

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.2270 of 2016

IN

Civil Writ Jurisdiction Case No. 17023 of 2016

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Vinod Kumar Paswan S/o Late Ramnandan Paswan, R/o village - Bhawanipur, P.O. Dighari, P.S. Suryagarha, District - Lakhisarai, At Present Posted as Headmaster, Up - Graded Middle School Wakarchak, District - Lakhisarai .

.... Appellant

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, New Secretariat, District Patna.
2. The Director, Primary Education, Education Department, Government of Bihar, New Secretariate, District Patna.
3. The Regional Deputy Director of Education, Munger Division, District Munger.
4. The District Education Officer, District Lakhisarai.
5. The District Programme officer (Establishment), District Lakhisarai.
6. The Block Education officer, Block Suryagarha, District Lakhisarai.
7. Anita Mandal, W/o Surendra Mahto, Resident of Bakarchak, P.O. Dighari, P.S. Suryagarha, District - Lakhisarai At Present Posted as Head Assistant Teacher, Up - Graded Middle School Wakarchak, District Lakhisarai .

.... Respondents

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Appearance :

For the Appellant/s : Mr. Avanindra Kumar Jha, Advocate.

For the Respondent/s : Mr. Ashutosh Ranjan Pandey, AAG-15

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 24-04-2017

Seeking exception to an order dated 29.11.2016 passed by the learned writ court in C.W.J.C. No. 17023 of 2016, this appeal has been filed under clause-10 of the Letters Patent.

2. The learned writ court in the matter of transfer has only observed that on administrative consideration in the matter of posting of a headmaster, the authority cannot be said to have no power and, therefore, refused to interfere with the order of transfer and dismissed the writ petition. However, after hearing the learned counsel for the



parties, we find that the order of transfer impugned is not as simple as pointed out in the order passed by the learned writ court on the contrary it is established that the transfer has been passed by an unauthorized officer usurping the power and in contravention to the statutory rule framed under Article 309 of the constitution namely the Bihar Rajya Rajkiyakrit Prarambhik Vidyalaya Sikshak (Transfer) Niyamawali, 2006.

3. The facts in nutshell goes to show that the petitioner was initially working as a teacher and vide Annexure-2 on the basis of certain recommendations made by the Departmental Proceeding Committee, which held its deliberation on 12.07.2016, he was promoted as Headmaster. On his promotion as headmaster he was posted in an Upgraded Middle School, Wakarchak, Suryagarha, in the district of Lakhisarai, while he was so working, the District Programme Officer (Establishment) on 26.09.2016 vide Annexure-A10 transferred him to another school and permitted the respondent no.7 namely Anita Mandal to continue as in-charge Principal of the school in Bakarchak.

4. It is the case of the appellant that the District Programme Officer has no jurisdiction or authority to transfer the appellant and as this vital aspect of the matter was not taken note of by the learned writ court, when the matter was heard on the last date, we directed the



counsel for the State to file an affidavit and bring on record the documents indicating the competent authority empowered to transfer the petitioner. In pursuance to the direction issued by Sri Amit Kumar, Assistant Director, Primary Education, Government of Bihar, has filed an affidavit and even though he has tried to justify the transfer order and has made an averments in the counter affidavit that when the transfer is within one school in a district, the District Programme Officer is competent to transfer and in support thereof he says that Annexure-B is the statutory rule governing the transfer. A perusal of Annexure-B goes to show that it is a notification issued by the State Government on 03.07.2009, in exercise of its power under Article 309 of the Constitution and the rule in question is nothing but a rule governing transfer of teachers working in the Primary School in the State of Bihar. A perusal of the aforesaid rule goes to show that under Rule-6 and Rule-8 for the purpose of transfer, two committees have been constituted. One headed by the District Education Officer, as the Chairman with the regional officers and the District Education Superintendent, as member and Secretary and another transfer committees in which the Director, Primary Education is the Chairman and other officers are its members and secretary. Nowhere in this statutory rule of 2006, is there any indication that the District Programme Officer is competent to transfer an employee within the



district. The transfer rule only contemplates transfer after approval of two committees, as are indicated in rule-6 and rule-8 of the Rules, 2006. That being so, as per the statutory rule any transfer even from one school to another in the same district has to be effected after due concurrence and approval of the aforesaid committees. On record no such concurrence or approval is available nor is it the case of the respondent that the case of the petitioner transfer was placed before the committee and after their approval, the District Programme Officer only implemented the recommendations of the committee.

5. On the contrary, we find that without placing the matter even as per the amended provision as contained in Annexure-B dated 03.07.2009 or and in total disregard to Rule-2 (ga) (i) and (ii) the impugned transfer is effected. It is a case where the District Programme Officer has ordered the transfer, he is not competent to transfer and, therefore, the transfer being by an authority not competent to do so and being contrary to the statutory rule has to be interfered with. Even though, learned counsel for the respondent no.7 vehemently tried to argue that the order is not an order of transfer it is only an order of posting after the petitioner was promoted as Headmaster vide P2. We are unable to subscribe and accept the aforesaid contention of learned counsel for the respondent no.7. The order of promotion (Annexure-2) is passed by the Departmental



Promotion Committee based on its deliberation held on 12.07.2015 and it posted the petitioner in one particular institute, whereas Annexure-10 is an order passed by the District Programme Officer, transferring the petitioner from one school to another which is not permissible for the reason as indicated hereinabove.

6. Accordingly, finding the transfer to have been effected by an unauthorized person contrary to the requirement of the statutory rule framed under Article 309 of the Constitution and the learned writ court having not adverted to consider all the legal aspect of the matter, which makes the order of transfer illegal. We allow the appeal and quash the order passed by the learned writ court and also quash the order (Annexure- P10) impugned in the writ petition and allow the writ petition and grant liberty to the respondent to take action on administrative consideration after following the due process of law, if they so required.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

Amit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28-04-2017
Transmission Date	NA

