



2025:AHC:186442

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 8388 of 2025

Reserved on :12.09.2025

Delivered on :17.10.2025

A.F.R.

.....Petitioners(s)

Committee Of Management
Madarsa Arabiya Shamshul Uloom
Sikariganj Ehata Nawab And
Another

Versus

State Of U.P. And 3 Others

.....Respondents(s)

Counsel for Petitioners(s)	: Brijendra Kumar Mishra, Narendra Kumar Chaturvedi
Counsel for Respondent(s)	: Ashish Kumar (Nagvanshi), Sunil Kumar Tiwari, Vashishtha Tiwari, C.S.C.

Court No. - 52

HON'BLE MRS. MANJU RANI CHAUHAN, J.

1. Heard Mr. Narendra Kumar Chaturvedi, learned counsel for the petitioners, Mr. Vashishtha Tiwari, learned counsel for respondent no.4, Mr. Ashish Kumar Nagvanshi, learned counsel for respondent no.5 as well as Mr. Hare Ram, learned Standing Counsel for the State.

2. The present petition has been filed with the following prayers :-

“a) Issue a writ, order or direction in the nature of Certiorari quashing the impugned Advertisement dated 29.04.2025 advertized by Nazime Ala/Manager (Respondent No. 4) in daily newspaper Aaj, Gorakhpur for selection of 05 posts of Assistant Teacher Tahtaniya and 01 post of Clerk in Madarsa Arabiya Shamshul Uloom Sikariganj (Ehata Nawab) Gorakhpur (Annexure No. 1 to this writ petition).

b) Issue a writ, order or direction in the nature of Mandamus directing the Nazime of Ala/Manager the institution namely Madarsa Arabiya Shamshul Uloom Sikariganj (Ehata Nawab) Gorakhpur (respondent No. 4) not to proceed further selection

process in pursuance of impugned advertisement dated 29.04.2025 in daily newspaper Aaj, Gorakhpur.”

3. Placing the brief facts of the case, learned counsel for the petitioners submits that a Society in the name of Anjuman Islamiyan Arbia Shamsul Uloom Village & Post-Sikariganj, Tehsil-Khajani, District-Gorakhpur is registered under Society Registration Act, 1860 on 19.05.1978. The term of Committee of Management of Society is three years. It has its own by-laws. The said society has been renewed from time to time.

4. The said society runs an educational institution namely, Madarsa Arabia Shamsul Uloom Sikariganj (Ehata Nawab) Gorakhpur. The last elections of the Committee of Management of the Society was held in the year 2014, in which the petitioner no.2 was elected as Sarparast. Thereafter, dispute arose in the society and respondent no.2 by orders dated 11/17.10.2019, declared the Committee of Management of the Society time barred and directed the respondent no.3 to hold the elections under Section 25(2) of Society Registration Act, 1860.

5. Learned counsel for the petitioners submits that in the aforesaid order, it had been specifically stated that Sajjad Husain was not a member of the society, therefore, the elections as held on 29.9.2017 and 22.6.2018 were invalid. In the aforesaid order as passed by respondent no.2, a list of 40 valid members was also placed. Thereafter, three petitions were filed, however, no interim order was granted in any of the petitions and all the three petitions were dismissed. Accordingly, respondent no.3 pursuant to the orders dated 11/17.10.2019, passed by respondent no.2 declared the election programme but the election could not be held for one or the other reason.

6. Challenging the aforesaid orders, the petitioner no.2 along with four members filed **Writ-C No.17485 of 2021 (Nawab Rahmat Karim Khan And 4 Others vs. State Of U P And 2 Others)**, whereas **Writ-C No.43176 of 2019 (C/M Anjuman Islamiya Arbiya Shamshul Uloom And Another vs. State Of U.P. And 4 Others)** was filed by respondent no.4-The Committee of Management through its Manager Sajjad Hussan. The writ petition filed on behalf of the Committee of Management was dismissed on the ground of alternative remedy, directing the Committee of Management to approach the prescribed authority under Section 25(1) of the Society Registration Act, 1860 for redressal of their grievances, whereas the petition filed by the petitioners which was with a prayer to direct the District Minority Welfare/Election Officer, Gorakhpur for holding the elections of Committee of Management of the Society in pursuance of the orders dated 11/17.10.2019, passed by respondent no.2

within fixed time frame was allowed by order dated 5.1.2022, directing the election process to be carried out to its logical conclusion within a period of 15 days from that date.

