

(2011) 12 AHC CK 0018

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 62998 of 2011

Daya Shankar Tripathi and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-12-2011

Acts Referred:

Citation : (2012) 1 ADJ 423

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard Sri R.K. Ojha for the petitioners at length and learned Star dng Counsel for the respondents.

2. The writ petition is directed against order dated 13 14.10.2011 (Annexure 8 to the writ petition) passed by District Magistrate, Mirzapur. The District Magistrate has cancelled the report of Chief Development Office, Mirzapur and has issued certain directions to District Basic Education Officer in the matter of transfer/absorption of teachers of Primary Schools maintained by the Board of Basic Education in District, Mirzapur.

3. Sri Ojha, learned counsel for the petitioners at out set has not disputed that power of the District Magistrate is derived from the Rules framed under the Right to Education Act and, therefore, the jurisdiction of the District Magistrate is not disputed. However, he submitted that District Magistrate has not exercised the power strictly in accordance with law and, therefore, impugned order is liable to be set-aside.

4. It appears that District Basic Education Officer passed an order on 27.7.2011 absorbing/adjusting and transferring about 206 Assistant Teachers of Primary Schools which included the petitioners. A complaint was made to the District Magistrate about various irregularities committed by District Basic Education Officer in passing the aforesaid order of transfer whereupon the matter was

examined by a Committee namely Transfer Committee" presided by Chief Development Officer, Mirzapur who submitted report on 24.9.2011 observing that District Basic Education Officer, Mirzapur in passing the transfer order dated 27.7.2011 has acted in collusion arbitrariness etc. and it also says that he has tried to mislead the various higher authorities. The observations made by Committee in its report dated 24.9.2011 reads as under :

5. The District Magistrate by means of impugned order has observed that Chief Development Officer presided the Transfer Committee ought not to have cancelled the entire transfer/absorption but should have enquired into the irregularities and the illegalities committed in the individual cases and ought to have passed order accordingly.

6. Consequently, the District Magistrate set-aside the order of Chief Development Officer, Mirzapur dated 24.9.2011 and has issued certain directions to District Basic Education Officer for the purpose of complying the transfer order dated, 27.7.2011.

7. The contention of learned counsel for the petitioners is that they are being transferred at far flung areas in wholly illegal and arbitrary manner. From the order of District Magistrate it is evident that out of 206 teachers, 149 were absorbed in such Primary Schools where there was no teacher working at all and 40 were absorbed in Primary Schools which were only single teacher schools.

8. It is really unfortunate that on one hand the constitutional provision confer fundamental right of primary education upon children in the age of 6 to 14 and to give effect to such fundamental right the Parliament has enacted Right to Education Act, yet in this State, a large numbers of primary schools though exists but have no teachers or single teacher not capable to look after the total number of students therein. The primary schools basically having been established at Gram Panchayat levels, obviously numbers of such schools are situated in far flung areas but this would not mean that persons appointed as Primary Teacher should be given a right to select the place of posting of their own choice and to create all kinds of obstructions in case an effort is made to fill in unmaned primary schools situated in distant areas. Ex-fade the attempt on the part of respondents is in large public interest and attempt on the part of the petitioners in creating obstructions in such genuine cause lacks bona fide. It shows that petitioners are more interested in their own convenience instead of looking to the requirement and interest of public at large which they must serve by going at the places where there is no teacher.

9. The appointment of Primary Teachers is not with the object to provide only employment but it is a means and method to achieve the goal of providing primary education to the children in the entire State. The opportunity of hearing is consequential but cannot be made the basic cause which may prevail over so as to prejudice interest of schools and the students in particular.

10. The submission advanced by learned counsel for the petitioners only

demonstrate some individual hardships but no illegality in general, therefore, I find no reason to interfere with the impugned order but am constrained to observe that the present writ petition demonstrate the extent to which primary school teachers, after getting appointment, can go to prejudice their basic obligation of imparting education in primary schools, Particularly those which are unmaned by offering service thereat instead of creating obstructions. Since in my view the petitioners have not approached this Court with clean hands, the writ petition deserves to be dismissed with costs.

11. Before departing, however, I am also constrained to observe that Chief Development Officer looking into the matter as Chairman of Transfer Committee has found serious lapses on the part of District Basic Education Officer regarding his conduct which constitute serious misconduct and the District Magistrate, in regard to the ultimate procedure adopted by Chief Development Officer, though has not concurred with him, but in respect to the observations made relating to conduct of District Basic Education Officer, has not found anything otherwise therein. That being, so the respondent authorities ought not to have allowed District Basic Education Officer to escape and instead the District Magistrate ought to have recommended the competent authority to initiate appropriate departmental enquiry against the concerned District Basic Education Officer.

12. In the circumstances, the Secretary, Basic Education is hereby directed to look into the report of Chief Development Officer and the order of District Magistrate and take appropriate disciplinary action against District Basic Education Officer and complete proceedings within three months. This matter shall be listed before this Court on 12.3.2012 only to peruse the progress report which the Secretary, Basic Education shall submit before this Court after completion of departmental enquiry and the final order passed therein.

13. With the aforesaid observations, the writ petition is dismissed with costs quantified to Rs. 10,000/-