

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

**Letters Patent Appeal No.2052 of 2015**

**In**

**Civil Writ Jurisdiction Case No. 12807 of 2015**

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1. Kanti Kumari Wife of Sri Anuj Kumar Sharma Resident of Village -  
Diha, P.S. - Ariari, District - Sheikhpura, Presently posted as Head Teacher,  
Primary School, Ambedkar Colony, Sandalpur, Mahendur, P.S. -  
Sultanganj, Block - Patna Sadar, District - Patna.

.... .... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of  
Education, Government of Bihar, Patna.  
2. The Director, Primary Education, Bihar, Patna.  
3. The District Education Officer, Patna.  
4. The District Programme Officer (Establishment), Patna.  
5. The School Sub-Inspector, Mahendru, Patna.  
6. The Senior Superintendent of Police, Patna.

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Arun Kumar

For the Respondent/s : Mr. Ram Balak Mahto

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**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE**

**and**

**HONOURABLE JUSTICE SMT. ANJANA MISHRA**

**ORAL ORDER**

**(Per: HONOURABLE THE ACTING CHIEF JUSTICE)**

3      08-03-2016

The present Letters Patent Appeal has been filed  
against the judgment and order, dated 15.10.2015, passed in  
C.W.J.C. No. 12807 of 2015, whereby and whereunder the  
learned single Judge has dismissed the writ application of the  
petitioner without taking into consideration the compelling  
circumstance, whereunder she had prayed for an order of  
transfer.

2. The writ petitioner had come to this Court seeking



a direction to the respondents to consider her claim to transfer her to any other school, under Patna district, as per the option expressed by her inasmuch as there was persistent danger to her life by some anti-social elements. She had further prayed for a direction to respondent No. 2, namely, Director, Primary Education, Bihar, to consider her application, in the light of the Government policy decision, for inter-district transfer to the district of Jamui, where her husband works as Headmaster in Middle School so as to facilitate her to lead a congenial life.

**3.** The facts, leading to the writ application, are as follows :-

(i) The petitioner was appointed as an Assistant Teacher, in the district of Munger, vide Memo No. 790, dated 07.02.2012, and was posted as Assistant Teacher in upgraded Middle School, Terasi Tola, under Block Muffassil Munger.

(ii) Pursuant to a policy decision of the respondent-State, with regard to inter-district transfer of newly appointed lady teacher, the petitioner also applied for inter-district transfer from Munger to Patna and accordingly, vide Memo No. 2546, dated 15.03.2013, she was posted in Primary

School, Ambedkar Colony, Sandalpur, under Block Mahendru, Patna, where she joined and started discharging her duty.

(iii) While discharging her duty, she claims to have faced harassment at the hands of one Nagar Teacher, Jai Ram, who was also the Head Teacher of the school; but despite her complaint to the respondent authority, no action was taken against the said Head Teacher. It is alleged by her that at the instance of the said Nagar Teacher of the school, certain anti-social elements were visiting the school and were demanding *Rangdari* (extortion money) from her and told her that she was required to pay a lump sum amount per month out of the salary of Rs. 30,000/- being received by her, failing which she would be physically assaulted. It is also alleged that on one occasion (i.e., on 13.05.2015), the said Nagar Teacher, Jai Ram, along with his associate, came and accosted her in broad day light, while she was undergoing training at Middle School, Musallahpur, and hurled filthy languages and even assaulted her. Accordingly, on 13.05.2013 itself, she filed a



complaint before the respondent- District Education Officer, Patna. However, no action was taken against the said two teachers. Though she continued to discharge her duty, she claims that she had been facing constant threat and harassment and she, therefore, submitted a written report to the SHO, Sultanganj, Patna, upon which Sultanganj P.S. Case No. 25 of 2014 was registered under Sections 341 323, 504, 354, 379, 353 along with other penal provisions of the Indian Penal Code.

