

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9319 of 2015

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Chandra Shekhar Kumar, Son of Late Raj Narayan Singh, Resident of Village-
Tejpur, P.S.- Telhara, District- Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principle Secretary, Department of Education, Government of Bihar, New Secretariat, Patna. Bihar
3. The Director Administration-cum-Additional Secretary, Department of Education, Government of Bihar, New Secretariat, Patna, Bihar
4. Deputy Director (Administration) cum Under Secretary, Department of Education, Government of Bihar, New Secretariat, Patna, Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Basant Kumar Chaudhary, Sr. Advocate.

For the Respondent/s : Mr. P.N.Shahi, AAG-10

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

C.A.V. JUDGMENT

Date: 05-08-2015

Heard learned counsel for the parties.

2. This writ application has been filed by the petitioner questioning his order of transfer dated 27.06.2015 from the post of District Education Officer, Patna to Bihar Board of Open Schooling & Examination, Patna.

3. Mr. Basant Kumar Choudhary, learned senior counsel appearing on behalf of the petitioner, in support of the prayer made in this writ application, when the matter was first heard on 20.07.2015, had initially concentrated on the aspect that the impugned order of transfer was bad because the petitioner was sought to be transferred against a non-existing post and in fact at a place where there was also



no vacancy for the petitioner. In this regard, he had explained that by the impugned order, the petitioner was transferred in Bihar Board of Open Schooling & Examination, Patna (hereinafter referred to as 'the Board') where there was no vacancy for the petitioner and, therefore, such order of his transfer would actually amount to his being subjected to harassment and victimized.

4. Let it be noted that in this case, a counter affidavit had also been filed on 20.07.2015 and when the case was heard and this Court, on finding from the counter affidavit that the issue of availability of a place for working of the petitioner had already been resolved by the Principal Secretary of the Education Department on 09.07.2015 while replying the letter of the Chief Executive Officer of the Board dated 30.06.2015, whereby and whereunder it was categorically held that there was a post available for joining and working of the petitioner, it had still felt the necessity to inquire into the fact with regard to plea of there being no available post for him in the Board as would be better reflected in the order that was passed in this case on 20.07.2015, which reads as follows:

"Having regard to the grievance of the petitioner that pursuant to the impugned order of transfer, he has not been allotted work or even his joining has not been accepted at the transferred place, this Court keeping in view that the direction issued by the Principal Secretary of the Health Department dated 09.07.2015, would direct the C.E.O. of Bihar Open School Training and Examination Board to appear in person

on Thursday i.e. 23.07.2015, and explain as to why the petitioner has not been allowed to join and work on the transferred post.

5. Pursuant to the aforementioned order, Sri Angraj Mohan, Chief Executive Officer of the Board, Patna had appeared in person on 23.07.2015 and had submitted that the petitioner had not till date reported for joining and as such it would be incorrect to say that the petitioner's joining was not accepted by him in the Board. The C.E.O. of the Board has also submitted that as a matter of fact, whatever was written by him on 30.06.2015 while seeking a guideline from the Principal Secretary to Education Department was in the interest of the working of the Board and, therefore, the same should not be taken to be refusal on his part in accepting the joining of the petitioner in the Board. He has however informed that when, in reply to his aforesaid letter dated 30.06.2015, the Principal Secretary of the Education Department by his letter dated 09.07.2015 had rejected his proposal either for retaining the working employees in the Board or for making any alternative posting of Baleshwar Yadav and the petitioner he had relieved two of the four retained officers and as such there would be no difficulty in accepting the joining of the petitioner if he would submit his joining in the Board.

6. In the considered opinion of this Court, when the petitioner himself had filed this writ application on 01.07.2015 and till



that date he had not submitted his joining, he cannot be allowed to complain with regard to his being transferred on a non-existing post. As a matter of fact, the decks had been cleared by the order of Principal Secretary dated 09.07.2015 wherein the Chief Executive Officer of the Board was directed to desist from many unnecessary correspondence in the policy matter or create confusion in the implementation of the Government decision relating to transfer and posting. Thus, the aforesaid grievance of the petitioner of his being transferred to a non-existing post in the Board is incorrect and accordingly, rejected.

