

1. Md. Kabir Ansari
2. Md. Taiyab
3. Md. Iqbal Ansari
4. Abdul Mustafa
5. Md. Neyamatullah

Versus

1. The State of Jharkhand
2. Director, Secondary Education, Human Resources Development Department, Ranchi
3. District Education Officer, Deoghar
4. Jharkhand Academic Council through its Secretary, Ranchi
5. The State of Bihar
6. The Management of the Madarsa Islamia Arabia, Deoghar

CORAM: HON'BLE MR. JUSTICE SANJAY PRASAD

For the petitioners : Ms. Alka Kumari, Advocate
For the Respondent-State: Mr. Navneet Toppo. AC to GP-I
For the Respondent-JAC: Mrs. Richa Sanchita, Advocate
Ms. Risheetta Singh, Advocate
For the Respondent No. 5: Mr. S. P. Roy, GA (Bihar)
Mr. Ranjit Kumar, AC to GA (Bihar)
For the Respondent No. 6: None.

I.A. No. 1213 of 2024

29/05.02.2024 I.A. No. 1213 of 2024 has been filed on behalf of the State of Bihar-respondent no. 5 to permit Sri Shamim Akhatar, Assistant Secretary, Bihar State Madarsa Education Board, Patna to appear in person in place of Deputy Secretary, Education Department, Bihar, Patna pursuant to the order dated 09.01.2024 passed by this Court.

2. It has been stated that Sri Shahjahan, Deputy Secretary, Education Department, Bihar, Patna, has already been deputed in Bihar State Educational Infrastructure Development Corporation (in short BSEIDC) as well as in Bihar Education Project Council (in short BEPC) vide Memo No. 323 dated 14.02.2023 as well as Memo No. 460 dated 13.03.2023 and as such, the Additional Chief Secretary, Education Department, Government of Bihar, Patna has authorized Sri Shamim Akhthar, Assistant Secretary of the Board to appear before this

Court personally along with the available record vide office order dated 27.01.2024 bearing Memo No. 179.

3. Sri Shamim Akhthar, Assistant Secretary of the Board, Government of Bihar is present in Court along with the records.

4. Under the circumstances, personal appearance of Sri Shamim Akhthar, Assistant Secretary of the Board, Government of Bihar is dispensed with for the present.

5. I.A. No. 1213 of 2024 is allowed and stands disposed of.

6. Thereafter, Mr. S. P. Roy, learned counsel appearing on behalf of the State of Bihar, has further submitted that certain records of Directorate of Primary/Middle of Education Department, Vikash Bhawan, New Secretariat, Patna has been destroyed due to incident of fire in the year 2016.

7. Sri Shamim Akhthar, Assistant Secretary of the Board, Government of Bihar has produced the records, which shows correspondence from the 28.06.2022 till date, but the records of State of Bihar does not appear to be satisfactory as it does not disclose the approval of the Madarsa in the year 1994 itself. It also appears that the counter affidavit has been filed by the respondent no. 3 on 28.03.2018 and counter affidavit filed on behalf of the respondent no. 5, Director, Secondary Education, Government of Bihar, Patna on 18.07.2022 and counter affidavit filed on behalf of the respondent no. 4 on 26.02.2018 and supplementary counter affidavit filed on behalf of the respondent no. 4 on 26.08.2022 and supplementary counter affidavit filed on behalf of the respondent no. 2 on 05.10.2023 and counter affidavit filed on behalf of the respondent no. 3, DEO, Deoghar on 10.10.2023, but still the matter is pending and no steps have been taken particularly by the respondent no. 2, Director, Secondary Education, Human Resources Development Department, Ranchi and respondent no. 3, District Education Officer, Deoghar.

8. From para-13 of the counter affidavit filed on behalf of the respondent no. 3, District Education Officer, Deoghar, it appears that on the one hand, it has been stated that the petitioners have been

appointed illegally without approval of the competent authority whereas in the supporting document Annexure-D bearing Memo No. 1428 dated 23.11.1994, it would appear that the Madarsa of the petitioners has been approved by the State of Bihar.

9. The stand taken on behalf of the respondent no. 3, District Education Officer, Deoghar appears to be contradictory and defective.

10. It appears that that respondent no. 3, District Education Officer, Deoghar has no basic knowledge and basic courtesy to file a proper reply. The respondent no. 3, District Education Officer, Deoghar is directed to remain careful in future and will not file such type of affidavit, which may warrant action against him in future.

The Respondent no. 3, District Education Officer, Deoghar is directed to furnish all the entire documents to the learned counsel for the State of Bihar and learned counsel for the Jharkhand Academic Council.

11. The respondent no. 2, Director, Secondary Education, Human Resources Development Department, Ranchi is directed to ensure to take final decision in the light of the supplementary counter affidavit filed on 05.10.2023 by which he has prayed for eight weeks' time to take final decision.

12. The respondent no. 3, District Education Officer, Deoghar has filed counter affidavit dated 10.10.2023 in which it has been stated that the respondent cannot release the salary of the petitioner because due approval has not been given by the competent authority i.e. the respondent no. 2, Director, Secondary Education, Human Resources Development Department, Ranchi and Jharkhand Academic Council.

13. The respondents cannot be remained silent on the point of not taking any decision on the part of the respondent no. 2, Director, Secondary Education, Human Resources Development Department, Ranchi as well as the respondent no. 3, District Education Officer, Deoghar.

14. The respondent cannot be allowed to remain silent for a long time that the records are not available, rather it appears that the entire

records are available and has been shown by the writ petitioners and the same were enclosed in the writ petition and it was incumbent upon the respondents to verify the same and act accordingly.

15. By way of last chance, put up this case on 20.02.2024.

16. Although Sri Tony Premraj Toppo, District Education Officer, Deoghar i.e. the respondent no. 3 is present in Court, but has not come with the records of Madarsa. The Respondent no. 3, District Education Officer, Deoghar is directed to remain present before this Court on the next date along with all the relevant records.

17. On that date, it is expected that the respondent no. 2, Director, Secondary Education, Human Resources Development Department, Ranchi may be able to take final decision with regard to the salary of the petitioners.

18. Although, personal appearance of Sri Shamim Akhatar, Assistant Secretary, Bihar State Madarsa Education Board, Patna is dispensed with for the present, however, the authorities of the Respondent no. 2 should co-ordinate with the Respondent no. 2 and Respondent no. 3 with regard to the claim of the petitioners.

19. The Respondent no. 5 should also verify as to whether the records of the Madarsa of the petitioners in question is in existence or not ? and shall file necessary affidavit in this regard.

(Sanjay Prasad, J.)