
(2007) 05 PAT CK 0047
In the Patna High Court
Case No : CWJC No. 4257 of 2007

Ashok Kumar Giri and Others	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 10-05-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 309

Citation : (2007) 3 PLJR 811

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mridula Mishra, J.—Services of all nine petitioners belong to Subordinate Education Service (hereinafter referred to as S.E.S.), status of their service is gazetted and supervisory in nature. Petitioners had filed this application initially for quashing Memo No. 1638 dated 11.10.2006 issued by the Commissioner-cum-Secretary, Human Resources Development Department, Government of Bihar to adjust the supervisory staffs of Adult Education, retrenched from the posts of Clerk-cum-Accountant and Clerk-cum-Typist on the vacant posts of Block Education Extension Officer (hereinafter referred to as the B.E.E.O.) of Subordinate Education Service Cadre. Subsequently I.A. No. 2102 of 2007 was filed by the petitioners challenging the order dated 27.3.2007 contained in Memo No. 285 issued by the Director, Primary Education Department of Human Resources, Government of Bihar transferring 184 Block Education Extension Officer to different posts within their own cadre, on the ground that in order to adjust the retrenched employees of adult education mass transfer order has been passed.

2. Four interlocutory applications have been filed for being impleaded as respondents claiming to be necessary party. I.A. No. 2526 of 2007 and I.A. No. 2528 of 2007 have been filed by those interveners who are supporting the case of the petitioners. Intervenors in I.A. No. 2526 of 2007 are members of lower

Subordinate Education Service. Their case is that by suppressing all earlier decisions the State Government vide order contained in letter No. 967 dated 20.4.1971 decided to fill up 50% of the vacancies of S.E.S. cadre lower division from amongst the members of Lower Subordinate Service on the basis of their seniority and service record. Thereafter vide letter No. 27 dated 7.1.1976 issued by the Special Secretary of the Government the State Government issued instruction for promotion of Subordinate Education Service Cadre lower division from Lower Subordinate Service category. For appointment/promotion to Subordinate Education Cadre lower division requisite qualification is B.A., B.Ed. or Dip-in-Ed. training course of two years. Till the date appointments/promotions in the aforesaid branch of S.E.S. have been made with the aforesaid qualification. Earlier there were two division of S.E.S. namely lower division and upper division. Initially appointments were made in lower division of S.E.S. and thereafter persons were being promoted/ appointed to upper division of S.E.S. Subsequently the State Government vide letter No. 11607 dated 11.11.78 merged lower division and upper division of S.E.S. and declared the post as Gazetted. After merger of two divisions, 50% vacancies of S.E.S. is filled through promotions from amongst the persons of Lower Subordinate Service category possessing requisite qualifications. The intervener respondents are working in L.S.S. category as Assistant Teachers in different Government basic schools for more than 20 years and till date they have not been promoted to S.E.S. cadre. Their case is that on account of the resolution contained in Memo No. 1638 dated 11.10.2006 300 persons retrenched from the post of Clerk-cum-Accountant and Clerk-cum-Typist of Adult Education supervisory category are going to be adjusted on the gazetted posts of B.E.E.O. of S.E.S. cadre. On account of such adjustment, the promotional prospects of the intervener respondents is going to be blocked. The retrenched employees are going to be adjusted on the post of higher in status in all respect. Their seniority will also be reckoned from the date of their joining in S.E.S. cadre, such adjustment is not permissible. On account of such appointment/adjustment intervener respondents and other Assistant Teachers who were appointed in L.S.S. cadre in the year 1991 and waiting for promotion for more than 25 years to the post of S.E.S. are going to be affected. Ignoring their claim the retrenched staffs cannot be adjusted/ appointed.

3. Mr. Dr. S.N. Jha representing the intervener respondents has also submitted that a person comes in a Government service not for appointment but for career. On account of the impugned order the carrier of the intervener respondents is going to be effected. In this connection he has placed reliance on a decision reported in Council of Scientific and Industrial Research and Another Vs. K.G.S. Bhatt and Another, .

