

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1911 of 2011

In
Civil Writ Jurisdiction Case No.12553 of 2003

=====

Firdaus Jamal Khatoon and Ors W/o Late Dr. Sadare Alam

... .. Appellant/s

Versus

1. The State Of Bihar And Ors
2. The Secretary Cum Commissioner Now Principal Secretary Human Resources Development Department, Government Of Bihar, Patna
3. The Director Administration - Cum - Deputy Secretary Human Resources Development Department, Government Of Bihar, Patna
4. The Special Director, Secondary Education, Government Of Bihar, Patna
5. The Secretary, Bihar State Madarsa Education Board, Patna
6. The Principal, Madarsa Islamia Shamsul Huda, Patna-6, P.S.- Pirbahore, District- Patna
7. The Bihar Public Service Commission 15, Jawahar Lal Nehru Marg, Bailey Road, Patna, Through Its Secretary
8. The Director Bihar Public Service Commission, 15, Jawaharlal Nehru Marg, Bailey Road, Patna
9. The Deputy Secretary Bihar Public Service Commission, 15, Jawaharlal Nehru Marg Bailey Road, Patna
10. Syed Mashood Ahmad S/O Late Shah Aun Ahmad R/O Phulwarishariff, P.S.- Phulwarisharif, District - Patna
11. Md. Kalim Akhtar S/O Abdul Kalam R/O Village- Boghra, P.S.- Jalley, District- Darbhanga
12. Md. Aftab Alam S/O Md. Ataur Rahman R/O Kurhailee, P.S.- Farbisganj, District- Araria
13. Md. Zafar Sadique S/O Late Mustafa Raza Kamali R/O Village- Pokhira, P.S.- Narpur, District- Sitamarhi
14. Md. Alauddin S/O Late Hafiz Abdul Hafeez R/O Village- Doghra, P.S.- Jalley, District- Darbhanga
15. Md. Abid Hussain S/O Late Md. Hasif R/O Village- Hirauta, P.S.- Tariyari, District- Sheohar
16. Md. Sayeed Ahmad S/O Late Md. Sulaiman R/O Village- Narkatiya, P.S.- Hathauri, District- Muzaffarpur

... .. Respondent/s

=====

with
Letters Patent Appeal No. 2043 of 2011
In
Civil Writ Jurisdiction Case No.12563 of 2003



=====

MD. ASLAM HUSSAIN S/O Late Muazzam Husain R/O Mohalla- Dargah
Ghara, P.O.- Mahendru, P.S.- Sultanganj, District- Patna

... .. Appellant/s

Versus

1. The State Of Bihar And Ors
2. The Secretary Cum Commissioner Now Principal Secretary Human Resources Development Department, Government Of Bihar, Patna
3. The Director Administration - Cum - Deputy Secretary Human Resources Development Department, Government Of Bihar, Patna
4. The Special Director Secondary Education, Government Of Bihar, Patna
5. The Secretary Bihar State Madarsa Education Board, Patna
6. The Principal Madarsa Islamia Shamsul Huda Patna-6, Nehru Marg Baily Road, Patna Through Its Secretary
7. The Bihar Public Service Commission 15, Jawahar Lal Nehru Marg, Baily Road, Patna Through Its Secretary
8. The Director Bihar Public Service Commission, 15, Jawaharlal Nehru Marg, Baily Road, Patna
9. The Deputy Secretary Bihar Public Service Commission, 15, Jawaharlal Nehru Marg Baily Road, Patna
10. Syed Mashood Ahmad S/O Late Shah Aun Ahmad R/O Phulwarisharif, P.S.- Phulwarisharif, District - Patna
11. Md. Kalim Akhtar S/O Abdul Kalam R/O Village- Boghra, P.S.- Jalley, District- Darbhanga
12. Md. Aftab Alam S/O Md. Ataur Rahman R/O Kurhailee, P.S.- Farbisganj, District- Araria
13. Md. Zafar Sadique S/O Late Mustafa Raja Kamali R/O Village- Pokhraise, P.S.- Narpur, District- Sitamarhi
14. Md. Alauddin S/O Late Hafiz Abdul Hafeez R/O Village-Boghra, P.S.- Jalley, District- Darbhanga
15. Md. Abid Hussain S/O Late Md. Hanif R/O Village- Hirauta, P.S.- Tariyahi, District- Sheohar
16. Md. Sayeed Ahmad S/O Late Md. Sulaiman R/O Village- Narkatiya, P.S.- Hathauri, District- Muzaffarpur

