

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

Present:

Mr. Justice Hasan Foez Siddique, *Chief Justice*
Mr. Justice Md. Nuruzzaman
Mr. Justice Obaidul Hassan
Mr. Justice Borhanuddin
Mr. Justice M. Enayetur Rahim
Mr. Justice Md. Ashfaqul Islam
Mr. Justice Md. Abu Zafor Siddique
Mr. Justice Jahangir Hossain

**CIVIL REVIEW PETITION NO.195 of 2020 WITH CIVIL
PETITIONS FOR LEAVE TO APPEAL NO.2957-2958,
2416, 2627, 2606, 3351, 3359, 3408, 3377-3378, 3270-3271,
3393, 2823, 2860-2861 OF 2022 AND 2112 OF 2020**

The Government of Bangladesh,
represented by the Secretary, Ministry of
Education, Secondary and Higher
Secondary Division, Bangladesh
Secretariat, Dhaka and others
Md. Wali-ul Islam and others

.....**Petitioners**
(In C.R.P. No.195 of 2020, C.P.
Nos.2957-2958, 2416, 2606,
3351, 3359, 3408, 3377-3378,
3270-3271, 3393, 2823, 2860-
2861 of 2022 and 2112 of 2020)

.....**Petitioners**
(In C.P. No.2627 of 2022)

-Versus-

Arifur Rahman and others

.....**Respondents**
(In C.R.P. No.195 of 2020)

Farzana Hoque Rozi and others

.....**Respondents**
(In C.P. No.2957 of 2022)

Samir Kumar and others

.....**Respondents**
(In C.P. No.2958 of 2022)

Muhammad Mahmudur Rahman and
others

.....**Respondents**
(In C.P. No.2416 of 2022)

Government of Bangladesh and others

.....**Respondents**
(In C.P. No.2627 of 2022)

Md. Bakibillah Bhuiyan and others

.....**Respondents**
(In C.P. No.2606 of 2022)

Md. Yeasinur Rahman and others

.....**Respondents**
(In C.P. No.3351 of 2022)

Md. Sohag Hossen and others

.....**Respondents**
(In C.P. No.3359 of 2022)

Md. Waliullah and others

.....**Respondents**
(In C.P. No.3408 of 2022)

Md. Selim Rana and others

.....**Respondents**
(In C.P. No.3377 of 2022)

Md. Zahangir Alam and others

.....**Respondents**
(In C.P. No.3378 of 2022)

Md. Ashraful Alam and others

.....**Respondents**
(In C.P. No.3270 of 2022)

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| Md. Atikul Islam Mukul and others | <u>Respondents</u> (In C.P. No.3271 of 2022) |
| Md. Sumon and others | <u>Respondents</u> (In C.P. No.3393 of 2022) |
| Md. Jakir Hossain and others | <u>Respondents</u> (In C.P. No.2823 of 2022) |
| Md. Ripon Miah and others | <u>Respondents</u> (In C.P. No.2860 of 2022) |
| Md. Abdur Rahman and others | <u>Respondents</u> (In C.P. No.2861 of 2022) |
| Md. Nur Alom and others | <u>Respondents</u> (In C.P. No.2112 of 2020) |

For the petitioners : Mr. Sk. Md. Morshed, Additional Attorney General with Mr. Samarendra Nath Biswas, Deputy Attorney General, Mr. Sarwar Hossain Bappi, Deputy Attorney General, Mr. Sayem Mohammad Murad, Assistant Attorney General, Mr. Mohammad Saiful Alam, Assistant Attorney General, Ms. Tamanna Ferdous, Assistant Attorney General, Ms. Farzana Rahman Shampa, Assistant Attorney General, instructed by Mr. Haridas Paul, Advocate-on-Record and Mr. Md. Helal Amin, Advocate-on-Record.
(In C.R.P. No.195 of 2020, C.P. Nos.2957-2958, 2416, 2606, 3351, 3359, 3408, 3377-3378, 3270-3271, 3393, 2823, 2860-2861 of 2022 and 2112 of 2020)

For the petitioners : Mr. Md. Moniruzzaman Asad, Advocate, instructed by Ms. Madhu Malati Chowdhury Barua, Advocate-on-Record.
(In C.P. No.2627 of 2022)

For the respondents : Mr. Probir Neogi, senior Advocate with Mr. Salahuddin Dolon, senior Advocate, instructed by Ms. Madhu Malati Chowdhury Barua, Advocate-on-Record.
(In C.R.P. No.195 of 2020)

For the respondents : Mr. Probir Neogi, senior Advocate with Mr. Moniruzzaman Asad, Advocate, instructed by Ms. Madhu Malati Chowdhury Barua, Advocate-on-Record.
(In C.P. No.2416 of 2022)

For the respondents : Mr. Sk. Md. Morshed, Additional Attorney General with Mr. Samarendra Nath Biswas, Deputy Attorney General, Mr. Sarwar Hossain Bappi, Deputy Attorney General, Mr. Sayem Mohammad Murad, Assistant Attorney General, Mr. Mohammad Saiful Alam, Assistant Attorney General, Ms. Tamanna Ferdous, Assistant Attorney General, Ms. Farzana Rahman Shampa, Assistant Attorney General (appeared with the leave of the Court).
(In C.P. No.2627 of 2022)

