

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

**Writ Petition No. 440 of 2020**

**IN THE MATTER OF :**

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

-And-

**IN THE MATTER OF :**

**Sharmin Sultana Shorjo and others**

..... Petitioners

-Versus-

Secretary, Ministry of Primary and Mass Education,  
Bangladesh Secretariat Building, Ramna, Dhaka-  
1000 and others

.....Respondents

Mr. Md. Kamal Hossain, Advocate

.....for the petitioners

Mr. Amit Das Gupta, DAG

.....for the respondent No. 1

Mr. Md. Muntasir Uddin Ahmed, Advocate

.....for the respondent No. 2

*Heard on: 31.07.2023 & 07.08.2023*

**Judgment on : 09.08.2023**

**Present:**

**Ms. Justice Naima Haider**

**&**

**Ms. Justice Kazi Zinat Hoque**

**Naima Haider, J;**

The dispute in the instant writ petition in broad terms relates to service matter and the arguments advanced by the respective parties necessitates addressing certain important questions of law.

This Division by order dated 14.01.2020, a Rule was issued in the following terms:

Let a Rule Nisi was issued calling upon the respondents to show cause as to why the final result vide Memo No. 38.01. 0000. 143. 11.

011.18-291 dated 24.12.2019 published by the respondent No. 2 selecting candidates for appointment to the post of Assistant Teachers in different Government Primary School in the Court (Annexure-C) violating the provisions laid down in the “সরকারী প্রাথমিক বিদ্যালয়ে শিক্ষক নিয়োগ বিধিমালা-২০১৩” should not be declared without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.

Subsequently, by order dated 06.08.2023, a Supplementary Rule was issued in the following terms:

Let a supplementary Rule Nisi be issued calling upon the respondents to show cause as to why they should not be directed to appoint the petitioners as Assistant Teachers in Government Primary Schools to the respective Thana/Upazila under Bhola District in the light of the quota mentioned in “সরকারী প্রাথমিক বিদ্যালয়ে শিক্ষক নিয়োগ বিধিমালা-২০১৩” by preparing a merit list of the petitioners on the basis of written and viva voce examination and/or pass such other or further order or orders as to this Court may seem fit and proper.

Two separate applications were filed for addition of parties. These applications were allowed and the applicants were added as co-petitioners. In this judgment, the co-petitioners are addressed as “petitioners” for convenience. We wish to point out that this Judgment will apply in respect of them as well.

The petitioners are citizens of Bangladesh. The respondents invited applicants to apply for the post of Assistant Teacher and the petitioners, having requisite qualifications, applied. Admit cards were issued in their favour. The petitioners attended the written examination held on 24.05.2019. They all passed in the written examination and thereafter they attended the viva voce. Thereafter result was published but the petitioners' names did not appear in the list. The petitioners are all from Bhola District.

The contention of the petitioners is simple; the respondents in the appointment process did not follow the provision dealing with quota as contained in সরকারি প্রাথমিক বিদ্যালয় শিক্ষক নিয়োগ বিধিমালা, ২০১৩ (“the 2013 Regulations”) though they were required to do so. The argument of the petitioners is that had the 2013 Regulations been followed, then they would have been appointed as Assistant Teachers. The petitioners thus, in broad terms, challenged the appointment process and also sought direction from this Division to appoint them to the post of Assistant Teacher under the 2013 Regulations. Rule Nisi and Supplementary Rule was issued in terms quoted aforesaid.

The relevant Regulation of the 2013 Regulations, calling for interpretation is Regulation 7. Regulation 7 is set out below for ease of reference:

৭। কোটা বিভাজন। (১) অন্য কোন বিধি বা সরকারি সিদ্ধান্তে যাহা কিছুই উল্লেখ থাকুক না কেন-  
(ক) এই বিধিমালার অধীন সরাসরি নিয়োগযোগ্য পদগুলির ৬০% মহিলা প্রার্থীদের দ্বারা, ২০% পোষ্য প্রার্থীদের দ্বারা এবং বাকী ২০% পুরুষ প্রার্থীদের দ্বারা পূরণ করা হইবে;

