

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14170 of 2017

=====

Rajdeo Sah, aged about 47 years, Son of Late Manki Sah, resident of Village-
Marwapakar Police Station- Saraiya, District- Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Human Resources, Government of Bihar, Patna.
2. The Principal Secretary, Human Resources Department, Government of Bihar, Patna.
3. The RDDE, Tirhut Division, Muzaffarpur.
4. The District Education Officer, Muzaffarpur.
5. The District Project Officer (Establishment), Muzaffarpur.
6. Usha Kumari, Wife of not known to the petitioner, presently posted as Head Master, Middle School, Basantpur Patti, Sariya, Block- Saraiya, District- Muzaffarpur.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Anand Kumar Ojha, Advocate

For the Respondent/s : Mr. S.C. MISHRA-SC16

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 30-11-2017

Heard learned counsel for the petitioner and the State.

2. Mr. Anand Kumar Ojha, learned counsel appearing on behalf of the petitioner submits that the petitioner, as a disciplined employee of the State, has carried out the order of transfer, however, his grievance is that the respondent authorities, who profess a policy in the matter of posting on promotion, as headmaster, has made a departure in the case of the petitioner. In the case of other promoted headmaster, the authorities have considered their option but notwithstanding the vacancy available in the school in question where the petitioner was the senior most teacher, the respondents have



adopted different yardstick. He submitted that when the respondents have professed a policy, they are obliged to follow it religiously. The law is well settled that a public authority, who professes a policy for decision making his action, is required to be judged at the touch stone of the professed policy. Any departure from the professed policy can only be at the pain of invalidation. In fact, this principle was laid down by Justice Frankfurter in *Vitelli v. Ceacon* which was followed in numerous cases by the Courts in India including in the case of **Ramana Dayaram Shetty vs. The International Airport** reported in **1979 AIR 1628**.

3. Mr. Ojha also submitted that the guidelines are meant for adherence whether guidelines are directory or mandatory, it matters little. He referred to the judgment of the Division Bench in the case of **Man Singh Vs. The State of Bihar and Others**, reported in **1982 BBCJ 392**. He submits that now the petitioner has joined the place of posting after his promotion, but his grievance remains that in the matter of posting, he was discriminated and he was not posted as per his option, whereas others were posted according to their option and as such he submits that the respondent Regional Deputy Director of Education, Muzaffarpur has not considered the representation objectively while disposing the same bearing Appeal No. 1 of 2017 (Annexure-7). Mr. Ojha submitted that from Annexure-7, it appears



that the RDDE while disposing of the appeal has not examined the case of the petitioner in the light of the guidelines contained in Annexures- 3 and 4 and, as such, he submits that this Court may direct the RDDE, Muzaffarpur to examine the case of the petitioner afresh in accordance with the guidelines contained in Annexures-3 and 4.

4. Counsel for the State submits that during the pendency of the writ application private respondent was posted in the school in question and as such right accrued to the private respondent, and as such the RDDE is required to decide the representation only after hearing the private respondent.

5. After hearing the parties and considering the nature of relief claimed by the petitioner, this Court is of the view that the RDDE, Muzaffarpur is required to consider the case of the petitioner afresh in the light of Annexures- 3 and 4. However, while considering the case of the petitioner, the RDDE, Muzaffarpur is required to hear the private respondent, namely, Smt. Usha Kumari, who has been posted in the school, where the petitioner was senior most teacher, he shall assign reason. The RDDE is required to consider the case of the petitioner for posting according to his option, if it is not possible to grant him posting in the school where he was the senior most teacher. The respondent RDDE will pass order afresh notwithstanding the earlier order passed as contained in Annexure-7 in Appeal No. 1 of



2017. Such exercise must be completed after hearing all concerned within a period of 60 days from the date of receipt/production of a copy of this order.

6. With the aforesaid observations and directions, this application stands disposed of.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.12.2017
Transmission Date	NA

