



IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19255 of 2016

1. The Managing Committee, Madarsa Faizul Uloom (Kabai Banghara), at present Mohalla Chandchaur, Rahimtola, P.S. Ujiarpur, District-Samastipur through its president Sri Mohmmad Quaisar Son of Azizul Haque,
2. Mohmmad Jalil Ahmad, Son of Farmood Hussain Khan, teacher and Member of Madarsa Faizul Uloom, Chandchaur, Rahimtola, P.S. Ujiarpur, District-Samastipur

... .. Petitioner/s

Versus

1. The State Of Bihar through its Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Higher Education, Government of Bihar, Patna.
4. The Director, Secondary Education, Government of Bihar, Patna.
5. The Joint Director, Secondary Education, Government of Bihar, Patna.
6. The Bihar State Madarsa Education Board, Patna through its Chairman.
7. The District Education Officer, Samastipur, P.S. and District Samastipur.
8. The District Programme Officer Establishment Samastipur.
9. Iftekhar Alam, Son of late Mahfuz Alam, Resident of Village- Daudpur, P.O. Shekhopur, P.S. Methrapur (O.P.), Warisnagar, District-Samastipur, Pin 848101, at Present Principal cum-Head Maulvi Madarsa Faizul loom Kabai Banghara Block-Vidyapati Nagar Via-Dalsingsarai, District-Samastipur Pin-848114.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Pratik Kumar Sinha, Adv.
For the State	:	Mr. Umesh Narayan Dubey, AC to GP-27
For the Madarsa Board	:	Md. Aslam Ansari, Adv.
For Respondent No.9	:	Mr. Basant Kumar Chaudhary, Sr. Adv. Mr. Arvind Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR SINHA
ORAL ORDER

10 30-04-2026

Heard learned counsel for the petitioners, learned
Senior Counsel for respondent no.9, learned counsel for the
Bihar State Education Madrasa Board and learned counsel for





respondents-State.

2. In the present writ application, the petitioners have prayed for the grant of following reliefs:

“i. To issue a writ of certiorari quashing and annulling the order dated 9/6/2016 of the Joint Secretary, Secondary Education as contained in memo no. 331 by which the same in exercise of its appellate jurisdiction and at the instance of private respondent nos. 9 & 10 has set aside the order dated 30/9/2014 and 30/12/1989 as contained in memo nos. 6200-6206 & 4633 respectively of the Chairman, Madarsa Education Board, Patna holding that the Chairman Madarsa Education Board, Patna does not have the jurisdiction to shift the Madarsa in question as also such shifting was against the decision of cabinet.

ii. To issue a further writ of Certiorari quashing and setting aside the order dated 17/8/1995 of the Chairman, Madarsa Education Board, Patna by which he has virtually passed the order of reinstatement of respondent no. 10 and he being the Head Moulvi of the Madarsa in question directed him to make prepare the bills of teaching and non-teaching staffs of the Madarsa Faizul Uloom. Kaba Banghara which is completely erroneous in view of the admitted fact that such order has been passed on the basis of the order dated 15/7/1995 of the Special Director which has been quashed by the Hon'ble Court passed in C.W.J.C. No 5595/1995.

iii. To issue a further writ of certiorari quashing the order dated





7/11/2007 of the Director, Secondary Education, Bihar, Patna by which the same in exercise of its appellate power has set aside the earlier interim orders dated 28/9/1995 and 31/7/1996 of the then special director, Secondary Education and affirmed the order dated of the 17/8/1995 of the Chairman, Madarsa Education Board, Patna and further directed the respondent no. 7 herein to follow the order dated 17/8/1995 of the Chairman, Madarsa Education Board, Patna and make payment of salaries of the working employees of the Madarsa Faizul Uloom. Kabai Banghara.

iv. To issue a writ of mandamus directing the respondents authorities particularly to the respondent nos.7 & 8 to make payment arrears of salaries as also correm salaries of the employees of the Madarsa in question, Chand Chaur Raluns Tola.

v. To issue further order/orders or writ/writs or direction/directions directing the respondents authorities to grant him further relief as he may be entitled under the law or as this Hon'ble court may deem fit and proper in doing substantial justice against them (petitioners).”

