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**(2019) 03 PAT CK 0031**

**In the Patna High Court**

**Case No : Civil Writ Jurisdiction Case No. 985 Of 2015**

Imran Alam And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

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**Date of Decision : 27-03-2019**

**Acts Referred:**

**Citation : (2019) 03 PAT CK 0031**

**Hon'ble Judges : Amreshwar Pratap Sahi, CJ;Anjana Mishra, J**

**Bench : Division Bench**

**Advocate : Shailendra Kumar Singh, Lalit Kishore, Prabhu Narayan Sharma**

**Final Decision : Allowed**

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## **Judgement**

Anjana Mishra, J

1. Heard learned counsel for the petitioners and the learned Advocate General for the State of Bihar.

2. This writ petition has been filed by two petitioners claiming themselves to be the validly appointed teachers of Madarsa Islamia Arbia, Naeemia, Sonebarsa, Maharajganj, District- Siwan. They claim that the Petitioner No. 1 was appointed under a resolution dated 16th July, 2012, whereas the Petitioner No. 2 was appointed under a resolution dated 16.08.2012. These proposals were preceded by an advertisement in the year 2011 and after the selection process, the papers with regard to the selection of these two teachers were sent for approval to the competent authority with regard to which approval was granted, as disclosed in Paragraph 9 of the writ petition. This factum of appointment of the petitioners and their approval remains undisputed.

It is, however, submitted by the learned Advocate General that these appointments having been made after the resolution dated 15th of February, 2011, they were entitled to a fixed pay which has been now indicated in the impugned memo dated 31st August, 2013 where Clause 6 categorically provides

that such of these teachers who have been appointed after 15th February, 2011 shall be entitled to fixed pay only.

3. The challenge has been raised to the resolution dated 31st August, 2013 to the aforesaid extent contending that the same is arbitrary and discriminatory and there is no rationale so as to reduce the pay-scale of the petitioners that they were already enjoying pursuant to their appointment by retrospectively applying the resolution dated 31st August, 2013.

4. The background in which this challenge has been raised centres around two resolutions, one dated 15th February, 2011 and the impugned resolution dated 31st August, 2013.

5. There were 1128 Madarsas that were recognized and aided by the State Government but were privately managed. According to the resolution dated 15th February, 2011 apart from these recognized and aided private Madarsas, there were 2459 unrecognized and unaided Madarsas who were registered with the Madarsa Board. It appears that an issue was raised with regard to bringing such 2459 Madarsas on the grant-in-aid list and extend State benefit to them. It is in respect of such Madarsas, that were unrecognized, that a resolution was passed on 15th of February, 2011, wherein it was provided that a departmental survey will be conducted with regard to the status of these 2459 Madarsas and thereafter the grant-in-aid shall be proportionately given to them for meeting the expenses of salary which shall be at a fixed rate. Thus, the scale of pay was a fixed rate of pay-scale that was to be provided to the teachers of such of these 2459 Madarsas, if they were otherwise found to be eligible for recognition.

6. The resolution nowhere indicates of the applicability of fixed pay-scales in respect of recognized and aided Madarsas including the 1128 Madarsas referred to therein that were already recognized prior to 15.2.2011 and its teachers who were getting regular pay-scales. The said resolution was, therefore, not made applicable in respect of teachers appointed in the recognized Madarsas that were already on the grant-in-aid list prior to 15th February, 2011. There is no dispute that the petitioners have been appointed in such Madarsas which were already recognized and were already in the grant-in-aid list where they were getting the regular pay-scale. It is correct that their appointment has been made after 15th of February, 2011, but the fact remains that these appointments are prior to the impugned resolution dated 31st August, 2013 in Madarsas that were recognized and aided prior to 15.2.2011.

7. Consequently, the petitioners belong to those class of teachers who were appointed against sanctioned posts in recognized Madarsas that were already on the grant-in-aid list prior to the resolution dated 15th February, 2011.

8. The contention of the learned Advocate General is that as per Clause 7 and Clause 8 of the resolution dated 15th February, 2011, the same was also meant to be applied in respect of all appointments in all Madarsas and Sanskrit Schools irrespective of their status of recognition and receiving grant-in-aid list prior to

15th February, 2011. In essence, his argument is that since the petitioners were appointed after 15.02.2011, therefore, they are also covered by the aforesaid two clauses.

9. Clauses 7 and 8 are extracted hereinunder:-

"7- सम्यक विचारोपरान्त राज्य सरकार द्वारा यह निर्णय लिया गया है कि बिहार राज्य मदरसा शिक्षा बोर्ड द्वारा निबधित 2459 मदरसों की जांच विभागीय सकल्प सख्या 1090 दिनांक 29.11.1980 में निहित शर्तों के आलोक में जिला शिक्षा पदाधिकारी से करायी जायेगी। जांचोपरान्त उपर्युक्त निर्धारित शर्तों को पूरा करने वाले मदरसों को बिहार राज्य मदरसा शिक्षा बोर्ड द्वारा प्रस्वीकृति प्रदान की जायेगी। तत्पश्चात् उन्हें अनुदान के रूप में उच्च विद्यालय एवं प्रारंभिक विद्यालय के शिक्षकों को वर्तमान में देय नियत वेतन के समतुल्य राशि भुगतान करने का निर्णय लिया गया।

8- राज्य सरकार द्वारा गोपालगंज जिलान्तर्गत उचकागांव प्रखण्ड के लुहिसी पंचायत में अवस्थित मदरसा अरबिया इमदादुल उलूम, कपरपुरा को प्रस्वीकृति प्रदान करने एवं उनमें कार्यरत शिक्षकों को उपरोक्त प्रक्रिया के अनुसार अनुदान की राशि देने का निर्णय लिया गया है।"

10. A perusal of Clause 8 read with Clause 7 would leave no room for doubt that it was in respect of only those 2459 Madarsas which were unrecognized and it is in respect of the teachers appointed in such Madarsas that the Government came out with a policy to provide them with a fixed pay-scale as against the regular pay-scales that were being paid to the other teachers including the petitioners who were appointed in recognized and aided Madarsas that were getting benefits prior to 15.2.2011.

