

GAHC010005892026



2026:GAU-AS:2954

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

Case No. : WP(C)/219/2026

MD. CHULEIMAN HUSSAIN
S/O- MD. PAIR ALI, R/O- VILL.- BANGAON, P.O. BANGAON, P.S. BELSOR,
DIST. NALBARI, ASSAM, PIN- 781303.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
HEALTH AND FAMILY WELFARE (B) DEPARTMENT, DISPUR, GUWAHATI-
06.

2:THE MISSION DIRECTOR
NATIONAL HEALTH MISSION
ASSAM
SAIKIA COMMERCIAL COMPLEX
G S ROAD
GHY- 05.

3:THE JOINT DIRECTOR OF HEALTH SERVICE CUM MEMBER SECRETARY
DISTRICT HEALTH SOCIETY
DISTRICT- NALBARI
ASSAM

4:BIMAL KALITA
S/O- LATE BHADRA KALITA
R/O- VILL.- JAPARKUCHI
P.O. TERECHIA
P.S. AND DIST. NALBARI
ASSAM
PIN- 783001

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

For the Petitioner : Ms. M.K. Brown, Advocate

For the Respondents(s) : Mr. B. Gogoi, Addl. A.G.
Mr. A. Sarmah, Advocate

Date on which judgment was reserved : **NA**

Date of pronouncement of judgment : **25.02.2026**

Whether the pronouncement is of the
Operative part of the judgment? : **NA**

Whether the full judgment has been
pronounced? : **Yes**

JUDGMENT AND ORDER (ORAL)

Heard Ms. M.K. Brown, the learned counsel appearing on behalf of the petitioner. Mr. B. Gogoi, the learned Additional Advocate General, Assam appears on behalf of the respondent Nos. 1 to 3 and Mr. A. Sarmah, the learned counsel appears on behalf of the respondent No. 4.

2. The present writ petition has been filed challenging the transfer order dated 14.11.2025 whereby the petitioner was transferred from BPHC-Chamata to BPHC- Mukalmua and the respondent No. 4 was transferred from BPHC-Mukalmua to BPHC-Chamata.

3. The case of the petitioner herein is that the said transfer order is contrary to the order dated 30.08.2022 issued by the Mission Director, National Health Mission, Assam wherein it was categorically mentioned that employees of the National Health Mission, Assam at district and sub-district levels shall not be transferred or attached (including allowed to work) by the Joint Director of Health Services or any subordinate officers at the district or sub-district level.

4. The learned counsel appearing on behalf of the petitioner submitted that taking into account that the Mission Director, National Health Mission, Assam, is the highest authority in the State, the Joint Director of Health Services could not have exercised jurisdiction to transfer the petitioner vide the impugned order dated 14.11.2025. The learned counsel further submitted that the petitioner has 8 (eight) months of service remaining and that the respondent No. 3 not only disregarded the standing order dated 30.08.2022, but also did not take into consideration that the petitioner had just 8 (eight) months of service left. The learned counsel further submitted that not only that, the respondents have also not taken into consideration that the petitioner had various ailments, and as such, at this fag end of his service career, the petitioner ought to have been retained in the said office till his retirement.

5. This Court, pursuant to the filing of the instant writ petition

issued notice, however, no interim order was passed, taking into account that the writ petition was filed 2 (two) months after the transfer order dated 14.11.2025. Be that as it may, this Court enquired with the learned counsels appearing on behalf of the respondents, as to whether, the impugned transfer order so passed was contrary to the order dated 30.08.2022 issued by the Mission Director, National Health Mission, Assam.

6. When the matter was taken up on 02.02.2026, a set of instructions was placed before this Court assigning the reasons for transferring the petitioner.

7. The first reason assigned was that there was a direction issued by the Minister to transfer the petitioner as the same is apparent from the office note dated 14.11.2025.

The second reason assigned was that a complaint was made on 10.10.2025 by certain public. However, nothing was placed before this Court to show that based upon such complaint there was any satisfaction of the authorities concerned that the complaint so submitted on 10.10.2025 had any substance.

8. This Court further takes note of that in the meantime, as there was no stay order passed, the respondent No. 4 joined his place of posting at BPHC- Chamata taking unilateral charge.

9. This Court further heard the matter on 16.02.2026 and taking into account that the petitioner had submitted a representation which remained un-redressed, an opportunity was given to the Respondent Authorities to decide the said representation.

