
(2011) 02 PAT CK 0089
In the Patna High Court
Case No : CWJC No. 8248 of 2010

Narendra Kumar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-02-2011

Acts Referred:

Citation : (2011) 02 PAT CK 0089

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Kr. Tripathi, J.—Heard Learned Counsel for the Petitioner, Learned Counsel for the State as well as private Respondent No. 7. This writ application has been filed for quashing of the office order issued vide memo No. 50 dated 28.1.2010 contained in Annexure-1 by virtue of which private Respondent, namely, Smt. Nilam Singh has been posted as Headmistress of Mahavir Inter School, Gaya at the cost of the petitioner. He also wants that his claim should be considered by the Respondents in light of the fact that he is the seniormost Headmaster and he should be given due priority in terms of 2006 Rules in matters of choice transfer for which application had been made by the Petitioner.

2. From the materials brought on record it seems that the Petitioner has been at loggers head with one Surith Gahlaut with regard to the posting to the same school in question which led to filing of C.W.J.C. No. 14773 of 2009 which came to be disposed of on 20.11.2009. The order passed by the learned Single Judge is Annexure-6 to the writ application.

3. After disposal of the above writ application, matter was considered by the Respondent authorities and Annexure-1 came to be passed posting the private Respondent to the said school which has hurt the Petitioner now and has compelled him to move this Court afresh on the issue.

4. From the materials which have now been brought on record by the private

Respondent including the decision of the Establishment Committee also annexed by the Petitioner with his supplementary affidavit, it is evident that the case of the Petitioner was considered in totality alongwith the claim made by the private Respondent for a request transfer. Case of the private Respondent was given priority in terms of the Rules, specially Rule 2(kha) of 2006 Rules which is reproduced herein below:

(kha) Aichchik asthanantran hetu yadi kisi vidyalaya mein ek pad ke virudh ek se adhik aavedan parapt hota hai to varyatam shikshak ko wohan asthanantrit kiya jayega. Variyata ka aadhar niyukti ki tithi hogi. Viklang evam mahila ko prathamikta di jayegi.

5. Claim of the Petitioner is that the private Respondent could have been given priority provided she was senior, to the present Petitioner because seniority was the primary consideration in terms of the Rules for such transfer but admittedly private Respondent is junior to the Petitioner and, therefore, she cannot usurp the position at the cost of the Petitioner.

6. A reading of the above Rule would show that priority has to be given to the physically handicapped and woman in such request transfer. If seniority was the issue for such request transfer, then there would have been no occasion for framers of the Rules to include the clause that physically handicapped and woman have to be given priority because if seniority was the only criteria then it had already been talked of in the earlier part of the Rule. The fact that the Rule makers have categorically indicated that despite seniority, physically handicapped and woman will be given priority by itself indicates that seniority is not the only criteria when it comes down to claim of a woman or physically handicapped teacher.

7. Keeping the above Rules in mind, an order of transfer effected by Respondent No. 4, in the background indicated in the observation made by the Establishment Committee as well as the transfer order as such contained in Annexure-1 does not deserve to be interfered with. This writ application has no merit. It is dismissed.