

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.14384 of 2015**

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Manju Kumari, wife of Dr. Sunil Kumar, resident of Jail Road, Aurangabad, P.S. - Aurangabad, District - Aurangabad posted as Block Education Officer (B.E.O.), Goh, Aurangabad.

.... .... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, New Secretariat, Bailey Road, Patna.
2. The Director, Primary Education, Government of Bihar, Patna.
3. The District Education Officer (D.E.O.), Aurangabad.
4. The District Programme Officer (Establishment), Aurangabad.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Y. V. Giri, Sr. Advocate  
Mr. Ajoy Kumar Chakraborty  
Mr. Krishna Murari Rawt

For the Respondent/s: Mr. Prabhat Kumar Singh, SC12

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI**

**ORAL JUDGMENT**

**Date: 14-10-2015**

Petitioner is a Block Education Officer. By virtue of Annexure-1 dated 28.6.2014, she was transferred from Patna to Goh, Aurangabad. She joined her place of posting. One of the reasons for her transfer to Aurangabad was that her husband is also a government servant and is posted at Aurangabad. It is also the stand of the counsel for the petitioner that there is also a humanitarian dimension as to why she needs to be posted near the place of posting of her husband because she is suffering from cardiac coronary disease for which evidence has been brought on record. Even the State Government has sanctioned money to avail treatment. Annexures 2 series are

indicators of the above fact.

2. The reason for the petitioner to approach the High Court is that in about a year, by virtue of notification dated 1.9.2015, contained in Anneuxre-3, petitioner has been ordered to move from Goh to Jagdishpur, in the district of Bhojpur. Petitioner wants quashing of the notification in relation to her transfer, primarily, on the ground that the circular concerning transfer and posting, issued by the General Administration Department, gives an assurance of posting for at least 3 years. No doubt, for administrative reasons, transfers can be effected prior to the tenure but there has to be a justifiable reason thereof. The decision taken to transfer the petitioner is irrational, arbitrary and it is an exercise of power for the sake of exercise.

3. The State authorities were directed to file a counter affidavit and explain the reason for such transfer, especially in relation to the petitioner. The counter affidavit has been filed on behalf of respondent No.2, who is said to be the Assistant Director, Primary Education, Government of Bihar.

4. The Court has gone through the counter affidavit. Except for lecturing the Court that the State has power to exercise and it has been exercised, there is not even modicum of an effort to justify as to why such quick transfers have been effected. The plea of

administrative ground is also not explained. As if, it is a State secret, it cannot be disclosed even when the matter is put under judicial scrutiny.

5. In view of such materials and the stand of the respondent State, the court is of the opinion that it is a mindless exercise of power of the State authorities in resorting to large scale transfers in quick succession. Obviously, such transfers are being done for extraneous reasons and may be for considerations which can be deduced from the kind of explanation/non-explanation in exercise of power.

6. No doubt, powers are vested in authorities by law. But in a country which is governed by rule of law, no power is absolute power because the moment a Court gets a feeling that power has been exercised for the sake of exercise then it amounts to unbridled exercise of power and irrational exercise of power. Justification of exercise of power must emerge and must be offered at least to a Constitutional Court when the matter is put under judicial scrutiny and when a grievance is raised by a citizen that such power is being used or misused for other reasons.

7. In the given facts there cannot be a better example of what has been indicated by the Court in the earlier part of the order that transfer of the petitioner seems to be irrational, without any justification and these transfers have been done for the sake of

exercise of power. Since the transfer order has been passed in just about a year and without valid reason, the order does become vulnerable.

8. The circumstance under which petitioner came to be posted at Goh in Aurangabad has not vanished and that still persists.

9. In view of the same, the impugned notification, contained in Anneuxre-3 dated 01.09.2015, in so far as it relates to the present petitioner, stands quashed. Writ application is allowed.

10. Petitioner shall continue at her present place of posting.

**(Ajay Kumar Tripathi, J)**

R.K.Pathak/-

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