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15.12.2021.  
d.p.

**In The High Court At Calcutta  
Constitutional Writ Jurisdiction  
Appellate Side**

**W.P.A 19887 of 2021  
(Via Video Conference)**

**Santanu Banerjee  
-versus  
State of West Bengal & Ors.**

**Mr. Nirmalya Kumar Das.  
...For the Petitioner.**

**Mr. Prosenjit Mukherjee,  
Ms. Madhurima Sarkar.  
...For the Madrasah Service  
Commission.**

In response to an advertisement published by the West Bengal Madrasah Service Commission for appointment of Headmaster/Headmistress of High and Higher Secondary Madrasahs, the petitioner appeared in the recruitment process. Result of the said examination was published in August 2021.

The case of the petitioner is that at the time of publication of the vacancies Rule 22 (a) 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 was not followed.

It has further been submitted that the Madrasah Service Commission did not follow the guidelines laid down by NCTE. It has been submitted that according to the NCTE guidelines a candidate securing at least 50%

marks in graduation ought to be eligible for being appointed as Headmaster/Headmistress.

In the instant case, the advertisement has been published for recruiting candidates with only 45% marks in Madhyamik, 40% in honours or 45% in Pass Graduate level. The percentage of marks as required to be followed in terms of the NCTE guidelines have not been followed by the Madrasah Service Commission.

According to the provisions of Rule 22 (a), the Commission is required to prepare strictly in order of merit a panel of candidates found fit for recommendation, and each such panel shall include names equal to the number of vacancies referred to in sub-rule 3 of Rule 9.

Sub-rule 3 of Rule 9 relates to updating of vacancies. It mentions that the Commission is required to finally update the number of vacancies occurred and to be occurred within the 1<sup>st</sup> January next ensuing of the year of advertisement post/subject, medium, category, and gender-wise as well as district-wise, if required, before the publication of the result of written test.

According to the petitioner, the vacancy list that has been published was not updated till the 1<sup>st</sup> January of the ensuing year of publication of the advertisement.

The learned advocate appearing for the West Bengal Madrasah Service Commission submits that the tentative vacancy list was published at the time of publishing the advertisement but at the time of declaration of the results, the final vacancy list has

been published taking into consideration the vacancies up to August 2021.

It is the further case of the Commission that the petitioner secured less marks than last empanelled candidates and accordingly, his name did not appear in the merit list.

It has been submitted that the lowest marks obtained in Bengali medium (General) (empanelled) is 69.125 and the lowest marks in Bengali medium (General) (waiting) is 67.875. The petitioner secured 67.5 marks and accordingly could not be empanelled.

As the petitioner secured less marks than the last empanelled candidate, his name did not figure in the merit list.

The submission of the petitioner that the NCTE guidelines were not followed at the time of publication of the advertisement cannot be accepted by the Court at this stage.

Had the petitioner been aggrieved by the action of the Commission in not following the NCTE guidelines, he ought to have approached the Court immediately after the advertisement was published.

The petitioner took a calculated chance to appear in the examination and when he became unsuccessful in the said examination, he challenged the same by filing the present writ petition.

It is settled law that an unsuccessful candidate cannot be heard to challenge the initial advertisement in response to which he appeared in the examination.

In view of the above, no relief can be granted to the petitioner in the instant case.

The writ petition fails and is hereby dismissed.

The instruction given by the Commission is retained with the records.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

**( Amrita Sinha, J.)**