

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)**

**WRIT PETITION NO. 16049 OF 2018**

**WITH**

**WRIT PETITION NO. 31 OF 2020**

IN THE MATTER OF:

An application under Article 102(2) of the Constitution  
of the People's Republic of Bangladesh.

-AND-

IN THE MATTER OF :

Abdur Rahman and others

.....Petitioners

(In Writ Petition No. 16049 of 2018)

Most. Fatima Zinnah and another

.....Petitioners

(In Writ Petition No. 31 of 2020)

**-VERSUS-**

The Government of the People's Republic of  
Bangladesh, represented by the Secretary, Ministry of  
Primary and Mass Education and others.

.....Respondents.

(In both Writ Petitions)

Mr. Mohammad Hossain, Senior Advocate with

Mr. Md. Ataur Rahaman, Advocate

.....For the Petitioners

(In both Writ Petitions)

Mr. Muntasir Uddin Ahmed, Advocate.

.....For the respondent No.3

(In both Writ Petitions)

Mr. Muhammad Khalequzzaman Bhuiyan, Advocate

.....For the respondent Nos. 4-6

(In both Writ Petitions)

**Heard on 27.11.2025 & 04.12.2025 and**  
**Judgment on: 11<sup>th</sup> December, 2025**

**Present:**  
**Mr. Justice Sikder Mahmudur Razi**  
**and**  
**Mr. Justice Raziuddin Ahmed**

**Sikder Mahmudur Razi, J.:**

Since common questions of law and fact is involved in both the writ petitions, therefore, both the writ petitions are taken up together for hearing and now being disposed of by a single judgment. In both the Writ Petitions *Rule Nisi* were issued in identical terms which runs as follows;

*“Let a Rule Nisi be issued calling upon the Respondents to show cause why the Rules for Recruitment in the post of "PTI Instructor" so far as it relates to providing an explanation to the term of 'departmental candidate' meaning "a teacher of an Experimental School only" and thereby excluding the petitioners being the teachers of a Government Primary School from the term of 'departmental candidate' as it is evident from the advertisement Serial No. 71 of the Recruitment Advertisement vide Memo No. 80.00.0000.301.073.01.2018-192 dated 09.09.2018 (Annexure- B) issued under the signature of respondent No. 6 shall not be declared to have been passed without lawful authority and is of no legal effect and as to why they shall not be directed to include the teachers of a Government Primary School within the meaning of 'departmental candidate' in the Rules for Recruitment in the post of "PTI Instructor" and/or such other or further order or orders passed as to this Court may seem fit and proper.”*

Facts, relevant for disposal of the Rules, are as follows:

The petitioners of both the Writ Petitions are the teachers of different Government Primary Schools. All the petitioners have the required

educational qualification for the post of PTI Instructor and all of them were within the age of 45 years and they were within the age limit for a departmental candidate for the post of “PTI Instructor”. But on 09.09.2018, the respondent No. 6 issued the impugned Recruitment Advertisement vide memorandum no. 80. 00. 0000. 301. 073. 01. 2018-192 dated 09.09.2018 being Serial no. 71 for the post of “PTI Instructor” providing an explanation to the term of “departmental candidate” meaning “a teacher of an Experimental School only” and thereby excluded the petitioners being the teachers of a Government Primary School from the term of “departmental candidate” and wherein only the teachers of an Experimental School, a Government Primary School established with the Primary Training Institute has been given the opportunity to apply as a departmental candidate. The petitioners were looking forward for applying for the post of “PTI Instructor” as the departmental candidate but they had been debarred from applying for the post of “PTI Instructor” as the departmental candidate. Prior to filing of the writ petition, the petitioners of Writ Petition No. 16049 of 2018 made applications for the post of “PTI Instructor” within time and during the pendency of the Rules, they appeared in the Preliminary and written examination. The petitioner Nos. 2, 6, 7, 24, 25, 29, 40, 44, 45, 46 and 47 in Writ Petition No. 16049 of 2018 bearing Registration Nos. 000076, 000030, 200198, 300199, 200040, 200197, 700071, 300112, 000203, 700076 and 300104 respectively appeared in the written Examination and passed the written examination. Prior to filing of the Writ Petition, the petitioners in Writ Petition No. 31 of 2020 bearing Registration

