
(1996) 09 CAL CK 0028
In the Calcutta High Court
Case No : CWJC No. 2054 of 1996 (R)

Dinesh Kumar Dandpat and Others	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 11-09-1996

Acts Referred:

Citation : (1996) 09 CAL CK 0028

Hon'ble Judges : Pranab Kumar Deb, J

Bench : Single Bench

Judgement

Pranab Kumar Deb, J.—Seen the explanation submitted by the office in compliance of the order dated 7.8.1996. The reasons shown are accepted.

Deficit Court fee been filed today in Court.

2. Supplementary affidavit has been filed today by the petitioners in which it has been stated that petitioner No. 3 had died on 9.8.1996 i.e. during the pendency of the writ petition and as such his name may be deleted from the cause title of the writ petition. Prayer is allowed. Let the name of petitioner No. 3 be deleted from the cause title of the writ petition.

3. The grievance of the petitioners in this writ petition is with respect to the transfer orders contained in Annexures 4 and 4/1. The petitioners' contention is that they were appointed in the Government Basic School but by the above transfer orders, they have been transferred to the District Cadre of Nationalised Elementary School. According to the petitioners, if the said transfer order is given effect by the order contained in Annexure 4 series, it amounts to change of cadre. The petitioners, being in the Divisional Cadre cannot be transferred to the District Cadre of Nationalised Elementary School. It is stated by the learned counsel for the petitioners that service conditions of the teachers of Government's Basic School and the teachers of Nationalised Elementary schools are quite different as the teachers of Government Basic School have to be superannuated at the age of 58 years while the teachers of Nationalised Schools

have to be superannuated at the age of 60 years. This position of change of cadre have been raised before this Court in batch cases and those writ petitions were allowed in terms of judgment dated 3.2.1994. The said judgment was challenged by the State of Bihar in the Supreme Court but the Special Leave Petitions were dismissed. The cases of the petitioners are fully covered by the aforesaid judgments of this Court. It is further stated that in 1995, several writ petitions being CWJC No. 3097 and 3411 of 1995(R) were filed and a Single Bench of this Court in terms of order dated 6.12.1995 allowed the writ petitions with observation that they will be deemed to be officers borne on the Divisional Cadre and held that there are two separate cadres and one cadre cannot be merged with another. In that view of the matter, when there are distinct cadres, there cannot be any further change between the two. It appears from the circular of the State Government at Annexure 2 that the District Superintendent of Education was empowered to make appointments in exigency of situation, but the said notification merely conferred the power of appointment on the District Superintendent of Education. So far the question of cadre is concerned, there was no change in the position. In other words, the petitioners by virtue of appointment in the basic school will be deemed to be the officers borne on the divisional cadre.

4. In this view of the matter, the transfer order contained in Annexures 4 and 4/1 are bad in law and are hereby quashed. However, the appropriate authorities are definitely at liberty to make transfer within the cadre.

5. Application disposed of.