- For the respondents** : Mr. Md. Moniruzzaman Asad, Advocate, (In C.P. Nos.2957-2958, 2606, 3351, 3359, 3377, 3270, 2861 of 2022 instructed by Ms. Madhu Malati Chowdhury Barua, Advocate-on-Record.
- For the respondents No.1-2 & 7** : Mr. Md. Shahidul Islam, Advocate-on-Record. (In C.P. No.3378 of 2022)
- For the respondents No.3-6 & 8-105** : Not represented. (In C.P. No.3378 of 2022)
- For the respondents No.92 & 330** : Mr. Fida M. Kamal, senior Advocate with Mr. Md. Moniruzzaman Asad, Advocate, instructed by Ms. Madhu Malati Chowdhury Barua, Advocate-on-Record and Mr. Md. Zainul Abedin, Advocate-on-Record. (In C.P. No.3408 of 2022)
- For the respondents No.1-91&93-329 & 331-655** : Not represented. (In C.P. No.3408 of 2022)
- For the respondents No.1-2&47** : Mr. Fida M. Kamal, senior Advocate, instructed by Md. Shahidul Islam, Advocate-on-Record. (In C.P. No.3271 of 2022) & **For the respondents No.1-3** (In C.P. No. 3393 of 2022)
- For the respondents No.3-46&48-152** : Not represented. (In C.P. No.3271 of 2022)
- For the respondents No.4-253** : Not represented. (In C.P. No.3393 of 2022)
- For the respondents No.1 & 29** : Mr. Sharif Uddin Chaklader, Advocate, instructed by Mr. Zainul Abedin, Advocate-on-Record & Ms. Nahid Sultana, Advocate-on-Record. (In C.P. Nos.2823 &2860 of 2022)
- For the respondents No.2-28&30-180** : Not represented. (In C.P. No.2823 of 2022)
- For the respondents No.2-100** : Not represented. (In C.P. No.2860 of 2022)
- For the respondent No.12** : Mr. Momtazuddin Fakir, senior Advocate, instructed by Ms. Madhu Malati Chowdhury Barua, Advocate-on-Record. (In C.P. No. 2112 of 2020)
- For the respondents No.2-11&13-108** : Not represented. (In C.P. No.2112 of 2020)
- Date of hearing and judgment** : The 2nd day of April, 2023

JUDGMENT

Obaidul Hassan, J. The delay of 186, 187, 189, 179, 188, 190 and 655 days in Civil Petitions No.3351, 3359, 3393, 3270, 3378, 3408 of 2022 and Civil Petition No.2112 of 2020 respectively is condoned.

2. We shall dispose of all these petitions by rendering this common judgment as all of these petitions more or less involve common and overlapping points of facts and law, but deal with individual cases separately wherever necessary.

3. **The Civil Review Petition 195 of 2020:**

The Civil Review Petition No.195 of 2020 is directed against the judgment and order dated 12.03.2020 passed by this Division in Civil Appeal No.343 of 2019 arising out of a judgment and order dated 05.11.2018 passed by the High Court Division in Writ Petition No.17506 of 2017 heard analogously with Writ Petitions No.16307, 17896, 17961, 18100, 18727 and 18728 of 2017 making all the Rules absolute.

The facts necessary for disposal of this Civil Review Petition are, in a nutshell, that the respondents herein as writ-petitioners filed Writ Petition No.17506 of 2017 in the High Court Division seeking direction upon the writ-respondents to appoint them as Lecturers, Assistant Teachers, Demonstrators, Instructors and Assistant Moulovis to the vacant posts of the non-government educational institutions, that is, Colleges, Schools and Madrashas, all over the country, stating, *inter alia*, that on 24.02.2016, the writ-respondent No.5 published a public notice for the purpose of preparing a panel of qualified persons to fulfill the vacant posts of the teachers of the non-government educational institutions. In pursuant to the said

notice the writ-respondent No.7 vide a letter bearing memo dated 31.10.2016 requested all the non-government education institutions all over the country to send the requisition stating the number of vacant posts in their respective institutions. On receipt of the said requisition, the Non-Government Teachers' Registration and Certification Authority (for short NTRCA) published aforesaid advertisement inviting application from aspiring candidates. Accordingly, after appearing in both the written and *viva voce* examination the writ-petitioners became successful. The final result was published on 04.06.2017 and their names were registered by NTRCA and certificates were issued in favour of them with a period of three years validity. As per Clause 10(Jha) of the 13th Teachers' Registration Examination, 2016 the NTRCA is bound to recommend the writ-petitioners for job as per demand of vacant posts as stated in the circular dated 31.10.2016. However, the writ-petitioners were not recommended by the NTRCA against the vacant posts even after the lapse of 5 to 6 months from the date of publication of the result and issuance of the certificates. Under the aforesaid facts and circumstances, the writ-petitioners filed the instant writ petitions in the High Court Division and obtained the Rules *Nisi*.

Upon hearing the High Court Division was pleased to make all the Rules absolute by judgment and order dated 05.11.2018

with a direction to recommend the writ-petitioners according to their issued certificates within 60 days.

Being aggrieved with the said judgment and order dated 05.11.2018, the government and other writ-respondents preferred Civil Appeal being No.343 of 2019 upon getting leave. Upon hearing the Civil Appeal No.343 of 2019 was disposed of by this Division by judgment and order dated 12.03.2020.

Being disgruntled with the judgment and order dated 12.03.2020 passed by this Division in Civil Appeal No.343 of 2019 the government and other writ-respondents filed the instant Civil Review Petition.

Upon perusal of the record, it is evident that the instant Civil Review Petition being time barred is liable to be dismissed.

