

43 10.01.2023
Sc Ct. no.22

WPA 21928 OF 2018

Smt. Sabina Yasmin & Ors.

Vs.

The State of West Bengal & Ors.

Mr. Uday Sankar Chattopadhyay
Mr. Suman Sankar Chatterjee
Mr. Santanu Maji
Ms. Trisha Rakshit
Mr. Subhayu Das
Mr. Pronay Basak
Ms. Rajashree Tah.

....For the Petitioners

Mr. Prosenjit Mukherjee
Ms. Madhurima Sarkar.

.....For the Madrasah
Service Commission

This writ petition is at the instance of twelve petitioners having independent but identical causes of action. Court fees have been put in respect of all petitioners.

Pursuant to the direction of a coordinate Bench dated January 25, 2021 Mr. Prosenjit Mukherjee, learned counsel appearing for the respondent nos.2, 3 and 4 has filed an affidavit report, affirmed on August 16, 2021, today, is taken on record. A copy of the said report has already been served upon the writ petitioners.

The writ petitioners also filed a counter affidavit against the said report which was affirmed on December 2, 2021, the same is also taken on record.

The twelve writ petitioners were aspirants and participated in the **6th State Level Selection Test-TET, 2013** (6th SLST – 2013) in different streams which are as follows :

1. Sabina Yasmin – writ petitioner no.1 – Bengali (H/PG)
2. Rubi Dey – writ petitioner no.2 – History (H/PG)
3. Md. Toufique – writ petitioner no.3 - English (H/PG)
4. Mujanur Sekh - writ petitioner no.4 – Geography (H/PG)
5. Mamataj Khatun – writ petitioner no.5 – Bengali (H/PG)
6. Towheed Alam – writ petitioner no.6 – Arabic Madrasah (M.M.) – (H/PG)
7. Mojibur Rahman – writ petitioner no.7 – Arabic Madrasah (M.M.) – (H/PG)
8. Wahida Rahaman – writ petitioner no.8 – Geography (H/PG)
9. Md. Maruf Ali – writ petitioner no.9 – English (H/PG)
10. Srimanta Mandal – writ petitioner no.10 – English (H/PG)
11. Sagira Khatun – writ petitioner no.11 – English (H/PG)
12. Sybhrajyoti Singha – writ petitioner no.12 – Bengali (H/PG)

All the twelve petitioners travelled up to the “**Personality Test**”.

The affidavit report filed on behalf of the respondent nos. 2, 3 and 4 had revealed the stand of the said respondents as follows:

“ The panel was published on 22.06.2018 and the same had lost its force after one (1) year as per Rule 24 of the West Bengal Madrasah Service Commission Recruitment (Selection and Recommendation of persons for Appointment and Transfer to the Post of Teacher and non-teaching Staff) Rules, 2010 and thus, there is no

scope for taking into consideration the vacancies of unwilling Madrasahs after 06.01.2020 for preparation of a fresh panel. Moreover, in the judgment and order dated 06.01.2020 the Hon'ble Supreme Court of India did not pass any order for preparation of a fresh panel of 6th SLST, 2013 (AT) taking into account the vacancies of unwilling Madrasahs. Hence, the representation annexed in the supplementary affidavit has no merit at all."

Mr. Uday Sankar Chattopadhyay, learned counsel appearing for the writ petitioners submitted that previously identical writ petitions filed by various other writ petitioners aspirants were considered by this Court from time to time. In two of such writ petitions, viz. **W.P. 24096 (W) of 2018** and **W.P. 11977 (W) of 2018** a coordinate Bench by its order dated August 30, 2019 directed the West Bengal Madrasah Service Commission (for short the said Commission) to consider the case of the petitioner in accordance with law. Leaned counsel appearing for the petitioners prayed identical relief in this writ petition today. He submitted that in view of the said direction made by the coordinate Bench, the said Commission had considered the cases of the writ petitioners and several writ petitioners had received appointment subsequently.

Mr. Prosenjit Mukherjee, learned counsel appearing for the said Commission referred to a portion from an order dated May 17, 2018 passed by the Hon'ble Supreme

Court in **Civil Appeal No(s). 5808/2017 (SK. MD. RAFIQUE VERSUS MANAGING COMMITTEE, CONTAI RAHAMANIA HIGH MADRASAH & ANR.)** which was as follows :

“5. As there are large number of vacancies existing in the various Madrasahs, we permit the declaration of the result for the recruitment process of the year 2014. However, no further recruitment process shall be undertaken. It is also stated by the State Government and Commission that only those Madrasahs who want to take the incumbents from the list of 2014 process, the Commission shall sponsor the names only to such Madrasahs, not to others. The process shall be done strictly and in accordance with the merit list of the candidates and the appointment so made, shall be subject to the final outcome of the case.

6. It was stated that there are certain incumbents, who were selected in the recruitment process of 2013 also, are also awaiting their appointments. Let the appointment be made in the institutions which are willing to take such teachers, however, strictly in order of merit and that shall be subject to the final outcome of these matters.”

Mr. Mukherjee then submitted that in view of the dictum of the Hon’ble Supreme Court, it was true that the said Commission had acted thereupon to the extent that no further recruitment process was undertaken till January 6, 2020 and only those madrasahs who wanted to take the incumbents from the list of 2014 process, the

Commission had sponsored the names only to such madrasahs and not to others. Mr. Mukherjee then submitted that subject to the said limitation as observed by the Hon'ble Supreme Court, in terms of the requisition made by the willing madrasahs the names were sponsored by the said Commission. He then submitted that these twelve writ petitioners did not come within the consideration zone even after participating the "***Personality Test***". He submitted that, in any event even the willing madrasahs' requisitions would be taken into account in terms of the dictum of the Hon'ble Supreme Court, then also if these writ petitioners would come within the consideration zone strictly in terms of their merit, their names could not and cannot be sponsored by the said Commission.

Considering the rival contentions of the parties and considering the materials on record and considering the fact of pendency of this writ petition since October, 2018, this Court is of the view that **in the light of the observation made by the Hon'ble Supreme Court** the said Commission through its Secretary, i.e., the respondent no.3 in exercise of its power and discretion and without any fetter thereupon shall consider the case of these writ petitioners strictly on the basis of the requisitions made by the willing madrasahs, if there is any vacancy available in terms of such requisitions and

strictly on the basis of the merits of these twelve writ petitioners in accordance with law.

This exercise, as directed above, shall be carried out and completed by the respondent no.3 positively within a period of four weeks from the date of communication of this order. The respondent no.3 then shall communicate its reasoned decision to the writ petitioners within a further period of two weeks thereafter.

It is made clear that this Court has not gone into the merits of the claim of the petitioners. It is also made clear that this order shall not create any equity or right in favour of these writ petitioners in any manner whatsoever, in the event they are ineligible to be considered in terms of their merits and in accordance with law.

On the above terms this writ petition, **WPA 21928 of 2018** stands disposed of, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)