

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8486 of 2020

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Baidya Sagar Thakur @ Vidya Sagar Thakur Son of Late Gajendra Narayan Thakur, Resident of Village - Majhaura, Police Station- Bahera, District- Darbhanga. At Present Headmaster, Upgraded Middle School Dhobiyahi, Anchal- Benipur, District - Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Govt. of Bihar, Patna.
2. The District Magistrate, Darbhanga.
3. The Regional Deputy Director of Education, Darbhanga Division, Darbhanga.
4. The District Education Officer, Darbhanga.
5. The District Program Officer (Establishment), Darbhanga.
6. Shrawan Kumar Paswan, Headmaster Upgraded Middle School Mahthour Harijan within Tardih Block, Police Station Sakatpur, District - Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Jagdish Prasad Singh, Advocate
For the Resp. No.6	:	Mr.Baidyanath Thakur, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

3 21-06-2021 Heard Mr. Jagdish Prasad Singh, learned counsel appearing on behalf of the petitioner, Mr. Baidyanath Thakur, learned counsel appearing on behalf of the respondent No. 6 and learned counsel appearing on behalf of the State.

The matter relates to transfer and posting of teachers.

While issuing notice to respondent No. 6 on 10.11.2020, the impugned order contained in memo no. 1191 dated 11.10.2019, Annexure-7 and the consequential orders as



contained in Annexures 9 and 10 of the writ petition were considered and stayed by a Co-ordinate Bench of this Court.

Mr. Baidyanath Thakur, learned counsel appearing on behalf of respondent No. 6 submits that the order of stay was passed without hearing the respondent no. 6 and without considering the order dated 24.02.2020 passed by this Court in CWJC No. 3301 of 2020 filed by the respondent no. 6, Annexure-8 to the writ petition. Mr. Thakur would submit that the Court has not considered the statutory rule with regard to transfer and posting while passing the order dated 10.11.2020. He referred to Rule 5 to contend that the post of teacher is non-transferable and only in three exceptional circumstances transfer is permissible and none of the eventualities contemplated in the Rule is attracted in the present case which was totally ignored while passing the order dated 10.11.2020.

Mr. Thakur further submits that the impugned order was passed by the appellate authority having regard to the policy decision of the Government for posting of wife in the same place and there is no infirmity in the decision which has attained finality when the order was implemented after the order of this Court as contained in Annexure-8.



Considering the controversy involved in the matter and in view of the fact that the order was kept in abeyance for seven months, the writ petition is disposed of with a direction to the respondent Regional Deputy Director of Education, Darbhanga Division, Darbhanga to provide opportunity of hearing to the petitioner and respondent no. 6 and pass fresh order considering the policy decision and rule with regard to transfer and posting. The respondent No. 6 is at liberty to raise the issue with regard to enhancing qualification without prior permission of the competent authority by the petitioner which shall be considered by the appellate authority appropriately in accordance with law.

Until fresh order is passed within one month from the date of receipt/production of a copy of the order, the decision dated 10.11.2020, staying the operation of annexures 7,9 and 10 shall continue. The parties shall abide by the fresh order passed by the appellate authority as indicated hereinabove. The transfer order dated 11.10.2019 and any other order in teeth of annexures 7,9 and 10 shall cease to have effect after fresh order passed by the respondents.

The appellate authority shall pass fresh order positively within one month from the date of receipt/production



of a copy of this order failing which the interim protection granted by this Court on 10.11.2020 shall cease to exist.

With the aforesaid, the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

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