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

Case No. : WP(C)/5257/2024

DIBYAJYOTI MALAKAR
S/O- DIPAK MALAKAR
VILL.- PACHIM NANDALALPUR
P.O. DIMRUPAR
P.S. AND DIST. HOJAI
ASSAM
PIN- 782435.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF SCHOOL EDUCATION
DISPUR
GUWAHATI-781006.

2:THE DIRECTOR OF ELEMENTARY EDUCATION DEPARTMENT
ASSAM
KAHILIPARA
GUWAHATI-781019.

3:THE MISSION DIRECTOR

SAMAGRA SHIKSHA
ASSAM
KAHILIPARA
GHY-781019.

4:THE DISTRICT COMMISSIONER
HOJAI
SANKARDEV NAGAR
DIST. HOJAI

ASSAM
PIN- 782442.

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
HOJAI
DIST. HOJAI
ASSAM
PIN- 782442.

Advocate for : MR J ABEDIN
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 4 ORS

- B E F O R E -

HON'BLE MR. JUSTICE SOUMITRA SAIKIA

Advocate for the petitioner : Mr. J. Abedin,
Advocate

Advocate for the respondents : Mr. D.K. Sarma
Govt. Advocate
Ms. S.Chutia
SC, ELEM, EDU

Date on which judgment is reserved : N/A

Date of pronouncement of judgment : 31.07.2026

Whether the pronouncement is of the
operative part of the judgment? : Yes.

Whether the full judgment has been
pronounced? : No.

JUDGMENT AND ORDER

Heard Mr. J. Abedin, learned counsel for the petitioner. Also heard Mr. D.K. Sarma, learned Government Advocate for the State respondents; Ms. S. Chutia, learned Standing Counsel, Elementary Education Department.

2. The petitioner in the present writ petition has assailed an order of transfer dated 22.06.2024, issued by the District Commissioner, Hojai, transferring the petitioner from Uttar Hojai Nimna Buniadi to Changmaji Abdul Kadir Laskar LP.

3. The petitioner has projected in the writ petition that the order of transfer dated 22.06.2024 has been issued without jurisdiction by the District Commissioner, Hojai.

4. It is submitted that the transfer of teachers of Elementary and Secondary Schools is presently regulated by the Assam Elementary and Secondary School Teachers (Regulation of Posting and Transfer) Act, 2020.

5. It is submitted that the provisions of the said Act of 2020 do not empower the jurisdictional District Commissioner to issue orders, transferring the teachers working in schools within the area falling under his jurisdiction. It is submitted that the order having been passed without jurisdiction, the same would mandate an interference from this Court.

6. The learned counsel for the petitioner has reiterated the said facts and has submitted that the order dated 22.06.2024 having been passed by the District

Commissioner, Hojai without jurisdiction, the same is null and void and the direction passed therein to the petitioner would not mandate compliance by him.

7. Ms. S Chutia, learned Standing counsel, Elementary Education Department, on instructions, has submitted that the power to issue orders for transfer and posting of the teachers working in the Elementary and Secondary Schools is vested in the departmental authorities, including the District authorities of the said departments. It is submitted that the transfer and posting of teachers is undertaken as per the provisions of the Act of 2020.

8. Heard the learned counsels for the parties and also perused the materials available on record.

9. The relevant provisions of the Act of 2020 is necessary to be referred to at this stage. Section 2(a) defines the appointing authority as under:

“2(a) "Appointing Authority" means the Appointing Authority of a teacher according to the provisions of the relevant Service Rules for the time being in force”

Section 2(b) defines category or cadre as under:

“2(b) "Category or Cadre" means different Category of Teachers working in the State, like Principal, Vice-principal, Head Master, Assistant Head Master, Assistant Teachers, Intermediate Teachers, Graduate Teachers, Post Graduate Teachers, Fixed pay Teachers, Contractual Teachers, Additional Teachers, Craft Teachers, Music Teachers, Tutors etc”

Section 2(c) provides for competent authority as under:

