

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22704 of 2019

Umakant Roy, Son of Late Shyam Sunder Roy Resident of Refugee Colony, Block Road, Ward No. 6, Police Station- Sadar, District- Saharsa, PRESENTLY POSTED AS Headmaster, Residential Middle School, Parvinia, Kahra, Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Department of Education (Primary), Government of Bihar, Patna.
2. The Joint Secretary, Department of Primary Education, Government of Bihar, Patna.
3. The Director (Administration), Primary Education, Government of Bihar, Patna.
4. The Regional Dy. Director of Education, Koshi Division, Saharsa.
5. The District Magistrate, Saharsa.
6. The Sub- Divisional Public Complaint Redressal Officer, Saharsa-cum-Member, District Primary Teachers Establishment Committee, Saharsa.
7. The District Programme Officer, SSA, Saharsa-cum- Member, District Primary Teachers Establishment Committee, Saharsa.
8. The District Education Officer, Saharsa.
9. The District Programme Officer (Establishment), Saharsa.
10. The Block Education Officer, Kahra, Saharsa.
11. Shri Dilip Kumar Son of Late Bechen Prasad Bimal Resident of Panchwati Chowk, Ward No. 17, Police Stationi- Sadar, District- Saharsa. Presently Posted at Middle School Baluaha, Mahishi, Saharsa.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Pankaj Kumar Das
For the Respondent/s : Mr. Madhaw Pd. Yadaw (GP23)

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 04-02-2020

Heard Mr. Rajesh Kumar Singh for the petitioner,

Mr. Rajesh Kumar Sinha for the State and Mr. Shashi

Bhushan Singh for private-respondent no. 11.



The petitioner has challenged the order of posting and transfer dated 09.10.2019 contained in Annexure-20 and 21 of the writ petition respectively issued by the District Education Officer, Saharsa, whereby the earlier order of posting has been reviewed and the petitioner has now been posted at Middle School Virgoan, Mahisi, Saharsa from Residential Middle School Parvinia, Kahra, Saharsa.

The case of the petitioner is that he could not have been transferred but only adjusted after keeping into account the teacher-student ratio in different schools. Precisely for this reason, an earlier order of transfer was not sustained by this Court when challenged in C.W.J.C. No. 5451 of 2019. A Bench of this Court *vide* order dated 09.09.2019 directed that the case of the petitioner be placed before the District Programme Officer (Establishment), Saharsa, who would take the issue before the District Establishment Committee for a fresh decision in the matter in accordance with law. The order impugned



in the present writ petition reflects no reason or statement signifying any such adjustment. All that the order says after quoting the relevant portion of the order passed by this Court that the petitioner is being transferred from School -A to School – B.

The aforesaid argument is contested by private-respondent no. 11 who says that it is no longer an issue of transfer but of promotion. The further objection to the maintainability of the present petition is that the petitioner has already preferred an appeal before the Regional Deputy Director of Education and has also approached the office of Lokayukta for the needful.

This Court has times without number stated that if an order which is challenged is absolutely without jurisdiction, the availability of alternative remedy would not come in the way of exercise of jurisdiction under Article 226 of the Constitution of India. Nonetheless, when such alternative remedy has already been availed of, this Court



does not deem it prudent to entertain the petition at this stage.

In view of the categorical statement made in the writ petition that an appeal against the order impugned is pending before the Regional Deputy Director of Education, this Court only directs that the concerned Regional Deputy Director of Education (Respondent No. 4), after hearing the parties, shall pass a reasoned order in accordance with law taking into account all the arguments urged on behalf of the parties, within a period of 60 days of a reminder / representation preferred by the petitioner, annexing a copy of this order within a period of one week.

With the aforesaid observation / direction, this petition stands disposed off.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	05.02.2020
Transmission Date	

