

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12450 of 2016

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1. Murari Das S/o Late Karle Mistry Resident of Ram Dayalu Path, Ward no. 30, Lane No. 7, Aghoriya Bazar, District Muzaffarpur, Presently posted as Clerk in the Office of District Education Officer, Muzaffarpur
 2. Rajani Kant Son of Late Umesh Jha Resident of Village - Kiul, POst-Garhtara, District - Begusarai, Clerk in the office of District Education Officer, Muzaffarpur
 3. Vinay Kumar Son of Ram Chanu Singh Resident of Village + Post - Athari, District - Sitamarhi, presently Posted as Clerk in the Office of District Education Officer, Muzaffarpur
 4. Shushil Kumar Singh Son of Shri Jaychandra Prasad Singh Resident of Village - Ratanpur, Post - Piprahi, District - Sheohar, Presently posted as Clerk in the Office of District Education Officer, Muzaffarpur
 5. Anand Swaroop Verma Son of Late Jagannath Prasad Verma Village + Post - Manik Chowk, District - Sitamarhi. Presently posted as Clerk in the Office of District Education Officer, Muzaffarpur
 6. Rajesh Kumar Shrivastava Son of Sheo Shankar Prasad Mohalla - Balughat, Post-Muzaffarpur, District - Muzaffarpur, presently posted as Clerk in the office of District Education Officer, Muzaffarpur
 7. Varun Kumar Mishra Son of Harihar Mishra Sheikhpur Akharaghat Road, P.S. - Ahiyapur, Mushahari, District - Muzaffarpur, presently posted as Clerk in the office of District Education Officer, Muzaffarpur
 8. Ajay Kumar Roy Son of Jaimangal Roy Resident of Village - Jarang Chandrahas Nagar, Post - Jarang Dyorhi, PS - Gayghat, District - Muzaffarpur, presently posted as Clerk in the office of District Education Officer, Muzaffarpur
 9. Sanjay Kumar Son of Late Mishrilal Kumar Resident of Village - Kanhaulimath, Post - Ramna, PS - Mithanpuraa, District - Muzaffarpur, presently Posted as Clerk in the office of District Education Officer, Muzaffarpur
 10. Hare Kishore Hari Son of Vishwanath Singh Resident of Village - Para, PS - Sarai, District - Vaishali, presently posted as Clerk in the office of District Education Officer, Muzaffarpur
 11. Santosh Kumar Singh Son of Tejnarayan Singh Resident of Village - Jarang Dih, Post Office - Jarang Dyorhi, P.S. - Gayghat, District -Muzaffarpur. presently posted as Clerk in the office of District Education Officer, Muzaffarpur
 12. Ravikant Son of Baijnath Singh Resident of Aamgola, Orient Club, Kazimohammadpur, District - Muzaffarpur, Presently posted as Clerk in the office of District Education Officer, Muzaffarpur
 13. Naveen Kumar Singh Son of Late Gajadhar Singh Resident of Village - Jamalpur Bish, Post Office - Athmalgola, District - Patna, Presently posted as Clerk in the office of District Education Officer, Muzaffarpur
 14. Avinash Kumar Mishra Son of Late Harendra Prasad Mishra Resident of Village + Post Office - Ginjas, District - Muzaffarpur, Presently posted as Clerk in the office of District Education Officer, Muzaffarpur
 15. Vinod Kumar Tiwary Son of Late Jai Mangal Tiwari Resident of Village - Asonagar, Post Office - Barmatpur, P.S. - Kanti, District - Muzaffarpur, Presently posted as Clerk in the office of District Education Officer, Muzaffarpur
 16. Narendra Kumar Son of Late Lal Babu Roy Resident of Village - Mahuli, Post Office - Choumukh, P.S. - Hathouri, District - Muzaffarpur, Presently posted as Clerk in the office of District Education Officer, Muzaffarpur
 17. Archana Rani Daughter of Siyadeo Narayan Prasad Resident of Mohalla -

Anandpuri Muzaffarpur, Post Office - Brahampura, District - Muzaffarpur, Presently posted as Clerk in the office of District Education Officer, Muzaffarpur

18. Nawal Kishore Sah Son of Late Kapildeo Sah Resident of Village + Post - Kudhani, District - Muzaffarpur, Presently posted as Clerk in the office of District Education Officer, Muzaffarpur

