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(Via Video Conference)

Court : 04
Item : 03
Matter : MAT
Status : DISMISSED
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MAT 1018 of 2019
with
CAN 1 of 2021
with
CAN 2 of 2021

Md. Abdul Motaleb Miah & Ors.

Vs.

The State of West Bengal & Ors.

Mr. Biswaroop Bhattacharya, Advocate

Mr. Golam Mohiuddin, Advocate

Ms. Puja Mondal, Advocate

.....for the Appellants

Mr. Md. Galib, Advocate

Mr. Gourav Das, Advocate

....for the State

Mr. Prosenjit Mookherjee, Advocate

Ms. Madhurima Sarkar, Advocate

....for the Commission

Mr. Nadeem Suliaman, Advocate

.....for the Respondent No. 2

The unsuccessful aspirants for the post of Headmaster/Headmistress/Superintendent in a category of the recognized non-government aided madrasah had filed the writ-petition being WPA 13717 of 2021 seeking relief in the form of mandamus commanding the respondents to publish the list prepared by the West Bengal Madrasah Service Commission disclosing the names of the candidates who have been selected for personality test.

A plea was taken in the writ-petition that

though the written test was conducted by the Commission wherein the aforesaid writ-petitioners participated but the Commission did not publish the list of the selected candidates despite mandate having given in Rule 10(3)(a) and Rule 18 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.

According to the writ-petitioners/appellants the aforesaid Rules makes it imperative not only to specify the vacancies in the advertisement for the post of Headmaster/ Headmistress/ Superintendent at the time of inviting applications for States/Regional Level Selection Test but also the final vacancy list at the time of publication of the result of the written examination by declaring actual vacancy that has occurred or been reported. It further provides the course to be adopted after the evaluation of the answer-scripts of the written examination and the preparation of the list of the candidates qualifying for the personality test on the basis of the marks obtained in the written test and evaluation of academic and professional qualification as well as teaching experience in terms of Schedule II and III thereof. The proviso appended to Rule 18

postulates that the qualifying candidate for each category of post and subject, to be called for personality test in the order of merit, should not be exceed 1.5 times of the number of actual vacancy. The grievance so raised was that the Commission has not acted strictly in terms of the Rules, more particularly, in not publishing the list on the basis of the written test and the academic performance before it proceeded to conduct the personality test.

The single Bench held that Rule 10(3)(a) of the said Rules pertains to publication of the vacancy list at the time of inviting the applications and the final vacancy list after the written examination is conducted whereas Rule 18 relates to evaluation to answer-scripts and the preparation as per medium, post, subject, category and gender-wise list of the candidates qualifying for personality test on the basis of the marks so obtained and also of the evaluation of the academic and professional qualification in terms of the aforesaid Schedule appended thereto. Rule 23 is relatable to the publication of the panels of the successful candidates and waiting list. It is thus held that the conjoint reading of the aforesaid provision does not contemplate the publication of the list of the elected candidates prepared in terms of Rule 18 of the

said Rule before commencement of the personality test. Ultimately, the writ-petition was dismissed as no case of such nature was pleaded in the writ-petition nor the marks obtained by the appellants would justify their entitlement.

At the time of moving the instant appeal, identical pleas were taken and this Court made a prima facie finding that Rule 18 is conjunctive in letter and essence enabling the evaluation of the answer-scripts in the written test along with evaluation of the academic and professional qualification and teaching experience as per the Schedule and if those provisions are applicable, the candidate would be called in the personality test in such proportion. It was prima facie found that the optimum level of satisfaction could not have been reached by the single Bench solely on the performance of the writ-petitioners/appellants on the basis of the marks obtained in the written-test alone. The interim order was passed directing the Commission to keep one post of Headmaster, two post of Headmistress and one post of Superintendent, vacant till the disposal of the appeal or until further order.

