

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 2291 of 2017

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Gauhar Anjum, Wife of Sri Rafi Ahmad Khan, Resident of Chawari Bethah, P.S.
Betiah Sadar, District- West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Education Department, New Secretariat, Patna.
3. The Director (Primary Education) Education Department, New Secretariat, Patna.
4. The Principal D.I. E.T. College, Rambagh, District- Muzaffarpur.
5. Principal D.I.E.T. College, Kumarbagh, District- West Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pratap Sharma, Advocate

For the Respondent/s : Mr. Prabhu Narayan Sharma, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 20-03-2017

Heard learned counsel for the petitioner and the State.

The petitioner is aggrieved by the order contained in
Memo No. 1161 dated 28.12.2016, by which her transfer made by
order dated 30.06.2016 has been stayed.

Learned counsel for the petitioner submitted that in a
routine yearly chain transfer involving 461 persons, the petitioner, on
her representation, was transferred as Lecturer Diet, Ram Bagh,
Muzaffarpur to Lecture Diet, Kumarbagh, West Champaran.
Learned counsel submitted that some others affected by such transfer
had moved this Court in various writ petitions and the transfer was
interfered with by the Court but the transfer of the petitioner was



never cancelled. Learned counsel submitted that such interference was limited to the persons, who had approached the Court, though the Court had observed that in view of large persons being affected, the State may take a fresh decision in entirety by following norms and standards and after due verification of the service history of the posting of the persons. Learned counsel submitted that the same has been treated as quashing of the entire notification though in the order dated 18.08.2016 passed in C.W.J.C. No. 11011 of 2016 and analogous cases, it is specifically stated in the order that the notification, at least in relation to those petitioners had been quashed. Learned counsel submitted that the post to which the petitioner had been transferred was not on the basis of any *vice versa* transfer as no other person involved in the entire chain was posted on such post and as such the post was vacant where she has been transferred. Learned counsel further submitted that the reason for staying the previous transfer order as a whole was that at some places persons had already joined and thereafter the notification was quashed with regard to some persons leading to there being more than one person on one post due to which there was difficulty in making payment of salary. Learned counsel submitted that such is not the case with the petitioner.

Learned counsel for the State submitted that the



authorities have sought modification of the order dated 18.08.2016 passed in C.W.J.C. No. 11011 of 2016 and analogous cases due to the reason that there was an observation of the Court that the transfer should be made keeping in mind Rule 153 of the Bihar Education Code. He submitted that the said is only an Executive instruction which has been modified by the decision of the State Cabinet and thus, the same is no more applicable. This Court would only observe that the co-ordinate Bench in the order dated 18.08.2016 had only stated that such transfer be made, '**may be keeping in mind Rule 153 of the Bihar Education Code,**' which only indicates that the authorities 'may' also take into consideration Rule 153. When the position is that such Rule no more exists or is superseded and there being no specific direction for considering in terms of the said Rule, the discretion is with the authorities to proceed, in accordance with law.

However, since the authorities have approached for modification of the order, this Court would not like to dwell on the issue.

Coming to the merits of the matter, the Court finds that the transfer of the petitioner being on her representation and in conformity with the requirement for such transfer, having once being acceded to and no interference or comment made by any Court with



regard to her transfer, her case was required to be looked into separately. Further, when the post to which she was transferred, not being after replacing any other person and she having joined such place without any hindrance or controversy, the authorities are required to reconsider the matter.

In view thereof, the writ petition stands disposed off with a direction to the respondent no. 3 to consider the case of the petitioner on its own merits keeping in view the fact that she was transferred by order dated 30.06.2016 contained in Memo No. 646 on a post on which neither anybody was posted or was transferred and also the fact that it was based on her representation on valid and genuine ground. Such decision be taken within two weeks from the date of receipt/communication of this order to the respondent no. 3.

(Ahsanuddin Amanullah, J.)

P. Kumar

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