4. Interveners in I.A. No. 2526 of 2007 is Subordinate Education Service Association. This interlocutory application has been filed in representative capacity on behalf of the members of the Association. It has been submitted that the demand of retrenched employees was only for their absorption against equivalent posts, but on account of the impugned order they are being absorbed

on higher posts, in higher scale. In the Bihar Education Code there is no provision for direct appointment against S.E.S. post, which is a promotional post of Lower Subordinate Service. On account of such absorption, cadre of S.E.S. is going to be disturbed. It has also been stated that in the S.E.S. cadre supervisory post are available against which the retrenched staffs could have been adjusted, even then they are being adjusted on a higher post.

5. I.A. No. 2542 of 2007 and I.A. No. 2566 of 2007 have been filed by the retrenched employees of Adult Education who are going to be absorbed/appointed on account of the order dated 11.10.2006. Their case is that the resolution dated 11.10.2006 clearly indicates that the appointment of retrenched supervisory staffs of Adult Education Programme was conditional and they have to acquire required training qualification within four years of their respective appointments, failing which their absorption will be cancelled. In the light of the resolution dated 11.10.2006 the State Government has issued office order bearing Memo No. 301 dated 3.4.2007, whereby retrenched supervisors have been absorbed in the Subordinate Service cadre (primary section) pay scale of Rs. 5500-9000/- in pay scale of Rs. 5000-8000/- Their posting order have also been issued, at this stage petitioners have challenged policy decision without impleading retrenched employees as Respondents. Though valuable rights have accrued in favour of these persons and going to be affected in case the order contained in Annexure-5 is quashed. Contention of the counsel appearing on behalf of these interveners-respondents is that writ application is fit to be dismissed, on account of non-joinder of necessary parties.

6. It has also been submitted that the writ application is not maintainable as the petitioners have no cause of action, the petitioners cannot be termed as persons aggrieved on account of the policy decision. The writ application has been filed maliciously for one motive i.e. quashing of the transfer order.

7. Petitioner's case is that, necessity arose for filing writ application on issuance of Memo No. 1638 dated 11.10.2006. In the background of issuance of Memo No. 1638 dated 11.10.2006 is the judgment and order passed by the High Court in C.W.J.C. No. 5036 of 1992 and M.J.C. No. 2884 of 1996 in which direction was issued to adjust retrenched supervisory staffs of Adult Education Programme (1992) who were appointed under the Non-Formal Education Programme and retrenched in the year 2001. In order to comply the direction in C.W.J.C. No. 5036 of 1992, impugned resolution which is the policy decision of the Government for adjustment of retrenched employees was issued. The number of total retrenched supervisory staff of adult education was 334 and they have to be suitably absorbed, adjusted in compliance of the direction of this Court. The State Government in order to identify vacant posts in different departments held a meeting of departmental heads of different departments under the Chairmanship of Chief Secretary on 4.3.2005. In this meeting details of existing vacancies in their department were submitted by the departmental heads in the same supervisory scale i.e. Rs. 5000-8000/- In the Welfare Department existing

vacancies for female supervisors were 2128, in the Rural Engineering Organization and Panchayati Raj Department, number of vacancies were 54 in Food and Supply Department vacancy was 292 and in Art, Culture and Welfare Department the total existing vacancy was 151. After considering the vacancies in the different department by resolution No. 582 dated 20.5.2005 it was resolved that the retrenched employees of the Adult Education Department will be adjusted against these vacancies. Subsequently this resolution was amended and it was resolved that those retrenched employees who possess B.A. trained educational qualification should be adjusted on priority basis, against the sanctioned vacant posts of Subordinate Education Service giving relaxation in pay scale from Rs. 5500-9000/- to Rs. 5000-8000/-. The retrenched staffs, will be adjusted against vacant posts of Block Education Extension Officers on some terms and conditions such as they will be adjusted/absorbed in their own pay scale i.e. Rs. 5000-8000/-. The absorbed/ adjusted employees will not claim for pay scale of Subordinate Education Service i.e. Rs. 5500-9000/-. In case of such demand their absorption will be cancelled. Retrenched employees holding B.Ed, degree will be given priority in adjustment. Untrained employees will be adjusted with this condition that within four years they will acquire their B.Ed. training degree or otherwise their absorption will be cancelled. Such retrenched/absorbed employees, who were earlier adjusted against posts going to be abolished in future will be re-absorbed against the vacant posts of B.E.E.O. The seniority of absorbed/appointed employees will be reckoned from the date of their joining in the cadre of Subordinate Education Service. This policy decision of the Government, dated 11.10.2006 was issued for absorption/appointment of retrenched employees of supervisory cadre against the sanctioned vacant posts of B.E.E.O. in the cadre of S.E.S. in the pay scale of Rs. 5500-9000/ - in their own supervisory scale of Rs. 5000-8000/-.