4. Civil Petition for Leave to Appeal No.2627 of 2022:

The Civil Petition for Leave to Appeal No.2627 of 2022 is directed against the judgment and order dated 10.08.2022 passed by the High Court Division in Writ Petition No.6671 of 2021 discharging the Rules.

The facts necessary for disposal of this Civil Petition are, in a nutshell, that the petitioners filed Writ Petition No.6671 of 2021 in the High Court Division to declare the provision of Clause 11.11 of the ‘বেসরকারি শিক্ষা প্রতিষ্ঠানের (স্কুল ও কলেজ) জনবলকাঠামো ও এম,পি,ও নীতিমালা-২০২১’ and provision of Clause 11.6 of the ‘বেসরকারি

শিক্ষা প্রতিষ্ঠানের (মাদ্রাসা) জনবলকাঠামো ও এম,পি,ও নীতিমালা-২০১৮' to the extent of 'বেসরকারি শিক্ষা প্রতিষ্ঠানের শিক্ষক-কর্মচারীদের চাকরিতে প্রথম প্রবেশের সর্বোচ্চ বয়সসীমা ৩৫ বছর' should not be declared as *ultra vires*, illegal, malafide and to have been passed without lawful authority and is of no legal effect.

The writ-petitioners filed the Writ Petition No. 6671 of 2021 stating, *inter alia*, that while the petitioners took part in the 14th Teachers' Registration Examination, 2017 there was no provision of age-limit for entering the service as teacher in the non-government educational institutions. The petitioners being successful in both the written and *viva voce* examination the final result was published on 27.11.2018 and they obtained certificates. The NTRCA published circular of 15th Teachers' Registration Examination, 2018 on 28.11.2018 restricting the age-limit to 35 years. The NTRCA framed 'বেসরকারি শিক্ষা প্রতিষ্ঠানের (স্কুল ও কলেজ) জনবলকাঠামো ও এম,পি,ও নীতিমালা-২০২১' and 'বেসরকারি শিক্ষা প্রতিষ্ঠানের (মাদ্রাসা) জনবলকাঠামো ও এম,পি,ও নীতিমালা-২০১৮'. The provision of clause 11.11 of the 'বেসরকারি শিক্ষা প্রতিষ্ঠানের (স্কুল ও কলেজ) জনবলকাঠামো ও এম,পি,ও নীতিমালা-২০২১' and provision of clause 11.6 of the 'বেসরকারি শিক্ষা প্রতিষ্ঠানের (মাদ্রাসা) জনবলকাঠামো ও এম,পি,ও নীতিমালা-২০১৮' fixed the maximum age-limit of the teachers and employees to enter into the service of the non-government educational institutions. Since the public notice of *viva voce* examination of the petitioners was published on 07.06.2018 and as such the

whole process of the 14th Teachers' Registration Examination, 2017 is out of ambit of 'বেসরকারি শিক্ষা প্রতিষ্ঠানের (স্কুল ও কলেজ) জনবলকাঠামো ও এম,পি,ও নীতিমালা-২০২১' and 'বেসরকারি শিক্ষা প্রতিষ্ঠানের (মাদ্রাসা) জনবলকাঠামো ও এম,পি,ও নীতিমালা-২০১৮'. Although the petitioners are 14th NTRCA certificate-holders, they could not take part in any recruitment process because of the age-bar of 35 years as fixed by জনবলকাঠামো ও এম,পি,ও নীতিমালা-২০১৮ and ২০২১ which is unlawful and hence those provisions are liable to be declared illegal.

Upon hearing the High Court Division by judgment and order dated 10.8.2022 was pleased to discharge the Rules in the light of the judgment and order passed by this Division in Civil Petition for Leave to Appeal No.3900 of 2019.

Being aggrieved with the said judgment and order dated 10.08.2022 passed by the High Court Division, the writ-petitioners preferred the Civil Petition for Leave to Appeal No.2627 of 2022.

5. Civil Petition for Leave to Appeal No.2112 of 2020:

The respondents herein as writ-petitioners filed Writ Petition No.9556 of 2017 seeking direction upon the writ-respondents to prepare and publish merit list under Rule 9(2)(Uma) of the বেসরকারী শিক্ষক নিবন্ধন, পরীক্ষা গ্রহণ ও প্রত্যয়ন বিধিমালা, ২০০৬ and pursuant to that appoint the petitioners as Lecturers, Demonstrators, Assistant Teachers and Assistant Moulavi in the vacant post of

the non-government educational institutions in terms of certificates issued by the NTRCA.

The petitioners filed the Writ Petition No.9556 of 2017 stating, *inter alia*, that authority published a public notice under title “12th Teachers’ Registration Examination, 2015” for the purpose of fulfillment of the vacant posts of the non-government educational institutions. The petitioners sat for preliminary and written examination. On being successful in the written examination the respondents prepared merit list of the deserving candidates, but the respondents did not take yet any step to recommend and appoint the writ-petitioners. Before publication of their result on 11.11.2015 the respondent No.1 issued a circular postponing all the appointment process till further notification and as such the writ-petitioners have not got chance to be appointed although other certificate holders of 1st to 11th Examination took the chance of being appointed as teachers. The authority without taking initiative to give appointment to the petitioners published on 01.06.2017 notification of 14th Teachers’ Registration Examination, 2017.

Upon hearing the High Court Division made the Rule absolute by judgment and order dated 12.12.2018 and directed to prepare and publish merit list under Rule 9(2)(Uma) of the বেসরকারী শিক্ষক নিবন্ধন, পরীক্ষা গ্রহণ ও প্রত্যয়ন বিধিমালা, ২০০৬ and further directed to consider the petitioners, who are eligible to be

appointed as teachers in terms of certificates issued by the NTRCA as expeditiously as possible.

