

Court No. 17

WPA 10450 of 2019

14.06.2022

(SL 12)

(S. Banerjee)

Akmol Hossain & Ors.

Vs.

The State of West Bengal & Ors.

with

CAN 1 of 2020

(old CAN 2041 of 2020)

Mr. Samim Ahmed

Ms. Gulsanwara Pervin

... for the petitioners

Mr. Prosenjit Mukherjee

Ms. Madhurima Sarkar

... for the Madrasah Service Commission

The petitioners' case is that though they have desirable qualification, i.e., B.Ed etc., they have not been given recommendation for being appointed in Madrasahs as Assistant Teachers against the recruitment procedure of 2013-14 for which advertisement was issued on 6th February, 2014.

Under proviso to Rule 3 of the recruitment rules namely, 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, all the persons who have desirable qualifications if qualified in written examination shall get **preference** over the candidate who has qualified in written examination but has no desirable qualification.

(Emphasis mine)

The petitioners pin-point their case here by saying that they have not been given preference by the Madrasah Service Commission.

I have heard the Commission but there is no cogent reply as to why the petitioners were not given preference. The petitioners have indicated that untrained candidates, i.e., candidates who do not have desirable qualification, have been given appointment for the post of teachers but they, having desirable qualifications, have not been given recommendation for appointment.

I direct the Commission to give preference to the petitioners over the candidates who do not have desirable qualifications and recommend the names of the petitioners in the posts for which they have applied within a period of 15 days from the date of communication of this order. If necessary, the untrained candidates' service may be interfered with for accommodating the petitioners who have been deprived from service most illegally by the Commission. If the petitioners can be accommodated in vacant posts including posts from future vacancy for which steps are to be taken forthwith by the Commission for obtaining such vacancy and in such case the petitioners are to be appointed in such posts without disturbing the other

persons who did not have training qualification, i.e., desirable qualification.

The Commission has committed a grave illegality in not giving recommendation for getting appointment in Madrasahs for which a cost of Rs. 70,000/- (Rupees seventy thousand only) is imposed upon the Madrasah Service Commission to be paid in equal proportion to the seven petitioners by 15 days from the date of communication of this order.

The petitioners have not filed full court fees though they are seven in number and applied separately for different posts. Therefore, there causes of action cannot be clubbed together though they can file a petition jointly on payment of full court fees.

Therefore, the petitioners are directed to pay the full court fees by 17th June, 2022 and unless the said court fees are paid, this order will not take effect.

The writ petition is allowed with a cost as aforesaid.

The Commission has filed one affidavit in opposition which is kept on record.

The petitioners have filed one amendment application which has not been pressed and the said application is disposed of.

The Commission raised a point of maintainability of the writ application which has been rejected at the very threshold.

(Abhijit Gangopadhyay, J.)