

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1191 of 2022

1. The Managing Committee, Madarsa Mofidul Islam at Tegharia, P.O. Gangi Hat, P.S. Kochadhaman, District Kishanganj (Madrse No. 484) through its Secretary.
2. Abdul Khalik, son of Md. Sultan, resident of Tegharia, Natuapara, P.S. Kochadhaman, District Kishanganj. The President of the Managing Committee of Madarsa Mofidul Islam Tegharia at Tegharia, P.O. Gangi Hat, P.S. Kochadhaman, District Kishanganj (Madrse no. 484).
3. Md. Faiyaz Alam, son of Md. Faziruddin, resident of Tegharia, P.S. Kochadhaman, District Kishanganj. The Secretary of the Managing Committee of Madarsa Mofidul Islam at Tegharia, P.O. Gangi Hat, P.S. Kochadhaman, District Kishanganj (Madrse no. 484).
4. Head Molvi, Madarsa Mofidul Islam at Tegharia, P.O. Gangi Hat, P.S. Kochadhaman, District Kishanganj (Madrse no. 484).

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Secondary Education, Government of Bihar, Patna.
2. The Bihar State Madarsa Education Board, Patna through its Chairman.
3. The Chairman, Bihar State Madarsa Education Board, Patna.
4. The Secretary, Bihar State Madarsa Education Board, Patna.
5. The District Education Officer, Kishanganj.
6. The District Programme Officer, Kishanganj.
7. Md. Shamsad Alam, son of Safiur Rahman, resident of Tegharia, P.O. Gangi Hat, P.S. Kochadhaman, District-Kishanganj.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Abdul Mannan Khan, Adv. Mr.Nihal Beg, Adv. Mr.Shiv Kumar, Adv.
For the State	:	Mr.Prabhakar Jha (Gp27)
For the Madarsa Board	:	Mr.Shahzad Hassan Khan, Adv. Mr.Aslam Ansari, Adv.

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV JUDGMENT

Date :09-07-2024

Heard learned counsel for the petitioners and learned
counsels for the respondents.

2. The present writ application has been filed for the



following relief/s:-

“(i) For issuance of an appropriate writ, order or direction for quashing the order passed by the respondent Chairman, Bihar State Madarsa Education Board, Patna as contained in Memo No.2772 dated 15.12.2021 (Annexure-1) issued by the Secretary, Bihar State Madarsa Board, Patna by which the respondent Chairman inspite of deciding the issue of approval of termination of service of private respondent, has most arbitrarily and quite malafidely directed the petitioners to permit the private respondent to function on the post of Assistant Teacher (Maulvi). He has also directed the petitioners to pay the arrears of salary of the private respondent otherwise he has threatened the Head Molvi (petitioner no.4) to stop his salary. He has further directed the petitioners to not to take any disciplinary action against the private respondent.

(ii) For issuance of an appropriate writ, order or direction restraining the respondents from interfering in the peaceful management of the Madarsa in question.

(iii) For issuance of an appropriate writ, order or direction for grant of ad interim stay of the operation of the impugned order dated 15.12.2021 as contained in Memo No.2772 dated 15.12.2021 (Annexure-1) passed by the respondent Chairman, Bihar State Madarsa Education Board,



Patna which is annexure-1 of this writ petition, during the pendency of the writ petition.

(iv) For grant of any other relief or reliefs to which the petitioners may be deemed entitled in the facts and circumstances of the case.”

3. The short facts of the case is that Madarsa Mofidul Islam was established by the local Muslims in the year 1957 at Tegharia, P.O. Gangi Hat, P.S. Kochadhaman, District Kishanganj. The aforesaid Madarsa has been recognized/affiliated vide Letter/Memo No.484 in the year 1962 by the Bihar State Madarsa Education Board, Patna. The petitioner nos.2 and 3 are the President and the Secretary of the Managing Committee and the petitioner no.4 is the Head Molvi (Principal) of the said Madarsa.

