

GAHC010196322024



2026:GAU-AS:437

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

Case No. : WP(C)/4902/2024

DR DILIP PAUL
SON OF SRI SUDHANGSHU PAUL,
R/O- DHOLAI BAZAR, DISTRICT- CACHAR,
ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
HEALTH AND FAMILY WELFARE DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE JOINT SECRETARY TO THE GOVT. OF ASSAM
HEALTH AND FW(A) DEPT.
DISPUR
GUWAHATI-6.

3:THE DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABARI
GUWAHATI-36.

4:THE JOINT DIRECTOR OF HEALTH SERVICES
CACHAR
SILCHAR
PO AND DIST.- CACHAR
ASSAM

PIN- 788001

Advocate for the Petitioner : MR. S P CHOUDHURY, MR K BISWAKARMA,MS B DEVI

Advocate for the Respondent : SC, HEALTH,

Linked Case. : I.A.(Civil)/3184/2025

DILIP PAUL
SON OF SRI SUDHANGSHU PAUL, R/O- DHOLAI BAZAR, DISTRICT-
CACHAR, ASSAM.

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PO AND DIST.- CACHAR
ASSAM

PIN- 788001

Advocate for the Petitioner : MR. S P CHOUDHURY, MS B DEVI,MR K BISWAKARMA

Advocate for the Respondent : SC, HEALTH,

Linked Case : I.A.(Civil)/706/2025

DR DILIP PAUL
SON OF SRI SUDHANGSHU PAUL
R/O- DHOLAI BAZAR
DISTRICT- CACHAR
ASSAM.

VERSUS

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Advocate for : MR. S P CHOUDHURY
Advocate for : SC
HEALTH appearing for STATE OF ASSAM AND ORS

- B E F O R E -

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

For the Petitioner(s) : Mr. S. P. Choudhury, Advocate.

For the Respondent(s) : Ms. D.P. Borah, Standing Counsel, Health Department.

Date on which judgment is reserved : **N/A**

Date of pronouncement of judgment : **09.01.2026.**

Whether the pronouncement is of the operative part
of the judgment ? : **No.**

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

JUDGMENT & ORDER (ORAL)

Heard Mr. S. P. Choudhury, learned counsel appearing for the writ petitioner. Also heard Mr. D.P. Borah, learned Standing Counsel, Health Department, appearing for the State respondents.

2] By way of this instant writ petition under Article 226 of the Constitution of India, the writ petitioner is assailing the impugned transfer order dated 07.09.2024, whereby the petitioner has been transferred from the post of Superintendent, S.K. Roy Civil Hospital, Hailakandi, to Majuli as District Leprosy Officer.

3] The brief facts of the case are that the petitioner, while he was discharging his duties as SDM & HO, Dholai BPHC, was transferred to S.K. Roy Civil Hospital, Hailakandi, to officiate as Superintendent vide order dated 13.03.2024 issued by the respondent No. 2. It is the specific case of the petitioner that since the health condition of the father of the petitioner, who was aged about 92 years at that relevant point of time, was very critical during that period of time, he had submitted a representation to reconsider his transfer order, but instead of considering his representation, the respondent No. 2 issued a show cause notice dated 08.07.2024.

4] Thereafter, the petitioner was promoted to officiate to the post of Superintendent vide order dated 06.05.2024 and was once again directed to join at his transferred place of posting, i.e., Superintendent, S.K. Roy Civil Hospital, Hailakandi. Pursuant to the issuance of the said order, the respondent

authorities, by modifying the earlier transfer order dated 13.03.2024 transferred the petitioner to Majuli as District Leprosy Officer by order dated 07.09.2024. Aggrieved by the said transfer, the present writ petition has been filed.

5] Upon moving the present writ petition, this court on 23.09.2024, while issuing notice to the respondents, was pleased to direct *status-quo* as regards the posting of the petitioner at Dholai, from where he had not handed over the charge till then. During the pendency of the writ petition, an interlocutory application being I.A. (Civil) No. 706/2025, has been filed seeking direction to the respondents to comply with the interim order dated 23.09.2024 and allow the petitioner to continue discharging his duties at Dholai BPHC as SDM & HO. Apart from that, the petitioner filed another interlocutory application being I.A. (Civil) No. 3184/2025 stating that despite the *status-quo* order, he has not been allowed to discharge his duties at Dholai BPCH as SDM & HO, and his salary has also been withheld.

