

(1992) 11 PAT CK 0034

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10836 of 1992

Rabi Shankar Shrivastava

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 27-11-1992

Acts Referred:

Constitution of India, 1950 — Article 162, 226, 309

Citation : (1993) 1 PLJR 705

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

Bench : Division Bench

Advocate : Mahesh Narayan Parbat, for the Appellant; D.K. Singh, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—In this writ application, the petitioner has prayed for quashing of memo no. 1024 dated 18.7.1992 as contained in Annexure 1 to the writ application, whereby the petitioner has been transferred from Middle School, Semaria West Revilganj to the Middle School, Benaut Ekma, Saran. The petitioner was working as Headmaster of Middle School, Semaria West Revilganj. He joined the said post on 8.5.1989. He was transferred to Middle School, Benaut Ekma by order dated 18.7.1992. The petitioner has stated that after issuance of Annexure-1, he went to join the post on 3.8.1992, but, he was not allowed to join the same as no post of Head-Master was vacant in the said School. The petitioner has contended that Kailashpati Singh who was working as Head Master of the said School has also made representation to the aforementioned effect. Thereafter a correction slip was issued by the District Superintendent of Education, Saran on 10.8.1990 as contained in Annexure-5 to the writ application, whereby the petitioner was directed to join Girls Middle School, Benaut Bathani Tola. The petitioner has contended that as he has not completed the period of five years and in view of the policy decision of the State of Bihar to stay the general and mass transfer, no order of transfer could have

been passed. The petitioner has also contended that the District Superintendent of Educating Saran, Chapra by letter no. 1436 dated 26.9. 1992 has stayed the transfer orders as contained in Annexure-1 to the writ application. According to the petitioner, letter no. 1024 dated 18.7.1992 whereby the petitioner has been transferred has not been stayed.

2. From a perusal of the order dated 18th July, 1992 as contained in Annexure-1 to the writ application, it appears that three Headmasters have been transferred on administrative exigency. By reason of the impugned order dated 10.8.1992 a correction slip has been issued to the effect that although the petitioner was in fact, transferred to the Girls' Middle School, Benaut Bathani Tola in the village of Ekma but in the order of transfer only Middle School, Benaut, Ekma has been mentioned by mistake.

3. It is now well known that transfer is an incidence of service. There cannot be also any doubt that the State as an employer is entitled to transfer its employees from one place to another. No employee has any fundamental or legal right to be posted at a particular place. The State Government, however, in exercise of its powers under proviso appended to Article 309 of the Constitution of India or by reasons of provisions of an Act or statutory rules or in absence thereof by issuing executive instructions in exercise of its powers under Articles 162 of the Constitution of India lay down the general guidelines based on a rational policy relating to the matters of transfer. Such guidelines, however, had been held to be directory in some of the decisions but it is also well settled that even directory provisions are meant to be complied with. It is also well settled that a mistake can always be corrected by the State. As the petitioner was transferred on administrative exigency, it has been held by this Court as also by the Supreme Court of India in a number of decisions that no person has a right to continue on a particular post. It has further been held that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, normally does not interfere with such orders of transfer. Reference in this connection may be made to B. Varadha Rao Vs. State of Karnataka and Others, , Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani, , Dr. Bindu Shekhar Singh and ors. v. The State of Bihar and ors. [(1991) 2 B.L. J.R. 1090 : 1991 (2) PLJR 422] and Bank of India Vs. Jagjit Singh Mehta, and Shanti Kuraari v. Regional Deputy Director, Health Services, Patna Division, Patna (AIR 1981 Sc1577 : 1982 PLJR (SC) 6).

For the reasons aforementioned, there is no merit in this writ application, which is accordingly dismissed. G.C. Bharuka, J.

I agree.