

10 SCOB [2018] HCD

HIGH COURT DIVISION (SPECIAL ORIGINAL JURISDICTION)

Writ Petition No. 9297 of 2014
with
Writ Petition No.9706 of 2014
Writ Petition No.10844 of 2014
Writ Petition No.1482 of 2015
Writ Petition No.517 of 2015
Writ Petition No. 9591 of 2014
Writ Petition No.5951 of 2015
Writ Petition No.6557 of 2015
Writ Petition No.6863 of 2015
Writ Petition No.2710 of 2015
Writ Petition No.5849 of 2015
Writ Petition No.10021 of 2015
Writ Petition No.10544 of 2015
Writ Petition No.11354 of 2015
Writ Petition No.13023 of 2015
Writ Petition No.13111 of 2015
Writ Petition No.13109 of 2015
Writ Petition No.13382 of 2015
Writ Petition No.11845 of 2015
Writ Petition No.11847 of 2015
Writ Petition No.51 of 2016
Writ Petition No.13415 of 2015
Writ Petition No. 6661 of 2015
Writ Petition No. 7549 of 2015
Writ Petition No.13 of 2016
Writ Petition No. 667 of 2016
Writ Petition No. 12824 of 2015
Writ Petition No. 12971 of 2015
Writ Petition No. 12972 of 2015
Writ Petition No. 12973 of 2015
Writ Petition No. 12887 of 2015
Writ Petition No. 12642 of 2015
Writ Petition No. 13024 of 2015
Writ Petition No. 13110 of 2015
Writ Petition No. 13108 of 2015
Writ Petition No. 8037 of 2015

Muhammad Imrul Hasan and others

...Petitioners in Writ Petition No.
9297 of 2014

Sumon Hossain and others

...Petitioners in Writ Petition No.
9706 of 2014

Writ Petition No. 9583 of 2015
Writ Petition No. 11844 of 2015
Writ Petition No. 8340 of 2015
Writ Petition No. 6519 of 2015
Writ Petition No. 13037 of 2015
Writ Petition No. 13038 of 2015
Writ Petition No. 10924 of 2015
Writ Petition No. 6946 of 2015
Writ Petition No. 13588 of 2015
Writ Petition No. 13027 of 2015
Writ Petition No. 7512 of 2015
Writ Petition No. 13418 of 2015
Writ Petition No. 13416 of 2015
Writ Petition No. 215 of 2016
Writ Petition No. 2559 of 2015
Writ Petition No. 11909 of 2014
Writ Petition No. 868 of 2015
Writ Petition No. 5950 of 2015
Writ Petition No. 3446 of 2015
Writ Petition No. 12917 of 2015
Writ Petition No. 11848 of 2015
Writ Petition No. 11846 of 2015
Writ Petition No. 12199 of 2015
Writ Petition No. 13065 of 2015
Writ Petition No. 10883 of 2015
Writ Petition No. 263 of 2016
Writ Petition No. 12075 of 2015
Writ Petition No. 13078 of 2015
Writ Petition No. 12029 of 2015
Writ Petition No. 12123 of 2015
Writ Petition No. 12514 of 2015
Writ Petition No. 12200 of 2015
Writ Petition No. 12461 of 2015
Writ Petition No. 12198 of 2015
Writ Petition No. 189 of 2016

Mohammad Mizanur Rahman and others

...Petitioners in Writ Petition No.
10844 of 2014

Kamrunnesha and others

..for the petitioner in Writ Petition No. 1482 of 2015

Agmal Hossain Chowdhury and others
..for the petitioner in Writ Petition No. 517 of 2015

Abul Manjur Ahmed and others
...Petitioners in Writ Petition No. 9591 of 2014

Md. Abu Sayed and others
...Petitioners in Writ Petition No. 5951 of 2015

Most. Taslima Khatun and others
..for the petitioner in Writ Petition No. 6557 of 2015

