

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9074 of 2018

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Ajay Kumar Singh, son of Vishwanath Singh, resident of village Sareya, P.O. and
P.S. Bansghati, District Deoriya, (U.P.). Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, New Secretariat, Patna.
 2. The Hon'ble Minister, Education Department, Govt. of Bihar, New Secretariat, Patna.
 3. The Principal Secretary, Education Department, Govt. of Bihar, New Secretariat, Patna.
 4. The Regional Deputy Director of Education, Saran Division, Chapra.
 5. The District Education Officer, Gopalganj.
 6. The District Programme Officer (Establishment), Gopalganj.
 7. The Block Education Officer, Bhore, Gopalganj.
 8. Sri Sanjay Kumar Rai, I/c Headmaster, Middle School Sheorajpur, Anchal Bhore District Gopalganj. Respondent/s
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Appearance :

For the Petitioner/s : Mr. Bipin Bihari Singh, Advocate
For the Respondent/s : Smt. Shilpa Singh -GA12
Mr. Sunil Kumar, AC to GA-12
For private respondent : Mr. Mrigank Mauli, Advocate
Mr. Prince Kumar Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 14-05-2018

Heard learned counsel for the petitioner, State and
counsel appearing on behalf of the private respondent.

2. It is a peculiar case, where the orders are passed by
the direction of superior authority including the Minister on
Telephone and the authorities, who are exercising statutory powers,
are dancing in the tune of the Minister and Principle Secretary. The
order indicates that the authorities have passed the order because there
are direction of the Minister and Principle Secretary.

3. The Court does not approve any such order. We



fashion rule of law and not whim and capricious and Minister and Principle Secretary of the department are not above law. The Division Bench of this court has deprecated transfer made on the recommendation and political consideration. The judgment of the Division Bench in the case of **Abdul Muttalib vs. the State of Bihar & others** reported in 1985 PLJR 931.

4. The second issue which is also of importance is that the statutory authorities have passed the order at the dictate of the Superiors.

5. In the instant case, the Regional Deputy Director of Education, Saran Division, Chapra has passed this kind of order on the dictate of Hon'ble Minister and Principal Secretary on telephone, such order cannot sustain in eye of law in view of the judgment of the Apex Court in the case of **Purtabpore Co. Ltd vs. Cane Commissioner Of Bihar & Ors.**, reported in AIR 1970 SC 1896 where the Hon'ble Supreme Court has categorically held out that the order passed at the dictate of the Chief Minister is nullity in the eye of law. Considering the aforesaid, the Court cannot approve the order of the respondent as such decision is not valid in the eye of law in view of the judgment of the Division Bench in **Abdul Muttalib** case (supra) and the judgment in the case of **Purtabpore Co. Ltd vs. Cane Commissioner Of Bihar & Ors.** (supra).

6. Mr. Mrigank Mauli, learned counsel appearing on



behalf of the private respondent submits that in the instant case the respondents have committed gross illegality and as such the Minister as well as Principle Secretary have to intervene in order to see that wrongs are rectified. He submits that in the present case quashing of the order may revive the illegal order and as such the Court should not quash the order.

7. In the aforesaid circumstances, the respondents are required to cancel all the previous orders with regard to petitioner and the respondents treating them as null and void and they are required to take fresh decision in accordance with law within a maximum period of 60 days from the receipt/production of a copy of this order. The respondents will consider the case of the petitioner and respondents objectively while passing fresh order of posting.

8. Entire exercise in this regard must be completed by respondents within the time frame of 60 days as indicated hereinabove.

9. With the aforesaid, the writ application stands disposed of.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.05.2018
Transmission Date	

