

Neutral Citation No. - 2025:AHC:40993
Judgement Reserved on 25.11.2024
Judgement Delivered on 21.03.2025

Court No. - 33

Case :- WRIT - A No. - 17952 of 2024

Petitioner :- Shri Hafeezur Rahman And 6 Others

Respondent :- State Of Up And 3 Others

Counsel for Petitioner :- Gaurav Gautam

Counsel for Respondent :- C.S.C.,Harish Chandra Dwivedi,Mohd. Faizan Ali,Pranav Mishra

Hon'ble Prakash Padia,J.

1. Heard Sri Gaurav Gautam, learned counsel for the petitioners, learned Standing Counsel for respondent Nos.1 & 3, Sri Pranav Mishra, learned counsel for respondent No.2 and Sri Harish Chandra Dwivedi , learned counsel for respondent No.4.

2. Pursuant to the order passed by this Court, the learned Standing Counsel placed instructions dated 19.11.2024 under the signatures of District Minority Welfare Officer, Mau the same is taken on record.

3. Learned Standing Counsel agreed that the matter be decided on the basis of instructions without calling for counter affidavit.

4. In this view of the matter and with the consent of learned counsel for the parties, the present petition is being decided at the admission stage itself without calling the counter affidavit.

5. The petitioners have preferred the present petition with the prayer to quash the order dated 8.10.2024 passed by the respondent no. 2/Registrar/Inspector U.P. Madarsa Education Board, Lucknow. A prayer has also been made to direct the respondent no. 2 to grant financial approval to the appointment of the petitioners as Assistant Teachers in Alia, Fauquania & Tahtaniya. A further prayer has been made to direct the respondent no. 3/ District Minority Welfare Officer, Mau to make payment of regular salary to the petitioners as and when it falls due along with arrears from the date of appointment on their respective posts, i.e. from 21.9.2023.

6. Facts in brief as contained in the writ petition are that the Madarsa in question, namely, Madarsa Faiz E- Aam, Mau (hereinafter referred to 'Madarsa') is a duly recognized Madarsa and the same is on the grant-in-aid list of the State Government. All the teachers and employees of the aforesaid Madarsa are getting their salary from the State funds.

7. It is so happened that the posts of Assistant Teacher in Alla, Fauquania & Tahtaniya fell vacant due to superannuation of various teachers in the Madarsa. Since the students in the institution were suffering due to the non-availability of the teachers, the Committee of Management of the Madarsa passed a resolution on 4.6.2023 wherein it was resolved to fill up the aforesaid vacant posts.

8. Pursuant of the aforesaid resolution, advertisements were published in newspapers, namely, 'Hindustan' Varanasi edition in Hindi and 'Aag' Azamgarh edition in Urdu on 14.6.2023. The advertisement was published for filling up of the posts of Assistant Teachers in following category:-

1. Two posts of Assistant Teacher in Alia, equivalent to High School and above.
2. Two posts of Assistant Teachers, Fauquania, equivalent to Junior High School.
3. Three posts of Assistant Teachers in Tahtaniya, equivalent to Primary/Junior High School.

9. In response to advertisement, 13 candidates applied for the post of Assistant Teacher in Alia, 43 candidates applied for the posts of Assistant Teacher in Fauquania and 81 candidates applied for the posts of Assistant Teacher in Tahtaniya.

10. The Committee of Management constituted a selection committee on 8.7.2023 comprising of five members in order to hold interviews as per Madarsa Regulation, namely, "**UTTAR PRADESH NON-GOVERNMENT ARABIC & PERSIAN MADARSA RECOGNITION ADMINISTRATION AND SERVICES REGULATION, 2016**".

11. The Selection Committee fixed the date of interview for the posts of Assistant Teacher in Alia and Fauquania category on 26.7.2023 and the date for interview for the post of Assistant Teacher in Tahtania category was fixed on 27.7.2023.

12. All the candidates had been duly given information regarding the date of interviews in their respective categories for their participation in the interview.

