

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2205 of 2019

Tanzeem Ahmad S/o- Late Md. Aminudddin r/o- Khas Ganji ,P.O.- Ganji, P.s. Bahadurganj, Dist- Kishanganj, At present posted as assitant teacher in Madarsa Ashraful Uloom, Aouji Gachh, Alta Bari, P.o. Ganji, P.s- Bahadurganj, Kishanganj.

... .. Petitioner

Versus

1. The State of Bihar and Ors Principal Secretary, Education Department Government of Bihar, Vikas Bhawan, Patna
2. The Special Director Secondary Education Vikas Bhawan Patna
3. The Education Officer Kishanganj
4. The District Programme Officer(Establishment) Kishanganj
5. Md. Siddique, Secretary Managing Committee of Madarsa Ashraful Uloom aouji Gachh, P.O- Alta Bari Kishanganj(Mad.no-483)
6. Mohit Ali , Head Maulvi of Madarsa Ashraful Uloom Aouji Gachh, P.O- Alta Bari Kishanganj
7. Md. Naushad Alam In-Charge Head Maulvi of Madarsa Ashraful Uloom aouji Gachh Alta Bari, Kishanganj
8. the Chairman, Bihar State Madarsa Education Board Patna, Vidyapati Marg, Patna
9. The Secretary Bihar State Madarsa Education Board, Patna , Vidyapati Marg, Patna

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Alim Jang Khan, Advocate
For the State	:	Mr. Apurva Kumar, Advocate
For the M. Board	:	Mr. S.A. Khan, Advocate
For the Respondent No.7:	:	Mr. Anish Akhtar, Advocate

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 22-03-2024

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the Madarsa Board.

2. The petitioner has prayed for following relief:

“(i) For commanding the Chairman Bihar State Madarsa Educaiton Board, Patna, and respondents no. 5 and 6 to ensure payment of salary arrears of salary form 01.03.2014 till day and current salary to the petitioner who is validly appointed, worked



and working in the said Madarsa.”

3. The case, in short is that the old Secretary of Managing Committee of Madarsa Ashraful Uloom, Aouji Gachh, Atla Bari, District-Kishanganj asked permission for advertisement for filling matric trained vacant post by letter dated 31.10.2012 from the Secretary, Bihar State Madarsa Board, Patna. Thereafter, the Secretary, Bihar State Madarsa Education Board, Patna, issued direction by letter no-5025 dated- 23.07.2013. The Secretary, Bihar State Madarsa Board, Patna, clearly directed the Secretary of the Managing Committee to appoint dependent of Md. Aminuddin, who was teacher in the Madarsa, and died in harness, on the vacant post of Matric trained. It was stated in the letter by which Wajahul Quamar appointment was found illegal and it was cancelled by special Director Secondary Education. The Managing Committee of the Madarsa appointed Tanzeem Ahmad (petitioner) on vacant post of trained matric on compassionate ground by resolution no-03 dated- 31.07.2013. The Secretary of the Managing Committee of Madarsa sent for approval to Bihar State Madarsa Board. The appointment of Tanzeem Ahmad (petitioner) was approved by the Chairman of the Board and informed by letter no-5961-69 dated- 03.09.2013. After the appointment, petitioner joined



Madarsa and worked. Petitioner was paid salary from September 2013 to February 2014 for six months. The salary demand bill of Madarsa including bill of the petitioner for the period 01.03.2014 to 31.07.2014 was presented before D.P.O., Kishanganj on 05.08.2014 by joint signature of Md. Idris, the then Secretary of the Managing Committee of the Madarsa and Mohit Ali, Head Maulvi of Madarsa, but D.P.O. Kishanganj did not make payment of salary of the petitioner.

4. Learned counsel for the petitioner submits that it is relevant to point out that the Head Maulvi was suspended by the Managing Committee of the Madarsa, Md. Naushad Alam, Assistant Teacher was made In-charge Head Maulvi and it was approved by Bihar State Madarsa Board by letter no- 6547- 50 dated- 02.11.2015. The new Managing Committee of the Madarsa came into existence by memo no-6053-61 dated- 29.09.2014 of Bihar State Madarsa Board, Patna. Md. Siddque became Secretary and Mohit Ali as Head Maulvi. This committee was illegally approved by the Chairman of the Board. It is settled law by catena of decisions of this Court that committee approved by order of the Chairman is nullity in law. He further submits that the new Managing Committee is trying to oust the petitioner and bring Wajahul Quamar whose appointment has been cancelled by letter no- 142 dated



