

(2014) 06 PAT CK 0037

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 13840 of 2013

Ranjan Kumar

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 05-06-2014

Acts Referred:

Constitution of India, 1950 — Article 21(A)

Citation : (2014) 3 PLJR 253

Hon'ble Judges : Mihir Kumar Jha, J

Bench : Single Bench

Advocate : Avanindra Kumar Jha, Advocate for the Appellant; Kundan Bhadur Singh, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Mihir Kumar Jha, J.—Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application reads as follows:-

Issuance of an order, Direction or a Writ in nature of Mandamus commanding the Respondent Authorities concerned to allow and grant the posting/transfer to the petitioners at the place/school of their choice (preference) in view of the provisions of Rule 3 of "Bihar Nationalised Elementary School Teachers-Transfer Rules, 2006" and guidelines issued in this regard by the Director, Primary Education, Govt. of Bihar, vide Memo No. 576, dated 11.06.2011.

Issuance of an order, Direction or a writ in nature of Mandamus commanding the Respondent No. 2, the Deputy Development Commissioner, Begusarai to dispose of the Appeal Preferred by the Petitioners against the order of posting (which has resulted in the transfer of the petitioners), issued as the follow up process of promotion.

3. The facts giving rise to this writ application lie in a very narrow compass. The petitioners are the teachers of primary Schools in the district of Begusarai. They

were granted promotion in the graduate trained pay scale w.e.f., 14.11.2012 in terms of Bihar Nationalized Elementary Schools Teachers Promotion Rules, 2011 (hereinafter referred to as 2011 Promotion Rules). According to them at the time of their posting upon promotion they had given their choice for posting in terms of Rule-3() of Bihar Rajaya Rajkiyakrit Prarambhik Vidyalaya Shikshak (Asthanantaran) Niyamawali-2006 (hereinafter referred to as the 2006 Transfer Rules), but they were given posting on promotion at a far distant places.

4. In this regard, the case of petitioner no. 1 is that he was working as an assistant teacher in Middle School Ramdiri, Matihani and when his promotion was under consideration, he had given his option for his posting after promotion in the Middle School Ramdiri, Matihani itself as the post of graduate trained teacher was available and vacant in the same School. According to petitioner no. 1, when his promotion order was issued on 30.12.2012, he was not given the place of his choice posting in the Middle School Ramdiri, Matihani and in fact was transferred 50 kilometers away to upgraded Middle School, Sughran, Dandari.

5. Similarly, as with regard to petitioner no. 2, it has been stated that prior to his promotion in the B.A. trained pay scale, he was working as an assistant teacher in Middle School Mahana, Barauni and when he too had given his option for his being posted on promotion in Upgraded Middle School Singhaul, Barauni, he was not given such choice place of posting even when there was also vacancy in the B.A. trained pay scale in the same School i.e., Upgraded Middle School Singhaul, Barauni, and he was transferred on promotion to Upgraded Middle School, Chak Kanaya, Bhagwanpur at a distance of 33 kilometers from his original Middle School Mahana, Barauni.

6. The case of petitioner no. 3 is that he was working as an assistant teacher in Middle School Paspura, Begusarai and when his promotion was under consideration he too had given his option for his transfer to Middle School Korias, Begusarai but again he also was not given his choice place of posting and was transferred to Upgraded Middle School, Kusmahaut, Begusarai.

7. In this regard, the petitioners have mainly complained that their such transfer is in violation of the provisions contained in Transfer Rules, 2006 and the guidelines issued by the Director, Primary Education in his letter dated 11.06.2011. According to learned counsel for the petitioner the post of teacher as per Transfer Rules, 2006 is not transferable and such transfer can be made only on the request of the teacher concerned. Mr. Purushottam Kumar Jha, learned counsel for the petitioner has also laid stress that the order of transfer of the petitioners upon their promotion was also contrary to the policy decision taken by the Director, Primary Education but in his circular dated 11.06.2011 wherein he had made it clear that upon promotion, posting in a different place should only be made if there was no vacancy on the post of B.A./B.Sc trained teacher in the School in question of the concerned teacher sought to be promoted and posted.

