

**08 21.05.
2025**

**Ct. No.
07**

Ab

WPA 24366 of 2022

Md. Abdul Gani

Vs.

The State of West Bengal and others.

**Mr. Soumen Dutta,
Mr. Subham Dutta,
Ms. Juthika Barman,
Mr. Partha Sarathi Basu.
... for the petitioner.**

**Mr. Sk. Md. Galib,
Mr. Abu Siddiqui Mallik,
Ns, Subhra Nag.
... for the State.**

**Mr. Tushar Kanti Mukherjee,
... for the private respondent.**

By preferring this writ petition, the petitioner questions the legality of the appointment of the private respondent as Muhamaddan Marriage Registrar (hereinafter referred to as 'MMR').

The relevant facts, as projected in the writ petition and as stated by the present petitioner, leading to the filing of the present writ petition, are that one Md. Habibur Rahaman, who was appointed as Muhamaddan Marriage Registrar (MMR) at Murari Police Station, retired in 2005. In 2013, Sk. Abdullah was given the additional charge to act as MMR at Murari P.S. In 2018, Murari P.S. was divided into two parts: Murari Part-A, covering the territorial limits of Murari Block-I, and Murari Part-B, covering the territorial limits of Murari Block-II.

The petitioner, being an inhabitant of Murari Part-B and an eligible candidate for the post with experience in discharging the duties of MMR, applied for the position.

However, in contravention of the applicable rules and without initiating any proper selection process, the private respondent, who had exceeded the upper age limit and was employed as the Shiksha Samprasarak of Chhatna A.K. Madhyamik Shiksha Kendra, was appointed as MMR.

Upon concluding that the writ petition needs to be decided after the exchange of affidavits, a Co-ordinate Bench of this Court directed the respondents to file an affidavit-in-opposition, granting the petitioner liberty to file a reply thereto. Accordingly, the private respondent and the petitioner have exchanged their affidavits. However, the State has not filed any affidavit-in-opposition to the writ petition.

Mr. Dutta, learned Advocate appearing on behalf of the petitioner, draws my attention to the notification dated 18 May 2018 (Annexure P6 to the writ petition) and submits that, by virtue of this notification, Murarai Police Station was bifurcated into two parts, namely Murarai Part A and Murarai Part B, for the purpose of making appointments to the post of MMR. He contends that on the very same date, i.e., 18 May 2018, the private respondent was appointed as MMR for Murarai Part B.

Referring to a notification dated 19 January 2017, he submits that, in accordance with the amended Rule 4(4) of the Bengal Muhammadan Marriage and Divorce Registration Rules, 1929 (hereinafter referred to as "the 1929 Rules"), the upper age limit for the post is 40 years. He draws my attention to information furnished to the

petitioner by the concerned authority under the Right to Information Act, 2005, and contends that the private respondent's date of birth is 6 January 1965. Therefore, as on 18 May 2018, the private respondent had attained the age of 53 years and had thus exceeded the prescribed upper age limit. He further submits that the respondents subsequently claimed that the appointment of the private respondent was made on a temporary basis.

Referring to Rule 4B of the 1929 Rules, he submits that any relaxation of the upper age limit for appointment as a temporary Muhamaddan Marriage Registrar must be supported by a special reason, which is required to be mandatorily recorded. However, he alleges that in the present case, no such special reason was recorded, yet the private respondent was appointed as a temporary MMR by granting the benefit of age relaxation.

Drawing my attention to Rule 24 of the 1929 Rules, he submits that a candidate who is employed in another establishment is required to obtain prior permission from the Inspector General of Registration before holding the post of MMR.

In support of his contention, he relies on an unreported decision of a Co-ordinate Bench in *W.P. 4897(W) of 2020 (Newaz Sharif vs. The State of West Bengal & Ors.)*, and submits that the Bench had an occasion to deal with a similar situation, where it quashed an appointment upon finding that the State Government had made the appointment without adhering to the prescribed rules. To

further support his submission, he places reliance on two decisions: one reported in (2008) 7 SCC 153 (*Pramod Kumar vs. U.P. Secondary Education Services Commission & Ors.*), and another unreported decision rendered in *Appeal (Civil) Nos. 5460–5465 of 2007 (Nagendra Chandra & Ors. vs. State of Jharkhand & Ors.)*.

Mr. Mukherjee, learned Advocate appearing on behalf of the private respondent, defends the appointment of the private respondent by contending that the position in question does not constitute public employment. He argues that the concerned authority was not obligated to follow any selection process, which, according to him, is generally applicable only in the case of appointments to permanent posts.

He claims that the private respondent's engagement to the post is purely a temporary arrangement. He asserts that the private respondent was appointed as a temporary MMR and has been discharging his duties diligently and without any complaint. It is further submitted that the private respondent has since resigned from his previous employment. He also contends that the private respondent has not received any honorarium from the public exchequer or from any funds allocated by the State Government.

He contends that the petitioner has not suffered any personal or legal injury that would entitle him to invoke the writ jurisdiction of this Court under Article 226 of the

Constitution of India. He further submits that the petitioner did not even apply for appointment to the post in question. To lend support to his argument, he places reliance on a decision rendered by a Co-ordinate Bench in *WPA No. 16967 of 2021 (Bushra Afreen vs. The State of West Bengal & Ors.)*, decided on 19 January 2023.