3. While advancing argument on 02.04.2026, learned counsel for the petitioners had confined his prayer to relief sought for in paragraph-1(i) and 1(iv). He had expressly given up the relief claimed in paragraph-1(ii), 1(iii) and 1(v). This writ application is, therefore, being disposed of only with respect to





relief claimed by the petitioners in paragraph-1(i) and 1(iv) as the other reliefs have already been given up by the petitioners.

4. While assailing the order dated 09.06.2016 (Annexure-21) passed by Dr. Vijay Kumar Pandey, Joint Director of Secondary Education as contained in Memo No.331, learned counsel while advancing argument on 02.04.2026 had stated that the grounds for challenging the impugned order is elaborately pleaded in paragraph nos. 37 to 44 of the writ application. For ready reference and convenience, paragraph nos. 37 to 44 of the writ application are once again reproduced hereinbelow for needful:

“37. That it is this decision of the petitioner (founding managing committee) herein dated 15/12/1988 which has been set aside by the respondent no. 5, Joint Director, Secondary Education, Patna erroneously and without application of mind because i has been passed without giving opportunity of being heard. Even the teaching and non-teaching employees of the Madarsa (Chandchaur Rahim Tola) were not given opportunity of hearing. Order under challenge having been passed behind their back and having caused serious prejudice to them is fit to be interfered with by the Hon'ble Court on this singular ground itself..

38. That it is humbly submitted urged here that the respondent no.5, joint director, secondary education is not legally





empowered under the law to decide or examine the orders and decision taken by the Managing Committee because it is only by a departmental letter he has been authorized to hear appeal under section 28 of B.M.E Act, 1981. In other words before giving him appellate power under section 28 of the Act there must have been either an order of governor to this effect or an approval to such effect, however no such mandate of the law was complied with by the respondents.

39. That it is worth to mention here that the joint director, secondary education adjudicating the matter as an appellate authority failed to take cognizance of the fact that the period of limitation was running. He without condoning the delay examined the legality of the orders of the Madarsa Board and the Founding Managing Committee.

40. That the appellate authority totally failed to take into consideration the fact that the issue of shifting of Madarsa in question was decided and ended more than a decade back and hence review of such issue could not have been gone into as it was barred by the principles of res-judicata.

41. That it is pertinent to state here that the issue of shifting of madarsa in question was already decided by the board and a seal of approval to such effect was given by the Hon'ble High Court which has been re-opened again or legality of such order has again been gone into by the respondent no.5 which is totally contrary to settled proposition of law that a quasi-judicial authority cannot sit over the orders of the judicial





authority.

42. That the appellate authority exercising power as an appellate authority under section 28 of the Act has failed to take cognizance of the fact that the private respondent no 10 who was head moulvi of the madarsa has in fact no locus standi to question the decision or orders of Madarsa Board as he was terminated from service two decades back itself.

43. That the order under challenge has failed to consider the fact as well law that the state government has very negligible power to examine the decision taken by the Managing Committee as it is in teeth of Article 29 and 30 of the Constitution of India.

44. That the respondent no.5, joint director, secondary education totally failed to take into consideration the fact that the orders of the authorities which form the basis of order impugned herein has already been quashed and annulled by the Hon'ble High Court in C.W.J.C No. 5595/1995.”

5. One of the grounds on which the learned counsel for the petitioners has challenged the impugned order dated 09.06.2016 passed by Dr. Vijay Kumar Pandey, Joint Director, Secondary Education as contained in Memo No. 331 (Annexure-21) is that Dr. Vijay Kumar Pandey was not legally authorized and empowered to pass such an order in the capacity of being the Appellate Authority under Section 28 read with





Rule-3 of the Act. In other words, as per learned counsel for the petitioners, Dr. Vijay Kumar Pandey, at that point of time did not have the appellate power under Section 28 of Bihar State Madarsa Education Board Act, 1981 (for brevity 'BME Act, 1981') read with Rule-3 of the Bihar Rajay Madarsa Siksha Board Niyatran (Appeal) Niyamawali, 1983, and therefore, as per learned counsel for the petitioners, the impugned order passed by the said person was/is completely illegal and wholly without jurisdiction.