8. Petitioners have prayed for two different reliefs; and challenged the order dated 11.10.2006 as well as order dated 27.3.2007. First relief is for quashing the policy decision of the Government for absorption of retrenched staff and second for quashing of the order of mass transfer order of Block Education Extension Officers including the petitioners.

9. The order dated 11.10.2006 i.e. resolution of Human Resources Department, Government of Bihar has been challenged by the petitioners on different grounds. First ground is that decision for absorption against vacant posts of B.E.E.O. is in violation of earlier decision taken in the meeting of departmental heads, under the Chairmanship of Chief Secretary contained in Memo No. 582 dated 20.5.2005. In this meeting a resolution was passed that the retrenched employees will be adjusted against the vacancies existing in different department in supervisory costs in their own scale of pay. Ignoring this resolution as well as existing vacancies, retrenched employees are going to be adjusted against the posts of B.E.E.O. though there are no existing vacancies on that post. Since there is no existing vacancies, in order to create vacancies 184 B.E.E.O. are being transferred. This contention of the petitioner has been controverted by the

counsel for the State, it has been submitted that the resolution of the Commissioner-cum-Secretary, Human Resources Department dated 13.9.2006 is complete answer to the submission made by the petitioners. Subsequent to the meeting of Commissioners it was decided that since retrenched employees belonged to Adult Education Programme, which started under non-formal education programme of the Central Government in the year 1992 and subsequently abolished by the decision of the Central Government on 1.4.2001 their services can be absorbed in Education Department. Number of retrenched employees were 1427 who belonged to supervisory cadre, Clerks, Driver, Peon and Accountants. The retrenched employees filed writ application for their absorption. Writ application was allowed with a direction to absorb retrenched staffs. As per direction of High Court. Out of 773 Project Officers of supervisory cadre, 155 were absorbed in the Food and Civil Supply Department, 4 in Panchayat Raj, 155 in Welfare Department. Still 334 retrenched employees of supervisory cadre remained for absorption. Out of 334, thirty four either reached their age of superannuation or died. Remaining 300 retrenched employees of supervisory cadre were to be absorbed as per the High Court's order. In the Human Resources Department in Subordinate Education Service (primary branch) 128 posts of B.E.E.O. were lying vacant. It was found that the nature of job of B.E.E.O. and the job earlier done by retrenched employees in the Adult Education Department were same i.e. supervisory in nature. Considering all these aspects, policy decision was taken to absorb the retrenched staff of Adult Education against vacant posts of B.E.E.O. Another reason behind the policy decision was that the State Government in order to revamp the academic atmosphere decided to begin academic session in April introducing new academic calendar in schools. The Government in order to improve the school education decided to fill vacant posts in teachers training institutions. In order to fill posts in teachers training institutions B.E.E.O. who have remained posted on this post for a longer period were decided to be transferred and against those posts the retrenched employees of Adult Education were decided to be adjusted. The earlier resolution No. 582 dated 20.5.2005 taken in the meeting of the departmental Commissioners was reconsidered by the Cabinet and finally the policy decision was taken for adjustment of 300 retrenched employees against the vacant posts of B.E.E.O. There is no violation of earlier resolution as the subsequent policy decision has been taken and order contained in Annexure-5 has been issued with the approval of the Cabinet. The ground taken by the petitioners that the impugned order dated 11.10.2006 is violative of the resolution No. 582 dated 20.5.2005 has no substance and this cannot be a ground for quashing the impugned order. I find substance in the submission of State counsel, as such the ground taken by the petitioners for challenging the impugned policy decision is rejected.