... .. Respondent/s

=====

with
Letters Patent Appeal No. 507 of 2012
In
Civil Writ Jurisdiction Case No.10679 of 2004

=====

1. MD.ZAFAR SADIQUE and ANR Son Of Late Mustafa Raza Kamali
Resident Of Village Pokhraise P.S. Narpur District Sitamarhi



2. Md. Alauddin Son Of Late Hafiz Abdul Hafeez Resident Of Village Doghra
P.S. Jalay District Darbhanga

... .. Appellant/s

Versus

1. THE STATE OF BIHAR and ORS
2. The Director Administrator-Cum-Deputy Secretary Department Of
Education, Govt. Of Bihar, Patna
3. The Bihar Public Service Commission Patna Through Its Secretary
4. The Chairman, Bihar Public Service Commisison Patna
5. The Deputy Secretary, Bihar Public Service Commission, Patna
6. The Madarsa Islamia Shamsul Hoda Patna Through Its Principal
7. The Governing Body Of Madarsa Islamia Shamsul Hoda Patna Through Its
Secretary
8. The Principal, Madarsa Islamia Shamsul Hoda, Patna
9. Syed Mashhood Ahmad Son Of Late Maulana Shah Aun Ahmed Resident
Of Danish Khankah Mujibia Phulwarisgarif P.S. Phulwarisharif District
Patna
10. Md. Aftab Alam Son Of Ataur Rahman Resident Of Village Kushali P.O.
Dholbajja P.S. Forbisganj District Araria At Present Residing In Amin
Building Karbigahia Exhibition Road Patna
11. Md. Kalim Akhtar Son Of Abul Kalam Resident Of Village and P.O. Doghra
P.S. Jale District Darbhanga At Preent Residing At Principal Quarter,
Madarsa Islamia Shamsul Hoda P.O. Mahendru Patna-6

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 1911 of 2011)

For the Appellant/s	:	Mr. Rajendra Narayan, Sr. Advocate
For the Respondent/s	:	Mr. Ajay Kumar Gautam, Advocate
For BPSC	:	Mr. Zaki Haider, Advocate
For Madarsa Board	:	Md. Aslam Ansari, Advocate
For the respondents	:	Mr. Siya Ram Shahi, Advocate
	:	Mr. Anisur Rehman, Advocate

(In Letters Patent Appeal No. 2043 of 2011)

For the Appellant/s	:	Mr. Rajendra Narayan, Sr. Advocate
For the Respondent/s	:	Mr. Ajay Kumar Gautam, Advocate
For BPSC	:	Mr. Zaki Haider, Advocate
For Madarsa Board	:	Md. Aslam Ansari, Advocate
For the respondents	:	Mr. Siya Ram Shahi, Advocate
	:	Mr. Anisur Rehman, Advocate

(In Letters Patent Appeal No. 507 of 2012)

For the Appellant/s	:	Mr. Siya Ram Shahi, Advocate
	:	Md. Anisur Rahman, Advocate
	:	Md. Akram Naiyar, Advocate
For the Respondent/s	:	Mr. Devendra Kr Sinha Aag2
	:	Mr. Zaki Haider, Advocate



CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 06-07-2022

L.P.A. No. 1911 of 2011 and L.P.A. No. 2043 of 2011

Heard learned counsel for the parties.

