

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10854 of 2022

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Hem Narayan Bharti Son of Jageshwar Yadav Resident of Village Mahadev
Manth P.S.- Andhramanth, District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Education Department,
Government of Bihar, Patna.
2. The Director, (Primary Education), Education Department, Government of
Bihar, Patna.
3. The District Magistrate, Madhubani.
4. The District Programme Officer (Establishment), Madhubani.
5. The District Education Officer, Madhubani.
6. The Block Development Officer, Laukhi District- Madhubani.
7. The Block Education Officer, Laukhi District- Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Basant Kumar Choudhary, Sr. Adv. With Mr. Arvind Kumar, Adv. Mr. Shiv Nandan Bharti, Adv.
For the Respondent/s	:	Mr. Subhash Chandra Mishra (Sc 16)

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**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

ORAL ORDER

2 20-10-2022

1. Heard the parties.

2. The petitioner by way of this writ petition assails
the order dated 13.05.2022, issued by the Block Development
Officer, Laukahi, whereby he has been transferred from Middle
school Mahadev Math to Middle school, Dhabhi within the
laukahi Block, Madhubani District.

3. Learned Senior Counsel has taken this court to the
provisions of Bihar Panchayat Elementary School Service
(Appointment, Promotion, Transfer, Disciplinary Proceeding

and Service Condition) Rules, 2020, hereinafter referred as the Panchayat Rules of 2020 and more specifically to Rule 15 relating to transfer and submits that the provision does not allow such a transfer. Learned counsel submits that the exception mentioned thereto would not apply to the case of the petitioner as the charge levelled against him has not been proved as date and before the same is proved, there is no occasion for transferring the petitioner out of place of original posting in the concerned panchayat.

4. Learned counsel appearing for the respondents however submits that there are serious charges against the petitioner. It has been stated that an F.I.R. was registered at the police station at Andhramanth on 20.04.2021 under Sections 341, 323, 332, 333, 152, 353, 188/506 of the I.P.C. along with Section 51 of the Disaster Management Act, 2005 and Section 3 of the Epidemic Disease Act, 1897 as against the petitioner with allegations that he had been found teaching children during the Covid-19 pandemic and thus flouted the guidelines. Thereafter he misbehaved with the Magistrate and the police force. On account thereto the petitioner was suspended, and committee thereafter took a decision to reinstate him and transferred him to Middle School, Dhabhi. Learned counsel submits that in terms

of Rule 15 (iii) the petitioner could be transferred for one time on administrative grounds in the interest of school and students.

5. I have considered the submissions. For the purpose of adjudication, it would be apposite to quote Rule 15 of the Panchayat Rules of 2020, which is as under:-

15. Transfer :- The post of Head Master, Teacher and Instructor generally are not transferable, however for Headmaster and Teachers following exceptions may apply:-

(I) During the service period Head master and Teacher may avail two optional transfers after completing three years of service within the schools situated under the recruitment unit. There shall be difference of five years in between the two optional transfers. The transfer shall be made in his/her grade/cadre only. If more than one application is received for one vacant post, then the member secretary of the recruitment unit shall take steps for transfer on the basis of inter se seniority in which handicapped head master, teacher and women head master, teacher shall be given priority respectively. The approval of this action shall be given by the committee constituted for the purpose of appointment.

(ii) The Administrative Department may direct the recruitment unit to absorb teachers in other school in compliance of the Right of Children to Free and Compulsory Education Act, 2009 (as amended) and provisions contained in corresponding notified rules. The member secretary shall comply the direction within fixed time frame after getting the approval of the Chairman of the recruitment unit.

(iii) In the case of proved financial irregularities, moral

turpitude or other serious charges, the member secretary of the recruitment unit shall transfer head master/teacher, for one time on administrative ground in the interest of school and students. The approval of this action shall be given by the Chairman of the committee constituted for the purpose of appointment.

(iv) Handicapped Teacher and Woman Teacher may avail optional transfer for one time only at schools situated in inter-recruitment unit, including inter-district. Besides, male teachers may also avail mutual inter-recruitment unit (including inter-district) transfer for one time only. In this regard, the Administrative Department will issue detailed guidelines keeping in mind the reservation category, seniority etc.

6. From the perusal of the aforesaid, it is apparent that the transfer ordinarily cannot be done of a Headmaster or a Teacher, however certain exceptions have been carved out the Rule 15 itself. As far as Clause (iii) is concerned, the Member secretary has the power to transfer a person against whom serious charges are proved of financial irregularity, moral turpitude or of any other nature. Such a transfer can be done as a one time on administrative ground and the same has to be approved by the Chairman of the committee constituted for the purpose of appointment.

7. In the present case, this Court finds that although the committee has approved the transfer of the petitioner from his earlier place of posting to the place of

posting at Dhabhi, it is noticed that the enquiry is yet to conclude as against the petitioner, and therefore, it cannot be said that the charges are proved. The respondent has also not pointed out whether in the criminal case, the petitioner has been ultimately convicted. In the circumstances, therefore, the exception clause (iii) would not be applicable to the facts of the petitioner and he cannot be said to be a person against whom serious charges are proved. This Court also finds that teaching during the Covid-19 pandemic period may be a hazardous situating during the pandemic but the action of teaching by the petitioner cannot be said to be of such a serious charge which goes against in the interest of the school and students at large and cannot be a matter for transferring him from his present place of posting, where he is performing duty of teaching.

8. In view thereof, the order dated 13.05.2022 is found to be illegal and in violation of Rules of 15 of Panchayat Rules of 2020, and therefore, is quashed and set aside. The petitioner shall be allowed to be posted back on the place of posting, where he was performing his duty prior to passing of the order dated 13.05.2022.

9. The order shall be complied within a period of 7 days.

10. The Writ petition is accordingly allowed. No
cost.

(Sanjeev Prakash Sharma, J)

amit/-
Item no.9

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