

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10490 of 2015

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1. All Bihar Madarsa Teachers Association, Branch West Champaran at Bettiah through its Secretary, Md. Zakariya, son of late Fateh Mohammad, Resident of Mausa Tola, P.S.- Bettiah, District- West Champaran at Bettiah.
 2. Md. Zakariya, son of late Fateh Mohammad, Resident of Mausa Tola, P.S.- Bettiah, District- West Champaran at Bettiah.
 3. Noorullah, Son of Ali Imam SAheb, resident of Mohalla- Dorua Deoraj, P.S.- Lauria, District- West Champaran at Bettiah.
 4. Kamaluddin Ansari, son of late Khalid Ahmad Ansari, resident of Mohalla- Kila Bettiah, P.S.- Bettiah, District- West Champaran at Bettiah.
 5. Nasir Ahmad, Son of S.K.Abul Naeem, resident of Bastha, P.S.- Mainatand, District- West Champaran at Bettiah.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Special Director, Minorities Institution, Vikas Bhawan, Patna.
4. The District Regional Deputy Director of Education, Tirhut Division, Muzaffarpur.
5. The District Education Officer, West Champaran at Bettiah.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Advocate.

For the Respondent/s : Md. Raisul Haque, SC 4.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 31-07-2015

Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application reads as follows:

"1. That this is an application on behalf of the petitioners for issuance of an appropriate writ/order/direction to the respondents authorities to grant of monetary benefit of 5th and 6th Pay Revision scale to the Teachers of Minority School (petitioner 1) with effect from the date the same have been given to the Teachers of others Government /Minority

Aided Schools and further to pay the arrear of salary and for grant of any other consequential or incidental relief/reliefs to which the petitioners may be found deemed legally entitled to in the facts and circumstances of the case."

3. Learned counsel for the petitioner, in support of the aforementioned prayer, relies on two main aspects, namely, there is a decision of the State Government dated 20.02.1990, which according to him will bind the State Government to also pay the salary of 5th and 6th Pay Revision Committee recommended for the Government schools. Secondly, he also places reliance on an order of this Court dated 28.10.2010 in C.W.J.C. No. 7139 of 2004. According to learned counsel for the petitioner, in fact, there is yet another earlier order of this Court dated 19.09.1997 which will go to the root of the petitioner in support of the aforementioned prayer.

4. Learned counsel for the State, on the other hand, has submitted that the State Government does not pay salary to the employees of the Madarsa in the sense as it pays to the Government servant for whom the Pay Revision Committee Reports were either submitted or accepted by the State Government. It has also been explained that the State Government has taken a policy decision to grant aid to the recognized Sanskrit School and Madarsa and those grants never envisaged that



whatever pay scale will be given to the Government employees from time to time, even by way of Pay Revision, will automatically become available to the employees of the Madarsa. He has also submitted that at the end of the day, it will be a policy decision of the State Government and there being no statutory provisions, this writ application filed by the All Bihar Madarsa Teachers Association seeking direction from this Court for payment of salary to the employees of the Madarsa in the recommended and acted pay scale for the Government school in the 5th and 6th Pay Revision Committee cannot be issued.

5. Firstly, this Court must hold the present writ application to be not maintainable for a simple reason that circulars of the Government cannot be enforced by the writ petitioner. These are the executive decisions by way of policy decision and it is for the State Government to have taken conscious decision keeping in view the financial impact that it may create on account of extending the benefit of the Government pay scale of the 5th and 6th Pay Revision Committee to Madarsa.

6. Let it be noted that when the State Government in the year 1981 had taken a decision to give such grant and had fixed the pay scale which were at par with the pay scale of the Government Schools of 4th Pay Revision Committee. It had also



given dearness allowances and today, whatever salary is being paid to the employees of either the Sanskrit School or Madarsa is by way of up- to- date dearness allowances on that pay scale. In other words, today every teacher of a recognized Sanskrit School or Madarsa is getting grant of 200% of dearness allowances only because the Government has decided to also make payment to them on the scale admissible from 01.04.1981.

7. This Court has also examined the Circular dated 20.02.1990 from which it becomes very clear that whatever decision was taken cannot be read to also mean that if and when the pay scale of the Government employees or teaching and non-teaching employees of the Government schools would be enhanced, as per the recommendation of the Pay Revision Committee, the same will also become automatically available to the teachers and non-teaching employees of the Sanskrit School and Madarsa. The Circular dated 20.02.1990, in any event, as noted above, is merely an executive instruction, which cannot be enforced in any way by this Court.

8. The comparison made by the learned counsel for the petitioner to the minority aided institutions is also wholly misplaced. Minority aided institutions under Section 18 of the Bihar Non-Government Secondary School (Taking Over

Management and Control) Act 1981 have statutory status but the Madarsa does not have such a status and, therefore, whatever was said in respect of minority declared institutions by this Court in the case of ***Bihar Minorities Aided Primary Teachers Association, Patna*** cannot be ***ipso facto*** made applicable to the teaching or non-teaching personnel of Madarsa.

9. Finally, the earlier order of this Court dated 19.09.1997 in the case of ***Madhav Mahaseth & Ors. vs. The State of Bihar & Ors.*** in ***C.W.J.C. No. 5336 of 1996*** relates to a retired Peon of Marwari Middle School, Sitamarhi. This institution also was declared to be a minority institution under the statutory provisions. Thus, whatever has been said in the case of ***Madhav Mahaseth*** (supra) also will not be of any use and available for the purpose of grant of pay scale of 5th and 6th Revision Committee of the Government servant and Government teachers to the teaching personnel of Madarsa.

10. That being so, this writ application must fail and is accordingly, dismissed.

(Mihir Kumar Jha, J)

Sujit/-

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