

08-09-2021
ct no. 05
Sl. 12
Sayandeep

W.P.A. 13717 of 2021

Md. Abdul Motaleb Miah & Ors.

-Versus-

The State of West Bengal & Ors.

(Via Video Conference)

Mr. Partha Sarathi Deb Barman

Ms. Reshmi Ghosh

Mr. Golam Mohiuddin

Ms. Puja Mondal

...for the petitioners

Mr. Sk. Md. Galib

Mr. Gaurav Das

....for the State

Mr. Nadeem Sulaiman

.....for the Respondent No. 2

Mr. Prosenjit Mukherjee

Mr. Nirmalya Kumar Das

Ms. Madhurima Sarkar

..for the Madrasah Service Commission

There are four aspirants who are at present working as assistant teachers in different Madrasahs in the District of Dakshin Dinajpur and they have jointly preferred this writ petition with a common prayer for publication of list prepared by the West Bengal Madrasah Service Commission containing names of candidates who have been selected for participation in the personality test for preparation of final panel for the post of Headmaster/ Headmistress / Superintendents in different categories of

recognized non-Government aided Madrasahs in West Bengal. There was notification dated 30th August, 2020 issued by the Secretary, West Bengal Madrasah Service Commission (hereinafter referred to as the said “Commission”) inviting online applications for eligible candidates for their participation in 7th State Level Selection Test, 2020 for the post of Headmaster/Headmistress/ Superintendent in different categories of recognized non-Government aided Madrasahs in West Bengal. It is the case of the writ petitioners that they have applied for the said post of Headmaster/ Headmistress / Superintendent in the Madrasahs pursuant to the said notification dated 30th August, 2020 being eligible candidates. Pursuant to such notification of the Commission, written test was conducted by the Commission where all the four writ petitioners participated. In addition thereto, their academic records were also appraised by the Commission while preparing the list of candidates who are to be allowed to participate in the ensuing personality test which is schedule to commence on and from 9th September, 2021. The grievance of the writ petitioners is that non-publication of the list of the selected candidates for the purpose of holding personality test as contemplated under the relevant provisions of the West Bengal Madrasah Service Commission

Recruitment(Selection and Recommendation of Persons for Appointment and Transfer to the Post of Teaching and non-Teaching staff) Rules, 2010 (hereinafter referred to as “the Rules of 2010”)

The prayer made in the writ petition runs
infra :

“b) A writ in the nature of Mandamus commanding the Respondents and/or their men, agents or subordinates as to why each of them should not be restrained from treating the petitioners as not qualified candidates for the posts in question, without publishing and/or disclosing the list of qualified and not qualified candidates with the marks obtained by the respective candidates in written test, academic including professional qualification and experience;

c) A writ in the nature of Mandamus directing the Respondents and/or their men, agents or subordinates as to why the respondents should not be restrained from conducting personality test for the posts in question without publishing the list of qualified and unqualified candidates disclosing the marks of the respective candidates in written test, academic including professional qualification and experience;

d) A writ in the nature of Mandamus directing the Respondents and/or their men, agents or subordinates to show-cause as to why one post of Headmaster, two

posts of Headmistress and one post of superintendent of recognized non-Government aided High/ Higher Secondary/Junior High/Senior Madrasahs be kept vacant forthwith;”

In support of the case made out in the writ petition Mr. Partha Sarathi Deb Barman learned Counsel duly assisted by Ms. Reshmi Ghosh draws attention to the relevant provisions of said Rules of 2010 specially Rule (10)(3)(a) as well as Rule 18, for better understanding Rule (10)(3)(a) and Rule 18 is quoted below:

“(3) While specifying the vacancies in the advertisement, the Commission shall, in case of the post of –

*(a) **Headmaster/ Headmistress / Superintendent** .- Publish a provisional/tentative vacancy list at the time of inviting application for State/ Region Level Selection Test and a final vacancy list at the time of publication of the result of written examination by declaring the actual vacancies that have occurred/been reported.*

18. Preparation of list of candidates for Personality Test.*- After the evaluation of the answer sheets of the written examination, the Commission shall prepare medium, post, subject, category and gender-wise list of the candidates, who shall qualify for personality test on*

the basis of the marks obtained by him/her in the written test and evaluation of academic and professional qualification (to be calculated on the basis of statement made in regard to academic qualification by a candidate at the time of submission of the application form) taken together and also teaching experience as per Schedules II and III, if applicable:

Provided that the number of qualified candidates for every category (of post) and/or subject (teacher and non-teaching staff to be called for the personality test in order of merit, shall not exceed 1.5 times of the number of actual vacancy (ies):

Provided further that if more than one candidate scores same marks at the last rank/position of the list of qualified candidates all such candidates as that position shall be called for the personality test.”

Placing reliance upon the said Rule (10)(3)(a) and Rule 18 Mr. Partha Sarathi Deb Barman has tried to impress upon this Court that the Commission is duty bound to publish the list prepared by the Commission on the basis of written test as well as academic performance prior to holding personality test.