7. In view of the aforesaid order, as no election process was completed by respondent no.3, therefore, fresh election programme was published, fixing the election date as 6.7.2022. The respondent no.3 did not hold the election on 6.7.2022 according to the provisions of by-laws of the society and in the aforesaid elections, Eid Mohammad was elected as Nazim-e-Ala/Manager along with other office bearers. A list of Committee of Management for the year 2022-2023 was registered by respondent no.2 on 6.8.2022. The petitioner no.2 along with other members filed **Writ-C No.24910 of 2022 (Nawab Rahmat Karim Khan And 9 Others vs. State Of U.P. And 9 Others)** challenging the election dated 6.7.2022 before the Hon'ble Court. Although, interim order dated 6.9.2022 was granted but ultimately the said petition was dismissed on 25.11.2024, for want of prosecution.

8. Consequently, Eid Mohammad published the advertisement dated 14.6.2023, as modified by 21.6.2023, in daily news paper "Aaj" for selection on 3 posts in Madarsa Arabiya Shamsul Uloom Sikariganj (Ehata Nawab) Gorakhpur (hereinafter referred to as madarsa). As per Clause 8 of the by-laws, the condition has been mentioned as to who can be a member of the society. The petitioners challenged the above advertisement by means of filing **Writ-A No.11463 of 2023 (C/M Madarsa Arbiya Shamshul Uloom Sikariganj And Another vs. State Of U.P. And 3 Others)** and the Court by order dated 30.10.2023, on the statement of Eid Mohammad (who has issued the advertisement), mentioned that the aforesaid advertisement was subject matter of challenge in the writ petition and the same has been withdrawn by the respondents, therefore, the petition has become infructuous. However, the Court had granted opportunity to the petitioners to approach the Court in case any adverse action is taken, which means that in case a fresh advertisement is issued, the petitioners were given the liberty to approach the Court. Accordingly, the writ petition was consigned to records. He further submits that without any elections being conducted, a list of 27 members of Committee of Management of the Society was published.

9. Despite the said fact that the respondent no.4 was not declared as member of the general body of the society by the respondent no.2 in his orders dated 11/17.10.2019 and the writ filed by respondent no.4 being **Writ-C No.43176 of 2019 (C/M Anjuman Islamiya Arbiya Shamshul Uloom And Another vs. State Of U.P. And 4 Others)**, challenging the

aforesaid order for his membership was also dismissed by order dated 5.1.2022, the respondent no.2 registered the list of Committee of Management of the Society for the year 2024-2025 on 1.2.2025 with respondent no.4 as Manager. Learned counsel for the petitioners submits that respondent no.4 is not even a member of the general body of the society and by playing fraud he has become Manager of the Society.

10. As per the Government Order dated 20.5.2025, direction was issued with regard to selection of teachers in madarsa, pursuant to which a letter was issued on 21.5.2025 by Director, Minority Welfare, U.P. and on 30.5.2025 by respondent no.3, in which it was specifically mentioned that the direction issued by the Government has to be strictly complied, while making appointments in madarsa. Despite the aforesaid, the respondent no.4 advertised 5 posts of Assistant Teachers Tahtaniya and 1 post of Clerk on 29.4.2025 in daily news paper "Aaj", Gorakpur. Eid Mohammad filed **Writ-C No.16024 of 2025**, challenging the advertisement as he was in collusion with respondent no.4 and the same was dismissed as withdrawn by order dated 20.5.2025. The aforesaid writ petition was filed just to mislead the petitioners. The petitioners by the letter dated 16.5.2025 has taken the power of Committee of Management of the Society and the papers have been forwarded to the respondent nos.2, 3 and 4. Despite the aforesaid, the respondent no.4 is not restraining the selection process and has issued interview letter dated 28.5.2025, fixing 14.6.2025 as the date for interview. As there was urgency in the matter, the petition was filed during summer vacations. The respondent no.4 who is not even the member of the society, in collusion with Eid Mohammad, playing fraud has assumed himself to be Manager of the Society, which was registered in January 2025, just for the purpose of issuing advertisement for selection on the post of Assistant Teachers and Clerk in the institution, despite directions of the State Authorities and Government Orders, restraining such selections in madarsas.

