

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13310 of 2019

1. Punam Kumari W/o Amrendra Kishore Resident of Village Sweta Bangra,P.S. Maharajganj,Dist.Siwan
2. Sanjeev Kumar Pandey S/o Late Ramasan Pandey Resident of Village Akhityarpur,P.S. Garkha,Dist.Saran
3. Satendra Narayan Singh S./o Binod Singh Resident of Village Aamdarhi,P.S. Ekma,Dist.Chapra(Saran).
4. Arun Kuamr S/o Late Jai Prasad Sharma Resident of Village Mahamdpur,P.S. Garkha,Dist.Chapra(Saran)
5. Rajesh Kumar Shrivastava S/o Late Nawal Kishor Shrivastava Resident of Villate Ratan Kutir,Shastri Nagar,Fulwariya Road,Bara Chakiya,P.S. Bara Chakiya,Dist.West Champaran
6. Manmohan Singh S/o Late Harishankar Singh Resident of Village Narharpur,P.S. Marhura,Dist.Saran
7. Himanshu Shekhar Srivastava S/o Bashisht Narayan Resident of Village Siwan PS and OP Mahadeva,Dist.Siwan
8. Khimeshwar Prasad Yadav S/o Late Raghuvir Prasad Yadav Resident of Village Kerwa,P.S. Isuapur,Dist.Saran
9. Sudama Rai S/o Late Ghura Rai Resident of Mohalla Chatradhari Bazar Chapra,P.S. Bhagwan Bazar,Dist.Chapra(Saran)
10. Brajesh Kumar S/o Late Toshani Prasad Yadav Resident of Village Jalpur,P.S. Dariganj,Dist.Chapra(Saran)
11. Basuki Nath Singh S/o Late Kameshwar Prasad Singh Resident of Mohalla Shyam Cham,Anandpuri,Devi Mandir Ke Pas Chapra,P.S. Bhagwan Bazar,Dist.Chapra(Saran)
12. Rajeshwar Rai S/o Late Ram Jay Rai Resident of Village Mukimpur,P.S. Garkha,Dist.Saran
13. Raj Kishor Shrivasta S/o Late Bhagwati Prasad Resident of Village Sondhani,P.S. Bhagwanpur,Dist.Siwan
14. Ram Vilas S/o Late Rampyare Resident of Mohalla Mouna Dhanuk Toli,Chapra,P.S. Chapra Town Dist.Saran
15. Ruby Shrivastava W/o Kaushal Kishor Shrivastava Resident of Mohalla Dr. Mahmud Chowk,Dhaiyana,Chapra,P.S. Chapra Town,Dist.Saran
16. Niraj Kumar Singh S/o Late Mithilesh Kumar Singh Resident of Village Kotheyan,P.S. Jalalpur,Dist.Saran
17. Manoj Kumar S/o Late Krishna Murari Rai Resident of Village Baluan,P.S. Doriganj,Dist.Saran
18. Sarvanand Singh S/o Virbahadur Singh Resident of Mohalla Vrindavan Colony,Koshi Bazar,Chapra,P.S. Bhagwan Bazar,Dist.Saran
19. Birendra Kumar S/o Shila Nath Rai Resident of Village Sadar Hospital Road,Nai Bazar Chapra,P.S. Bhagwan Bazar,Dist.Saran
20. Shatrughna Singh S/o Late Dev Kishore Singh Resident of Village



