

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13442 of 2021

1. Md. Parwez Alam Son of Md. Yasin Resident of Village- Narayanpur, P.O.- Dilawarpur, P.S.- Kalyanpur, District- East Champaran presently working as Madarsa Teacher in Madarsa Nezamia (Madarsa No. 757/1128), Dilawarpur, District- East Champaran.
2. Abdus Sami Khan Son of Md. Ali Khan Resident of Village- Dariyapur, P.O.- Dariyapur, P.S.- Sangrampur, District- East Champaran presently working as Madarsa Teacher in Madarsa Islamia, Dariyapur (Madarsa No. 69/1128), District- East Champaran.
3. Taha Kamal Son of Md. Akil Khan Resident of Village- Dariyapur, P.O.- Dariyapur, P.S.- Sangrampur, District- East Champaran presently working as Madarsa Teacher in Madarsa Islamia, Dariyapur (Madarsa No. 69/1128), District- East Champaran.
4. Sarwar Jamil Son of Md. Jamil Akhtar Resident of Village- Jamunia, P.O.- Phenara, P.S.- Phenara, District- East Champaran presently working as Madarsa Teacher in Madarsa Darul Uloom Ejorbara (Madarsa No. 77/1128), Khas Phenara, District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary Education Department, Government of Bihar, New Secretariat, (Bikas Bhawan), Patna.
3. The Principal Secretary Finance Department, Government of Bihar, Old Secretariat, Patna.
4. The Joint Secretary Education Department, Government of Bihar, New Secretariat, (Bikas Bhawan), Patna.
5. The Director Secondary Education, Government of Bihar, New Secretariat, (Bikas Bhawan), Patna.
6. The Special Director Secondary Education, Government of Bihar, New Secretariat, (Bikas Bhawan), Patna.
7. The District Education Officer East Champaran at Motihari.
8. The District Programme Officer (Establishment) East Champaran.
9. Bihar State Madarsa Education Board Sector-2, Harun Nagar Colony, Phulwarisharif, Patna.
10. The Chairman Bihar State Madarsa Education Board, Sector -2, Harun Nagar Colony, Phulwarisharif, Patna.
11. The Secretary Bihar State Madarsa Education Board, Sector -2, Harun Nagar Colony, Phulwarisharif, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Wasi Ahmad Khan, Advocate
For the Respondent/s : Smt. Shilpa Singh, GA-12



**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date : 26-06-2023**

The issue raised herein revolves around two resolutions, one dated 15.02.2011 and the other dated 31.08.2013; which controversy was resolved by the judgment of this Court in CWJC No. 985 of 2015 dated 27.03.2019. A reading of the said decision 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 recognition 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.

2. Insofar as the petitioners are concerned, it is claimed they were appointed after 15.02.2011 but before 31.08.2013. We do not however see any averment as to the petitioners' appointments having been made to Madarsas which were recognized prior to 15.02.2011. In any event, if the separate appointments of the petitioners were made to such Madarsas, which were recognized prior to 15.02.2011 and which received grant-in-aid prior to that date, necessarily, the petitioners would be entitled to be continued in the pay scale to which they were appointed, if they were appointed between 15.02.2011 and 31.08.2013 and there could be no modification made based on the subsequent resolution dated 31.08.2013.

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

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Saurabh/Bibhash

AFR/NAFR	
CAV DATE	
Uploading Date	28.06.2023
Transmission Date	

