

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8585 of 2025

Md. Asghar Hussain son of Late Abdul Ghani, resident of Village-Naya Tola
Babhangawan, P.O.-Banghara, P.S.-Vidyapati Nagar, District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Director Mass Education cum Special Secretary cum Appellate Authority, Department of Education, Bihar, Patna
3. The Bihar State Madarsa Education Board, Patna, through its Chairman.
4. The Chairman, Bihar State Madarsa Education Board, Patna.
5. The Secretary, Bihar State Madarsa Education Board, Patna.
6. The President, Managing Committee of Madarsa Faizul Uloom Kawai Banghara, Via-Dalsing Sarai, District-Samastipur (Madarsa no.145).
7. The Secretary, Managing Committee, Madarsa Faizul Uloom Kawai Banghara, Via-Dalsing Sarai, District-Samastipur (Madarsa no.145).
8. Aisha Khatoon daughter of Ekramul Haque, Bathua Buzurg, Musri Gharari, District-Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Alok Kumar Sinha, Adv
For the State	:	Mr. Government Pleader (16)
For Madarsa Board	:	Mr. Shahzad Hassan Khan, Adv
		Md. Aslam Ansari, Adv

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR SINHA
CAV JUDGMENT

Date : 08-07-2026

Heard the parties.

2. The petitioner in the present writ application has
prayed for following relief(s):

*“(i) For issuance of an appropriate
writ, order or direction for quashing the Letter
No.01 dated 09.04.2025 issued by Director,
Mass Education cum Special Secretary cum
Appellate Authority, Department of Education,*



Bihar, Patna (Respondent no.2 hereof) on the application of Respondent no.8 (hereof) namely, Aisha Khatoon, for re-hearing of Appeal No.08/2023 directing the petitioner and others to appear before him on 07.6.2025 in the re-hearing of aforesaid Appeal No.08 of 2023 which has already been allowed by Respondent No.2 himself vide order dated 08.10.2024 quashing the order dated 19.01.2022 bearing Memo No.513 and 514 issued under the signature of Secretary, Bihar State Madarsa Education Board whereby petitioner's selection/appointment as clerk at Madarsa No.145 made by the Managing Committee of Madarsa Faizul Uloom Kawai, Banghara, Samastipur (Madarsa No.145) was arbitrarily and quite malafidely been cancelled/rejected and one Aisha Khatoon private Respondent no.8 was appointed in his place although her name was even not empanelled by the said Managing Committee.

(ii) For issuance of an appropriate writ, order or direction in the nature of mandamus directing the Chairman, Bihar State Madarsa Education Board Patna (Respondent no.4) to approve the selection/appointment of the petitioner as a clerk at Madarsa Faizul Uloom Kawai Banghara, Samastipur (Madarsa No.145) in the light of the order dated 08.10.2024 (Annexure-10)



passed by Special Secretary cum Appellate Authority, Department of Education, Bihar, Patna (Respondent no.2).

(iii) For issuance of an appropriate writ, order or direction in the nature of mandamus directing the Chairman, Bihar State Madarsa Education Board Patna (Respondent no.4) to approve the selection/ appointment of the petitioner as a clerk at Madarsa no.145 made by the Managing Committee of Madarsa Faizul Uloom Kawai Banghara, Samastipur (Madarsa No.145) through a valid selection process on the basis of guidelines of the Bihar State Madarsa Education Board, Patna.

(iv) For issuance of an appropriate writ, order or direction for grant of ad-interim stay of the order dated 09.04.2025 passed by the Director, Mass Education cum Special Secretary cum Appellate Authority, Department of Education, Bihar, Patna (Respondent no.2).

(v) For grant of any other relief or reliefs to which the petitioner may be deemed entitled in the facts and circumstances of the case.”

3. The learned counsel for the petitioner submits that the petitioner was duly selected for appointment to the post of Clerk in Madrasa Faizul Uloomi Kawai, Banghara, Via Dalsingsarai,



District Samastipur (Madrasa No. 145), pursuant to a valid selection process undertaken strictly in accordance with the guidelines issued by the Bihar State Madrasa Education Board. It is submitted that, upon the request of the Managing Committee to fill up the vacant sanctioned posts, the Chairman of the Bihar State Madrasa Education Board granted permission by Letter No. 2778 dated 31.08.2020 (Annexure-P/1) and directed that appointments be made after publication of advertisement in newspapers and in accordance with the prescribed procedure . Thereafter, experts were nominated by the Board itself by Memo No. 2644 dated 03.12.2021 to participate in the selection process (Annexure-P/2).