19. Manohar Kumar Son of Ramdeo Mahto Resident of Village + Post Office - Bhutahi, PS - Sonbarsa, District - Sitamarhi, Presently posted as Clerk in the office of District Education Officer, Sitamarhi

20. Jahoor Ahmad Son of Late Md. Ajeem Resident of Village - Ababakpur, PS - Goroul, District - Vaishali, Presently posted as Clerk in the office of District Education Officer, Vaishali

21. Jaglal Rai Son of Late Kamal Rai Resident of Village + Post Office - Sangho, PS - Goroul, District - Vaishali, Presently posted as Clerk in the office of District Education Officer, Vaishali

22. Rajeev Kumar Son of Late Raghubansh Prasad Singh Resident of Village + Post - Chandpur, PS - Bidupur, District - Vaishali, Presently posted as Clerk in the office of District Education Officer, Vaishali

23. Lalan Kumar Son of Late Ramashish Bakt Resident of Village - Basanta, Post Office - Ghataro, P.S. - Lalganj, District - Vaishali, Presently posted as Clerk in the office of District Education Officer, Vaishali

24. Prabhat Kumar Gupta Son of Anandi Lal Sah Resident of Village - Songho Kahartoli, Post Office - Songho, P.S. - Goroul, District - Vaishali, Presently posted as Clerk in the office of District Education Officer, Vaishali

25. Sanjay Kumar Prabhakar Son of Gyaneshwar Rai Resident of Village - Pojha, Post Office - Bhabhantoli, P.S. - Goroul, District - Vaishali, Presently posted as Clerk in the office of District Education Officer, Vaishali

26. Anil Kumar Jha Son of Late Prasad Jha Resident of Village + Post Office - Bengahi, P.S. - Bairganiya, Presently posted as Clerk in the office of District Education Officer, Sitamarhi

.... Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, Patna

2. The Principal Secretary, Education Department, Govt. of Bihar, Patna

3. The Director, Secondary Education, Education Department, Government of Bihar, Patna

4. The Regional Deputy Director, Tirhut Division, Muzaffarpur

5. The District Education Officer, Muzaffarpur, District - Muzaffarpur

6. The District Education Officer, Vaishali, District - Vaishali

7. The District Education Officer, Sitamarhi, District - Sitamarhi

8. The District Programme Officer (Establishment), Muzaffarpur, District - Muzaffarpur

9. The District Programme Officer (Establishment), Vaishali, District - Vaishali

10. The District Programme Officer (Establishment), Sitamarhi, District - Sitamarhi

.... Respondents

with

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Civil Writ Jurisdiction Case No. 14321 of 2016

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Yatindra Kumar Pandey Son of Late Ram Lakshan Pandey Resident of village - Mobarakpur, P.O. Kabilpur, P.S. Kanti, District Muzaffarpur, Presently Posted as

Clerk in the office of District Education officer, Muzaffarpur

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Education Department, Government of Bihar, Patna
3. The Director, Secondary Education, Education Department, Government of Bihar, Patna
4. The Regional Deputy Director of Education, Tirhut Division, Muzaffarpur
5. The District Education officer, Muzaffarpur, District Muzaffarpur
6. The District Education officer, Vaishali at Hajipur, District Vaishali at Hajipur

.... Respondents

with

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Civil Writ Jurisdiction Case No. 13454 of 2016

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1. Rajiv Ranjan Kumar Son of late Ram Pravesh Singh Resident of Village-Belwanba Motihari, P.,S District East Champaran , Presently Posted as Clerk in the Office of District Education Officer, East Champaran.
2. Arun Kumar S/o Sri Ganesh Choudhary Resident of Mohalla- Maripur, Azad Colony, Road, No. 4, P.O Maripur P.S. Kazimohammad, district Muzaffarpur Presently Posted as Clerk in the Office of Regional Deputy Director (Education) Tirhut Division Muzaffarpur.
3. Ranjit Kumar Mishra Son of late Kameshwar Pd. Mishra Resident of Village+Post- Ballor, P.,S KUDhni, District Muzaffarpur , Clerk in the office of District Education Officer, Muzaffarpur.
4. Vijay Kumar son of late Nageshwar Mahto Resident of Posted Bharaulia, Post Mahuawan District Presently Posted as Clerk in the Office of District Education Officer East Champaran.