13. The interview for the posts of Assistant Teachers in Alia and Fauquania were held on 26.7.2023. For the post of Assistant Teacher in Alia, out of 13 candidates, 12 candidates had participated in the interview. For the posts of Assistant Teacher in Fauquania, out of 43 candidates, 39 candidates had participated in the interview. For the post of Assistant Teacher in Tahtania, which was held on 27.7.2023, out of 81 candidates, 69 candidates had participated in the interview. The Selection Committee, after holding interview for the aforesaid posts, has prepared a tabulation chart and the proceedings of the Selection Committee were placed before the Committee of Management of Madarsa. The Committee of Management, vide resolution dated 14.9.2023 affirmed the proceedings of the Selection Committee and authorized/directed the Manager to issue letter of appointment to the selected candidates.

14. The Manger of Madarsa had issued separate appointment letters to all the selected candidates/petitioners on 16.9.2023. In pursuance of the aforesaid, the petitioners joined their respective posts on 21.9.2023.

15. After joining of the petitioners in Madarsa, complaints were filed against the Principal of the Madarsa, namely, Mazhar Ali, regarding his date of birth. In the complaint, it was mentioned that the date of birth of Principal has wrongly recorded as 3.7.1965, whereas the correct date of birth of Principal of Madarsa is 3.7.1960. The said complaints were being investigated by the authorities and some adverse orders, restraining the Principal were passed. The investigation against Mazhar Ali continued and ultimately after various enquiries by the Competent Authority, final order dated 10.4.2024 was passed, affirming the date of birth of Principal of

Madarsa as 3.7.1965 and continuation of Mazhar Ali as Principal of the institution was affirmed.

16. Another dispute with regard to the members of Committee of Management was also raised before the Assistant Registrar, Firm Societies & Chits, Azamgarh Region, Azamgarh. As there was dispute with regard to recognition of members of Committee of Management as well as office-bearer of the Committee of Management, papers could not be forwarded and ultimately, the dispute was resolved when the order dated 26.4.2024 was passed by the Assistant Registrar, Firm Societies & Chits, Azamgarh Region, Azamgarh and Committee of Management was recognized.

17. When both the disputes, i.e. dispute with regard to Principal of Madarsa and the Committee of Management, the papers and documents regarding selection and appointment of the petitioners were forwarded to the respondent no. 2 through respondent no. 3, i.e. District Minority Welfare Officer, Mau, vide covering letter dated 9.8.2024. It is further stated in writ petition and argued by the counsel for the petitioners that further delay about 2 months occurred, because the respondent no. 3, i.e. District Minority Welfare Officer, Mau was not accepting the papers and documents forwarded by the Committee of Management on the ground that same are beyond time, prescribed under Regulation, 2016.

18. The Committee of Management has produced the judgment dated 11.12.2021 passed by this Court in Writ-A No. 16908 of 2021 before the respondent no. 2 and based on the aforesaid judgment, the Committee of Management submitted before the respondent no. 3 that in view of the law laid down by this Court, the respondent no. 3 must accept the papers and then only the papers were forwarded by the respondent No.3 to respondent No.2.

19. It is further argued that after submission of the documents, one Bharat Lal Rahi made complaint to the respondent no. 3 with the allegation in selection and appointment of the petitioners. Based on the aforesaid complaint, a Committee was constituted who conducted a detailed enquiry and in the said enquiry, nothing adverse or illegal was found regarding

appointment of the petitioners and thus, the respondent no. 3 forwarded the papers and documents regarding appointment of the petitioners to the respondent no. 2 on 24.8.2024. While forwarding the papers to the respondent no. 2, the respondent no. 3 made following observation/objection in his letter dated 24.8.2024, which are as under:-

उक्त के क्रम में अवगत कराना है कि उपरोक्त के दृष्टिगत मदरसा सेवा विनियमावली 2016 के अनुसार पत्रावली के परीक्षणोपरान्त कतिपय कमियां पाई गई जो निम्नवत् है-