10. Today, when the matter is being taken up, Mr. B. Gogoi, the learned Additional Advocate General has placed a set of instructions in connection with the representation submitted by the petitioner. The said instructions are kept on record and marked with the letter "Z".

11. From a perusal of the said instructions which is kept on marked with the letter "Z", it is seen that there was a public complaint duly signed by local residents under the jurisdiction of MG Model Hospital, Belsor relating to the petitioner's performance in public service and alleged disharmonious conduct. It was further mentioned that although the petitioner cited physical weakness and health-related issues, in the greater interest of public service delivery, the concerned District Health Society effected his temporary transfer. It was also mentioned that the action of temporary transfer of the petitioner along with a necessary replacement was necessary and justified, and that any further stay of the transfer may lead to agitation among the public.

12. This Court, having perused the document which is kept on record and marked with the letter "Z" do not find that there was any

subjective satisfaction on the part of the concerned Respondent Authorities as regards the allegations contained in the public complaint that it had any substance. On the other hand, from the document which is kept on record and marked with the letter "X", and the enclosure thereto, which is an office note dated 14.11.2025, it is seen that the transfer of the petitioner was effected pursuant to the direction received from the concerned Minister.

13. This Court has heard the learned Additional Advocate General appearing on behalf of the Health Department, who on the query being made in respect to the order dated 30.08.2022 issued by the Mission Director, National Health Mission, Assam submitted that such order dated 30.08.2022 cannot confer a right upon the petitioner to challenge the transfer order. In that regard, the learned Additional Advocate General referred to the judgment of the Supreme Court in the case of ***State of U.P. & Others Vs. Gobardhan Lal*** reported in ***(2004) 11 SCC 402*** wherein the Supreme Court observed that unless a transfer order is shown to be the outcome of a mala fide exercise of power, violative of any statutory provision, or passed by an authority not competent to do so, an order of transfer ought not to be interfered as a matter of course or routine for any or every type of grievance sought to be made.

14. The question, however, arises in the present proceedings, as to

whether, the Joint Director of Health Services had the authority to issue the impugned transfer order in view of the order dated 30.08.2022 passed by the Mission Director, National Health Mission, Assam who is the head of the National Health Mission in the State of Assam.

15. It is pertinent to take note of that the order dated 30.08.2022 categorically mentions that the Joint Director of Health Services or any subordinate officer at the district or the sub-district levels cannot transfer or attach (including allowed to work) any employee under the National Health Mission. Therefore, the competence of the Joint Director of Health Services to issue the impugned transfer order is the question which is before this Court.

16. The judgment of the Supreme Court in the case of **Gobardhan Lal (supra)** makes it very clear that in the circumstance when a transfer order is vitiated by mala fide or is violative of the statutory provisions of law or passed by an authority not competent to do so, the same can be interfered by this Court under Article 226 of the Constitution of India.

17. The order dated 30.08.2022 is an order by which the power of the Joint Director of Health Services has been taken away to transfer National Health Mission employees at the district or sub-district level. Under such circumstances, it is therefore the opinion of this Court that

the impugned transfer order dated 14.11.2025 was passed by an authority having no competence.

18. Accordingly, the instant writ petition therefore stands disposed of with the following observations and directions:

(i) The impugned transfer order dated 14.11.2025 is set aside and quashed.

(ii) The petitioner herein shall join his office at BPHC-Chamata within 3 (three) days from today. Taking into account that the transfer order was issued by an authority not competent to do so, the period from the date of the petitioner's transfer order till the petitioner joins within the time stipulated herein above shall be construed as a period during which the petitioner continued to function at BPHC-Chamata which would however be subject to the leave which the petitioner had applied.

(iii) This Court also duly takes note of that the respondent No. 4 had in the meantime joined pursuant to the transfer order dated 14.11.2025. In view of the said transfer order having been set aside and quashed, the respondent No. 4 shall be deemed to have been in service at BPHC-Mukalmua during this period.

(iv) For the sake of clarity, this Court observes that this Court had set aside the impugned transfer order on the ground that

the same was passed by an authority not competent to do so. It is observed that the instant judgment shall not put any hindrance to transfer the petitioner by the Competent Authority subject to existence of public interest.

JUDGE

Digitally signed by Satyam Sharma
Date: 2026.02.25 08:29:11 +05'30'

Comparing Assistant