Md. Sheikh Sadi and others
...Petitioners in Writ Petition No. 6863 of 2015

Md. Moniruzzaan Khan and others
...Petitioners in Writ Petition No. 2710 of 2015

Md. Ishahaq Ali and others
...Petitioners in Writ Petition No. 5849 of 2015

Md. Jashimuddin and others
...Petitioners in Writ Petition No. 10021 of 2015

Md. Reaz Uddin and others
...Petitioners in W. P No. 10544 of 2015

Md. Kamal Hossain and others
...Petitioners in Writ Petition No. 11354 of 2015

Md. Abdul Hakim and others
...Petitioners in Writ Petition No. 13023 of 2015

Zillul Haque Zilu and others

...Petitioners in Writ Petition No. 13111 of 2015

Md. Mutaleb Mollah and others
...Petitioners in Writ Petition No. 13109 of 2015

Md. Ruhul Amin and others
...Petitioners in Writ Petition No. 13382 of 2015

Md. Bellal Hossain and others
...Petitioners in Writ Petition No. 11845 of 2015

Md. Dilwar Hossain and others
...Petitioners in W. P. No. 11847 of 2015

Sumi Khatun and others
...Petitioners in W. P. No. 51 of 2016

Md. Anwar Hossain and others
...Petitioners in W. P. No. 13415 of 2015

Md. Abdul Kader and others
...Petitioners in W. P. No. 6661 of 2015

Md. Abdul Hannan Mia and others
...Petitioners in W. P. No. 7549 of 2015

Md. Abu Hanif and others
...Petitioners in W. P. No. 13 of 2016

Md. Murshed Ali and others
...Petitioners in W. P. No. 667 of 2015

Md. Abu Bokar and others
...Petitioners in W. P. No. 12824 of 2015

Muhammad Anwar Hossain and others

...Petitioners in W. P. No.12971
of 2015

Akhtaruzzaman and others

...Petitioners in W. P. No.12972
of 2015

Abu Abdullah and others

...Petitioners in W. P. No.12973
of 2015

Md. Ferozul Islam and others

...Petitioners in W. P. No.12887
of 2015

**Mohammad Abdullah-Al- Mamun and
others**

...Petitioners in W. P. No.12642
of 2015

Md. Amir Hossain Akhandh and others

...Petitioners in W. P. No.13024
of 2015

Md. Milon Hossain and others

...Petitioners in W. P. No.13110
of 2015

Shahadat Hossain and others

...Petitioners in W. P. No.13108
of 2015

Md. Juwel Miah and others

...Petitioners in W. P. No.8037
of 2015

Md. Shahidul Islam and others

...Petitioners in W. P. No.9583 of
2015

Kawsar Ahmed Mamun and others

...Petitioners in W. P. No.11844
of 2015

Md. Firoz Hossain and others

...Petitioners in W. P. No.8340
of 2015

Md. Amirul Islam and others

...Petitioners in W. P. No.6519
of 2015

Sayed Manir Hossain and others

...Petitioners in W. P. No.13037
of 2015

Rasel Khan and others

...Petitioners in W. P. No.13038
of 2015

Md. Abu Hashem Khan and others

...Petitioners in W. P. No. 10924
of 2015

Md. Ariful Islam and others

...Petitioners in W. P. No. 6946
of 2015

Saydul Islam and others

...Petitioners in W. P. No. 13588
of 2015

Md. Akhlakur Rahman and others

...Petitioners in W. P. No. 13027
of 2015

Anoara Begum Purakaystha and others

...Petitioners in W. P. No. 7512 of
2015

Md. Shahidul Islam and others

...Petitioners in W. P. No. 13418
of 2015

Shafia Khanom and others

...Petitioners in W. P. No. 13416
of 2015

Md. Rafiqul Islam and others

...Petitioners in W. P. No. 215 of
2016

Md. Abdur Rahman and others

...Petitioners in W. P. No. 2559
of 2015

Md. Kamrul Hossain and others

...Petitioners in W. P. No. 11909 of 2014

Sharmin Akhter and others

...Petitioners in W. P. No. 868 of 2015

Md. Abul Fazal and others

...Petitioners in W. P. No. 5950 of 2015

Md. Ariful Islam and others

...Petitioners in W. P. No. 3446 of 2015

Md. Ruhul Amin and others

...Petitioners in W. P. No. 12917 of 2015

Harun-A-Rashid and others

...Petitioners in W. P. No. 11848 of 2015

Md. Mubarak Hossain and others

...Petitioners in W. P. No. 11846 of 2015