8. Mr. Jha, in this regard has also submitted that when the petitioners had filed their appeal before the Deputy Development Commissioner in terms of Transfer Rules, 2006, the D.E.O. had raised the question of jurisdiction as a result whereof the Deputy Development Commissioner had not passed any order, which in turn would also amount to denial of statutory right of the petitioners.

9. Learned counsel for the State, on the other hand has submitted that the case of the petitioners for a choice posting upon their promotion in terms of 2011 Promotion Rules is simply not maintainable because the posting after promotion has to be made keeping in view the vacancies which are available on the post of graduate trained teachers. He has also submitted that if every teacher would start seeking choice posting at the time of promotion, the whole work of the teaching in the Government primary and middle Schools would collapse. As with regard to the jurisdiction of the Deputy Development Commissioner, in hearing appeal against the order of promotion cum posting, he is of the view that no appeal shall lie against such order before the Deputy Development Commissioner in view of the specific provisions made in 2011 Promotion Rules inasmuch as Rule-18 thereof itself giving jurisdiction only to Regional Deputy Director of Education to hear the appeals.

10. At the outset it must be made clear that this Court is not inclined to interfere with the impugned orders of promotion and posting specially when the petitioners have also complied them and are working in the schools in which they have been posted by order dated 30.12.2012. This Court infact cannot encourage such tendency of the teachers to remain posted at a particular place or in a particular School for years together only because there is a provision in the Transfer Rules 2006 that the post of a teacher is non-transferable. Such privilege to a teacher has been given while he or she is continuing on a particular post as a teacher in particular scale but the moment the question of promotion would arise there cannot be the posting of everyone in the same School.

11. Let it be also kept in mind that in every Government Middle School there is only one post each of graduate trained teacher in Arts and Science and therefore, if every one starts clamouring for posting the same School or in a School of his or her choice where someone has a better claim, the entire right of free education guaranteed under Article- 21(A) of the Constitution of India will evaporate, on account of vacancies on the post of graduate trained teachers being not filled up due to non availability of teachers who may stick to their so called choice of posting at the time of their promotion. The teachers of Primary School of this State will have to realize that their main job is to impart education to those students who are in the age group of 6 to 14 years and who have been guaranteed by the State to have free and compulsory education and therefore, posting in a School for teaching such students by way of ensuring their fundamental rights has necessarily to be given precedence over a statutory right, if any, for claim of a teacher of his post being not transferable.

12. This Court therefore keeping in view of a larger public interest is not

prepared to interfere with the general order of promotion and posting of the petitioners dated 30.12.2012 which is well within the scope of Rule-13 of 2011, Promotion Rules.

13. Reverting to the issue of denial of statutory right of appeal to the appellants in terms of Transfer Rules 2006 this Court is of the considered opinion that the power and jurisdiction of promotion with posting has been vested to District Promotion Committee under Rule-13 of 2011 Promotion Rules, and there is also a forum of appeal against such order of promotion cum posting only before the Regional Deputy Director of Education. This would become evident from a bare perusal of Rule-4, Rule-13 and Rule-18 which reads as follows:-

(underlining for emphasis)

14. The moment this Court would find that there is a special provision made under Rule-13 empowering the District Primary Teachers Promotion Committee, to not only take a decision for promotion but also posting on the promotional post, it will have no difficulty in coming to a conclusion that any decision taken by the Committee of promotion with posting will not be appealable before the Deputy Development Commissioner who is empowered only to redress the grievance of a teacher as with regard to a decision taken in respect of transfer by District Transfer Committee under Transfer Rules, 2006. Let it be noted that in the Transfer Rules, 2006, it is only the transfer of a teacher which is involved and the authority namely, the Deputy Development Commissioner (D.D.C.) has the jurisdiction to take a decision to adjudicate over any decision taken by the transfer Committee which at the district level has to comprise of D.E.O., all Area Education Officers and D.S.E. (now renamed as District Programme Officer, Establishment).