6] The writ petition is being taken up for final disposal as per the consensus arrived at between the learned counsels appearing for the parties; the entire matter along with the aforesaid two interlocutory applications are being heard.

7] Mr. S. P. Choudhury, learned counsel appearing for the petitioner, submits that despite representation to the effect that due to the medical health condition of the father of the petitioner, it was not possible for the petitioner to leave his present place of posting at Dholai BPCH, the respondents have not considered the said representation and instead issued a show cause notice for not joining the new place of posting. He further submits that despite the petitioner representing for foregoing the promotion to the post of Superintendent and continuing in his present place of posting at Dholai, the respondents, without

considering the same, modified the transfer order dated 13.03.2024 and transferred the petitioner to Majuli as District Leprosy Officer, which is about 460 kilometers by road. He further submits that the respondents could have empathically considered the representation submitted by the petitioner, and hence the impugned transfer order warrants interference from this court.

8] *Per contra*, Mr. D.P. Borah, learned Standing Counsel, Health Department, submits that the impugned transfer order dated 07.09.2024 whereby the petitioner has been posted at Majuli as District Leprosy Officer is due to administrative exigencies and public interest, and hence, the same ought not to be interfered with by this writ court. He further submits that there being a shortage of doctors at Majuli, the petitioner has been promoted there. He further submits that despite the petitioner having been earlier transferred to Hailakandi from Dholai, the petitioner did not join the said place of posting and instead continued protesting against the same and defying the lawful orders passed by the administration. He relies upon a decision of the Apex Court in the case of **S.C. Saxena v. Union of India and Ors.**, reported in **(2006) 9 SCC 583**, wherein the Apex Court has strongly deprecated the conduct of a government servant disobeying a transfer order by not reporting at the place of posting and then going to a court to ventilate his grievances. In support of his further submission that a writ court ought not interfere with the transfer order unless the same is shown to be vitiated by *mala fide* or in violation of any statutory provision or to have been passed by an authority not competent to pass such an order, he relies upon a decision of the Apex Court in the case of **State of U.P. and Ors., v. Gobardhan Lal**, reported in **(2004) 11 SCC 402**. He further submits that neither the petitioner has pleaded nor has it been argued that the impugned transfer order is vitiated by *mala fide* or is in violation

of any statutory provision or has been passed by an authority not competent to pass such an order.

9] I have given my prudent consideration to the arguments advanced by the learned counsel for both the parties and have also perused the material available on record. I have also duly considered the case laws cited at the bar.

10] The challenge in the present writ petition is the impugned transfer order dated 07.09.2024 whereby the petitioner has been transferred from Dholai BPCH as SDM & HO to Majuli as District Leprosy Officer, a transfer not only being an incident of service but also implicit as an essential condition of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an act or rule) passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or other type of grievance sought to be made [Refer: **Gobardhan Lal (supra)**]. In **Gobardhan Lal (supra)**, the Apex Court stated that even administrative guidelines for regulating transfers or containing transfer policies at best may afford opportunities to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay, and secured emoluments. It is in that backdrop that the Apex Court in that case reiterated that the order of transfer, even in transgression of administrative guidelines, can also be interfered with, as they do not confer any legally enforceable rights unless the

same is shown to be vitiated by *mala fide* or is made in violation of a statutory provision. There is no quarrel with the proposition that the writ court ought not substitute their own decisions in the matter of transfer for that of competent authorities of the state, and even allegations of *mala fide* when made must be such as to inspire confidence of the court or be based on concrete material and ought not to be entertained on the mere making of it or on consideration borne out of conjecture or surmise, and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

11] The said transfer order is not challenged on the ground of lack of jurisdiction, violation of any statutory rule, or any incompetence of the authority. No specific plea of *mala fide* has been pleaded, nor has any material been placed on record to substantiate such an allegation.