.... Petitioners

Versus

1. The State of Bihar through the Principal Secretary , Education Department , Govt of Bihar, Patna,.
2. The Principal Secretary, Education Department , Govt of Bihar, Patna.
3. The Director, Secondary Education , Education Department, Government of Bihar, Patna.
4. The Regional Deputy Director, Tirhut Division, Muzaffarpur
5. The District Education Officer, Muzaffarpur, District Muzaffarpur.
6. The District Education officer, East Champaran , Motihari.
7. The District Programme Officer(Establishment)Muzaffarpur, District Muzaffarpur.
8. The District Programme Officer(Establishment) East Champaran at Motihari.

.... Respondents

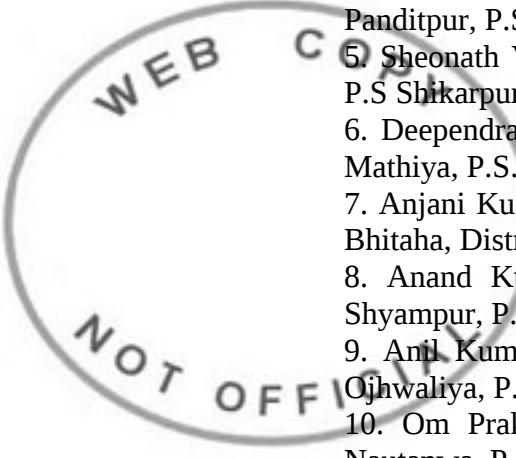
with

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Civil Writ Jurisdiction Case No. 14366 of 2016

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1. Pawan Kumar Ojha, Son of Late Sadhu Ojha, resident of Village Jadochhapar, P.S.- Chanpatia, District- West Champaran.
2. Rajneesh Kumar Verma, Son of Late Madan Mohan Prasad, resident of Village-Deurwa, P.S.- Lauriya, District- West Champaran.

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3. Abid Hussain, son of Late Manjoor Alam, resident of Village- Noniyadih, P.S.- Raxaul, District- West Champaran.
 4. Vinod Kumar Verma, son of Late Gauri Shankar Prasad, resident of Village- Panditpur, P.S.- Pahadpur, District- West Champaran.
 5. Sheonath Vidyarthi, son of Late Ghur Yadav, resident of Village- Phulwariya, P.S Shikarpur, District- West Champaran.
 6. Deependra Kumar Rai, son of Late Harihar Rai, resident of Village- Kundwa Mathiya, P.S.- Chanpatia, District- West Champaran.
 7. Anjani Kumar Rai, son of Late Shankar Rai, resident of Village- Bardiha, P.S.- Bhitaha, District- West Champaran.
 8. Anand Kumar Rai, Son of Late Nawal Kishore, Rai, resident of village- Shyampur, P.S.- Nautan, District- West Champaran.
 9. Anil Kumar Jha, Son of late Ashok Kumar Jha, resident of Village- Sareya Ojhwalaya, P.S- Bariya, District- West Champaran.
 10. Om Prakash Tiwari, son of Late Braj MohanTiwari, resident of Village- Nautanwa, P.S- Shikarpur, District- West Champaran.
 11. Amit Kumar Singh, son of Sri Sobha Kant Singh, resident of Village- Atapur, Nakuni, P.S.- Hasanpur, Road, District- Samastipur.
 12. Sandeep Kumar, Son of Late Kameshwar Prasad Singh, resident of Village- Damodarpur, P.S.- Malahi, District- East Champaran.
 13. Vinay Kumar, Son of Late Bishwanath Chaudhary, resident of Village- Sarai, P.S- Hazipur, District- Vaishali.

.... Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Bihar, Patna.
2. The Director (Secondary Education), Bihar, Patna.
3. The Regional Deputy Director of Education, Tirhut Division, Muzaffarpur.
4. The District Education Officer, West Champaran at Bettiah.
5. The District Education Officer, East Champaran at Motihari.
6. The District Programme Officer (Establishment), West Champaran at Bettiah.
7. The District Programme Officer (Establishment), East Champaran at Motihari.

.... Respondents

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Appearance :

(In CWJC No.12450 of 2016)

For the Petitioner/s : Mr. P.K.Shahi, Sr.Adv.

Mr. Shashi Bhushan Singh, Adv.

For the Respondent/s : Mr. Ashutosh Ranjan Pandey, Adv.

(In CWJC No.14321 of 2016)

For the Petitioner/s : Mrs. Anita Kumari

For the Respondent/s : Mr. JC to AG

(In CWJC No.13454 of 2016)

For the Petitioner/s : Mr. P.K.Shahi, Sr.Adv.