11. Learned counsel for the petitioners submits that when once a Government Order has already been issued on 20.5.2025, in view of the policy decision as taken by the authorities concerned as mentioned in the presentation dated 25.4.2025, restraining appointments till finality of the terms and conditions regarding eligibility and qualification of teachers in such institutions, the respondent no.4 who was not even a member of the society as is clear from the orders dated 11/17.10.2019, passed by respondent no.2, did not have any right to issue the advertisement. He further submits that such an advertisement issued as against the government policy which is illegal and needs to be quashed.

12. The learned counsel for respondent no.3 has placed the presentation dated 25.4.2025 as Annexure No.(CA-4) to the counter affidavit, wherein it has been clearly mentioned that the Kamil and Fazil degree has been declared unconstitutional by the Hon'ble Apex Court, therefore, appointments in the madarsa will be done only after the eligibility and qualification is decided. The Government Order dated 20.5.2025 mentioning about the presentation dated 25.4.2025 has also been annexed as Annexure No.(CA-5) to the counter affidavit, wherein a direction has been issued which is as follows :-

"3 - अतएव एतद्वारा निर्देशित किया जाता है की कृपया उपरोक्तानुसार अपेक्षित कार्यवाही सुनिश्चित कर शासन को अवगत कराने का कष्ट करे तथा शिक्षकों की योग्यता का विषयवार कक्षावार पुनर्निर्धारण करने के उपरान्त ही नई नियुक्तियां की जाय।"

13. The same has already been clarified in the letter dated 21.5.2025 as issued by the Director which is as follows :-

"अतएव एतद्वारा निर्देशित किया जाता है कि कृपया उपरोक्तानुसार अपेक्षित कार्यवाही सुनिश्चित कर शासन को अवगत कराने का कष्ट करें, तथा शिक्षकों की योग्यता का विषयवार कक्षावार पुनर्निर्धारण करने के उपरान्त ही नई नियुक्तियों की जाय।"

अतः इस सम्बन्ध में शासन के पत्र दिनांक 20.05.2025 की प्रति संलग्नकर प्रेषित करते हुए आपको निर्देशित किया जाता है कि शासन के निर्देशों का कड़ाई से अनुपालन सुनिश्चित करें। संलग्नक – यथोपरि।"

14. In the counter affidavit, the reference has been given to the order passed by the Hon'ble Apex Court dated 5.11.2024 in SLP No.8541 of 2024 (Anjuman Kadri and Others vs. Union of India and Others), wherein the degree of Kamil and Fazil has been declared as unconstitutional for which need arose to issue such notification, restraining fresh appointments in madarasas. Pursuant to the aforesaid order as passed by the Hon'ble Apex Court, the Ministry of Minority Welfare and Waqf Department vide its notification dated 14.5.2025 and Government Order dated 25.04.2025, has passed the following instructions which are as follows :-

".....कामिल एवं फाजिल की डिग्री को माननीय सर्वोच्च न्यायालय द्वारा असंवैधानिक घोषित किए जाने के आलोक में मदरसा के शिक्षकों की योग्यता का पुनः निर्धारण अनिवार्य है। शिक्षकों की योग्यता का विषयवार कक्षावार पुनः निर्धारण किया जाए। निर्धारण के बाद ही नयी नियुक्ति की जाये।

