
(2005) 04 PAT CK 0012
In the Patna High Court
Case No : CWJC No. 1285 of 2004

Bishwanath Prasad Yadav

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-04-2005

Acts Referred:

Bihar State Nationalised Elementary School Teachers (Transfer and Disciplinary Action) Rules, 2002 — Rule 9

Citation : (2005) 2 BLJR 1407 : (2005) 3 PLJR 408

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mridula Mishra, J.—Heard the counsel for the petitioner, the counsel for respondent No. 6 as well as the counsel for the State.

2. The petitioner has challenged the order passed by the Divisional Commissioner, Tirhut Division, Muzaffarpur, dated 22nd December, 2004, contained in memo No. 1198, whereby the review preferred by the petitioner on the direction of this Court in C.W.J.C. No, 12929 of 2003 has been decided, petitioner's claim has been rejected and the order of transfer passed by the Block Education Establishment Committee, contained in Annexure 1, has been revived. By order, contained in Annexure 1, the Block Education Establishment Committee had transferred the petitioner to Middle School, Nilkanthpur, Mahua, Hajipur petitioner represented against the transfer order of the Block Education Establishment Committee, was not considered. Thereafter, he represented his case before the District Education Establishment Committee. Petitioner's case was that his transfer to Middle School, Nilkanthpur, Mahua, Hajipur, is in violation of Bihar Elementary School Teachers (Transfer and Disciplinary) Rule, 2002. He has been transferred ten kilometers away from his home and his seniority has also not been considered. The District Education Establishment Committee, thereafter, by its order, dated 8.10.2003, transferred the petitioner to Middle

School, Mahua, Hajipur, and respondent No. 6, Jainath Kumar, whose home district is at Hajipur Block was posted at Middle School, Subhai, Hajipur, by order, dated 8.10.2003 (Annexure 5). This order was challenged by respondent no. 6 before the Divisional Commissioner in appeal. The Divisional Commissioner by his order, dated 5.11.2003, cancelled the order, dated 8.10.2003, contained in memo no. 3593 Hajipur (Annexure 4) as well as the order, dated 8.10.2003, contained in memo No. 3592 Hajipur (Annexure 5). The petitioner challenged this order in C.W.J.C. No. 12929 of 2003 on the ground that the impugned order has been passed without impleading him as party and without giving any notice to him. By order, dated 25.11.2003, the writ application was disposed of with an observation to the petitioner to file his representation before the Divisional Commissioner for seeking review of his order, contained in memo No. 1198, dated 22.12.2003, The review application filed by the petitioner has been rejected by the impugned order.

3. In the counter affidavit filed by respondent No. 6 as well as the State. It has been stated that the orders, contained in Annexure 4 and 5, of the District Education Establishment Committee was completely in violation of the statutory rule for transfer of teachers and headmasters of the middle schools. The District Education Establishment Committee has no jurisdiction to transfer the teachers or headmasters working in the middle school. It is the jurisdiction of the Block Education Establishment Committee under Rule 9 of the Rules. It has also been stated that in case the petitioner was aggrieved with the order transferring him to Middle School, Nilkanthpur, Mahua, Hajipur, in that case as provided under Rule he should have given joining at the transferred place and, thereafter, should have preferred an appeal, but instead of filing an appeal petitioner filed his representation before the District Education Establishment Committee. The petitioner has placed his reliance on the order, contained in Annexure-4 and 5, which are against the provisions of the statutory rules. The counsel for the State has submitted that impugned order, contained in Annexure 10, has been passed considering the application, filed by the petitioner as well as respondent No. 6. So far the service of respondent No. 6 is concerned, there is no complaint, in support of his exemplary performance several certificates have been issued by the authorities. In sum and substance, the submissions made by the respondents is that the petitioner has moved for the first time for review on the direction of this Court and the order passed by the District Education Establishment Committee, in complete violation of the rules, can not be a ground for cancellation of petitioner's earlier order passed by the Block Education Establishment Committee, as per rules.

4. Considering the fact that all matters were properly considered by the Divisional Commissioner on the direction of this Court in the writ application, he reviewed his order and came to the conclusion that there is no illegality in transfer order of the petitioner and orders, contained in Annexures 4 and 5, are in violation of the rules. I do not find any reason for interfering with the impugned order.

Accordingly, this application is dismissed.