
(1992) 09 PAT CK 0045

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7344 of 1992

Tarkeshwar Dubey and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 30-09-1992

Acts Referred:

Constitution of India, 1950 — Article 162, 309

Citation : (1994) 1 PLJR 523

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

Bench : Division Bench

Advocate : Awadhesh Kr. Mishra, in C.W.J.C. No. 7344 of 1992, A.K. Tiwary, in C.W.J.C. No. 7615 of 1992, Sanjay Kumar Singh, in C.W.J.C. No. 6927 of 1992, Sunil Kumar Singh and Girish Ch. Sharma, in C.W.J.C. Nos. 7370 of 1992, Dilip Kr. Tiwary, in C.W.J.C. No. 4579 of 1992 and Norendra N. Jha, Anisur Rahman and Mithilesh Kumar Rai, in C.W.J.C. No. 7993 of 1992, for the Appellant; K.N. Jain in C.W.J.C. No. 7344 of 1992, J.N. Jha in C.W.J.C. No. 7615 of 1992, R.N.P. Yadav in C.W.J.C. No. 6927 of 1992, S.R. Alam in C.W.J.C. No. 7370 of 1992, S.N. Roy in C.W.J.C. No. 7993 of 1992, for the Respondent

Judgement

S.B. Sinha, J.—In all these writ applications the common question which arises for consideration is as to whether the orders of transfer passed as against the Petitioners from one elementary School to Anr. is valid.

2. All the Petitioners are teachers working in the different Elementary Schools which had been taken over in terms of the provisions of Bihar Non-Government Elementary Schools (Management and Taking Over) Control Act, 1976 (hereinafter to be referred as the "Act"). Although, the said Act was enacted in the year 1976 and was made retrospective with effect from 1.1.1971, the State of Bihar has yet to frame the rules laying down the terms and conditions of services of teaching and non-teaching staff. The reluctant attitude on the part of the State in framing rules in terms of the provisions of the Act was also resented upon by a Full Bench of this Court in the year 1986 reported in Krishandeo Mishra v. State of Bihar reported in 1987 P.L.J.R. 854. But despite the same, no

rules have yet been framed by the State. However, the State from time to time had issued circular letters purported to be in exercise of its powers u/s 8 of the said Act laying down the guidelines which have to be followed inter- alia in the matter of transfer. As per the directive of the State Government, by reason of the aforementioned circular letters, a District Education Establishment Committee of which the District Magistrate is the ex-officio Chairman, is required to consider the cases of transfer of teachers.

3. The State of Bihar issued a circular letter bearing No. 502 dated 11th December, 1991, in terms whereof all transfers made after 30th June, 1991, were directed to be stayed till further orders. The State has further directed not to make mass transfer or general transfer except for three reasons viz. namely (i) in view of administrative and public interest on the basis of proved charges, (ii) either on the assurances given on the floor of the Assembly or in the light of the orders passed by the High Court and (iii) in the Schools where 50% of sanctioned posts are lying vacant, then in order to fill up such vacancies.

4. The learned Counsel appearing on behalf of the Petitioners have principally raised three contentions in support of these applications. The learned Counsel submitted that the Petitioners are now the employees of the State Government, therefore, the Government holds the ultimate power in the matter of their transfers. The State Government has only delegated the said power of transfer to the District Education Establishment Committee and, thus, the said Committee is bound by the conditions laid down by the State Government from time to time in this regard. It was further submitted that from a perusal of the circular letter issued by the State Government it would appear that one of the exceptions carved out is that there must be a proved charge of misconduct or administrative exigencies and in the public interest. The Learned Counsel submitted that grounds for effecting transfer from one School to Anr. School must fall under one of the exceptions enumerated in the aforementioned circular letter of the State Government bearing No. 502 dated 11th December, 1991. He also submitted that their cases do not fall within the above category.

5. The Learned Advocate General, on the other hand, submitted that the transfer being an incidence of service, the State has the power to transfer any of its employees. The Learned Advocate General further submitted that from a perusal of the policy decision as contained in Annexure-3 to the writ application, it would appear that what had been stayed was mass/general transfer and the exceptions carved out must be read in the context of Clause 2 of the aforementioned circular letter bearing No. 502 dated 11th December, 1991. as contained in Annexure-3 to the writ application.

6. There can not be any doubt that transfer is an incidence of service. There can not be also any doubt that the State as an employer is entitled to transfer its employees from one place to Anr. . 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.

7. It is not disputed at the Bar that the State Government had issued various notifications in purported exercise of its power u/s 8 of the said Act laying down the procedures for effecting transfers of the teachers. Such circular letters had been held to have been issued by the State Government in exercise of Executive powers under Article 162 of Constitution of India. (Smt. Protiva Singh and Anr. v. State of Bihar reported in 1988 P.L.J.R. 646). The circular letter bearing No. 502 dated 11th December, 1991, also falls within that category.