6. For ready reference, Section 28 of 'BME Act, 1981' and Rule-3 of the Bihar Rajay Madarsa Siksha Board Niyatran (Appeal) Niyamawali, 1983 are once again quoted hereinbelow for needful:

“28. Appeal against the orders of the Board.-Any person or managing committee aggrieved with the decision of the Board or Chairman may file an appeal for final hearing within 60 days of the passing of the orders, to the State Government.”

“3. अपील.— (1) बोर्ड अथवा बोर्ड के अध्यक्ष द्वारा दिये गये आदेश से असन्तुष्ट व्यक्ति या प्रबन्ध समिति आदेश निर्गत होने की तिथि से 60 दिनों के अन्दर उस अधिकारी के समक्ष अपील कर सकता है जिसे उस हेतु राज्य सरकार अधिसूचना द्वारा प्राधिकृत करेगी।

नोट— (1) ऐसे मामले जिसमें बोर्ड अथवा बोर्ड के अध्यक्ष द्वारा इस अधिसूचना के निर्गत होने की तिथि से पूर्व आदेश दिया गया है, वैसे आदेश से असंतुष्ट कोई व्यक्ति या प्रबंध समिति इस अधिसूचना के निर्गत होने की तिथि से 60 दिनों के अन्दर उक्त पदाधिकारी के समक्ष अपील कर सकता है।





- (2) यह अपील सलेख के रूप में होगी, जिसमें अपील के सभी आधार उल्लिखित रहेंगे।
- (3) अपील के साथ एक कोषागार चालान भी संलग्न होगा, जिसमें यह दर्शाया जायेगा कि आवेदन के शुल्क के रूप में 250 (दो सौ पचास) रुपये शीर्ष "077-ग-विशेष शिक्षा-शिक्षा शुल्क तथा अन्य शुल्क-अन्य प्राप्तियाँ में जमा किया है। अपील स्वीकृत होने पर इस प्रकार जमा की गई राशि लौटा दी जायेगी।
- (4) सम्बन्धित अभिलेख की अभिप्रमाणित प्रतियाँ सचिव, बिहार मदरसा शिक्षा बोर्ड द्वारा असन्तुष्ट व्यक्ति, प्रबन्ध समिति को आवेदन देने और 5 रू0 (पाँच रुपये) जमा करने के 5 दिनों अन्दर दी जायेगी।
- (5) वादी और प्रतिवादी को व्यक्तिगत अथवा किसी प्राधिकृत एजेंट के माध्यम से सुनवाई का अधिकार होगा और बोर्ड का आदेश जो किसी पक्ष के विपरीत हो तबतक पारित नहीं किया जायेगा जब तक कि उन्हें सुनवाई का समुचित अवसर प्रदान नहीं किया गया हो।”

7. Learned counsel for the petitioners on 02.04.2026 had also drawn attention of this Court to notification dated 11.08.2005, by which the State Government at that point of time had authorized one Shri Hasan Waris, Joint Director, Secondary Education, Bihar, Patna as the Appellate Authority in terms of Rule-3 read with Section 28 of the ‘BME Act’. The said notification dated 11.08.2005 is also quoted hereinbelow for needful:

“बिहार सरकार, मानव संसाधन विकास विभाग, अधिसूचना संख्या— [10/व 1-054/2005](#) [मा0/515](#) पटना, दिनांक 11.08.2005.— बिहार राज्य मदरसा शिक्षा बोर्ड, नियंत्रण (अपील) नियमावली, 1983 के अनुसार बिहार राज्य मदरसा शिक्षा बोर्ड, पटना अथवा बोर्ड के अध्यक्ष द्वारा दिये गये आदेश से असंतुष्ट व्यक्ति या प्रबंध समिति द्वारा की गयी अपील की सुनवाई करने की लिए श्री हसन वारिस, उप-निदेशक (मा. शि.) बिहार, पटना को प्राधिकृत किया जाता है।





