
(2016) 09 MEG CK 0005

MEGHALAYA HIGH COURT

Case No: Writ Petition (C). No. 258 of 2016

Shri. Welferson G. Momin

APPELLANT

Vs

The State of Meghalaya

RESPONDENT

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)—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, Bakhrakhutti 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 fulfilled by the Petitioner since it was not as per law, henceforth the said transfer order was issued 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 prayed before the said authority to revoke the said transfer order on humanitarian ground because of his wife's health condition and since his children are still minor and School going student and further in midst 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 asked 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 join the said Office at Dadenggiri. 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 non-cooperation with his local MLA, the said transfer order is issued just to punish 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.