Md. Moniruzzaman and others

...Petitioners in W. P. No. 12199 of 2015

Mohammad Ahasan Habib and others

...Petitioners in W. P. No. 13065 of 2015

Mst. Rulia Khatun and others

...Petitioners in W. P. No. 10883 of 2015

Jannatul Ferdous and others

...Petitioners in W. P. No. 263 of 2016

Krisna Lal Roy and others

...Petitioners in W. P. No. 12075 of 2015

Md. Mahabub Hossain and others

...Petitioners in W. P. No. 13078 of 2015

Mst. Sunia Sultana and others

...Petitioners in W. P. No. 12029 of 2015

Chamon Ara Begum and others

...Petitioners in W. P. No. 12123 of 2015

Afroza Shirin and others

...Petitioners in W. P. No. 12514 of 2015

Golam Mostafa and others

...Petitioners in W. P. No. 12200 of 2015

Most. Muslima Khatun and others

...Petitioners in W. P. No. 12461 of 2015

Md. Farhad Ali and others

...Petitioners in W. P. No. 12198 of 2015

Swapna Rani Dey and others

...Petitioners in W. P. No. 189 of 2016

Vs.

People's Republic of Bangladesh, represented by the Secretary, Ministry of Primary and Mass Education, Bangladesh Secretariat, Ramna, Dhaka and other.

.... Respondents

Mr.M. Amirul Islam with
Mr. Sheikh Rafiqul Islam Advocates
....for the petitioners in 9591/2014 and 868 / 2015

Mr. Sk. Md. Morshed with
Mr. Niaz Murshed and
Mr. Syed Nafiul Islam Advocates
.....for the petitioners in W. P. Nos. 9297/2014, 5951/ 2015, 517 of

2015,9706 of 2014,10844 of 2014,
6557 of 2015, 6863 of 2015, 13023
of 2015,13111 of 2015, 13109 of
2015, 11845 of 2015, 11847 of
2015,13 of 2016, 12642 of 2015,
13024 of 2015, 13110 of 2015, 11844
of 2015,13416 of 2015, 5950 of 2015,
3446 of 2015, 11848 of 2015,11846 of
2015, 12199 of 2015,12514 of
2015,12198 of 2015

Mr. Khairul Alam Advocate

...for the petitioners in W.P. Nos.
2710/2015, 5849/2015, 51/2016,
13415/2015, 13108 /2015, 8037/2015,
8340/2015, 13418/2015, 12917/2015,
12029 of 2015, 12123/2015,
12200/2015, 12461/2015

Mr. Md. Hafizur Rahman Advocate

.....for the petitioners in W. P.
No.6519/2015

Mr. Moinul Islam Advocate

....for the petitioners in Writ
Petition No.1482 of 2015

Mr. Mohammad Siddiq Ullah Miah
Advocate

....for the petitioners in W. P.
Nos.10021/ 2015, 10544/2015, 12824 /
2015, 13037/2015, 13038/2015,
13027/2015, 7512/2015, 12075/ 2015,
189/ 2016,13588/2015

Ms. Nasrin Ferdous Advocate

.....for the petitioners in Writ
Petition No.11354 of 2015

Mr. Md. Belal Hossain Advocate

.....for the petitioners in Writ
Petition No. 13382 of 2015

Mr. Md. Mahbubur Rahman Advocate

.....for the petitioners in W. P. No.
667 of 2016

Mr. Md. Giasuddin Ahammed Advocate

.....for the petitioners in W. P. Nos.
12971 of 2015,
12972/ 2015, 12973/2015,

Mr. Mohammad Shahidul Islam
Advocate

.....for the petitioners in W. P. Nos.
12887/2015, 263 of 2016

Mr. Md. Uzzal Hossain Advocate

.....for the petitioners in W. P. Nos.
9583/2015, 10883/2015

Mr. Md. Motaher Hossain Advocate

.....for the petitioners in W. P.
No.10924/2015

Mr. Md. Mohaddesh Ul Islam Advocate

.....for the petitioners in W. P. No.
6946/2015

Mr. Md. Matiur Rahman Advocate

.....for the petitioners in W. P. No.
215 of 2016

Mr. Zakir Hossain Munshi Advocate

.....for the petitioners in W. P. No.
2559/2015

Mr. Md. Israfil Hossain Advocate

.....for the petitioners in W. P. No.
11909 /2014

Mr. S.M.Bazlur Rashid Advocate

.....for the petitioners in W. P.
No.13065 /2015

Mr. Md. Imrul Hayder Advocate

.....for the petitioners in W. P.
No.13078 /2015, 6661/2015

Mr. Nowsad Al Alif Advocate

.....for the petitioners in W.P. No.
7549/2015

Ms. Amatul Karim D.A.G. with

Mr. A.R.M. Hasanuzzaman A.A.G. and
Mr. Abu Saleh Md. Fazle Rabbi Khan,
A.A.G.