Being aggrieved with the judgment and order dated 12.12.2018 the writ-respondents preferred the instant Civil Petition.

6. **Civil Petitions for Leave to Appeal No.2957-2958 of 2022, 2606 of 2022:**

The Civil Petitions for Leave to Appeal No.2957-2958 of 2022 are directed against the judgment and order dated 23.08.2022 passed by the High Court Division in Writ Petition No.8161 of 2022 heard analogously with Writ Petitions No.8653 of 2022 and 2527 of 2021 making all the Rules absolute.

The respondents herein as writ-petitioners filed Writ Petitions No.8161, 8653 of 2022 and 2527 of 2021 in the High Court Division challenging the inaction of the writ-respondents in taking immediate steps for the appointment by recommending the name of the petitioners pursuant to Clause 5.0 of the Circular (Annexure-E) to the ascertained vacant posts as per Clause 10(Jha) of the advertisement of the 13th Teachers' Registration Examination, 2016 (Annexure-C) according to their issued certificates and also for issuing direction upon the respondents to take immediate steps for the appointment by recommending the names of the petitioners pursuant to Clause 5.0 of the Circular to the

ascertained vacant posts as per Clause 10(Jha) of the advertisement of the 13th Teachers' Registration Examination, 2016 according to their issued certificates.

On 24.02.2016, the writ respondent No.5 published a public notice under title '13th Teachers' Registration Examination, 2016' for the purpose of preparing a panel of qualified persons to fulfill the vacant posts of the teachers in the non-government educational institutions. Accordingly, the petitioners applied for the vacant posts of teacher. After appearing in both the written and *viva voce* examination the writ petitioners became successful. The final result was published on 04.06.2017 and their names were registered by NTRCA and certificates were issued in favour of them with a period of three years validity. The then Minister, Ministry of Education made an announcement stating that the qualified candidates of 13th Teachers' Registration Examination would be appointed to their respective posts and the said announcement was published in different electronic as well as print media. The predecessors of the writ petitioners numbering 2207 filed several writ petitions seeking direction upon the respondents to take immediate steps for their appointment by recommending the names of the writ petitioners pursuant to Clause 5.0 of the Circular to the ascertained vacant posts as per clause 10(Jha) of the notice in

accordance with their issued certificates. Accordingly, Rules were issued and made all the Rules absolute with a direction upon the respondents. Against which a Civil Appeal No.343 of 2019 was filed upon granting leave. Upon hearing the said Civil Appeal this Division disposed of the same not interfering with the judgment and direction passed by the High Court Division. On 30.03.2021 one Member (Joint Secretary), NTRCA, Dhaka published a circular inviting the application from the interested candidates for appointment as teachers in different non-government educational institutions. In the said circular it has been notified that about 2207 qualified candidates' post have been reserved and the said candidates do not have to give their choice, they will have to simply make an application. The present writ-petitioners being in the merit list are entitled to be recommended by the NTRCA, but till the NTRCA did not recommend the names of the writ-petitioners for the purpose of appointment.

Upon hearing the High Court Division was pleased to make all the Rules absolute by judgment and order dated 23.08.2022 and 13.06.2022 with a direction upon the respondents to recommend the writ-petitioners pursuant to Clause 5.0 of the Circular (Annexure-E) to the ascertained vacant posts as per Clause 10(Jha) of the advertisement of the 13th Teachers'

Registration Examination, 2016 according to their issued certificates within 60(sixty) days.

Being aggrieved with the said judgment and order dated 23.08.2022 and 13.06.2022 the government and other writ-respondents preferred Civil Petitions for Leave to Appeal No.2957-2958 of 2022 and 2606 of 2022.

7. Civil Petitions for Leave to Appeal No.2416 of 2022, 3270 of 2022, 3377 of 2021, 3359 of 2022, 3351 of 2022, 3271 of 2022, 3393 of 2022, 3378 of 2022 and 3408 of 2022:

The Civil Petitions for Leave to Appeal No.2416 of 2022, 3270 of 2022, 3377 of 2021, 3359 of 2022, 3351 of 2022, 3271 of 2022, 3393 of 2022, 3378 of 2022 and 3408 of 2022 are directed against the judgment and order dated 01.06.2022 passed by the High Court Division in Writ Petitions No.4940 of 2021, 4941 of 2021, 4942 of 2021, 6451 of 2021, 8074 of 2021, 4665 of 2021, 3499 of 2021, 8484 of 2021 and 9417 of 2020 making all the Rules absolute.

The respondents herein as writ-petitioners filed all those writ petitions in the High Court Division praying for issuing direction upon the respondents to take immediate steps for the appointment by recommending the name of the petitioners pursuant to Clause 5.0 of the Circular dated 30.12.2015 to the ascertained vacant posts as per Clause 10(Jha) of the advertisement of the 13th Teachers' Registration Examination, 2016 according to their issued certificates.

