

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3087 of 2015

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Vinod Kumar, Son of late Shatrudhan Ram, R/O at ManikPur, P.O. Keshavpur, P.S. Simri, District- Buxar

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Human Resources Development Department, Government of Bihar, Patna
2. The Director, (Primary) Department of Education, Government of Bihar, Patna.
3. The District Magistrate Cum Collector, Katihar
4. District Program Officer - Establishment Education, Katihar.
5. The District Education Officer, Katihar
6. The District Education Establishment Committee, Katihar
7. The Block Education Officer, Manihari, District- Katihar
8. Nilam Kumari D/O not known, Presently posted as Head Mistress at Middle School Azampur Gola, Manihari Block, District- Katihar

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Md. Helal Ahmad, Adv

For the Respondent/s : Mr. Ram Balak Mahto, A.G.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 20-05-2015

A very pointed submission has been made by counsel for the petitioner while assailing Annexure-1, which is the order of transfer issued by the District Programme Officer, Establishment Education, Katihar. The impugned order is dated 23.01.2015, whose quashing the petitioner wants.

Submission of the counsel for the petitioner is that within one year of the posting of the petitioner in the present school he has been ousted to accommodate the private respondent no. 8 and that too in total contravention of the rules indicated by the State Authorities

themselves. Attention of the Court has been drawn to the Bihar State Nationalized Primary School Teacher (Transfer) Rules, 2006. Emphasis is on Rule 3 Sub rule Kha and Ga. The relevant rules are reproduced hereinbelow:

3. शिक्षक स्थानान्तरण के सामान्य सिद्धान्त. - शिक्षकों का पद अस्थानान्तरणीय होगा, परन्तु निम्नलिखित परिस्थितियों में ही स्थानान्तरण किया जा सकेगा-

(ख) प्रत्येक कोटि को इस नियमावली के अधिसूचित होने के बाद अपने सेवा काल में अधिकतम दो स्थानान्तरण लेने की छूट दी जायेगी। परन्तु प्रथम एवं द्वितीय स्थानान्तरण के मध्य कम-से-कम पाँच वर्षों का अंतराल होना आवश्यक होगा।

“(ग) जिला शिक्षा अधीक्षक तथा शिक्षा विभाग के वरीय पदाधिकारियों की अनुशंसा के आलोक में निदेशक प्राथमिक शिक्षा द्वारा प्रारंभिक विद्यालय के प्रधानाध्यापक/सहायक शिक्षक को प्रशासनिक आधार पर स्थानान्तरण हेतु सम्बन्धित जिला शिक्षा अधीक्षक को आदेश दिया जा सकेगा। प्रशासनिक आधार से निम्नांकित अभिप्रेत है:-

(i) प्रधानाध्यापक/सहायक शिक्षक की गतिविधियों का विद्यालय के अनुशासन तथा शैक्षणिक वातावरण पर कुप्रभाव पड़ रहा हो तथा विद्यालय के हित में उन्हें स्थानान्तरण किया जाना आवश्यक हो।

(ii) प्रधानाध्यापक/सहायक शिक्षक ऐसी वित्तीय अनियमितता जिसमें सरकारी राशि के गबन एवं अपराधिक मामले सम्निहित हों, में संलिप्त पाये जायें।”

If the above provisions are taken into consideration, the impugned order contained in Annexure-1 may require interference.

Learned Senior Counsel representing the private respondent submits and takes shelter under the pleadings and assertions made in the counter affidavit filed on behalf of the State-respondents. According to them, the Committee took a conscious decision taking into consideration the Letter no. 102 dated 30th of January, 2013 annexed as Annexure-A to the counter affidavit of respondent no. 4. They have also brought on record Annexure-B, which is said to be the decision of the Establishment Committee of the District of Katihar, which forms the basis for issuance of Annexure-1.

If the decisions are not taken in conformity with the prescribed rules, which are statutory in nature no amount of explanation as to the reason for such transfer can withstand judicial scrutiny. Any decision which is required to be taken has to be taken in terms of the prescribed procedure and the rules which in the opinion of the Court has not been adhered to. Whatever be the reasons for posting of the private respondent to the school in question, the fact is that it has not been done within the framework of Rule 3 and the Sub rules quoted hereinabove.

Writ application is allowed. Annexure- 1 is quashed.

(Ajay Kumar Tripathi, J.)

Vats/-

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