.....for the Respondent No. 5

Judgment on 03.02.2016

Heard on 17 .11.2015 , 03.12.2015 and
26.1.2016,

Present:

Mr. Justice Tariq ul Hakim

And

Mr. Justice Bhishmadev Chakraborty

Definition of Legitimate Expectation:

Legitimate Expectation has been defined as follows:

“A person may have a legitimate expectation of being treated in a certain way by administrative authority even though he has no legal right in law to receive such treatment. The expectation may arise either from a representation or promise made by the authority including an implied representation or consistent past practice.”

... (Para 21)

The Government cannot act arbitrarily and capriciously while choosing persons for employment. It cannot pick and choose employees like private individuals. It is always under a duty to act fairly and without discrimination while making choices for employment.

... (Para 22)

Judgment

Tariq ul Hakim, J:

1. Rules Nisi were issued calling upon the respondents to show cause why Appointment Circular under Memo No. প্রাশিঅ/ ৭ (নিয়াগ)/ সশিনি (রাজস্ব)/ ২০১৪/ ২৪৯ dated 14.09.2014 (Annexure-G) issued under the signature of Respondent No. 6, Director General, Directorate of Primary Education, Dhaka for appointment to posts of Assistant Teachers in Government Primary Schools without appointing the petitioners even though they passed written and viva voce examinations for the purpose as evident from the Result Sheet (Annexure-C) should not be declared to have been issued without lawful authority and is of no legal effect and why the Respondents should not be directed to appoint the petitioners in vacant posts of Assistant Teachers in Government Primary Schools pursuant to Appointment Circular under Memo No. প্রাশিঅ/ নিয়াগ/০২/ স:শি:নি:/ ২০১১/ ২৯৫ dated 04.08.2011 issued under the signature of the Respondent No. 6, Director General of Directorate of Primary Education (Annexure-A) and/or pass such other or further order or orders as to this Court may seem fit and proper.

2. All these Rules concern common questions of law and facts and were heard together and are being disposed of by this single judgment.

3. Facts relevant for disposal of these Rules is that the Respondent No. 5, Director General of Primary Education through the respective District Primary Education Officers issued Admit Cards in favour of the petitioners to attend a written examination and accordingly, the petitioners attended and passed the written examination conducted by the said Directorate. Thereafter the petitioners attended viva voce examinations conducted by the Respondent Nos. 5 and 6 and passed the same and became qualified for being appointed to the post of Assistant Teachers for Government Primary Schools under the Directorate of

Primary Education. The petitioners complied with all the terms and conditions of the appointment circular issued under Memo No. প্রাশিঅ/ নিয়োগ/০২/ স:শি:নি:/ ২০১১/ ২৯৫ dated 04.08.2011 and the Respondent Nos. 5 and 6 on 14.8.2012 published the list of successful candidates in two categories. In category (1) it was stated “সরকারী প্রাথমিক বিদ্যালয়ের সহকারি শিক্ষক পদে নিয়োগ-২০১১ এর জন্য গৃহীত লিখিত ও মৌখিক পরীক্ষায় চূড়ান্ত ভাবে নির্বাচিত প্রার্থীদের জেলা ভিত্তিক তালিকা” and in category (2) it was stated “সহকারি শিক্ষক নিয়োগের জন্য শূন্য পদের বিপরীতে প্রার্থী নির্বাচনের পর অবশিষ্ট প্রার্থীদের মধ্য হতে উপজেলা/ থানা ওয়ারী প্রাথমিক শিক্ষক পুল গঠনের নিমিত্তে সুপারিশকৃত রোল নম্বরের তালিকা” The petitioners are in the second category . The publication of the results show two groups: one group of candidates were selected for appointment as Assistant Teachers in Government Primary Schools all over the country and another group was to comprise a Teachers “Pool”. In the instant case all the petitioners belong to the second category and have been incorporated in the Teachers Pool.