The respondents as writ-petitioners filed all those writ petitions stating, *inter alia*, that the NTRCA published a public notice under title '13th Teachers' Registration Examination, 2016' for the purpose of preparing a panel of qualified persons to fulfill the vacant posts of the teachers in the non-government educational institutions. Accordingly, the petitioners applied for the vacant posts of teacher. After appearing in both the written and *viva voce* examination the writ petitioners became successful. The final result was published on 04.06.2017 and their names were registered by NTRCA and certificates were issued in favour of them with a period of three years validity. The then Minister, Ministry of Education made an announcement stating that the qualified candidates of 13th Teachers' Registration Examination would be appointed to their respective posts and the said announcement was published in different electronic as well as print media. The predecessors of the writ-petitioners numbering 2207 filed several writ petitions seeking direction upon the respondents to take immediate steps for their appointment by recommending the names of the writ-petitioners pursuant to Clause 5.0 of the Circular to the ascertained vacant posts as per clause 10(Jha) of the notice in accordance with their issued certificates. Accordingly, Rules were issued and made all the Rules absolute with a direction

upon the respondents. Against which a Civil Appeal No.343 of 2019 was filed upon granting leave. Upon hearing the said Civil Appeal this Division disposed of the same not interfering with the judgment and direction passed by the High Court Division. On 30.03.2021 one Member (Joint Secretary), NTRCA, Dhaka published a circular inviting the application from the interested candidates for appointment as teachers in different non-government educational institutions. In the said circular it has been notified that about 2207 qualified candidates' post have been reserved and the said candidates do not have to give their choice, they will have to simply make an application. The present writ-petitioners being in the merit list are entitled to be recommended by the NTRCA, but till date the NTRCA did not recommend the names of the writ-petitioners for the purpose of appointment.

Upon hearing, the High Court Division was pleased to make all the Rules absolute by judgment and order dated 01.06.2022 with a direction upon the respondents to recommend the writ-petitioners according to their issued certificates within 60 days.

8. Civil Petitions for Leave to Appeal No.2823 of 2022, 2860 of 2022 and 2861 of 2022:

The Civil Petitions for Leave to Appeal No.2823 of 2022, 2860 of 2022 and 2861 of 2022 are directed against the judgment and

order dated 29.06.2022 passed by the High Court Division in Writ Petition No.5047 of 2021 heard analogously with Writ Petitions No.8536 of 2022 and 6452 of 2021 making all the Rules absolute.

The respondents herein as writ-petitioners filed Writ Petitions No.5047 of 2021, 8536 of 2022 and 6452 of 2021 in the High Court Division seeking for issuing direction upon the respondents to take immediate steps for the appointment by recommending the names of the petitioners pursuant to Clause 5.0 of the Circular dated 30.12.2015 to the ascertained vacant posts as per Clause 13(Kha) of the advertisement of the 14th Teachers' Registration Examination, 2017 in the light of the judgment dated 05.11.2018 passed by this Division in Civil Appeal No.343 of 2019 for appointment to their respective posts according to certificates.

A public notice under title 14th Teachers' Registration Examination, 2017 for the purpose of preparing a panel of qualified persons to fulfill the vacant posts of the teachers in the non-government educational institutions. Accordingly, the petitioners applied for the vacant posts of teacher. After appearing in both the written and *viva voce* examination the writ petitioners became successful. The final result was published on 27.11.2018 and their names were registered by NTRCA and certificates were issued in favour of them with a

period of three years validity. The then Minister, Ministry of Education made an announcement stating that the qualified candidates of 13th Teachers' Registration Examination would be appointed to their respective posts and the said announcement was published in different electronic as well as print media. The predecessors of the writ petitioners numbering 2207 being qualified candidates of 13th Teachers' Registration Examination filed several writ petitions seeking direction upon the respondents to take immediate steps for their appointment by recommending the names of the writ-petitioners pursuant to Clause 5.0 of the Circular to the ascertained vacant posts as per clause 10(Jha) of the notice in accordance with their issued certificates. Accordingly Rules were issued and the same were made absolute with a direction upon the respondents. Against which a Civil Appeal No.343 of 2019 was filed upon granting leave. Upon hearing the said Civil Appeal this Division disposed of the same not interfering with the judgment and direction passed by the High Court Division. On 30.03.2021 one Member (Joint Secretary), NTRCA, Dhaka published a circular inviting the application from the interested candidates for appointment as teachers in different non-government educational institutions. In the said circular it has been notified that about 2207 qualified candidates' post have been reserved and the said candidates do not have to give

their choice, they will have to simply make an application. The present writ-petitioners being in the merit list are entitled to be recommended by the NTRCA but till date the NTRCA did not recommend the names of the writ-petitioners for the purpose of appointment.

Upon hearing, the High Court Division was pleased to make all the Rules absolute by judgment and order dated 29.06.2022 with a direction upon the respondents to recommend the writ-petitioners to the ascertained vacant posts as per Clause 13(Kha) of the advertisement of the 14th Teachers' Registration Examination, 2017 according to their issued certificates within 60 days.

9. For convenience, we would like to state the main points of argument made by the learned Counsels on behalf of all the parties:

Mr. Sk. Md. Morshed, the learned Additional Attorney General along with the Counsels assisting him at the time of hearing appeared on behalf of the government contends that the High Court Division committed illegality in directing to recommend the writ-petitioners pursuant to the circular in ascertained vacant posts according to their certificates issued by the NTRCA. The learned Counsel contends next that the writ-petitioners did not acquire any vested right to be appointed to the ascertained vacant posts, but the High Court Division failing to appreciate the same made such direction.

The learned Counsel argues next that the function of NTRCA is only to prepare a list of successful candidates and give them registration and issue certificates to them even though the High Court Division directed the writ-respondents to recommend the names of the writ-petitioners. The learned Counsel submits further that according to the circular dated 30.12.2015 the concerned Managing Committee or the Governing Body of the non-government educational institutions is the appointing authority of the teachers and on preparation of final result of the candidates prepared by the NTRCA, the appointing authority will give the appointment depending on the vacancy of posts, but the High Court Division erred in law giving direction to the writ-respondents to appoint the writ-petitioners. The learned Counsel contends lastly that the minimum age fixing 35 years while recruitment as teachers is a policy decision of the government which cannot be challenged in the writ petition. Moreover, the validity of the certificates of writ-petitioners in Writ Petition No.6671 of 2021 having been expired they will not be considered for appointment and the High Court Division most correctly discharged the Rules.

