

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

PRESENT:

HON'BLE MR. JUSTICE ABHIJIT GANGOPADHYAY

WPA 12901 of 2021

**Mst. Reshma Khatun & Ors.
-Versus-
State of West Bengal & Ors.
(Via Video Conference)**

For the petitioners	: Mr. Firdous Samim Ms. Gopa Biswas
For the Madrasah Service Commission	: Mr. Prosenjit Mukherjee Mr. Nirmalya Kumar Das Ms. Madhurima Sarkar
For the NCTE	: Mr. Sauvik Nandy
Heard on	: 18.08.2021
Judgment on	: 18.08.2021

Abhijit Gangopadhyay, J .:

This writ petition has been filed by 32 petitioners. Full court fees in respect of all have been paid against entry no. A-8559 dated 18th August, 2021. The document showing full payment of court fees be kept on record.

Affidavit of service filed today also be kept on record.

The main prayers of the petitioners in this writ application is for publishing of names of candidates by the West Bengal Board of Madrasah Education in 6th SLST who have provisionally qualified for personality test in 6th SLST (AT) (Work Education) and to publish the

breakup of marks of all candidates with all details of academic qualification and marks of written examination. They have also prayed for a direction to call the petitioners in interview for 6th SLST (AT) (Physical Education) and thereafter give consequential benefit to appoint the petitioners as Assistant Teacher in Work Education.

(Emphasis mine)

This prayer as to calling the petitioners in interview for Physical Education and giving them appointment in the post of Assistant Teacher in Work Education, is wholly inconceivable to me.

Mr. Mukherjee, learned advocate for the respondent nos. 2 and 3, being the West Bengal Madrasah Service Commission and its Secretary has raised an objection by submitting that there is no jural relationship between these 32 persons who have filed this application and, therefore, despite payment of full court fees, they cannot file this writ application jointly. He has also relied upon a judgement of the Supreme Court, reported in 1980 (Supp.). Supreme Court Cases 600 (Mota Singh & Ors.).

This objection of the Madrasah Service Commission is in the nature of a preliminary objection which I deal with first.

Following the principle analogous to Order II Rule 3 of the Code of Civil Procedure, which speaks about joinder of causes of action, I hold that the petitioners have properly united in this writ application several causes of action against the same defendant jointly. By doing so, the petitioners have not committed any illegality. This can be done under the law.

While considering the submission of the learned advocate for the petitioners on the merit of the writ application, I find that the claim of the petitioners is based upon one notification issued by the Madrasah Service Commission on 11th August, 2021 which says:

“Manner of evaluation of academic qualification of both 6th SLST (AT) (Physical Education) and 6th SLST (AT) (Work Education) in

accordance with the NCTE guidelines read with the WBSSC Rules, 2016 adopted by the Commission for lack of such provision in the rules of the West Bengal Madrasah Service Commission.”

(Emphasis mine)

The petitioners submit that because of this notification the Madrasah Service Commission (Commission, in short) has adopted the Rules of West Bengal School Service Commission, 2016 starts (at page 178 of this application).

I have found from the petition that in the said 6th SLST for Work Education and Physical Education the marks for essential qualification and training in the rules of the Commission was 25 (vide page 61 of the application). But the said Commission changed it and they decided to raise the marks for academic qualification including professional qualification as 35 instead of 25. This has been declared in the guideline for Work Education (Pass) which appears from page 69 of the writ application. The petitioners and all other candidates participated in the selection process (6th SLST (AT)) knowing that the full marks for academic qualification and professional qualification would be 35 and not 25. Now, while awarding marks against these 35 marks, which is the full marks Madrasah Service Commission naturally would face a problem for awarding of marks and manner of evaluation of the candidates against full marks 35 for academic qualification including professional qualification as in their own rules the full marks in this respect was 25 and the Commission has no tool for awarding marks to candidates for their academic qualification etc.

I have also found that full marks in respect of academic qualification including professional qualification in respect of West Bengal School Service Commission Rules is 35 for Assistant Teacher in Work Education and also for Physical Education which appears from the 2016 Rules of West Bengal School Service Commission (vide at pages 188 and 189 of the writ application).

The petitioners submit that this Part-C of the Rules of School Service Commission have been adopted by the Madrasah Service Commission relating to the Assistant Teacher in Work Education comes from the source of Rules 7, 12 and 13 of the 2016 Rules of the School Service Commission and, therefore, the Commission has also adopted the Rules 7, 12 and 13 of the said School Service Commission Rules and in fact the entire rules of 2016 the School Service Commission have been adopted by the Madrasah Service Commission.

Learned advocate for the Madrasah Service Commission in this respect has submitted that the Commission has its own rules and they have not adopted any other rules. For awarding marks; from the School Service Commission Rules of 2016 they have only adopted Part-C of the 2016 Rules and that is why their notification dated 11th August, 2021 which was published in their website as to manner of evaluation is wholly comparable with the words used in the heading of Part-C in schedule II of the School Service Commission Rules of 2016 which also speaks about the manner of evaluation, academic qualification etc. is concerned.

I have found that the submission of the Commission has some merit so far as the full marks for academic qualification etc. is concerned; enhancement of full marks from 25 to 35 so far as academic qualification etc. is concerned; and the problem faced by them for evaluating the academic qualification etc. for 35 marks as they do not have a tool to evaluate the candidates against the full marks 35 for academic qualification etc.

The Commission got the tool from Part-C of Schedule II of 2016 Rules of School Service Commission and they have made it clear in their notification dated 11th August, 2021 by stating that this is being done for lack of such provision in the rules of the West Bengal Madrasah Service Commission which is found to be correct from the records before me. There is no illegality in culling out of a table from a different but an equivalent rule for recruitment of school teachers by the Madrasah

Service Commission for teachers of Madrasah. All the candidates for the posts of Madrasah teachers will be assessed by using the said tool being the table intituled as 'Part-C' of the School Service Commission Rules of 2016. Using the said table of 'Part-C' does not mean that the Commission is also adopting the Rules referred in the said Schedule II of the School Service commission Rules of 2016. I hold that the petitioners' contention in this regard is wholly baseless.

Therefore, the claim of the petitioners, who are all unsuccessful candidates according to the Commission and admitted by the petitioners, that the Commission must publish the breakup of marks and the list of candidates following the School Service Commission Rules of 2016 as a whole, is totally baseless, meaningless, frivolous and ill-motived.

I find no merit in the writ application. I also do not find any urgency in this matter on the basis of which it was included in the list, as was prayed for by the learned advocate for the petitioners yesterday before me.

This writ application is not only a wholly frivolous writ application but also some meaningless urgency have been shown to this court by making some pleadings in paragraph 25 of the writ application which is not acceptable to this court.

This writ application is dismissed with a cost of Rs. 10,000/- to be paid to the High Court Legal Services Authority within a period of two weeks from date.

The Registrar General is directed to place a report in this regard before this court after the expiry of the said two weeks period and if it is found that the cost has not been paid by the petitioners, appropriate steps will be taken by this court for realising the cost.

(Abhijit Gangopadhyay, J.)