4. The problem in the Madarsa arose when the private respondent no.7 got himself appointed on the post of Assistant Teacher (Molvi) on 18.05.2013 by playing fraud and forgery upon the then Managing Committee. The fraud and forgery of the private respondent came into light when on 04.01.2021, one Israil filed a petition before the President/Secretary regarding the fraud played by the private respondent for getting appointment in the Madarsa in question. A domestic enquiry was conducted by three members enquiry committee on the



directions of the Managing Committee and it was found that the private respondent had got initial education from the Madarsa in question and he had passed Wastania examination of Bihar State Madarsa Education Board from the Madarsa in question and his date of birth has been recorded there as 16.12.1974. Thereafter, he has passed Fauquania and Molvi examination from another Madarsa in the year 1990 and 1992 conducted by the Bihar State Madarsa Education Board and in his all above certificates, his date of birth has been recorded as 16.12.1974.

5. He had produced the certificates of a private Madarsa of Bareilly (U.P.) of Fazil standard, which appears to be forged and fabricated and not recognized by the Bihar State Madarsa Education Board/the Government of Bihar. The date of birth of the private respondent in the certificate of Fazil of private Madarsa has been shown as 16.12.1988 (Annexure-2 of the writ petition).

6. The Secretary of the Managing Committee issued show cause notice against the private respondent and to explain as to why he should not be removed/terminated from the service of the Madarsa in question. The enquiry committee had also examined the private respondent. After providing sufficient opportunity of hearing and examining the entire aspect of the



matter, the managing committee found that admittedly the private respondent's date of birth in the Madarsa in question and his all certificates issued by the Bihar State Madarsa Education Board of Wastania, Fauquania and Molvi is 16.12.1974 whereas in Fazil course of private Madarsa of Bareilly, he has subsequently changed his name and date of birth in the certificate of Fazil issued by the private Madarsa of Bareilly (U.P) so it has been found by the managing committee that private respondent has committed fraud and forgery in getting his appointment on the post of Molvi (Assistant Teacher). A resolution was passed by the Managing committee dated 20.06.2021 by which the private respondent has been dismissed from the service of Assistant Teacher. The order of dismissal has been issued by the Secretary of the Managing Committee and served upon the private respondent vide letter dated 21.06.2021 by the Secretary of the Managing Committee (Annexure-3 of the writ petition).

7. Petitioner no.3 being Secretary of Managing Committee of Madarsa in question sent a letter along with resolution of Managing Committee with all evidence to the Chairman/Secretary, Bihar State Madarsa Education Board informing them that the private respondent has been terminated



from the service of Madarsa in question (Annexure-4 of the writ petition). The Chairman, Bihar State Madarsa Education Board not at all considered the above resolution of termination of private respondent and took the issue very lightly and passed the impugned order vide Memo No.2772 dated 15.12.2021 as contained in Annexure-1 by which he has issued the following directions:-

(i) The petitioners to permit the private respondent to function on the post of Assistant Teacher (Molvi)

(ii) He has also directed the petitioners to pay the arrears of salary of the private respondent otherwise he has threatened the Head Molvi (petitioner no.4) to stop his salary.

(iii) He has further directed the petitioners to not to take any disciplinary action against the private respondent.

8. Learned counsel for the petitioners submits that the impugned order passed by the respondent Chairman, Bihar State Madarsa Education Board is quite unjust, improper and without jurisdiction. The private respondent has got his appointment in the Madarsa in question by committing fraud and forgery and by suppressing the hard fact as such being the only competent body the petitioner managing committee has rightly terminated the service of the private respondent. The power of appointment and



termination as contained in Section clause (n) of sub-section (2) of section 7 and section 24 of Bihar State Madarsa Education Board Act, 1982 has been declared ultra vires by this Hon'ble Court as well as the Hon'ble Supreme Court of India. The impugned order passed by the respondent Chairman, Bihar State Madarsa Education Board is arbitrary, malafide and without jurisdiction.