No. 700051 and 000008 respectively appeared in the written Examination and during the pendency of the Rule, they passed the written examination. But subsequently, on 22.12.2022, the respondent No. 6 published the schedule for the Viva voce examination vide Memorandum No. 80. 00. 0000. 011. 11. 32. 2015 (Aungsha-3/22)-149 dated 22.12.2022 canceling the candidatures of the petitioners as they were beyond the age limit for the post as per the advertisement, although the petitioners were within the age limit for a departmental candidate and if they were treated as the departmental candidates, they would be qualified for appearing in the examination. Thereafter, the petitioners moved before this Court by filing applications for stay and direction except the petitioner No. 46 of Writ Petition No. 16049 of 2018 and upon hearing on 11.01.2023, this Court was pleased to direct the respondents to keep vacant 12 (twelve) post for the writ petitioners in the post of “PTI Instructor”.

Mr. Mohammad Hossain, Senior Advocate appearing with Mr. Md. Ataur Rahaman, learned Advocate for the petitioners of both the writ petitions submitted that both the teachers of an experimental school and the teachers of a Government Primary School are working in similar posts, under the same Directorate and under the same Ministry and the impugned order providing an explanation to the term of “departmental candidate” meaning a teacher of an Experimental School only and thereby excluding the petitioners being the teachers of a Government Primary School from the term of “departmental candidate” is discriminatory and violative of

fundamental rights of the petitioners as guaranteed under Article 27 and 29 of the Constitution.

Mr. Mohammad Hossain further submitted that in the original Rules of the Directorate of Primary Education Gazetted Officers and Non-Gazetted Employees Recruitment Rules, 1985, there was no explanation to the term of “departmental candidate” for the post of “Instructor (General)” but subsequently, on 31.08.2003 by an amendment of the Directorate of Primary Education Gazetted Officers and Non-Gazetted Employees Recruitment Rules, 1985, an explanation to the term of “departmental candidate’ for the post of Instructor (General) was incorporated as “a teacher of an Experimental School only” but subsequently, the Directorate of Primary Education Gazetted Officers and Non-Gazetted Employees Recruitment Rules, 1985 has been abolished by in pursuance of the Judgment and order dated 15.05.2011 passed by the Hon’ble Appellate Division in the Case of *Siddique Ahmed vs Government of Bangladesh and others [Civil Appeal No. 48 of 2011]*, reported in 65 DLR (AD) 8 and after the abolishment of the Directorate of Primary Education Gazetted Officers and Non-Gazetted Employees Recruitment Rules, 1985, there is no such explanation to the term of “departmental candidate” for the post of “Instructor (General)” and therefore, all the employees of the Directorate of Primary Education shall be the treated as the departmental candidate for the post of “Instructor (General)” and in absence of the any provisions of law/ Rules, providing the explanation in the recruitment advertisement to the term of ‘departmental

candidate' as a teacher of an Experimental School only is illegal, arbitrary, *malafide* and is without lawful authority.

Mr. Mohammad Hossain finally submitted that during the pendency of the Rule, the Ministry of Primary and Mass Education framed the Directorate of Primary Education (Employees) Recruitment Rules, 2023 which has been published in the Bangladesh Gazette Additional Issue dated 13.09.2023, wherein there is no explanation to the term of “departmental candidate” for the post of Instructor (General) and all the employees of the Directorate of Primary Education including the petitioner are now the Departmental candidates for the post of Instructor (General) and by framing the new Rules, the contention of the petitioners have been proved as correct and genuine and the right of the petitioners have been recognized and the impugned recruitment advertisement providing the explanation to the term of “departmental candidate” meaning “a teacher of an Experimental School only” was without any legal basis and is illegal, arbitrary, *malafide* and without lawful authority .

