

Court No. 24

11.02.2022

(Item No.20-50)

(sh)

W.P.A. 8771 of 2020

Nasim Akhter

VS

The State of West Bengal & Ors.

With

W.P.A. 8790 of 2020

With

W.P.A. 8797 of 2020

With

W.P.A. 8802 of 2020

With

W.P.A. 8805 of 2020

With

W.P.A. 8808 of 2020

With

W.P.A. 8851 of 2020

With

W.P.A. 8857 of 2020

With

W.P.A. 8863 of 2020

With

W.P.A. 8874 of 2020

With

W.P.A. 9575 of 2020

With

W.P.A. 9044 of 2020

With

W.P.A. 9046 of 2020

With

W.P.A. 9048 of 2020

With

W.P.A. 9051 of 2020

With

W.P.A. 9108 of 2020

With

W.P.A. 9114 of 2020

With

W.P.A. 9120 of 2020

With

W.P.A. 9163 of 2020

With

W.P.A. 9168 of 2020

With

W.P.A. 9454 of 2020

With

W.P.A. 9464 of 2020

With

W.P.A. 9466 of 2020

With

W.P.A. 9571 of 2020

With

W.P.A. 9684 of 2020

With

W.P.A. 9685 of 2020

With

W.P.A. 9688 of 2020
With
W.P.A. 9693 of 2020
With
W.P.A. 9695 of 2020
With
W.P.A. 9697 of 2020
With
W.P.A. 9703 of 2020
(via video conference)

Mr. Samim Ahammed
 Mr. Arka Maity
 Ms. Saloni Bhattacharjee
 Ms. Gulsanwara Pervin
 ... For the petitioners.

Mr. Prosenjit Mukherjee
 Ms. Madhurima Sarka
 ... For the Madrasah Service Commission.

The reasoned order dated December 6, 2019 passed by the Chairman, West Bengal Madrasah Service Commission in compliance of the direction passed by this Court on August 30, 2019 in WP No. 24096(W) of 2018 and WP No. 11977(W) of 2018 is impugned in the writ petitions.

The petitioners participated in the 6th SLST, 2013(AT) conducted by the West Bengal Madrasah Service Commission. The said selection test got held up midway as certain provisions of the West Bengal Madrasah Service Commission Act, 2008 came to be challenged and the same was declared ultra vires by this Court. The matter thereafter went up before the Hon'ble Supreme Court and the Hon'ble Supreme Court was pleased to hold that the Act was intra vires.

At the time of hearing the appeal, the Hon'ble Supreme Court observed that there are large number of vacancies existing in the various Madrasahs, and accordingly passed order on May 17, 2018 permitting declaration of the result for the recruitment process of the year 2014. However, the Hon'ble Court restrained the Commission to undertake further recruitment process.

Pursuant to the leave granted by the Hon'ble Supreme Court, the Madrasah Service Commission published the result of the selection test.

The Madrasah Service Commission in the affidavit-of-opposition has averred that the result was published on June 22, 2018 in the notice board of the Commission with a view to comply the solemn order dated May 17, 2018.

The Madrasah Service Commission completed the recommendation process by June 30, 2018. The matter was fixed before the Hon'ble Supreme Court on July 12, 2018. Due to urgency the Commission could not publish the panel in the official website of the Commission but the result/panel and the vacancy was published in the official notice board of the Commission and the result was uploaded in the official website of the Commission in such a manner that the candidates could see their results by feeding their registration numbers.

The final vacancies were uploaded in the official website of the Commission to enable the empanelled candidates to select the Madrasahs of their choice well before the counselling which was conducted from June 26, 2018 to June 30, 2018.

The panel in question was prepared strictly on the basis of merit according to the marks obtained by the candidates in the written examination, academic score and the marks obtained in the personality test.

The grievance of the petitioners is that the panel which was allegedly published was not in accordance with Table-3 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.

It has been submitted that the break up of marks has not been disclosed. The evaluation process, which the Commission has relied upon, was not in accordance with the recruitment Rules. Still now there are huge number of vacancies to be filled up and the petitioners being TET qualified candidates ought to be favoured with appointment.

The Commission has opposed the prayer of the petitioners. It has been submitted that the panel in question was published in the year 2018 and the same was valid for a period of one year only. The

evaluation of marks has been done by following the Rules of the West Bengal School Service Commission Rules. The fact of following the Rules of the West Bengal School Service Commission Rules in respect of the 6th SLST, 2013 was published in the official website of the West Bengal Madrasah Service Commission.

It has been submitted that a co-ordinate Bench of this Court by a judgment dated August 18, 2021 passed in WPA 12901 of 2021 (Mst. Reshma Khatun & Ors. v. State of West Bengal & Ors.) was pleased to hold that there is no illegality in culling out of a table from a different but an equivalent Rule for recruitment of school teachers by the Madrasah Service Commission. All the candidates for the posts of Madrasah teachers can be assessed by using the said tool. The Court was pleased not to accept the submission of the petitioner regarding publishing the break up of the marks and the list of candidates following the School Service Commission Rules, 2016.

The learned advocate appearing for the Commission has produced before this Court the break up of the marks obtained by the petitioners herein.

From the said break up it appears that in the subject Arts and Social Science the lowest mark

obtained is 70.26 in Bengali medium (General) and 69.55 in Bengali medium (Female) category.

The lowest mark obtained in the subject Physics is 49.4 in Bengali medium (General) and 44.4 in Bengali medium (Female) category.

The lowest mark obtained in the subject English (H/PG) is 53.33 in Bengali medium (General) and 52 in Bengali medium (Female) category.

The lowest mark obtained in the subject Bengali (H/PG) is 66.85 in Bengali medium (General) and 64.77 in Bengali medium (Female) category.

The lowest mark obtained in the subject Mathematics (H/PG) is 46.87 in Bengali medium (General) and 41.97 in Bengali medium (Female) category.

The lowest mark obtained in the subject Arabic MM (H/PG) is 49.75 in Bengali medium (General) category.

The lowest mark obtained in the subject Geography (H/PG) is 63.63 in Bengali medium (General) and 62 in Bengali medium (Female) category.

The lowest mark obtained in the subject History (H/PG) is 66.31 in Bengali medium (General) category.

None of the petitioners could be awarded any marks for experience, as they do not possess any

experience of teaching. All the petitioners obtained less marks than the last empanelled candidate in their respective category.

From the submissions made on behalf of both the parties, it appears that the petitioners being unsuccessful in the selection process have come up with frivolous allegations challenging the reasoned order passed by the Commission. They challenge the marking pattern and the manner in which the result/panel has been published. The petitioners lost sight of the fact that they are not the only ones to have been singled out. The marking pattern was applied uniformly in respect of all the candidates. The petitioners have not been treated differently and have not been prejudiced in any manner whatsoever.

It does not appear that the stand of the Commission was in any manner illegal, arbitrary, discriminatory or contrary to the provisions of the Recruitment Rules, 2010.

The entire issue of publishing the panel already attained finality way back in 2018 when the matter was *sub judice* before the Hon'ble Supreme Court. The same ought not to be reopened at such a belated stage, that too, at the instance of unsuccessful candidates. The rights of the successful candidates have already been crystalized in the meantime and should not be ordinarily disturbed unless there has

been gross violation of statutory rules or *mala fide* in the selection process.

The writ petitions fail and are hereby dismissed.

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

(Amrita Sinha, J)