(iv) Facing continuous threat to the life, she approached the Mahila Ayog (Women's Commission) detailing atrocities and harassment meted out to her at the hands of the aforementioned persons and requesting the Commission to take appropriate action in the matter.

(v) Faced with no other alternative, the petitioner was constrained to file an application before the District Education Officer, Patna, on 16.09.2104, praying for a transfer under special circumstances to any different school, in the district at Patna, so that she may not be adversely affected in the discharge

of her duty.

(vi) She, again, submitted another application for voluntary transfer under special circumstances, on 19.11.2014, in the light of the provisions of the Bihar State Nationalized Primary Teacher (Transfer) Rules, 2006, quoting Rule 3 (G) of the Transfer Rules, 2006, whereby the respondent-Director, Primary Education was vested with the power to take decision, in the matter of transfer, in the interest of school, on administrative ground. However, no action was taken in the matter.

(vii) Since she was under persistent threat and also because the accused had come out of jail custody after remaining inside for four-five months, but no notice was taken on her request and the respondents failed to notice the compelling circumstances wherein she had made an application for transfer.

(viii) It was under such facts and circumstances, that the petitioner was constrained to move this Court seeking appropriate relief.

4. A counter affidavit has been filed, on behalf of the respondent, Senior Superintendent of Police, Patna, stating

therein that the action had been taken against the accused persons and *charge sheet* had also been submitted.

5. A counter affidavit was also filed on behalf of respondent No. 2, namely, Director, Primary Education, Government of Bihar, duly sworn by the Deputy Director, Primary Education, Government of Bihar, stating therein that the claim raised by the petitioner and also in view of the direction given by the High Court, the petitioner's case was considered under the Bihar Rajkiyakrit Primary Teachers (Transfer) Rules, 2006 (as amended in 2009), wherein it has been specifically provided that normally, the post of teacher is non-transferable. However, under the aforementioned Rules, she can be allowed to avail mutual/voluntary transfer to the maximum of two times in the entire service period and there must be a gap of minimum 5 years between the first and second transfer. Further, the order of transfer can only be issued after approval of the committee constituted for the said purpose.

6. It would be evident from the averments made in the writ application that the petitioner was appointed as Assistant Teacher, on 07.02,2012, and posted at Middle School, Terasi Tola, Munger, in the district of Munger. Subsequently, in view of option having been given by the petitioner for the transfer and



posting in the district of Patna, she was transferred and posted at Primary School, Ambedkar Colony, Sandalpur, Mehendru, Patna, in the year 2013. In view of the decision taken by the District Establishment Committee, Patna, vide Annexure- 2 of the writ application and pursuant to Annexure- 2, she submitted her joining report in the said school and has been discharging her duties there accordingly.

7. From the service history of the petitioner, it is apparent that she joined at Patna in the year 2013, after having exercised her option and the minimum prescribed period of five years has not been completed as yet. Under such facts and circumstances, it would not be open to the respondents to facilitate another transfer.

8. So far as the claim for inter-district transfer is concerned, her matter has been referred to District Level Committee, constituted for the said purpose, and vide letter, contained in Memo. No. 1160, dated 24.09.2015, the District Education Officer, Patna, has been asked to make an enquiry in respect of allegation of the petitioner relating to hindrance being created by the anti-social elements of the locality in the educational activities of the school and institute First Information Report accordingly. The learned single Judge, in

these circumstances, concluded that the writ petition was fit to be dismissed, and accordingly dismissed the writ petition.

9. We have heard learned Counsel for the parties and perused the materials available on record.

10. It is evident from the extant Rules that the petitioner is not eligible for any such re-consideration at the present moment and the learned single Judge, having observed that the accused persons have already been taken to task, has passed impugned order.

11. Thus, we find no infirmity in the order passed by the learned single Judge so as to warrant interference by this Court in this intra-Court appeal. The appeal, being devoid any merit, is, thus, dismissed.

**(I.A. Ansari, ACJ)**

**(Anjana Mishra, J)**

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