4. It is submitted that, after due advertisement, applications were invited for the post of Clerk and teachers. Out of about 60 applicants for the post of Clerk, 19 candidates appeared in the interview held on 27.12.2021 in the presence of the members of the Selection Committee, the President and Principal of the Madrasa and the experts nominated by the Board. The proceedings of the interview and the tabulation sheet were duly prepared and signed by all concerned (Annexure-P/3). On evaluation of merit, the final panel of three candidates was prepared (Annexure-P/4), wherein the petitioner secured the first position. The Managing Committee, in its meeting held on



02.01.2022, resolved to recommend the petitioner's appointment and to seek approval from the Bihar State Madrasa Education Board (Annexure-P/5). Subsequently, by resolution/selection letter dated 06.01.2022, the Managing Committee unanimously approved the appointment of four teachers and the petitioner as Clerk and forwarded the entire records comprising about fifty documents to the Board for approval (Annexure-P/6).

5. Learned counsel submits that, despite the petitioner having been placed first in the merit panel, the Chairman of the Bihar State Madrasa Education Board, acting upon a complaint preferred by respondent no. 8, issued a short notice contained in letter no. 389 dated 14.01.2022 directing the petitioner and others to appear on 19.01.2022 (Annexure-P/7). Owing to unavoidable circumstances, the petitioner could not appear on the said date. It is submitted that without granting any effective opportunity of hearing and without examining the validity of the selection process, the Chairman, by Memo Nos. 513 and 514 dated 19.01.2022, rejected the petitioner's recommendation for appointment made by the Managing Committee and directed appointment of respondent no. 8, namely Ayesha Khatun, as Clerk (Annexures-P/8 and P/8A). According to the petitioner, the said



action was arbitrary, violative of the principles of natural justice and wholly without jurisdiction.

6. It is further submitted that the petitioner initially challenged the letter no. 389 dated 14.01.2022 by filing CWJC No. 1676 of 2022 before this Court on 25.01.2022. Since the petitioner was unaware of the order dated 19.01.2022 at the time of filing the writ petition, the same could not initially be assailed. During the proceedings, the petitioner also brought on record affidavits indicating that persons who had appeared before the Chairman on 19.01.2022 were informed that the matter had been postponed owing to the absence of the petitioner, thereby casting doubt upon the manner in which the impugned order came to be passed. This Court, by order dated 21.11.2022, as corrected on 31.01.2023, relegated the petitioner to the statutory remedy of appeal under Section 28 of the Bihar State Madrasa Education Board Act, 1981.

7. Pursuant thereto, the petitioner preferred Appeal No. 8 of 2023 before the Special Secretary-cum-Appellate Authority, Department of Education, Bihar. Learned counsel submits that the Appellate Authority, after considering the entire matter, allowed the appeal by order dated 08.10.2024 (Annexure P/10) and set aside Memo Nos. 513 and 514 dated 19.01.2022 (Annexures-P/8 and P/8A). It is submitted that the said appellate order attained



finality and was binding upon the Bihar State Madrasa Education Board.

8. It is submitted that despite the appellate order, the respondent-Madarsa Board failed to act upon the same. The petitioner submitted representations dated 14.10.2024, 28.10.2024 and 07.03.2025 before the Secretary and Chairman of the Bihar State Madrasa Education Board requesting approval of his appointment in the light of the appellate order. Since no action was taken, the petitioner submitted a representation dated 19.02.2025 before the Additional Chief Secretary, Education Department (Annexure-P/12), followed by another representation dated 07.04.2025. It is pointed out that the Director, Secondary Education, by Letter No. 687 dated 13.03.2025, directed the Secretary of the Bihar State Madrasa Education Board to inform the Department regarding the action taken in compliance with the appellate order. However, according to the petitioner, the Board deliberately failed to comply with the said directions.