12] What transpires from the materials available on record is that the petitioner, instead of complying with the first transfer order and joining at Hailakandi, chose to remain absent by availing leave after leave and continued to submit representation protesting the transfer on the ground of the medical health condition of his father. It further appears that upon the petitioner being transferred on promotion as District Leprosy Officer, Majuli, by order dated 07.09.2024; he once again did not comply with the said promotional transfer order despite his transfer being made for administrative exigencies and public interest, particularly the acute requirement of medical officers in that area, as clearly reflected in the affidavit-in-opposition filed by the State respondent No. 2 on 23.05.2025, and instead approached this court by way of the present writ petition and obtained an interim order *of status-quo*, thereby continuing to avoid joining at the said place of posting.

13] The conduct of the petitioner as revealed from the record demonstrates a deliberate and persistent refusal to comply with lawful transfer orders. It is settled law that a government servant has no vested right to remain posted at a particular station, more so when the petitioner has continued at one place for several decades. Transfer is an incident of service, and unless vitiated by *mala fide*, arbitrariness, or violation of statutory provision, the scope of judicial interference is extremely limited.

14] While this court is not unmindful of the personal difficulties projected by the petitioner, such considerations cannot override administrative requirements and public interests, particularly in the public health sector. The respondents have already shown due consideration by modifying the posting once; however, the petitioner has chosen defiance over compliance.

15] This court strongly depreciates and condemns the conduct of the petitioner in not joining at Hailakandi, by repeatedly remaining on leave and submitting representations in lieu of compliance, and thereafter in not joining at Majuli by obtaining *interim* protection from this court. Such conduct is impermissible and undermines discipline in public service. In **S.C. Saxena (Supra)**, the Apex Court has held that a government servant cannot disobey a transfer order by not reporting at the place of posting and then going to a court to ventilate his grievances. The Apex Court has categorically held in the said decision that it is the duty of such government servant to first report for work where he is transferred and make a representation as to what may be his personal problems. Paragraph 6 of the aforesaid judgment reads as under: -

“6. We have perused the record with the help of the learned counsel and heard the learned counsel very patiently. We find that no case for our interference whatsoever has been made out. In the first place, a

government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed. Apart therefrom, if the appellant really had some genuine difficulty in reporting for work at Tezpur, he could have reported for duty at Amritsar where he was so posted. We too decline to believe the story of his remaining sick. Assuming there was some sickness, we are not satisfied that it prevented him from joining duty either at Tezpur or at Amritsar. The medical certificate issued by Dr. Ram Manohar Lohia Hospital proves this point. In the circumstances, we too are of the opinion that the appellant was guilty of the misconduct of unauthorisedly remaining absent from duty.”

16] In the absence of any pleaded or established mala fides, arbitrariness, or violation of statutory rules, this court finds no merit in the writ petition.

17] Accordingly, the writ petition is dismissed.

18] *Interim* order if any, stands vacated.

19] It is, however, categorically clarified that only upon the petitioner first joining at the place of posting at Majuli, in compliance with the transfer order dated 07.09.2024 and not otherwise, the petitioner shall be at liberty to submit a representation along with relevant medical documents concerning the health condition of his father. Upon such joining and submission of representation, the respondent authorities shall consider the same strictly in accordance with law, applicable service rules, and administrative exigencies. Such consideration shall not be construed as a direction to grant any particular relief.

20] In respect of the pending interlocutory application, i.e., I.A. (Civil) No. 3184/2025, as regards withholding the salary of the petitioner, it is directed that subject to the petitioner joining at Majuli and subject to verification in accordance with law, the respondent authorities shall take steps for release of

any admissible arrear salary, if due, without unnecessary delay.

21] It is needless to clarify that while taking steps for releasing any admissible arrear salary as directed hereinabove, the respondents shall keep in mind that this court, while issuing notice in the present writ petition by way of an *interim* order by order dated 23.09.2024 directed maintenance of *status-quo* as regards the posting of the petitioner.

22] With the above observations and directions, the pending interlocutory applications being I.A. (Civil) No. 706/2025 and I.A. (Civil) No. 3184/2025 also stands disposed of.

JUDGE

Comparing Assistant

Pranab
Chandra
ra Das

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