

GAHC010243232023



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

Case No. : WP(C)/6714/2023

PADMA KANTA BORAH

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
EDUCATION (SECONDARY) DEPARTMENT, ASSAM, DISPUR, GUWAHATI-
06.

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

Advocate for the Petitioner : MS M DAS

Advocate for the Respondent : SC, SEC. EDU.

**BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

JUDGMENT & ORDER (ORAL)

Date : 23-11-2023

Heard Ms. M. Das, learned counsel for the petitioner and Mr. B. Kaushik, learned counsel for the respondents in the Secondary Education Department.

2. The petitioner Padma Kanta Borah was initially serving as Planning Assistant in the office of the Inspector of Schools, Nagaon. By the order the Director of Secondary Education, Assam dated 22.07.2022, the petitioner was promoted to the post of Planning and Statistical Officer and upon promotion was posted in the office of the Inspector of Schools, Golaghat. It is stated that on 22.07.2022 when the petitioner was promoted to the post of Planning and Statistical Officer, no vacant post of Planning and Statistical Officer was available at Nagaon and accordingly for exigencies of service, the petitioner was required to be posted at Golaghat.

3. It is rather unfortunate that the petitioner is also the father of a specially abled child who is presently stated to be aged about 16 years. A certificate of the Director of Health Services, Nagaon, is available on record wherein the son of the petitioner, namely, Prachurjya Bora had been certified to be suffering from 50% permanent disability due to intellectual disability (moderate).

4. As per the certificate of disability, it is apparent that the son of the petitioner Prachurjya Bora is a specially abled child who requires special care and attention of the petitioner as the father. Upon promotion to the post of Planning and Statistical Officer at Golaghat, the son of the petitioner was inconvenienced to the extent that the 'care giver father' had to be separated from him because of his service conditions.

5. In the circumstance, the respondents by taking a sympathetic view had allowed the petitioner to be attached to the office of the Inspector of Schools, Nagaon. It is stated that in the meantime, one post of Planning and Statistical Officer in the office of the Inspector of Schools, Nagaon had fallen vacant and in the circumstance, the petitioner has made a representation dated 29.05.2023 making a prayer that he may be transferred and adjusted in the vacant post of Planning and Statistical Officer at Nagaon. It is also stated that at present, the post of Planning and Statistical Officer, Nagaon is vacant and no one is occupying the post. Although the petitioner had raised certain other assertions in the representation that his wife is also suffering from certain medical ailments and requires surgery, for the purpose of determining the present writ petition we are not required to go into such assertions. However, we take note that the petitioner is the father and care giver of a specially abled child who is certified to be suffering from 50% permanent disability due to intellectual disability (moderate).

6. The right of a specially abled child to have the comfort of a care giver father had been recognized by the Government of India in the Ministry of Personnel, Public Grievances and Pensions in their office memorandum dated 06.06.2014, wherein it had been provided that there has been a demand that a Government employee who is the care giver of the disabled child may not have to suffer due to displacement by means of routine transfer/rotational transfers etc. and considering the matter in its entirety, the Government of India in the Ministry of Personnel, Public Grievances and Pensions in their office memorandum dated 06.06.2014 provided that in a case where a Government employee would be a care giver of a specially abled/disabled child, such employee should not be subjected to any displacement in course of his

employment which may have a bearing on the systematic rehabilitation of the specially abled/disabled child. The said office memorandum dated 06.06.2014 is stated to have been also adopted by the Government of Assam.

7. In the instant case, it is taken note that the specially abled child of the petitioner is presently aged about 16 years and he has been provided the systemic rehabilitation under the facilities available at Nagaon inasmuch as, prior to the promotion and transfer the petitioner was all along posted at Nagaon.

8. A conclusion would be arrived that the specially abled child of the petitioner, namely, Prachurjya Bora has a legal right under the law of disability to have the benefit of his care giver father to be with him without any resultant displacement due to his service conditions. In other words, to provide a place of posting to the petitioner at Nagaon, we are of the view that it is a legal right of the specially abled child namely, Prachurjya Bora to have his care giver father near him at Nagaon so that his systematic rehabilitation process is not hampered.

9. We are clarifying it to the aspect that this is not a legal right of the Government employee to have a place of posting of his choice to be near the specially abled child, but on the other hand, it is a legal right of the specially abled child to have the care giver father near him so that his systematic rehabilitation process is not hampered. From such point of view, there is a requirement under the law of the respondents to give a due consideration to the representation dated 29.05.2023 of the petitioner Padma Kanta Borah requesting that he be given a place of posting as the Planning and Statistical Officer at Nagaon.

10. As it is a legal right of the specially abled child to have the care giver

father near him and not a legal right of the Government employee to have a place of posting of his choice to be near the specially abled child, the representation of the petitioner has to be considered not from the point of view of the principles that may be applicable while deciding the claim of a Government employee for a place of posting or transfer, but on the principles of the legal right of a specially abled child to have the care giver father near him.

11. We also take note that even the respondents or any other Government employee may not be inconvenienced if the petitioner is given a place of posting at Nagaon inasmuch as, the post of Planning and Statistical Officer at Nagaon is presently vacant, where in any view of the matter for administrative exigency the departmental authorities would transfer and post some employee at Nagaon.

12. Having determined as above, we direct the Director of Secondary Education, Assam to give a due consideration to the representation of the petitioner dated 29.05.2023 by further providing that in doing so, the Director shall take note of the legal right of the specially abled child of the petitioner namely, Prachurjya Bora under the law of disability and do the needful and in doing so, the Director shall not consider the representation to be a regulation representation of an employee seeking transfer and posting at a given particular place. The reasoned order be passed within a period of 15 (fifteen) days from the date of receipt of certified copy of this order.

Writ petition stands disposed of as indicated above.

JUDGE

Comparing Assistant