10. In opposition, the learned Counsels appearing on behalf of the private parties argued that the NTRCA with observing all the legal formalities from holding examination to publication of final result of

successful candidates gave registration to them and also issued certificates in their favour, in such view of the matter the High Court Division made the Rules absolute giving direction to the writ-respondents to recommend the writ-petitioners for appointment. The learned Counsels submit next that earlier this Division in Civil Appeal No.343 of 2019 and Civil Petitions for Leave to Appeal No.1381, 1406-1412, 1421-1425 and 1432-1437 of 2021 on identical question of law affirmed such direction and did not set aside the judgment of the High Court Division and as such the writ-petitioners are entitled to get recommendation for appointment. The learned Counsel appeared on behalf of the petitioners in Civil Petition No.2627 of 2022 submits that the High Court Division erred in law discharging the Rule in Writ Petition No.6671 of 2021 inasmuch as the time when they applied for the vacant posts there was no age restriction which was later on amended.

11. We have gone through the impugned judgments and orders passed by the High Court Division, considered the submissions of the learned Counsels of either side and the materials on record.

12. For the convenience of discussion, we may cluster all the cases in two categories based on the legal and factual aspects of all the Civil Petitions except Civil Petition No.2112 of 2020. First category includes the Civil Petition for Leave to Appeal No.2627 of 2022 which deals with the maximum age for recruitment as teacher in non-government educational institutions while the second category

includes all other Civil Petitions for Leave to Appeal except Civil Petition for Leave to Appeal No.2112 of 2020.

13. Prior to embark on main discussion it is advantageous to know about the Non-Government Teachers' Registration and Certification Authority ('বেসরকারী শিক্ষক নিবন্ধন ও প্রত্যয়ন কর্তৃপক্ষ') (for short NTRCA). The NTRCA was established with the enactment of 'বেসরকারী শিক্ষক নিবন্ধন ও প্রত্যয়ন কর্তৃপক্ষ আইন, ২০০৫' (for short the Act 2005). Extrapolating the intention of the legislature for enactment of the Act 2005 this Division observed in the case of the *Government of Bangladesh and ors. vs. Arifur Rahman and ors.* in Civil Appeal No.343 of 2019, reported in 17ADC(2020)419 that-

“On 15th February 2005, the legislature enacted 'বেসরকারী শিক্ষক নিবন্ধন ও প্রত্যয়ন কর্তৃপক্ষ আইন, ২০০৫' (hereinafter refer to Act No. 1 of 2005). The object of such enactment was embodied in the preamble of the Act. In the preamble it was stated, “যেহেতু শিক্ষার সার্বিক মান উন্নয়নের জন্য বেসরকারী শিক্ষা প্রতিষ্ঠানসমূহে যোগ্য ও দক্ষ শিক্ষক নিয়োগদানের লক্ষ্যে বেসরকারী শিক্ষক নিবন্ধন ও প্রত্যয়নের জন্য একটি কর্তৃপক্ষ গঠন করা সমীচীন ও প্রয়োজনীয়;”

14. What appears from the above is that the NTRCA has been established for appointing qualified and skilled teachers in the non-government educational institutions with a view to develop the total standard of education.

15. Section 8 of the Act 2005 enumerates the functions of the NTRCA. As far as the issue of teacher recruitment is concerned the functions of NTRCA are amongst other-

- (Ka) To ascertain the demand of teachers;
- (Kha) To ascertain the qualification for appointment as teachers;
- (Ga) To determine the teacher's standard nationally and ascertain their qualification;
- (Gha) To prepare list of teachers succeeded in the examination held for the purpose of selection of the teachers in the non-government institutions in accordance with the rules, their registration and certification.

16. Section 10 of the Act 2005 lays down that the authority i.e. NTRCA with the prior approval from the government shall prepare a list of qualified teachers, give registration and issue certificates to them in accordance with the *Probidhan* laid down for the purpose of appointment of teachers in the non-government educational institutions. Section 10 further provides that a teacher shall not be considered to be appointed in the non-government institutions if not included in the list prepared by the authority, not being registered by the authority and not having certificate issued by the authority.

17. Section 21 empowers the government to frame Rules while Section 22 empowers to frame *Probidhan* for the purpose of fulfillment of the object of the Act 2005.

18. In pursuant to the power delegated in Section 21 of the Act 2005 the government framed 'বেসরকারী শিক্ষক পরীক্ষা গ্রহণ, নিবন্ধন ও প্রত্যয়ন বিধিমালা, ২০০৬' (for short *Bidhimala* 2006) which was later on amended on 17.07.2012 and 21.10.2015.

19. Rule 3 of *Bidhimala* 2006 provides for holding at least one examination in a calendar year by the authority with a view to ascertaining the qualification for registration and certification as teacher and giving certificates in this regard.

20. Rule 3Ka has been newly inserted in *Bidhimala* 2006 on 21.10.2015 through amendment. According to Rule 3Ka the authority shall collect the number of available vacant posts of non-government educational institutions in each district through the District Education Officer by the month of November each year. It provides further that Upazila or Thana Secondary Education Officer will prepare such list by the month of October in each year and send the same to the District Education Officer, who upon examination of propriety of the said list will send it again to the authority.

