

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.25508 of 2013

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1. The Managing Committee Of The Madrasa Amjadia Samiululoom, Bansbari, P.S. Balrampur, District- Katihar Through Its Secretary Md. Ashraf Resident Of Village- Bansbari, P.S. Balrampur, District- Katihar

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Chief Secretary Cum- Commissioner, Department Of Human Resources Development, Govt. Of Bihar, Patna.
3. The Director, Secondary Education, Department Of Human Resources Development, Govt. Of Bihar, Patna.
4. The Special Director, Secondary Education Department Of Human Resources Development, Govt. Of Bihar, Patna.
5. The Bihar State Madrasa Education Board, Patna Through Its Secretary
6. The Chairman, Bihar State Madrasa Education Board, Patna
7. The Secretary, Bihar State Madrasa Education Board, Patna
8. The District Education Officer, Katihar, District- Katihar
9. Md. Kamaluddin S/O Md. Jamaluddin Resident Of Village- Bansbari, P.S. Balrampur, District- Katihar
10. The New Managing Committee Of The Madrasa Amjadia Samiululoom, Bansbari P.S. Balrampur, District- Katihar, Through Its Secretary Inteshar Hussain

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Raj Nandan Prasad Mr. Wasi Ahmad Khan
For Respondent No.1 to 4	:	Mr. Manoj Kumar, AC to GP-4
For Respondents 5 to 7	:	Mr. Rashid Alam
For Respondents 9 & 10	:	Mr. Vijay Anand

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 02-05-2017

There are certain facts, which are not in dispute for the purpose of adjudication of the present writ application.

2. The present writ application has been filed on behalf of the Managing Committee of the Madrasa Amjadia Samiululoom, Bansbari, through its Secretary Md. Ashraf. He is



aggrieved by issuance of letter No.4949-53, dated 18.07.2013, passed by the Chairman of the Madrasa Board, whereby the Board has accorded approval to the resolution of the Managing Committee of the Madrasa Board, dated 13.07.2013, reinstating the Respondent No.9 on the post of Head Moulvi, who was earlier dismissed.

3. The said Respondent No.9 was working as Head Moulvi of the said Madrasa Amjadia Samiululoom, Bansbari. A disciplinary proceeding was initiated against him by the Managing Committee of the Madrasa, which culminated into his dismissal from said post by order, dated 01.01.2010. The said decision of the Committee to dismiss Respondent No.9 was approved by the Bihar Madrasa Education Board with the issuance of the Office order, dated 30.09.2011. The dismissal of Respondent No.9 is apparently on the charge of misconduct. The Respondent No.9 approached this Court by filing CWJC No. 362 of 2012, challenging his order of dismissal and subsequent approval of the Chairman of the Bihar State Madrasa Education Board. There being alternative remedy available to the Respondent No.9 against the decision of the Committee and the approval of the Madrasa for his dismissal from service, the Court disposed of the said writ application with a liberty to the Respondent No.9 to approach the Government against the order impugned in that case. Respondent No.9 preferred Letters Patent



Appeal No. 415 of 2012 against the order, dated 10.01.2012. It appears from the order, dated 21.01.2013 that the Respondent No.9 stated before this Court that he shall avail the alternative remedy of statutory appeal and he accordingly, withdrew the appeal.

4. It appears that subsequently new Committee came to be constituted in place of old Committee of the said Madrasa and the new Committee decided to reinstate the Respondent No.9 on the post of Head Moulvi of the Madrasa. There is nothing on record to show that Respondent No.9 had preferred statutory appeal before the competent authority against his dismissal.

5. Learned Counsel for the petitioner has, however, submitted verbally that the Respondent No.9 had preferred appeal before the Government as stipulated under Section 28 of the Bihar State Madrasa Education Board Act, which he withdrew subsequently in view of the decision of the new Committee to reinstate. The decision of the Committee to reinstate Respondent No.9 has been approved by the Bihar State Madrasa Education Board by office order, dated 18.07.2013, which is under challenge, in the present application.

6. There is another aspect which needs to be taken note of. Against constitution of new Committee of the said Madrasa and its approval by the Board, the petitioner filed an



appeal under Section 28 of the Bihar State Madrasa Board Education Act. The decision of the Board to approve constitution of new Committee had been stayed by the Special Director, Secondary Education Department, Government of Bihar. The said decision of the Special Director, Secondary Education Department, Govt. of Bihar was assailed by Respondent No.9 before this Court. This Court has set aside the said order on the ground that Special Director had no jurisdiction to entertain appeal. As on the said date, the said appeal preferred by the petitioner is pending before the Joint Director, Secondary Education Department, Govt. of Bihar.

7. Be that as it may, evidently charge of misconduct was levelled against respondent No.9. The said charge stood proved in a departmental proceeding. Based on such proved charge, a decision was taken. The order of dismissal was approved by the Board. There is no provision for review of the decision taken either by the Committee or by the Board. Therefore, neither the Committee nor the Board could have recalled the decision, whereby respondent No.9 dismissed from service.

8. Accordingly, the impugned order, dated 18.07.2013, is set aside. The order recording dismissal of respondent No.9 by the newly constituted Committee is also declared to be a nullity in the eye of law.



9. It is evident, from what has been submitted on behalf of the parties that the petitioner was advised to withdraw his statutory appeal pending before the Government in view of the decision of duly constituted Committee and approval of such decision by the Board. If the respondent No.9 applies for restoration of that appeal, in the facts and circumstances of the case, I direct the Joint Director, Secondary Education, Government of Bihar, Patna to hear the appeal on merits and dispose of the appeal within a period of two months from the date of receipt/production of a copy of this order.

10. The writ petition stands allowed.

(Chakradhari Sharan Singh, J)

ArunKumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	12.05.2017
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