Maksudpur,P.S. Amnour,Dist.Saran

21. Brajendra Bhaskaran S/o Late Yogendra Ojha Resident of Village Kauthi Bathua,Ojhawalia,P.S. Phulwaria,Dist.Gopalganj
22. Mukul Kumar Singh S/o Late Bishweshwar Dayal Singh Resident of Village Sadaua,P.S. Sidhawaliya,Dist.Gopalganj
23. Binod Kumar Singh S/o Late Binda Lal Resident of Village Orbigha,P.S. Parawalpur,Dist.Nalanda
24. Shiv Narayan Baitha S/o Late Chandra Bali Baitha Resident of Village Mishra Belwa,P.S. Bhore,Dist.Gopalganj
25. Om Prakash Yadav S/o Late Sheo Chandra Prasad Yadav Resident of Village Hembardaha,P.S. Kuchaikote,Dist.Gopalganj
26. Anil Kumar Ram S/o Late Lal Bahadur Ram Resident of Village Godra,P.S. Rivilganj,Dist.Chapra(Saran)
27. Naresh Kumar Ram S/o Late Purushotam Ram Resident of Village Nari Nawadih,P.S. and Dist.Lohardaga (Jharkhand)
28. Sandhya Pandey W/o Late Aanand Kumar Resident of Village Lohati,P.S. Katega, Dist.Gopalganj
29. Imamul Haque S/o Late Maqubul Ahamad Resident of Village Sahbajawa,P.S. Gopalganj,Dist.Gopalganj
30. Meethu Prasad S/o Late Niwas Resident of Village and P.S. Gopalganj,Dist.Gopalganj
31. Ram Kishor Ram S/o Late Babu Nand Ram Resident of Village Sahebganj,Derwa,P.S. Gopalpur,Dist.Gopalganj
32. Asutosh Kumar Shrivastava S/o Late Triveni Sahay Resident of Village and P.S. Maniyar,Dist.Baliya(U.P.)
33. Himansu Kumar Singh S/o Late Ram Jam Singh Resident of Mohalla Mahadera Mishan Compound Siwan,P.S. Mahadeva O.P. Dist. Siwan
34. Bijendra Kumar Singh S/o Dineshwar Prasad Singh Resident of Village Tarwan,P.S. Dighwara,Dist.Saran
35. Sanat Kumar Singh S/o Late Krishna Kumar Singh Resident of Village Naraon,P.S. Autarnagar, Dist.Saran

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Govt. of Bihar, Patna
2. The Director, Secondary Education, Govt. of Bihar, Patna
3. The Regional Deputy Director of Education, Saran, Chapra
4. The District Education Officer, Saran
5. The District Education Officer, Siwan
6. The District Education Officer, Gopalganj
7. The District Education Officer (Est.), Saran



8. The District Education Officer (Est.), Siwan
9. The District Education Officer (Est.), Gopalganj

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. P.K. Shahi, Sr. Advocate
For the Respondent/s : Mr. Madhav Pd. Yadav (GP-23)

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 07-08-2019

Heard Mr. P.K. Shahi, learned senior advocate for the petitioners and Mr. Madhav Prasad Yadav, learned G.P.-23 for the State.

2. The petitioners, who are Class-III employees have challenged the order dated 21.06.2019 passed by the Director, Secondary Education, Government of Bihar, Patna whereby the earlier orders of transfer of the petitioners about two years ago has been cancelled and the concerned Regional Deputy Director of Education, Saran Division has been asked to pass fresh orders in accordance with law after bringing the issues before the Divisional Establishment Committee, if so desired and taking resort to the rules of 2019 with respect to the transfer of similarly situated employees of the



government.

3. The order impugned reflects that it has been passed on the basis of complaint by one Megh Nath Rai and Niranjana Singh, claiming themselves to be members of Youth Janta Dal (U) regarding transfers made against the rules. It was also alleged that persons who had not completed the normal periodicity of tenure were also transferred to their choice place and persons who were serving for a longer time than the normal tenure were allowed to remain at the same place.

4. Considering such irregularities in the orders of transfer by various memos which have been detailed in the order impugned, the Regional Deputy Director of Education, Saran, Chapra was given a direction to pass fresh orders in accordance with law after bringing the matter before the Divisional Establishment Committee and in terms of rules of 2019 but sparing such employees whose transfers were effected under the orders of the Courts.



5. Mr. P.K. Shahi, learned senior advocate for the petitioners has challenged the order dated 21.06.2019 on several grounds, the main amongst them being; (a) an executed order of transfer cannot be recalled or modified without genuine reason; (b) such recall/modification of the order amounts to punishment and therefore stigmatic; (c) the ground raised in the order impugned that all the stakeholders were heard is incorrect and there was no consultative process and; (d) that the complaint by some political persons was taken on its face value and no attempt was made to verify the correctness of such complaint.

