

**BIHAR HUMAN RIGHTS COMMISSION**  
**9, Bailey Road, Patna – 15**

File No **BHRC/COMP.** 1644/12

Case of **VISHWABANDHU KUMAR**

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Applicant Vishwabandhu Kumar – a clerk in Marwari High School, Muzaffarpur – approached the Commission seeking its intervention for his transfer from the said school on compassionate ground, on account of his physical disability.

The Commission sought report from Director, Secondary Education. It appears that the applicant had also represented his case before the departmental authorities for his transfer. Regional Deputy Director of Education (RDDE) Tirhut Division, Muzaffarpur vide his memo no.914 dated 11.6.2012 posted the applicant in Ramesh Rani Agarwal Balika Uchch Vidyalaya, Ghirni Pokhar, Muzaffarpur – transferring him from the Marwari High School – on compassionate ground in anticipation of the approval of the Divisional Education Establishment Committee, giving reference to the notice from this Commission among other things. Report to this effect was submitted to the Commission. In his response, the applicant stated that his joining in Ramesh Rani Agarwal Balika Uchch Vidyalaya was not accepted and in the circumstances he was not getting salary. As the matter involved the question of livelihood, the case was fixed for oral hearing and notice was issued to the Headmistress of the school i.e. Ramesh Rani Agarwal Balika Uchch Vidyalaya, besides the applicant and the Director, Secondary Education.

The matter was finally heard on 2.1.2013 in presence of the applicant, Deputy Director, Secondary Education, Sri Brajesh Kumar Ojha and the Headmistress of the school Smt. Rekha Upadhyay.

Smt. Rekha Upadhyay took the plea that posting of male clerk (the applicant) had evoked protests from the guardians and the students; the matter was discussed by the Managing Committee of the school and it was resolved that a female clerk or some old male clerk be posted in place of the applicant. In the circumstances, she did not accept the applicant's joining and sought guidance from the Director. She also stated that the joining of the applicant in three schools earlier also was not accepted.

Applicant pointed out – referring to her response – that after his appointment in the year 2004 he was posted in High School Patahi where he served for about six years from 11.8.2004 to 28.3.2010; thereafter he was posted in Marwari High School, Muzaffarpur which was his second place of

posting. There was thus no question of his joining in three schools "not being accepted earlier". Applicant submitted that non-acceptance of his joining had cast adverse reflection on his character and reputation – impinging on his human rights. He stated that in the light of the subsequent order, he joined the erstwhile school i.e. Marwari High School but being an excess staff, he is not being paid salary. He is thus deprived of salary i.e. source of livelihood since June 2012.

Sri Brajesh Kumar Ojha stated that the Managing Committee has no role in the matter of transfer and posting of teachers and staff in secondary schools and it is therefore not understandable as to how the matter was at all put up before the Managing Committee. He pointed out that the Divisional Education Establishment Committee had duly approved the transfer of the applicant on 27.6.2012. The order of the RDDE, duly approved by the Establishment Committee, was binding on the Headmistress of all fours and she had no authority to question the same. Reference to the Director also was uncalled for since the competent authority is the Regional Deputy Director, and the Director has no role.

It transpired in course of hearing that although the school in question is a girls school, it is the admitted position that many male teachers and non-teaching staff are posted in the school. Curiously, the applicant's replacement – after he was re-posted in Marwari High School – also was a male. The case of the applicant is that the Headmistress objected to his posting because she was interested in the posting of one Kunwar Jitendra as clerk in the school.

In its order dated 4.12.2012 – while issuing notice for oral hearing – the Commission had observed that transfer of the applicant to Ramesh Rani Agarwal Balika Uchch Vidyalaya being on compassionate ground, and by the competent authority, refusal to accept his joining amounted to insubordination for which suitable action should be taken against the Headmistress. After hearing the Headmistress of the School and the Departmental Representative, the Commission is satisfied that it is a fit case for initiating departmental proceeding against Headmistress Smt. Rekha Upadhyay for her acts of omissions and commissions.

The Commission asked the applicant as to whether he wanted to go back to Ramesh Rani Agarwal Balika Uchch Vidyalaya. He submitted that loss of reputation which he has suffered by reason of unwarranted insinuations reflecting upon his character can be recompensed by posting him back in the same school.

RDDE Muzaffarpur is directed to consider the matter and issue appropriate orders. In any case, he should ensure that the applicant is paid salary including arrear salary from the school where he is posted.

Put up this file on 30.1.2013 awaiting compliance report from the Director, Secondary Education as well as the RDDE, Tirhut Division, Muzaffarpur.

Let copy of this order be sent to (i) Director, Secondary Education, (ii) Regional Deputy Director Education, Tirhut Division, Muzaffarpur, (iii) Smt. Rekha Upadhyay, Headmistress, Ramesh Rani Agarwal Balika Uchch Vidyalaya, Ghirni Pokhar, Muzaffarpur and (iv) the applicant for compliance and information, as the case may be.

Date: 4.1.2013

Justice S.N. Jha  
Chairperson