2. In these L.P.A. matters, appellants have sought for the following relief/reliefs in the L.P.A nos. 1911 of 2011 and L.P.A No. 2043 of 2011:

“That the present memo of Appeal is directed against the orders dated 26.08.2011 passed in C.W.J.C. NO. 12553 of 2003 Dr. Sadare Alam Versus State of Bihar and others and in C.W.J.C. No. 12563 of 2003 Md. Aslam Hussain versus The State of Bihar and Others by Hon’ble Justice Sheema Ali Khan whereby and where under though the Hon’ble Single Judge has accepted that one Khwaja Abdul Bari who was similarly situated to the petitioner moved this Hon’ble Court vide C.W.J.C. No. 11338 of 1994, for quashing memo no. 338 dated 31.05.1989 (tentative gradation lists) and the memo no. 7088 dated 2.12.1994 whereby Junior to Khawaja



Abdul Bari as also the petitioner has been made senior in the gradation list, the Special Director Secondary Education directed the principal to prepare a fresh gradation list in accordance with the direction given in C.W.J.C. No. 11338 of 1994. The name of Khawaja Abdul Bari was upgraded from S.No. 1 to S.No. 3 Hon'ble Court but has dismissed the writ application filed by the writ petitioner on the ground that the petitioner retired during the pendency of this writ application and as such, no order need be passed with respect to changing the position of the petitioner in the gradation list. Apart from which, the gradation list was finalized in the year 1999 and the writ application was filed after 5 years challenging the gradation list which is unwarranted as it is suffered from delay and latches and the petitioner had not applied against the advertisement contained in Annexure – 2 and as such he cannot challenge the appointment of respondents.”

3. Learned Single Judge decided the matters on 26.08.2011 passed in C.W.J.C. No. 12553 of 2003 Dr. Sadare Alam Versus State of Bihar others and in C.W.J.C. No. 12563 of



2003 Md. Aslam Hussain Versus The State of Bihar and others, which is subject matter of these LPAs.

4. Core issue involved in these matters are those officials who did not have promotional avenues in the Madarsa Islamia Shamsul Hoda Institution, Patna they had approached the government to provide avenue of promotion or prospectus as they were stagnated in a particular post. It was subject matter of number of litigation which was taken up to the Hon'ble Supreme Court. In terms of the directions of the Hon'ble Supreme Court, State Government took policy decision to merge Madarsa Islamia Shamsul Hoda Institution and Bihar Education Service Class II. To that effect notification was issued on 07.07.2006 during pendency of the original petition. Before disposal of original petition, State Government issued revised notification on 02.04.2013 in respect of merger of Madarsa Islamia Shamsul Hoda Institutions with the Bihar Education Service Class II. In the light of the later development namely merging of two sets of institution on 02.04.2013 with effect from 01.01.1977, the competent authority was required to undertake exercise in respect of service conditions of such of those persons who were working in the Madarsa Islamia Shamsul Hoda Institution read with Bihar Education Service Class II during the intervening period from



1.01.1977 till date in order to ascertain or to provide certain service benefits to such of those persons who were working in Madarsa Institutions. We are in the year 2022, till date the State Government or the competent authority have not undertaken such exercise after merger of the aforesaid institutions even through such merger notification has attained finality on 02.04.2013 with effect from 01.01.1977. In the light of these facts and circumstance, the present LPAs have become infructuous. Accordingly, they are disposed of with the following further observation:

5. The concerned employee or retired employee of Madarsa Islamia Shamsul Hoda Institution were permitted to make a detailed representation before the competent authority within a period of two months from the date of receipt of this order for the purpose of extending any service benefits on account of notification or order dated 02.04.2013 in respect of merger of the aforesaid institutions or service, if such representation is submitted, in that event, the competent authority/government is hereby directed to take note of the merger notification read with the service particulars of the each of the Madarsa Islamia Shamsul Hoda Institution employee and assigned appropriate ranking in the respective cadre while taking note of the fact that merger



notification dated 02.04.2013 is effective from 01.01.1977. Thereafter, extend all consequential benefits. We hope the competent authority or government would give *quietus* to the litigation which are before the judicial forum since the year 2003 to 2022 if the Madarsa Employee are entitled for any monetary benefits on account of merger and further extension of service benefits, in that event, the same shall be calculated and disbursed at the earliest.

L.P.A. 507 of 2012

Learned counsel for the petitioner submitted, on instruction, during pendency of the present L.P.A., relief sought by the appellant is stated to have been set right i.e. the appellants have got benefit of subordinate education service.

Accordingly, L.P.A. No. 507 of 2012 has become infructuous.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	18.07.2022
Transmission Date	

