

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya.

W.P.A 16967 of 2021

Bushra Afreen

vs.

The State of West Bengal & Ors.

For the petitioner	:	Mr. Soumen Kr. Dutta, Adv. Mr. Subhadeep Chatterjee, Adv. Mr. Sabyasachi Bhattacharjee, Adv.
For the State	:	Ms. Chaitali Bhattacharya, Adv. Mr. Subhendu Roy Choudhury, Adv.
For the respondent no. 4	:	Mr. Rachit Lakhmani, Adv. Ms. Afreen Begum, Adv.
Last Heard on	:	22.12.2022
Delivered on	:	19.01.2023.

Moushumi Bhattacharya, J.

1. The petitioner seeks cancellation of a licence of appointment of the private respondent no. 4 on 26.2.2021 by which the said private respondent was conferred the power to register Muhammadan marriages and divorces within the Jamuria Block comprising the territorial limits of the Asansol Municipal Corporation including Churulia and Madanpur Gram Panchayat within the Jamuria Police Station area, Paschim Bardhaman. The licence was to remain in force until the private respondent attains the age of 68 years or until the revocation and suspension of the licence, whichever is earlier.

2. According to learned counsel appearing for the petitioner, the petitioner was appointed as the Muslim Marriage Registrar (MMR) of Jamuria Police Station area on 11.3.2020 on the basis of a recommendation given by the District Registrar, Paschim Bardhaman. Counsel submits that the petitioner is aggrieved by the appointment of the private respondent as the MMR for the Asansol Municipal Corporation area from Ward No. 1 – Ward No. 11 as that would curtail the petitioner's area of operation as the existing MMR. The other point of challenge to the impugned appointment of the private respondent is that of the private respondent allegedly being over-aged as on the date of the appointment. Counsel relies on a communication dated 7.2.2018 issued by the District Registrar, Burdwan in this regard. It is further submitted that the appointment of the private respondent is in violation of Rule 3(b), 4A (5) and (6) and 4B of the Bengal Muhammadan Marriages and Divorces Registration

Rules, 1929. Counsel complains that the relaxation made in the case of the private respondent was passed one year after the issue of licence in favour of the private respondent.

3. The contention of the State respondents, through learned counsel, is that the State has the power to relax the upper age limit of an MMR under the Rules notified in 1929 and further that the relaxation was made by reason of the fact of private respondent possessing vast knowledge of the Muhammadan religion. Counsel submits that the petitioner is not prejudiced by the impugned appointment and that temporary appointments may be altered by the State at any point of time having regard to the requirements of the area and public purpose in general.

4. Learned counsel appearing for the private respondent, whose appointment is under challenge, relies on the Bengal Muhammadan Marriages and Divorces Registration Act, 1876 and the Rules framed thereunder to urge that the Government has discretion in granting a licence to a party to act as an MMR within the jurisdiction of one or more Police Stations. Counsel submits that the petitioner is not entitled to any opportunity of hearing prior to the appointment of any other person including the private respondent. Counsel stresses on the fact of the private respondent is a learned man and has been a cleric in the concerned area for several years.

5. The only issue which arises for consideration before this Court is whether the impugned appointment of the private respondent no. 4 was made

in violation of the governing Act and the rules namely The Bengal Muhammedan Marriages and Divorces Registration Act, 1876 and The Bengal Muhammedan Marriages and Divorces Registration Rules, 1929 which was notified in accordance with the powers conferred by section 24 of the 1876 Act.

6. Section 3 of the 1876 Act empowers the State Government to grant a licence to any person, being a Muhammadan, authorising him to register Muhammadan marriages and divorces on an application made by the person for such registration. The *proviso* to section 3 states that no more than two persons shall be licensed to exercise the said function within the same limits. Rule 3 of the Rules, notified on 14.8.1929, sets out the procedure for the selection of candidates for Muhammadan Registrarship in Districts other than Calcutta; Rule 4, as amended on 6.1.2017, sets out the qualifications of candidates and Rule 4 (4) provides that such candidates shall not be less than 25 years and not more than 40 years on the date of inviting applications under Rule 3(a). Rule 4(5) provides that the State Government may by order regularise any temporary appointment made after 15.10.2009 or any compassionate appointment made after 3.8.2012 of any candidate if such candidate fulfills the requisite qualifications and is not less than 25 years and not more than 40 years at the time of submission of application.