1-स०अ०आलिया के विज्ञापन रोजनामा आग उर्दू में अंकित शैक्षिक योग्यता के स्नातकोत्तर के स्थान पर एम०ए० अंकित किया गया है।

2-श्री ज्याउर्रहमान स०अ०आलिया के पद पर नियुक्त अध्यापक द्वारा स०अ०फौकानिया का संलग्न किया गया अनुभव (जून 2012 से जुलाई 2015 तक) तत्समय प्रचलित नियमावली के अनुसार नहीं है क्योंकि उनके पास स०अ०फौकानिया पद हेतु कामिल की शैक्षिक योग्यता नहीं है। अतः अनुभव प्रमाण पत्र मान्य नहीं है।

3-स०अ०तहतानिया पद हेतु 81 अभ्यर्थियों के लिये प्रेषित साक्षात्कार पत्र में दो रजिस्ट्री की रसीद क्रमांक 23 श्री अनवार आलम व क्रमांक 73 श्री अबू रेहान मिसिंग दर्शायी गई है। जिसके सापेक्ष क्रमांक 23 पर अंकित श्री अनवार आलम साक्षात्कार में अनुपस्थित हुआ है तथा क्रमांक 73 पर अंकित श्री अबू रेहान साक्षात्कार में उपस्थित रहा है।

4-साक्षात्कार की तिथि 26 व 27.07.2023 से लगभग डेढ़ माह के बाद दिनांक 14.09.2023 को प्रबन्ध समिति की बैठक करने के उपरान्त दिनांक 16.09.2023 को नियुक्ति पत्र जारी किया गया है। जो की नियमावली के भाग-3 की धारा-7 का उलंघन है।

5-नवनियुक्त कार्मिको द्वारा दिनांक 21.09.2023 को मदरसे में ज्वाइनिंग के लगभग 11 माह बाद नियुक्ति पत्रावली कार्यालय में प्रस्तुत की गयी। जो की नियमावली के भाग-3 की धारा 9- (2) का उलंघन है।

20. Apart from the aforesaid observation/objection, the respondent no. 3 also annexed the copy of the enquiry report, conducted by the Committee on the complaint made by Bharat Lal Rahi.

21. After forwarding the papers by the respondent no. 3 to the respondent no. 2, the respondent no. 2 has passed the impugned order dated 8.10.2024 and

has denied to grant financial approval to the appointment of the petitioners. In the aforesaid impugned order dated 8.10.2024, following reasons have been recorded for rejecting grant of financial approval.

"1. "उ०प्र० अशासकीय अरबी और फारसी मदरसा मान्यता प्रशासन और सेवा विनियमावली-2016 के भाग-3 की धारा-7 में निम्नवत् अंकित है चयन समिति नियुक्ति हेतु अभ्यर्थियों के नाम प्रबन्ध समिति को प्रेषित करेगी। इसके उपरान्त प्रबन्ध समिति के अनुमोदन से प्रथम वरियता के अभ्यर्थियों को नियुक्ति प्राधिकारी (प्रबन्धक / प्रधान) द्वारा पंजीकृत डाक के माध्यम से नियुक्ति पत्र प्रेषित किया जायेगा जिसमें पद का नाम, वेतन संरचना, परीक्षा काल तथा नियुक्ति के प्रकार का स्पष्ट उल्लेख होगा। साक्षात्कार की तिथि से दो सप्ताह के भीतर नियुक्ति पत्र प्रेषित कर दिया जायेगा। " परन्तु प्रश्नगत नियुक्तियों में साक्षात्कार की तिथि से 02 सप्ताह के स्थान पर नियुक्ति पत्र 50 दिन के बाद प्रेषित किया गया है।

