

05.01.2023

Sl.No. 6
Ct.No. 22
Amalranjan

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

WPA/10086/2022

Abu Raihan & 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. Ranjan Saha

...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 9 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 first fold of challenge of the petitioners 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 in 2021, the petitioners would have a chance for being selected.

The second fold 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 of marks and

only by mentioning their respective ranks. It was then submitted that, in absence of disclosure of such break up of marks of the successful empanelled candidates the unsuccessful candidates did not get a chance and opportunity to adjudge their position in the selection process.

Mr. Prosenjit Mukherjee, learned advocate appearing for the West Bengal Madrasah Service Commission referred to a few 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:

Sl. No.	Name of the Petitioners	Total Marks (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.

13. That the deponent states the Meheub Hossain having below 45% marks in the Higher Secondary examination was allowed to participate in the selection process only on the ground that the candidate Meheub Hossain submitted participation certificate in different Games & Sports at the time of the application and due to such

Games & Sports Certificate the relaxation has been given to him as an eligible candidate. The Petitioners have alleged regarding the selection of Meheub Hossain who got rank 45 but the said Meheub Hossain is not a party as the private respondent in the instant writ petition."

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 21 to the said report. He submitted that, in any event the writ petitioners did not come within the consideration zone as 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 of merit and is liable to be dismissed.

Rules 9(1) and 9(3) of the said 2010 Rules are quoted below:

“9. Vacancy(ies). – (1) Report of vacancies.- The district Inspectors of Schools (SE) or any other authorized officer as may be entrusted by the Commission in writing, shall prepare a report regarding the number of vacancies in approved/sanctioned posts which exist(s) or is/are expected to occur within the 1st day of January next ensuing, and shall furnish the same to the Commission at least 15 days before the date of publication of the advertisement.

3. Updating of vacancies. – The Commission shall finally update the number of vacancies occurred and to be occurred within the 1st January next ensuing of the year of advertisement post/subject, medium, category, and gender-wise as well as district-wise, if required, before the publication of the result of written test.”

Considering the rival contention of the parties and considering the materials on record it appears that from a combined and harmonious reading and construction of **Rules 9(1) and 9(3)** of the said 2010 Rules the vacancy position should be published 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 event 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. Since, the aspirant candidates could not come within the consideration zone they could not have claimed 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 10086 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.)