10. Counsel for the petitioner has further contended that the impugned policy decision of the Government dated 11.10.2006 is violative of the High Courts direction in C.W.J.C. No. 5036 of 1992 and analogous cases. Direction of this

Court in the writ application was to absorb/adjust retrenched employees on equivalent posts and only relaxation which was to be given i.e. relaxation of age. The policy decision has been taken in violation of the direction of this Court as the retrenched employees are going to be adjusted giving several relaxation though there was no such direction of High Court. The posts of B.E.E.O. belongs to the cadre of S.E.S. which is gazetted post. For being appointed/promoted to the S.E.S. cadre person must possess qualification of B.A. with B.Ed, or Dip-in-Ed. or two years training, by the resolution contained in Memo No. 1638 dated 11.10.2006 requisite qualification has been relaxed. 300 retrenched staffs who were earlier holding posts of Clerk-cum-Accountant and Clerk-cum-Typist in supervisory cadre of Adult Education are going to be adjusted/appointed on the vacant posts of B.E.E.O. of S.E.S. cadre in the pay scale of Rs. 5500-900/-. The retrenched persons though do not possess requisite qualification for being appointed/adjusted on the Gazetted posts of B.E.E.O of S.E.S. cadre will be absorbed giving relaxation in the pay scale. The post of Clerk-cum-Typist and Clerk-cum-Accountant is non-gazetted posts, now they will be absorbed against gazetted posts. Retrenched staffs were working in the pay scale of Rs. 5000-8000/- but on account of impugned order they are going to be appointed/adjusted against post in the scale of Rs. 5500-9000/-. All such relaxation are in violation of the direction of the High Court.

11. Petitioners case is that the posts of B.E.E.O. belonging to S.E.S. cadre is higher in status than the post of Adult Education Supervisory category. The supervisory category posts not being equivalent to the post of B.E.E.O. the impugned order issued by the respondents directing to absorb/adjust retrenched employees against post of B.E.E.O. is illegal and must be quashed. In reply to this submission counsel for the respondents including the State respondents have submitted that the direction of this Court was to give relaxation in age etc. which means that in order to absorb/adjust all required relaxations should be given and in any case the retrenched employees must be absorbed only in order to comply the direction of this Court, the Government has taken this policy decision as well as in the larger interest. It has also been stated that the policy decision is not going to infringe the right of the petitioners in any manner. The policy decision has been taken to utilise available man power and resources in order to improve the academic environment in the State. The policy decision was taken by the Government after much consideration, how to absorb the retrenched employees suitably, keeping in view their qualifications and experience. This decision has been taken in the same manner as taken in the State of Uttar Pradesh, since this was the direction in C.W.J.C. No. 5036 of 1992. The direction of High Court was to absorb the retrenched employees of Adult Education Department as retrenched employees have been absorbed in Uttar Pradesh considering the educational qualification of the retrenched employees and granting relaxation in the age etc.

12. The Government has taken policy decision in the larger interest of the academic/educational environment of this State, in the interest of retrenched

employees and to improve the standard of the education. By this policy decision the petitioners are neither going to lose their seniority, prospects of promotion or any of their valuable rights relating to their service conditions, as it is not going to be affected or infringed. Relaxation has been given for appointing/absorbing retrenched staffs subject to some conditions. They are going to be appointed as B.E.E.O. in the cadre of S.E.S. in their own pay scale i.e. 5000-8000/- and not in the pay scale of Rs. 5500-9000/-. This scale will be available to them only when they will complete their training and fulfill the requisite educational criteria. Time limit of four years has been given for acquiring this qualification. In case, they will fail to acquire such qualification within four years automatically their absorption will be cancelled. Petitioners are not going to lose their seniority. So far the seniority of these retrenched absorbed employees are concerned that will be from the date of their joining. It means that they will remain junior to all members of existing S.E.S. cadre. The Government is authorised to make policies in the larger interest, such policy can be questioned only if it is arbitrary or on account of such policy, interest of any class or group is going to be arbitrarily affected. I do not find that any such reason is existing in the present case for which interference of this Court is needed. Counsel for the petitioner has given reference of Bihar Education Code Articles 153 and 154. Article 153 is not relevant at this juncture, but so far Section 154 is concerned it relates to general principles, criteria and procedure of determining inter se seniority of officers of S.E.S. Different categories of service which belong to Subordinate Education Service for deciding their inter se seniority provision is envisaged under Article 154 of Bihar Education Code, Article 154(f)(i) indicates that the criteria of seniority of officers shall be based on their date of appointed provided at the time of appointment they fulfill the requisite academic qualification and professional training. Their seniority will be counted from the date of acquiring the requisite academic and professional qualification for the post. In any way seniority of the retrenched/absorbed employees will be subject to Article 154 and this is also mentioned in the impugned order dated 11.10.2006. In this view the order dated 11.10.2006 and the policy decision of the Government do not suffer from any arbitrariness and need no interference.

