
(2012) 01 PAT CK 0013
In the Patna High Court
Case No : CWJC No. 8557 of 2010

Md. Abu Bakar Rizvi and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-01-2012

Acts Referred:

Citation : (2013) 1 PLJR 198

Hon'ble Judges : Ravi Ranjan, J

Bench : Single Bench

Advocate : Abbas Haider and Ranjay Kumar Singh, for the Appellant; V.M.K. Sinha and Pankaj Kumar Sinha, for the Respondent

Final Decision : Allowed

Judgement

Ravi Ranjan, J.—Heard learned counsel for the petitioners and the State. The petitioner nos. 1 and 2 claim to have been duly appointed on the vacant and sanctioned post of Assistant Teacher by the petitioner no. 3. Petitioners submit that their appointments have been made after following all the norms and procedure for appointment as laid down under the law. However, it is claimed that the salaries of the petitioner nos. 1 and 2 are not being paid by the respondent no. 3 without any rhyme and reason.

2. Learned counsel for the petitioners has submitted that the petitioner nos. 1 and 2 have filed representation, a copy of which has been appended as Annexure-4 to the writ application. However, from the perusal of paragraph no. 2 it appears that petitioner nos. 1 and 2 were appointed on 23.2.2010 and the representation was filed on 28.4.2010 itself. Even the writ petition has been filed soon after filing of the aforesaid representation. However, at this point of time this Court would not go into the aforesaid issue as about more than two years have already elapsed and counter affidavit has already been filed on behalf of the respondent no. 3. The respondent no. 3 has stated in paragraph no. 5 of the counter affidavit that the Managing Committee of the Minority Education Institution is definitely empowered to make appointment of Madarsa Teachers

under prescribed manner but thereafter necessary approval is required under law from the Bihar Madarsa Education Board and, as such, he has some difficulty in payment of salary of the petitioner nos. 1 and 2.

3. This matter was earlier taken up on 27.9.2012 and on that date, learned counsel appearing for the State was directed to justify the stand taken in the counter affidavit regarding the requirement of approval of Madrasa Board.

4. Mr. V.M.K. Sinha, learned counsel appearing for the State has appeared today and produced a copy of Hindi version of Bihar State Madarsa Education Board Act, 1981 which has been printed in the Gazette of the State of Bihar on 24th January, 1982. Learned counsel has made strong reliance upon the provision as contained under Sections 24 and 25 of the aforesaid Act. It is submitted that Section 24 clearly stipulates that the services of the approved teachers and non-teaching staff of the recognized Madarsa would be under the provision of the Madarsa Board. Similarly, Section 25 lays down that the State Government in consultation with the Board would be empowered to make rules and procedures describing eligibility for appointment as well as promotion of the teachers of the recognized Madarsa.

5. Per contra, learned counsel for the petitioners submits that Section 24 has already been struck down by a Division Bench in Anjuman Ahle Hadees, Darbhanga and Others Vs. State of Bihar and Others, as the same had conferred the right to an outside authority like the Board and had taken away the disciplinary power of the minority institution. Learned counsel for the petitioners further places reliance upon another decision rendered in Md. Sohrabuddin vs. The State of Bihar & Ors. (1985 PLJR 870) to demonstrate that the Board does not come in the picture regarding appointment of teachers of Madarsa. If the appointment has been made against vacant and sanctioned post, no approval of the Board would be required.

6. I find force in the submission raised on behalf of the petitioners. From the perusal of the aforesaid decisions rendered by the Division Bench as well as Single Bench of this Court, it is apparent that the issue is no longer res integra. The Division Bench in Anjum Ahle-Hadees (supra) has already struck down the Section 24 of the Act which takes away the disciplinary power of a minority educational authority by an outside authority. The relevant passage of the aforesaid decision is quoted as under:--

23. Section 24 deals basically with the disciplinary power of the minority institution. The institution has a right to enforce and ensure discipline in its administrative affairs. To confer this right to an outside authority like the Board is to take away the disciplinary power of the minority institution. The grounds of interference by the Board has not been defined. Conferment of such a blanket power interferes with the disciplinary control of the managing body of a minority educational institution. This is in effect demitting the entire disciplinary power of a minority educational institution in favour of an outside agency. Similar question

arose in the case of Lily Kurian Vs. Sr. Lewina and Others, where the Kerala University Act provided a right of appeal to the Vice-Chancellor of the University against any order passed by the management by way of a disciplinary action. The same was struck down by the Supreme Court by observing "the conferral of a right of appeals to an outside authority like the Vice-Chancellor under Ordinance 33(4) takes away the disciplinary power of a minority educational authority. The Vice-Chancellor has the power to veto its disciplinary control. There is a clear interference with the disciplinary power of the minority institution". It was further held "the State's right to regulate do not include a power to impose any restriction which is destructive of the right itself". Spirit of Section 24 of the Act is similar to that of Section 33 (4) of the Kerala University Act and as such has to be struck down.

7. So far requirement of approval is concerned, the issue came for determination before this Court in Md. Sohrabuddin (supra). In that case after noticing that by necessary implication the approval of the appointment of the petitioner was refused by the Board, this Court has come to the conclusion that the Board does not come in the picture regarding the appointment of teachers of Madarsa at all and, thus, even though there was no approval, the writ petition was allowed and the appointment of the petitioner to the post of Alim Teacher in the concerned Madarsa was affirmed and the impugned orders were quashed.

8. This Court also would have no difficulty in following the aforesaid line of the decisions. As a result, I hold that there is no requirement under law for seeking approval of Madarsa Board regarding appointment made by the Managing Committee of the Minority Madarsa upon the sanctioned and vacant post following the due procedure laid down under law. I further hold that the stand taken by the respondent no. 3 in its counter affidavit that that he would not proceed to pay the salary of the petitioner nos. 1 and 2 as their appointment have not been approved by the Madarsa, is without any basis or foundation and is unjustified. In above view of the matter, this writ application succeeds and respondent no. 3, the District Education Officer, Darbhanga is directed to ensure the payment of arrears of salary within two months from the date of receipt/production of a certified copy of this order as well as current salary of the petitioner nos. 1 and 2 in view of the clear cut statement made in paragraph no. 5 and other paragraphs of the counter affidavit that, except the lack of approval of the Madarsa Board, there is no infirmity in petitioners' appointment.