

(2023) 04 PAT CK 0019

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2535 Of 2023

Irshad Ahmad

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 10-04-2023

Acts Referred:

Citation : (2023) 04 PAT CK 0019

Hon'ble Judges : K. Vinod Chandran, CJ; Madhuresh Prasad, J

Bench : Division Bench

Advocate : Md. Ziaul Quamar, Prabhakar Jha

Final Decision : Allowed

Judgement

The grievance of the petitioner here is with respect to the scale of pay which was granted to him on his appointment and continued, having been modified to fixed rate or consolidated sum as per the impugned resolution dated 31.08.2013. The petitioner is said to have been interviewed pursuant to an advertisement for appointment to the vacant post of Maulvi in a Madarsa. The petitioner was selected from among the other applicants and appointed to the said post, which appointment was approved by the Madarsa Board as per Annexure-2 dated. 03.09.2012. The petitioner was paid salary in the pay scale as indicated in Annexure-2 with all other allowances. However, by the impugned resolution dated 31.08.2013, the petitioner's salary was modified to at a fixed rate as is applicable to un-recognized and unaided Madarsas, with respect to which the earlier resolution dated 15.02.2011 was issued.

The issue revolves around two resolutions, one dated 15.02.2011 and the other dated 31.08.2013; which controversy was resolved by Annexure-3 judgment of this Court. A reading of Annexure-3 would indicate that there were 1128 Madarsas in the State of Bihar that was 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 unrecognized. The Division Bench held that the resolution dated 15.02.2011 was only applicable to the unrecognized 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.

Insofar as the petitioner is concerned, he was appointed after 15.02.2011 but before 31.08.2013. However, we do not see any averment as to the petitioner's appointment having been made to a Madarsa which was recognized prior to 15.02.2011.

In any event, if the appointment was made to such a Madarsa which was recognized prior to 15.02.2011 and which was receiving grant-in-aid prior to that date, necessarily, the petitioner would be entitled to be continued in the pay scale to which he was appointed and there could be no modification made based on the subsequent resolution dated 31.08.2013.

With the above declaration, the writ petition is allowed, leaving the parties to suffer their respective costs.