

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1928 of 2012

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Md. Muslim, S/O Late Md. Diljan, President of Managing Committee of Madarsa
Islahul Musalmin Sarra, P.O.- Madna, P.S.- Babubarhi, District- Madhubani

.... Appellant/s

Versus

1. The State of Bihar
2. The Bihar State Madarsa Education Board, Vidyapati Marg, Patna
3. The Chairman, Bihar State Madarsa Education Board Vidyapati Marg, Patna
4. The Secretary, Bihar State Madarsa Education Board Vidyapati Marg, Patna
5. The Special Director, Secondary Education, Bihar, Patna
6. The District Education Officer, Madhubani
7. The District Superintendent of Education, Null, Madhubani
8. Abdul Aziz S/O Late Raji Noor Mohammad R/O Village- Sarra, P.S.- Madna,
P.S.- Babubarhi, District- Madhubani

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Md. Ziaul Quamar, Advocate
Mr. Manish Kumar, Advocate

For the Respondent/s : Mr. Priyank Deepak, Advocate, AC to SC 19

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 14-03-2016

Heard learned counsel for the appellant, who was
the writ petitioner, and the learned counsel for the State.

The issue was simple and virtually the learned
Single Judge had granted the relief but inadvertently, it appears to us,
the operative part was not clear. The writ petitioner disputed the
authority of the Special Director, Secondary Education, Bihar, Patna
to hear appeal in exercise of powers under Section 28 of the Bihar
State Madarsa Education Board Act, 1981. The contention was that

this Court had repeatedly held that the Special Director himself, being a member of the Madarsa Board, cannot sit in appeal over the orders passed by the Madarsa Board, as such, the order passed by the Special Director, acting as an appellate authority over the Madarsa Board, could not be sustained, though the learned Single Judge noticed the above proposition and held that the appeal would lie to the Secretary of the Department instead of Special Director, it did not pass any order setting aside the order of the Special Director. Hence, the order of the Special Director continued to operate notwithstanding it was an order wholly without jurisdiction. No appeal could be preferred so long as the order operated.

Hence, we have no option but to allow this appeal with direction that the order dated 05.07.2010, passed in Appeal No. 19 of 2010 by the Special Director, Secondary Education, Bihar, Patna in purported exercise of powers under Section 28 of the Bihar State Madarsa Education Board Act, 1981 is set aside with liberty to the applicant, who had filed the appeal, to move the Secretary of the Department if so advised. The appeal is, accordingly, disposed of.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Arjun/Rajesh/-

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