7. As a matter of fact, when this aspect became also clear on 23.07.2015, when this case was heard in presence of the Chief Executive Officer of the Board, Mr. Basant Kumar Choudhary, learned senior counsel for the petitioner had sought to advance his further argument assailing the impugned order of transfer on other grounds as well. According to him, the petitioner was being subjected to a number of transfer orders in past. He had also submitted that the petitioner, in last two years, was subjected to six transfer orders and what was still painful for the petitioner to learn that despite being senior in rank in the Bihar Education Service, he was not allowed to remain posted on the post of District Education Officer and he was, in an insignificant manner, posted in the Board whereas several of his

juniors were allowed to man the post of District Education Officer.

8. Mr. Choudhary had also submitted that the petitioner was in fact doing a good job as District Education Officer, Patna and, therefore, his being displaced to the Board by way of transfer within seven months of his joining the post of District Education Officer, Patna, was not backed by any administrative exigency. In this regard, learned senior counsel was also of the view that the plea of administrative exigency arising out of influx of a large number of teachers in Bihar Education Service, as per the order of the Supreme Court, had nothing to do with the impugned transfer order inasmuch as in course of compliance of the judgment of the Supreme Court in respect of teachers inducted into the cadre of Bihar Education Service, the petitioner had already been brought down from the post of Regional Deputy Director of Education to the post of District Education Officer and, therefore, he should not have been subjected to any fresh order now even removing him from the post of District Education Officer.

9. Finally, Mr. Choudhary has also submitted that the plea of allegations, being against the petitioner for his transfer, as sought to be advanced by the respondent in their counter affidavit with the help of complain of the Bihar Rajya Prathmik Shikshak Sangh seemed to be only a mere excuse. He had in this regard also placed reliance on



the Government policy with regard to normal tenure of transfer of a period of three years and thus the impugned order of transfer being bad because the petitioner had joined the post of District Education Officer only in the month of November, 2014 and as such his transfer order within a period of seven months was contrary to the Government policy.

10. Mr. Pushkar Narain Shahi, learned AAG-10, on the other hand, had defended the Government decision of transferring the petitioner and by referring to the averments made in the counter affidavit. He had submitted that first of all the transfer of the petitioner and in fact, many other officers of Education Department, who originally belonged to the cadre of Bihar Education Service, had become a compulsive necessity in view of the judgment of the Apex Court in Civil Appeal No. 8226-8227 of 2012 dated 23.11.2012 whereby and whereunder a large number of teachers, who were earlier not forming the part of cadre of officers of the Bihar Education Service, were not only encadred but they were given their earlier seniority because of which most of the existing officers of Bihar Education Service had become juniors. Since, these teachers also had made a complain before the Apex Court by filing a contempt petition and in course of deliberation before the Apex Court, it was conveyed to the State Government of Bihar that incumbent of the merged cadres

of teachers should be given their due place of posting as per their seniority, it had led to a complete upheaval by displacing earlier officers of Bihar Education Service by way of their transfer and posting on other posts. In this regard, he had also placed his reliance on para-5 of the counter affidavit, which reads as follows:

"5. That the answering respondent humbly submits that whatever posting was given to the instant petitioner in between the period of 2 years was justified and had been done due to compulsive administrative reason. It is further humbly submitted that after the decision of Civil Appeal No. 8226-8227 of 2012 on 23.11.2012 the Bihar State Government Secondary School Teacher's Association had filed the contempt application bearing no. 88-89 of 2013 in the Hon'ble Supreme Court for the compliance of the Hon'ble Apex Court order, whereby and whereunder the petitioner association had raised the issue of posting of merged officer as per the Combined Gradation List-2007 which was prepared by the department in view of the resolution no. 1209 which was prepared by the department in view of the resolution no. 1209 dated 07.07.2006. During the adjudication of the aforesaid contempt matter in the Hon'ble Supreme Court, the Hon'ble Court had orally advised/expressed its view to post the incumbents of merged association as per the gradation list of 2007 of the BES. In afore stated view of the matter the Department of the Education was very much scare respect to the administration of education in Bihar because the officer of original cadre in Gradation list were very much below in compression to the merged officer who doesn't have any experience in the field of Administration. It is further relevant to state here that in view of the afore stated circumstances the department had made several arrangement with a view that if the Hon'ble Apex Court finally directed the state respondent to post the merged officer as per the Gradation List 2007 in the sub cadre of Administrative Department under the Bihar Education Service, then at least down the line one experience officer must

be in every unit of the education department and accordingly several notification of transfer and posting had been issued by the department in between the period of 2013-14."

