

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16841 of 2018

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Managing Committee Of Madrasa Darul Hoda, Sikrona, P.S.- Kadwa,
District- Katihar through its Secretary, Dr. A. Ali, Son of Late Rayazuddin, at
Sikrona, P.S.- Kadwa, District- Katihar.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Education Govt. of Bihar, Patna
3. The Special Secretary, Secondary Education, Department of Education,
Govt. of Bihar, Patna
4. The Special Director, Secondary Education, Department of Education,
Govt. of Bihar, Patna
5. The Joint Director, Secondary Education, Department of Education, Govt.
of Bihar, Patna
6. District Education Officer, Katihar District Katichar
7. The Bihar State Madrasa Education Board, Patna through its Secretary
8. The Chairman, Bihar State Madrasa Education Board, Patna
9. The Secretary, Bihar State Madrasa Education Board, Patna
- Nos. 7 to 8 are 5 Vidtyapati marg, P.S. Kotwali District, Patna
10. The Outgoing Managing Committee of Madrasa Darul Hoda Sikrona P.S.
Kadwa District Katihar through its Secretary Ajaz Ahmad Son of Late Abdul
Mannan at Sikrona P.S. Kadwa, District Katihar

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P.K. Shahi, Sr. Advocate with Mr. Raj Nandan Prasad
For the Respondent/s	:	Mr. Prabhakar Jha -GP-27 with Mukund Mohan Jha, AC to GP-27
For Respondent No.10	:	Mr. Sanjay Singh
For Madrasa Board	:	Mr. Md. Rashid Alam

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

5 06-12-2018 I have heard Mr. P.K. Shahi, learned Senior Counsel

appearing on behalf of the petitioner, Mr. Sanjay Singh, learned

counsel appearing on behalf of private Respondent No.10 and

Mr. Prabhakar Jha, learned GP-27 appearing on behalf of the

State of Bihar.

2. The petitioner assails in the present writ



application, an order dated 06.08.2018 passed in Appeal Nos. 17/14 and 1/13 by Sri Binod Kumar Singh, the Special Secretary, Secondary Education, Government of Bihar, Patna, whereby he has set aside the orders dated 11.08.2011 and 01.11.2013 passed by the Bihar State Madrasa Education Board, Patna. The Special Secretary has exercised his power as an appellate authority under Section 28 of the Bihar State Madarsa Education Board Act, 1981 (hereinafter referred to as 'the Act')

3. There are certain aspects which are admitted. The impugned order has been passed in the light of an order dated 21.08.2017 passed by this Court in CWJC No. 19290 of 2016, whereby this Court had set aside an earlier order passed by the Joint Secretary, Secondary Education Dr. Vijay Kumar Pandey dated 17.11.2016 in the same appeals, mainly on the ground that the said Dr. Vijay Kumar Pandey was not duly notified by the State Government to function as an appellate authority under Section 28 of the Act. It was in that background that the matter was remanded back to the competent appellate authority to pass an order afresh on the said appeal preferred by respondent No.10.

4. Mr. P.K. Shahi, learned Senior counsel appearing on behalf of the petitioner has submitted that it is manifest from



the impugned order that there is absolutely no application of mind by the appellate authority inasmuch as he has verbatim reproduced the earlier order passed by the said Dr. Vijay Kumar Pandey. He has contended that even the punctuations are same in the impugned order as they were in the earlier order passed by Dr. Vijay Kumar Pandey. He has drawn my attention to an order dated 27.09.2018 passed by this Court in CWJC No. 18056 of 2018 (The Managing Committee of the Madrasa Islahul Muslimin Bocha Garhi, P. S. Bahadurganj, Kishangan Vs. The State of Bihar and ors) to contend that in similar circumstance, on the ground of non application of mind for having reproduced the entire order passed by Dr. Vijay Kumar Pandey in another case, this Court has quashed the order on the ground of non-application of mind. The said order has been brought on record by way of Annexure-23 of the supplementary affidavit filed on behalf of the petitioner.

5. Mr. Sanjay Singh, learned counsel appearing on behalf of Private Respondent No.10, on the other hand, while defending the impugned order, has submitted that what has been recorded in the impugned order is justifiable based on records available before the appellate authority. He argues that since the appellate authority was satisfied with the reasons assigned by



Dr. Vijay Kumar Pandey, in his order, merely for the reason that he has verbatim reproduced the earlier order may not be a ground for interference by this Court. He has, however, not been able to controvert the stand taken on behalf of the petitioner that earlier order passed by Dr. Vijay Kumar Pandey has been verbatim reproduced in the impugned order passed by the Special Secretary, Mr. Vinod Kumar Singh.

6. While deciding the case of Managing Committee of Madrasa Islabhul Muslimin Bocha Garhi, Bahadurganj, Kishanganj (supra) in the order dated 27.09.2018, this Court has expressed displeasure over the manner in which the appellate authority had decided the appeal by just copying the earlier order passed by the Joint Director, Secondary Education, Dr. Vijay Kumar Pandey. I reiterate that power of the appellate authority under Section 28 of the Act being statutory in nature has to be judiciously exercised by the appellate authority. Any order passed by a statutory authority exercising quasi-judicial function must reflect application of mind. I find that the appellate authority is in habit of passing such order which are unnecessarily generating litigations before this Court.

7. The impugned order dated 06.08.2018, in my view, cannot be sustained, for non-application of mind and is,



accordingly, set aside. The appellate authority is directed to pass an order afresh in a manner which may reflect his own application of mind.

8. Before I part with the present order, I consider it appropriate to direct the Chief Secretary of Bihar to consider whether the Special Secretary, Secondary Education, Govt. of Bihar, Patna should be allowed to be given any charge which requires exercise of quasi-judicial function or not, in view of the nature of orders which he has been found to be passing.

Let a copy of this order be communicated to the Chief Justice of Bihar, forthwith.

(Chakradhari Sharan Singh, J)

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