills District till 31st December, 2016 and thereafter he may be transferred allowing him one month's time

to shift to the new place of posting.

7. Accordingly, the order dated 29th July, 2016 is hereby set aside. Writ petition is allowed and stands disposed of with the above direction.