

(1992) 09 PAT CK 0017

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4508 of 1992

Mrs. Indu Srivastava

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 30-09-1992

Acts Referred:

Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981 — Section 3(1)
Constitution of India, 1950 — Article 14

Citation : (1993) 1 PLJR 372

Hon'ble Judges : S.B. Sinha, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : Ganesh Prasad Singh and Shivaji Pandey, for the Appellant; Rajendra Pd. Singh and B.N. Singh for the State, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha and G.C. Bharuka, JJ.—This petition is directed against an order dated 7.5.1992 passed by the Director Secondary Education (Respondent no. 2) whereby the respondent No. 4 has been deputed as Headmistress at Mahila Shilp Kala Bhawan, Muzaffarpur as contained in Annexure-1 to the writ application. The fact of the matter lies in a very narrow compass.

The aforementioned school was nationalised u/s 3 (1) of the Bihar Non-Government Secondary School (Taking over of Management and Control) Act, 1981. The post of the Headmistress of the said school fell vacant on 30th April, 1992. The petitioner became Incharge Headmistress of the said school with effect from 1.5.1992. The respondent No. 4 was the Headmistress of the one Project Girls High School situated at Kanti.

2. By reason of the impugned order she has been transferred to the present school. The petitioner has filed a supplementary application wherein it has inter alia been contended that the aforementioned impugned order was passed malafide on the basis of political parivis made by one Shri Rajani Ranjan Sahu

member of Parliament and Dr. Ranjan Prasad Yadav another Member of Parliament.

3. According to the petitioner the said members of Parliament wrote letters to the Minister of Education on 1st May, 1992 and 5th May, 1992 whereby he was requested to transfer the respondent No. 4 to the School in question. The said letters are contained in Annexures 11 and 12 to the supplementary application.

4. From a perusal of Annexure 12, it appears that the Minister on the body of the said letter itself directed the Director Secondary Education to depute the respondent No. 4 in the said school and pursuant thereto a note was given by the Director on 6.5.1992 purported to be addressed to one Shri Sharma that the same be done on the said day.

5. The petitioner has further filed a supplementary affidavit alleging therein that the respondent No. 4 is a resident of Muzuffarpur Town.

6. In this case a counter affidavit has been filed wherein it has been stated by the respondents 4 that pursuant to the impugned order she had been working Headmistress of the aforementioned school from 11.5.1992. It has further been submitted that the respondent No. 4 is in the cadre of Headmistress whereas the petitioner in the cadre of an Assistant Teacher and, thus he has no locus standi to maintain the writ application.

7. In a rejoinder filed to the said counter affidavit, it has been contended by the petitioner that she is likely to be promoted to the post of Headmistress against the 80% of the promotional quota and thus she has a right to continue as Headmistress of the school in question.

8. It has further been submitted that the order of transfer of respondent No. 4 was against the Government Assurances given on the floor of the Assembly on 20.3.1991 to the effect that such teachers who are in the promotional list of 80% vacancies, they will continue as the Acting Headmaster/Headmistress of the School till they are granted regular promotion.

9. The petitioners in support of the aforementioned contention has annexed a copy of the order dated 11.6.1992 passed in CWJC No. 4025 of 1992. The said order is contained in Annexure-13 to the supplementary application.

10. Mr. Ganesh Prasad Singh, Learned Counsel appearing on behalf of the petitioner has raised a number of contentions in support of this application.

The Learned Counsel firstly submitted that from a perusal of Annexures 11 and 12 to the writ application as it is manifest that the respondent No. 4 was transferred in the school by political parivi, the same be held to be bad in law.

11. It has further been submitted that in view of the fact that the Minister of Education has given an assurance to the effect that those persons who are on the promotional list would not be transferred to another school and would be allowed to continue as Acting Headmistress of the School, the impugned order

must be held to be against the aforementioned assurance made on the floor of the assembly.

12. The Learned Counsel next contended that in any event as the petitioner is a resident of Muzaffarpur District she is not entitled to be posted in the school in question as the same is violative of the provisions contained in Rule 12 of the 1983 Rules.

13. The Learned Counsel in support of these contentions apart from Annexure-13 to the aforementioned supplementary application has also placed reliance upon a decision of this Court in Janardan Prasad Singh v. State of Bihar and others in CWJC No. 4033 of 1992 disposed of on 17.7.1992.

