

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1871 of 2018

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Nitishwar Mahto, Son of Late Maheswar Mahto, resident of Village- Jarang Gotoli, P.S. Gaighat, District- Muzaffarpur at presently posted as Block Education Officer, Pupri, Block and District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
2. The Director, Primary Education, Government of Bihar, Patna.
3. The District Magistrate, Sitamarhi.
4. The District Education Officer, Sitamarhi.
5. The District Superintendent of Education, Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar choudhary, Adv. Mr. Harendra Prasad, Adv. Mr. Akshansh Ankit, Adv.
For the Respondent/s	:	Mr. Shankar Kr. Thakur, AC to GP27

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date : 13-09-2018

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

In this case, the petitioner is challenging the order dated 12.12.2017 bearing Letter No. 8/V.3-04/2017, 1363 by which the petitioner has been transferred from the post of Block Education Officer, Pupri, Sitamarhi to the post of Lecturer, Diat, Dighi, Vaishali.

The short point has been raised by the petitioner that he belongs to the Administrative Cadre, as per Rule, he cannot be transferred to the Research and Training Sub Cadre. As per



petitioner, the State of Bihar has come up with a Rule as Bihar Education Service Rule, 2014 wherein Rule-3, four cadres have been created, namely, (a) Bihar Education Service (Administration sub Cadre), (b) Bihar Education Service (Teaching sub Cadre), (Dying Cadre), (c) Bihar Education Service (Research & Training sub Cadre) and (d) Bihar Education Service (Isolated sub cadre). Rule-4 says that none of the officers of one sub Cadre will be transferred and posted in another sub cadre. So, it is mandatory in nature.

Learned counsel for the petitioner submits that he was working as a Block Education Officer in Pupri block, has been transferred illegally to the Diat in Research and Training Sub-Cadre and has submitted that the minimum qualification for performing the job there in Diat is as per Clause 28 of the aforesaid Rule is Post Graduate qualification having 55% marks. On perusal of the Rule, every head has been dealt with in different sub-heads, Adminstrating sub Cadre has been dealt in Part-2 which runs from Rule 5 to Rule 16 and Rule 16 says that the transfer and posting of the officers of the sub-cadre shall be done to the post of administration sub-cadre. Part-3 is the Teaching Sub Cadre which has been dealt in Rule-17 to 24 and Rule 24 says that the transfer and posting of the officers of this sub cadre shall be done to the



post of teaching sub cadre only. Part-4 deals with Research and Training sub Cadre, the basic post and promotional post have been mentioned in Rule-25, Rule-28 prescribes in what manner that cadre should be filled up, 50% basic post will go for direct appointment and 50% posts would be filled up by way of promotion. Sub-Rule (2) of Rule 28 prescribes the minimum educational and training qualification, post graduate qualification 55% marks from a recognized university and requisite qualification in the specific subject with 55% marks in M.ED. For the direct recruit, the qualification has been provided as graduate or equivalent from any recognized university. So, certainly, the petitioner has not been appointed directly to the Research and Training Sub Cadre but, basically, he is a teacher which is absolutely clear from Annexure-1 and Item No. 28 thereof shows that he was working as a Headmaster, Government Elementary School, Gausia, Gopalganj and transferred as Block Education Officer, Pupri, Sitamarhi. Here, it is not the question for consideration as to whether the transmission of the petitioner to the administration cadre but, only issue has been raised in the present case, whether he could have been transferred to the Research and Training Center.



Learned counsel for the petitioner submits that as per Rule, the petitioner cannot be transferred there as well as he does not possess the minimum qualification for discharging his duty.

Learned counsel for the State submits that of-course, he may not possess the minimum qualification but, basically he is from the Teacher Cadre and, at the same time, he was not transferred but, deputed in the Directorate, from there, he has been posted as Lecturer, Diat, Dighi, Vaishali.

Having considered the rival contentions of the parties, the Rule itself speaks that inter sub-cadre transfer has been prohibited, inasmuch as, the person in the sub-cadre of Research and Training can be inducted in two manners, 50% will go to the direct recruitment and 50% for the promotion. Certainly, the petitioner is not from the direct recruitment nor he has been promoted and because the promotee has to be promoted on the basis of limited examination amongst the teachers. That is not the case of either party, inasmuch as, the petitioner does not possess the minimum educational qualification which is required to discharge the function of the Lecturer.

In that view of the matter, the order contained in Memo No. 1363 dated 12.12.2017 is set aside.



The petitioner will be at liberty to make a representation to the authority concerned who will take a 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.

In the result, this writ application stands allowed.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.09.2018
Transmission Date	