2. विनियमावली-2016 के भाग-3 की धारा-9 (2) में व्यवस्था है कि "सम्बन्धित कर्मचारियों द्वारा कार्यभार ग्रहण करने से दो सप्ताह के भीतर नियुक्ति या प्रोन्नति से सम्बन्धित समस्त अभिलेख वित्तीय सहमति हेतु निरीक्षक अरबी मदरसा को जिला अल्पसंख्यक कल्याण अधिकारी के माध्यम से प्रेषित कर दिये जायेंगे।" परन्तु कार्यभार ग्रहण करने के दो सप्ताह के स्थान पर लगभग 11 माह के उपरान्त पत्रावली जिला अल्पसंख्यक कल्याण अधिकारी, मऊ को प्रस्तुत की गयी है।

3. श्री ज्याउर्रहमान स०अ०आलिया के पद पर नियुक्त अध्यापक द्वारा स०अ० फौकानिया का संलग्न किया गया अनुभव (जून 2012 से जुलाई 2015 तक) तत्समय प्रचलित नियमावली के अनुसार नहीं है क्योंकि उनके पास स०अ० फौकानिया पद हेतु कामिल की शैक्षिक योग्यता नहीं है। अतः अनुभव प्रमाण पत्र मान्य नहीं है।

4. मदरसे में रिक्त पदों पर भर्ती हेतु दो समाचार पत्रों हिन्दी दैनिक "हिन्दुस्तान" तथा उर्दू दैनिक "आग" में विज्ञापन प्रकाशित कराया गया। उर्दू दैनिक 'आग' में स्नातकोत्तर के स्थान पर एम०ए० अंकित किया गया था। सेवाविनियमावली-2016 में आलिया कक्षाओं के लिये शैक्षिक अर्हता निम्नवत् अंकित है "फाजिल अथवा अरबी / फारसी / दीनियात से स्नातकोत्तर उपाधि तथा फौकानिया कक्षाओं का तीन वर्ष का शैक्षिक अनुभव।" स्पष्ट है कि विज्ञापन सेवाविनियमावली के अनुसार त्रुटिपूर्ण है।

5. नियुक्तियों के सम्बन्ध में व्यापक शिकायतें प्राप्त हुई हैं तथा जिला अल्पसंख्यक कल्याण अधिकारी, मऊ की आख्यानुसार श्री जमील अहमद व मो० आमिर की नियुक्ति पूर्व नियोजित प्रतीत हो रही है।"

22. The first ground for refusal of financial approval is that in accordance with Regulation of 2016, the letter of appointment should be issued within

two weeks from the interview, whereas in the present case, the appointment letters have been issued after 50 days of the interview.

23. The learned counsel for the petitioners has argued that the aforesaid ground for refusing to grant financial approval is not sustainable in law. He further argued that it is provided in Regulation 6(4) of Part-III of Regulation, 2016 that the Selection Committee shall prepare the list of selected candidate in order of preference. The Selection Committee, on the basis of educational qualification and marks obtained in interview shall place the name of three candidates in the list who are found suitable for the post. The said list will be valid for 3 months from the date of selection provided that if the 1st selected candidate does not join, the list will be valid for one year.

24. It is further argued that Regulation-7 of Part-III of Madarsa Regulation, 2016 provides that the Selection Committee shall send the name of candidate for appointment to the Managing Committee. After approval of Managing Committee, the appointment letter shall be send to the candidate of first preference by the Appointing Authority (Manager/Head) through registered post, in which the name of post, salary structure, probation period and form of appointment shall be clearly mentioned. The appointment letter shall be send within two weeks from the date of interview. Copy of appointment letter shall be send to the District Minority Welfare Officer, Mad and Inspector, U.P. Madarsa Education Board. Relevant portion of Part-III of Madarsa Regulation 2016 reads as follows:

6. (1) The selection committee shall prepare a list of the candidates applied for and call for interview such candidates who fulfill the required qualification. There shall be 100 marks for academic carrier, in which 10 marks for the first division, 07 marks for second division and 05 marks for third division shall be given and the percentage of academic carrier will be counted in totality. In interview 16 marks shall be determined for each member and 10 marks shall be under the joint consent of President and Manager and the marks for interview shall be calculated on the basis of marks given by all the members.