Mr. Shashi Bhushan Singh, Adv.

For the Respondent/s : Mr. JC to AG

(In CWJC No.14366 of 2016)

For the Petitioner/s : Mr. P.K.Shahi, Sr.Adv.

Mr. Amit Kumar Anand, Adv.

For the Respondent/s : Mr. Prabhakar Jha, GP27

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 26-09-2016

Name of petitioner no.10 is permitted to be corrected.

All these writ applications have raised a common question of law which relates to the decision of the State authorities to effect transfer of these petitioners, who are working as Clerks in different District Education Officer's offices being in direct breach of 1974 Rules which are still in existence.

The vehement argument made on behalf of these petitioners is that the notification by virtue of which transfer order has been effected, on the so called administrative reason that these petitioners have spent more than three years at a place of posting may be factually correct but not legally permissible.

The submission of the learned Senior counsel for the petitioners is that if there is a Rule which governs the service conditions including how the transfer if at all can be done at clerical cadre, a copy of which is Annexure 1, then the respondent State authorities cannot hide behind a general notification of the Cabinet Secretariat Department to make it the basis for transfer of these petitioners.

Since it was a limited submission made on behalf of these petitioners, the Court gave ample opportunity to the State authorities to revert to this Court and indicate whether 1974 Rules have gone any

change? Whether it has been repealed or amended? And why the State authorities would ignore their own provision which are occupying the field for more than four decades and is a Rule made under Article 309 of the Constitution of India.

The stand taken in the counter affidavit, duly sworn by the Director, Secondary Education, is not only appalling but also an eye opener because it shows that the person holding such high responsibility had no modicum of understanding of governance and what Rule of law is all about. If it is not so, then he would not have ventured to say what he has had to say in following words:

7. That with respect to the aforesaid submission of the petitioners the answering respondents further humbly submits that it is true that there is a promotion and transfer rule, 1974 is in existence for the service conditions of clerks working in the different offices of the Education Department wherein at part-5 of the rules deals with the provision of transfer and posting. However it is relevant to state here that now a days the appointment on the post of L.D.C. in the State of Bihar has been done through the Staff Selection Commission for the every Departments of the Government either in Secretariat or in field and transfers are being made in view of the guidelines provided by the Cabinet Secretariat Department.

8. That it is further relevant to state here that in view of the new scenario for the appointment process of post of L.D.C. the rule 1974 is in under process of change.

9. That it would not out of place to submit here that in view of the guidelines provided by the Cabinet Secretariat Department now a days in every establishment transfers are being done and accordingly since 2007 transfers had been done with respect to

the cadres of the Divisional level employees also and the present set of employees belongs to the cadres of the Divisional level employees."

The Court has even gone through the notification issued by the Cabinet Secretariat Department. These are general guidelines and have no overriding power over any statutory Rules or Regulation in place. Therefore, the Cabinet Secretariat Department notification cannot become sole repository of any power of transfer.

What amazes this Court further from the stand taken by the Director, Secondary Education, is with regard to mode of appointment becoming the basis for the respondent authorities to decide order of transfer. The Court is sought to be impressed that since the Staff Selection Commission is making appointments on the post of L.D.C. and therefore, the Cabinet Secretariat Department's notification governing general Rule of transfer will govern the issue.

Since when has mode of appointment become the basis for fixing service conditions including the power of transfer. This Court is not aware of any legal proposition. No such decision of such kind has been brought to the knowledge of this Court so far.

Court wonders whether the deponent i.e. the Director, Secondary Education has basic understanding of governance and capability to run such an important department under the State of Bihar. Matter requires a re-look at the highest level.

In totality, therefore, so long as notification No. 3435 dated 13.8.1974 subsists on the Statute book, which is a creation under Article 309 of the Constitution of India, the argument made on behalf of the State, as the justification for the order of transfer cannot be accepted by this Court. The impugned orders of transfer issued in terms of letter no. 1034 dated 29.4.2016, Memo No. 991, 992, 994 dated 24.6.2016, letter no. 434 dated 1.3.2007, Memo No. 1018 dated 30.6.2016, Memo No. 1077 dated 30.7.2016 and Memo No. 1120 dated 5.8.2016 stand quashed since they have been issued in violation of the statute which is still in play. The mighty State has powers to amend the rules but they cannot violate it.

All the writ applications are allowed.

(Ajay Kumar Tripathi, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.9.2016
Transmission Date	NA