

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11073 of 2024

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Anil Kumar Singh son of Bachcha Prasad Singh, R/o S.K. Puram Lane No. 7,
Arya Samaj Mandir Road, Near R.P.S. More, Bailey Road, P.S.-Rupaspur,
District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education Department, Government of Bihar, Patna.
2. The Secretary cum Director, Secondary Education, Government of Bihar, Patna.
3. The Deputy Director Secondary Education, Government of Bihar, Patna.
4. The Regional Deputy Director Education, Patna.
5. The District Education Officer, Patna.
6. The District Programme Officer Establishment, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Krishna Kant Singh, Advocate Mr. Dhananjay Kumar Shahi, Advocate
For the State	:	Mr. Dhurjati Kumar Prasad, GP-14

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CORAM: HONOURABLE MR. JUSTICE NANI TAGIA
ORAL JUDGMENT

Date : 04-10-2024

The petitioner, who was promoted to the post of In-Charge Headmaster, has challenged the Memo No. 626, dated 01.03.2024 (Annexure-P/1), issued by the respondent no.2/the Secretary cum Director, Secondary Education, Government of Bihar, Patna, whereby the petitioner was transferred from High School, Purainia, Bihta to High School, Sedanpur, Masadhi. The petitioner has also put to challenge the letter no. 1323, dated 09.07.2024 (Annexure-P/6), issued by the respondent no.2/ the



Secretary cum Director, Secondary Education, Government of Bihar, Patna, written to all the District Education Officers, whereby it has been stated that information of giving up promotion after the notification is issued, cannot be accepted on the ground that after the promotion, the promotees were not posted at their desired place of posting.

2. According to the petitioner, the petitioner is about to retire on attaining the age of superannuation within two years. In that light, when the impugned transfer order dated 01.03.2024 was issued by the respondent no.2, transferring the petitioner from High School, Purainia, Bihta to High School, Sedanpur, Masadhi, the petitioner submitted a representation dated 05.03.2024 (Annexure-P/2), to the respondent no.2/ the Secretary cum Director, Secondary Education, Government of Bihar, Patna praying for retaining the petitioner at High School, Purainia, Bihta on the ground that he is going to retire within two years and he has to look after his ninety years old ailing mother. While the aforesaid representation submitted by the petitioner remained not considered by the respondent authorities, the respondent no.2/the Secretary cum Director, Secondary Education, Government of Bihar, Patna had issued letter no. 1114 dated 28.05.2024 (Annexure-P/3) to all the



District Education Officers, whereby an affidavit was sought for from the transferred headmasters that in the event they do not join the place where they have been transferred, they will not seek promotion in future. Pursuant thereto, the petitioner submitted a representation dated 07.06.2024 (Annexure-P/4) accompanied by an affidavit to the respondent no.2/the Secretary cum Director, Secondary Education, Government of Bihar, Patna, whereby the petitioner gave an undertaking that he will not seek promotion in future if the petitioner is retained at High School, Purainia, Bihta.

3. The petitioner now contends that the respondent authorities having sought such an undertaking for foregoing the future promotion for retaining the petitioner at the earlier place of posting, now has issued the impugned letter no. 1323, dated 09.07.2024 (Annexure-P/5), whereby the respondent authorities have made 'U' turn saying that earlier information for giving up future promotion after the notification of transfer is issued, cannot be accepted on the ground that after promotion they have not been posted in the school where they desired to be posted.

4. The State has filed a counter affidavit, wherein it has been stated that the request for retaining the petitioner at earlier place of posting shall be considered after the petitioner



joins the place where he has been transferred by the impugned transfer order dated 01.03.2024.

5. I have heard learned counsel for the parties and perused the materials placed on record.

6. It appears from the record that the petitioner was transferred from High School, Purainia, Bihta to High School, Sedanpur, Masadhi by the impugned Memo No. 626 dated 01.03.2024 (Annexure-P/1), issued by the respondent no.2/ the Secretary cum Director, Secondary Education, Government of Bihar, Patna. Thereafter, the petitioner appears to have filed a representation on 05.03.2024 to the respondent no.2/ the Secretary cum Director, Secondary Education, Government of Bihar, Patna for retaining him at High School, Purainia, Bihta on the ground that he is going to retire within two years and he has to look after his ninety years old ailing mother. In the representation, he has also stated that the place where the petitioner has been transferred is forty kilometers away from the present place of posting. Respondent no.2, thereafter, appears to have issued letter no. 1114 dated 28.05.2024, whereby, an undertaking in form of affidavit was sought for from the transferred employees to the effect that if they are retained at their earlier place of positing, they will not seek promotion in



future. Pursuant thereto, the petitioner had submitted an application dated 07.06.2024 accompanied by an affidavit to the effect that he will not seek promotion in future if he is retained at his earlier place of posting.

7. Respondent no.2, thereafter, appears to have issued impugned letter no. 1323 dated 09.07.2024, wherein it has been stated that the earlier information, giving up promotion after the notification is issued, cannot be accepted on the ground that after promotion, they have not been posted at the desired school. From the letter no.1323 dated 09.07.2024, it is also noticed that after the impugned transfer order was issued on 01.03.2024, many of the transferred headmasters had submitted representation with a prayer either to retain them at their earlier place of posting or to transfer them to the place of their choice. As a result of large number of representations submitted by the transferred headmasters and also due to non-joining of the transferred headmasters in the schools where they have been transferred, it is highlighted in the letter that there is an atmosphere of uncertainty in the school for about four months.

8. Having taken note of the aforesaid state of affairs prevailing in different schools of the State after the impugned order of transfer dated 01.03.2024 was issued and also in view



of the settled position of law with regard to scope of judicial review insofar as transfer and posting of an employee is concerned that this Court, in exercise of power under Article 226 of the Constitution of India, has limited jurisdiction to interfere with the order of transfer, namely, if the transfer order is issued in violation of the statutory provisions; if it is issued in *mala fide* exercise of power; if it is issued by an authority not competent to issue and finally if it is issued arbitrarily and in violation of the professed norms, I am not inclined to interfere with both the impugned orders passed vide Memo no. 626 dated 01.03.2024 (Annexure-P/1) and letter no. 1323 dated 09.07.2024 (Annexure-P/6), by respondent no.2/ the Secretary cum Director, Secondary Education, Government of Bihar, Patna for the reasons that the petitioner has not made out a case for interference to the order of transfer issued vide Memo No. 626 dated 01.03.2024 (Annexure-P/1) as well as letter no. 1323 dated 09.07.2024 (Annexure-P/6), issued by respondent no.2/ the Secretary cum Director, Secondary Education, Government of Bihar, Patna on any of the grounds highlighted hereinabove.

9. However, since the respondents in the counter affidavit have stated that they are willing to consider the representation submitted by the petitioner after he joins the



place where he has been transferred, the respondents are directed to consider the representation that may be submitted by the petitioner after he joins the new place of posting.

10. With the above observation and direction, the present writ petition is disposed off.

(Nani Tagia, J)

Amrendra/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	05/10/2024
Transmission Date	N/A