7. More important, Rule 4B gives the State Government the power to relax the rules, particularly Rule 4, provided that a special reason exists for doing so. The special reason must however be recorded in writing by an order. Rule 4B

specifically provides that the State Government may record the special reason and by an order relax the minimum age or upper age limit of a candidate for being appointed as temporary Muhammadan Registrar. The *proviso* mandates that the candidate shall not be below 21 years at the time of submission of the application under Rule 4.

8. It is clear that the State Government has the power to relax the upper age limit of a candidate provided the other criteria under Rule 4 are met. There is no dispute that the private respondent has the requisite qualification under Rule 4(1) namely having sufficient acquaintance with the Arabic language and Muhammadan Law of Marriage and Divorce and is of a good moral character. Hence, the appointment of the private respondent by way of the order dated 21.12.2021 cannot be said to be in violation of the Act or the Rules framed thereunder. The impugned order, which is disclosed with the Report of the State, also contains the reasons for such appointment being that the private respondent possesses vast knowledge of Muhammadan religion and that his appointment as an MMR is therefore beneficial to public interest.

9. The emphasis placed by the petitioner on the earlier rejection of the private respondent on 7.2.2018 on the ground of being over-aged loses relevance in light of the power conferred on the State to relax the upper age limit under Rule 4B of the 1929 Rules. Second, the relaxation of the upper age limit of the private respondent was approved by the Law Department of the State on 21.12.2021 which would be evident from the document enclosed with

the Report of the State. The date mentioned in the impugned appointment and enclosed with the writ petition namely “26.2.2020” appears to be a typographical mistake when compared to the date given on the same document at the right-hand bottom corner of the page. Hence, the allegation that the order of relaxation was passed one year after issue of the licence to the private respondent does not appear to have any basis.

10. Above all, the grievance of the petitioner is essentially that of sharing the territorial-pie with the private respondent. It is relevant that the only grievance raised in the writ petition is that of the petitioner not being given a hearing before the impugned appointment made in favour of the private respondent. Neither the Act nor the Rules contemplate such a hearing being given to an existing MMR. In any event, the Act and the Rules gives the power to the State Government to relax the upper age limit whenever expedient subject to the reason being indicated by way of a written order. This has been satisfied in the present case. Hence, the petitioner has not been able to establish any infraction of the governing Act and the Rules in the impugned appointment. Even if the Court discounts the dense Muslim population in the concerned area and the consequent need for two MMRs, the State has acted within the power conferred upon it in the Rules and satisfied the procedural requirement.

11. Moreover, the alleged delay in the publication of reasons after the appointment of the private respondent as temporary MMR satisfies the test of substantial compliance. Since age-relaxation is permitted under Rule 4B, the

petitioner would not have been placed in a worse position if the reason for relaxation was communicated earlier. *J & K Public Service Commission vs. Dr. Narinder Mohan*; (1994) 2 SCC 630, *State of Odisha vs. Sulekh Chandra Pradhan*; (2022) 7 SCC 482, *Renu vs. District and Sessions Judge, Tis Hazari*; (2014) 15 SCC 731 were cases where there had been serious violations of the mandatory rules and procedures in the appointment/recruitment of government employees without following the recruitment rules. These decisions are hence distinguishable on facts. On the other hand, the Supreme Court in *State of U.P vs. Harendra Arora*; (2001) 6 SCC 392, opined that the theory of substantial compliance would apply for procedural provisions other than those of a fundamental nature and that objections on this account would have to be judged on the touchstone of prejudice.

12. Since this Court is of the view that the impugned appointment of the private respondent was made in accordance with the Act of 1876 and the Rules as notified on 14.8.1929, the allegations made by the petitioner are found to be without any factual or legal basis.

13. WPA 16967 of 2021 is accordingly dismissed without any order as to costs.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)