
(1991) 03 PAT CK 0017
In the Patna High Court
Case No : C.W.J.C. No. 1061 of 1981

Abu Mozaffar Hussain

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 22-03-1991

Acts Referred:

Citation : (1991) 1 BLJR 732

Hon'ble Judges : S.K. Singh, J;B.N. Agrawal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.N. Agrawal and S.K. Singh, JJ.—This writ application has been filed challenging the order dated 18.2.1981, contained in Annexure-6, by which the Director, Secondary Education, Bihar, has transferred Trilok Nath Jha, respondent No. 5, who was working as Headmaster, High School, Dhorai Pepra, district Purnea, as Headmaster of High School, Azad Nagar, Chattargarh within the same very district.

2. The short facts for disposal of this writ application are that the petitioner was appointed on 2.1.1964 as an assistant teacher in National High School, Kishanganj and he continued there till 16.7.1965. On 17.7.1965 he was appointed as an assistant teacher in Insan High School, Kishanganj and he worked in that school as Headmaster from 14.11.1966 to 13.11.1971. On 2.9.1971, the petitioner was appointed as Headmaster in High School Azad Nagar, Chhattargachh within the district of Purnea. The petitioner was allowed to continue in that school as Headmaster till 24.2.1980. On 25.2.1980, one Shri M.P. Verma was appointed as Headmaster of that school who continued on the said post till 1.10.1980 and thereafter by virtue of the order dated 3.11.1980 the petitioner is continuing as incharge Headmaster. When the order of transfer was passed on 18.2.1981, the petitioner was working as incharge Headmaster in the school in question.

3. Learned Counsel appearing on behalf of the petitioner contended that on the date of passing of the order of transfer, vacancy of Headmaster in Azad Nagar School could have been filled up from amongst the teachers that school treating the said school to be a unit, as by that time, Bihar Nationalized Secondary Schools (Service Condition) Rules, 1982 had not come into force, which came into force only on 25th September, 1983. According to learned counsel, respondent No. 5, who was working as Headmaster in another school, could not have been transferred to the school in question at the relevant time when the cadre of Headmaster was not State wise but every school was a separate unit. In support of his contention, learned Counsel has placed reliance upon a Bench decision of this Court in the case of Mauun Kant Mishra v. State of Bihar and Ors. 1985 PLJR 107 wherein, in similar circumstances, an order of transfer was quashed.

4. Learned Counsel appearing on behalf of State and respondent No. 5 contended that the petitioner has no right to challenge the order of transfer of respondent No. 5. According to learned counsel, the petitioner was not the senior most teacher in the school in question, but the senior most teacher in the school was one Shri Ekram Hussain. The question who was the senior most in teacher in Azad Nagar school is not necessary to be decided in the present case, but one thing is clear that the Board is treating the petitioner to be incharge Headmaster, Of course, by this it cannot be inferred that the petitioner is senior most teacher in the school in question. The question of seniority of the petitioner vis-a-vis Shri Ekram Hussain can be decided by appropriate authority in accordance with law.

5. Another submission of learned Counsel for respondent No. 5 is that the petitioner was not having ten years, teaching experience of a recognized school; as such, he was not entitled to be considered for the post of Headmaster in the school in question. So far this question is concerned, we think, this matter should also be left open to be decided by competent authority; as such, we refrain from deciding this question as well.

6. Since the order of transfer was passed in the year 1981, that is prior to the coming into force of the aforesaid rules in our view, the present case is squarely covered by the decision of this Court in the case of Madan Kant Mishra (supra), as such, the order of transfer cannot be allowed to stand.

7. In the result, this application is allowed and the order of transfer contained in Annexure-6 is hereby quashed. In the circumstances of the case, we direct that parties shall bear their own costs.