मदरसे में कार्यरत शिक्षकों को कक्षा 1-5 अथवा 6-8 में उपयोग करने की व्यवस्था बनाई जाए। कार्यरत शिक्षकों की विषयवार योग्यता को

चिह्नित कर उन्हें प्रशिक्षित किया जाय। ब्रिज कोर्स कराकर शिक्षकों को आधुनिक विषयों से जोड़ा जाय।"

15. The Secretary, U.P. issued a direction dated 20.5.2025 which is as follows :-

".....कामिल एंव फाजिल की डिग्री को माननीय सर्वोच्च न्यायालय द्वारा असंवैधानिक घोषित किए जाने के आलोक में मदरसा के शिक्षकों की योग्यता का पुनः निर्धारण अनिवार्य है। शिक्षकों की योग्यता का विषयवार कक्षावार पुनः निर्धारण किया जाए। निर्धारण के बाद ही नयी नियुक्ति की जाये।

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16. The aforesaid direction has also been issued by the Registrar, U.P. Madarsa Education Board vide its order dated 23.5.2025. Accordingly, Principal/Manager of the institutions have been directed to comply with the letters dated 20.5.2025 and 23.5.2025 as issued by the District Minority Welfare Officer.

17. In compliance with the letters dated 20.5.2025 and 23.5.2025, the District Minority Welfare Officer vide its letter dated 30.5.2025 has directed all Principal/Manager of the institutions to comply with the aforesaid directions and restrain from making any fresh appointments in madarasas. Recommendations have also been made to make appropriate amendments in the Madarsa Education Board Act, 2004 and U.P. Non-government Arabi and Farsi Madarsa (Recognition, Administration and Service) Regulations 2016 for betterment of students and safety & security of the teacher and also for making changed in rearranging the syllabus for the students of Class 9th to 12th.

18. Learned counsel for respondent no.3 submits that no requisition has been submitted by the Manager of the institution with regard to appointment of the staff. On a complaint as made by Mohd. Asif Khan, who pointed about the fraud being played by the alleged Manager Sajjad Husain for making appointments over the post of Assistant Teacher by issuing advertisement dated 29.4.2025 in Hindi and Urdu newspapers, he has been sent letters mentioning about the relevant government orders and directions, asking him not to make any appointment and if any

appointment is made by the Management of the institution, then the responsibility of the same will be with the Manager of the institution. The letters so issued to the Manager are dated 30.5.2025, 11.6.2025, 24.6.2025 & 3.7.2025 and earlier also letters have been issued to all the Principal and Manager of the institutions informing about the decision as taken by the State Government in view of the orders passed by the Hon'ble Apex Court.

19. Learned counsel for respondent no.4 has taken objection regarding maintainability of the writ petition, as the same is barred by principle of *estoppel* as earlier a writ petition, challenging the same advertisement was dismissed as withdrawn. Secondly, the President of the Society is not empowered to file a writ petition without resolution of Committee of Management.

20. While answering the aforesaid objections, learned counsel for the petitioners submits that liberty had been granted to the petitioners to approach the Court in case any adverse action is taken as the earlier advertisement, which was issued under the signatures of Eid Mohammad was withdrawn, therefore, the petition on this very ground is maintainable, as the same has been filed as per the liberty granted by the Court by order dated 30.10.2023 passed in **Writ-A No.11463 of 2023 (C/ M Madarsa Arbiya Shamshul Uloom Sikariganj And Another vs. State Of U.P. And 3 Others)**.

21. Learned counsel for the respondent no.4 submits that the respondent no.4 was duly accepted as Manager of the institution and, therefore, he has all the rights to issue the advertisement. Mentioning about the details of the writ petitions filed, he submits that the advertisement has been issued in accordance with law and there is no illegality in the aforesaid. He further contends that the selections have already been made and the persons have joined services.

