

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16057 of 2016

=====

Binod Kumar Chaudhary S/o Sri Sitaram Chaudhary resident of Village- Supna,
P.S.- Saraiya, District- Muzaffarpur.

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Department of Education, Govt. of Bihar, New Secretariat, Patna.
2. Commissioner, Tirhut Division, Muzaffarpur.
3. Secretary, to Commissioner, Tirhut Division, Muzaffarpur.
4. The Director, Secondary Education, Government of Bihar, Patna.
5. The Regional Deputy Director of Education, Tirhut Division, Muzaffarpur.
6. The District Education Officer, Motihari.

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Mukul Sinha, Adv.

For the Respondent/s : Mr. Madhukar Mishra, AC to SC-16

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 09-03-2017

Heard Mr. Mukul Sinha, learned counsel for the petitioner
and Mr. Madhukar Mishra, AC to SC-16, for the State.

The petitioner is aggrieved by the order bearing Memo No.
251 dated 27.1.2016 of the Director, Secondary Education,
Government of Bihar, Patna, whereby the petitioner has been
transferred from the office of the Regional Deputy Director of
Education, Tirhut Division, Muzaffarpur to the office of the District
Education Officer, Motihari, District East Champaran in the same
capacity of a Clerk, inter alia, on grounds of long duration at his
present place of posting. A copy of the order is impugned at Annexure



1 to the writ petition. The petitioner is also aggrieved by the consequential order relieving him from the post bearing Memo No. 2394 dated 1.6.2016, impugned at Annexure 1/1 to the writ petition.

With the consent of the parties the writ petition has been heard with a view to final disposal at the stage of admission itself.

The petitioner has already joined his place of posting in obedience of the transfer order but he questions the transfer order on merits as well as on jurisdiction. It is the argument of Mr. Mukul Sinha, learned counsel appearing for the petitioner, that three allegation petitions were filed against the petitioner questioning his stay at Muzaffarpur on several grounds namely;

- (a) long duration;
- (b) his association with a candidate in the general election;
- (c) harassment to one Neelam Sinha, a Principal in the local school; and
- (d) being accused in the vigilance case.

He submits that all the allegations were enquired into and were found to be false. Learned counsel has referred to the report of the Regional Deputy Director of Education, present at Annexure 8, as to the clarification on the complaint of Neelam Sinha, whereby the Director was informed that since the petitioner had detected alleged irregularities committed by the said Principal, hence she had



complained against him.

In so far as complaint regarding helping a candidate in general election is concerned, learned counsel refers to the letter of the Deputy Director of Education, present at Annexure 9, whereby he has informed the District Election Officer cum District Magistrate, Muzaffarpur regarding falsity of the allegations.

As regarding the allegation of being an accused in the vigilance case is concerned, learned counsel has referred to the documents enclosed at Annexures 10 series to support his stand. Learned counsel in reference to the opinion expressed by the Deputy Development Commissioner present at Annexure 10/1 has submitted that his long duration as well as the allegation on his integrity, stands explained. It is submitted that despite this position the transfer order was issued by the Director impugned herein and against which not only the petitioner represented before the Principal Secretary vide Annexure 11 on 29.1.2016 rather his case was also recommended by the Regional Deputy Director of Education vide Annexure 12 requiring a reconsideration on the transfer in the light of the recommendations present therein. A reply was sent from the office of the Director, Education to the Regional Deputy Director of Education, present at Annexure 3, in which he was informed that the Regional Deputy Director of Education himself was competent to take



necessary decision in this regard. Needful to mention here that even though the transfer order was issued on 27.1.2016 but it is under the advice of the Regional Deputy Director of Education that the petitioner initially continued at Muzaffarpur and was allowed to do the assigned work. The petitioner has thereafter joined his place of posting but as indicated, questions the transfer order on merits as well as on jurisdiction.