8. Clause 2 of the aforementioned circular letter dated 11th December, 1991, reads as follows:

Samuhik ebam samanaya sthanantaran agle adesh tak sthagit rahega.

The said clause, however, provides that the order of the aforementioned directions staying transfer of teachers shall not be applicable in three situations referred to in the said circular letter in Paragraph "ka" "kha" and "ga" thereof. In the said three situations transfer orders can be issued by the District Superintendent of Education after obtaining orders from the District Magistrate and the post facto approval thereof would be taken from the District Education Establishment Committee. The exceptions referred to in the said orders are:

(ka) Pramanit aaropo ke adhar par prashasanik ebam janhit ke dristikon se kiye gaye sthanantaran.

(kha) Vidhan Mandal me diye gaye ashwasano tatha Ucchha Nyayalaya ke adesh ke alok me kiye gaye sthanantaran.

(ga) Jin Viddalayo me sirit pad ke 50 pratisat se adhik riktiya ho unme kiye gaye sthanantaran.

9. One of the exceptions for effecting transfers as set out in category "ka" on literal translation in English means: "transfers effected keeping in view the administrative and public interest based on proved allegations."

10. The main contention of the learned Counsel for the Petitioners is that under this category only such teachers can be transferred against whom there was a departmental proceeding wherein the charges levelled had been found to be proved and had become imperative in administrative and public interest to effect their transfers. As a corollary, it has been submitted that transfers can not be effected only because of existence of any public interest or administrative exigencies. The suggestion is that the three requirements namely (i) proved charge (ii) administrative exigency and public interest must co-exist in the case

of a particular teacher if his transfer is sought to be made in the said category.

11. It is true that the language employed under the category "ka" referred to above is somewhat ambiguous and it may admit of more than one interpretation. But the rule of interpretation of Government circulars can not be the same as that of the statutory provisions. Moreover, the rule of interpretation to be employed should be such which may smoothen the administration, management and control of the Schools.

12. In our opinion, keeping in view of these factors in mind, the said category "ka" permits the transfers on three grounds namely (i) proved charges (ii) administrative exigency and (iii) public interest, each of which in itself is a good ground for effecting transfer to facilitate proper administration of the Schools by the respective authorities. In our opinion, the three grounds set out in the category "ka" may not necessarily coexist in case of every teacher who is sought to be transferred.

13. It is well known that in order to construe a document/statute, the same is to be read as a whole. From a perusal of the said circular letter dated 11th December, 1991, it is manifest that the orders of transfer on the grounds mentioned therein were required to be implemented. For the purpose of implementation of orders of transfer, even the matters were, not required to be placed before the District Education Establishment Committee and as such orders of transfer, as noticed hereinbefore could be issued by the District Superintendent of Education only upon obtaining, orders in that regard from the District Magistrate, who is the Chairman of the said District Establishment Committee. It is, thus, manifest, that except mass/general orders of transfer, every kind of transfers come within the purview of the said circular letter. Keeping in view the findings aforementioned, individual cases of the Petitioners have to be considered.

14. In this view of the matter, in our opinion, all the three grounds mentioned in the aforementioned circular letter dated 11th December, 1991, have to be read disjunctively and not conjunctively.

15. C.W.J.C. No. 7344 of 1992: In this writ application, there are seventeen Petitioners. They have been transferred under five different orders issued by the District Superintendent of Education, Bhojpur/Buxar bearing Memo Nos. 2419 dated 25th July, 1992, 1924 dated 16th June, 1992, 1926 dated 16th June, 1992, 1927 dated. 16th June, 1992, and 1929 dated 16th June, 1992. All the said orders have been filed as part of Annexure-1 to the writ application. These orders have been issued in view of the decision taken by the District Education Establishment Committee, Buxar, in their meeting held on 22nd July, 1992 and 3rd July, 1992.

16. From the Memo Nos. 2419 dated 25.6.92, 1929 dated 16.6.92, 1926 dated 16.6.92 and 1927 dated 16.6.92 it appears that the transfers of teachers have been effected keeping in view the public interest and administrative exigency

and, therefore, these orders are clearly covered by category "ka" referred to above. So far as the order of transfer contained in Memo No. 1924 dated 16.6.92 is concerned, it appears from the order itself that these transfers have been effected on the basis of certain allegations received against the teachers referred to in that order at the Janta Darbar" and other sources. Therefore, the transfers of the said teachers covered by these orders have been effected on mere allegations and not on proved charges. As such, this order is not sustainable in law and accordingly is quashed.