11. Let it be noted that aforesaid averment in the counter affidavit has not been sought to be controverted but only explained by the petitioner in following terms:

"4. That in reply to the statements made in paragraph-5 of the counter affidavit, it is stated on behalf of the petitioner that the Respondents have tried to confuse the whole issue in the name of Hon'ble Supreme Court order because in terms of the direction issued by the Hon'ble Supreme Court on 11.11.2014 the petitioner has already been transferred/posted on 23.11.2014 from the post of RDDE, Patna to the post of District Education Officer, Patna, while the statement made in paragraph-5 as a matter of fact there is no reference of the order of the Hon'ble Supreme Court dated 11.11.2014.

It is further made clear that in terms of the Hon'ble Supreme Court order dated 11.11.2014 the entire gradation list was revised and those who were found above the rank of the petitioner they were posted above the petitioner and others on 23.11.2014 itself and that was only once and there is no other revision or posting in terms of the Hon'ble Supreme Court order but the Respondents have tried to confuse the whole issue by making a long statement in the name of Hon'ble Supreme Court order."

12. Thus, on the basis of the materials on record, when the petitioner himself does not deny that it was in view of implementing the judgment and direction of the Apex Court with regard to merger of the teachers in the cadre of Bihar Education Service and their consequential posting on senior cadre posts of Bihar Education



Service, such decision of transfer of the petitioner and others were taken, it cannot be said that there was no administrative exigency in transferring the petitioner also on a number of occasions in last two years. The Government, as noted above, was initially trying to shield the officers of Bihar Education Service from there being displaced in its own interest of having more experienced persons on the higher post of Regional Deputy Director of Education and District Education Officer, but ultimately, it had to change its decision in view of the order of the Apex Court. Thus, this Court would find that the earlier transfer orders, prior to the impugned order of transfer of the petitioner, were made purely in the administrative exigency arising out of the judgment of the Apex Court.

13. As with regard to impugned order of transfer of the petitioner within a period of seven months, the respondents have again sought to justify that the petitioner had created a lot of administrative problem while holding the post of District Education Officer, Patna. In this regard, para-6 & 7 of the counter affidavit becomes more relevant and are being quoted herein below:

"6. That with respect to the notification in question the answering respondent humbly submits that the education department had received several complain with respect to the petitioner mis-conduct being an authority of DEO , Patna. It is further relevant to state here that during the tenure of DEO , Patna the instant petitioner being a DEO,Patna has violated the set norms of transfer/posting of the teachers under jurisdiction of

the Patna District as well as due to aforesaid mis-conduct of him, the administration of the education in Patna District has compelled to suffer. Hence at last the Principal Secretary of the Education Department had stayed the all transfer which was made during in his tenure being the DEO, Patna on the written complaint received from Bihar State Primary Teacher Association.

7. That it is further relevant to state here that the Director, Primary Education had issued the direction with respect to the illegal transfer, which was done in the tenure of instant petitioner being a DEO, Patna. However, it is further relevant to state here that the department has finally decided to enquire the matter of illegal transfer/posting as alleged by the different person/association of the teachers working under Patna District and accordingly vide order contained in memo no. 1461 dated 04.07.2015 two member committee has been constitution."

14. Once again, this Court will have to also advert to the reply affidavit filed by the petitioner in respect of the aforementioned stand of the respondents in the counter affidavit inasmuch as the petitioner in para-7 to 9 of the reply affidavit has taken the following plea:

7. That in reply to the statements made in paragraph 6 of the counter affidavit it is stated on behalf of the petitioner that after filing of the writ application by the petitioner, the so called complaint appears to have been manufactured/designed at belated stage in order to frame the petitioner or to create a back ground at belated stage for the purpose of issuing transfer order. It is further stated that if the so called complaint was received on 03.02.2015 and it was treated as most urgent then there was no occasion for instituting an enquiry on 04.07.2015 when the transfer order was issued on 27.06.2015 ignoring the fact that the order of transfer was not the individual act of the petitioner rather it was the decision taken by the District Education

Establishment Committee consisting of District Education Officer, District Programme Officer (Establishment) and Block Education Officer, and as such the petitioner cannot be faulted for the same that too when very few transfers were made in extreme exigencies considering the serious personal difficulties of teachers.

8. That it is further stated on behalf of the petitioner that if the petitioner has committed any wrong then there should have been some disciplinary action against the petitioner which is not the case and even the transfer order does not refer to any such allegation.

