

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.712 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 889 of 2012
Along with
Interlocutory Application No.2995 of 2015

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The Managing Committee of the Madarsa Islamia Rabbul Bux, at village Abadpur P.O. & P.S. Abadpur, District Katihar through its Secretary Zaheeruddin Ahmad and member Saidul Alam holds Power of Attorney.

.... Respondent No.6- Appellant
Versus

1. The State of Bihar.
2. The Principal Secretary, Secondary Education, Department of Education, Bihar, Patna.
3. The D.E.O., Katihar.
4. The Chairman, Bihar State Madarsa Education Board, Vidyapati Marg, Patna.
5. The Incharge Deputy Secretary, Bihar State Madarsa Education Board, Vidyapati Marg, Patna.

Respondents No. 1 to 5

6. Shahjahan Alam, son of late Jalajuddin, resident of Village + P.O. Palasi, P.S. Abadpur, Distt. Katihar.

Respondent No.7

7. Abdur Rauf, son of late Abid Hussain, resident of Village - Malapara, P.S. Abadpur, Distt Katihar.

... ... Petitioner

8. The Special Director, Secondary Education, Bihar, Patna.

.... Respondents

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Appearance :

For the Appellant : Mr. Satish Chandra Mishra, Advocate
Mr. Firoz Ahmad, Advocate

For the Respondents-State : Mr. Anjani Kumar, A.A.G.-4
Mr. Sajjal Prasad, A.C. to A.A.G.-4

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 16-08-2016

Re.: Interlocutory Application No.2995 of 2015

The application is for condonation of delay of 22 days in

filing of the present Letters Patent Appeal.

For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, we condone the delay in filing of the present Letters Patent Appeal.

Interlocutory Application stands allowed accordingly.

Re.: Letters Patent Appeal No.712 of 2015

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench on 14th of July, 2014 whereby, the writ application filed by Abdur Rauf, respondent no.7 herein, was dismissed and direction was issued to appoint the present respondent no.6 namely Shahjahan Alam as Alim Teacher.

The Managing Committee of Madarsa Islamia Rabbul Bux, the present appellant, invited applications for the posts of Alim, Maulvi and Intermediate Trained Teachers. The interviews were fixed for 25th of August, 2002. The age limit of the candidates was prescribed to be 18 to 35 years. The Abdur Rauf, respondent no.7 herein, was 43 years of age and was not eligible for appointment. But still, he was appointed. The Abdur Rauf relied upon a decision taken by the Managing Committee on 18.08.2002 wherein it was decided to relax the age in respect of him and another candidate Md. Shoaib. The relaxation in the case of the writ applicant- respondent no.7 herein was

for the reason that he was teaching in the Madarsa for the last 24 years.

The appointment of the writ applicant Abdur Rauf was challenged by Shahjahan Alam, respondent no.6 herein. The Principal Secretary, Education Department vide order dated 22nd December, 2011 held that the Managing Committee did not have power to relax the age limit. Even if the Managing Committee was of the view that the age should be relaxed, then the corrigendum should have been issued. Thus, the decision of the Managing Committee was held to be illegal and unconstitutional.

The writ applicant before the writ Court relied upon an order passed by this Court in the case of Ahmad Noor Vs. The state of Bihar & Ors., 1999 (3) PLJR 363, to contend that the order of the Principal Secretary that the Managing Committee has no power to relax the age is not correct. The learned Single Bench found that the terms of the advertisement cannot be altered as rules of game cannot be changed during the game itself. If the Managing Committee wanted to change the term of the advertisement what was required to do was to issue a proper advertisement by way of corrigendum so that an opportunity is provided to all similar situated persons to apply against the post in terms of the revised criteria. In view of the said fact, the learned Single Bench did not find any illegality in the order passed by the Principal Secretary, but since the respondent no.6 herein, namely Shahjahan

Alam, was next in the merit list, he was directed to be appointed. The Court also imposed cost of Rs.10,000/- on the present appellant.

A perusal of the record shows that name of Abdur Rauf was at serial no.1, but that was after granting relaxation in age. The respondent no.6 herein was next in the merit list. Once the appointment of the writ applicant has been found to be not tenable for the reason that the age relaxation should not have been granted, the logical consequence is of right of appointment of the person next in the merit list, i.e. respondent no.6 herein. Therefore, it cannot be said that the order passed by the learned Single Bench giving direction to the appellant to appoint respondent no.6 as Madarsa teacher can be said to be incorrect in any manner.

The judgment in Ahmad Noor's case (supra) does not support the contention raised by the appellant, though in the aforesaid case, the Managing Committee had granted relaxation of age by three years, but the writ applicant, who was more than 35 years of age, fixed in the advertisement, was not appointed and his writ application remained unsuccessful.

However, learned counsel for the appellant argued that the cost of Rs.10,000/- imposed is untenable as the management was supporting the issue of relaxation in age on the basis of a judgment of this Court. But the circumstances are not such which will not entail

imposition of cost of Rs.10,000/-.

Having heard learned counsel for the parties, we find that the imposition of cost of Rs.10,000/- in the facts of the present case is unjustified and harsh. Consequently, the order imposing cost of Rs.10,000/- is set aside while dismissing the Letters Patent Appeal on merit.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Sunil/-

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