

(2007) 11 PAT CK 0058
In the Patna High Court

Nagendra Prasad		APPELLANT
	Vs	
The State of Bihar and Others		RESPONDENT

Date of Decision : 13-11-2007

Acts Referred:

Citation : (2007) 11 PAT CK 0058

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Navin Sinha, J.—Heard the learned Counsel for the petitioner and the learned Counsel for the State.

2. The petitioner is aggrieved by the order dated 24.9.2007 transferring him from Middle School Khasganj in the District of Nalanda to the Middle School at Ben.

3. Learned Counsel for the petitioner submits that in April 2007 he was transferred from Middle School Khasganj in the District of Nalanda to the Primary School at Hanumangarh, Chandi in the District of Nalanda. Aggrieved by the fact that the order of transfer was not in accordance with the Primary Teachers Transfer Regulation 2006, the petitioner came to this Court in CWJC No. 5731/2007 in as much as the petitioner had given three options for transfer and that he was transferred ignoring his option to a fourth place. That the post was normally not transferable except in two conditions:

(a) Mutual transfer of teachers in the same category;

(b) A maximum permissible of two transfers on option but that a minimum gap of five years between exercise of two options.

4. This Court by its order dated 17.7.2007 noticed that the petitioner had submitted his representation in respect of the same before the District Superintendent of Education, Nalanda and therefore disposed off the writ

application with a direction for disposal of the representation. The impugned order has been passed in response thereof and again the option of the petitioner had not been considered and he had not still been given one of the three options in his posting.

5. Learned Counsel for the State sought to support the impugned order of transfer from the Rules to submit that the petitioner had been transferred in the interest of administration facilitating imparting of education to the students.

6. The Rules of 2006 purported to regulate the absence of teachers due to existing transfer policy affecting imparting of education by them, meaning thereby their absence from class room. This Court in similar writ application being CWJC No. 8052 Of 2007 has noticed that in Service Jurisprudence, the place of posting of an employee is the discretion of the employer. To invite an application for a choice posting militates against this basic principle. According to the Service Jurisprudence the transfer and posting was discretion of the employer to be exercised in the best interest of administration. Notwithstanding the same Rules have been framed by the State Government inviting the teachers to give option for their choice place of posting. Quite obviously a teacher who submits his application for his choice positing is expected to make rounds of the corridors of the Secretariat to ensure that his application for transfer is accepted. The inevitable result is his absence from the class room, which is what the Rules purport to redress,

7. It is admitted position that geographical distance between Khasganj and Ben, both in the district of Nalanda is hardly 30 K.M.

8. This Court finds no merit in this application. The same is accordingly dismissed.