

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19625 of 2016

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Shahi Bhanu Kishore Uday, Son of Late Uday Bhanu Prasad Shahi, Resident of village - Paterha, P.S. Maharajganj, District - Siwan

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna
2. The Director, Primary Education, Government of Bihar, Patna
3. The District Magistrate, Siwan
4. The Regional Deputy Director of Education, Chapra
5. The District Education Officer, Siwan
6. The District Programme officer (Establishment), Siwan
7. The Block Education officer, Maharajganj, Siwan
8. The Block Education officer, Daraunda, Siwan
9. Mintu Kumari, Wife of Shri Nishi Kant Shahi, Presently working as In - Charge Headmaster, Middle School, Patedi Anchal, Maharganj, Siwan.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Vipin kumar, Advocate

For the Respondent/s : Mr. Ranjan Kumar, AC to GA-12

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 13-02-2017

Heard parties.

Through this writ application, the petitioner seeks quashing of order dated 3.11.2016, as contained in Annexure-9, by which he has been posted at Upgraded Middle School, Devaria, Maharajganj. He also assails the order dated 10.08.2016, as contained in Annexure-6, by which his transfer from Primary School, Garauli, Daraunda to Middle School, Paterhi, Maharajganj at his option was cancelled on the ground that the order was passed without approval of the competent authority.



Counter affidavit has been filed on behalf of the State.

The amended relevant rule, which governs the issue, namely, Bihar State Nationalized Primary School Teacher (Transfer) Rules, 2006, has been appended as Annexure-A. Rule 3 thereof lays down in clear terms that the post of Teachers would be non-transferable, however, in two conditions they can be transferred. First is mutual transfer and second at the option of the concerned teacher but that option can be exercised only twice in the service career. The petitioner exercised his option and upon exercise of his option he was transferred to Middle School, Patedi Anchal, Maharajganj vide order dated 31.08.2015. However, that order was found to be in violation of Rule 3 (6) because that was done without approval of the Establishment Committee. The order itself discloses that though it was being passed in anticipation of approval which would be taken later on. Vide Annexure-6, the transfer at his option was cancelled on the ground that no approval could be taken from the Establishment Committee and, in the meantime, eight months have passed. Thereafter, the petitioner was again asked for his option vide Annexure-7. He submitted his option again for the same school but vide Annexure-9, he has been transferred to the Upgraded Middle School, Deoria, Maharajganj.

In my view, the order, as contained in Annexure-9, is



totally without jurisdiction as nobody could have been transferred against his will or option. So far the Annexure-6 is concerned, it appears from that order that, without placing the matter before the Establishment Committee, such order has been passed cancelling his transfer made on his option. The statute clearly lays down that a teacher can exercise such option twice in his service career. The petitioner had exercised his option, however, it was the fault of the respondent authorities in not obtaining the necessary approval from the Establishment Committee and for that the petitioner cannot be blamed. Therefore, it was a fit case in which even after cancellation of the earlier order of transfer, the petitioner's option should have been considered by the Establishment Committee as a first one option which has not been done.

It is submitted on behalf of the petitioner that a post at Paterha Anchal Maharajganj is still vacant.

In such a situation, this Court does not have any option but to quash the Annexure-9 and direct the respondent authorities to consider the case of the petitioner for his posting at Patedi Anchal Maharajganj as his first option exercised by him and take a final decision in accordance with rules as Annexure-6 discloses that fault was not of the petitioner rather the respondent authorities themselves are to be blamed.



This Court has also noticed in the order dated 22.04.2016 passed in CWJC No.15714 of 2015 (Annexure-3) that the whole game of the petitioner of that case was to somehow circumvent the transfer of the petitioner of this case because he seems to be senior to that petitioner who was enjoying the status of the In-charge Headmaster of the school in question. However, in view of the fact that this order has been passed without hearing the respondent no.9, this Court is refraining itself from passing any order with respect to that.

It is expected that the whole exercise would be completed within a period of four months from the date of receipt/production of a copy of this order.

This is further made clear that this option of the petitioner would be considered to be his first option as under the rule he can exercise such option only twice in his service.

Accordingly, this writ application stands allowed.

(Dr. Ravi Ranjan, J)

V.K. Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	17.02.2017
Transmission Date	N.A.

