

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3388 of 2023

Md. Sayeed, Son of Abdul Jabbar Ansari, Resident of Village and P.O.-
Mustafabad, P.S.-Goreya Kothi, District-Siwan. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Human Resource Department, Government of Bihar, Secretariat, Patna, Bihar.
2. The Bihar State Madarsa Education Board, Patna, through its Secretary, Apex Tower, Haroon Colony, Sector-II, Near-Khojai Imli Mazar, P.O. and P.S.-Phulwarisharif, Patna.
3. The Chairman, Bihar State Madarsa Education Board, Patna, Apex Tower, Haroon Colony, Sector-II, Near-Khojai Imli Mazar, P.O. and P.S. Phulwarisharif, Patna.
4. The Secretary, Bihar State Madarsa Education Board, Patna, Apex Tower, Haroon Colony, Sector-II, Near-Khojai Imli Mazar, P.O. and P.S. Phulwarisharif, Patna.
5. The District Education Officer, Siwan, Mohalla-Mahadeva, Siwan.
6. The District Program Officer, Siwan.
7. The Managing Committee of Madarsa Ansarul Muslamin Khagni, P.O.-Mustafabad, P.S.-Goreya Kothi, District-Siwan, Madarsa No.-609/5621, through its Secretary Rafi Ahmad Ansari, Son of Abdul Jabbar Ansari Resident of Vilage and P.O.-Mustafabad, P.S.-Goreya Kothi, District-Siwan.
8. Ataur Rahman Son of Late Abdul Gafar Resident of Village and P.O.-Mustafabad, P.S.-Goreya Kothi, District-Siwan, President of Managing Committee of Madarsa Ansarul Muslamin Khagni, P.O.-Mustafabad, P.S.-Goreya Kothi, District-Siwan, Madarsa No. 609/562.
9. Md. Nasimuddin Son of Azizul Haque, Resident of Village- Mustfabad, P.O.- Mustfabad P.S.- Goriya Kothi, Dist.- Siwan-841439.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Rashid Izhar, Advocate
For the State	:	Mr. Prabhakar Jha, GP-27
For the Resp No. 9	:	Mr. Washi Ahmad Khan, Advocate
For the Madarsa Board	:	Mr. Shahzad Hassan Khan, Advocate
		Mr. Md. Aslam Ansari, Advocate
		Mr. Sanjay Kumar, Advocate
For the Resp No. 8	:	Mr. Rajnandan Prasad, Advocate
For the Resp No. 7	:	Mr. Wasi Akhtar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 04-09-2023 Heard learned counsel for the petitioner, learned counsel
for the Managing Committee (respondent no. 7), learned counsel for
Respondent no. 8, learned counsel for the Respondent no. 9, learned



counsel for the Bihar State Madarsa Education Board (hereinafter referred to as the 'Madarsa Board') as also learned counsel for the State.

2. The petitioner in the present case is seeking the following reliefs:-

i. Issuance of a writ or writs in the nature of Certiorari to set-aside the order dated 02.01.2023 passed by the Special Secretary-cum-Appellate Authority, Education Department, Bihar, Patna passed in Appeal No. 48/2022, whereby the final Order dated 15.01.2020, passed by the Bihar State Madarsa Education Board, Patna with regard to Termination of the Petitioner on the post of Head Teacher (Moulvi) by the Managing Committee of Madarsa No. 609/562 is rejected and the Appellate Authority observed that the interim order once passed by the Board during the pendency of hearing will attain finality and the final order will not be taken as final order and at the same interim order cannot be reviewed by the Respondent Education Board.

ii. Issuance of a writ or writs in the nature of Mandamus commanding the Respondents especially the Respondent Management Committee to immediately restore the service of the Petitioner on the post of Head Teacher (Moulvi) of the Madarsa in terms of the final order passed by the Respondent Board vide Memo No. 350 dated 15.01.2020, whereby the Petitioner was directed to function as Head Moulvi of the Madarsa upon hearing all the parties including the Managing Committee of the Madarsa.

iii. Grant such other relief or reliefs to which the petitioner may be entitled in the facts and circumstances of this case.”

3. Earlier after hearing learned counsel for the parties and at the stage of issuing notice, this Court has recorded the submissions



advanced on behalf of the petitioner in its order dated 18.07.2023

which are being reproduced hereinunder:-

Order Dated 18.07.2023

“Heard learned counsel for the petitioner, learned counsel for the Respondent No. 8, learned counsel for the Bihar State Madarsa Education Board (hereinafter referred to as the ‘Board’) and learned counsel for the State.

Learned counsel for the petitioner submits that by Annexure ‘1’ the Managing Committee of the Madarsa decided to terminate the service of the petitioner and to appoint Md. Nasimuddin. The resolution of the Managing Committee of the Madarsa was sent to the Board for approval, however, the Board granted approval initially for a period of three months only vide Memo No. 3344 dated 25.04.2017. It is submitted that vide Memo No. 3344 dated 25.04.2017, the petitioner was called upon to appear before the Board in connection with the decision of the Managing Committee to terminate his service so that the Board may take further decision.

It is submitted that pursuant to the notice as contained in Annexure ‘3’, the parties appeared before the Chairman of the Board on 13.01.2020. On the said date, the Secretary of the Managing Committee, this petitioner and the new incumbent Md. Nasimuddin all were present. They resolved the dispute amicably and the same was informed to the Chairman which is recorded in Memo No. 350 dated 15.01.2020 (Annexure ‘4’). By virtue of Annexure ‘4’, the petitioner was allowed to act as Head Maulvi.