“(c) "Competent Authority" means the State Level Committee or the District Level

Committee as mentioned in sub-sections (1), (2) and (5) of section 5”

Section 9 lays down the power of the Deputy Commissioner and the same is reads as under:

“9. In case of exigency for maintenance of proper academic atmosphere in a school or for maintaining peace and tranquility or safety and security of a female Teacher, the Deputy Commissioner of a district, after observing such formalities as may be prescribed, if satisfied that transfer of a Teacher is essential for anyone of the said grounds, may, refer to the Competent Authority for transfer of a teacher, even from a Low PTR school. The Competent Authority shall immediately consider such proposals of the Deputy Commissioner and recommend to the concerned Appointing Authority for issue of transfer order:

Provided that on transfer of such a Teacher from a Low PTR school, the Appointing Authority shall immediately post a Teacher in that school to maintain the PTR norms as per provisions of this Act, either by direct recruitment or through transfer from a High PTR school.”

10. On a perusal of the aforesaid provisions, it is evident that, in terms of Section 9, the Deputy Commissioner/District Commissioner is empowered, in exigencies relating to the maintenance of a proper academic atmosphere in a school, the preservation of peace and tranquillity, or the safety and security of a female teacher, to take appropriate action in accordance with law. After observing such formalities as may be prescribed and upon being satisfied that the transfer of a teacher is essential on any of the aforesaid grounds, the Deputy Commissioner/District Commissioner may refer the matter to the competent authority for the transfer of such teacher, including a teacher serving in a Low PTR School. The competent authority shall immediately consider such proposal submitted by the Deputy Commissioner and recommend to the concerned appointing authority for issuance of a transfer order in respect of the concerned teacher. Therefore, the Deputy Commissioner in terms of section 9 is

empowered only to send proposal or to refer a proposal to the competent authority for transfer of a teacher. Thereafter, upon being satisfied that the proposed transfer is necessary, the competent authority shall consider the proposal submitted by the Deputy Commissioner and recommend the same to the concerned appointing authority for issuance of the transfer order.

11. In the present proceedings there is no dispute that the Deputy Commissioner is not the appointing authority of the writ petitioner. Under such circumstances, and in the absence of any statutory provision conferring upon the Deputy Commissioner, the power to issue a transfer order, the impugned order issued by the Deputy Commissioner is clearly without jurisdiction and beyond the powers conferred under the statute.

12. Consequently, the impugned order is liable to be set aside as being ultra vires the provisions of the statute. It is only the concerned appointing authority that is vested with the power to issue a transfer order upon the recommendation of the competent authority, made on the basis of the proposal submitted by the Deputy Commissioner of the concerned district.

13. It is a settled principle of law that where a statutory power is vested in a particular authority, such power can be exercised only by that authority in the manner prescribed by the statute. No other person or authority is competent to exercise such power unless the statute expressly confers or validly delegates such authority. In this context, a reference in this regard can be made to the judgment of the Apex Court rendered in ***Commissioner of Police, Bombay v. Gordhandas Bhanji*** reported in 1951 SCC 1088.

14. The jurisdictional District Commissioner therefore, is not empowered under the provisions of the Act of 2020 to transfer any teacher from any school to another school situated within the area falling under his jurisdiction. Such order of transfer is ex-facie beyond the powers conferred on the District Commissioner under the Act of 2020 and therefore, clearly not sustainable.

15. In view of the above, the impugned order of transfer dated 22.06.2024, insofar as it concerns the petitioner, herein, stands set aside.

16. This Court having only interfered with the impugned order of transfer dated 22.06.2024 on the ground that the same was issued by the jurisdictional District Commissioner without jurisdiction, such interference would not restrain the respondent authorities either to issue a fresh order of transfer by considering the necessity for the same and/or to institute appropriate disciplinary proceedings against the petitioner and for that purpose to place the petitioner under of suspension, if the need so arises.

17. With the above observation and directions, the present writ petition stands disposed of.

JUDGE

Comparing Assistant