Per contra, Mr. Muntasir Uddin Ahmed, learned Advocate for respondent No. 3, submitted that since the Directorate of Primary Education (Employees) Recruitment Rules, 2023 do not contain any explanation of the term “Departmental Candidate” for the post of Instructor (General), the petitioners being teachers of Government Primary Schools are already covered within the ambit of “Departmental Candidate” for the said post, and, as such, the present Rule has become infructuous. However, the learned

Advocate fairly conceded that, in view of the latest development, the instant Rule may be disposed of with a direction upon the respondents to allow the petitioners to appear in the viva voce examination.

Mr. Muhammad Khalequzzaman Bhuiyan, learned Advocate for respondent Nos. 4–6, submitted that the Bangladesh Public Service Commission (BPSC), acting upon the requisition received from the Directorate of Primary Education under the Ministry of Primary and Mass Education, published the impugned advertisement strictly in accordance with the Recruitment Rules framed by the said Ministry. He further contended that the authority to amend, modify, or change the Recruitment Rules rests exclusively with the Ministry of Primary and Mass Education, and not with the BPSC. The BPSC is bound to act within the four corners of the prevailing government rules and regulations while issuing advertisements and recommending candidates and have no authority to deviate there from. Consequently, unless and until the Recruitment Rules are amended by the competent authority, the BPSC cannot act beyond or contrary to the existing Recruitment Rules.

We have heard the learned Advocates of all the sides and examined the materials on record.

It appears to us that, upon the abolition of the Directorate of Primary Education Gazetted Officers and Non-Gazetted Employees Recruitment Rules, 1985 by operation of the judgment and order dated 15.05.2011 passed in Civil Appeal No. 48 of 2011, there remained no lawful authority empowering the respondents to insert or define any explanation to the term

“departmental candidate” for the post of Instructor (General). Consequently, the insertion of such explanation in the impugned recruitment advertisement was wholly without legal foundation. We have further found that, by deliberately refraining from providing any restrictive explanation to the term “departmental candidate” for the post of Instructor (General), the subsequently framed Recruitment Rules, namely, the Directorate of Primary Education (Employees) Recruitment Rules, 2023, have already brought the petitioners within the ambit and meaning of “departmental candidate” for the said post.

In view of the observations and findings made hereinabove, we are of the considered view that, the right of the petitioners which was earlier curtailed by the impugned recruitment advertisement, now stands duly recognized and reaffirmed under the Directorate of Primary Education (Employees) Recruitment Rules, 2023. Therefore, we are of the view that ends of justice would be best served if the Rule is disposed of with a direction upon the respondents to permit the petitioners, who have already qualified in the written examination, to participate in the viva voce examination.

Accordingly, the respondents/ concerned authorities are hereby directed to hold the *viva- voce* examination of the petitioner Nos. 2, 6, 7, 24, 25, 29, 40, 44, 45, 46 and 47 of Writ Petition No. 16049 of 2018 bearing Registration Nos. 000076, 000030, 200198, 300199, 200040, 200197, 700071, 300112, 000203, 700076 and 300104 respectively and the



petitioners of Writ Petition No. 31 of 2020 bearing Registration No. 700051 and 000008 respectively in respect of the Recruitment Advertisement published vide memorandum no. 80. 00. 0000. 301. 073. 01. 2018-192 dated 09.09.2018 being Serial no. 71 for the post of “Instructor (General)” within 30 (thirty) days from the date of receipt of a copy of this judgment and order and thereby to complete the rest of the procedures as expeditiously as possible.

With the above observations and directions, the Rules are disposed of. However, there is no order as to costs.

Communicate the judgment to the concerned authority, at once.

**(Sikder Mahmudur Razi, J:)**

I agree.

**(Raziuddin Ahmed, J:)**