

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4158 of 2015

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Dr. Syed Mohibul Hassan son of Late Syed Zabbar Ul Hassan Resident of Mohalla
- Chanwara, Hal Saheb Ke Kothi , District- Muzzafarpur.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary , Education Department , Government of Bihar , Patna.
3. The Joint Secretary , Education Department , Government of Bihar, Patna.
4. The Secretary, Bihar Madarsa Shiksha Board, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Singh

For the Respondent/s : Mr. Anjani Kumar, AAG6

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 19-03-2015

Heard learned counsel for the parties as with regard to the
following prayer made in this writ application:-

*"----- for quashing the show-cause notice contained in
Memo No. 157 dated 12.3.2015 issued by Joint Secretary,
Education Department, Government of Bihar, Patna as
contained in Annexure-4 with all consequential benefits."*

2. Mr. Basant Kumar Chaudhary, learned senior counsel
appearing on behalf of the petitioner, in support of the aforementioned
prayer, has straightway made a submission that it is on account of
apprehension that the petitioner has filed this writ application because
he finds that in the show-cause notice, his qualification mentioned
therein has been incorrectly mentioned and in fact the authority while
making allegation has failed to take into consideration that the



petitioner did not fulfill the eligibility criteria for being appointed on the post of Chairman of the Bihar State Madarsa Board (hereinafter to be referred to as 'the Madarsa Board'). In this regard he also explains that in the Madarsa Board, there are four alternative qualifications on the basis of which a person can be appointed as Chairman of the Board but, in the show-cause notice, in question, they have only taken into consideration the three of the four alternative qualifications which the petitioner does not possess. Mr. Chaudhary, therefore, is of the view that since in the show-cause notice the 4th qualification was not taken into consideration which the petitioner possesses which has made the petitioner to believe that some thing is brewing against him.

3. Per contra, learned counsels for the respondents have taken a plea that this writ application is premature and in fact not maintainable as against the impugned show-cause notice because no final decision has been taken in the matter. Mr. Singh, learned counsel for the State, has also submitted that on mere apprehension, the petitioner cannot file this writ application because if the petitioner had any explanation with regard to fallacy in the show-cause notice even in respect of any qualification, he could have definitely explained it while filing the show-cause reply but, that will not give him a right to question the correctness of the show-cause notice itself.

4. Learned counsel for the Madarsa Board says the matter

lies between the petitioner and State Government in which Board has a little to do.

5. In the considered opinion of this Court, this writ application is wholly misconceived and in fact not maintainable for a simple reason that a writ application in any manner will never be maintainable against the show-cause notice for a simple reason that there is no order which can be subjected to judicial review. Reference in this connection may be usefully made to the judgment of the Apex Court in the case of *Union of India & Anr. Vs. Kunisetty Satyanarayana* reported in (2006) 12 SCC 28.

6. As a matter of fact, by a show-cause notice, a person is only given an opportunity to explain his stand. Thus, it is only in rare of the rarest cases when a writ application can be entertained against a show-cause notice and too primarily only on account of such show-cause notice being wholly without jurisdiction. The petitioner however cannot contend that one who had appointed him had no reason to ask him on a show-cause notice for explaining as to why he should not be removed on the ground certain deficiency in his qualification and terms of eligibility..

7. In that view of the matter, this Court is of the view that this writ application is wholly premature, misconceived and ill advised.

8. Nonetheless, whatever apprehension has been expressed by Mr. Chaudhary as with regard to omission of one of the four alternative qualifications in relation to the qualification of the Chairman of the Madarsa Board, all that can be said that this again is a matter of show-cause reply by the petitioner where he can definitely explain that though there are four alternative qualifications mutually exclusive to each other for appointment on the post of Chairman of Madarsa Board and yet in the show-cause notice only three qualifications were mentioned and the fourth alternative qualification was not taken into consideration only to ensure removal of the petitioner. That however would be a matter of reply of the impugned show cause notice by the petitioner.

8. Thus for the reasons indicated above, this Court is of the considered view that this writ application is wholly ill advised and misconceived and is, accordingly, dismissed.

9. The dismissal of this writ application, however, will not come in the way of the petitioner in either filing of the show-cause reply or its consideration in accordance with law.

(Mihir Kumar Jha, J)

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