

(1984) 01 PAT CK 0009

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1041 of 1983

Md. Sohrabuddin

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-01-1984

Acts Referred:

Bihar State Madarsa Education Board Act, 1981 — Section 7

Citation : (1985) PLJR 870

Hon'ble Judges : S. Ali Ahmad, J

Bench : Single Bench

Advocate : Najmul Hoda, for the Appellant; S. Hoda (S.C. 3) and N.A. Rahmani, for the Respondent

Judgement

S. Ali Ahmad, J.—The prayer in this application is to quash the order dated 15.2.83 passed by respondent No. 3 where by approval to the appointment of the petitioner to the post of Alim teacher in Madarsa Talimul Quran Luqmania (respondent No. 5) was refused and respondent No. 6 was appointed on that post. Without mentioning unnecessary details all that need be said is that the post of an Alim teacher fell vacant in the Madarsa. The Board directed the Managing committee of the Madarsa to make appointment of that post pursuant to that an advertisement was published in the newspaper. Applications were called and interview was held. The interview board prepared a panel of three names, petitioner was the first and respondent No. 6 was the second in that panel. The matter was then placed before the Managing committee of the Madarsa. The Managing committee by its resolution dated 20.1.83 appointed the petitioner to that post and directed the Secretary of the Managing Committee to seek approval of the appointment from the Board. A letter as contained in Annexure-7 therefore was sent to the Secretary of the Board for approval of petitioner's appointment. The Board appointed respondent No. 6 to the post and gave an approval. By necessary implications therefore the approval to the appointment of the petitioner was refused. The order is contained in Annexure-3. Mr. Najmul Hoda, learned Counsel, in support of the application has urged that

the Board had no authority to appoint and give approval to the appointment to some one who was not appointed by the Managing Committee. According to him since respondent No. 6 was not appointed by the Managing committee the question of his approval by the Board does not arise. He also urged that although there is no rule empowering the Board to give approval to the appointment of the teacher made by the Managing committee yet the practice is that after making appointment the Managing committee of different Madarsa seek approval of the appointment and the Board after making scrutiny gives necessary approval; The learned Counsel urged that even this even this practice has been violated and on the facts of this case there was no reason to refuse approval to the appointment of the petitioner. Mr. Rahmani, learned Counsel appearing for the Board, urged that under rules 6 and 7 of Non-Government Madarsa service condition Rules, the Board had authority to pass impugned order. He, therefore, urged that the writ application has no substance.

2. It is extremely doubtful as to whether under the aforesaid Rules also the examination Board had the authority to pass the order as contained in annexure-3 but even if it is presumed in the favour of the Board the order under challenge cannot be sustained because admittedly the aforesaid rules cease to be operative with effect from the 17th January 1981 when the Madarsa Education Board Act, 1981 came into force. Section 7 of this Act enables the Board to make rules under the Act. Mr. Rahmani said that no rule has yet been framed under the Act. Although it is not relevant for the purpose of this case but yet it will certainly be advantageous for the Board itself if steps are taken to frame rules under the Act as early as possible. Therefore, the position is that the Board does not come in the picture regarding appointment of teachers of Madarsa at all particularly in respect of such appointments where the post is admitted to be vacant by the board also and the appointment does not in any way impose financial burden on the heard. In that view of the matter the application succeeds, and the appointment of the petitioner to the post of Alim teacher in Madarsa Talimul Quaran Luqmania is affirmed and orders contained in Annexure-3 are quashed.