

DL. March 3,
10. 2021

Through Video Conference

M.A.T. 430 of 2020

Mr. Khairul Alam,
...for the appellant.

Mr. Prosenjit Mukherjee,
Mr. Nirmalya Kumar Das,
Ms. Madhurima Sarkar,
...for the Madrasah Service Commission.

Re: CAN 2925 of 2020 (stay)
filed on March 17, 2020.

Although the matter is appearing under the heading “application”, by consent of the parties, the appeal itself is taken up for consideration.

This appeal is directed against an order dated February 4, 2020 passed by a learned Single Judge of this court in connection with a writ petition filed by the appellant for consideration of her appointment against large number of vacancies available and in terms of the interim order passed by the Hon’ble Supreme Court on May 17, 2018 in Civil Appeal No. 5808 of 2017.

The claim of the writ petitioner/appellant for appointment against such vacancies was turned down by the learned Single Judge on the ground that she obtained marks less than the cut off marks prescribed by the West Bengal Madrasah Service Commission. Aggrieved by and dissatisfied with the said order, this appeal has been preferred.

The learned advocate appearing on behalf of the writ petitioner/appellant submits before us that the learned Single Judge

failed to appreciate the interim order passed by the Hon'ble Supreme Court on May 17, 2018 by which permission was granted to the West Bengal Madrasah Service Commission to publish the result for the recruitment process of the year 2014 and to fill up the vacancies that may be available to the said Madrasah Service Commission consequent upon the recruitment process initiated in the year 2014 in terms of the definition of "panel" as contained in Rule 2(xv) read with Rules 6, 8 and 9 of the West Bengal Madrasah Service Commission Recruitment (Selection and Recommendation of persons for Appointment and Transfer to the Posts of Teacher and non-teaching Staff) Rules, 2010.

It has been further submitted on behalf of the appellant that the order dated May 17, 2018 passed by the Hon'ble Supreme Court obliges the authority concerned to fill up vacancies for the recruitment process initiated in the year 2014 and in denying to do so there has been a violation of Articles 14 and 21 of the Constitution of India.

In order to appreciate the contentions raised by the learned advocate for the appellant, we directed the Madrasah Service Commission to produce the records showing cut off marks fixed prior to the examination for the subjects mentioned in page 37 of the stay application. Such direction to produce records was given in view of the clear stand taken on behalf of the appellant that there has been a manipulation of record and that in the event the original record is produced, it could be easily ascertained that the appellant has been deliberately omitted from the wait listed candidates.

The West Bengal Madrasah Service Commission has

filed an affidavit in opposition to the stay application today in court. The same is taken on record. It is contended that in terms of Rule 9 of the Rules of 2010, the Commission declared 241 vacancies in English (H/PG) subject in Bengali medium general category; 14 vacancies for Bengali medium female category and 5 vacancies for Urdu medium general category in connection to sixth SLST 2013 (AT). It has been further contended that the Commission, in accordance with the above vacancies, called 392 candidates (1.5 times of the vacancies declared) for personality test in terms of Rule 18 of the Rules of 2010 and after completion of the said test, the Commission prepared a panel of 241 candidates in Bengali medium general category, 14 for Bengali medium female category and 5 for Urdu medium general category on the basis of equal number of declared vacancies in terms of Rule 22 of the Rules of 2010. It has also been contended that the Commission prepared a waiting list of 25 candidates in Bengali medium general category, 2 for Bengali medium female category and 1 for Urdu medium general category in terms of sub-rule (xxviii) of Rule 2 of the said Rules of 2010.

It has been submitted on behalf of the Commission that the writ petitioner/appellant had obtained only 51 marks which is less than that of the last wait listed candidate of the relevant category and in view thereof her name was not included either in the merit list candidates or in the waiting list. The extract of the marks of final panelled candidates for the Sixth State Level Selection Test (AT) 2013 was produced before us.

The learned advocate appearing on behalf of the writ petitioner/appellant has submitted that the Madrasah Service

Commission is duty bound to fill up the vacancies declared by it in view of the order passed by the Hon'ble Supreme Court on May 17, 2018 in the pending Special Leave Petition where the vires of the West Bengal Madrasah Service Commission Act, 2008 has been under challenge.

Our attention is drawn to paragraph 5 of the order passed by the Hon'ble Supreme Court on May 17, 2018 wherein a categorical permission was given to the Madrasah Service Commission to declare the result for the recruitment process of the year 2014.

Consequent upon declaration of results, pending decision in the special leave petition where vires of the West Bengal Madrasah Service Commission Act, 2008 is under challenge, steps have been taken by the Madrasah Service Commission to fill up the vacancies from the list of vacancies declared for the recruitment process of the year 2014.

From the list produced before us, it is clear that the last wait listed candidate has obtained 52.18 marks. The appellant admittedly has obtained marks less than the marks that the last wait listed candidate has obtained in the Sixth State Level Selection Test 2013.

It is contended that the interim order passed by the Hon'ble Supreme Court does not preclude the Madrasah Service Commission to enlarge the scope of the panel and to include the name of the wait listed candidates for the subsequent vacancies as and when recruitment process for the subsequent vacancies would start. It was further argued that there is large number of vacancies

and in view of Rules 6 and 9 of the said Rules of 2010, such vacancies can be filled up from the wait listed candidates.

The waiting list is defined in Rule 2(xxviii) in relation to assistant teachers for which the appellant is aspiring. “Waiting List” would mean a list of candidate named in order of merit containing names of candidates equal to 0.10 times of the number of vacancies occurred/declared or will occur within the stipulated period for a State Level Selection Test category-wise, subject-wise, medium-wise, gender-wise.

The vacancies occurred for the recruitment process of the year 2014 has been duly filled up and the period of panel has also expired. There is no dispute that the names of the candidates found in the panel is in accordance with Rule 2(xv) of the said Rules of 2010.

West Bengal Madrasah Service Commission came up before a co-ordinate bench of this court by way of MAT 803 of 2018 against the similar grievance raised by a similarly placed writ petitioner. In disposing of the said appeal, the co-ordinate bench observed that there was no mandate upon the Commission to fill up the vacancies which arose after 2014 by starting a selection process. It would appear from the order of the co-ordinate bench that the writ petitioner approached this court with a prayer to validate declaration of vacancies made by the Madrasah Service Commission and also to fill up those vacancies from the “incumbents” (understood to be wait listed candidates) in the 2014 selection process. The commission having complied with the direction passed by the Hon’ble Supreme Court and in view of the order of the co-ordinate

bench where a similarly situated grievance was decided against the writ petitioner, we are of the view that the writ petitioner/appellant is not entitled to be considered against the vacancies declared for the recruitment process of the year 2014. However, considering the fact that the vacancies after 2014 has not been filled up under the special circumstances and by way of an interim measure, the Madrasah Service Commission was directed to fill up the existing vacancies for the recruitment process of the year 2014. The Madrasah Service Commission shall take immediate steps to fill up such existing vacancies as by reason of not filling up such vacancies the students are suffering.

The appeal thus fails.

In view of disposal of the appeal, the application for stay also stands disposed of.

There will be no order as to costs.

(Soumen Sen, J.)

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(Saugata Bhattacharyya, J.)