4. In the meantime, the Respondent No. 1 Ministry of Primary and Mass Education issued another Circular dated 13.03.2012 for the creation of Primary Teachers Pool at Upazila/ Thana level under the heading “উপজেলা/ থানা পর্যায়ে প্রাথমিক শিক্ষক পুল” from the successfully qualified candidates who attended and qualified in Government Primary School Assistant Teachers Appointment Examination giving effect to the same on and from the date of its publication i.e. 13.03.2012. Thereafter the Respondent No. 1 Ministry of Primary and Mass Education on 3.4.2014 circulated “প্রাথমিক শিক্ষক পুল নীতিমালা ২০১৪” stating several conditions for appointment of pool teachers. In the meantime the Respondent Nos. 5 and 6 appointed some of the petitioners as Pool teachers for limited periods under a contract as per the aforesaid ‘Nithimala’ 2014.

5. It has been further stated that the petitioners have been pursuing their claim for appointment as Assistant Teachers in Government Primary Schools but the respondents are not paying any heed to them. In the meantime many of the petitioners have crossed the age limit of 30 and have become ineligible to apply for any Government job. In the circumstances the petitioners through their learned Advocates served Notices Demanding Justice on 12.10.201 requesting the respondents to rescind, cancel and withdraw the impugned Appointment Circular under Memo No. প্রাশিঅ/ ৭ (নিয়োগ)/ সশিনি (রাজস্ব)/ ২০১৪/ ২৪৯ dated 14.09.2014 (Annexure-G) issued under the signature of the Director General, Directorate of Primary Education, Dhaka for appointment to posts of Assistant Teachers all over the country and to appoint the petitioners to the vacant posts of Assistant Teachers in the Government Primary Schools as they have passed and qualified to be appointed to the said posts pursuant to the aforesaid Appointment Circular under Memo No. প্রাশিঅ/ নিয়োগ/০২/ স:শি:নি:/ ২০১১/ ২৯৫ dated 04.08.2011 issued under the signature of the the Director General of Directorate of Primary Education but the respondents did not pay any heed to the same.

6. It has been further stated that the respondents by the impugned appointment notice inviting fresh applications for Assistant Teachers have denied the legal and fundamental rights of the petitioners to be appointed to the vacant posts of Assistant Teachers even though they qualified for such appointment after attending and succeeding in the written and viva voce examinations conducted for the purpose by the respondents and as such the impugned appointment circular is liable to be declared to have been issued without lawful authority and is of no legal effect. It has been further stated that according to the final result a total of 27,720 candidates were found successful of whom 12,701 candidates were appointed Assistant Teachers of Government Primary Schools and the rest 15019 candidates were not appointed to the said post which is ex-facie discriminatory, arbitrary, malafide and without

lawful authority. The Respondent No. 2 made a Pool with the aforesaid 15,019 successful candidates including the petitioners who are being made to wait for vacant positions of temporary duration in Government Primary Schools thus introducing a scope for creating an arbitrary barrier and making arbitrary choices at the mercy of the appointing authority.

7. Being aggrieved, the petitioners have come to this Court and obtained the present Rules.

8. The Rules are being contested by the Respondent No. 5, Director, Directorate of Primary and Mass Education, Mirpur, Dhaka by filing Affidavit-in-Opposition stating inter alia that as part of the Government policy to form a “Teachers Pool” pursuant to “প্রাথমিক শিক্ষক পুল নীতিমালা ২০১৪” persons who qualifying in written viva voce examinations for appointment in Government Primary Schools Teachers but are not so appointed are to be incorporated in the said pool and since in the instant case the petitioners were not recommended for appointment as teachers in Government Primary Schools they have been incorporated in the pool and they have nothing to be aggrieved. It has been further stated that those who are not interested in staying in the pool are at liberty to leave and that 10% of the members of the said pool will eventually be given permanent appointment as Assistant Teachers in Government Primary Schools.

9. In a Supplementary Affidavit on behalf of the Respondent No. 5 it has been further stated that in the instant case the successful candidates recommended for recruitment as Assistant Teachers in Government Primary Schools under general quota had achieved more marks than the candidates who were recommended for forming “Teachers Pool” and therefore there was no arbitrary selection of the candidates.

