
(2004) 09 PAT CK 0138
In the Patna High Court
Case No : C.W.J.C. No. 6567 of 2003

Braj Nandan Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-09-2004

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2004) 4 PLJR 706

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Advocate : Kamal Nayan Chaubey, Rajeev Kumar in 6567 and 6568, M/s Devendra Kr. Sinha and Biresh Kr. Sinha in 8273, for the Appellant; C.K.P. Bhagat and R.S. Singh (in 6567, 5636), M/s A.K. Singh, S. S. Mishra, Nirmala Kumari and Prabhat Kr. Singh (in 6568, 8273 and 6369) for the State, for the Respondent

Judgement

Shiva Kirti Singh, J.—All these five writ petitions were treated as analogous and were heard together at the stage of admission. After these writ petitions were filed in the month of July/ August 2003 State Counsel took time for instructions and for filing counter affidavits and in the meantime order to maintain status quo was passed in all the writ petitions. At the stage of admission itself the matter was heard finally on four dates but nobody appeared to press CWJC No. 5636 of 2003 which relates to transfer of Headmasters/Teachers of Government Primary and Middle Schools in the district of Vaishali. Similarly, nobody appeared on behalf of the petitioners in CWJC No. 6369 of 2003 which relates to similar matter from the district of East Champaran. Hence, both the aforesaid writ petitions are dismissed for non-prosecution. The remaining three writ petitions relate to transfer of Headmasters/Teachers of Government Primary and Middle Schools in the district of Begusarai. In CWJC No. 6567 of 2003 there are altogether 38 petitioners but learned counsel for the petitioners has, at the outset, indicated that he is not pressing writ petition in respect of 12 persons whose names appear as petitioners No. 4, 16, 19 to 24, 29, 30, 36 and 38. The reason for not pressing the writ petition on behalf of the aforesaid petitioners

was not disclosed but it is apparent that either they have accepted their transfer orders or they have obtained relief through representation or statutory appeal provided under Rules of 2002 framed under Article 309 of the Constitution of India to govern transfer and disciplinary proceeding in respect of Teachers like the petitioners. CWJC No. 6568 of 2003 has been filed by two petitioners who are each other spouse. CWJC No. 8273 of 2003 has been filed on behalf of a single petitioner. Thus, there are 29 teachers from the district of Begusarai who have challenged their transfer under the Rules of 2002 which have been notified on 1.4.2002.

2. For the sake of convenience, the relevant facts shall be referred to from the records of CWJC No. 6567 of 2003. The impugned order of transfer dated 27.6.2003 has been annexed as Annexure-3. Although the entire list of Teachers conversed by the transfer order has not been annexed but there is no dispute that the transfer initiated under the Rules of 2002 is comprehensive transfer covering more than 3000 Teachers who are all conversed under the Rules of 2002 and are posted in the district of Begusarai. As noticed above, now less than 30 persons are aggrieved by the aforesaid general transfer.

3. The first submission on behalf of the petitioners was that such general and comprehensive order of transfer is not contemplated by Rules of 2002. Next it was submitted that even if such large number of transfer could have been done the same was done ignoring the provisions of Rule 3(2) and also the provisions of Rules 9 to 13. The next common submission was that petitioners have wrongly been denied posting to their home Blocks or to the places for which they had given options. Lastly, it was submitted that in some cases the certificate of residence submitted for change of home Block has not been properly appreciated and accepted and that the gradation list has not been made up-to-date for the purpose of effecting transfer as per Rules and that the transfer list also includes some Teachers who are no longer in service or are dead which shows that there has been no application of mind.

4. On behalf of the State a preliminary objection has been taken on the basis of Rule 14 which inter alia provides for relieving the transferred Teachers within 15 days of the transfer order otherwise they would be deemed to have been relieved; that payment of salary for the succeeding month after the month in which transfer order is issued shall be made from the school where the Teacher may have been transferred; that representation against the transfer or application for leave will be entertained only if submitted after joining at the transferred place and that against an order of the District Education Establishment Committee under Rule 8 placing service of a Teacher under a particular Block/ Urban Area an appeal may be preferred before the Divisional Commissioner after joining the place of posting and within two months of issuance of impugned order. It has been submitted that Rules of 2002 framed under Article 309 of the Constitution of India provide for an alternative forum of appeal and hence, writ petitions be not entertained directly against the decision

of the District Education Establishment Committee.

