

Item No.7

15.12.2021
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
(via video conference)

WPA 19916 of 2021
Rafi Mahammad
v.
The State of West Bengal & Ors.

Mr. Sabyasachi Chatterjee
Mr. Akashdeep Mukherjee
... for the petitioner.

Mr. Prosenjit Mukherjee
Ms. Madhurima Sarkar
... for the Madrasah Service Commission.

Sk. Md. Galib
Mr. G. Das
... for the State.

The petitioner appeared in the recruitment process for appointment as headmaster in terms of the West Bengal Madrasah Service Recruitment (Selection and Recommendation of Persons for Appointment and Transfer to the Posts of Teachers and Non-teaching Staff) Rules, 2010.

The petitioner is aggrieved by the recommendation made in favour of one Md. Mufassel Sk. who was successful in the recruitment process. The aforesaid Md. Mufassel Sk. was empanelled in rank 47 of the merit list.

According to the petitioner the aforesaid Md. Mufassel Sk. ought not to have been recommended for

the post of headmaster in terms of the bar which has been imposed in Rule 27 of the aforesaid Rules.

According to the petitioner Md. Mufassel Sk. was recommended for general transfer in the post of assistant teacher on January 15, 2021 and accordingly he could not have been recommended for the second time as headmaster in the same year.

Rule 27 of the aforesaid Rules mentions that notwithstanding anything contained in these Rules, the Commission shall not recommend the name of a person under Rule 26(a) who, at the time of submission of application or after submission of application, is recommended to a post in a Madrasah on the basis of counselling conducted by the Commission and continues his/her service as such, but has not completed continuous one year's approved service in the said post of lower scale or two years' approved service in the said post of same scale.

According to the petitioner as the said Md. Mufassel Sk. was recommended as assistant teacher in January 2021 his name could not have been recommended for headmaster in August 2021.

The aforesaid submission of the petitioner is thoroughly mis-conceived.

The Rule requires that the bar of recommendation will apply if the previous recommendation was to a

similar post in a Madrasah. In the present case the said Md. Mufassel Sk.'s name was recommended as assistant teacher but not as headmaster. The said Md. Mufassel Sk. had more than one year's approved service in the post of lower scale which is required as per the Rule. Accordingly, recommendation of Md. Mufassel Sk.'s name as headmaster is in accordance with the provision of the Rule.

The petitioner has come up with an allegation against the aforesaid Md. Mufassel Sk. without adding him as party respondent in the writ petition.

As it appears that there is no requirement of hearing the submission of Md. Mufassel Sk. as the submission of the petitioner against the said party is absolutely mis-conceived no direction is being passed to add him as a party respondent in the instant writ petition. The Commission will be at liberty to take necessary steps in the matter in accordance with law.

The learned advocate for the Commission submits that the petitioner being an unsuccessful candidate has filed the instant writ application to stall the process of recruitment of headmaster.

The writ petition at the instance of an unsuccessful candidate is not maintainable in the present facts and circumstances.

The writ petition fails and is hereby dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

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(Amrita Sinha, J.)