
(2005) 01 JH CK 0008

In the Jharkhand High Court

Case No : W.P.S. No. 6200, 6287, 6304, 6345, 6346, 6348, 6445, 6446, 6457, 6463, 6501, 6594 and 6604 of 2004

Rajendra Prasad Singh and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 06-01-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 2 BLJR 975 : (2005) 1 JCR 355

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Sumir Prasad, B. Yadav, S.K. Pandey, R.B. Singh and M.M. Pan, for the Appellant; H.K. Singh SCI, H.K. Mehta, G.A., R.R. Mishra, GP-II, Manjul Prasad, Sheela Prasad, GP-IV and S.K. Verma, SC (mines), for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In all these writ petitions since common question of law and facts are involved, they have been heard together and are disposed of by this common order.

2. In all the writ applications the petitioners have challenged the order dated 6.11.2004 and 17.11,2004 issued under signature of Regional Deputy Director of Education, South Chotanagpur Division, Ranchi, Santhal Pargana Division, Dumka and Chiabasa respectively whereby the petitioners, who are the Assistant Teachers, have been transferred from one school to another school. The orders challenged by the petitioners in all writ petitions and the authorities issuing the same are given below :

Case No. Date of order Issuing Authority WPS 6200/2004 6.11.2004 Regional Deputy Director of Education, SouthChotanagpur Division, Ranchi. WPS 6287/2004 6.11.2004 Regional Deputy Director of Education, South Chotanagpur Division, Ranchi. WPS 6304/2004 6.11.2004 Regional Deputy Director of Education, South Chotanagbur-cum Chaibasa Division, Ranchi. WPS

6345/2004 17.11.2004 Regional Deputy Director of Education, Santhal Pargana, Dumka. WPS 6346/2004 17.11:2004 Regional Deputy Director of Education, Santhal Pargana, Dumka. WPS 6348/2004 17.11.2004 Regional Deputy Director of Education, Santhal Pargana, Dumka. WPS 6445/2004 6.11.2004 Regional Deputy Director of Education, South Chotanagpur Division, Ranchi. WPS 6446/2004 6.11.2004 Regional Deputy Director of Education, South Chotanagpur Division, Ranchi. WPS 6457/2004 6.11.2004" Regional Deputy Director of Education, South Chotanagpur Division, Ranchi. WPS 6463/2004 6.11.2004 Regional Deputy Director of Education, South Chotanagpur Division, Ranchi. WPS 6501/2004 6.11.2004 Regional Deputy Director of Education, South Chotanagpur Division, Ranchi. WPS 6594/2004 6.11.2004 Regional Deputy Director of Education, South Chotanagpur Division, Ranchi. WPS 6604/2004 6.11.2004 Regional Deputy Director of Education, South Chotanagpur Division, Ranchi.

3. The petitioners have challenged the aforesaid orders mainly on the ground that the Jharkhand Nationalized Secondary Schools (Service Conditions), Rules, 2004 has been promulgated vide notification No. 3109 dated 5.11.2004 which deals with the provisions and procedures with regard to transfer of Headmasters/ teachers/ non-teaching staff working in different nationalized schools in the State of Jharkhand. Petitioners' case is that according to the aforesaid Rule of 2004 the cadre of Assistant Teachers will be State Cadre and the Directorate Level Education Establishment Committee is the competent authority to take decision in respect of transfer of teachers. The Regional Deputy Director of Education, South Chotanagpur Division, Ranchi, Dumka and Chaibasa have, therefore, no jurisdiction to issue the impugned orders of transfer.

4. Respondent's case, on the other hand, is that the impugned orders of transfer have been passed on the basis of the decision taken by the Divisional Education Establishment Committee in their meeting dated 4.11.2004. It is stated that vide notification No. 3169 dated 5.11.2004 the Rules of 2004 was framed wherein it is specifically provided that the said Rules shall come in force from the dated of it's publication in the official Gazette. The impugned orders of transfer were issued on the basis of the decision taken on the basis of existing Rules.

5. I have heard learned counsels appearing for the petitioners and also learned counsels appearing for the respondents- State.

6. From perusal of the letter 5.2.2004 issued by the Secretary, Human Resources Department, Government of Jharkhand, it transpires that a direction was issued regarding subject wise posting of teachers in Nationalized High Schools in the State of Jharkhand. On the basis of such direction the Divisional Education Establishment Committee took a decision to that effect. In the undivided State of Bihar, Rule of 1997 was in force and after creation of the State of Jharkhand, the same was adopted by the State of Jharkhand, Human Resources Development Department vide notification No. 259 dated 5.2.2004. In the said Rule the Divisional Establishment Committee is the competent authority for transfer and

posting of teachers in the nationalized schools. The said Rule of 1997 so adopted by the State of Jharkhand is still in force, inasmuch as the new Rule of 2004, referred to hereinabove, has not yet been published in the Gazette. Admittedly, when the impugned orders of transfer and posting were issued from the Divisional Level, the new Rule of 2004 was neither in force nor the same is in force today. It has not been disputed by the petitioners that under 1997 Rules so adopted by the State of Jharkhand the Divisional Education Establishment Committee is the competent authority to take decision in the matter of transfer and posting of Assistant teachers.

7. Besides the above, transfer and posting of the teachers including the petitioners has been made" considering their requirement in the schools subject-wise and also considering the sanctioned strength of teachers in different schools. The impugned orders of transfer have, therefore, been issued in accordance with the Rules in force and it does not appear that the action of the respondents is arbitrary or mala fide. It is well settled that transfer is an incidence of service and it needs no interference unless it is mala fide or service rules prohibits such transfer or the authorities who issued the order are not competent to pass such order. In such circumstances I do not find any strong reason to interfere with the impugned order of transfer.

8. For the aforesaid reasons, no relief can be granted to the petitioners. These writ petitions are, accordingly, dismissed.