9. It is further submitted that the impugned order passed by the respondent Chairman, Bihar State Madarsa Education Board is a direct interference in the peaceful managing of Madarsa in question, which is a recognized minority institution under Article 29 and 30 of the Constitution of India.

10. Learned counsel for the petitioners further submits that the petitioners' case is fully covered by the various decisions of this Hon'ble Court as well as Hon'ble Supreme Court as rendered in **(1985) PLJR 837; 1994 Suppl. (2) SCC 509; AIR 1990 SC 695, 1985 PLJR 870; 1995(1) PLJR 492 and (1988) PLJR 1107**. It is further submitted that by order dated 05.09.2019 in CWJC No.18427/2019, order dated 01.10.2019 in LPA No.1279/2019, order dated 07.10.2013 in LPA No.408/2013 the Hon'ble High Court has restrained the Chairman to not to function or to take decision by the majority



of the members of the Board and by himself alone.

11. Learned counsel for the petitioners has further relied upon the judgment and order passed in CWJC No.5595 of 1995 dated 06.11.2012 by which the learned Single Judge of co-ordinate bench of this Court has considered this fact that having being declared ultravires then the education lack of jurisdiction teacher may be dismissed by the managing committee of the Madarsa then is natural remedy would be to approach the Civil Court. The relevant para is quoted hereinbelow:-

“It may be noted that Section-24 of the Act, as it was originally enacted, inter alia, had a provision that “no teacher of the Madrassa can be discharged or dismissed from the service without the prior approval of the Board”. This clause had squarely come up for consideration before the Division Bench of this Court in the case of Anjuman Ahle-Hadees, Darbhanga & Ors. Vs. the State of Bihar & Ors. since reported in 1985 PLJR 837 and this Court declared it ultra vires and against the rights of minorities who administered the institution. I may also notice here that similar aspect has also recently been decided by this Court in the case of Anjali Jain Vs. the State of Bihar & Ors. since reported in 2011 (3) BBCJ 522 and also reported in 2011 (3) PLJR 702 wherein it has been held that in view of the Articles-29 & 30



of the Constitution, a minority is entitled to administer its educational institution without Governmental interference even if such institution receives substantial aid from the Government. Why reference has been made to Section-24 of the Act by this Court in this judgment is because if this Patna High Court CWJC No.5595 of 1995 dt.06-11-2012 - 7 - provision is ignored, having been declared ultra vires, then the Madrasa Education Board also lacks jurisdiction in the matter where a teacher may be dismissed by the Managing Committee of the Madrasa then his only remedy would be to approach the Civil Court.”

12. A counter-affidavit is filed on behalf of the private respondent as well as the Madarsa Board. It is submitted that after appointment the petitioner called for his duty properly in the Madarsa. In the meanwhile due to some dispute regarding Imam of Masjid, petitioner's managing committee got offended and decided to disturb the respondent no.7. So the petitioner made a false story about the two different dates of birth, one being 16.12.1974 and the other being 16.12.1988. Earlier date of birth i.e. 16.12.1974 regarding degree of Bihar State Madarsa Education Board, Patna where name Md. Shamshad Ansari while the later date of birth i.e. 16.12.1988 where respondent



no.7 got Fazil degree from Madarsa of Bareilly (U.P.) in which name is clearly mentioned as Md.Shamshad Alam S/o-Safiur Rahman which is only degree of respondent no.07. He is not concerned about degree of Bihar Madarsa Education Board where date of birth is mentioned as 16.12.1974.

13. It is submitted that the petitioner's managing committee illegally constituted three men committees with the help of his supporters. They supported the allegation of the managing committee towards the respondent no.7. Thereafter, the petitioner's managing committee sent show cause notice to the respondent no.7 Md. Shamshad Alam regarding the two different dates of birth and different degrees. But respondent no.7 replied on 15.06.2021 clearly stating his date of birth as 16.12.1988. He never acknowledged the earlier date of birth i.e. 16.12.1974 and degree obtained from Bihar Madarsa Education Board, Patna in the year 1988 and 1990.