07.08.2012 and confirmed by court in its order dated 25.07.2013 in C.W.J.C. No. 17976 of 2012. The petitioner is regularly and continuously working in the Madarsa, but he was not paid salary for long so he filed C.W.J.C. No. 1723 of 2017 on 31.01.2017, it was heard by the Hon'ble Court on 15.02.2018 and a co-ordinate Bench of this Court directed the petitioner to approach the Chairman of the Madarsa Board, Patna for redressal of grievance. The petitioner in the pursuance of order dated 15.02.2018 approached the Chairman of Madarsa Board by filing representation for payment of salary on 12.03.2018, but the Chairman of the Madarsa Board did nothing for three months. The petitioner at last filed contempt petition M.J.C. No. 2072 of 2018 on 26.06.2018 against the Chairman and other authorities for non-compliance of this Court's order. After that Secretary of Bihar State Madarsa Board issued direction to the Secretary and Head Maulvi of the said Madarsa to comply the order of Hon'ble High Court within 15 days vide letter no- 6018-22 dated- 20.08.2018.

5. Learned counsel for the petitioner further submits that the Madarsa Board raised issue of Wajahul Quamar and showed favour to the illegally appointed Secretary and Head Maulvi of the Madarsa by its show- cause. At last M.J.C. was disposed on 28.11.2018 with direction to the petitioner to assail



the decision of the opposite parties in appropriate proceeding. Hence, this writ is being filed for redressal of grievances. He further submits that it is very pertinent to mention here that the Secretary and the Head Maulvi of the Madarsa tried to make payment to Wajahul Quamar, who was dismissed teacher and not produced the bill of the real working teacher, Tanzeem Ahmad. It is evident from letter no- 328 dated- 21.02.2015 and letter no- 558 dated- 26.03.2015 of District Programme officer (Establishment) Kishanganj.

6. Learned counsel for the petitioner further submits that the petitioner has been appointed by competent Managing Committee and also approved by Bihar State Madarsa Education Board, Patna. Petitioner joined the Madarsa and has been working from 03.09.2013. He got salary from September 2013 to February 2014. His bill for payment of salary from 01.03.2014 to 31.07.2014 was presented by D.P.O. (Establishment) Kishanganj, on 05.08.2014 by joint signature of Md. Idris, the then Secretary and Mohit Ali, but DPO did not make payment of the salary to the petitioner. The salary of the petitioner has not been paid from 01.03.2014 to 31.12.2018 up till now. Non-payment of salary to the petitioner for four years without any rhyme and reason is arbitrary, illegal. It is against the provision of Articles- 14, 21 and 23 of the Constitution of



India. He further submits that it is important to state that all hurdles have been created by Md. Naushad Alam, who was posted as Assitant Teacher at Madarsa and by letter No. 6547-50 dated 02.11.2015, he was made in-charge and head Maulvi of Madarsa and the Secretary of the present Managing Committee. The present Managing Committee is invalid in view of Patna High Court decision reported in *Md. Daud Hassan vs. State of Bihar* and others reported in 1995(1) P.L.J.R. 492. Hence, all actions and orders passed by this committee is without jurisdiction.

7. Learned counsel for respondents no. 8 and 9 has filed a counter affidavit on behalf of the respondents no. 8 and 9 stating therein that, at the outset, a preliminary objection is being raised regarding maintainability of the present writ application and submits that the person, namely, Wajahul Qamar, who was appointed in place of the present petitioner has not been made a party respondent in the present writ application. It is a clear-cut violation of Clause 4D (1) of the Bihar State Litigation policy, 2011, as this is the case of Non-joinder and Mis-joinder of the necessary party and the intention of the writ petitioner is only to harass the answering respondent unnecessarily. Therefore, this writ application is liable to be dismissed on this score only. He further submits that Vide Memo No. 2381-84 dated 10.09.2009,



the Madrasa Board accorded its approval to the duly appointed Wajahul Quamar on the vacant post of Matric Trained in the said Madrasa. The above appointment was challenged before the Appellate Authority in Madrasa Appeal No. 26/2009 which was allowed vide Memo No. 142 dated 07.08.2012 after setting aside above memo of the Board dated 10.09.2009. It is relevant to mention here that at that time, the Special Director, Secondary Education, Bihar, being Ex-Officio member of the Madrasa Board, was hearing the madrasa appeal in the capacity of Appellate Authority. The above order of the Special Director was challenged by the Wajahul Quamar before the this Hon'ble Court in CWJC No. 17976 of 2012 vide order dated 20.11.2018 was passed, which is reproduced herein below:

“ the only issue warranting adjudication was whether the Special Director, who is ex- officio member of the Madrasa Board, is competent to hear appeal against the decision of the Madrasa Board. This issue has already been answered by this Court in series of cases earlier.