In support of the contentions of the writ petitioners, it has also been submitted before

this Court that in order to maintain transparency in the selection procedure adopted by the Commission such disclosure of the list of candidates for holding personality test is necessary. Mr. Deb Barman has also relied upon the Judgment of the Supreme Court reported in (2008)14 Supreme Court Cases 144 **(Mohd. Altaf(2) and Others vs. U.P. Public Service Commission and Another)**

Per contra, Mr. Prosenjit Mukherjee, learned advocate representing the Commission being the main contesting respondent has specifically made submission that there is no statutory requirement to publish the result of the list of candidates selected for participating in the ensuing personality test and in addition to Rule (10)(3)(a) and Rule 18 Mr. Mukherjee has drawn attention to Rule 23 of the Rules of 2010. Rule 23 is quoted below:

“23. Publication of Panel.- The Commission shall publish such panel(s) and waiting list(s) of candidates in the Commission’s Website and the Notice Board of the Commission as well as the Offices of the District Inspector of Schools(SE).”

It has also been submitted on behalf of the Commission that pursuant to the said

notification dated 30th August, 2020 written test was held and the result of written test was published on 11th August, 2021. The writ petitioners did not approach the Commission by making any representation or any application under the Right to Information Act for dissemination of information relating to their performance in the written test. On the contrary, the writ petitioners filed the present writ petition on 3rd September, 2021 when the personality test is scheduled to be commenced on and from 9th September, 2021 and that will be concluded next day that is 10th September, 2021. It has been specifically submitted on behalf of the Commission that considering the relevant provisions of Rules of 2010, there is requirement for publication of final panel in terms of Rule 23 of the Rules of 2010 but at this stage after completion of first stage of selection process when the written test is over and there is requirement to conduct personality test, there is no requirement provided in the said Rules of 2010 to publish the list containing names of candidates who will be permitted to participate in the personality test.

Elaborate submissions have been made by the learned advocate representing the writ petitioners as well as the Commission by

pointing out the relevant provisions of Rules of 2010 in support of their respective cases and which has been considered by this Court. on perusal of Rule 10(3)(a), it appears that the said Rule primarily relates to publication of vacancy list at the time of inviting application for State/Regional Level Selection Test and relating to final vacancy list at the time of publication of result of the written examination by declaring the actual vacancies that have occurred or have been reported. Rule 18 provides for evaluation of answer-sheet of the written examination thereafter the Commission is required to prepare medium, post, subject, category and gender wise list of the candidates who shall qualify for personality test on the basis of the marks obtained by him or her in the written test and evaluation of academic or professional qualification which are to be taken together and also teaching experience as per schedule II and III, if applicable. There is also another relevant provision which the learned advocates have pointed out during the course of hearing before this Court that is Rule 23 which specifically deals with publication of panel and which says the Commission shall publish the panel(s) and waiting list(s) of candidates in the Commission's website and the notice board of the Commission

as well as the offices of District Inspector of Schools(SE). Conjoint reading of Rule 10(3)(a), Rule 18 and Rule 23 does not contemplate publication of list of selected candidates which has been prepared in terms of Rule 18 of the said Rules of 2010 before commencement of the personality test rather Rule 23 specifically provides for publication of panel and waiting list of candidates at the end of the selection process. On placing reliance upon Rule 10(3)(a) an attempt has been made to make out a case before this Court that there is a statutory prescription for publication of list of vacancy at the time of publication of result of written examination which has not been done in the present case and Mr. Deb Barman has made submissions that there is a requirement of publication of list of vacancies as per Rule 10(3)(a). Considering such submission made on behalf of the writ petitioners, this Court has tried to find out whether any case in the writ petition relating to failure to comply with the relevant provisions of Rule 10(3)(a) of the Rules of 2010 is made. Unfortunately Court has failed to find out any specific case made out on behalf of the writ petitioners in the present writ petition and there is no such averments made that there is failure on the part of the Commission to

publish the list of vacancies as contemplated under the Rule 10(3)(a) and there is no specific prayer couched in the writ petition to that extent.

The Judgment reported in 2008(14) Supreme Court Cases 144 (**Mohd. Altaf(2) and Others vs. U.P. Public Service Commission and Another**) has been placed before this Court but on perusal of the ratio of the judgment it appears that the selection process which was considered by the Supreme Court was for different post and that relates to different method of selection; it has no connection with the selection process which the Commission is required to follow under the said Rules of 2010 therefore the decision as contained in the Judgment of the Apex Court reported in **Mohd. Altaf (supra)** is of no help.

Lastly in order to satisfy the conscience of the Court Mr. Prosenjit Mukherjee learned advocate representing the Commission has placed before this Court a writing signed by the Secretary, West Bengal Board of Madrasah Service Commission, dated 7th September, 2021 containing the marks awarded by the Commission in favour of the four writ petitioners in written test. On primary scrutiny it appears that the marks obtained by the writ petitioners

are not adequate to make them eligible to participate in the ensuing personality test considering the cut-off marks fixed by the Commission for the said personality test.

In view of above conspectus of facts, this Court does not find merit in the writ petition and accordingly the writ petition stands dismissed.

However, the Court directs the Secretary of the Commission to inform the four writ petitioners separately the marks which have been awarded to them in the written test as well as in their academic qualification within a period of seven days from the date of Communication of this order.

The writing dated 7th September, 2021 of Secretary of the Commission produced before the Court in sealed cover is kept with the records.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, is to be given to the parties upon compliance with the necessary formalities.

(Saugata Bhattacharyya, J.)