14. It is further submitted that according to rule, if petitioner's managing committee is not satisfied, they may prefer an appeal before the appellate authority but here they decided to file writ petition after ignoring the appellate authority which is illegal and outside the jurisdiction. Petitioner annexed some affidavits by some teaching staffs and students about



respondent no.7 studying in Madarsa Mofidul Islam but respondent no.7 had also taken certificate from Mukhiya and Sarpanch Gram Panchayat of Tegharia, Kishanganj where Madarsa is situated i.e. clearly stated that respondent no.7 after completing primary education went to Madarsa in Bareilly (U.P.) where he got his Fazil degree and several villagers also gave sworn affidavit in support of the respondent no.7.

15. It is further submitted that the petitioner put a question regarding the validity of Annexure-1 Chairman has no jurisdiction to pass such an order alone because a Bench of the Hon'ble High Court restrained the function of the Chairman as a Board on 05.09.2019 in C.W.J.C. No.18427/2019 (**Madarsa Anisul Gurba v/s Bihar State Madarsa Education Board and Ors.**). Thereafter, the Madarsa board filed an appeal bearing L.P.A. No.1279 of 2019 which was dismissed on 01.10.2019.

16. Learned counsel for the Board has filed a counter-affidavit in which it is stated that the petitioners have directly approached the Hon'ble High Court without availing the provisions of appeal prescribed u/s 28 of the Bihar State madarsa Education Board Act, 1981. The section 28 of the 1981' Act prescribes for the appeal before the State Government and reads as follows:-



“28. Appeal against the orders of the Board- Any person of the Managing Committee aggrieved with the decision of Board may file an appeal for final hearing within 60 days of the passing of the orders, to the State Government.”

17. It is submitted that the petitioners are aggrieved by the order passed by the Chairman, Bihar State Madarsa Education Board, Patna contained in Memo No.2772 dated 15.12.2021 (Annexure-1) where it has been directed to allow Md. Shamshad Alam, Assistant Teacher to continue on the post of Maulvi and also directed to make the payment of rest of his salary. It is submitted that one complaint with regard to the date of birth of the respondent no.7 was made before Managing Committee of the Madarsa wherein it was alleged that the different dates of the date of birth of the respondent no.7 has been mentioned on the certificates. The enquiry was conducted and wherein it was found that in the Fazil certificate the date of birth has been mentioned as 16.12.1988 and pursuant there to the Managing Committee dismissed the respondent no.7 from the service.

18. Learned counsel for the Board further submits that the power and function of the Chairman of Board has been provided u/s 13 of the Bihar State Madarsa Education Board Act, clause 4 of which reads as under:-



“(4) If at any time, except when the Board is in Session, the Chairman is satisfied that an emergency has arisen requiring him to take immediate action involving the exercise of any powers vested in the Board by or under this Act, the Chairman shall take such action as he deems fit and shall report the action taken by him to the Board in the next meeting.”

19. Per contra, learned counsel for the petitioner submits that the Chairman has not reported the action taken by him to the Board in the next meeting.

20. Considering the argument of the parties and on perusal of the record, it is an admitted fact that there is dispute regarding two dates of birth of private respondent no.7. The disputed fact cannot be settled by the Writ Court, it is required to be resolved by taking oral and documentary evidence, to identify the real date of birth, which is real and which is fake date of birth certificate.

21. Considering the argument of the parties and on perusal of record, this Court is of the opinion that the Chairman of Bihar State Madarsa Board has no power to interfere with the decision of Managing Committee of Madarsa, only available remedy to the petitioner would be to approach the Civil Court.

22. Considering this fact and circumstances, the order dated



15.12.2021 (Annexure-1) passed by the Chairman, Madarsa Board is hereby quashed. The private respondent no.7 is at liberty to take legal action, in accordance with law.

23. The present writ application is hereby allowed.

(Anjani Kumar Sharan, J)

pallavi/-

AFR/NAFR	NAFR
CAV DATE	20.06.2024
Uploading Date	09.07.2024
Transmission Date	N.A.