In view of the above, the order passed by the Special Director, as contained in Annexure-10, against the order of the Madrasa Board cannot sustain. It is, accordingly, quashed. The matter is remanded back to the Special Secretary, Education Department, who has been authorised to hear appeal against the decision of the Madrasa Board.



The Special Secretary is directed to hear and decide the appeal in accordance with law at the earliest preferably within a maximum period of four months from the date of receipt/production of a copy of this order. It is needless to say that the Special Secretary shall provide opportunity of hearing to all concerned before taking decision in accordance with law.

With the aforesaid, the writ petition stands allowed and disposed of.”

8. Learned counsel for the respondents no. 8 and 9 further submits that learned Special Secretary-cum-Appellate Authority vide Memo No. 14 dated 30.01.2024 while disposing the remanded back appeal no. 26/2009 passed an order as under:

"It appears from the provisions enumerated under the Rules of Bihar State Madrasa Education Board that teachers cannot be appointed on compassionate grounds in a recognized Madrasa. Therefore, there is no reasonable ground for the Appellate Authority to interfere with the order in question vide Memo No. 2381-84 dated 10.09.2009 of the Madrasa Board"

9. Learned counsel for respondents no. 8 and 9 further submits that pursuant to the Memo No. 142 dated 07.08.2012 of the Special Director, the Secretary of the Managing Committee seek permission from the office of the



Board to advertise to fill the vacant post of Matric Trained in the concerned Madrasa. In compliance of the order of the learned Appellate Authority, the permission was granted by the office of the Board through Memo No. 5025 dated 23.07.2013 and further issued a direction to the Managing Committee of Madrasa Ashraful Uloom, Bahadurganj, Kishanganj (Madrasa No. 483) to appoint the legal heir of Shri. Aminuddin on compassionate ground on the vacant post of Matric Trained, who died in harness on the same post in the said Madrasa. He further submits that this Hon'ble Court vide order dated 12.04.2012 passed in CWJC No. 20921 of 2011 has already rejected the claim of the wife, namely, Nasima Khatoon of Late Aminuddin to be appointed on compassionate ground on the basis of observation rendered in C.W.J.C. No. 8017 of 2007 (*Md. Minhaj Alam Versus The State of Bihar & Others*), order dated 05.04.2011. He further submits that Smt. Nasima Khatoon, who was the petitioner in the above writ application, was also an appellant in the Madrasa Appeal no. 26/2009. Without perusing above observation of the Hon'ble High Court the Board, vide letter no. 5961-64 dated 03.09.2013, granted approval to the appointment of the petitioner, who is son of Shri Aminuddin, on the compassionate ground on the post of Matric Trained. He further submits that according to Rules, 2022, regarding managing



committee and also as per previous practice, the statutory period or tenure of the approved managing committee of Madrasa is of 3 years. All the claims of the present petitioner regarding his valid appointment on the compassionate ground and payment of his salary or arrears and the orders of the Board in favour of the petitioner have become infructuous in the light of Memo No. 14 dated 30.01.2024 (Annexure-2 to the counter affidavit) passed by the Special Secretary-cum-Appellate Authority in the remanded back Madrasa Appeal No. 26/2009 who observed that there is no reasonable ground to interfere with the order in question vide Memo No. 2381-84 dated 10.09.2009 of the Madrasa Board which was earlier set aside by the Special Director, Secondary Education, Patna, in the capacity of the Appellate Authority under section 28 of the Bihar State Madrasa Education Board Act, 1981.

10. Learned counsel for the respondents no. 3 and 4 has also filed a counter affidavit stating therein that the appointment of the petitioner was cancelled by the then Managing Committee as he has never worked. He further submits that the petitioner has filed the present writ application after more than nine years for the payment of his arrears of salary on the false and fabricated grounds.

11. Considering the above submissions of learned



counsel for the parties and from perusal of the records, it appears that there is no provision for appointment on compassionate ground in the Madarsa Board, it is clear from the order of the Special Secretary-cum-Appellate Authority passed in remand back Appeal No. 26 of 2009 by the Memo No. 14 dated 31.01.2024 and, further, the decision of the learned Single Judge rendered in C.W.J.C. No. 8017 of 2007, (*Md. Minhaj Alam Versus The State of Bihar & Others*) dated 05.04.2011, the Court, after due deliberation and hearing the parties and taking the note of the law has come to a considered opinion that no writ will lie against the affairs of Private Managing committee as it is not a state even under Article 12 of the Constitution of India.

12. In view of the above observation, the present writ petition stands dismissed.

(Anjani Kumar Sharan, J)

anand/-

AFR/NAFR	NAFR
CAV DATE	11.03.2024
Uploading Date	22.03.2024
Transmission Date	NA