17. Accordingly, we hold that except in the case of the Petitioners who are covered by the transfer order as contained in Memo No. 1924 dated 16.6.92 the other Petitioners are not entitled to any relief and the writ application stands dismissed in respect of the Petitioners who have been transferred under the impugned orders except the one contained in Memo No. 1924 dated 16.6.92 referred to above.

18. C.W.J.C. No. 7615 of 1992: In this case there are ten Petitioners. The impugned order of transfer as contained in Memo No. 1927 dated 16.6.92 also appears to be a case of mass transfer. The order of transfer as contained in Memo No. 1923 dated 16.6.92 also appears to be a case of mass transfer. Memo Nos. 136 dated 6.7.92 and 504 dated 6.7.92 are relieving orders. Similarly, order of transfer as contained in Memo No. 2419 dated 25.7.92 also appears to be cases of mass/general transfer. For the reasons aforementioned, this writ application is allowed and the Memo Nos. 1927 dated 16.6.92, 1923 dated 16.6.92 and 2419 dated 25.7.92 and quashed.

19. C.W.J.C. No. 6927 of 1992: In this case the Petitioners have filed this application for quashing the orders of transfer as contained in Memo Nos. 1927 dated 16.6.92, 1930 dated 16.6.92 and 1929 dated 16.6.92. From a perusal of the said orders, it appears that teachers and Headmasters had been transferred for the purpose of smooth running of the Schools. Such orders of transfers, therefore, had been passed on administrative exigencies. This writ application is, therefore, dismissed.

20. C.W.J.C. No. 7370 of 1992: In this case the sole Petitioner has been transferred by reason of an order as contained in Memo No. 1362 dated 9.6.92 from Madhaya Vidyalaya, Ramkarpur to Madhaya Vidyalaya, Mohan Darwan as contained in Annexure-1 to the writ application. By reason of the said order, ten persons have been transferred. The said order has not been passed either on the administrative exigencies or in the public interest. This writ application is, therefore, allowed and the impugned order as contained in Annexure-1 to the writ application is quashed.

21. C.W.J.C. No. 4579 of 1992: The Petitioners who are five in numbers have questioned the order of transfer as contained in Memo No. 302 dated 7.3.92 which is Annexure-2 to the writ application. In this case also mass transfer has been effected which can neither be said to be in the public interest nor in

exigencies of administration. This writ application is, therefore, allowed and the order as contained in Annexure-2 to the writ application is quashed.

22. C.W.J.C. No. 7993 of 1992: Saran District Primary Teachers' Association and one Ram Lochan Sharma, said to be the President of Petitioner No. 1 have filed this writ application. The Petitioners have questioned the orders of transfer as contained in Memo Nos. 1021 dated 18.7.92, 1022 dated 18.7.92, 1023 dated 18.7.92 and 1025 dated 18.7.92.

23. The Learned Advocate General has drawn our attention to the circular letter No. 502 dated 11.12.91 as contained in Annexure-2 to the writ application. He has submitted that in a case where a persons is ordinarily posted for five years should be transferred and he will not come within the purview of the above circular letter. The learned Advocate General has further submitted that from a perusal of Annexure-3 to the writ application it would appear that all the teachers named therein have been working for more than 25 years and, thus, their transfer must be held to have been made in public interest and/or" on administrative exigencies. Similarly, from Annexure-7 to the writ application also, it appears that the teachers named therein had been posted for more than 25 years in their own home block.

24. Such orders of transfers, in our opinion, as has been rightly pointed out by the learned Advocate General would be in public interest. Similarly, in Annexure-8 to the writ application, it appears that all the teachers have been transferred to places where there arc no teachers. Such orders of transfer would also be in public interest and come within purview of exception.

25. Therefore, in our opinion, the Petitioners have no case to question the orders of transfer.

26. However, on 14.9.92 the learned Counsel for the Petitioners has produced before us a copy of the order passed by the State Government issued by the Deputy Secretary to the Government Human Resources Department in memo No. 1195 dated 10th September, 1992 in terms whereof orders of transfer passed pursuant to the meeting of the District Education Establishment Committee held on 29.6.92 as contained in the impugned orders have been stayed till further orders. If this be so, the concerned authorities may act thereupon and pass necessary consequential orders. In these writ applications we are concerned with the matter of interpretation of the order as contained in Memo No. 502 dated 11.12.1991 as the various orders of transfer have been passed in the light of the said order.

27. In this view of the matter, this writ application is disposed of with the observations made hereinbefore.

28. Keeping in view the facts and circumstances of these writ applications there will be no order as to costs.

G.C. Bharuka, J.

29. I agree.