
(2023) 08 PAT CK 0016

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1160 Of 2016

Heer Mohammad

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 08-08-2023

Acts Referred:

Citation : (2023) 08 PAT CK 0016

Hon'ble Judges : Rajeev Ranjan Prasad, J

Bench : Single Bench

Advocate : Y.V. Giri, Sumit Kumar Jha, Riya Giri, Bivvtosh Kumar, Shahzad Hassan Khan, Aslam Ansari, Obaidur Rahman, Anshuman Singh, Harendra Kumar

Final Decision : Disposed Of

Judgement

1. Heard learned senior counsel for the petitioner, learned counsel for the Bihar State Madarsa Education Board, learned counsel for the respondent no. 12 and learned counsel for the State.

2. The present writ application has been filed seeking a direction to the Chairman, Bihar State Madarsa Education Board, Bihar (hereinafter referred to as the "Board") to dispose of the petition dated 10.09.2015 as contained in Annexure '4' to the writ application.

3. Learned senior counsel for the petitioner submits that the petitioner is the Secretary of the Madarsa Darul Quadria Nooria of Chhamatia (hereinafter referred to as the "Madarsa"). This Madarsa is affiliated with the Board up to 'Wastania standard'. It is submitted that in order to bring the said Madarsa under the resolution No. 1090 dated 29.11.1980 and the departmental resolution No. 162 dated 15.02.2011 for grant of aid/financial assistance by the State, the respondent District Education Officer, Kishanganj conducted spot inquiry on the basis of letter No. 1442 dated 11.04.2011 of the Secretary of the Board and letter No. 162 dated 15.02.2011 of the respondent Principal Secretary. It is submitted that an inquiry report was submitted.

4. The grievance of the petitioner is that the said inquiry was conducted by the District Education Officer, Kishanganj without any knowledge to the petitioner. It is further submitted that the D.E.O., Kishanganj submitted his inquiry report annexing the list of teacher along with the list of members of the Managing Committee of the Madarsa for getting the benefit of the resolution. When this fact came to the notice of the petitioner and other teachers and members of the Managing Committee of the Madarsa, they brought this to the knowledge of the respondent D.E.O., Kishanganj whereafter the entire matter was enquired into by the respondent through the Block Education Officer, Pothia, District – Kishanganj. The Block Education Officer, Pothia, Kishanganj submitted his report to the District Education Officer, Kishanganj in which he found that the claim of the petitioner and other members of the Managing Committee was correct.

5. Learned senior counsel submits that the enquiry report as contained in letter No. 842 dated 17.12.2014 submitted by the Block Education Officer to the D.E.O., Kishanganj has been forwarded to the respondent Secretary of the Board for necessary action vide letter No. 70 dated 10.03.2015 alongwith the copy of the report. Annexure '3' series are the letter and the enquiry report sent to the Secretary of the Board.

6. The grievance of the petitioner is that despite bringing of the entire facts to the notice of the Secretary of the Board, the same has not been considered and the government funds received in the Madarsa are being distributed among those teachers by the head Moulvi. The petitioner is, therefore, praying for consideration of the report as contained in Annexure '3' series.

7. A counter affidavit has been filed on behalf of the Board. The Board admits that an enquiry has been conducted by the Block Education Officer as contained in Annexure '3' series, but the stand of the Board is that the same is not in terms of the government resolution dated 15.02.2011. It is the stand of the Board that the petitioner has made representation dated 10.09.2015 but nothing has been shown to have been received in the Board. The Madarsa in question has already been notified by the State Government to be given financial assistance and the relief has been sought for in the writ petition for a direction to the Board to dispose of the same declaring another set of the teaching staffs to be entitled for salary.

8. It is, thus, the stand of the Board that this writ application involves disputed question of facts which may only be decided in the suit by civil court of competent jurisdiction.

9. A counter affidavit has been filed on behalf of the Respondent No. 12. Attention of this Court has been drawn towards the resolution as contained in Annexure 'A' vide Memo No. 162 dated 15th February, 2011. It is stated that the Madarsa in question has been granted aid only after an enquiry upon finding that these Madarsas are fulfilling the conditions required under resolution no. 1090 dated 29.11.1980.

10. Learned counsel has further submitted that with reference to the judgment of this Court rendered on 02.07.2018 in CWJC No. 746/2015 (Md. Habibur Rahman Vs. The State of Bihar and others) that in the said case a similar kind of report forwarded by the District Education Officer to the Secretary of the Board and the decision of the Board based on the said forwarded report was set-aside on the ground that the said decision was based on an incompetent enquiry report.

11. Learned counsel submits that Annexure '3' cannot be acted upon for the same reason which is provided in the judgment of this Court in Annexure 'B' to the counter affidavit of respondent no. 12.

12. Having heard learned senior counsel for the petitioner, learned counsel for the Board, learned counsel for the respondent no. 12 and learned counsel for the State, in view of the judgment of learned coordinate Bench of this Court in CWJC No. 746/2015 (Annexure 'B' to the counter affidavit of respondent no. 12), this Court is of the considered opinion that Annexure '3' as it is cannot be acted upon, however, this Court would hasten to add that this being a matter in which financial illegalities are being pointed out by the petitioner must be enquired into by the competent authority. This Court would not form any opinion at this stage but directs the District Education Officer, Kishanganj to make a spot enquiry himself with the aid and assistance of his officers and submit a fresh report in his own pen to the Secretary of the Board.

13. Let such report be submitted within a period of two months from the date of receipt/production of a copy of this order.

14. On receipt of the report from the District Education Officer, Kishanganj, the Board shall consider the same and take an appropriate view of the matter after hearing all the stake-holders.

15. This Writ Application stands disposed of accordingly.