9. Learned counsel further submits that, Respondent no. 8, thereafter filed a review petition before the Special Secretary cum Appellate Authority, Department of Education (Bihar) for review of the order dated 08.10.2024 (Annexure-P/10). The Director, Mass Education-cum-Special Secretary-cum-Appellate



Authority issued Letter No. 1 dated 09.04.2025 directing the parties to appear on 07.05.2025 for rehearing of Appeal No. 8 of 2023 (Annexure-P/16). It is contended that once the statutory appeal had been finally decided, the Appellate Authority had become *functus officio* and had no statutory power under the Bihar State Madrasa Education Board Act, 1981 to review or rehear its own decision. Consequently, the very initiation of proceedings for rehearing was wholly without jurisdiction and contrary to settled principles of law. It is on account of this reason that the Appellate Authority itself, by order dated 31.07.2025, rejected the review petition filed by respondent no. 8 and directed the Bihar State Madrasa Education Board to take action in accordance with law. The said order has been brought on record as Annexure-P/17. The operative portion of the said order dated 31.07.2025 is quoted herein below for needful:

“सभी पक्षों को सुनने तथा अभिलेख पर उपस्थापित साक्ष्य के अवलोकन एवं विवेचन के उपरांत विषयगत याचिका को पुनर्विचार के बिन्दु पर खारिज किया जाता है एवं बिहार राज्य मदरसा शिक्षा बोर्ड, पटना को नियमानुसार निर्णय लेने हेतु वापस किया जाता है। उपरोक्त के आलोक में बिहार राज्य मदरसा शिक्षा बोर्ड विधिसम्मत कार्रवाई करे।”

10. It is further submitted that the legal position regarding appointments in recognized minority Madrasas is no



longer res integra. Learned counsel places reliance upon the judgments of this Court in **CWJC NO. 1692 of 1982** reported in **1985 PLJR 837 (AIR 1985 Patna 315)**, as affirmed by the Supreme Court in **(1994) Supp. (20) SCC 509**, to contend that the provisions enabling interference by the Board with the autonomy of recognized minority institutions were declared unconstitutional. Reliance is also placed on the judgments CWJC No. 1041 reported in 1985 PLJR 870 and CWJC No. 5210 of 1983 reported in 1988 PLJR 1107, wherein this Court held that the Chairman of the Bihar State Madrasa Education Board has no authority to discard the appointments made by the Managing Committee and substitute them with appointments of his own. It is thus contended that the power of appointment exclusively vests in the Managing Committee of the recognized Madrasa and not in the Chairman of the Board.

11. Learned counsel submits that the allegations regarding any irregularity or malpractice in the selection process are wholly baseless. The entire process was conducted in the presence of experts nominated by the Board itself; the petitioner secured the highest marks and was placed at Serial No. 1 in the merit panel, whereas respondent no. 8 did not even find place in the final panel prepared by the Selection Committee. It is,



therefore, submitted that there existed no legal basis whatsoever to ignore the petitioner's selection and direct appointment of respondent no. 8.

12. Learned counsel for the petitioner lastly submits that while allowing the Appeal No. 8 of 2023 which had been filed by the petitioner, the Appellate Authority had set aside the appointment of Respondent No. 8. Thereafter, by order dated 31.07.2025, the same Appellate Authority, while rejecting the review petition filed by Respondent No. 8 had directed the respondent-Madarsa Board to take action in accordance with law, which required the respondent-Madarsa Board to take a decision on the issue of grant of approval of the petitioner's appointment, but instead of taking a decision on the issue of approval, the Chairman, by Memo No. 1569 dated 17.12.2025, rejected the petitioner's claim and, in effect, reiterated the earlier decision appointing respondent no. 8 while keeping Memo Nos. 513 and 514 dated 19.01.2022 intact. According to the petitioner, the subsequent order has been passed in complete disregard of the binding appellate order and amounts to indirectly reviving an order which had already been set aside. It is, therefore, contended that the said order is arbitrary, illegal, without jurisdiction and liable to be quashed.



13. On the aforesaid premises, learned counsel submits that the actions of the respondent authorities in refusing to act upon the binding appellate order and ultimately reaffirming an order already set aside are arbitrary, unreasonable, violative of the Bihar State Madrasa Education Board Act, the principles of natural justice, and Articles 14 and 30 of the Constitution of India. It is, therefore, prayed that the impugned orders be quashed and the respondents be directed to accord approval to the petitioner's appointment as Clerk in Madrasa No. 145.

