

(2022) 11 PAT CK 0084

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 12296 Of 2021

Ramesh Lal

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 21-11-2022

Acts Referred:

Citation : (2022) 11 PAT CK 0084

Hon'ble Judges : Sanjeev Prakash Sharma, J

Bench : Single Bench

Advocate : Gyan Prakash, Prashant Pratap

Final Decision : Dismissed

Judgement

1. Heard the parties.

2. The petitioners by way of this writ petition have prayed as under:-

"1. (I). For quashing Memo No. 1553 dated 30.06.2021 issued by the Director, Schedule Caste and Schedule Tribes Welfare Department, Govt. of Bihar transferring the petitioners and other Primary Assistant Teachers pre-maturely, in gross violation of concern circulars of the State Govt. as well as by adopting the pick and choose policy.

II. For holding that the pre-matured enmasse transfer of the petitioners within one year by adopting pick and choose method is harsh measure to disturb the teaching administration of SC & ST Residential Schools and the object, therefore can not be achieved contrary to the duly notified circulars of the State Govt. leading provision of which provide transfer after 3 years of service.

III. For holding that this transfer order is unsound as the teachers who have been posted at their present school for more than 3 years have not been transferred as they have treated as privileged teachers for the reason best known to the concern authorities whereas the petitioners who have not completed 1 or 2 years have been transferred contrary to the provision of

concern circular of the State Govt.

IV. For any other reliefs for which the petitioners be find entitled to in the facts of the case.”

3. Admittedly, all the petitioners were working as Primary Assistant Teachers in residential Schools, running within the SC/ST Welfare Department, Government of Bihar and were transferred from one School to Another vide order dated 30th June, 2021. The petitioners have already joined on their new place of posting. They have come before this Court alleging that the transfer orders have been made by hand putting some of the person alone, while leaving several others who have remained for more than 03 years in a particular School. It is submitted that the Rules applicable to the other Primary Schools relating to transfer would also be applicable to the Bihar Government Ambedkar Residential School Teachers Regulations.

4. Learned counsel submits that the impugned order of transfer, seeks to transfer when almost 75% of the teachers were posted, who had not completed 3 years of their tenure at their previous place of posting before transfer orders were passed. The petitioners, therefore, prayed that they should be allowed to continue at their previous place of posting.

5. Learned counsel submits that there is no appellate administrative exigency of transfer of the petitioner within short spam of 01 year or 02 years.

6. Counter affidavit had been filed and it has been stated that there are 87 residential Schools in the different Districts across the State of Bihar as per Right to Education Act. Ratio is to 30:01 is required to be achieved for providing quality education to the students. The schools are meant for providing education to the weaker section residing in disadvantaged area of the State. It is further stated that the number of teachers in the residential schools are only 316 against the total strength of 672 teachers that is around 47% of the total strength. There are 11 girl's residential school, where there is not a single female teacher, while in 30 residential schools only two or less teachers are posted against sanctioned strength of 7. At the same time in some residential schools (about 15 in number) where there are 6 or more than 6 teachers posted.

7. In view thereof, the decision was taken to rationalize the teachers strength and post them proportionately in all the Schools with an attempt as far as possible to post at least one female teacher in girls residential school. In view thereof, the order dated 30th June, 2021 was passed, whereby postings have been made in all the Schools.

8. Learned counsel for the petitioners has filed a reply to the counter affidavit stating therein that there are still some schools where there are teachers were working for more than three years. Several lady teachers have been transferred to boys residential schools. It is also submitted that some teachers were transferred from girl's school to boys school in order to adjust them. It is also

stated that while petitioner nos. 1 and 2 were transferred prematurely. In their place three teachers have been transferred to Nalanda from Sasaram.

9. I have considered the submission, the post of teachers in the residential school is transferable as per Regulation 14 of the said Regulations. Thus, transfer is a condition of service which can be applied considering the exigency of service as held in the case of Dr. Nagarao Shivaji Chavan Vrs. Dr. Sunil Purushottam Bhamre & Ors. 2019 (13) SCC 788. The petitioners have already joined on their new place of posting in the year 2021. In case of Shilpi Bose & Ors. Vrs. State of Bihar & Ors. as reported in 1991 Supp (2) SCC 659, the Hon'ble Supreme Court has settled the law that person holding transferable post are liable to be transferred.

10. At this stage, no interference is required to be made in the transfer orders. However, it is made clear that the petitioners may make appropriate representation to the authorities and if their grievances are found to be genuine, the authorities shall take steps to post them at their place of posting as desired.

11. The writ petition is accordingly dismissed with the aforesaid observations.