21. Rule 9 lays down the detail about examination system and publication of result. According to Rule 9(2)(Ga) Upazila, district and nation-wide list of successful candidates in the written and *viva voce* examination shall be prepared and published. Rule 9(2)(Gha) states that while preparing the main list of the successful candidates against vacant posts the authority may also prepare a waiting list comprising of candidates 20% more of the total vacant posts. If any post falls vacant due to death, relinquishment of job, unwillingness to join the post or any other reason the authority may appoint teacher from the said waiting list. Rule 9 (3)(Ga) provides that the

result shall be published within thirty days from the date of holding *viva voce* examination.

22. Rule 10 states that the authority shall enroll the names of successful candidates in teacher registration register as per Form-3 of the 4th schedule within 90 days from the date of publication of result and also issue certificates as per Form-4 for a period of three years.

23. Rule 11 provides that no person will be qualified to be appointed in the post of teacher of non-government institutions if he is not registered and does not have certificate from the authority.

24. It is to be noted that earlier this Division has dealt with the identical matter with the cases in hand. It has been observed by this Division in Civil Petition for Leave to Appeal Nos. 1381, 1406-1412, 1421-1425 and 1432-1437 of 2021 in the following:

“From the above quoted statutory provisions, it appears that NTRCA is authorized to ascertain the demand of teachers of non-government educational institutions, fixation of required qualifications for getting registration in teaching professions for getting appointment in the non-government institutions and preparation of list of the qualified candidates passed in examination. The NTRCA is a statutory body established with the mandate of registering and certifying qualified persons who can get appointment as teachers in non-governmental institutions. It is entrusted with the preparation of competent candidates against vacant posts in non-government educational institutions. The

notification for registration and certification amounts to an invitation for qualified candidates to apply for registration and certification and those registered and certified candidates do not acquire any right to the post. List does not confer on a candidate an indefeasible right to appointment.

From amended Rule 10(1) (amended on 21.10.2015) it appears that there is specific provision that the certificate issued by NTRCA will remain valid for a period of three years from the date of publication of the result. The result of the writ petitioner-contemnors of 13th Teachers Registration and Certification Examination were published on 04.06.2017. As per provision of Rule 10(1) of the Rules, the certificates issued in that examination remained valid till 04.06.2020. That is, at present, the certificates issued in favour of the contempt petitioners ceased to be in force after three years. The statutory life of the list was three years which came to an end on 04.06.2020 and that being so, no right can be claimed by the respondents after 04.06.2020. Admittedly, all the respondents were empanelled in the list, which, as aforementioned, had ceased to exist on 04.06.2020. Resultantly, they cannot set up any claim in respect of vacancies reported thereafter.

Another group of writ petitioners, who participated in 13th Teachers Registration and Certification Examinations and got their names registered and obtained certificates, filed identical Writ Petitions No.1750 of 2017, 16307 of 2017, 17896 of 2017, 17961 of 2017, 18100 of 2017, 18727 of 2017 and 18728 of 2017 and obtained Rule *Nisi* in every petition. The High Court Division made all the Rules absolute by a judgment and order dated 05.11.2018. Against which, the Government and others preferred Civil Appeal No.343 of 2019 in this Division. This Division by a judgment and order dated 12.03.2020 disposed of the appeal with some observations. In that judgment, it was, *inter alia*, observed that the listed or empanelled candidates, of the list prepared on 13th Teachers Registration and Certification Examination would remain valid till 04.06.2020. Since the validity period of the issued certificates in 13th examination has expired on 04.06.2020 in view of the statutory provision of Rule 10 (1) of the Rules, the list prepared thereunder lost its efficacy and, thus, the contempt petitioners cannot set up any claim. Moreover, the process for selection for the purpose of recruitment against anticipated vacancies does not create a right to be appointed to the post which can be enforced by issuing *mandamus*. (Jatinder Kumer V. State of Punjab, (1985)1 SCC 122). The appointing authority as an employer has a right to fill up all the posts or not to fill them up. A candidate will have no legal right for claiming a writ in the nature of *mandamus* unless there is discrimination and arbitrariness in regard to the filling up of the vacancies. Empanelment at best is a condition

of eligibility for the purpose of appointment and by itself does not amount to selection or create any vested right to be appointed.

In view of the discussions made above, we are of the considered opinion that the instant contempt proceedings are misconceived.

Accordingly, all petitions are disposed of.”

(underlines supplied by us)

25. In the similar manner, Civil Appeal No.343 of 2019 (supra) has also been disposed of by this Division with some observation. The observation made by this Division in the said case is extracted below:

“Whatever be the number of ascertained posts, listed or empanelled, candidates of the list will remain valid till 04.6.2020. There is no scope to appoint any teachers from outside the registered, listed and certified candidates by the appointing authority, that is, respective non-government educational institutions.

Shortly, the procedure is that the NTRCA shall prepare list of qualified candidates with due regard to the number of vacancies of the teachers which fall vacant in course of the year and that the list of the candidates so prepared shall be published by notification. The recommendation of the NTRCA for selecting suitable candidates as teachers ought to get respect it deserved. Preparation of long list ignoring statutory provision and reasonableness has created the present situation which

the authority is facing and, consequently, the writ petitioners have been suffering. In such view of the matter, the High Court Division did not commit any substantial wrong in its direction.”