13. Further it has been contended that the retrenched employees are going to be absorbed/appointed on the post of B.E.E.O. in violation of the procedure for appointment. Any appointment against a cadre post can be made in accordance with the rules, but in the present case it has completely been ignored. Bihar Education Code provides that 50% of total sanctioned vacancies of S.E.S. is to be filled by promotion from Lower Subordinate Service category possessing requisite qualification for appointment to S.E.S. cadre. Minimum requisite qualification is B.A., B.Ed., Dip-in-Ed. or training course. 50% can be filled only by the direct appointment though earlier all posts of S.E.S. Gazetted were to be filled by promotion only. By the on account of policy decision of the Government all vacant posts of S.E.S. cadre including 50% posts are going to be filled by absorption which should have been filled by way of promotion.

14. Counsel appearing for the interveners in I.A. No. 2528 of 2007 who are members of S.E.S. cadre have also raised their objection stating that on account of impugned order they are going to lose their prospects of promotion to the S.E.S. cadre, for which they have been waiting for 26 years. Their submission is that the appointment/absorption is in violation of rules framed under Proviso to Article 309 of the Constitution of India and in violation of Bihar Education Service Class I and Bihar Education Service Class II Recruitment Rules, 1973 which has been framed under proviso to Article 309 of the Constitution of India. Under this Rule 50% vacancies of Bihar Education Service Class II is reserved for S.E.S. The interveners respondents who are eligible for promotion to S.E.S. on the basis of their seniority are going to be effected on account of the impugned order dated 11.10.2006. This submission has been replied by the counsel appearing for the State as well as intervener respondents of I.A. No. 2542 of 2007 and I.A. No. 2566 of 2007. It has been submitted that the petitioners as well as respondents of I.A. No. 2526 of 2007 have raised objection contrary to the current position of vacancies in S.E.S. cadre as indicated in departmental letter (Annexure-9) to the writ application. Annexure-9 to the writ application indicates total sanctioned posts in the cadre. Total number of posts filled, and total number of posts vacant. The total strength of S.E.S. cadre is 1458. Total number of filled post is 613 and total vacant post is 843. Out of total vacant post i.e. 843. The number of posts which is going to be filled through direct appointment is 424 and the numbers of posts which is going to be filled through promotion is 422.

15. Mr. Lalit Kishore, Additional Advocate General placing reliance on Annexure-9 has stated that by order dated 11.10.2006 three hundred retrenched employees are going to be appointed/absorbed which is less than the total vacancies to be filled through direct appointment. So far the posts which are to be filled by way of promotion, is not going to be effected on account of this order or by absorption of retrenched employees. In this way I find that the rules for appointment/promotion is not going to be effected by the impugned order dated 11.10.2006. The absorption/appointment is only against the vacancies existing to be filled through direct appointment. On this ground also petitioners have not been able to make out a case for interference.

16. Another relief which petitioners have prayed is for quashing of the order dated 27.3.2007 contained in Memo No. 285 issued by the Director, Elementary Education Department of Human Resources, Government of Bihar.

17. Counsel appearing for the State as well as the intervener respondents of I.A. No. 2538 of 2007 and I.A. No. 2566 of 2007 have challenged the maintainability of the writ application on the ground of non-joinder of necessary party. It has also been submitted that existence of right and infringement thereof are the foundation of the exercise of jurisdiction under Article 226 of the Constitution of India. The right, for enforcement of which, application is filed under Article 226, must be personal or individual right of the applicant. In the present case the petitioners have challenged the order dated 11.10.2006 without impleading the

retrenched employees who are going to be absorbed/appointed. In case the impugned order is quashed they are going to be affected as such they are necessary party and without impleading the necessary parties the writ application has been filed as such it is bad on account of non-joinder of necessary party and fit to be dismissed on this count.

