

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16770 of 2023

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Shayara Bano Wife of -Md Mahboob Saba, Daughter of-Md Hasan Raja Ansari, Resident of-Makkhachak, P.S-Bakhri District-Begusarai. Presently working as Madrasa Teacher in Madrasa Islamia Makkhachak, P.S-Bakhri District-Begusarai. Madrasa no.-198.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna.
2. The Finance Secretary, Finance Department, Govt. of Bihar, Patna.
3. The Principal Secretary, Education Department, Govt. of Bihar, Patna.

4. The Joint Secretary, Education Department, Govt. of Bihar, Patna.

5. The Special Director, Secondary Education, Education Department, Govt. of Bihar, Patna.
6. The District Education Officer Begusarai District Begusarai.

7. The Bihar State Madrasa Education Board, Patna through its Secretary, Phulwari Sharif District-Patna.
8. The Chairman, Bihar State Madrasa Education Board, Patna, Phulwari Sharif, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Md. Ziaul Quamar, Advocate
For the State	:	Mr. P.K. Shahi, Advocate General
For Madarsa Board	:	Mr. Md. Shahzad Hassan Khan, Advocate
		Mr. Md. Aslam Ansari, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT



(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 21-08-2024

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 were 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-recognized. 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. In Para-4 of the writ petition, it is stated that Madarsa Board has been pleased to accord approval of the appointment of the petitioner as Madarsa Teachers vide letter dated 28.09.2011. Hence, it is the contention of the petitioner that he has been appointed prior to said dates.

3. We do not, however, see any averment as to the petitioner's appointment having been made to Madarsa which was recognized prior to 15.02.2011. In any event, if the separate appointment of the petitioner was made to such Madarsa, which was recognized prior to 15.02.2011 and which received grant-in-aid prior to that date, necessarily, the petitioner would be entitled to be continued in the pay scale to which she was appointed, if she was appointed prior to 15.02.2011 or between 15.02.2011 and 31.08.2013 and there could be no modification made based on the subsequent resolution dated 31.08.2013.

4. With the above declaration, the writ petition is disposed of directing the petitioner to make appropriate representation before Respondent No. 5 specifically indicating her date of appointment and also furnishing evidence as to her date of appointment as also the recognition of her Madarsa prior



to 15.02.2011. The representation shall be considered and disposed of based on the cited decision within a period of three weeks from the date of furnishing of evidence.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.08.2024
Transmission Date	NA