22. Heard learned counsel for the parties and perused the record.

23. The advertisement has been issued against the policy of the Government despite notices to all, including the Manager of the said institution, therefore, any person whose appointment is made pursuant to the aforesaid advertisement cannot claim any legal right to such an illegal appointment.

24. In the case of **P.U. Joshi and Others Vs. Accountant General, Ahmedabad and others**, (2003) 2 SCC 632, the Apex Court has held as under:-

"10. ... Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate."

25. In **Chandigarh Administration Vs. Usha Kheterpal Waie and others**, (2011) 9 SCC 645, the Supreme Court in paragraph 22 observed:-

"22. It is now well settled that it is for the rule-making authority or the appointing authority to prescribe the mode of selection and minimum qualification for any recruitment. The courts and tribunals can neither prescribe the qualifications nor entrench upon the power of the authority concerned so long as the qualifications prescribed by the employer is reasonably relevant and has a rational nexus with the functions and duties attached to the post and are not violative of any provision of the Constitution, statute and rules. [See J. Rangaswamy vs. Govt. of A.P. (1990) 1 SCC 288 and P.U. Joshi vs. Accountant General (2003) 2 SCC 632]. In the absence of any rules, under Article 309 or statute, the appellant had the power to appoint under its general power of administration and prescribe such eligibility criteria as it is considered to be necessary and reasonable. Therefore, it cannot be said that the prescription of Ph.D. is unreasonable."

26. In **Fertilizer Corporation Kamgar Union (Regd.), Sindri vs Union of India**, reported in (1981) 1 SCC 568, it was also observed:-

"35.We certainly agree that judicial interference with the administration cannot be meticulous in our Montesquien system of separation of powers. The court cannot usurp or abdicate, and the parameters of judicial review must be clearly defined and never exceeded. If the directorate of a government company has acted fairly, even if it has faltered in its wisdom, the court cannot, as a super auditor, take the Board of Directors to task. This function is limited to

testing whether the administrative action has been fair and free from the taint of unreasonableness and has substantially complied with the norms of procedure set for it by rules of public administration."

27. Reference may also be made to the judgment of the Apex Court in the case of **Directorate of Film Festivals & Ors. Vs. Gaurav Ashwin Jain & Ors., reported in (2007) 4 SCC 737**, where the Apex Court held as follows:-

"16. The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy nor are courts Advisors to the executive on matters of policy which the executive is entitled to formulate."

28. Article 30(1) of the Constitution of India undoubtedly guarantees to minorities the right to establish and administer educational institutions of their choice; however, this right cannot be stretched to claim immunity from reasonable regulations framed to ensure academic excellence and maintain standards of education. Thus, the issuance of advertisement without waiting for the government to frame the standards for qualification of teachers in the madarsa is bad in the eyes of law and in violation of the aforesaid article.

29. Considering the facts and circumstances of the present case, this Court finds that the respondent no.4 has proceeded to issue an advertisement in violation of the government policy and the directions as passed by the Hon'ble Apex Court, pursuant to which, guidelines, directions, letters and notices have already been issued to the Principal and Manager of the institutions, restraining them from making any fresh appointments till finality of the rules and regulations regarding qualification & eligibility as already discussed above. The details as given by respondent no.3 also supports the case of the petitioners.

30. In view of the above discussion, the advertisement dated 29.04.2025, advertized by Nazim-e-Ala/Manager (Respondent No. 4) in daily newspaper Aaj, Gorakhpur for selection of 05 posts of Assistant Teacher Tahtaniya and 01 post of Clerk in Madarsa Arabiya Shamshul Uloom Sikariganj (Ehata Nawab) Gorakhpur, is **quashed**.

31. Even if the persons have been appointed pursuant to an advertisement which is illegal *per se*, they have no right to be heard and cannot raise any objection when they have been selected pursuant to an advertisement which has been issued illegally and is against the policy

decision taken in view of the directions as issued by the Hon'ble Apex Court.

32. Accordingly, the present writ petition is **allowed**.

(Mrs. Manju Rani Chauhan,J.)

October 17, 2025

Kalp Nath Singh