

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15892 of 2019

1. Pradeep Ram S/o Arjun Ram resident of Village- Rampur Gangauli, Ward No. 8, P.S. Riga, District- Sitamarhi, presently posted as Clerk in the office of District Education Officer, Sitamarhi.
2. Sudhisth Paswan son of Late Harendra Paswan resident of Village- Mahima Rasalpur, Jhajiha, P.S.- Jhajiha, District- Sitamarhi Clerk in the office of District Education Officer, Sitamarhi.
3. Anil Kumar Singh S/o Dinesh Prasad Singh resident of Ward No. 9 Kailashpuri, P.S. Dumra, District- Sitamarhi, presently posted as Clerk in the office of District Education Officer, Sitamarhi.
4. Ram Bhaju Singh S/o Kailas Singh resident of Village- Koriyahi, Ward No. 17, P.O. and P.S.- Parsurampur, District- Sitamarhi, presently posted as Clerk in the office of District Education Officer, Sitamarhi.
5. Kamod Paswan S/o Sumitra Paswan resident of Village- Raghobpur Bakhri, Ward No. 6, P.S. Dumra Bakhri, District- Sitamarhi, presently posted as Clerk in the office of District Education Officer, Sitamarhi.
6. Manohar Kumar S/o Ramdeo Mahto resident of Village and P.O.- Bhutahi, P.S. Sonbarsa, District- Sitamarhi, presently posted as Clerk in the office of District Education Officer, Sitamarhi.
7. Anil Kumar Jha son of Late Shree Prasad Jha resident of Village and Post Office- Bengahi, P.S.- Baiganiya, Presently posted as Clerk in the office of District Education Officer, Sitamarhi.
8. Arvind Kumar Singh S/o Ram Kripal Singh resident of Village- Chiraiya, Ward No. 13, P.S. Purnahiya, District- Sheohar, presently posted as Clerk in the office of District Education Officer, Sitamarhi.
9. Rajeev Ranjan Kumar S/o Ram Pravesh Singh resident of Village- Belwanwa, P.S.- Motihari, District- East Champaran, presently posted as Clerk in the office of District Education Officer, East Champaran.
10. Birendra Kumar Pandey S/o Late Shyam Narayan Pandey resident of Mohalla- Koluara, Ward No. 02, P.O. and P.S.- Motihari, District- East Champaran, presently posted as Clerk in the office of District Education Officer, East Champaran.
11. Jitendra Kumar S/o Sudhisth Narayan Singh resident of Village- Bathna, P.O.- Veejdhari, P.S. Kesariya, District- East Champaran, presently posted as Clerk in the office of District Education Officer, East Champaran.
12. Praveen Kumar Singh S/o Late Bachan Singh resident of Village- Olahan, P.O.- Mehta Tola, P.S.- Harsiddhi, District- East Champaran, presently posted as Clerk Teachers Training College, Dariyapur, East Champaran.
13. Vijay Kumar S/o Madan Ray resident of Village and P.O.- Nariyar, Ward No. 11, P.S.- Kanti, District- Muzaffarpur, presently posted as Clerk in the office



of District Education Officer, Muzaffarpur.

14. Javed Iqwal Mazhar S/o Owais Anjum resident of Tharma, Gaighat, P.S. Gaighat, District- Muzaffarpur, presently posted as Clerk in the office of District Education Officer, Muzaffarpur.
15. Sanjay Kumar son of Late Mishrilal Kumar resident of Village- Kanhaulimath, Post- Ramna, P.S.- Mithanpuraa, District- Muzaffarpur, Presently posted as Clerk in the office of District Education Officer, Muzaffarpur.
16. Rajesh Kumar Shrivastava son of Sheo Shankar Prasad Mohalla- Balughat, Post- Muzaffarpur, District- Muzaffarpur, Presently posted as Clerk in the office of District Education Officer, Muzaffarpur.
17. Avinash Kumar Mishra son of Late Harndra Prasad Mishra resident of- Ashirbad Gausala Road, Post Office- Mithanpura, District- Muzaffarpur, Presently posted as Clerk in the office of District Education Officer, Muzaffarpur.
18. Archana Rani D/o Siyadeo Narayan Prasad resident of Mohalla- Sarvodaya Nagar, Bibiganj, Muzaffarpur, District- Muzaffarpur, Presently posted as Clerk in the office of District Education Officer, Muzaffarpur.
19. Ajay Kumar Rai S/o Jay Mangal Rai resident of- Jarang Chandrahas Nagar, Post- Jarang Dyodhi Jarang, Sarfiuddinpur, District- Muzaffarpur, Presently posted as Clerk in the office of District Education Officer, Muzaffarpur.
20. Prakash Kumar S/o Late Jangi Ram Ward No. 11, Marwan Bhoj, District- Muzaffarpur, Presently posted as Clerk in the office of District Education Officer, Muzaffarpur.
21. Md. Seraj S/o Samsul Haque resident of Village- Rampur Ugan, P.S. Motipur, District- Muzaffarpur, Presently posted as Clerk in the office of District Education Officer, Muzaffarpur.
22. Arvind Kumar S/o Ramdeo Thakur resident of Village- Kushi Harpur, Ramni, P.S. Kanti, District- Muzaffarpur, Presently posted as Clerk in the office of District Education Officer, Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Education Officer, Govt. of Bihar, Patna.
3. The Director, Secondary Education, Education Department, Government of Bihar, Patna.
4. The Regional Deputy Director, Tirhut Division, Muzaffarpur.
5. The District Education Officer, Muzaffarpur District- Muzaffarpur.
6. The District Education Officer, Sitamarhi, District- Sitamarhi.