9. That, in reply to the statements made in paragraph 7 of the counter affidavit, it is stated on behalf of the petitioner that the transfer order was issued on 27.06.2015, writ application was filed on 29.06.2015 and this enquiry is instituted on 04.07.2015. It is further stated that whatever the petitioner challenges his premature transfer one enquiry is set up as even during the last transfer dated 11.09.2013 (Annexure 2) when the petitioner was posted as a Librarian in SCERT from the post of RDDE, Muzaffarpur the same stand was taken by saying that one departmental proceeding has been initiated against him on the complaint of District Education Officer, in which he has reported that by staying certain transfer order as RDDE he is trying to interfere in his work and the same kind of frivolous stand is taken in this writ application also. However, it is made clear that after enquiry the petitioner was exonerated from all the charges subsequently but the petitioner had to suffer."

15. From reading of the aforementioned pleading with regard to the petitioner's facing allegation, it becomes very clear that the petitioner while holding a sensitive post of District Education Officer, Patna, had taken a number of decisions of mass transfer of teachers of Patna District creating a huge administrative problems. His actions of transferring the teachers of Patna District contrary to



the rules and instructions issued by the Government had let not only to a massive protest but in fact the Principal Secretary of the Education Department had to intervene by staying all the transfer orders which were made during the tenure of the petitioner. This Court, therefore, would find that there were also compelling administrative exigency for shifting the petitioner from the post of District Education Officer, Patna.

16. The submission of Mr. Choudhary that the decision to transfer the petitioner from the post of District Education Officer, Patna was taken earlier on 27.06.2015 whereas the enquiry against the petitioner has been setup only on 04.07.2015 would go to show that only some sort of the defence was being developed by the respondents in support of the impugned order of transfer is also acceptable to this Court. In this regard as has been noted earlier the mass scale transferred of teachers made by the petitioners in capacity of D.E.O., Patna had already perturbed the government and the Principle Secretary had to stay all of them and thus the order for issuing holding of fact finding enquiry cannot mean that there was no administrative exigency.

17. Thus if the order for holding enquiry against the petitioner for making a large scale transfer of teachers contrary to rules was issued only on 4th July 2014 that will make no difference in



this case because earlier the Government had stayed all those transfers and the enquiry, which has been now set up against the petitioner, can only lead to taking disciplinary measure against him. In fact, in presence of the petitioner no fair enquiry could have been held and, therefore, his being transferred from the post of District Education Officer by the impugned order dated 27.6.2015 in the aforesaid circumstances even otherwise had become a compulsion for the Government.

18. At this stage, this Court would infact not go to say anything more about the correctness of the serious allegations made against the petitioner in exercise of his power of resorting to mass transfer of teachers specially when they are subject matter of pending enquiry and, therefore, as to whether such transfers of teachers in Patna District by the petitioner, in capacity of the District Education Officer, Patna, were made contrary to the rules or the headmasters/teachers posted in the rural area, within one year of their earlier period of posting were transferred by the petitioner to Urban are only with a view to favour them for being granted 20% salary by way of House Rent allowance or whether Domi Shah became the conduit of the petitioner, who was brought by the petitioner from the office of the Regional Deputy Director of Education, Patna allowing him to work in the office at D.E.O., Patna, for giving effect to design



of the petitioner for making mass scale of transfer of teachers or other allied serious allegation raised by the teachers' association in their representation filed to the State Government on 30.01.2015, would require no comment from this Court at this stage, but then this much is clear that the Government immediately on 04.02.2015 had to take a decision for staying all the decision of mass transfer of teachers taken by the petitioner. The petitioner also infact in his rejoinder affidavit does not deny this fact that his decision of mass scale of transfer of teachers had to be stayed by the State Government while he was still working on the post of District Education Officer, Patna but then, he comes out to say that if these were the allegations against him and the petitioner was transferred in view of these allegations that would be a punitive transfer and thus not permissible in law.

19. The answer to such submission of punitive transfer however can be found in the judgment of the Apex Court in the case of ***Union of India vs. Janardhan Debanath & Anr.*** reported in ***(2004) 4 SCC 245***, wherein it was held as follows:

"12. That brings us to the other question as to whether the use of the expression "undesirable" warranted an enquiry before the transfer. Strong reliance was placed by learned counsel for the respondents on a decision of this Court in Jagdish Mitter v. Union of India' AIR 1964 SC 449 to contend that whenever there is a use of the work "undesirable" it casts a stigma and it cannot be done without holding a regular enquiry. The submission is clearly without substance. The said case relates to use of the expression "undesirable" in an order affecting the continuance in service by

way of discharge. The decision has therefore no application to the facts of the present case. The manner, nature and extent of exercise to be undertaken by courts/tribunals in a case to adjudge whether it casts a stigma or constitutes one by way of punishment would also very much depend upon the consequences flowing from the order and as to whether it adversely affected any service conditions-status, service prospects financially- and the same yardstick, norms or standards cannot be applied to all categories of cases. Transfers unless they involve any such adverse impact or visit the persons concerned with any penal consequences, are not required to be subjected to same type of scrutiny, approach and assessment as in the case of dismissal, discharge, reversion or termination and utmost latitude should be left with the department concerned to enforce discipline, decency and decorum in public service which are indisputably essential to maintain quality of public service and meet untoward administrative exigencies to ensure smooth functioning of the administration."