14. *Per contra*, learned counsel appearing for respondent nos. 3 to 5 (Madarsa Board), while referring to the counter affidavit filed in I.A. No. 01 of 2026, submits that the interlocutory application seeks to challenge Memo No. 1569 dated 17.12.2025 issued by the Bihar State Madrasa Education Board whereby the claim of the petitioner for appointment to the post of Clerk in Madrasa Faizul Uloomi Kawai, Banghara, Samastipur, has been rejected. It is submitted that the legality and validity of the said order is a matter for consideration by this Court after hearing all the parties.

15. Learned counsel further submits that the impugned order dated 17.12.2025 has been passed by the Bihar State Madrasa Education Board in compliance with the directions issued



by the Special Secretary-cum-Appellate Authority, Department of Education, contained in the order dated 31.07.2025 passed in Appeal No. 8 of 2023, whereby the review petition preferred by respondent no. 8 was dismissed with a direction to the Board to take action in accordance with law. It is contended that, pursuant thereto, the Board reconsidered the matter on merit on the basis of the materials available on record and passed a detailed and reasoned order rejecting the claim of the petitioner while directing maintenance of status quo with respect to the claim of respondent no. 8.

16. It is further submitted that the order dated 17.12.2025 has specifically been made subject to the final outcome of CWJC No. 8585 of 2025 and, therefore, does not suffer from any arbitrariness or illegality warranting interference by this Court. It is also contended that the petitioner has an equally efficacious statutory remedy of appeal under Section 28 of the Bihar State Madrasa Education Board Act, 1981 against the order dated 17.12.2025 and, without availing the said remedy, the petitioner has sought to assail the order by way of the present interlocutory application. On these grounds, it is submitted that the interlocutory application as well as the writ petition are liable to be dismissed.



17. Having heard the learned counsel for the parties and upon perusal of the materials available on record, this Court finds that the principal controversy does not relate to the validity of the selection process undertaken by the Managing Committee in the first instance, but to the legality of the action of the Bihar State Madrasa Education Board in refusing to implement the order passed by the statutory Appellate Authority and thereafter proceeding to re-examine the entire matter on merits.

18. The admitted factual position is that the petitioner participated in the selection process conducted pursuant to the permission granted by the Bihar State Madrasa Education Board itself. The Board had issued the guidelines governing the selection process, nominated experts to participate in the interview and evaluation, and the petitioner secured the first position in the merit panel prepared by the Selection Committee. The Managing Committee, acting upon the recommendation of the Selection Committee, unanimously approved the petitioner's selection and forwarded the proposal to the Board for approval.

19. It further appears from the records that instead of granting approval, the Chairman of the Bihar State Madrasa Education Board, by Memo Nos. 513 and 514 dated 19.01.2022, rejected the petitioner's recommendation for appointment made



by the Managing Committee and directed appointment of respondent no. 8. The said order was challenged by the petitioner before the statutory Appellate Authority in Appeal No. 8 of 2023. The Appellate Authority, by a reasoned order dated 08.10.2024, set aside Memo Nos. 513 and 514 dated 19.01.2022. The legality and correctness of the appellate order has never been assailed before any superior forum. Consequently, the said order attained finality and became binding upon all the authorities subordinate thereto, including the Bihar State Madrasa Education Board.

The subsequent conduct of the respondent authorities-Madarsa Board, however, does not inspire confidence. Instead of acting upon the appellate order, the petitioner was compelled to submit repeated representations before the Board as well as the Education Department. Even the Director, Secondary Education, required the Board to report compliance of the appellate order. Despite such directions, the Board failed to take any consequential action.

20. The matter assumes greater significance in view of the subsequent events. Respondent no. 8 sought review/rehearing of the appellate order. Significantly, the Appellate Authority itself rejected the review petition by order dated 31.07.2025, since that no statutory power of review or rehearing is available under the



Bihar State Madrasa Education Board Act, 1981. While dismissing the review petition, the Appellate Authority merely directed the Bihar State Madrasa Education Board to "take action in accordance with law."

