

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 13641 of 2016

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Sudama Sharma, Son of Shri Ram Raj Sharma, Resident of Shri Krishna Nagar Ahri, Near Durga Mandir, P.O.- Aurangabad, P.S.- Mufassil, Police Station- Aurangabad, District- Aurangabad, at present posted as Assistant Teacher, Lower Subordinate Education Service, Government Basic School, Erki, P.O.- Erki, P.S.- Deo, District- Aurangabad.

.... Petitioner.

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Director, Primary Education, Education Department, Government of Bihar, Patna.
3. The Regional Deputy Director of Education, Government of Bihar, Patna,
4. The District Programme Officer (Establishment), Aurangabad,
5. The District Education Officer, Aurangabad.

.... Respondents.

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Appearance :

For the Petitioner : Mr. Pratap Sharma, Adv.

For the Respondents: Mr. Vikas Kumar, Adv.

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 15-03-2017

Heard learned counsel for the petitioner and the State.

Through, this writ petition the petitioner seeks quashing of the Letter No. 337 dated 30.04.2016, as contained in Annexure-1 issued by the Regional Deputy Director of Education, Magadh Division, Gaya, i.e., the respondent no. 3 by which his posting at Divisional Cadre Government Basic School, Erki, Deo, Aurangabad was declared to be unacceptable and he



has been reverted back to the Middle School of District Cadre.

It is contended on behalf of the petitioner that his appointment was itself in the divisional cadre, therefore, this order is unsustainable. The petitioner places reliance upon several documents including Annexure-6 by which the DSE had posted him in the basic school of divisional cadre.

Per contra, from the counter affidavit filed on behalf of the respondent no. 3, it appears that the DSE did not have any power to make appointment of divisional cadre because he was merely authority of the District Cadre not the Divisional Cadre and for divisional cadre the RDDE would be the competent authority.

Learned counsel for the petitioner places reliance upon a decision of a Division Bench of this Court rendered in CWJC No. 6532 of 1993 and other analogous matters.

However, from plain reading of the impugned order contained in Annexure-1, it appears that the same has not been passed after granting reasonable opportunity to the petitioner. The petitioner was allowed to work for the divisional government basic school for about 29 years and, thereafter, suddenly Annexure-1 has been passed on 30.04.2016 without any show cause notice reverting back to the district cadre.



In my view, such order cannot be sustained in the eye of law. Accordingly, the same is, hereby, set aside.

However, if the competent authority takes a decision to pass another order in this regard then a notice should be issued to the petitioner and his reply should be considered and, thereafter, a reasoned order would be required to be passed in accordance with law. If such notice is issued, petitioner would be at liberty to raise all the grounds which would be available to him under law including those which have been raised in this writ petition.

While taking such decision, the authority would also be obliged to consider the aforesaid decision of the Division Bench of this Court in its proper perspective.

This disposes of the writ petition.

(Dr. Ravi Ranjan, J.)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.05.2017
Transmission Date	NA