6. The learned counsel appearing for the State, however has sought to defend the order on the ground that after finding such anomalies in the orders of transfer in the year 2018, such orders of transfer have not automatically been rescinded or recalled but a direction has been given to the concerned Regional Deputy Director of Education to apply his mind over the



case of each of the employees afresh in consultation with the Divisional Establishment Committee and in accordance with the rules of 2019 and then pass necessary orders in accordance with law. No fault could be found with the aforesaid direction as it is always in the domain of the executive authorities to pass orders of transfer in administrative exigencies or for carrying out the administration of the government/ department in a proper manner. No interference is required to be made, it has been urged, when the executed orders of transfers have not been rescinded but have only been directed to be reconsidered or given a re-look after verifying the complaints, the requirement of such employees to be transferred and the application of the relevant rules.

7. This Court, on an earlier occasion, after hearing the parties had observed and had recounted the law with regard to the scope of interference of a Court of law in matters of transfer. After noting that transfer is an incidence of service and unless it is proved that it is



mala fide, stigmatic or has been effected on extraneous consideration, normally, the Courts ought not to interfere with such orders of transfer more so when it is demonstrated that it is made in the interest of the administration. The reason for development of such law of transfer is that an employer knows best how to take advantage from his employees and which employee would be best suited for serving at which place. Thus, the order of transfer, if made in public/administrative interest ought not to be interfered with.

8. In the present case, the orders of transfer were executed sometimes in between the years 2016 to 2018. There was a complaint from political persons that the orders of transfer were effected on considerations which were different from administrative reasons. It was also pointed out to the Director, Secondary Education, Government of Bihar, Patna that persons who had overstayed at a place were not transferred and persons who had not completed the normal periodicity of tenure



of three years were transferred to their choice place of posting.

9. Thus, the Director, Secondary Education, Government of Bihar, Patna smelt rat and was of the view that all the orders of transfer, reference of which have been made in the order, was required to be revisited and reconsidered. Such orders, details of which have been stated in the impugned order were rescinded and the Regional Deputy Director, Saran Division was directed to give a fresh look over such transfers and pass necessary orders afresh in accordance with law.

10. The reason why this Court had stayed the operation of such order in the first instance is that such order was passed on a complaint which was never verified. The preface to the order indicates that there was a consultation process and such person/transferees were also heard of their explanation and cause, which fact has been denied by the learned counsel for the petitioners.



11. In any event, an executed order of transfer could not have been recalled/rescinded.

12. However, on a closer scrutiny of the order, it appears that after rescinding of such executive orders of transfer a direction has been issued to the Regional Deputy Director to pass a fresh order in accordance with law.

13. This Court therefore is constrained to state that even otherwise, transfer orders could be passed and effected on grounds of administrative necessity. If for administrative reasons and for reasons that no person could be allowed to stay at one particular place for a long time or be transferred/posted to a place where he was earlier posted only recently, necessary orders can be passed transferring such employees from one place to another. No consultation is required to be made before such transfer orders.

14. What this Court therefore directs is that the order of the Director, Secondary Education, Government



of Bihar, Patna be not followed by the Regional Deputy Director of Education, Saran, Chapra but it would be open for him to give a re-look at the service condition of such transferees/petitioners and if it is found that they are required to be transferred in administrative interest or for other reasons which are not punitive, penal or because of some complaints against them and in that case, necessary order would be passed by bringing the matter before the Divisional Establishment Committee and such orders shall be, needless to be stated, in tune with the rules framed in this regard in the year 2019.

15. Thus, this Court sets aside the order impugned in the present petition, but leaves the issue open for the Regional Deputy Director of Education, Saran at Chapra to pass necessary orders with respect to individual petitioners in accordance with law and in such terms what has been stated and clarified in the order.

16. With the aforesaid observation/direction, the



writ petition stands disposed off.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13/08/2019