21. In the considered opinion of this Court, the expression "take action in accordance with law" cannot be construed as conferring a fresh adjudicatory jurisdiction upon the Board to reopen the merits of the petitioner's selection or to undertake a *de novo* evaluation of his recommendation for appointment made by the Managing Committee. Such a direction necessarily required the Board only to act upon the appellate order by taking consequential administrative steps consistent with the findings already recorded by the Appellate Authority. Once the order dated 19.01.2022 stood set aside, the Board could not indirectly re-establish the appointment of Respondent No. 8, which the Appellate Authority had already nullified.

22. The submission advanced on behalf of the Board that it was entitled to reconsider the petitioner's claim independently cannot be accepted. A statutory authority exercising administrative powers cannot sit in appeal over a binding order passed by its own superior appellate authority. Permitting such a course would render the appellate remedy wholly illusory and would strike at the very



foundation of the doctrine of finality of quasi-judicial decisions. An authority to whom implementation of an appellate order is entrusted cannot assume unto itself the power to reconsider issues already concluded by the appellate authority.

The order dated 17.12.2025 (Memo No. 1569) clearly demonstrates that the Board has not merely taken consequential action but has re-appreciated the petitioner's recommendation for appointment on merits and once again rejected his candidature while continuing the appointment of respondent no. 8. This exercise, in substance, amounts to reviving Memo Nos. 513 and 514 dated 19.01.2022 which had already been set aside by the Appellate Authority. Such an exercise is wholly impermissible in law. What cannot be done directly cannot be permitted to be achieved indirectly.

23. This Court also finds substance in the submission of the petitioner that the power of appointment in a recognised minority institution vests with its Managing Committee and the role of the Board is circumscribed by law. The legal position regarding the autonomy of recognised minority educational institutions has already been settled by the decisions of this Court, affirmed by the Hon'ble Supreme Court. In the present case, the selection process was initiated pursuant to the Board's own



permission, conducted in the presence of experts nominated by it, and culminated in the petitioner being placed first in the merit panel. No finding has been recorded by any competent authority holding that the selection process itself was vitiated by fraud, malpractice or violation of the prescribed procedure. In the absence of any such finding, the Board had no justification to disregard the recommendation of the Managing Committee and substitute its own decision.

24. The contention of the respondents that the petitioner ought to have preferred another statutory appeal against Memo No. 1569 dated 17.12.2025 also does not merit acceptance. The said order is not an independent adjudication giving rise to a fresh cause of action but is a direct consequence of the Board's refusal to comply with the binding appellate order dated 08.10.2024. Relegating the petitioner to yet another round of statutory appeal would amount to compelling him to repeatedly litigate against orders passed in defiance of the earlier appellate decision. The extraordinary jurisdiction of this Court under Article 226 of the Constitution is intended precisely to prevent such abuse of administrative process and to ensure that statutory authorities act within the bounds of their jurisdiction.



25. The impugned order dated 17.12.2025, therefore, cannot be sustained. The same has been passed without jurisdiction, in disregard of the binding order dated 08.10.2024 passed by the Appellate Authority and contrary to the direction contained in order dated 31.07.2025, which merely required the Board to take consequential action, in accordance with law. The Board exceeded its authority by reopening issues already concluded by the appellate authority and by re-evaluating the petitioner's recommendation for appointment on merits, an exercise wholly dehors the statutory scheme.

26. Accordingly, Memo No. 1569 dated 17.12.2025 passed by the Bihar State Madrasa Education Board is hereby quashed. The respondents-Madarsa Board are directed to give effect to the order dated 08.10.2024 read with order dated 31.07.2025 passed by the Special Secretary-cum-Appellate Authority in Appeal No. 8 of 2023 and to take all consequential steps for granting approval to the petitioner's appointment as Clerk in Madrasa Faizul Uloomi Kawai, Banghara, Via Dalsingsarai, District Samastipur (Madrasa No. 145), as recommended by the Managing Committee. Such exercise shall be completed within a period of eight weeks from the date of receipt or production of a copy of this judgment.



27. It is made clear that the respondent-Board shall not reopen or re-adjudicate the petitioner's case on merits, as all those issues already stand concluded by the appellate order dated 08.10.2024. Their obligation is confined to just act upon the said order in its true letter and spirit by granting approval to the recommendation for appointment of the petitioner.

28. The writ petition is, accordingly, allowed. No order as to costs.

(Alok Kumar Sinha, J)

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AFR/NAFR	AFR
CAV DATE	06.07.2026
Uploading Date	08.07.2026
Transmission Date	N/A