10. Mr. M. Amirul Islam, Senior Advocate on behalf of the petitioners submits that the petitioners’ legitimate expectation for being appointed after having passed and qualified in the written and viva voce examinations has not turned into reality as the Respondent Nos. 1-8 did not take any steps whatsoever in appointing the successful passed candidates. The learned Advocate further submits that the Respondents instead of appointing qualified successful and eligible persons to vacant posts of Assistant Teachers by the impugned Memo they are being made to wait in an arbitrary and discriminatory manner by creating a so called ‘pool’ for the last two years which is ex-facie illegal, arbitrary, malafide and an abuse of executive discretion. The learned Advocate submits that the final result of 27,720 candidates were issued on the same day but the results were published in two parts-12,701 candidates in one part and the rest 15,019 candidates in another part which is ex-facie discriminatory, arbitrary, malafide and without lawful authority and it demonstrates an arbitrary exercise of power indulging in a pick and choose method and therefore the process of selection of Assistant Teachers for appointment in Government Primary Schools by the respondent Nos. 1-8 cannot be called transparent. The learned Advocate further points out that the act of recruiting new candidates for the position of Assistant Teachers of Government Primary Schools vide job circular dated 14.9.2014 despite already having successfully passed candidates waiting in the pool for appointment is an exhibition of arbitrary exercise and abuse of power.

11. Mr. Sheikh Muhammad Morshed, the learned Advocate for the petitioners submits that the respondents by the impugned appointment notice are seeking fresh applications for vacant posts of Assistant Teachers in Government Primary Schools by denying the legal

and fundamental rights of the petitioners to be appointed to those posts although they successfully qualified for such appointment after attending and succeeding in the written and viva voce examinations conducted for the purpose by the respondents. The learned Advocate further submits that the petitioners were found qualified in all respects for appointment and there is no reason why fresh notice seeking applications for appointment should be made without first filling up the vacancies by the petitioners. The learned Advocate points out that the provisions of the said Nithimala, 2014 dated 03.04.2014 are not applicable to the petitioners who attended and qualified for appointment as Assistant Teachers pursuant to the earlier appointment circular issued under Memo No. প্রাশিঅ/নিয়োগ/০২/স:শি:নি:/২০১১/২৯৫ dated 04.08.2011. The learned Advocate submits that the respondents most illegally, malafide and without lawful authority without taking any steps for appointing the petitioners to vacant posts have published a new circular dated 14.9.2014 for the appointment of Assistant Teachers and as such the same is liable to be declared without lawful authority and of no legal effect. The learned Advocate further points out that the Respondents have not taken into consideration that the petitioners have already qualified in the written and viva voce examinations for appointment as Assistant Teachers of Government Primary Schools and without appointing them to vacant posts, the respondents most illegally and without lawful authority have published the impugned appointment circular dated 14.9.2014. The learned Advocate next points out that the ‘Nithimala’2014 ‘ dated 3.4.2014 did not exist when the petitioners applied for appointment of Primary School Teachers and it cannot be given retrospective effect by appointing the petitioners as ‘Pool Teachers’ pursuant to its provision.

12. Ms. Amatul Karim, the learned Deputy Attorney General with Mr. A.R.M. Hasanuzzaman Assistant Attorney General appearing for the Respondent No.5 submits that the “Pool Nithimala,2014”,has been formulated to ensure that the Government Primary Schools are not short of teaching staff when a teacher is away on temporary leave. The Pool has therefore being formed from those candidates who successfully passed and qualified in the written and viva voce examinations for appointment as Assistant Teachers of Government Primary Schools. There is no compulsion on any one for appointment as Pool Teacher. Ten percent of the pool teachers would be subsequently given appointment in permanent jobs in Government Primary Schools. The learned Deputy Attorney General submits that since there is no compulsion for the candidates to join the pool there is no illegality in appointing them. The learned Deputy Attorney General further submits that in view of the huge number of vacancies in the post of Assistant Teachers in Government Primary Schools it was not possible to quote the exact number of vacancies at the time of publication of the appointment circular but at the time of filling up the posts they were recruited as per the available number of vacancies and in the instant case 12,701 teachers were appointed to posts of Assistant Teachers in Government Primary Schools since that many posts were available. The learned D.A.G. further submits that in the meantime more vacancies have been created and the new circular was issued in 2014 and those who could not be appointed earlier are at liberty to apply again and they have a chance of being recruited if their performance in the written and viva voce examination is satisfactory.