18. Further it has been submitted that nine petitioners have challenged entire transfer order dated 27.3.2007 whereby 184 persons have been transferred. Petitioners could have challenge their own transfer order as it is their personal right. They cannot challenge entire transfer or-order on the basis of which 184 persons have been transferred as such prayer of the petitioners for quashing the impugned order transferring 184 persons should be rejected. Reliance has been placed by the respondents-State as well as the intervener respondents in the case of State of Punjab Vs. Suraj Parkash Kapur etc., wherein it has been held that the existence of a right and the infringement thereof are the foundation of the exercise of the jurisdiction of the High Court under Article 226 of the Constitution. The right that can be enforced under Article 226 of the Constitution must ordinarily be the personal or individual right of the applicant.

19. In reply to this submission counsel for the petitioners has stated that since the petitioners have challenged the validity of the policy decision of the Government it is not necessary that those persons who are going to be absorbed/appointed must be impleaded as party. Counsel for the petitioner has placed reliance on a decision in the case of The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others, . In this decision the policy decision of the Railway Board regulating seniority of the railway staff was challenged on the ground of violation of Articles 14 and 16 of the Constitution of India. The employees against whom the reliefs were sought were not impleaded as party as such the objection was raised that in their absence no effective decision can be rendered by the Court. They being the necessary party, their non-joinder is fatal to the writ application. The finding recorded by the Apex Court on such objection was that where the validity of the policy decision of the Railway Board regulating seniority of railway staff were challenged on the ground of their being violative of Articles 14 and 16 of the Constitution of India and the relief is claimed only against the railway, it is sufficient if the railway was impleaded and non-joinder of the employees likely to be effected by the decision in the case is not fatal to the writ application. Those employees almost were proper party but not necessary party.

20. Counsel for the petitioners have also stated that the policy decision of the Government being violative of Articles 14 and 16 of the Constitution of India has been challenged. A different treatment is being given by the State Government to the retrenched employees going to be absorbed/appointed. The rules for appointment for S.E.S. posts is being relaxed as such the persons who are going to be absorbed may be a proper party but not necessary party, their non-joinder cannot be fatal for the writ application. I find that since the petitioners are

challenging the policy decision of the Government it is not necessary that all 300 retrenched staff of Adult Education, going to be absorbed, be impleaded as party. Accordingly this objection raised by the State as well as other respondents is rejected.

21. Petitioners have challenged the transfer order stating that it is not an ordinary routine transfer order. The transfer order contained in Memo No. 285 has been passed in consequence of the resolution dated 11.10.2006 contained in Memo No. 1638. Petitioners as well as other B.E.E.O. total 184 in number have been transferred in different primary teachers training college to adjust the retrenched supervisory staffs of Adult Education. In the resolution dated 11.10.2006 it is stated that the retrenched supervisory staff of Adult Education are being appointed/adjusted against the sanctioned vacant posts of B.E.E.O. but in reality there was no vacancy for 300 retrenched supervisory staffs of Adult Education on the post of B.E.E.O. Existing vacancy was only 127. In order to create further vacancies 184 B.E.E.O. including the petitioners have been transferred. This transfer order has been challenged by the petitioners on the ground of mala fide stating that just in order to create vacancies, the petitioners and others have been transferred. Further it has been stated that the transfer order is in violation of resolution of the Cabinet Secretariat and Coordination Department, Government of Bihar contained in letter No. 434 dated 1.3.2007. Clause I of this resolution indicates that normally transfer/ posting will be done once in a year in the month of June, but for promotion purposes, in exigency of work or for administrative reason can be done at anytime. For such transfers approval of officer senior to the competent authority will be essential. The transfer order is in violation of this provision. Secondly it has been stated that Clause 4 of this resolution provides that in any case more than 10% of total cadre strength should not be transferred/promoted in a year though such orders can be passed in the work interest or administrative reasons after taking approval of the senior authority of the competent authority, these two clauses have been violated.

22. Counsel for the petitioners in support of this submission has placed reliance on Annexure-8 i.e. letter No. 434 dated 1.3.2007 as well as Annexure-9 which indicates total strength of the officers of S.E.S. cadre. While referring Clause 4 of Annexure-8 counsel for the petitioners has indicated that total sanctioned post of B.E.E.O. is 587. Working strength of this post is 455. in any case more than 10% of the working post i.e. 45 could have not been transferred. By the impugned transfer order 184 persons have been transferred in violation of Clause 4 of Annexure-8.