(2) Information for interview shall be given to candidates by the Selection Committee through registered post, 15 days prior to the date fixed.

(3) Presence of President and 4 members shall be mandatory in the interview and if for some reason the interview is adjourned then all the candidates called on for interview shall be given written information. They will also be informed through registered post 15 days prior to the next interview date.

(4) The Selection Committee shall prepare a List of selected candidates in order of preference. The selection committee on the basis of educational qualification and marks obtained in interview shall place the name of three candidates in the list who are found suitable for the post. This list shall be valid for 3 months from the date of selection provided that if the selected candidate does not join the final list shall be valid for one year.

7. The Selection Committee shall send the name of candidates for appointment to the Managing Committee. After that on approval of Managing Committee the appointment letter shall be sent to the candidate of first preference by the appointing authority (Manager/Head) through registered post in which the name of post, salary structure, probation period and form of appointment shall be clearly mentioned. The appointment letter shall be sent within two weeks from the date of interview. A Copy of the appointment letter shall be sent to the District Minority Welfare Officer and the Inspector Uttar Pradesh Madarsa Education Board.

25. Based on the aforesaid regulation, it is argued that the merit list is valid for period of 3 months, as such, the delay in issuance of appointment letter could not be a ground for rejecting the grant of financial approval, as during validity period of select list, the letter of appointment has been issued.

26. The aforesaid argument of learned counsel for the petitioner is based on the Part-III of Regulation 2016 and since the letter of appointment has been issued within the time limit of validity of the select list, the denial of grant of financial approval on this ground is not maintainable and is hereby quashed.

27. So far as the ground No.2, i.e., the delay of 11 months in forwarding the papers for financial approval instead of 2 months is concerned, from the document on record and the explanation submitted by the Committee of Management before the Competent Authority, it is clear that due to dispute between the members of the Committee of Management and the dispute being arisen after selection of the petitioners, delay occurred and the same cannot be basis for denial of financial approval, especially when the immediately on resolution of dispute by the order of the Assistant

Registrar, Firm Societies & Chits, Azamgarh Region, Azamgarh dated 10.4.2024, papers were forwarded to the authority on 10.4.2024 & 16.4.2024 with providing full details and reason for delay. Further delay occurred on account of reason of not accepting the document, which has not been denied by the learned counsel for the respondents in its instruction. Thus, the delay in submitting the documents being bonafide and beyond control of the Committee of Management, cannot be a basis for denying the financial approval.

28. Insofar as the third ground made in the order impugned is concerned, the experience certificate submitted by the petitioner No.2/Ziyaur Rahman pertains to the period between June, 2012 and June, 2015 and at the relevant time of this appointment, the petitioner No.2 does not have requisite qualification is concerned, it is argued that the petitioner no. 2 is having degree of Fazil, which is equivalent to M.A. and while he was teaching as Assistant Teacher (Fauquania) from the period June 2012 upto June 2015 and the qualifications that were required for being able to teach as Assistant Teacher Fauquania was Kamil, i.e. equivalent to B.A. and as such at the time when the aforesaid experience was gained by the petitioner no. 2, he was in possession of higher qualifications which was required for the post in question and as such the objection made in the order impugned regarding the qualifications of the petitioner no. 2 is without any legal basis.

29. The fourth ground, in the order impugned that the advertisement for the post in question were published by the institution in question in two newspaper namely Hindustan and Aag and in the Urdu edition of newspaper (Aag), the qualifications has been wrongly mentioned for post of Assistant Teacher, Alia as M.A. in place of स्नातकोत्तर. It is argued that स्नातकोत्तर is the Hindi translation of M.A. and as such the same are widely used in place of each other. It is argued that the mentioning of the essential qualification as M.A. in place of स्नातकोत्तर is without any basis. It is argued that the qualification as has been mentioned in Regulation 2016, the word M.A. has been mentioned the qualification as the head of Part-III, Regulation- 3. The

relevant portion of aforesaid Regulation in English as well as in Hindi reads as follows:-