(underlining for emphasis)

20. In the considered opinion of this Court, if the petitioner had created a situation of transferring teachers contrary to the provision of Rules 4 and 5 of the Bihar Rajya Rajkiyakrit Prarambhik Vidyalaya Shikshak (Sthanantaran evam Anushasnik Karmvahi) Niyamavali, 2002 and thereby had created administrative exigency for the Government that by itself can be a good ground for transfer of such a person. Such 'administrative exigency' in the context of transfer of a Government servant was explained by the Apex Court in the case of **K.B.Shukla vs. Union of India & Ors.** reported in **AIR 1979 SC 1136** in following words:

"Responsibility for good administration is that of the Government. The maintenance of an efficient, honest and experienced administrative

service is a must for the due discharge of own responsibility. Therefore, the Government alone is a best suited to judge as to the existence of exigencies of such a service requiring appointment by transfer. The term "exigency" being understood in its widest and pragmatic sense."

(underlining for emphasis)

21. This issue again with regard to administrative exigency was gone into by the Apex Court in the case of ***T.D. Subramaniam vs. Union of India*** reported in ***AIR 1982 SC 776*** where the transfer of Director of Posts and Telegraphs from Cuttack to Ambala on being questioned that it was not made on the ground of administrative exigency because he was trying to root out the malpractices was rejected and it was held that handling the staff tactfully is the important requisite for maintaining relationship between the employer and the employee and, therefore, conducive to good administration, and in such circumstances the transfer cannot be assailed on the ground that it was not in the exigencies of service."

22. Similar view has been taken by the Apex Court again in the case of ***Janardhan Debanath*** (supra) wherein it has been held that :-

"14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any misbehaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima face satisfaction of the authority concerned on the contemporary reports

about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether the respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The writ petition filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs."

(underlining for emphasis)

23. This Court would also not like to dwell on the aspect of the Government policy of transfers giving certain prescribed normal tenure of transfer of either two years or three years inasmuch as they do also use a word "ordinarily" and in any event, they being not statutory rules and only directory in nature, cannot be enforced in a writ petition under Article 226 of the Constitution of India as has already been decided by the Division Bench of this Court in the case of **Man Singh vs. The State of Bihar & Ors.** reported in **1982 BBJC 392**.

24. It has to be also kept in mind that the impugned order of transfer of the petitioner is a chain transfer wherein as many as 23 officers in the rank of District Education Officer have been transfer. All the District Education Officers have not been transferred on the post of District Education Officer inasmuch as Smt. Pratima Kumari



and Smt. Shaukat Jehan have been transferred from the post of District Education Officer, Gaya and Jehanabad respectively as a Leave Reserve Officer. Similarly, Sri Krishna Singh, District Education Officer, Darbhanga has been transferred as a Leave Reserve Officer, Buxar. Similar, Sri Krishna Singh, Surendra Nath Sah, and Md. Harul through working on the post of District Education Officer, have been transferred as a Leave Reserve Officers. Thus, in the case of the petitioner, if he has already been transferred from the post of District Education Officer to a cadre post in the Board, there would be no question of either by any loss of his seniority and status muchless salary and emoluments. The petitioner is out and out an officer of the Bihar Education Service and there are cadre posts of District Education Officer or its equivalent post in various other equivalent posts on which his transfer is permissible.

25. As a matter of fact, even in the Board, there are three posts of Secretary/Head of Department and eight posts of Deputy Director which are to be filled up by the officers of the Bihar Education Service. In fact, the constitution of cadre of the Bihar Education Service Class-I and Class-II have not only the posts of District Education Officer or District Programme Officer (Establishment) but have also their equivalent post including that of teaching personnel in State Council for Educational Research and

Training as well as in the Board. Thus, this Court would not find that transfer of the petitioner to the Board in any way is against a non-existing or non-sanction post, an aspect has been clarified by the Principal Secretary of the Education Department in his letter dated 09.07.2015 addressed to the Chief Executive Officer of the Board.

