
(2013) 03 PAT CK 0092
In the Patna High Court
Case No : CWJC No. 18892 of 2012

Bimlesh Kumar

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 01-03-2013

Acts Referred:

Citation : (2013) 3 BLJud 316

Hon'ble Judges : Samarendra Pratap Singh, J.

Bench : Single Bench

Advocate : Mr. Dhananjay Kumar, Advocate, for the Petitioner; Mr. Ram Balak Mahto, AG, for the Respondents

Final Decision : Disposed Off

Judgement

Samarendra Pratap Singh, J. (Oral)—Heard counsel for the petitioner and the State.

2. The petitioner was initially appointed as Prakhanda Shikshak vide Niyojan letter no.6 dated 29.12.2006 under Arwal Block in the Arwal district and was posted in Middle School, Ahiyapur. The petitioner joined the said school on 30.12.2012. The appointment and service condition of the petitioner was regulated by the process of Bihar Panchayat Primary Teachers (Employment and Service Condition) Rules, 2006 in which there was no provision of transfer save and except as provided therein and that too on the request of the teacher itself. Thereafter, 2006 Rules underwent amendment from time to time and substituted by Bihar Panchayat Primary Teachers (Employment and Service Condition) Rules, 2008.

3. The petitioner submits that Arwal which was earlier a Sub-division was converted into a district. Thus the service of the petitioner was now recognised as Nagar Shikshak. In course of time Arwal block/Sub-division stood converted as Parishad and the petitioner becomes a Nagar Shikshak under Parishad. The petitioner submits that his service is now regulated and governed under Bihar

Panchayat Primary Teachers (Employment and Service Condition) Rule, 2012. The petitioner has challenged the validity and legality of office order contained in memo no.626 dated 17.9.2012 issued by the Block Education Officer, Arwal whereby he has been adjusted as a Teacher in Primary School, Muradpur Hujra. The petitioner submits that he could not have been transferred from his parent school as there is a prohibition on transfer in view of Rule 15. As per rules, a teacher can be transferred only on his consent. The petitioner submits that the transfer order has been issued by the Block Education Officer who is not a competent authority to issue the transfer order. The petitioner submits that his transfer order is in violation of Rule 3. He was appointed in a Middle school and as such he cannot be transferred to a Primary school. The petitioner submits that he has been allegedly transferred on the ground that there was excess teacher in the school in which he was appointed and as such to rationalize and to maintain the students-teachers ratio he has been transferred to a Primary School, Muradpur Hujra which is 22 KM away from his residence.

4. Counsel for the State submits that the petitioner should not read the impugned order to mean transfer rather his parent school itself is being adjusted in order to maintain a parity of students teachers ratio in view of government resolution dated 2.11.2007 contained in letter no.3991 (Annexure-A). He submits that as per policy of the government, there would be one teacher for every 40 students but it transpired that in some of the schools, students teachers ratio is low and in some of the schools is high. The main crux of the submission of the State is that the impugned order is not a transfer order.

5. I have heard counsel for the parties.

6. The petitioner was earlier appointed as the Block Teacher which was regulated under the 2006 Rules. On conversion of Arwal block into a Parishad, the petitioner became a Nagar Shikshak and was governed by Nagar Shikshak 2012 Rules. Rule 50 puts a prohibition on transfer of teacher save and except on own request. It would appear from the counter affidavit of the State as well as policy decision of the Government dated 2.11.2007 contained in Annexure-A that the school should maintain the ratio of one teacher for every 40 students. In course of survey, it transpired that quite a large number of schools were having more teachers in excess of ratio. Some schools were having less teacher vis-a-viz the ratio prescribed. In order to maintain a parity of students teachers ratio, it was decided to make changes in the basic school of the teachers itself in the best interest of students. The teachers are appointed to sub-serve the interest of students. The Panchayat School as well as Nagar Shikshak schools were opened to give effect to the constitutional scheme and to fulfil the object enshrined under Right to Education Act, 2005.

7. Though the rules put prohibition on transfer, it does not prohibit the respondents from taking corrective measures for balancing the students teachers ratio in the best interest of the students. In the instant case, the petitioner has sought to be adjusted by way of change of his parent school itself in order to

maintain students teachers ratio. A chart has been annexed by the State to show that some schools are having more teachers in excess of ratio whereas other schools are having lessor teacher. The government respondent would be within its jurisdiction to make such adjustment in order to maintain such parity. However, while making such adjustment the respondents would have regard of the fact that minimum inconvenience is caused to the teachers. In such circumstances, the teachers sought to be adjusted being in excess of number of teachers in his parent school should be given choice of schools in which the teachers students ratio is less. Further more, if the petitioner was earlier engaged in a Middle School, endeavour of the respondents should be to do the posting in Middle school itself. The petitioner submits that even as per the State's counter affidavit, there is less number of teachers in upgraded Middle School, Rashidpur.

8. In my view, if the petitioner files a fresh representation before the Executive Officer, Nagar Parishad after giving his joining at the adjusted school, the former would consider his case for adjusting him in a Middle School. The representation of the petitioner should be disposed of within two months from the date of its filing.

9. It goes without saying that a teacher of a Middle school as far as possible should be adjusted in a Middle School itself.

10. With the aforesaid observations and directions, this writ application stands disposed of.