

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4517 of 2021

1. Nuzhat Fatema D/o Md. Irfan, Resident of Village - Basta Dangi, P.O. - Surjapur, P.S. and District - Kishanganj. Presently working as Madarsa Teacher in Madarsa Noorul Isla, Patalwa, P.O. - Hanfia Madarsa no. 704 P.S. and District - Kishanganj.
2. Md Umar Farooque, S/O -Ais Mohammad Resident of Village - Tatpowa, P.O.- B B Bharatpur, P.S. - Thakurganj, District - Kishanganj. Presently working as Madarsa Teacher in Madarsa Majharul uloom Wajedia, Dohabari P.O. and P.S. - Powakhali Madarsa no. - 743 District - Kishanganj.
3. Md Manzer Alam S/o Md. Shafique Ahmad Resident of Village - Chariya, P.O. - Bagalbari, P.S. - Kochadhaman District - Kishanganj. Presently working as Madarsa Teacher in Madarsa Wahidia Chariya, P.O.- Bagalbari P.S. - Kochadhaman Madarsa no. 456 District - Kishanganj.
4. Mohd. Izhar Alam, S/o Haji Usman Resident of Village - Kothoro P.O.- Saraikori, P.S. - Powahali, District - Kishanganj. Presently working as Madarsa Teacher in Madarsa Majharul uloom Wajedia, Dohabari, P.O. and P.S. - Powakhali Madarsa no. 743 District - Kishanganj.
5. Md Abul Hussain S/o Abdul Majid, Resident of Village - Khirdah P.S. and District - Kishanganj. Presently working as Madarsa Teacher in Madarsa Takmilul Uloom Rashidia, Khirdah Madarsa no. 587 P.S. and District - Kishanganj.
6. Amjad Alam, S/o Ainul Haque Resident of Village - Khagra Bilatibari, P.S. and District - Kishanganj. Presently working as Madarsa Teacher in Madarsa Darus Salam, Khagra Bilatibari Madarsa no. 431 P.S. and District - Kishanganj.
7. Md Asim S/o Late Md Noor Islam Resident of Village - Doriya P.O. and P.S. Ziyapokhar District - Kishanganj. Presently working as Madarsa Teacher in Madarsa Minnatul Quran P.O. and P.S. Ziyapokhar Madarsa no. 561 District - Kishanganj.
8. Md Azharuddin, S/o Md. Matloob Alam, Resident of Village - Phulwari, P.O. Altaaat P.S. Kochadhaman District - Kishanganj. Presently working as Madarsa Teacher in Madarsa Islamia Mahboobia Idgah Majkuri P.O. - Sohandarhaat Madarsa no. 512 P.S. - Kochadhaman District - Kishanganj.
9. Md Ghulam Sarwar S/O Md Halim, Resident of Village - Nihal Bhag, P.O. Sontha, P.S. - Kochadhaman District - Kishanganj. Presently working as Madarsa Teacher in Madarsa Noorul Uloom Nihal Bhag P.O. - Sontha Madarsa no. 610 P.S. Kochadhaman District - Kishanganj.
10. Md Abrar Alam, S/o Abdul Latif Resident of Village - Chura Kutti P.O. - Kanhaiyabari Haat P.S.- Kochadhaman District - Kishanganj. Presently working as Madarsa Teacher in Madarsa Asraful Uloom Noorpur, Mahiyarpur, P.O. - Kanhaiyabari Haat Madarsa no. 497 P.S. - Kochadhaman, District - Kishanganj.
11. Farzana Nasrin D/o - Zainul Haque Resident of Village - Pipal Tora, P.O. - Kutti Gola, P.S. - Kochadhaman District - Kishanganj. Presently working as Madarsa Teacher in Madarsa Jamia Jamhuria Islamia Kutti Haat P.O. Kutti



Gola Madarsa no. 474 P.S. - Kochadhaman District - Kishanganj.

12. Samsuddin S/O Abdur Rahman Resident of Village - Haltabin P.O. and P.S. - Dighalbank, District - Kishanganj. Presently working as Madarsa Teacher in Madarsa Abre Rahmat Haltabin P.O. and P.S. - Dighalbank Madarsa no. 573 District - Kishanganj.
13. Md Arshad Anjum S/o Md Hamid Hussain Resident of Village - Balua Dangi P.O. - Mahesh Bathna P.S. Terhagach District - Kishanganj. Presently working as Madarsa Teacher in Madarsa Anwarul Uloom Balua Dangi, P.O. - Mahesh Bathna Madarsa no. 434 P.S. Terhagach District - Kishanganj.
14. Naqee Neyaz, S/o Muzaffar Alam, Resident of Village - Surenda P.O. and P.S. - Bahadurganj District - Kishanganj. Presently working as Madarsa Teacher in Madarsa Islahul Muslimin Bahadurganj Madarsa no. 464 P.O. and P.S. Bahadurganj District - Kishanganj.

... .. 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 Principle Secretary, Education Department, Govt. of Bihar, Patna.
4. The Joint Secretary Education Department, Govt. of Bihar, Patna.
5. The Director Primary Education Department, Govt. of Bihar, Patna.
6. The Special Director Higher Secondary Education Department, Govt. of Bihar, Patna.
7. The District Education Officer Kishanganj, District - Kishanganj.
8. The Bihar State Madarsa Education Board, Patna through its Secretary.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Md. Ziaul Quamar, Advocate
For the Respondent/s : Mr. Ajay Kumar Rastogi, Sr. Advocate

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-04-2023

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-recognized 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)

(Madhuresh Prasad, J)

sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	27.04.2023
Transmission Date	