26. Thus, to conclude, this Court must hold that an order of transfer is an incident of Government service and who should be transferred where, is a matter for the appropriate authority to decide and unless the order of transfer is vitiated by mala fides or is made in violation of statutory provisions, the Court cannot interfere with it. This aspect of the matter, in fact, has been consistently held by the Apex Court in a number of judgments including in the cases of ***Union of India & Ors. vs. S.L.Abbas*** reported in ***(1993) 4 SCC 357***; ***Abani Kanta Ray vs. State of Orissa & Ors.*** reported in ***1995 Supp (4) SCC 169*** and; ***Rajendra Singh & Ors. vs. State of Uttar Pradesh & Ors.*** reported in ***(2009) 15 SCC 178***.

27. As noted above, there is no case of malafide made by the petitioner either on fact or in law and there is no violation of any statutory rule in the transfer of the petitioner. The transfer of the petitioner, in fact, was made under the administrative exigency and thus, cannot be interfered by this Court in exercise of power under Article 226 of the Constitution of India.



28. As a matter of fact, this writ application also suffers from the fatal defect of non-impleadment of the necessary party inasmuch as by the same transfer order wherein the petitioner was transferred from post of District Education Officer, Patna to the Board, one Shashi Bhushan Rai was transferred to the post of District Education Officer, Patna but he has not been made party to this writ application and as such any order passed in this case which would directly affect Shashi Bhushan Rai cannot be allowed specially when the respondents have come out to place on record that Shashi Bhushan Rai had already assumed charge on the post of District Education Officer, Patna on 01.07.2015, as would be more apparent from reading of the aforementioned para-8 of the counter affidavit. The petitioner has also not denied the aforementioned statement in para-10 of his reply affidavit and in fact has taken the following stand:

"10. That in reply to the statements made in para-8 of the counter affidavit it is stated on behalf of the petitioner that the petitioner is at serial no.7 in his cadre of Bihar Education Service Class 1 whereas the person who is posted in place of the petitioner stands at serial no. 17 which is evident from gradation list published by the Director, Administration vide letter no. 309 dated 11.02.2010.

29. From reading of the aforementioned stand of the petitioner, it becomes clear that he is somehow under a misconceived notion that even transfer order on the post of District Education Officer has to be made as per the seniority position in the seniority



list. No rule of the Bihar Education Service provides that the senior in work has to be posted as District Education Officer at Patna and juniors cannot be posted on the post of District Education Officer, Patna. As a matter of fact, it is the Government which has to decide the place of posting as per its own assessment of an officer as per the requirement of the post. Thus, merely because a junior to the petitioner has been posted as a District Education Officer, Patna or some other juniors have been posted on the post of District Education Officer in other districts will not make chain transfer order to be bad. As noted above, it is the Government which has to decide the place of posting under its own administrative exigency.

30. The issue that the seniority will have no role to play in decision of transfer on the same or equivalent post stands settled by the Apex Court in the case of ***K.P.Sudhakaran vs. State of Kerala*** reported in ***AIR 2006 SC 2138*** holding that in service jurisprudence, the general rule is that if a Government servant holding a particular post is transferred to the same post in the same cadre, the transfer will not wipe out his length of service in the post till the date of transfer and the period of service in the post before his transfer has to be taken into consideration in computing the seniority in the transferred post.

31. Here, if the petitioner being the senior officer in the rank of District Education Officer has been assigned a special job in

the Board on an equivalent post of District Education Officer which is the cadre post, that cannot be held to be bad on the ground that juniors to him have been allowed to work on the post of District Education Officer. Merely because the post on which the petitioner has been transferred in the Board does not confer the same amplitude of power which the petitioner had, while holding the post of District Education Officer, can never be a ground for interfering in the order of transfer as was also held in the case of ***I.M Sharma vs. The U.C.O. Bank Head Office, Calcutta & Anr.*** reported in ***1995(1) SLR 108.***

32. Thus, for all the reasons, indicated above, this writ application must fail and is, accordingly, dismissed.

33. Let a copy of this judgment be sent to the Principal Secretary, Education Department to ensure that if the petitioner joins the post in the Board not only his joining is accepted immediately by the Chief Executive Officer of the Board but he is also assigned work commensurate to his status.

(Mihir Kumar Jha, J)

Patna High Court
Dated the 5th day
of August, 2015
AFR/NAFR
Sujit/-

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