Mr. Sk. Md. Galib, learned Advocate representing the State, has produced certain documents and submits that the private respondent was actually engaged in the post on 25.02.2019. He submits that it is not an appointment in the traditional sense. Instead, he contends that it constitutes the granting of a license. In line with Mr. Mukherjee, he asserts that the engagement of the private respondent is a temporary arrangement. He further submits that the private respondent was appointed as a temporary MMR and that this does not constitute public employment. Mr. Galib argues that, under the applicable rules, the State has the authority to relax the upper age limit for any candidate. He also places reliance on the judgment in *Bushra Afreen* (supra). The documents presented by Mr. Galib have been taken on record.

Heard the learned Advocate for the respective parties and peruse the materials on record.

Since the question of granting the benefit of relaxation of the upper age limit has assumed significance, it is apt to quote Rule 4B of the 1929 Rules, which reads as follows:

“4B. Power to relax rule. - Notwithstanding anything contained in rule 4, the State Government may, for any

special reason to be recorded in writing, by order, relax the minimum age or upper age-limit of a candidate for being appointed as temporary Muhammadan Registrar or in case of appointment of Muhammadan Registrar on compassionate ground.'

Therefore, it is quite clear that the legislature mandates the recording of special reasons before granting the benefit of relaxation of the upper age limit to a candidate for appointment as a temporary MMR.

One cannot overlook the fact that the legislature has consciously employed the word “*special*” to qualify the term “*reason*.” This indicates that ordinary circumstances do not justify the invocation of such a provision. There must be exceptional or compelling circumstances warranting the exercise of the power to relax the rule. Such power is not meant to be exercised routinely or as a matter of course; rather, it should be invoked sparingly, and only in situations where a permanent arrangement is not feasible.

It is important to note that when there is a legislative mandate requiring an administrative authority or individual to perform a task in a specific manner, it must be done in that manner or not at all. Since the legislature has set certain pre-requisite conditions that must be fulfilled before granting the benefit of age relaxation to a person, the concerned authority is bound to adhere to that procedure. Any action taken in violation of this provision cannot be considered valid on the part of the authority.

The communication dated 18 May 2018 issued by the Secretary to the Government of West Bengal, Judicial Department (Annexure R-9 to the affidavit-in-opposition), addressed to the Inspector General of Registration, indicates that on the same date, two MMR offices were created, and approval for the appointment of the private respondent was granted, citing the pendency of two writ petitions pertaining to the issue of engagement and/or appointment to that position. I have been told that there was no interim order in those proceedings restraining the authorities from proceeding to fill the position on a permanent basis. While the pendency of those writ petitions may, at best, serve as a justification for a temporary engagement, it cannot be regarded as a *special reason* for relaxing the upper age limit prescribed for the appointment.

In the present case, the formal letter of appointment and/or engagement was issued on 25 February 2019. Therefore, even assuming that the private respondent was actually engaged on that date, the engagement became effective in the year 2019 i.e. more than six years ago. In addition to complying with statutory norms and procedural fairness, the actions of the administrative authority must also withstand the test of reasonableness.

It is difficult to accept that an arrangement continuing for as long as six years can still be regarded as a temporary one. A temporary arrangement is meant to address an emergent situation arising unexpectedly. A temporary

arrangement lasts for a limited period. On the contrary, the prolonged continuation of such an arrangement strongly suggests that it was resorted to as a means to circumvent the process of making a permanent appointment to the post. The authority did not approach this Court seeking permission to fill the position on a permanent basis.

In the present case, both the private respondent and Mr. Galib place immense emphasis on the decision of a Coordinate Bench in *Bushra Afreen* (supra), arguing that, in a similar situation, the Bench refused to cancel the appointment or engagement. However, in that case, the specific grievance raised by the petitioner was that he was not given an opportunity of hearing before the impugned appointment was made in favour of the private respondent, and that there was a delay in the publication of the reason for the appointment. The Bench held that there was no provision requiring the authority to afford an opportunity of hearing to aspiring candidates, and concluded that the Court has the power to grant the benefit of relaxation of the upper age limit. Furthermore, the belated publication of the reason for the relaxation was held not to be fatal.

There can be no doubt in accepting this proposition. Admittedly, the law does not recognize any right of an aspiring candidate to be heard by the concerned authority, and it is an admitted position that the legislature has conferred power upon the administrative authority to grant relaxation of the upper age limit for temporary engagement of MMR. Therefore, with due respect, my view is that the

judgment in Bushra Afreen (*supra*) is distinguishable on facts.

In Newaz Sharif (*supra*), a Coordinate Bench of this Court, taking note that the benefit of relaxation of the upper age limit was granted to a candidate without recording any special reason, quashed the appointment. I have no hesitation in expressing my agreement with the decision in Newaz Sharif (*supra*).

Therefore, in the present case, since the authority failed to record any special reason before granting the benefit of relaxation of the upper age limit in favor of the private respondent, his engagement and/or appointment pursuant to the order dated 25.02.2019 cannot be upheld and is accordingly quashed.

However, it is clarified that the authorities are free to take appropriate steps to fill the post, either temporarily or permanently, with an eligible and suitable candidate, provided the procedure prescribed in the applicable Rules and/or statute is duly followed.

(Partha Sarathi Chatterjee, J.)