Mr. Mukul Sinha, learned counsel for the petitioner, has filed supplementary affidavit today and in reference to Rules 4, 5, 7 and 20 of the Government notification dated 13.8.1974 placed at Annexure 17 thereof he submits that the cadre stands explained in the Rules and the divisional cadre as per Rules 4 and 5, is to be headed by the Regional Deputy Director of Education, who has been made the controlling authority of clerical grade employees. It is in reference thereto, submitted that the issues regarding appointment and promotion has been assigned to a Establishment Committee so constituted consisting of Regional Deputy Director of Education of the concerned division as its Chairman and two other Officers as explained in Rule 7. He next refers to Rule 20 to submit that the Rule stipulates that normally any transfer is to be made within the district concerned except in exceptional circumstances where the employee can be transferred outside the district, at the discretion of the



Establishment Committee. He submits that once the Director vide Annexure 3 has delegated jurisdiction on the Regional Deputy Director of Education to take a decision, the transfer order lost its meaning.

The argument of Mr. Sinha has been contested by Mr. Mishra, learned State Counsel, whose sole contention is in reference to paragraphs 5 and 10 of the counter affidavit to submit that there were serious allegations against the petitioner, who has continued on his post since last 22 years.

I have heard learned counsel for the parties and have perused the records.

In so far as the allegation part is concerned, it stands explained in the letters of the Regional Deputy Director of Education and which has not been doubted by any superior authority. In fact the letter of the Regional Deputy Director of Education present at Annexure 12 explains the reason for the continued stay of the petitioner at Muzaffarpur and the Director taking note of the recommendation of the Regional Deputy Director of Education, has left the final decision at this discretion vide his advice as contained in the letter dated 27.6.2014 at Annexure 3. Now in such circumstances there was no occasion for the transfer order to remain on the records.



As I have noted, the petitioner while questioning the transfer order has joined his new place of posting and thus the issue would require a determination whether the transfer order is valid. In my opinion, in view of the stand taken by the Regional Deputy Director of Education on the allegations levelled against the petitioner, not contested by any superior authority, the allegations have lost its force.

In so far as the issue of continued stay of the petitioner at Muzaffarpur is concerned, the position is explained in the recommendation of the Regional Deputy Director of Education present at Annexure 12 which is a letter addressed to the Director. The Director of Education taking note of the recommendation, has left the option at the discretion of the Regional Deputy Director of Education.

In so far as the merits of the transfer order is concerned, the position is even worse because the order of transfer is by an authority who does not possess the jurisdiction to issue such transfer order. Rules 4 to 7 read alongside Rules 17 to 20 at Annexure 17 unquestionably vests jurisdiction in such matters on the Establishment Committee headed by the Regional Deputy Director of Education of the Division concerned and it is taking note of the legal position that the Director by his letter present at Annexure 3 did authorize the Regional Deputy Director of Education to take a final decision on the



transfer order. The rules in question do not recognize the role of the Director, Education nor vests any jurisdiction in him to usurp the powers vested in the Establishment Committee headed by the Regional Deputy Director of Education. The order of transfer thus passed by the Director, Education by exercising a usurped jurisdiction vested in the Establishment Committee constituted in each division as per the Rules, is without jurisdiction.

Such being the position, the transfer order is neither sustainable on merits nor on jurisdiction and as a consequence the order bearing Memo No. 251 dated 27.1.2016 impugned at Annexure 1 together with the relieving order dated 1.6.2016 impugned at Annexure 1/1 cannot be upheld and are accordingly quashed and set aside.

The petitioner is permitted to rejoin at his previous place.

Since the order of transfer itself has been quashed, the consequences shall follow and the person posted at the place of the petitioner at Muzaffarpur shall have to make way for the petitioner. Let the authority concerned take necessary steps in this regard.

Re: **I.A.No. 1248/2017**

The issue of suspension raised in the interlocutory application is an independent cause of action and liberty is afforded to the petitioner to question the same by way of independent writ



petition.

I.A.No. 1248/2017 is accordingly disposed of.

The writ petition is allowed with the directions
aforementioned.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.03.2017
Transmission Date	NA

