

05.01.2023

Sl.No. 5
Ct.No. 22
Amalranjan

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

WPA 10085 of 2022

Sontu Haldar & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Uday Sankar chattopadhyay
Mr. Suman Sankar chatterjee
Mr. Santan Maji
Ms. Trisha Rakshit
Ms. Subhaya Das

...for the petitioners

Mr. Bhaaskar Prosad Vaisya
Mr. Suman Dey

...for the State

Mr. Prosenujit Mukherjee
Ms. Madhurima Sarkar

...for the Madrasah Service Commission

Affidavit of service filed in court today, is
taken on record.

There are 6 writ petitioners they were the
aspirants in the State Level Selection Test, 2013
for the subject Physical Education for seeking an
appointment in the Madrasah for the post of
Assistant Teacher.

Pursuant to the directions made by this
court, the respondent nos. 2, 3 and 4 had filed
its report in the form of an affidavit affirmed on
December 5, 2022 dealing with the contention of
the writ petitioners as contended in the writ
petition.

The petitioners challenged the first fold of challenge of the petitioner was that the advertisement for the selection process was issued in 2013 whereas the final selection process came to an end in 2021.

The petitioner contended that the vacancy position published or issued in terms of **Rule 9(1) 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**, for short, the said 2010 Rules, showing the vacancy position could not be same when the final panel of the selection process was published after about 8 years therefrom in 2021. It was submitted that the vacancy position must have been increased which was not published by the respondent Commission in terms of **Rule 9(3)** of the said 2010 Rules. It was further contended on behalf of the petitioners that had there been the total vacancy position published as on 2021, the petitioners would have a chance for being selected.

The second limb of submission on behalf of the writ petitioners was referring to Annexure P-2 to the writ petition, the final panel of the

merit list was published for the successful candidates without any break up marks only by mentioning their respective ranks not only with the break up marks. It was then submitted that in absence of discloser of such break up marks of the successful empanelled candidates the position of unsuccessful candidates did not get a chance to an opportunity to adjudge their position in the selection process.

Mr. Prosenjit Mukherjee, learned advocate appearing for the West Bengal Madrasah Service Commission referred to relevant paragraphs from the report, which are quoted below:

“7. That the deponent states that all the petitioners could not obtain the minimum cut off marks (75) for entering into the zone of consideration for the post of Physical Education (Pass). The total marks obtained by the petitioners (written, academic qualification and personality test) are as follows:

	Name of the	Total Marks
Sl. No.	Petitioners	(Written, academic qualification and personality test)

1.	Abu Raihan	72.975
2.	Nakul Chandra Dhar	Admit card not given in Writ petition
3.	Debasis Saha	73.25
4.	Saimuddin Sk	72.45
5.	Susanta Karak	73
6.	Bidhan Karak	74.25
7.	Ranjit Kumar Sarkar	73.95
8.	Pankaj Biswas	73.5
9.	Pintu Saha	73.75

8. That the deponent further states that there is no scope of publication of break up of marks neither after the result of written examination nor after the completion result of personality test neither in terms of Rule 18 nor in terms of Rule 22 and Rule 23 of Rules of 2010. The Hon'ble Division Bench considering the mandamus appeal bearing MAT No. 1018 of 2019 rejected the prayer for publication of break up of marks till the preparation panel.

Mr. Mukherjee submitted that in view of the said portion of the Rule 22 of the 2010 Rules since the petitioners also secured the same cut

off marks as 69 but the petitioners being younger in age than the candidates who was selected his last with the said cut off marks of 69 did not come within the consideration zone. Accordingly, their candidatures were rejected.

Mr. Mukherjee, learned advocate then submitted that the advertisement for the selection process inviting the aspirant candidates to participate in the selection process was published in due compliance with **Rule 9(1)** of the said 2010 Rules. He also submitted that the necessary vacancy list in terms of **Rule 9(3)** was also published at page 25 to the said report.

Mr. Mukherjee, learned advocate then referred to Rule 22 of the 2010 Rules which is quoted below:

“22. Preparation of Panel(s) and Waiting List(s). – The Commission shall, on the basis of the marks obtained in the written test, evaluation of the academic as well as professional qualification and teaching experience, if applicable, and marks obtained in the personality test and or aptitude test, all added together, and on the basis of the guidelines issued by the Commission, prepare strictly in order of merit, -

- a. 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; and**
- b. A waiting list.**

Note: Subject to proviso to sub-rule (1) of rule 3 if more than one candidate obtain the same aggregate (total marks), the merit position of the candidates shall be determined according to the seniority in age i.e., candidates with earlier date of birth shall be preferred, and if the aggregate and also the date of birth be the same, the candidates, obtaining higher academic score be preferred; and if the aggregate date of birth and also the academic score shall be the same, the candidates obtaining higher marks in written examination shall be preferred.”

He submitted that in any event the writ petitioners did not come within the consideration zone as it would be evident from the above quotation and the qualifying marks and the last cut off marks for being considered in the considered zone was 75 whereas each of the writ petitioners secured less than that. He then

submitted that the writ petition is totally devoid on merit and liable to be dismissed.

Considering the rival contention of the parties and considering the materials on record it appears that to those that from a combined and harmonious reading and construction of **Rules 9(1) and 9(3)** of the said 2010 Rules the vacancy list should be reconstructed taking the cut off date being January 1st of the next ensuing year. In the instant case, the selection process was notified in the year 2013 and as such the cut off date for issuing the vacancy list should have been **January 1st, 2014** and not beyond that. Therefore, the Commission had not committed any error on its part in publishing the vacancy position taking the cut off date as January 1st, 2014.

From the report filed by the Commission, as quoted above, it further appears to this court that in any even none of the petitioners had secured the total cut off marks 75 or above and as such they could not come within the consideration zone. Was the aspirant candidates could not come within the consideration zone they could not claim any right in their favour in respect of the said selection process.

For those foregoing discussions and reasons this writ petition is wholly devoid on merits.

Resultantly, this writ petition **WPA 10085 of 2022** stands **dismissed** without any order as to costs.

Urgent certified photo copy of this order, if applied for, be given to learned advocates for the parties upon compliance of all requisite formalities.

(Aniruddha Roy,J.)