14. Mr. Rajendra Prasad Singh Learned Counsel appearing on behalf of the respondent No. 4, on the other hand, submitted that the petitioner has no locus standi to question the order of transfer/deputation passed in favour of the respondent No. 4 as he is in the cadre of an Assistant Teacher.

15. The Learned Counsel in this connection has relied upon an order of the Supreme Court in Dr. R. N. Singh v. State of Bihar Civil Appeal No. 2520 of 1989 and Civil Appeal No. 2694 disposed of on 14th December, 1989 as contained in Annexure-A to the counter Affidavit.

16. The Learned Counsel further submitted that deputation of a Headmistress of a Project School to a Nationalised School is not illegal.

17. The Learned Counsel in this connection has relied upon a decision of this Court in Smt. Chinta Kumar v. The State of Bihar and others in CWJC No. 139 of 1991 disposed of on 17th July, 1992.

18. There cannot be any doubt that the petitioner is an Assistant Teacher, she may or may not be promoted to the post of Headmistress. The respondent No. 4 on the other hand, admittedly is in the cadre of Headmistress.

19. This aspect of the matter has been dealt with by the Supreme Court in R. N. Singh v. State of Bihar and others in Civil Appeal No. 2520 and 2694 of 1989. It appears that the aforementioned case arose out of an order dated 2.3.1989 passed in CWJC No. 2175 of 1989 (Jai Kishore Singh v. State of Bihar) wherein an order of transfer was questioned on the ground of malice in law as the same was passed by the Minister of Education of the competent authority i.e. the Director of Education.

20. It was held that the Minister Incharge being a higher authority, should not have passed that order of transfer as the Director is the competent authority to pass an order of transfer on the recommendations of the Establishment Committee. It was therefore, held that the order of transfer of respondent No. 3 thereof was stricken by malice in law.

21. Shri R. N. Singh who was respondent No. 3 in the aforementioned case filed the aforementioned Civil Appeal and the Supreme Court by an order dated

14.12.1989 held as follows :?

Ram Nandan Singh in Civil Appeal No. 2520 of 1989 was a Headmaster in the Kamla Devi High School. He apprehended danger to his life in view of surrounding naxalite movement. He made a request for his transfer. The District Education Officer recommended his case to the Director who transferred him from Kamla Devi High School to Rajarshi Vidya Mandir Aurangabad. It was a vacant post. Respondent No. 3 who is teacher in the said school challenged that transfer before the High Court. The High Court accepted the petition and quashed the transfer. It was observed that the Director himself did not apply his mind but he was guided by the instruction from the Hon"ble Minister.

The High Court in our opinion ought not to have entertained the petition at the instance of respondent who has no locus standi to challenge the transfer. The respondent was neither displaced by the order nor affected by any other means. The High court was entirely in error in interfering with transfer.

We, therefore, allow the appeal and reverse the order of the High Court. In the view that we have taken, SLP are allowed setting aside the respective impugned orders thereunder.

22. The aforementioned decision of the Supreme Court was followed by a division Bench of this Court (one of us S. B. Sinha, J. is a member in CWJC No. 139 of 1991 wherein also an order of deputation of a Headmaster from a project School to Nationalised School was in question)

23. In that case the private respondent was deputed for a period of one year. It was held therein that although an employee cannot be transferred from one cadre to another cadre without his consent, but can be posted in a different cadre with consent and thus such order of deputation cannot be said to be illegal.

24. In this view of the matter, it must be held that the petitioner has no locus standi to challenge the order of deputation of respondent No. 4 as contained in Annexure-1 to the writ application.

25. It is true that the Minister of Education gave an assurance on the floor of the legislative assembly to the effect that those teachers who are likely to be promoted would be allowed to continue in the school as Headmaster. Headmistress but apart from the fact that such assurance on the floor of the house cannot be enforced in a court of law, the petitioner is yet to be promoted to the post of Headmistress. The matter relating to the promotion to the posts of Headmaster is pending before the State of Bihar for a number of years. It is not certain that when such orders of promotion would be issued. Uptil now the petitioner has merely a chance of promotion. Till she is promoted to the post of Headmistress, she would continue to be in the cadre of Assistant Teacher.

