
(2008) 04 JH CK 0086
In the Jharkhand High Court

Kamlesh Kumar Pandey and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 15-04-2008

Acts Referred:

Bihar Education Code, 1961 — Rule 149(D)

Citation : (2008) 2 JCR 717

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Judgement

N.N. Tiwari, J.—The petitioners have challenged their transfer order on the ground that they have been transferred from Inspection Branch to Training Branch. The main contention of the petitioners is that the Training Branch is altogether different and ex-cadre transfer is wholly without jurisdiction.

2. Counter-affidavit has been filed on behalf of the respondents stating, inter alia, that the petitioners' cadre is Sub-ordinate Education Services (Primary Branch) which includes the Head Masters of Basic Schools, Lecturers, Primary Teachers' Training College, Block Education Extension Officer etc. and as such the petitioners' transfer is not an ex cadre transfer. The respondents have relied upon the circulars/instructions issued by the Government regarding the posting and transfer of the officers of the Sub-ordinate Education Service (Annexures-A, B & C).

3. On perusal of the said instructions/ circulars, I find that the posts of Deputy Superintendent of Education, Sub-Inspector, Block Education Extension Officer, Lecturer, Primary Training Education College along with some others are under the same cadre of Sub-ordinate Education Services (Primary Branch).

4. Learned Counsel for the petitioners submitted that separate standards have been laid down for the Elementary Teachers' Training Education by the National Counsel for Teachers Education. According to the provisions, specific qualification and experience for the appointment of Teachers are required, which are not

required for other branch. The petitioners do not possess such qualification and experience and they cannot be transferred to the Training Branch. The impugned order is arbitrary and unjust. The petitioners made representation before the respondents requesting them to consider and pass appropriate order in view of Rule 149(d) of the Bihar Education Code and the provisions of the N.C.T.E. Act, but the same is still under consideration and no order has been passed.

5. Mr. Manjul Prasad, learned S.C. (L&C) appearing on behalf of the respondents, submitted that the point taken by the petitioners has no relevance as the provision of the N.C.T.E. Act does not deal with the power of transfer and posting of the Government. The petitioner's representation altogether raises different point which will be considered by the competent authority and appropriate order shall be passed. Learned Counsel submitted that so far as the power of the Government to transfer its employees is concerned, the Government has power to transfer its employees. In the instant case, the petitioners being the members of the Sub-ordinate Education Services, their transfer is within the cadre and the same cannot be held illegal,

6. I have heard learned Counsel for the parties and considered the facts and materials on record. The respondents have brought on record the provisions and circulars to show that the Instructors of Primary Teachers Training Colleges, the Block Education Extension Officers and the Head Masters of the Basic Schools along with others are of the same cadre. I, therefore, find no merit in the stand of the petitioners that their transfer has been made to a post of different cadre. However, since the petitioners have raised the point that in view of Rule 149(D) of the Bihar Education Code and the provisions of the N.C.T.E. Act, the petitioners do not possess the requisite qualification and they may be in difficulty in future, it is on the concerned authority to consider the same and pass appropriate order.

7. Mr. Manjul Prasad, learned S.C. (L&C), submitted that the petitioners' representation is still pending for consideration and disposal by the competent authority.

8. Considering the above, the Director, Primary Education, Human Resources Development Department, Government of Jharkhand, Ranchi (respondent No. 3) is directed to consider the petitioner's representation and dispose of the same by a reasoned order within a period of six weeks from the date of receipt/production of a copy of this order. If the petitioners have not already been relieved, they shall not be relieved until disposal of their representation by the Director, aforesaid.