इस संबंध में पूर्व में निर्गत अधिसूचना को निरस्त किया जाता है।”

[Emphasis Supplied]

8. Further while advancing argument, learned counsel for the petitioners had also brought attention of this Court to an earlier judgment of this Court dated 21.08.2017 passed by a co-ordinate Bench of this Court in CWJC No.19290 of 2016 wherein the impugned order of the said case was set aside because the same person i.e. Dr. Vijay Kumar Pandey who had acted as an Appellate Authority in the said case was held not to be having the authority in law to act as the Appellate Authority in terms of Rule-3 read with Section 28 of the ‘BME Act’ and thereafter, this Court was pleased to direct the Principal Secretary, Education Department, Government of Bihar to notify an Appellate Authority. It is considered appropriate to quote paragraphs-12 to 16 of the said judgment dated 21.08.2017 passed in CWJC No. 19290 of 2016, reported in 2017 (4) PLJR 592. Paragraphs 12 to 16 of the said judgment are reproduced hereinbelow for needful:

“12. Coming to the next question, that is, the manner in which the officer, who has passed the impugned order, has been authorized to function as an appellate authority, I find some force in the submission so made on behalf of the petitioner. Mr. P.K. Shahi, learned Senior Counsel, submits, while relying on Section 28 of the Act, that





appeal can be entertained by the State Government by operation of provisions of Rules of Executive Business by the Secretary of the Department. The State Government has framed Rules under Section 27 of the Act, laying down procedure for disposal of appeal under Section 28 of the Act. Rule 3 of the said Rules contemplates that a person, aggrieved with an order of the Board, can prefer appeal within sixty (60) days before such officer, who has been authorized by the State Government By notification. Mr. Shahi is correct in his contention that the notification, as contemplated under Rule 3 of the Rules, means notification published in official gazette, within the meaning of Section 4(37) of the Bihar & Orissa General Clauses Act, 1917.

13. The State-respondents have brought on record the authorization in favour of the officer, who has passed the impugned order, which is by way of departmental order, dated 20.4.2015, passed by the Director (Administration)-cum-Additional Secretary (Annexure-A to the counter affidavit filed on behalf of respondent No. 3). It appears from Annexure-A that there is no order of the State Government, authorizing Mr. Vijay Kumar Pandey as the Joint Director, Secondary Education, to hear appeals under Section 28 of the Act. Absence of notification in official gazette is not at all in dispute.

14. In such circumstance, I am of the view that the appointment of Mr. Vijay Kumar Pandey, as Joint Director, Secondary Education, has not been notified in the official gazette, the officer, who authorized him to function as an appellate authority, did not have the jurisdiction to pass such order. Mr. Shahi, learned Senior Counsel, is correct in his submission that if any





statutory provision requires something to be done in a particular manner, it should be done in that manner alone or not at all. The decision of the Supreme Court in case of M/s. Beopar Sahayak (supra), upon which reliance has been placed by Mr. Y.V. Giri, learned Senior Counsel, representing private respondent No. 10, is apparently distinguishable on facts. In said decision of M/s. Beopar Sahayak (supra), the Supreme Court, while sustaining the plea of de facto doctrine, was considering a case where the officer was found to be discharging his duties by virtue of his holding a particular post, which post was earlier held by another officer, who was appointed as prescribed officer by a competent authority. This is not the case here, An officer, namely, Director (Administration)-cum-Additional Secretary, who did not have the power to authorize a person to function as an appellate authority, authorized Mr. Vijay Kumar Pandey to act as such. Even the officer, who authorized Mr. Vijay Kumar Pandey, himself could not have exercised the power of an appellate authority in the absence of statutory authorization by the State Government, by publication in official gazette. The impugned order, therefore, in my view, cannot be sustained, having been passed by a person not legally authorized to pass the order.