15. In 2006 Transfer Rules, infact there is yet another transfer Committee at the State level for inter district transfer consisting of Director, Primary Education, Inspectors of School cum Deputy Director and the Incharge Deputy Director. Thus, the ambit of transfer under Transfer Rules, 2006, is quite different from the ambit of promotion and posting envisaged in Promotion Rules 2011. In other words, if a person is posted as a Headmaster or as a teacher in a Primary and/or Middle School and is sought to be transferred on administrative ground, he or she can move before Deputy Development Commissioner against such order of transfer inasmuch as there would be of course no appeal in the case of mutual transfer or transfer made on request as would emerge from a bare reading of Rule-3, 5, 6 and 7 of Transfer Rules, 2006 laying down as follows:-

16. Thus, in the background of Rule-3 of Transfer Rules, 2006 if Rule-5, 6 and 7 thereof are read together, it would be clear that they have been confined only to the transfer alone and not promotion followed by posting. This would become further clear from reading of Rule-8 of Transfer Rules 2006 which lays down as follows:-

17. A question would therefore, arise if Rule-7 as with regard to power of D.D.C.

is given unbridled interpretation it would lead to an absurd that even when situation the inter district transfer is taken at the level of Director, Primary Education, the same could be made subject matter of so called appeal before the Deputy Development Commissioner of the district in which the incumbent is working and is sought to be transferred. This however cannot be the intention of the framers of the Rules and therefore, the provision of Transfer Rules, 2006 has to be read harmoniously so as to ensure that it does not destroy or would make Rule 13 read with Rule 18 of Promotion Rules 2011 redundant.

18. It would infact appear to this Court that it is only in the case of transfer of teacher on administrative ground as envisaged under Rule-3 () of Transfer Rules 2006 that a redressal forum is available at the level of Deputy Development Commissioner. The Deputy Development Commissioner however in no view of the matter can interfere in the decision taken by the Promotion Committee which in terms of Rule-13 takes a decision for promotion followed by posting of a teacher. This Court would, therefore, find no flaw in the approach of the District Education Officer, Begusarai objecting to hearing of appeal by the Deputy Development Commissioner, Begusarai as with regard to the impugned order passed on 30.12.2012 inasmuch as it is not an order of transfer but only an order of promotion followed by posting in terms of Rule-13 of Promotion Rules 2011. As a matter of fact, the moment, Promotion Rules 2011 has repealed all earlier provision as with regard to promotion of the primary School teacher, it can be safely inferred that promotion followed by posting would not be a "transfer" so as to make it subject matter of consideration before the Deputy Development Commissioner in terms of Transfer Rules, 2006.

19. In the considered opinion of this Court, any and every decision of promotion followed by posting can be assailed, filed only before the Regional Deputy Director of Education in terms of Rule-18 of 2011, Promotion Rules and as such the appeal filed by the petitioners before Deputy Development Commissioner, Begusarai against their order of promotion and posting would now stand transferred to the concerned Regional Deputy Director of Munger who is hereby directed to dispose of the appeal of the petitioners strictly in accordance with law.

20. The R.D.D.E., Munger would look into the grievance of the petitioners that there were vacancies in their own schools on the post of B.A. trained pay scale inasmuch as it is the case of petitioner nos. 1 and 2 that though for them there were vacancies yet they were not accommodated in their own School or the petitioner no. 3 was not given choice posting. This Court would also give liberty to the petitioners to satisfy the concerned Regional Deputy Director of Education in terms of Rule-18 of 2011, Promotion Rules.

21. The R.D.D.E., Munger while disposing of the appeal of the petitioners would keep in mind the policy decision taken by the Director, Primary Education in his circular dated 19.02.2014, wherein, specific guidelines and instructions have also been given as with regard to deciding the posting after giving promotion to the concerned teacher. This Circular dated 19.02.2014 reads as follows:-

22. Before parting with, this Court would deem it expedient in the ends of justice to direct the State Government to issue an order in terms of Rule-9 of Transfer Rules 2006 as with regard to the power and jurisdiction of the Deputy Development Commissioner in respect of redressal of grievance pertaining to transfer of the teachers vis-?-vis the decision of promotion and posting in terms of Rule-13 of Promotion Rules 2011 so that there is no overlapping and confusion as was sought to be made in the present case at the level of Deputy Development Commissioner, Begusarai in the case of the petitioners.

23. With the aforementioned observation and direction, this application is disposed of.

24. Let a copy of this order be sent to Director, Primary Education for its compliance by all concerned in letter and spirit.