

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.15183 of 2017**

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1. Vineeta Kumari, Wife of Sri Shishir Kumar, Resident of S.D.O. road Hajipur, Shahajadapur Under Kila, P.S.-Hajipur Town, District-Vaishali.
2. Saroj Kumar Singh, Son of Sri Baijanath Singh, Resident of Village-Koriyawan, P.S.-Masaurhi, District-Patna.

... .. Petitioner/s

Versus

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

... .. Respondent/s

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**Appearance :**

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

For the Respondent/s : Mr.Jitendra Kr. Roy No-1, SC-13

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**

**ORAL JUDGMENT**

**Date : 22-06-2020**

The petitioners have challenged an order dated 04.10.2017, issued by the Director, Research and Training, Government of Bihar, whereby their services have been returned to the Director, Primary Education on administrative ground. They were posted as Lecturers under District Institute of Education and Training (DIET), Sonapur, Saran.

2. There are two grounds taken in the writ application for challenging the impugned order as mentioned in paragraph 2, which are as under :-



*“i. Whether respondent no. 3 has justified by returning back to the services of petitioners for which he has no jurisdiction because Director, Primary Education is appointing/ disciplinary authority of the petitioners?  
ii. Whether respondent no. 3 has justified by inflicting the punishment against the petitioners without giving any opportunity to the petitioners.”*

3. It is the case of the petitioners that petitioner no. 1 was posted in the DIET vide order dated 14.07.2012, whereas petitioner no. 2 was posted in the same institute by order dated 25.01.2016, after their promotion in Subordinate Education Service Cadre (Primary Wing). It is their case that the appointing/ disciplinary authority of Subordinate Education Service Cadre (Primary Wing) is the Director, Primary Education. They have relied on articles 153 and 154 of Bihar Education Code to make out their case that members of Subordinate Education Service (Primary Wing) are entitled for posting in different primary teachers training colleges as well as DIET. It is accordingly their case that the post of S.E.S. Cadre are existing in different colleges. With these pleadings, the petitioners claim that the impugned order, which has been passed by the Director, Research and Training, Department of Education, Government of Bihar, is



unauthorised as he did not have the authority to transfer.

4. It is noteworthy that to impute legal malice behind the impugned decision to return back the services of the petitioners, it has been stated that husband of petitioner no. 1 had filed a complaint case against the Director, Research and Training before the Lokayukta, Bihar on 10.07.2017, whereupon the Lokayukta had issued a direction to respondent no. 3 to file his response. After the said order dated 14.09.2017 was passed by the Lokayukta, the respondent no. 3 passed the impugned order on 04.10.2017. It has been also averred that passing of the impugned order amounts to imposition of punishment and for the said reason also the impugned order deserves to be interfered with by this Court, exercising power of judicial review under Article 226 of the Constitution of India.

5. A counter affidavit has been filed on behalf of answering respondent no. 3. It has been stated in the said counter affidavit that the State Government of Bihar in exercise of powers under Article 309 of the Constitution of India has notified Bihar Education Service Cadre Rules, 2014 (hereinafter referred to as 'the Rules'). A research and training sub-cadre has been created under Part-IV of the said Rules. It is the case of the respondents that original post of Lecturer of the Teachers' Training Institution



for Bihar Government have been provided under Rule 25(a), (b) and (c). It has further been stated that as per the provision made under Rule 27 of the Rules, Lecturers posted on deputation can be returned to the parent cadre. With reference to Part-II of the Rules, under which sub-cadres have been created, it is the plea on behalf of the respondents that the post of Director, Research and Training is the last/ third level promotional post and accordingly controlling and administrative powers have been delegated to the Director, Research and Training. It is further case of the respondents that by operation of Rule 53 of the Rules all the earlier directions/ notifications/ circulars have been annulled relating to cadre of Bihar Education Service. The administrative reason, why a decision was taken to return the services of these petitioners, has been mentioned in the counter affidavit.

6. It has been stated in paragraph-6 of the counter affidavit that petitioner no. 2 proclaimed himself to be the leader of Buniadi Vidyalaya Shikshak Sangh and on that basis he attempted to take undue liberty with the Principal of the College, which matter was reported to the answering respondent no. 3 on 05.08.2016. It has further been stated that after receiving allegations and counter-allegations from the institution, a senior officer of the Research and Training Directorate was authorised to



make inquiry and to submit report vide Memo No. 444 dated 27.10.2016. The officer, who was assigned to enquire into the matter and to submit his report, submitted his report on 30.11.2016 to the effect that Lecturers in the College had been divided into groups affecting adversely the academic atmosphere of the institution. In respect of the petitioners, it was reported that they were in habit of remaining absent from their classes and marking antedated attendance, which was reported by the Principal and other Lecturers of the institution vide letters dated 10.11.2016 and 18.11.2016. The Principal of the DIET is said to have reported that petitioner no. 2 was reportedly running a parallel office and he was indulging in other activities, which amounted to misconduct. Similarly, it is alleged against petitioner no. 1 that she had threatened the Principal to file a case against him and he is made to pay fine if her personal loan application was not forwarded.

7. The abovenoted developments were apparently prior in time, before the husband of petitioner no. 1, had reportedly approached the office of Lokayukta on 10.07.2017.