(underlines supplied by us)

26. If we make a combined reading of the observation given by this Division in Civil Petitions for Leave to Appeal No.1381, 1406-1412, 1421-1425 and 1432-1437 of 2021 and in the case of *Government of Bangladesh and ors. Vs. Arifur Rahman and ors.* in Civil Appeal No.343 of 2019 reported in 17ADC(2020)419 *vis-à-vis* the relevant provisions of law we can sum up in the following way. The NTRCA is authorised to ascertain the number of vacant posts in the non-government educational institutions gathering information from the District Education Officer and it arranges both written and *viva voce* examination. The NTRCA is also empowered to publication of final result within thirty days from the date of holding *viva voce* examination and prepare a panel of successful candidates as per Rules. The NTRCA shall give registration within 90 days from the date of publication of results and also issue certificates to the deserving candidate for the purpose of appointment as teacher in the non-government educational institutions. The certificate issued in favour of a successful candidate by the NTRCA shall remain valid for three years only. Consequently, the certificate will lose its validity on expiry of three years from the receipt of certificate. No

person shall be appointed as teacher in the non-government educational institutions if he is not registered or has not acquired certificate from the NTRCA. It is also evident that mere registration and receipt of certificate from the NTRCA will not confer an indefeasible right on a candidate to be appointed as teacher unless there is discrimination and arbitrariness regarding the filling up of vacancies. However, the recommendation by NTRCA by way of preparation and publication of a list of successful candidates should get respect it deserves.

27. It is also transparent from the record that the authority published a circular being No.৩৭.০০.০০০০.০৭১.০৮.০০৮৫.০৫(অংশ)-১০৮১ dated 30.12.2015 and clause 5.0 of the said circular provides as follows:

“৫.০:- এন.টি.আর.সি.এ অন-লাইনে আবেদন প্রাপ্তির পর চাহিদা ও মেধাক্রম অনুযায়ী প্রার্থীদের অবহিত রেখে নিয়োগযোগ্য প্রতিটি পদের বিপরীতে ০১ জন করে প্রার্থীর নাম অধিযাচনকারী প্রতিষ্ঠানে প্রেরণ করবে এবং সে অনুসারে নিয়োগকারী কর্তৃপক্ষ হিসেবে ক্ষেত্রমত ম্যানেজিং কমিটি বা গভর্নিং বডি নির্বাচিত প্রার্থী বরাবর ০১(এক) মাসের মধ্যে নিয়োগপত্র জারি করবে।”

28. In view of the above circular, the appointing authority in the cases in hand, is the concerned Managing Committee or Governing Body of a non-government educational institution but NTRCA is not the appointing authority. Therefore, we concur with the observation of this Division made in Civil Petitions for Leave to Appeal No.1381, 1406-1412, 1421-1425 and 1432-1437 of 2021 that the

appointing authority as an employer has a discretion to fill up all the posts or not.

29. Consequent upon the discussion made above, as regards the second category of the Civil Petitions, we are of the view that although the NTRCA is not the appointing authority the certificates issued by it is essential for recruitment as teachers in the non-government educational institutions and the recommendation by NTRCA by way of preparation and publication of a list of successful candidates should get due consideration for appointment. We do not find any infirmity or perversion in the judgment of the High Court Division giving rise to the filing of the second category of the Civil Petitions for Leave to Appeal. Therefore, all the Civil Petitions for Leave to Appeal of the second category do not have merit to be considered and as such deserved to be disposed of in the light of the judgment delivered by this Division in Civil Appeal No.343 of 2019 (supra) and Civil Petitions for Leave to Appeal No.1381, 1406-1412, 1421-1425 and 1432-1437 of 2021.

30. At this juncture, we will discuss about the first category of Civil Petition. In this regard we adopt the observation made by this Division in Civil Petition for Leave to Appeal No.3900 of 2019 and Civil Appeal No.343 of 2019 (supra) to the effect that as per Rule 10 of *Bidhimala* 2006 the certificates issued by NTRCA in favour of the writ petitioners are valid for a period of three years and after expiration of the validity period, the writ-petitioners would not be

entitled to get appointment on the basis of time expired certificates issued earlier in favour of them. In the instant case it transpires from the record that the petitioners being successful in both the written and *viva voce* examination the final result was published on 27.11.2018 and they obtained certificates and according to Rule 10 of *Bid himala* 2006 the certificates issued in favour of them by the NTRCA have already lost their validity and as observed earlier by this Division that the NTRCA is not the appointing authority rather the concerned Managing Committee or Governing Body of the non-government educational institution is the appointing authority in case of recruitment of teachers in the non-government educational institutions. The appointing authority as an employer has a discretion to fill up all the posts or not. Therefore, the writ-petitioners are not entitled to be appointed as prayed for in the writ petition and the High Court Division did not commit any illegality in discharging the Rule and as such no interference by this Division is warranted in this regard. Hence, the Civil Petition for Leave to Appeal No.2627 of 2022 is liable to be dismissed.

31. Pursuant to the detailed discussion made above, the Civil Review Petition No.195 of 2020 is **dismissed as being time barred** and Civil Petition for Leave to Appeal No.2627 of 2022 is **dismissed** and Civil Petition for Leave to Appeal No.2112 of 2020 be tagged with the Civil Appeal arising out of Civil Petition for Leave to Appeal No.1754 of 2020 and all other Civil Petitions for Leave to

Appeal are **disposed of** in the light of the judgment and order delivered in Civil Appeal No.343 of 2019 and Civil Petitions for Leave to Appeal No.1381, 1406-1412, 1421-1425 and 1432-1437 of 2021.

C.J.

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