Learned counsel for the petitioner submits that the President/Chairman of the Board took it upon himself to challenge the order as contained in Memo No. 350 dated 15.01.2020. There is nothing to suggest that at any point of time, the Managing Committee had authorized the President/Chairman to challenge the consented order recorded by the President of the Board vide Annexure ‘1’.

It is submitted that at the instance of the President of the Managing Committee of the Madarsa, the appeal was entertained by the



Special Secretary (Appellate Authority) vide Appeal No. 48 of 2022 who held that the order of the Chairman as contained in Memo No. 350 dated 15.01.2020 and Memo No. 1290 dated 22.04.2020 cannot be said to be legal and valid. Annexure '4' of the said appeal and the consequential order as contained in Annexure '5' of the said appeal have been cancelled. The bone of contention is that at no point of time, Md. Nasimuddin had challenged the consented order as contained in Annexure '1' and the President of the Managing Committee had no locus standi to challenge the decision of the President/Chairman of the Board.

Learned counsel for the Board and learned counsel for the Respondent No. 8 have jointly opposed this writ application. It is submitted that the termination of the petitioner was done by the Managing Committee, therefore, the Secretary of the Managing Committee alone was not competent to give a consent to retain the service of this petitioner.

Let Md. Nasimuddin be added as party Respondent No. 9 by Monday i.e. 24th July, 2023.

Issue notice to the Respondent No. 7 (Managing Committee) and the newly added Respondent No. 9 through both by ordinary process as well as under registered cover with A/D for which requisites etc. must be filed within two weeks from today, failing which this application as against concerned respondents shall stand dismissed without further reference to a Bench.

The Board and the Respondent No. 8 have filed their respective counter affidavits. If so advised, they may file any other supplementary affidavit in support of their contentions.

List this matter after six weeks i.e. on 31st August, 2023 under appropriate heading maintaining its position."

4. Today, learned counsel, who is appearing for respondent No. 7, submits that he is not required to file any counter affidavit, meaning thereby that respondent no. 7 is not



contesting the writ application.

5. Respondent No. 8 has filed a counter affidavit. He claims himself President of the existing Managing Committee of the Madarsa. In his pleadings, he also submits that respondent no. 7 is so-called non-functioning and non-existing Managing Committee of the Madarsa Board in question. It is evident from his counter affidavit itself that there was a dispute in the Managing Committee of respondent Nos. 7 and 8.

6. Respondent no. 8 claims that ultimately, the Madarsa Board had decided the dispute in his favour in Madarsa Appeal No. 76 of 2020 setting aside the order dated 17.11.2020 and then the Madarsa Board was directed to pass an approval order of either of the Managing Committee after enquiry conducted by the District Level Officer within a period of three months. His grievance is that again the Chairman of the Madarsa Board on his own passed the order dated 06.12.2021 approving the Managing Committee of Respondent no. 7. The said order was challenged by the respondent no. 8 in Appeal No. 109 of 2021 and the order was set aside directing the Madarsa Board to comply with the order dated 14.06.2021 passed in Madarsa Appeal No. 76 of 2020. Respondent no. 8 claims that by virtue of this order as contained in Annexures 'A' and 'B' to the counter affidavit, he is still functioning and managing the said Madarsa.



7. Respondent Nos. 2 to 4 has also entered appearance.

Learned counsel for the Madarsa Board submits that the Madarsa in question along with other 609 Madarsas was under enquiry by the Education Department, Government of Bihar in pursuance of the order dated 24.01.2023 passed by this Court in CWJC No. 20406 of 2018 (Alauddin Bismil versus The State of Bihar & Others). A High Level Committee is conducting the enquiry. This affidavit further states that because of the orders of the High Court, the State Government is not releasing any amount by way of grants-in-aid in favour of 609 Madarsas.

8. This Court finds from the kind of pleadings available on record that there is a keen contest with regard to the existence of the Managing Committee of Respondent Nos. 7 and 8 which cannot be adjudicated in the present writ application.

9. In the circumstances, this Court finds that the impugned orders have been passed at the instance of Respondent No. 8 who is claiming himself the Chairman of the Managing Committee which is being contested by Respondent No. 7, this Court is, therefore, of the considered opinion that the impugned order passed by the Special Secretary, Appellate Authority, Education Department, Government of Bihar dated 02.01.2023 is not sustainable inasmuch as the order contained in Memo No. 350 dated 15.01.2020 (Annexure '4' to the writ application) is an order



passed with consent of the parties and nothing has been brought to the notice of this Court to demonstrate that what was agreed to by the then Secretary of the Managing Committee was not sustainable and is liable to be set aside. The order contained in Memo No. 350 dated 15.01.2020 (Annexure '4') was based on an understanding given to the Chairman of the then Madarsa Board that the parties had resolved their disputes amicably.

10. The impugned order is, therefore, set aside. Annexure '4' is restored.

11. This writ application is allowed to the extent indicated hereinabove but in the nature of the dispute between the parties, in case they are so advised, they can seek their remedy before a competent court of law where the various factual aspects may be duly adjudicated after giving appropriate opportunity to adduce their respective evidences in accordance with law.

(Rajeev Ranjan Prasad, J)

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