26. However, we are constrained to take note of the fact that the matters relating to transfer of the teachers of a Nationalised School are governed by Bihar Nationalised High Schools (Service Conditions) Rules. 1983.

Rule 12 of the said rules governs the case of transfer.

27. In terms of Rule 12 (2) (Gha) and (dha) a proviso has been added that no Headmaster shall be posted in his home district except in a case where sufficient number of lady teachers are not available and in such cases as far as possible the embargo of porting of Headmaster/Headmistress in his/her home District shall not be operative.

28. Prior to the issuance of the said rules also a notification dated 21st February, 1985 had been issued and in terms of Clause (4) thereof, it was provided that no teacher shall be posted in his home block but he can only be posted during two years of his service immediately prior to his retirement.

The State should have followed the said principles.

29. It is further evident that the impugned order has been passed by the Minister of Education at the instance of some members of Parliament.

30. It has been noticed by this Court in numerous cases that such illegal orders of transfer are passed by the Director of Education at the behest of the Minister of Education who in turn does so upon succumbing to the political pairvis.

In Janardan Prasad Singh's case (supra) a division Bench of this Court observed as follows :?

Although a representative of the people entitled to bring any matter to the notice of the Minister concerned, it does not stand to any reason as to how the Minister of Education without calling for any report from the Director of Primary Education and without considering the materials on records and passed an order on the body of the said letter dated 16.7. 1988 (Annexure-8 to the counter affidavit) itself. Similarly after the order dated 27.12.1991 was passed in favour of the petitioner (Annexure-1 to the writ application), the respondent No. 4 filed a representation. The case of respondent No. 4 case was thereafter sponsored by one Kedar Nath Prasad M.L.A. dated 31.1.91 (Annexure-5) and on the body of the said letter, the Minister of Education made an endorsement asking the Director of Education to act in terms of the said recommendations Political pairvavi made on behalf of the respondents did not stop there. From Annexure-6, it appears that Shri Tuls Das Mehta, Minister of Human Resources Development Department to allow the respondent No. 4 to continue to act as Headmaster and suprisingly the Minister again made an endorsement on 6.3.1992 on the body of the said notification directing the Director Education to allow the respondent No. 4 to continue to act as Acting Headmaster till he attains the age of superannuation.

this Court times without number has deprecated such acts on the part of the Ministers in no uncertain terms, but despite the same, the Ministers easily fall prey to political parivis. Such action on the part of the men in power depict a sordid state of affairs. The State should be run by rule of law and not by rule of men.

In the instant case, from the facts as noticed hereinbefore, it is evident that the Minister of Human Resources Development Department had been making endorsements on the body of all the representations apparently without any application of mind. Such mindless orders are nullities. He, while making an endorsement probably did not even remember his earlier directions. Further such orders on the note-sheets and/or letters of M.L.A.'s or Ministers of other departments cannot be said to be the orders passed in terms of the provisions of the Constitution. They are fit to be ignored.

It appears surprising to us that the Minister concerned pass such orders on political pairvies made to them which is done evidently on political considerations and without taking into consideration the requirements of law. We express our anguish over such acts of the Minister. It is unfortunate that despite adverse comments of this Court of law, the Ministers do not even care to change their attitude.

We only hope and trust that in future good senses will prevail upon the concerned Minister of Education and he would refrain from passing such mindless orders and would allow the statutory authority namely the Director of Secondary Education to discharge his statutory duties.

31. It is one of those cases where the Minister of Education has again fallen prey to political pairvies. The Minister of Education should bear in mind that he has taken oath to uphold the rule of law. Orders of transfer/deputation which are passed on political pairvies, not only bring a bad name to the administration itself but also in effect and substance is subversive to the rule of law. We are further constrained to observe that despite our observation made in several cases, such illegal order of transfer/deputation are being passed. It is now well known that all State action must be fair and reasonable so as to conform to the provisions of Article 14 of the Constitution of India.

32. We hope and trust that the Director of Secondary Education would place this matter before the Minister of Education and shall take all steps to undo the wrong.

33. We may further observe that orders of deputation should be passed on administrative exigencies and upon taking into consideration the relevants facts. For the reasons aforementioned, this application is dismissed with the aforementioned observations and directions but without any order as to costs.