7. The District Education Officer, East Champaran, District- East Champaran.
8. The District Education Officer, Hajipur, District- Vaishali.
9. The District Programme Officer (Establishment), Muzaffarpur, District- Muzaffarpur.
10. The District Programme Officer (Establishment), Sitamarhi, District- Sitamarhi.
11. The District Programme Officer (Establishment), East Champaran, District- East Champaran.
12. The District Programme Officer (Establishment), Hajipur, District- Vaishali.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 16167 of 2019

Rajeev Ranjan Son of Late Deep Narayan Tiwari Resident of Village- Sherpur, P.O.- M.I.C., Bela P.S.- Sadar, District- Muzaffarpur, presently posted as Head Clerk, District Education Office, Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar Through Director, Secondary Education Department, Govt. of Bihar, New Secretariat, Patna.
2. The Director Secondary Education Department, Govt. of Bihar, New Secretariat, Patna.
3. The Regional Deputy Director Education, Tirhut Division Muzaffarpur, District- Muzaffarpur.
4. The District Education Officer Muzaffarpur, District- Muzaffarpur.
5. The District Programme Officer, (Establishment) Muzaffarpur, District- Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. P.K. Shahi, Sr. Advocate Mr. Shashi Bhushan Singh, Advocate
For the Respondent/s	:	Mr. Ram Vinay Prasad Singh AC to G.A - XII

CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER



4 14-01-2020 Heard learned Senior counsel appearing for the petitioners and learned counsel appearing for the State.

The issue involved in both these writ applications are similar and, therefore, have been taken up for admission simultaneously for adjudication. The pleadings have been completed by the parties and the matter is ready for admission.

In both the writ applications, the petitioners seek a writ in the nature of certiorari for quashing the letter no. 733 dated 29.06.2019 whereby the petitioners have been directed to transfer from one office to other office under Tirhut Division in total disregard of the ruled framed for transfer which is known as the Rule 2019 (Recruitment Promotion & Transfer Rule, 2019). By the said rules, the authority has to first ascertain the cadre force (Sambarg Bal) for different offices of the education department and after identification of the respective posts in the different cadre, the transfer has to be made in the said cadre in view of Clause -17 of Rule 2019.

It is submitted that even after quashing of letter vide Memo No. 1034 dated 29.04.2016 in CWJC No.



12450 of 2016, no positive steps have been taken by the respondents to determine the cadre force and the posts have not yet been identified but yet the respondents in utter disregard of the Rule 2019 have proceeded to issue a series of transfer orders which is wholly illegal and arbitrary. The entire action of the respondents is without any rational and they have proceeded to order transfer on one occasion on the basis of options extended by some of the members of the cadre but within a span of three days have again proceeded to modify such orders of transfer which appear to be for oblique reason and may have been for extraneous considerations.

Learned counsel for the petitioners further submits that though transfer is an incidence of service and can be gone into by the controlling authorities as and when the needs so requires such actions of the respondents warrant interference under Article 226 of the Constitution of India. He, however, submits that in view of the fact that the present transfers have been initiated in the teeth of the policies framed by itself, it would be inappropriate for them to proceed on the basis of such transfers and prejudice the



employees to their detriment who are faced with such arbitrary transfers. It is further submitted that though some of the concerned transferres, have been relieved they have not joined the new place of posting and prayed for an appropriate relief so that their case may be considered and the representations filed by them be taken up and decisions arrived at in accordance with Rule 2019.

Learned counsel for the State has seriously contested the matter and has submitted that the transfer orders were passed way back in the month of June 2019 and much water has flown since then and it would be inappropriate and against the settled principles of law with regard to transfer to interfere in the same.

Having heard learned counsel for the petitioners and learned counsel for the State, it does appear to this Court that the transfer orders which have been passed vide Annexures -9, 10 & 11 clearly indicate that the said orders have been passed against the policy framed under the Rules 2019 and in several cases as has been indicated in the supplementary affidavit, as contained in Annexures – 13 & 14, the authorities noting the discrepancy have proceeded to



stay the orders till further consideration of the matter. It further appears that some of the petitioners have not yet joined and have filed representations before the appropriate authority. It is, thus, directed that the petitioners, who have not yet joined, may approach the respondent no. 3 being the Director, Secondary Education, Education Department, Government of Bihar, Patna, making an appropriate representation in the light of the Rule 2019 (Recruitment Promotion & Transfer Rule, 2019) (Annexure- 7), which shall be considered by the respondents and disposed within a fortnight of receipt/production of a copy of this order.

It is made clear that till such representation is disposed of, the authorities shall maintain status quo with regard to such petitioners, who have not yet joined.

So far as the petitioners in these writ applications, who have already been relieved and have joined the new place of posting, liberty is also granted to them to approach the appropriate authorities, whose representation will also be considered in the light of the relevant policy and rules and if it is found that there has been any miscarriage of justice on account of violation of rules, the authority shall



issue necessary orders remedying the wrong occasioned to them.

With the aforementioned observations, the writ application stands disposed of.

(Anjana Mishra, J)

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