

(2000) 06 PAT CK 0022
In the Patna High Court
Case No : C.W.J.C. No. 10911 of 1998

Md. Muslim Hussain

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 23-06-2000

Acts Referred:

Citation : (2000) 3 BLJR 1769 : (2000) 4 PLJR 102

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The petitioner has challenged the order, contained in Memo No. 406 dated 25th August, 1998, passed by the Special Director, Secondary Education, Government of Bihar in an appeal-petition preferred by Respondent No. 6, Md. Ishaque. By the impugned order, while the Managing Committee, which appointed the petitioner, has been held to be illegally constituted, the appointment of petitioner has been held to be illegal on such ground. The authority also upheld the appointment of Respondent No. 6, Md. Ishaque.

2. It appears that six units were sanctioned by the State of Bihar in 1981 for the Madarsa with Junior Section, namely, (i) Fazil-1 post; (ii) Alim-1 post; (iii) Moulvi-1 post; (iv) Hafiz-1 post; (v) I.A. Trained-1 post; and (vi) Matric trained-1 post.

On the basis of a certificate of Fazil Nizami, the 6th Respondent was given appointment in 1977 against the post of Alim.

3. It appears that before approval of the appointment by the Bihar State Madarsa Education Board, certain infirmities, in the matter of appointment of 6th Respondent came to its notice, which by its letter dated 30th October, 1981 directed the S.D.E.O. concerned to make inquiry. The Managing Committee vide its resolution taken between 6th July, 1985 and 17th December, 1987 decided to

send notices to Respondent No. 6 to show-cause on the charge that his certificate was forged. The Committee ultimately decided to terminate the services of Respondent No. 6 in the resolution dated 16th September, 1987, followed by resolution dated 17th December, 1987.

4. The Secretary of Madarsa Board also issued notice to the Secretary and Head Master of the Madarsa (Mohammadia Rizwia Bisamra Quitta), as also Respondent No. 6 to appear before him on 13th June, 1988, vide letter dated 30th May, 1988 and the Secretary also issued notice to Respondent No. 6 on 16th January, 1988, whereinafter the services of Respondent No. 6 were terminated in pursuance of resolution dated 17th December, 1987, vide letter No. 450 dated 8th February, 1996.

5. In the meantime, the Managing Committee took steps to fill up the post of Alim by publishing advertisement in the newspaper "SANGAM" on 24th February, 1994, in pursuance of which petitioner applied, duly interviewed by Selection Committee along with others and on recommendation, he was appointed on the post of Alim, vide letter dated 21st March, 1994. The entire proceeding was sent to the Madarsa Board, which approved the services of petitioner temporarily vide Madarsa Board's letter No. 1071-73 dated 4th April, 1994.

6. It appears that the Respondent No. 6 moved this Court in C.W. J.C. No. 3364/1996, probably against the order of termination. He was allowed to prefer appeal before the Special Director, Secondary Education who, on hearing the parties, passed the impugned order on 25th August, 1998.

7. One of the questions raised by the Counsel for the petitioner was that the Special Director, Secondary Education had no appellate power to decide the issue. The order was challenged on the ground of jurisdiction. However, such stand was rightly controverted by the Counsel for the 6th Respondent placing reliance on a Bench decision of this Court in the case of Managing Committee, Madarsa Islamia Falahul Muslemeen and Others Vs. The State of Bihar and Others, wherein the Court held that the Special Director, Secondary Education has power to decide appeal having vested with power u/s 28 of the Act.

8. The Respondent No. 6 has not filed a separate counter-affidavit denying the averments made in the writ petition, though appeared on notice.

9. It has not been disputed that he obtained order of appointment on placing a forged certificate and for which a proceeding was initiated; he was noticed; and ultimately dismissed from service. It has also not been disputed that the petitioner was appointed after due advertisement; selection through a Selection Committee by a Managing Committee of Madarsa which was approved by the Madarsa Board.

10. It has not been made clear as to what was the order under challenge while C.W.J.C. No. 3364/96 was preferred by Respondent No. 6 before this Court, wherein the Court asked to prefer appeal vide order dated 25th March, 1998. It

seems to be a writ petition preferred by Respondent No. 6 against the order of dismissal issued in February 1996. However, from the impugned order dated 25th August, 1998, it appears that Respondent No. 6 preferred appeal against an order dated 4th April, 1994, which seems to be approval of service of petition as was made by the Madarsa Board.

11. From the impugned order, it will be evident that no specific challenge was made by Respondent No. 6 against the constitution of the Managing Committee and/or its approval by the Madarsa Board/its Chairman. In spite of the same, the Special Director decided the question of constitution of the Managing Committee and its approval by Madarsa Board while holding the appointment of petitioner as illegal.

12. Apart from the aforesaid fact, it will be evident that though no specific challenge was made against the order of termination of Respondent No. 6 but the said order of termination has been held to be illegal by the Special Director, Secondary Education who had no jurisdiction to decide the issue suo motu.

13. Further, I find that the Special Director, Secondary Education failed to take into consideration as to whether the appeal was maintainable against the approval of appointment of petitioner, preferred by a person who was not in the services of the Madarsa, his (Respondent No. 6) services having terminated, vide an order dated 17th December, 1987, as affirmed by the Madarsa Board, vide letter dated 8th February, 1996.

14. For the reasons aforesaid, while I hold that the Special Director, Secondary Education had jurisdiction to decide appeal preferred by Respondent No. 6, the impugned order otherwise being illegal, the same cannot be held to be legal.

15. Accordingly, I set aside the order, contained in Memo No. 406 dated 25th August, 1998 and allow the writ petition.