13. The learned Advocate vehemently submits out that the petitioners may have qualified in the written and viva voce examinations along with others but that does not give them any right to get the job and as such no interference by this Court is called for in the matter. The learned Deputy Attorney General next points out that the recruitment and appointment of Government Primary School Teachers is an on going process as every year a huge number of vacancies occur and those interested in getting the jobs must apply and pass

the relevant examinations. She also points out that just because some one is qualified in a certain year he/she cannot have a right to be appointed in a subsequent year and in the instant case the learned Advocate submits that qualified persons were not only appointed in the job but those with higher qualification got priority over those who got less marks in the written and viva voce examination and therefore no illegality has been done and the petitioners have nothing to be aggrieved .

14. We have considered the submissions of the learned Advocates.

15. The children of today are the leaders of tomorrow; those who are going to school now will one day grow up as matured men and women and contribute to nation building. We should therefore try to attract the most brilliant amongst us to impart education to the school children. To achieve this goal the Government must act with transparency and legitimacy.

16. Pursuant to an advertisement in different newspapers vide Circular under Memo No. প্রাশিঅ/ নিয়োগ/০২/ স:শি:নি:/ ২০১১/ ২৯৫ dated 04.08.2011 the petitioners applied for appointment to permanent posts of Assistant Teachers in different Government Primary Schools. The applicants were required to sit for written and viva voce examinations. It appears that 11,20,290 candidates appeared in the examination of which 27,720 were successful but out of them only 12,701 were appointed as Assistant Teachers in different Government Primary Schools. The petitioners are among the remaining 15,019 persons who passed their examinations but were not appointed Assistant Teachers. It is not clear why only 12701 candidates were appointed Assistant Teachers and why the respondents kept mum for another two years until publication of the impugned notice on 14.9.2014 although another 15,019 (fifteen thousand nineteen) persons were listed as qualified in the earlier examination. Since the examination was taken by applicants for permanent posts of Assistant Teachers in Government Primary Schools it is not clear why the successful candidates were offered jobs as 'Pool Teachers' against temporary vacancies in different Primary Schools at a comparatively lower scales of pay and allowances. In the circular dated 4.8.2011 there was no mention of the number of vacant posts or how many persons would be appointed as Assistant Teachers in different Government Primary Schools. The petitioners qualified in the written and viva voce examinations but were not appointed to the advertised jobs. The petitioners had a legitimate expectation that if they qualified in the written and viva voce examinations they would be appointed to the posts of Assistant Teachers of Government Primary Schools but the Respondents appear to have appointed some of the qualified candidates and denied appointment to many others like the petitioners. It was not stated in the result sheet on what criteria one group of the successful applicants were selected for permanent employment as Assistant Teachers and what was the reason for selecting another group of successful candidates for temporary posts of 'Pool Teachers'. The learned Deputy Attorney General's submission that applicants with higher marks in the written and viva voce examination got priority over those with lesser mark is not acceptable since the Result Sheet does not say that the selection for appointment was done in accordance with merit. It appears therefore that the Respondents acted arbitrarily in making their choices and adopted an unfair policy of pick and choose.

17. Article 27 of our Constitution states

“ All citizens are equal before law and are entitled to equal protection of law. ”

18. Similarly Article 29(1) clearly states

“ There shall be equality of opportunity for all citizens in respect of employment or office in the service of the Republic.”

19. In **Attorney General of Hong Kong Vs. Ng Yuen Shin (1983) 2 AC 629** it has been held by Lord Fraser that when a public authority has promised to follow a certain procedure, it is in the interest of good administration that it should act fairly and should implement its promise, so long the implementation does not interfere with the statutory duty.

20. In the case of **Public Service Commission Vs. Md. Sohel Rana and others reported in VIII ADC (2011) 332** it has been held that Legitimate expectation can be claimed where a person is the victim of an unfavourable decision taken by a public authority, amounting to infringement of that person's legitimate expectations where, for example, the decision contradicts an earlier promise or course of conduct on the part of the public authority concerned. Such expectation will also arise where a public authority makes a promise and then reneges on it or where there has been some established practice entitling the claimant to expect that practice to be followed and it is not followed.