The aforesaid interim order was passed solely on the ground that without being further disclosure the writ-petition should not have been

dismissed upon the marks obtained by the writ-petitioners/appellants which led us to pass further order on December 22, 2021 upon the Madrasah Service Commission to produce all relevant documents prepared in the computer pertaining to such recruitment process. Pursuant to said direction, the list pertaining to the category of the Headmaster (Senior Madrasah) Headmistress in Junior High Madrasah and Superintendent in Senior Madrasah who have or have not been called, were produced before us. The said report revealed the break-up of the marks obtained by the candidates in the written test, academic and professional experience and the personality test. Schedule II and III postulates the marks to be awarded under each category namely written test, academic, experience and the personality test and does not warrant the combined marks pertaining to the academic and professional and teaching experience as disclosed by the Madrasah Commission.

A further direction was passed on January 7, 2022 to disclose the break-up from the uploaded information in the computer maintained in this regard with the certification that such information has neither been modified, clarified and/or changed at any point of time. The Madrasah Commission produced the relevant

documents disclosing the marks of the candidates category-wise who were either called for the personality test or were not called for such test. The certificate is also appended by the competent officer certifying that the said data have been uploaded in the computer database which has not been modified/rectified or clarified once its stored therein.

In view of the aforesaid facts a point is taken that since it is a mandate under Rule 10(3)(a) and Rule 18 for publication of the actual vacancy and the marks obtained by each of the candidates which in fact, has not been done, the entire recruitment process should be quashed and set aside. As noticed earlier, the writ-petition was disposed of solely on the basis of the marks obtained by the writ-petitioners/appellants and the last cut-off marks fixed for the purpose of personality test after having invited the Commission to disclose full particulars which, in fact, has been done. There was no objection or protest made by the writ-petitioners at the time of applying their candidature in online portal nor any objection was put forth in participating in the written examination.

Our attention is drawn to the Schedule II and III of the aforesaid Rules which provides the

mechanism of evaluating the academic as well as the professional experience on the basis of the disclosure made by the aspirants and the marks to be awarded therein. It is no doubt true that Rule 10(3)(a) provides for publication of the provisional /tentative vacancy as well as the final vacancy list at the time of publication of the result of the written examination which, in fact, has been partially complied with when the publication inviting the applications were made.

It is no doubt true that the Commission cannot whittle-down the statutory provision in not disclosing the final vacancy list at the time of publication of the result of the written-examination as it would augment impartiality, transparency and fairness in the process. It does not absolve the Commission of such statutory duty casts upon it in making publication of the result of the written examination for the purpose of declaring the actual vacancy that has occurred or reported. Rule 18 casts further obligation upon the Commission to prepare a medium, post, subject, category and gender-wise list of candidates qualifying for the personality test on the basis of the marks obtained in the written test and evaluation of academic and professional qualification together with the teaching experience in terms of the aforesaid Schedule so

that the successful candidate may be called for personality test in the order of merit in the proportion of 1.5 times of the number of actual vacancy. Though it is a statutory obligation which cannot be bypassed nor avoided taking a circuitous route but after disclosure of the materials before us we do not find that it is a fit case where the entire recruitment process should be quashed and set aside for such infraction and/or invasion of the statutory rules.

The writ-petitioners/appellants could not secure the requisite marks and the list of the candidates qualifying for a personality test, would evince that the marks obtained by them on a different categories enumerated in Schedule II and III are much higher than the marks obtained by the writ-petitioners/appellants as revealed and/or disclosed not only before the single Bench but before us as well and, therefore, we do not think that any further relief can be granted to the appellants being the unsuccessful candidates.

We thus do not find that the candidates facts as disclosed warrants interference with the impugned order nor the reliefs can be granted to the appellants.

The appeal being **MAT 1018 of 2021** is thus **dismissed**. No order as to costs.

Let the report filed by the Madrasah School Commission be re-sealed by the Assistant Court Officer immediately and be returned to the learned Advocate-on-record of the said Commission.

With the dismissal of the main appeal, the connected applications being **CAN 1 of 2021** and **CAN 2 of 2021**, also stands **dismissed**.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)