
(2023) 07 PAT CK 0021

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5754 Of 2023

Managing Committe Of Madarsa Bustanul Uloom

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 11-07-2023

Acts Referred:

Citation : (2023) 07 PAT CK 0021

Hon'ble Judges : Rajeev Ranjan Prasad, J

Bench : Single Bench

Advocate : Raj Nandan Prasad, Prabhakar Jha, Umesh Narayan Dubey, Shahzad Hassan Khan, Md. Aslam Ansari

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner and learned counsel for the Madarsa Education Board (hereinafter referred to as the 'Board') as also learned counsel for the State.

2. This writ application questions the appointment of Respondent Nos. 8 to 11 on the post of Fazil, Alim, Maulvi and Matric trained respectively made by the Managing Committee (Respondent No. 7).

Submissions on behalf of the petitioner

3. Learned counsel for the petitioner submits that it is the petitioner Managing Committee which is a validly constituted committee, the Managing Committee (Respondent No. 7) was unlawfully constituted and indulged in making appointments of Respondent Nos. 8 to 11. It is submitted that the Chairman of the Board vide his order dated 19.05.2020 approved the alleged illegal appointments of Respondent Nos. 8 to 11. To complete the record, it is worth mentioning that the Managing Committee (Respondent No. 7) was constituted and the same was approved by the Chairman of the Board vide his letter dated 11.07.2019.

4. Learned counsel submits that the approval given by the Chairman of the Board vide his letter dated 11.07.2019 was under challenge before the Appellate Authority-cum-Special Secretary, Department of Education, Government of Bihar in Appeal No. 87 of 2019. It is, thus, his submission that during pendency of the appeal, the Respondent No. 7 Managing Committee proceeded to make appointments which were approved by the Chairman of the Board which is illegal, arbitrary and bad in law.

5. Learned counsel submits that later on, the appellant also challenged the order dated 19.05.2020 passed by the Chairman of the Board by which the appointment of Respondent Nos. 8 to 11 were approved. During pendency of the said challenge in Appeal No. 36 of 2020, the Appellate Authority decided Appeal No. 87 of 2019 vide order dated 26.02.2021.

6. It is stated that the Appeal No. 87 of 2019 was allowed and the order dated 11.07.2019 was set aside with a direction to the Board that within a period of three months from the date of receipt of the order, the report of the Regional Deputy Director, Education, Darbhanga as contained in Letter No. 40 dated 27.02.2016 shall be considered and appropriate order shall be passed. By way of an interim measure, the Appellate Authority further directed that the Appellant Managing Committee shall conduct the affairs of the Madarsa so that the children who are admitted in the Madarsa should continue to get their mid day meal and clothes as also other monetary benefits from the Government.

7. Learned counsel submits that in its order dated 26.02.2021 (Annexure '8'), the Appellate Authority has recognized the existence of the Appellant Managing Committee, therefore, when this order was brought to the notice of the Appellate Authority in course of hearing of Appeal No. 36 of 2020, the Appellate Authority was obliged to declare that the appointments of Respondent Nos. 8 to 11 by the Respondent No. 7 Managing Committee was illegal and such appointments were required to be canceled.

8. The grievance of the petitioner is that instead of interfering with the order dated 19.05.2020 passed by the Chairman of the Board, the Appellate Authority refused to interfere with the same on the ground that on the date the appointments of Respondent Nos. 8 to 11 were made, the Respondent No. 7 Managing Committee was in existence and it was having approval of the Chairman of the Board.

9. Learned counsel for the petitioner has relied upon a judgment of learned Writ Court in the case of Md. Daud Hassan Vs. State of Bihar and Ors. reported in (1995) 1 PLJR 492. Paragraph '6' of the judgment has been relied upon to submit that the Chairman of the Board had no authority of law to grant approval to the Managing Committee.

10. At this stage, a further submission has been made that this Court while hearing CWJC No. 18427 of 2019 (Madarsa Anisul Ghurba Vs. The Bihar State Madarsa Education Board and Ors.) had vide its order dated 05.09.2019

restrained the Chairman from functioning and exercising the power of the Madarsa Board.

11. For all these reasons, the submission of learned counsel for the petitioner would be to set aside the order as contained in Memo No. 286 dated 04.11.2022 passed in Appeal No. 36 of 2020 (Johar Ali Vs. The Bihar State Madarsa Education Board and Ors.).

Submissions on behalf of the Respondents

12. On the other hand, Mr. Shahzad Hassan Khan, learned counsel representing the Board submits that so far as the order of restrain passed by this Court in CWJC No. 18427 of 2019 is concerned, the same was passed on 05.09.2019, therefore, on 11.07.2019 when the Chairman approved the Respondent No. 7 Managing Committee, there was no order of restraint against his functioning.

13. Learned counsel has further informed this Court that the order dated 05.09.2019 was subject matter of a letters patent appeal being LPA No. 1279 of 2019 (The Chairman, Bihar State Madarsa Education Board and Another Vs. Madrasa Anisul Ghurba and Others). In the said letters patent appeal, opportunity was given to the Board to convene and hold a meeting of the Board which was accordingly done and conveyed to the Court.

14. Learned counsel further submits that in the operative part of the impugned order dated 04.11.2022, the Appellate Authority has rightly concluded that the Respondent No. 7 Managing Committee made appointments of Respondent No. 8 to 11 (Respondent No. 6 to 9 in Appeal) prior to passing of the order dated 26.02.2021 (Annexure '8') and the same had been approved during pendency of the Appeal No. 87 of 2019.

15. Learned counsel for the Board has placed before this Court a judgment of learned Writ Court in case of Abdul Azeem Haidri Vs. The State of Bihar & Ors. reported in 2001 (3) BLJ 83 to submit that the Md. Daud Hassan (Supra) case was cited before the learned Writ Court in Abdul Azeem Haidri (Supra) but for the reasons stated therein, the said judgment was not followed and the view taken by the learned Court in Abdul Azeem Haidri (Supra) has in fact been now the view of the Hon'ble Division Bench of this Court in LPA No. 346 of 2016.

Consideration

16. Having heard learned counsel for the petitioner and learned counsel for the Board as also learned counsel for the State and upon perusal of the records, this Court finds that the Appellate Authority while passing the impugned order dated 04.11.2022 (Annexure '7') has rightly concluded that an approved Managing Committee works for a period of three years and in this case the appellant Managing Committee was approved vide Memo No. 4133-41 dated 02.07.2015, therefore, its tenure of three years came to an end in July, 2018. In fact, there is no quarrel with this legal position and it has not been otherwise argued before this Court.

17. This Court further agrees with the view taken by the Appellate Authority that the appointment of Respondent Nos. 8 to 11 were made prior to issuance of the order contained in Memo No. 115 dated 26.02.2021 (Annexure '8'). During this period, Appeal No. 87 of 2019 preferred by the appellant Managing Committee was pending but no prayer was made before the Appellate Authority to restrain the Respondent No. 7 Managing Committee from proceeding with the appointments.

18. This Court further finds from Annexure '8' to the writ application which is the order dated 26.02.2021 that in its order, the Appellate Authority has not made any declaration that the appellant Managing Committee was still in existence on 11.07.2019, therefore, it is not possible for this Court sitting in its writ jurisdiction to record a finding or to agree with the submission of learned counsel for the appellant that it was the appellant Managing Committee which was the existing Managing Committee on the date the appointments were made.

19. For the reasons stated hereinabove, this Court finds no reason to interfere with the impugned order as contained in Annexure '7' to the writ application.

20. This writ application is accordingly dismissed.