8. This is to be noted that the counter affidavit on behalf of respondent no. 3 was filed after serving its copy on learned counsel for the petitioners on 22.11.2017. This is also to be noted that earlier, when the matter was taken up on 17.10.2017,



this Court, after noting the submission advanced on behalf of the petitioner that the Director, Research and Training did not have the jurisdiction to return the services of the petitioners to the Director, Primary Education, had stayed the impugned order finding, *prima facie*, substance in submissions made on behalf of the petitioners.

9. The Rules were apparently not brought to the notice of this Court, when the interim order was passed on 17.10.2017. The matter was adjourned to 21.11.2017 for being listed among top five cases. The case was again taken up on 22.11.2017, by which time the counter affidavit was filed and the petitioners sought adjournment for filing a rejoinder to the counter affidavit. I.A. No. 8453 of 2017 was also filed on behalf of the State Respondents for vacating the order of stay. For one reason or the other, I.A. No. 8453 of 2017 remained pending. The petitioners have not filed any reply to the counter affidavit and thus the averments made in the counter affidavit and I.A. No. 8453 of 2017 stand admitted, in absence of specific denial.

10. Mr. Pratap Sharma, learned counsel appearing on behalf of the petitioners has strongly submitted that the petitioners belong to subordinate education service in terms of Article 153 of Bihar Education Code. The relevant portion of Bihar Education Code has been brought on record by way of Annexure-3 to the writ



application.

11. I must note at the very outset that Bihar Education Code itself has no statutory character and is basically a compilation of the executive decisions taken by the State Government and some statutory provisions. The Code as a whole, has no statutory character. It is evident on careful reading of Article 153, on which the petitioners are placing reliance, that it was in the nature of executive instruction issued on 17.11.1960. The submission made on behalf of the petitioners that the Rules of 2014 do not have any application in their cases, is wholly misplaced. The Rules have been framed under Article 309 of the Constitution of India. Rule 53 of the Rules reads thus :-

*“53. Repeal and savings-1(a)  
All the orders, notifications, resolutions,  
instructions issued earlier by the department  
are repealed.*

*(b) Bihar Education Service  
(Class I) and Bihar Education Service  
(Class-II) Recruitment Rules 1973(Amended  
from time to time) are repealed.*

*(c) The Departmental  
Examination Rules, 1973 for Bihar  
education service class 1 and 2 is repealed.*

*2. Notwithstanding such repeal,  
anything done or any action taken under  
such rules and orders, shall be deemed to  
have been done or taken under these rules,  
as if these rules were in force on the date on  
which such thing was done or action taken.”*



12. Rule 3 of the Rules has divided Bihar Education Service into four sub-cadres including Bihar Education Service (Research and Training) Cadre. Sub-rule (4) prescribes that officers of one sub-cadre cannot be transferred and posted in another sub-cadre. Since the petitioners were holding posts of Lecturers in training institute, I shall be referring to Part-IV of the Rules, which deals with research and training sub-cadre. It is evident from Rule 25(a) of the Rules that post of Lecturer, DIET is a basic grade post in research and training sub-cadre. The petitioners were thus working against the posts of research and training sub-cadre under the Rules and their plea that the said Rules would not be applied in case of petitioners is completely misconceived.

13. The question, which now false for consideration, is as to whether the petitioners can claim to hold the said post by way of right and whether the Director, Research and Training could have returned back their services to the administrative sub-cadre or not. To answer the said question, I must refer to Rule 27 of the Rules, which reads as under :-

*“27. The officers appointed/ promoted and working on the above posts of this sub cadre and having the prescribed qualification of these posts shall give the option for inclusion in this sub cadre. In case of having no qualification or not*



*giving option for inclusion in this sub cadre or in case of working on deputation basis, they shall be reverted back to their own cadre, if they are appointed on these posts, they shall remain on their posts but they shall not get the benefit of regular promotion in this sub cadre.”*

14. It is evident on reading of Rule 27 that the officers working on the post of said sub-cadre are required to give their option for inclusion in the said sub-cadre. It further prescribes that in case of having ‘no qualification’ or ‘giving option’ for inclusion in his cadre or in case of working on deputation basis they shall be reverted back to their own cadre. It is not the case of the petitioners that they had given any option for inclusion in the sub-cadre of research and training under the Rules. As a matter of fact, they are disputing the very application of the cadre Rules in their cases.

15. The submission that the impugned order is punitive or *malafide* as made on behalf of the petitioners, cannot be accepted for the reason that they have not controverted the clear averments made in the counter affidavit. It is specific case of the respondents that their presence in the institute had vitiated the academic atmosphere and according to them, their continuance would have caused serious harm to the institute.

16. The plea in the counter affidavit that the Director, Research and Training is the controlling officer of the sub-cadre in



question has not been disputed on behalf of the petitioners.

17. Considering the facts and circumstances as noted above, since the claim of the petitioners is based on completely wrong assumption that the Rules are not applicable, I do not find any merit in this application.

18. This application is accordingly dismissed.

19. I.A. No. 8453 of 2017 is allowed. The interim order of stay dated 17.10.2017 stands vacated.

**(Chakradhari Sharan Singh, J)**

Rajesh/-

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