

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.7425 of 2019**

Md. Kamaluddin Son of Late Jamaluddin Resident of Village- Bansbari, P.S.-  
Balrampur, District- Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Higher Education Department, Vikas Bhawan, Patna.
2. Joint Secretary-cum-Appellate Authority, Education Department, Budh Marg, Text Book Building, Patna.
3. Special Director, Secondary Education, Vikas Bhawan, Patna.
4. District Education Officer, Katihar.
5. District Programme Officer (Establishment), Katihar.
6. The Chairman, Bihar State Madarsa Education Board, Patna, Vidyapuri Marg, Patna-1.
7. The Secretary, Bihar State Madarsa Education Board, Patna, Vidyapati Marg, Patna-1.
8. The Managing Committee of Madarsa Amjadia Samiul Uloom Bansbari, P.O.- Dungal, P.S.- Balrampur, District- Katihar.
9. Md. Ashraf Son of Late Md. Allauddin Secretary of the present Managing Committee of Madarsa Amjadia Samiul Uloom, Bansbari, P.S.- Balrampur, District- Katihar.
10. Asrarul Haque Son of Late Allaf Hussain Incharge Head Moulvi, Madarsa Amjadia Samiul Uloom Bansbari, P.S.- Balrampur, District- Katihar.

... .. Respondent/s

**Appearance :**

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| For the Petitioner/s  | : | Mr. Alim Jang Khan, Advocate<br>Mr. Sanjay Kumar, Advocate       |
| For the Respondent/s  | : | Mr. Madhaw Prasad Yadav (GP-23)<br>Mr. Arvind Kumar, AC to GP-23 |
| For the Madarsa Board | : | Mr. Md. Aslam Ansari, Advocate                                   |

**CORAM: HONOURABLE MR. JUSTICE AJIT KUMAR**  
**ORAL ORDER**

18    09-02-2026                      Heard learned counsel for the petitioner, learned  
counsel for the State and learned counsel for the Madarsa  
Board.

2. The writ petition has been filed for the following  
reliefs :-

*“For quashing the order contained in Memo*



*No.30 dated 12.02.2019 passed by learned Binod Kumar Singh, Joint Secretary, Education Department as appellate authority in Appeal No.6 of 2013/30 of 2017 and for quashing the order contained in Memo No.1172-76 dated 30.09.2011 passed by the Chairman Bihar State Madarsa Education Board, Patna.”*

3. Learned counsel for the petitioner submits that the petitioner was a Head Moulvi of Madarsa Amjadia Samiul Uloom Bansbari P.S. Balrampur District-Katihar and was suspended by the Managing Committee vide resolution dated 13.06.2009, which is said to have been approved by the Bihar State Madarsa Board, vide order dated 1672-75 dated 20.07.2009.

4. It is the case of the petitioner that petitioner was not paid subsistence allowance during his suspension and this issue was raised before the Special Director, Secondary Education, Vikas Bhawan, Patna, in view of direction issued by a Co-ordinate Bench passed in C.W.J.C. No.14452 of 2009 and on considering the issues, the Special Director, Secondary Education, Vikas Bhawan, Patna, quashed the suspension order passed by the Secretary, Managing Committee of the said Madarsa, and directed the Bihar State Madarsa Board to examine the veracity of the allegations at their level and on finding the allegations to be true, appropriate legal action be



taken, and accordingly, appeal was disposed of.

5. Learned counsel for the petitioner further submits that in view of the directions issued by the Special Director, Secondary Education, Human Resource Department, Bihar, and the Chairman, Bihar State Education Board, Patna, passed an order dated 30.09.2011 (Annexure-1) without examining the allegation and the petitioner had to again challenge the said order by filing writ petition being C.W.J.C. No.362 of 2012, in which liberty was granted to file an appeal, as per Section 20 of Bihar State Madarsa Education Board, Patna, before the State Government.

6. This Court had given a detailed hearing on 16.09.2025 and specific query was made from the counsel and had directed for bringing on record the materials to show that the subsistence allowances were paid to this petitioner during the course of proceedings but despite such direction having been issued, no such affidavit is said to have been filed explaining the position, insofar as it relates to the payment of subsistence allowance. The relevant extract of the order passed by this Court on 16.09.2025 is quoted as under :-

*“4. In view of the judgment rendered by the Hon’ble Apex Court reported in (1999) 3 SCC 679, Capt. M Paul Anthony v. Bharat Gold Mines Ltd.,*



*where it has been categorically stated that in a case where the departmental proceeding was initiated and the delinquent employee is not provided with subsistence allowance, the entire process of inquiry undertaken and punishment so recorded by the competent authority will vitiate in law.”*

7. Learned counsel for the State as also the learned counsel for the Madarsa Board has appeared and though a very detailed counter has been filed but the issues which have been raised by this Court, seeking their response, have not been answered till date and therefore, this Court is constrained to examine the issues based on the materials available on record.

8. From perusal of the order impugned, which is appended with the writ petition as Annexure-1, it appears that the Joint Director, Department of Education, Bihar, Patna, who had heard the appeal being Appeal No.06 of 2013 dated 02.05.2017, without examining the issues of violation of principles of nature justice and its effect on the Departmental Enquiry owing to non-payment of subsistence allowance, in light of the Hon'ble Apex Court judgment rendered in Capt. M Paul Anthony (*supra*), the Appellate Authority, simply by referring to the various attending facts and order passed by the Co-ordinate Benches and various petitions filed before the



appropriate forums by this petitioner, has tried to justify the order of dismissal but the legal question, which has been raised in this case in reference to payment of subsistence allowance during the course of inquiry to this petitioner, based on which the dismissal order has been passed, and without holding fresh inquiry, as per the direction of Special Director dated 22.05.2010, has simply relied upon the same material to pass the impugned order, which is not sustainable in law and even during the course of hearing of this case, the liberty which was given to them, to controvert the finding of non-payment of subsistence allowance, which is apparent from the order passed by the Special Director, as contained in Memo No.62 dated 22.05.2010, has not been denied and accordingly, this Court finds that there has been gross violation of principles of natural justice, while arriving to a conclusion with regard to passing of dismissal order and therefore, this Court has no hesitation in setting aside the order as contained in Memo No.30 dated 12.02.2019 and the authorities are directed to reinstate this petitioner back into service and to pay the consequential benefits for which, the petition is found entitled in law.

9. However, the authorities are put at liberty to examine the correctness of allegation, in accordance with law



and if the authorities proposes to do so, then the same can be done by strictly adhering to the principles of natural justice.

10. Accordingly, the writ petition is allowed.

**(Ajit Kumar, J)**

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