

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14399 of 2015

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Dr. Rajendra Prasad, son of Ganauri Ram, Block Education Officer, Bahadurganj, District – Kishanganj, at present resident of Bahadurganj, Block Campus, Vill. - Bahadurganj, P.O. and P.S. - Bahadurganj, District - Kishanganj.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Director, Primary Education, Government of Bihar, Patna - 1.
3. The District Education Officer, Kishanganj.
4. Meyar Alam, son of name not known, Block Education Officer, Vill. P.O. and P.S. Alauli, District - Khagaria.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Najmul Hoda
For the Respondent State: Mr. P N Sharma, AC to AG
For the Intervener : Mr. Jawed Gaffar Khan

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 29-09-2015

An order of transfer dated 01.09.2015, contained in Annexure-2, is the cause of action and grievance for filing the writ application on behalf of the petitioner. Name of the petitioner figures at serial No. 8. Petitioner wants quashing of the said order so far as it relates to him.

2. Contention of the counsel for the petitioner is that only on 6.9.2014 petitioner was transferred from Benipatti at Madhubani to Bahadurganj, the present place of posting. Within a year of his posting he has again been transferred from Bahadurganj to Barachatti, in the district of Gaya. The order contained in Annexure-2 does not

even indicate as to why such transfers have been effected because the notification does not indicate that it is being done for administrative reason.

3. The Court, therefore, directed the State authorities to file a counter affidavit and justify the decision. Counter affidavit has been filed by Assistant Director, Primary Education, Government of Bihar. The only reason emerging from the counter affidavit is that this was done to accommodate private respondent No.4 since he is superannuating on 31.5.2016.

4. In addition to that, the affidavit tries to make out as if the State authorities are obliging the petitioner by transferring him to adjoining district since he is the resident of Jehanabad district. The Assistant Director, Primary Education, is cheeky enough to even state in para 11 of the counter affidavit, which is reproduced herein below:

“11. That in reply to the submission made in Paragraph No.9 it is respectfully submitted here Gaya is a better place for education in comparison to Kishanganj and transfer of the petitioner in the district of Gaya is a boon in as much as Gaya is the neighbouring district of his native village / district and better place for education from primary to University, general to technical in comparison to Kishanganj.”



5. It is evident from the pleadings that the transfer of the petitioner has been made for other reasons, only with the object of accommodating the private respondent and not because of any administrative reason. The Court also fails to appreciate since when the superior authorities of the Education Department have become so conscious about the welfare of subordinates in matters of transfer.

6. No doubt, transfer is an incident of service but an employee also has to have some kind of assurance of tenure for the reason that besides being a government servant he also has duties and obligations towards his family and children. A government servant cannot therefore be kicked around on the whims and fancy at the instances or at the convenience of other employees, who may be better connected with the system or could be accommodated as per his request and desire. I wish the same magnanimity is shown by the State authorities with regard to every other employees of the department.

7. The Court is satisfied that the decision to transfer the petitioner is for other reason rather than for administrative reason, which any way has also not been indicated in the notification, contained in Annexure-2.

8. Writ application is allowed. The transfer of the petitioner, whose name figures at serial No.8 contained in Annexure-

2, stands quashed. Petitioner shall continue on the post without any let or hindrance.

9. The intervention application has been filed on behalf of respondent No.4. Let it be clarified that the circular on which he is relying for transfer to his home district or place is not a mandatory requirement. If he has to be accommodated, let it be done but not at the cost of the petitioner since he has not even completed one year at his present place of posting.

(Ajay Kumar Tripathi, J)

R.K.Pathak/-

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