

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2535 of 2023

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Irshad Ahmad, Son of Manzoor Hasan, Resident of Village-Madaripur Ward No. -03, P.S.-Bajpatti, District-Sitamarhi, presently working as Madrasa Teacher in Faiz-e-Rasool Sirsia Bazar P.O.-Sasa Musa, P.S.-Kuchai Kot, District-Gopalganj, Madrasa No. 1137.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Finance Secretary, Finance Department, Govt. of Bihar, Patna.
3. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
4. The Joint Secretary, Education Department, Govt. of Bihar, Patna.
5. The Special Director, Secondary Education, Education Department, Govt. of Bihar, Patna.
6. The Director Primary Education Department, Govt. of Bihar, Patna.
7. The District Education Officer Gopalganj, District-Gopalganj.
8. The District Programme Officer (Establishment), Gopalganj, District-Gopalganj.
9. The Bihar State Madrasa Education Board Patna through its Secretary, Phulwari Sharif District-Patna.
10. The Chairman, Bihar State Madrasa Education Board, Patna, Phulwari Sharif, Patna.
11. The Secretary, Bihar State Madrasa Education Board, Patna, Phulwari Sharif, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Md. Ziaul Quamar, Advocate

For the Respondent/s : Mr. Prabhakar Jha (GP27)

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**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD**

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 10-04-2023

The grievance of the petitioner here is with respect to the scale of pay which was granted to him on his appointment and continued, having been modified to fixed rate or consolidated sum as per the impugned resolution dated 31.08.2013. The petitioner is said to have been interviewed pursuant to an advertisement for appointment to the vacant post of Maulvi in a Madarsa. The petitioner was selected from among the other applicants and appointed to the said post, which appointment was approved by the Madarsa Board as per Annexure-2 dated. 03.09.2012. The petitioner was paid salary in the pay scale as indicated in Annexure-2 with all other allowances. However, by the impugned resolution dated 31.08.2013, the petitioner's salary was modified to at a fixed rate as is applicable to unrecognized and unaided Madarsas, with respect to which the earlier resolution dated 15.02.2011 was issued.

The issue revolves around two resolutions, one dated 15.02.2011 and the other dated 31.08.2013; which controversy was resolved by Annexure-3 judgment of this Court. A reading



of Annexure-3 would indicate that there were 1128 Madarsas in the State of Bihar that was recognized as aided Madarsas managed by private bodies. The resolution dated 15.02.2011 took note of 2459 unrecognized and unaided Madarsas, registered with the Madarsa Board which were also sought to be brought into the grant-in-aid list, for the purpose of extending State benefit to them. The resolution dated 15.02.2011 specifically provided for granting Government aid to such unrecognized Madarsas for which purpose a departmental survey was contemplated to determine the status of the said Madarsas and enable grant-in-aid to those found eligible. As far as grant-in-aid with respect to salaries to be paid to the employees of the Madarsas, a fixed rate was provided which was applicable only to those unrecognized Madarsas as on 15.02.2011. Later, by the impugned resolution dated 31.08.2013, the fixed rate was sought to be applied in respect of all appointments in the Madarsas and Sanskrit schools irrespective of their status of recognition and receipt of grant-in-aid prior to 15.02.2011. In essence, the argument of the State was that the resolution of 15.02.2011 applied to all the Madarsas, both recognized and un-recongized. The Division Bench held that the resolution dated 15.02.2011 was only



applicable to the un-recongized Madarsas and appointments made to such Madarsas after reconition is granted to enable grant-in-aid. The said resolution did not at all deal with the Madarsas which were receiving grant-in-aid before 15.02.2011. It was by the resolution dated 31.08.2013 that the condition of a consolidated sum of salary was sought to be imposed on all the Madarsas and Sanskrit schools. The said resolution could not have been applied retrospectively to appointments made before 31.08.2013; especially when the resolution of 15.02.2011 did not at all bring in such condition to the appointments made in Madarsas which were already receiving grant-in-aid. The persons who were appointed to the Madarsas recognized and aided prior to 15.02.2011; between 15.02.2011 and 31.08.2013, were appointed to and occupying regular posts with regular pay scales which could not have been interfered with retrospectively, thus, depriving those persons of the regular pay of scale. We bow to the above proposition and find no reason to depart from the same.

Insofar as the petitioner is concerned, he was appointed after 15.02.2011 but before 31.08.2013. However, we do not see any averment as to the petitioner's appointment having been made to a Madarsa which was recognized prior to 15.02.2011.



In any event, if the appointment was made to such a Madarsa which was recognized prior to 15.02.2011 and which was receiving grant-in-aid prior to that date, necessarily, the petitioner would be entitled to be continued in the pay scale to which he was appointed and there could be no modification made based on the subsequent resolution dated 31.08.2013.

With the above declaration, the writ petition is allowed, leaving the parties to suffer their respective costs.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	05.04.2023
Uploading Date	11.04.2023
Transmission Date	

