

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1225 of 2018

In
Civil Writ Jurisdiction Case No.16783 of 2014

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1. Md. Wasiullah Qadri @ Mohammad Wasiullah Quadri, son of Md. Sabihullah, resident of Village- Mohammadpur, P.O. Bahera, District- Darbhanga.
 2. The Managing Committee of Madarsa Anisul Ghorba, Darbhanga through it's President Md. Sabihullah, son of Late Md. Daud, resident of Village and P.O. Bahera, District Darbhanga.

... .. Appellant/s

Versus

1. The State of Bihar
2. The Special Director, Secondary Education, Human Resources Development, Government of Bihar, Patna.
3. District Education Officer, Darbhanga.
4. The Madarsa Board, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Raj Nandan Prasad, Advocate
For the State	:	Mr. Shashi Shekhar Tiwary, A.C. to AAG-10
For the Madarsa Board	:	Mr. Md. Aslam Ansari, Advocate
For the Respondent/s	:	Mr. Raj Kishore Singh, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 27-04-2023

The Letters Patent Appeal is filed against the judgment of the learned Single Judge which disposed of the writ petition with liberty left to the petitioners to approach the Madarsa Board in the matter of approval of the appointment of the 1st petitioner and thereafter consequential benefits were also directed to be dependent on the decision of the Madarsa Board



on such approval being granted.

2. Learned counsel appearing for the appellants would assert that there is no such procedure delineated in Bihar State Madarsa Education Board Act, 1981 (“1981 Act” hereafter) and the Rules.

3. Referring to the facts of the case, the first appellant is the person who was appointed by the second appellant, the Managing Committee of the Madarsa who is also the second petitioner in the writ petition. The first appellant is said to have been appointed as Moulvi/Assistant Teacher on 20.01.2014. The appellants submit that despite there being no statutory provision or rule conferring power on the Madarsa Board to approve the appointment, the learned Single Judge has observed that there is a detailed procedure delineated, and in such circumstances, the Board will consider the approval if an application is made by the petitioners. The learned counsel would also rely on a judgment of a learned Single Judge of this Court in Md. Abu Bakar Rizvi v. The State of Bihar and Ors. (CWJC No. 8557 of 2010) wherein it was found that under Sections 24 and 25 of the 1981 Act, there is no requirement under law for seeking approval of the Madarsa Board regarding appointment made by the Managing Committee of the minority Madarsa if there is a



sanctioned and vacant post on which appointment is made following the due procedure laid down under law.

4. We also heard the learned State Counsel and the learned Standing Counsel appearing for the Madarsa Board. In defence, we have been shown the Rules of 2022 framed under Section 26 of the 1981 Act. Rule 8 of the Bihar State Non-Government Recognised Aided Madarsa (up to Moulvi standard) Teaching and Non-teaching Staffs Service Condition, Rules, 2022 refers to the procedure of recruitment and Clause (C) thereof speaks of the Managing Committee being entitled to consider filling up of vacant posts of Assistant Teachers/School Peon by way of promotion from the eligible candidates. Rule 8 (B) deals with the direct recruitment of Assistant Teacher, Clerk and School Peon which is to be made through the web portal (software) which is prepared by the department for the respective districts. It is also required under sub-clause (iv) that the entire process of counseling shall be held in the concerned Madarsa under the supervision of an officer of the Bihar Education Service nominated by the District Education Officer. Sub rule (vii) speaks of the Managing Committee sending a proposal for seeking approval of the appointment and promotion to the Bihar State Madarsa Education Board, Patna on which a



decision has to be taken by the Board under sub-rule (viii). It is also pointed out that even the earlier rules being the Bihar State Non-Government Madarsa (Service Conditions) Rules 1977 contained Rules 5 to 7 delineating the procedure for appointments in Madarsas.

5. Learned counsel for the appellants, however, points out that the said rule is no more applicable in so far as the Act under which the rule was framed was repealed, as is seen from the decision of another learned Single Judge of this Court in CWJC No. 1041 of 1983 (Md. Sohrabuddin Vs. State of Bihar and others) dated 27.01.1984.

6. Admittedly, no rule was framed after the 1981 Act wherein specific power has been conferred on the Government to frame rules under Section 26 of the Act. Section 25 of the Act also confers on the Government the power to delineate the procedure through notifications. We have not been shown any rule or notification made under the 1981 Act. The Government relies on the Rules of 1977 when the Act under which the said Rule was made, has been repealed by the 1981 Act. Under the 1981 Act there is no rule framed till 2022, for which specific power is conferred on the Government. When the Rules of 1977 has not been validated under the enactment of 1981 there is no



question of reference to the said Rules. In fact, the Rules of 1977 are not operative after the 1981 Act especially by reason of the declaration made by the learned Single Judge of this Court in Md. Sohrabuddin (supra). The Rules of 2022 now made under the 1981 Act can also not be made applicable since the appointment of the first appellant was long prior to the statutory rules coming into force.

7. In such circumstances, there is no question of an approval by the Board as such. However, even learned counsel for the appellants agrees to the position that there could be a verification of the qualification of the first appellant for the post of Moulvi/Assistant Teacher.

8. In such circumstances, the second appellant, the Managing Committee of the Madarsa which has appointed the first appellant would communicate qualification of the first appellant along with supporting documents to the Madarsa Board. The Madarsa Board will verify as to whether the first appellant has the qualification for the post as it was required at the time of his appointment. If the qualification is found to be proper, the Madarsa Board shall approve the appointment of the first appellant and in that circumstance the dues to the first appellant shall be paid by the Managing Committee which shall



be disbursed by the State Government. We direct the Managing Committee to send the communication along with the details of the qualification, the procedure which was followed for appointing persons and also due proof of there being a sanctioned post existing as on 2014, to the Madarsa Board within a period of two weeks from the date of receipt/production of a copy of this judgment. The Madarsa Board shall then conduct due inquiry and at any rate within a period of two months from the date of receipt of the communication from the second appellant, consider the matter and pass a speaking order. If the appointment is approved, necessarily the dues of the petitioner shall be satisfied by the Government within a period of three months thereafter and he shall be continued with the salary due to him.

9. The writ appeal is allowed with the above directions.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

Anushka/PKP

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