Sl. No.	Designation	Age	Qualification
1	Principal (Alim or higher level Madarsa)	minimum age 30 years	Degree of Fazil and Kamil (Persian) with minimum 5 years teaching experience in Munshi/Maulvi or higher classes. or M.A. in Diniyat/Arabic/Persian with 50% marks and 5 years teaching experience as above. or Fazil/M.A with Dukturah in Diniyat/Arabic /Persian/Traditional Ancient subjects with 3 years experience as above.
2	Head (up to munshi and maulvi level recognised madarsa minimum age 30 years	minimum age 30 years	Fazil or master degree in Arabic/Persian/Theology with at least 50% marks and 3 years teaching experience of munshi/maulvi classes.

क्र० सं०	पदनाम	आयु	अर्हता
01	प्रधानाचार्य (आलिम या उच्चतर स्तर मदरसा)	न्यूनतम आयु 30 वर्ष	फाजिल एवं कामिल (फारसी) की उपाधि गुंशी/मौलवी या उच्चतर कक्षाओं का न्यूनतम 05 वर्षों का शैक्षणिक अनुभव; अथवा दीनियात/अरबी/फारसी में 50 प्रतिशत अंकों सहित एम० ए० तथा उपरोक्तानुसार 5 वर्षों का शैक्षणिक अनुभव: अथवा फाजिल/एम०ए० तथा दीनियात/ अरबी / फारसी / परम्परागत प्राच्य विषय में दुक्तूरा सहित उपरोक्तानुसार तीन वर्षों का शैक्षणिक अनुभव ।

02	प्रधान (मुंशी, न्यूनतम मौलवी स्तर तक आयु 30 मान्यता प्राप्त वर्ष मदरसा)	फाजिल अथवा अरबी / फारसी/दीनियात में न्यूनतम 50 प्रतिशत अंकों सहित स्नातकोत्तर उपाधि एवं तीन वर्षों का मुंशी / मौलवी कक्षाओं का शैक्षणिक अनुभव।
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30. Thus, the fourth ground is also not sustainable in law and the same is hereby quashed, being contrary to Regulation, 2016.

31. Insofar as fifth ground with regard to appointment of petitioner No.5/Jameel Ahmad and Mohd. Amir/petitioner No.3 is concerned, complaints were given to the effect that their appointments are premeditated are concerned, no specific allegation made regarding the appointment of the petitioners Nos.3 & 5 in the order impugned and without recording any reasons, only a blanket order has been passed. Thus, the fifth ground is also not sustainable.

32. It is argued that the impugned order has been passed without providing any notice or opportunity of hearing to the petitioners as well as Committee of Management and the same has been passed in complete violation of principles of natural justice. It is further argued that there is absolutely no allegation whatsoever regarding any short comings or misrepresentation on the part of the petitioners and without considering the explanations provided by the Committee of Management the order impugned has been passed.

33. From the instructions provided by the learned Standing Counsel it is also clear that no opportunity of hearing has been provided either to the petitioners or the Committee of Management before passing the impugned order, as such, on this ground alone, the impugned order dated 8.10.2024 is liable to be quashed.

34. Since all the five grounds mentioned in the impugned order for rejecting the grant of financial approval are not tenable in law and moreover, the impugned order has been passed without considering the explanation submitted by the Committee of Management regarding delay in issuing order and forwarding the papers before the Competent Authority for approval has not at all been considered by the respondent, the order

impugned is a non-speaking order and on this ground also, the impugned order is liable to be quashed.

35. Since the grounds, mentioned in the impugned order are not tenable in law, the impugned order dated 8.10.2024 is hereby quashed. A mandamus is issued to the respondent no. 2/Registrar/Inspector, U.P. Madarsa Shiksha Parishad, Lucknow to grant financial approval to the appointment of the petitioners from the date of their joining and pay the regular salary to the petitioners month by month along with arrears from the date of their joining in accordance with law.

36. With the aforesaid observations, the writ petition is allowed.

37. No order as to costs.

Order Date :- 21.03.2025
saqlain