

(2017) 10 PAT CK 0026

In the Patna High Court

Case No : 15856 of 2016

Ratnesh Kumar Singh, Son of Sri Deo Narayan Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 17-10-2017

Acts Referred:

Citation : (2017) 10 PAT CK 0026

Hon'ble Judges : Ahsanuddin Amanullah

Bench : SINGLE BENCH

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioners and the State.

2. The petitioners have moved the Court for the

following reliefs:

"(I) For issuance of an appropriate writ in the nature of CERTIORARI for quashing the letter dated 30.07.2016 issued under the signature of Respondent no. 6 and contained in his memo no. 1002 dated 30.07.2016, whereby and where under in view of the decision taken by the Block Teachers Appointment Committee in its meeting dated 13.02.2016 and after approval of the said proposal by the Respondent no. 6, he has been pleased to issue order of adjustment of the petitioners and others in contravention of the provisions contained under Bihar Panchayat Elementary Teachers (Appointment and Service Condition) Rules, 2012, so far it relates to the present petitioners. (II) For a declaration that if the provisions contained under Sub-Rule-E of Rule-15 of the Bihar Panchayat Elementary Teachers (Appointment and Service Condition) Rules, 2012 (hereinafter referred to as Appointment Rules, 2012), does not permit routing transfer of teachers by the Authorities and option to take transfer has been conferred upon the teachers. Even Sub-Rule- E (vi) of Rule-15 of Appointment Rules, 2012 cannot be exercised by the Block Teachers Appointment Committee for routing transfer of Block Teachers from one school

to another and that too in violation of the provisions contained under the Rules.

(III) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioners would be found entitled under the facts and circumstances of the case."

3. However, during the pendency of the writ petition, as far as petitioners no. 2, 3, 5 and 6 are concerned, their order for transfer were recalled and thus the cause of action not surviving, learned counsel for the petitioners submitted that the writ petition was not being pressed on their behalf.

4. The petitioners were aggrieved by the fact that without following the due procedure prescribed for such transfer, they have been transferred.

5. Learned counsel for the petitioners submitted that as per the Rules, if at all, any adjustment has to be made with regard to teachers from one school to another, an exercise has to be undertaken to determine the student-teacher ratio and thereafter it has to be determined as to where there are surplus teachers and where there are less teachers and further when the shifting is to be made, the requirement is that the juniormost person would be sent under such adjustment. Learned counsel submitted that in the present case, directly on the basis of a letter written by the Pramukh to the respondent no. 6, the whole exercise has been initiated without there being any follow up exercise and straightaway transfer orders have been issued without there being anything on record either showing justification on the basis of student-teacher ratio or the teachers being surplus, and further, the principle and method of making such transfer/adjustment.

6. Having considered the matter, the Court finds that from the pleadings on record, including the counter affidavits filed on behalf of the respondents, there is nothing to controvert the fact

that the procedure as required has not been followed. Rather, learned counsel for the State has submitted that the exercise is required to be done after determining the student-teacher ratio and the number of teachers who may be surplus but carrying out such exercise in the present case not having been stated either in the pleadings or orally before the Court, clearly indicates that the same has not been done. In view thereof, the transfer of the petitioners no. 1, 4 and 7 cannot be sustained.

7. Accordingly, the order impugned transferring the petitioners no. 1, 4 and 7 as contained in Memo No. 1002 dated 30.07.2016, as far as it relates to them, stands quashed.

8. The writ petition stands allowed in the aforementioned terms.

9. In view of the apprehension expressed by learned counsel for the State, it is clarified that the authorities are not constrained from taking action in the matter, including that of transfer/adjustment, as and when the occasion arises, the only rider being that it has to be in accordance with law and the Rules/ instructions issued in this regard by the Government/Competent Authority.