11. In our considered opinion, the resolution dated 15th of February, 2011, therefore, because of the aforesaid distinction as explained above was not at all applicable in the case of the petitioners who were already appointed and approved against sanctioned posts from the grant-in-aid that was being received by such Madarsas even prior to 15.02.2011. Clause 7 categorically applies to such Madarsas to be found eligible amongst 2459 Madarsas with which the petitioners had no concern.

12. The impugned resolution dated 31st August, 2013 proceeds to impose the condition of fixed salary in respect of all the teachers who were appointed after 15.02.2011 in the recognized 1128 Madarsas and 531 Sanskrit Schools. This has been clarified in Clause 5(t) read with Clause 6 of the impugned resolution dated 31st August, 2013 that are extracted hereinunder:-

"5(t) पुनरीक्षित वेतनमान में वेतन भुगतान के लिए सरकारी अनुदान संस्कृत विद्यालयों/मदरसों के स्वीकृत शिक्षकों/शिक्षकेत्तर कर्मियों के पदों पर नियमित रूप से नियुक्त उन्हीं शिक्षकों/शिक्षकेत्तर कर्मियों के लिए देय होगा, जिसके लिए सरकार द्वारा पूर्व से वेतन भुगतान के लिए अनुदान देने की स्वीकृति दी गई है। दिनांक 15.02.2011 के बाद विधिवत् नियुक्त कर्मियों को सरकार द्वारा नियत वेतन के आधार पर अनुदान दिया जा सकेगा, इसके लिए संस्था द्वारा अलग से प्रस्ताव देकर सरकार का अनुमोदन प्राप्त किया जायेगा।

(6) राज्य के अराजकीय प्रस्वीकृत ;वित्त सहित 1119 मदरसा एवं 09 बालिका मदरसा अर्थात् कुल 1128 मदरसा एवं विभिन्न स्तर के 531 संस्कृत विद्यालयों में कार्यरत शिक्षकों/शिक्षकेत्तर कर्मियों की सेवानिवृत्ति के पश्चात् हुए रिक्त पद सरकार द्वारा अनुदान के निमित्त नियत वेतन के पद में दिनांक 15.02.2011 से स्वतः Convert माने जायेंगे और दिनांक

15.02.2011 से अथवा बाद की सारी रिक्तियां के विरूद्ध नियुक्त शिक्षको/शिक्षकेत्तर कर्मियों के लिए राज्य सरकार द्वारा नियत वेतन की गणना के आधार पर अनुदान देय होगा।"

13. The petitioners are Teachers of such Madarsas and Schools that stood recognized and aided prior to 15.02.2011. The impugned Resolution dated 31.8.2013 quoted hereinabove in Clause 6 converts the pay-scales of those Teachers who were appointed in such schools after 15.02.2011 with retrospective effect. This was therefore impermissible as the matter under consideration on 15.2.2011 was of giving a fixed pay-scale to those Madarsas who had not been recognized up to 15.02.2011, and were found eligible after inquiry in terms of the said order of the Government. The 15.02.2011 Resolution therefore did not contemplate reduction of salary of those who were getting a regular pay-scale in recognized and aided Madarsas against posts sanctioned prior to 15.02.2011 which formed a different class. The petitioners were deprived of the regular pay-scale for bringing about an equality in respect of institutions which were not subject matter of the Resolution dated 15.02.2011. The 15.02.2011 resolution does not stipulate any restriction of regular pay-scales. The State Government may have been under some compulsion to reflect equality in its actions as they agreed to give a fixed pay-scale to the Madarsas that were recognized after 15.02.2011 as those Teachers may have demanded a regular pay-scale, but the same could not have been made a ground for deprivation of the pay-scale admissible to sanctioned posts in respect of the Madarsas and Schools that stood recognized and aided prior to 15.02.2011. The said benefits could not have been withdrawn retrospectively as the petitioners even though appointed after 15.02.2011 but before 31.08.2013 were occupying posts that were recognized and aided even prior to 15.02.2011 with regular pay-scale. The posts had not been abolished nor their pay-scales had been reduced when the petitioners were appointed which was admittedly prior to 31.08.2013. The shifting and adjustment of financial burden adopted by this discriminatory process therefore is an irrational exercise and is both arbitrary and discriminatory. If the State Government chose to give a lesser pay-scale to Madarsas which were unrecognized and unaided but were recognized after 15.02.2011, the same formed a separate class and it cannot be clubbed together for the purpose of revising the benefits of the petitioners who were in their own right entitled and were already getting a regular pay-scale prior to 31.08.2013. The impugned Resolution dated 31.08.2013, therefore, cannot apply in the case of those who have been appointed prior to 31st August, 2013.

For all the aforesaid reasons, the impugned action and Resolution to the aforesaid effect converting the pay-scale of the petitioners cannot be sustained and is, hereby, quashed insofar as it relates to the petitioners.

14. We, accordingly, allow the writ petition and declare that the petitioners will continue to get the same salary that they were getting prior to the impugned resolution together with all arrears on that account that shall be released forthwith within a period of three months from today.