

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4125 of 2017

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Ramesh Kumar son of Munindra Kumar Singh, resident of Village +P.O. Hridayachak, P.S. Kaler, District Arwal at present Headmaster, Government Yugal Middle School, Aurangabad

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Director, Primary Education, Department of Education, Government of Bihar, Patna.
3. The Deputy Development Commissioner, Magadh Division, Gaya
4. The Regional Deputy Development Commissioner, Magadh Division, Gaya
5. The District Education Officer, Aurangabad
6. The District Programme Officer (Establishment), Aurangabad
7. Smt. Bibha Kumari, Head Mistress, Upgraded Middle School, Aura, Aurangabad

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Tej Bahadur Singh, Sr. Advocate with
Mrs. Shashi Priya Pathak, Advocate

For the State : Mr. Krishna Chandra, AC to AG

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 29-03-2017

Heard learned counsel for the petitioner and State.

2. The petitioner has prayed for quashing of order dated 21.02.2017 contained in Memo No. 161 passed by the respondent no.



4 by which respondent no. 7 has been posted on the post of Headmaster of the school in which the petitioner had initially been posted as per the common order of promotion and posting of Headmaster contained in Memo No. 3649 dated 17.12.2016 issued by the respondent no. 5.

3. Learned counsel for the petitioner submitted that in a general promotion and posting order relating to 288 persons the petitioner as well as respondent no. 7 were promoted to the post of Headmaster and posted at various places, the petitioner at Yugal Middle School, Aurangabad whereas the respondent no. 7 at Upgraded Middle School, Aura, Aurangabad, by order contained in Memo No. 3649 dated 17.12.2016 issued by the respondent no. 5. Learned counsel submitted that pursuant to the same, both had joined at their place of posting but by order contained in Memo No. 161 dated 21.02.2017 issued by the respondent no. 4, 16 such transfers were interfered with and the petitioner and the respondent no. 7 have been directed to interchange their place of posting. Learned counsel submitted that with regard to the others, second option of the concerned has been asked but in the case of the petitioner, only order is that the respondent no. 7 be posted at the place where the petitioner is posted and the petitioner should go to the place where the respondent no. 7 is posted. Learned counsel submitted that once the



persons have joined at their designated place of posting, the subsequent interference amounts to a transfer, which is governed by the Bihar State Government Primary School Teachers (Transfer) Rules, 2006 (hereinafter referred to as the 'Rules') and such Rules prohibit general transfer. It was submitted that the Rules permit only transfer by mutual consent or on various administrative grounds specified which does not cover the case at hand. Learned counsel submitted that if at all the respondent no. 7 was aggrieved, she should have filed an appeal before the respondent no. 3 but the respondent no. 4 has no jurisdiction in the matter. It was further pointed out that as per Rule 6 of the Rules, there is a Committee for such mutual transfer consisting of the District Education Officer, all Regional Education Officers as well as the District Superintendent of Education (now District Programme Officer). Learned counsel summed up with arguments by submitting that prior to the impugned order being passed, no consent was taken of the petitioner in terms of the provisions of the Rules.

4. Learned counsel for the State submitted that the writ petition is misconceived as on very cogent ground, the respondent no. 7 has been posted at the place where the petitioner was posted and he has been directed to take charge of the post held by the respondent no. 7. Learned counsel pointed out that as per the option submitted by the



respondent no. 7 and also her being a lady and suffering from heart disease, such decision has been taken.

5. Having considered the rival contentions, the Court does not find any merit in the present writ application. In the case of teachers, once they are promoted as Headmaster, there is a composite order of such promotion as well as their posting. The said postings are done taking into consideration the merit position of the candidate and the options submitted by him or her. In the present case, the respondent no. 7 is at serial no. 213 whereas the petitioner is at serial no. 272. Further, the respondent no. 7 had given her option to be posted at Yugal Middle School, Aurangabad but she was not given the said school and instead posted at Upgraded Middle School, Aura. The respondents, by the impugned order have rectified the situation as the petitioner, being at a much higher merit position and giving option for Yugal Middle School, Aurangabad, which was given to the petitioner, though as per his choice, but not in accordance with law, for the reason that he was much below in the merit list, was a patent error and was also not legally sound as the settled principle for such posting to be made on merit-cum-choice/option, was blatantly flouted. Thus, this is not a case of transfer where the Rules will apply. Once having held that the present is not a case of transfer and purely a case of correction of the mistake done while posting the petitioner and the respondent



no. 7 upon their promotion to the post of Headmaster, the authorities having rectified such mistake to remove the anomaly and having acted in accordance with the statutory as well as legal provisions, posting the petitioner to the post where the respondent no. 7 was posted and posting the respondent no. 7 to the place where the petitioner was posted, in the considered opinion of the Court, requires no interference.

6. Accordingly, the writ petition stands dismissed.

7. However, as it is not clear from the impugned order as to whether the petitioner had given any other option and also as to whether considering his position in the merit list, such second or other option could have been given to the petitioner, the authorities are required to look into such aspect of the matter also. Further, as an opportunity has been given to others for giving second option, the petitioner may also be given an opportunity for second option and if such option can be granted to him taking into consideration the *inter se* seniority of the persons concerned, the authorities are required to consider the same. For such purpose, the petitioner is at liberty to represent before the respondent no. 4 within three weeks from today along with a copy of this order. If such representation is filed within the time stipulated, the same would be looked into and disposed off within two weeks thereafter. It is clarified that the posting of the



respondent no. 7 at Upgraded Middle School, Aura shall not be disturbed as the Court has found that she is rightly entitled to such post, primarily in terms of the option given by her and her position in the merit list as compared to the petitioner.

(Ahsanuddin Amanullah, J)

Anjani/-

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