23. Counsel for the State has contradicted this submissions made by the counsel for the petitioners. It has been submitted that Clause 4 indicates that in any case more than 10% of total working strength of the cadre will not be transferred within a year. The cadre of S.E.S. does not mean only the working strength of B.E.E.O. cadre means all other posts belonging to that cadre and the total

working strength of S.E.S. cadre is 613 out of that total 184 have been transferred by the impugned order which is more than 10% but it can be done in the general interest in the work interest as well as for administrative reason after taking approval of senior authorities than the authority competent to pass such order. In the present case the order has been passed for administrative reason as well as for facilitating the policy decision of the Government after taking approval of the Minister. There is not violation of either Clause 1 or Clause 4 of the resolution contained in letter No. 434 dated 1.3.2007 (Annexure-8). It has also been submitted that in the resolution dated 1.3.2007 issued by the Cabinet Secretariat, the Department itself has given power to exceed 10% limitation and also transfer in other months than the month of June. I find that the objection raised by the petitioner while challenging the transfer order has properly been replied by the counsel appearing for the State and as such objection is rejected. Transfer order is not in violation of any of the provision under Annexure-8.

24. Counsel appearing for the State has stated that so far the policy decision of the Government for absorption of retrenched employees of Adult Education is concerned was passed on 11.10.2006. This policy decision was not challenged by the petitioners or anyone till the date transfer order was issued i.e. on 27.3.2007. Petitioners are not perturbed by the policy decision but what has disturbed them is, the transfer order in the garb of policy decision petitioners have challenged the transfer order which cannot be entertained. The State Government being the employer has prerogative to transfer, promote its employees and that order cannot be challenged unless it suffers from malice or vindictive and violative of Articles 14 and 16 of the Constitution. In the present case petitioners have been transferred as they have remain posted on same post for ten years or more in violation of Article 133 of the Bihar Education Code. They have been transferred within their own cadre. By this transfer order they have neither been demoted or going to loose any financial benefits. The transfer order cannot be challenged if it has not been passed for some mala fide reasons or is going to affect the service conditions of the petitioners. Petitioners cannot be allowed to challenge the transfer order taking shelter behind the policy decision of the Government.

25. Mr. Lalit Kishore, Additional Advocate General has also emphasized that the Government being interest in revamping of the education needed trained teachers posted in the educational institution. The posts in educational institution have remained vacant for years together. For proper functioning of the education system, properly trained teachers are also required. The Government in order to reach this object has transferred 184 B.E.E.O. in the training colleges, in the training schools which is neither violative of any mandatory rules nor suffers from malice. The competent authority has passed this transfer order in public interest as well as for administrative exigency as such it should not be interfered with. On account of transfer order neither the petitioner's right has been infringed nor they have been transferred out of their cadre. It is not that the petitioners have got vested right to remain posted as B.E.E.O. only. This can be

decided by the employer i.e. the State Government and it has been decided. On perusal of Article 154 of the Bihar Education Code I find that the Subordinate Education Service consists of 12/13 categories of posts. Persons holding one post can be transferred on other posts and there is no restriction in transferring a person posted on one post to another post. Petitioners who were holding posts of B.E.E.O. can be transferred as lecturers, Superintendent, Deputy Superintendent in Primary Teachers Training Schools. The transfer order is not an ex-cadre transfer. Petitioners have not been able to make out any case of malice on the part of the respondent against the petitioners as such this also cannot be a ground for quashing the transfer order. I do not find that on account of such transfer order petitioner's any legal or constitutional right has been infringed. Petitioners are working on transferable posts and the transfer is the condition of their service. There is no reason for interference with the transfer order. On this ground also petitioners have not been able to make out a case and as such it is rejected.

26. I.A. No. 2482 of 2007 was filed by the State and I.A. No. 2526 of 2007 was filed by the intervener respondents for vacating the order of stay granted by order dated 9.4.2007. Since the writ application is being dismissed, order of stay is automatically vacated. This writ application is dismissed.