15. *The impugned order is, accordingly, set aside.*

16. *I direct the Principal Secretary, Education Department, Govt. of Bihar, to notify an appellate authority, under Rule 3 of the Rules, for exercising power under Section 28 of the Act, within a period of two (2) weeks from the date of receipt/production of a copy of this order, by publication of notification in an official gazette. Once an officer is authorized to*





discharge functions of appellate authority, under Section 28 of the Act read with Rule 3 of the Rules, the said appellate authority will be required to consider afresh Appeal No. 14 of 2017 and Appeal No. 1 of 2013. The appeal, aforementioned, must be disposed of within a period of three (3) months from the date of first appearance of the parties before the appellate authority. This application is, accordingly, allowed to the extent as indicated above.”

9. While responding to the argument of learned counsel appearing for the petitioners, on 02.04.2026, learned counsel for the respondent-State was not in a position to submit on that day as to whether pursuant to the aforesaid direction passed in the above case reported in 2017 (4) PLJR 592 whether any Appellate Authority had been notified under Rule-3 of the Rules for exercising power under Section 28 of the ‘BME Act’ and had taken time to seek instruction on this aspect of the matter.

10. In view of the *lego factual* position which has emerged on 02.04.2026 on the basis of argument advanced by all the parties which has been discussed in detail in previous order dated 02.04.2026, this Court had granted two weeks’ time to the respondent-State to take necessary instruction and to inform this Court by filing of an affidavit as to whether after the notification dated 11.08.2005 and also after the aforesaid





judgment reported in 2017 (4) PLJR 592, any Appellate Authority had been notified in terms of Rule-3 read with Section 28 of the 'BME Act' or not. The affidavit was directed to be sworn by the Additional Chief Secretary of the Education Department, Government of Bihar, Patna.

11. In compliance of the direction given vide order dated 02.04.2026, the respondent-State has filed an affidavit in which it has been categorically stated that as on the date i.e. 09.06.2016, Dr. Vijay Kumar Pandey was not having authority in law to act as Appellate Authority in terms of Section 28 of Bihar State Madarsa Education Board Act, 1981 read with Rule-3 of the Bihar Rajay Madarsa Siksha Board Niyatran (Appeal) Niyamawali, 1983. The respondent-State has, therefore, fairly admitted that the impugned order dated 09.06.2016 of the Joint Director, Secondary Education as contained in Memo No. 331 (Annexure-21) is illegal and wholly without jurisdiction for the reasons as stated above, and therefore, the proper course would be to set aside the order and remand the matter back to the current Appellate Authority, who happens to be the Special Secretary, Education Department, Government of Bihar, Patna.

12. Considering the submissions made by the parties and taking due notice of the acceptance of the respondent-State





that Dr. Vijay Kumar Pandey who had passed the impugned order was not having the authority in law to act as an Appellate Authority on 09.06.2016, the impugned order dated 09.06.2016 (Annexure-21) passed by Dr. Vijay Kumar Pandey, the then Joint Secretary, Secondary Education is hereby quashed/set aside and the matter is remanded back to be decided afresh by the current Appellate Authority i.e. the Special Secretary, Education Department, Government of Bihar, Patna.

13. It is expected that the Special Secretary, Education Department, Government of Bihar, Patna shall decide the entire matter within a period of six months from the date of receipt/production of a copy of this order, after hearing all the parties concerned.

14. The prayer of the petitioners with regard to payment of arrears of salary as also current salary of the employees of the Madarsa shall also be agitated by the petitioners before the Appellate Authority along with all other relevant issues and it is expected that the Appellate Authority i.e. the Special Secretary, Education Department, Government of Bihar, Patna shall expeditiously decide the matter within the time fixed by this Court.

15. The writ application is accordingly disposed of in





the aforesaid terms.

16. Pending interlocutory application(s), if any, shall also be deemed to have been disposed of.

(Alok Kumar Sinha, J)

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