

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1417 of 2018

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1. Md. Israr Ahamad son of Md. Raza Karim resident of village - Charuanwan, P.S. - Shekhopursarai, District - Shekhpura.
 2. Ram Uday Mahto son of Sri Siyaram Mahto resident of Mohalla - Ward No. 2, near Sangam Bihar Nala, Singhaul, District - Begusarai.
 3. Shivjee Mahto son of late Saukhi Mahto resident of mohalla ward no. 12, Raghapur, District - Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Principal Secretary, Education Department, New Secretariat, Patna.
3. Director, Primary Education, Education Department, New Secretariat, Patna.

... .. Respondent/s

Appearance :

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

For the Respondent/s : Mr. Madanjeet Kumar -GP20

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date : 20-06-2018

Heard learned counsel for the petitioner and counsel for the State.

The petitioners have been promoted vide order dated 28.12.2016 in the Sub-ordinate Education Service, after promotion, they were transferred to the different colleges of the Primary Education Training College/DIET.

The petitioners have raised a grievance that in terms of Rule 153 of the Bihar Education Code, after ten years of service, on promotion, it is compulsorily required to change the status but, after promotion, the petitioners were allowed to work in the inspection side, just after few months, they were transferred to the teaching side. The letter no. 881 dated 3.6.2009 has been mentioned in the impugned order which stipulates after three years of promotion would make person



entitled of another branch but, in the Education Code, the situation is otherwise, relevant to quote Clause 153 (C)(2) which postulates in the following terms:-

“153(C)(2) Officers with more than 10 years of service should compulsorily be transferred to other branch after promotion.”

So the grievance has been raised that it is a mandatory requirement that on completion of 10 years of service, the side has to be changed. As they remained in the teaching side for more than 25 years on promotion, they should be posted in different branch.

For the present, this Court is not interfering with the order passed by the Director, Primary Education but, this court gives direction to the petitioners to file a detailed representation before the Director, Primary Education drawing attention to the provision of Clause 153 and point out anomaly that has crept in the impugned order. As it is well known principle of law that the Rule cannot be overridden by the letter of department and the rule has to prevail not the letter issued by the Department. This aspect of the matter will be looked into by the Director, Primary Education.

Learned counsel for the petitioners also brought to the notice of this Court the counter affidavit filed by the State in C.W.J.C. No. 11060 of 2016 wherein it has been mentioned which reads as follows:-

“10(a) Out of the aforesaid 461 there are approximately 33 such officials who have worked as BEO for more than 20 years.



(b) Similarly there are 41 such officials who have worked as BEO for 15 to 20 years.

(c) There are 47 such officials who have worked as BEO for 10 to 15 years.

(d) 101 officials are those who have worked as BEO for 5 to 10 years.”

In view of the above, the Authority concerned must ensure the rule of law as well as transparency should prevail as it is essential and hallmark of the administration of justice and will take decision in accordance with law within a period of three months from the date of filing of the representation along with a copy of this order.

With the aforementioned observations and direction, this writ application is disposed of.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.07.2018
Transmission Date	NA

