

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1736 of 2016
IN
Civil Writ Jurisdiction Case No. 9703 of 2016**

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Bhalchandra Sharma, Son of late Baleshwar Pandit, Resident of Village -
Panditpur, Post - Nadaon, District - Buxar.

.... Appellant/s

Versus

1. The State of Bihar through Secretary of Education Department Bihar at Patna.
2. The Director of Secondary Education Department Bihar at Patna.
3. The Regional Deputy Director of Education, Patna.
4. The District Education Officer, District - Buxar.
5. The District Education Officer, Bhabua District - Kaimur at Bhabua.
6. The District Education Officer, Sasaram, District - Rohtas at Sasaram.
7. The District Education Officer, Arrah, District -Arrah.
8. The District Education Officer, Patna District Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajani Kant Pandey, Advocate
For the Respondent/s : Mr. Md. Nadeem Seraj-GP5
Ms. Shalini, AC to GP-5

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 26-04-2017

Seeking exception to an order dated 19.08.2016 passed by
the Writ Court in refusing to interfere with an order of transfer passed;
this Letters Patent Appeal has been filed under Clause X of the Letters
Patent.

It is stated that the transfer in question has been effected
contrary to the Statutory Rules, namely, Bihar Ministerial Service
Cadre (Appointment, Promotion and Transfer) Rules, 1974. It is stated
that under Clause 20 of the aforesaid Rules, petitioner is to be
transferred within the District only and transfer out of the District is



not permissible. Petitioner has been transferred out of the District. The petitioner was working in the office of the District Education Office, Buxar and has been transferred to Hilsa, Nalanda by the impugned order and challenging the transfer order, the writ petition was filed.

The learned Writ Court found that the petitioner has already completed his tenure posting in Buxar and, therefore, if an administrative decision has been taken to transfer him, no indulgence has to be made.

Contention of the petitioner that under the Rules, he cannot be transferred out of the District is wholly misconceived. A perusal of the Rules goes to show that ordinarily, an employee in a particular cadre should be transferred within the District, but in exceptional circumstances, if administrative requirement is there, he can also be transferred out of the District. The Rules give discretion to the competent authority to transfer an employee even out of the District and there is nothing in the Rules that the employee should always be transferred within the District.

In the counter affidavit filed by the respondents, it has been stated that the petitioner has been posted in one District and in one office for the last more than four years and it is stated that the petitioner has been posted out of the District as all Clerks, who have been posted in one District for more than six years, have been transferred in the like manner. From the counter affidavit filed by the



respondents it is seen that a policy decision was taken to transfer all employees, who have continued in one place for about six years, and in this exercise, petitioner has been transferred.

Keeping in view the Circulars filed in this regard, available on the record of the writ petition as Annexure-A and B, it is clear that the transfer has been done on the basis of a decision taken by the State Government. The transfer is not vitiated by any *mala fide* or arbitrary decision and the Rules in question, which are said to have been violated, also give discretionary power to the Government to transfer an employee on certain conditions. In this case, counter affidavit has given reasonable justification and explanation for having transferred the petitioner out of the District and, in our considered view; the same does not call for any interference. The learned Writ Court has not committed any error in dismissing the writ petition. The appeal is also dismissed.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

Sunil/-

AFR/NAFR	N.A.F.R.
CAV DATE	N. A.
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