5. On merits learned counsel for the State has submitted that preamble to the Rules shows that earlier Rules of 1994 were replaced by the new Rules of 2002 in view of necessity to ensure regular posting, effective transfer and for ensuring orderly management of teaching in the Government schools covered by the Rules. He further submitted that on account of posting outside home district or to distant places away from their homes the Teachers and Headmasters of Primary and Middle Schools had developed habit of remaining absent on large number of days authorisedly or unauthorisedly. To overcome such a situation, services of Headmasters and Teachers in such schools were brought under a district cadre and seniority list is being maintained now at district level. With reference to Rule 3 of the Rules he explained that this Rule provides general principles for transfer which are required to be done generally in the month of May-June or November-December and it is also provided therein that generally Headmasters and Teachers shall not be transferred except on representation, or to implement Court orders or assurance to the Legislature, or to meet emergent administrative exigency in the opinion of the District Magistrate or to implement State level directions issued by the Directorate for achieving the purpose of the Rules. He further explained that as a result of framing of the new Rules a comprehensive exercise was necessary in view of provisions of Rule 9 which provides for preparation of seniority list keeping in view the home district/ place of Headmasters/ Teachers for the purpose of their services being allocated by the District Education Establishment Committee to different Blocks/Urban Areas. The allocation by District Education Establishment Committee is required to be done on the basis of total number of approved units of teachers for each Block/Urban Area as per position of Teachers/Headmasters in the gradation list with due preference to Lady Teachers and Handicapped Teachers. For this purpose according to learned counsel for the State, under the instructions of the Secretary of the Department contained in memo No. 561 dated 1.4.2002 (Annexure-1) seniority of Lady Teachers and Handicapped Teachers has to be reckoned separately for all classes and grades of teachers such as Headmaster, B. Sc. Trained, BA Trained, Matriculate Trained, Urdu Teachers and Bangla Teachers. On the basis of averments in the counter affidavit and original register of different categories of Teachers produced for perusal of the Court it was submitted by learned counsel for the State that transfers/allocation to different Blocks or Urban Areas have been made with due regard to seniority as provided under the Rules and also keeping in view the options of the Teachers for their home places or any other three places. It was made clear by him that some persons on account of being low in the seniority list could not get either their home Blocks/ places or even the places as per their three options but exercise of power to transfer such Teachers has been done fairly as per Rule 8(5) of the Rules and in such cases if there has been any mistake, the respondents are prepared to rectify the same on receipt of order from the appellate authority prescribed by the Rules.

6. On going through the submissions advanced on behalf of rival parties and the materials on record this Court finds that in these cases transfers have not been challenged on account of malafide. The only ground urged is alleged violation of letter or spirit of one Rule or the other. There is no provision in any statute or in the Rules prohibiting such transfers. When large number of Teachers converging the entire district had to be allocated to one or the other Block/Urban Area as per requirement of Rule 8, there may be stray cases where some provision of some Rule may have been overlooked but in the considered opinion of this Court such ground will not justify interference by this Court with the impugned order of transfer/allocation to different Blocks/Urban Areas. This view is supported by a recent judgment of the Supreme Court in the case of State of UP and Ors. vs. Siya Ram and Anr. reported in 2004(5) Supreme 750 (Supreme Today Part 124 dated 17th August, 2004).

7. In the facts of the case, the remedy for the aggrieved teachers like the petitioners would be to file representations/ appeals under the provisions of the Rules of 2002. Interference with such a big exercise affecting more than 3000 Teachers of the District at the instance of less than 30 Teachers would not be in the interest of justice also.

8. For all the aforesaid reasons, this Court finds no merit in these writ petitions and they are accordingly dismissed. However, before parting with the judgment interest of justice requires a suitable direction to the respondents for ensuring that such petitioners who could not join their new places of posting because of order of status quo passed in these writ petitions, should not be made to suffer unnecessarily on account of technicalities. If they have actually worked at their previous places of posting then they should be allowed to join their new places of posting if they apply for the same without any delay and in any case within two weeks. In such eventuality and in case they have worked in their old schools as indicated earlier they should be paid their salary without delay even if fund has to be diverted or sanctioned from the schools where they were to join after transfer. However, in cases where on account of relieving the petitioners did not work in the earlier school or in the school where they have been transferred in that event the period of absence may be regularised as per law treating such period to be under leave of one kind or the other as available under law. In such cases salary as found payable depending upon kinds of leave available may be paid without any delay. Considering that the new Rules of 2002 have been set in motion for the first time in respect of transfers at a large scale covering all the teachers in the district, some allowance has to be given to the petitioners if they want to avail right of appeal under the Rules. For that purpose the period of two months from the date of passing of the order by the District Education Establishment Committee is extended in the interest of justice and the appellate authority is directed to decide appeals preferred by the petitioners, if any, on merits if such appeal is preferred within one month from today but subject to the condition that the concerned Teacher must first join his new place of posting.