21. In **Halsbury's Laws of England , 4th Edition** Legitimate Expectation has been defined as follows:

“A person may have a legitimate expectation of being treated in a certain way by administrative authority even though he has no legal right in law to receive such treatment. The expectation may arise either from a representation or promise made by the authority including an implied representation or consistent past practice.”

22. The Government cannot act arbitrarily and capriciously while choosing persons for employment. It cannot pick and choose employees like private individuals. It is always under a duty to act fairly and without discrimination while making choices for employment.

23. Thus in our opinion since the Respondents prepared a list of 27,720 qualified persons for the post of Assistant Teachers after taking written and viva voce examinations and appointed only 12,701 persons those who were not appointed can legitimately complain of inequality before law and discrimination in public employment.

24. In the Affidavit-in-Opposition filed by the respondents no where it has been asserted about the ineligibility of the Writ Petitioners for being appointed as Primary School Teachers as per the advertisement. The petitioners who have been left out cannot be discriminated from those who have been appointed to the post of Government Primary School Teachers after they have been selected and qualified in their written and viva voce examinations.

25. In the case of **Syed S.M. Hasan Vs. Bangladesh** and another reported in 60 DLR (AD) (2008) 76 it has been held:

“Once an incumbent is selected for promotion the list should continue until it is exhausted and thereafter steps should be taken to select others who would follow the suit. Making a long list than the expected vacant posts and putting a time frame and then again selecting others and preparing a new list is highly deprecated as the same tends to deprive the listees who are in the lower side of the list of their legitimate expectation to be promoted in due course.”

26. It has been held in *N.T. Devin Kantti and others vs. Karnataka Public Service Commission* reported in 3 SC Cases 1990 157

“The power of appointment, no doubt, is discretionary but it also cast a duty to act fairly and not arbitrarily. It is not the case of the respondents that the petitioners were not fit to be appointed or that they did not qualify in the written and viva voce examinations. Candidates who apply and undergo written or viva voce test acquire a vested right for being considered for selection in accordance with the terms and conditions contained in the advertisement unless the advertisement itself indicates a contrary intention. Generally, a candidate has a right to be considered in accordance with the terms and conditions set out in the advertisement as his right crystallises on the date of publication of the advertisement, however he has no absolute right in the matter. If recruitment Rules are amended retrospectively during pendency of selection, in that event selection must be held in accordance with the amended Rules. A candidate on making an application for a post pursuant to an advertisement does not acquire any vested right for selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and terms contained in the advertisement, he does acquire a vested right of being considered for selection in accordance with the rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of the rules during pendency of the selection unless amended rules are retrospective in nature.”

27. Those who appeared in the written and viva voce examinations for being appointed as Assistant Teachers of Government Primary Schools had a legitimate expectation that they would be so appointed if they qualified in the examinations but their such expectations have been frustrated due to arbitrary selection by the respondents. In the meantime many of petitioners have grown older and have passed the age of being appointed to Government service. The respondents’ demand for school teachers is however increasing day by day as evident from the impugned Appointment circular under Memo No. প্রাশিঅ/৭ (নিয়াগ)/সশিনি (রাজস্ব)/2014/ 249 dated 14.09.2014 (Annexure-G). In such view of the matter, we see no reason why the petitioners who have been aggrieved by being deprived from being appointed as Assistant Teachers earlier should not be first considered for appointment to the post of Assistant Teachers of Government Primary Schools before considering other candidates for appointment pursuant to Appointment circular under Memo No. প্রাশিঅ/৭ (নিয়াগ)/সশিনি (রাজস্ব)/2014/ 249 dated 14.09.2014.

28. In the result, we find merit in all these Rules and they are made absolute. The respondents are hereby directed to appoint the petitioners to vacant posts of Assistant Teachers of Government Primary Schools before considering other candidates for appointment as Assistant Teachers pursuant to Appointment circular under Memo No. প্রাশিঅ/৭ (নিয়াগ)/সশিনি (রাজস্ব)/2014/ 249 dated 14.09.2014.

29. There will be no order as to costs.