(খ) উপজেলা/থানা ভিত্তিক শূন্যপদ অনুযায়ী কোন কোটায় উপযুক্ত প্রার্থী পাওয়া না গেলে মেধাক্রম অনুযায়ী একই উপজেলা বা ক্ষেত্রমত থানার উত্তীর্ণ সাধারণ প্রার্থীদের দ্বারা তাহা পূরণ করা হইবে।  
 (২) উপবিধি (১) এ উল্লিখিত মহিলা, পোষ্য ও পুরুষ কোটা পূরণের ক্ষেত্রে, আপাততঃ বলবৎ অন্য কোন বিধি বা সরকারি সিদ্ধান্তে কোন বিশেষ শ্রেণীর কোটা নির্ধারিত থাকিলে সেই কোটা সংক্রান্ত বিধান অনুযায়ী নিয়োগ করিতে হইবে।

There is no dispute that the applications were sought for in connection with direct appointment. The contending parties do not dispute on the applicability of Regulation 7 given that Clause 15 of the order dated 30.07.2018 (Annexure-A to the writ petition) provides that the provisions of সরকারি প্রাথমিক বিদ্যালয় শিক্ষক নিয়োগ বিধিমালা, ২০১৩ will be applicable in the appointment process. The issue is how Regulation 7 ought to have been applied and whether the respondents correctly applied Regulation 7 in the appointment process.

The learned Counsel appearing for the petitioners takes us through the writ petition and the documents annexed therein. He submits that Regulation 7 contemplates quota system and 60% of the posts would have to be filled up by female candidates but the result published does not reflect that this mandatory provision was followed. Had the mandatory provision been followed, then the petitioners would have been appointed and therefore, intervention by this Division is necessary. He also submits that the failure to follow the mandatory provision resulted in violation of petitioners' fundamental right to be treated in accordance with law. Primarily on these counts, the learned Counsel submits that the instant Rule should be made absolute with appropriate direction in terms of the Supplementary Rule.

The Rule is opposed by the respondent Nos. 1 and 2. Two separate Affidavits in Opposition were filed by the respective respondents.

The respondent No.1 in the Affidavit in Opposition states that there was no violation of law in the selection process. The respondent No.1 states that the final result was published pursuant to the circulars dated 17.03.1997 and 05.0.2018 (Annexures-2 and 3) and therefore, the issue of violation does not arise. The respondent No.1 states that selection of candidates is a policy decision of the Government and therefore, this Division should not intervene. The respondent No.1 through Annexure-4 of the Affidavit in Opposition provided an explanation with regard to the selection process. This clarifies the decision making process. For ease of reference the relevant part of the said explanation issued by the Directorate of Primary Education is set out below:

সরকারি প্রাথমিক বিদ্যালয়ের শিক্ষক নিয়োগ বিধিমালা, ২০১৩ এর ৭(১) (ক) অনুসরণপূর্বক প্রথমে ভোলা জেলার ৩৪৪ টি শূন্য পদে ৬০% হারে মহিলা কোটায় ২০৭টি, পোষ্য কোটায় ২০% হারে ৬৮টি, ও পুরুষ কোটায় ২০% হারে ৬৯টি পদ পূরণের জন্য নির্ধারণ করা হয়।

মহিলা কোটায় পূরণযোগ্য ২০৭ টি পদকে আবার সংস্থাপন মন্ত্রণালয়ের ১৭/০৩/১৯৯৭ তারিখের সম(বিধি-১)-এস-৮/৯৫(অংশ-১)-৫৬(৫০০) নম্বর পরিপত্র অনুসরণে মুক্তিযোদ্ধা কোটা ৩০% হারে ৬২টি, আনসার ও ভিডিপি ১০% হারে ২১টি, এতিম প্রতিবন্ধী ১০% হারে ২১টি ও ক্ষুদ্র নৃ-গোষ্ঠী ৫% হারে ১১টি পদ এবং অবশিষ্ট ৪৫% হারে ৯২টি পদ উপজেলার সাধারণ মহিলা প্রার্থীদের দ্বারা পূরণের জন্য নির্ধারণ করা হয়। উল্লিখিত সাধারণ মহিলা কোটা ৯২ টির মধ্যে যোগ্য মহিলা প্রার্থী ৯২ জন দ্বারা পূরণ সম্ভব হয়েছে। মুক্তিযোদ্ধা কোটা থেকে ৬২টির মধ্যে ১১টি পূরণ সম্ভব হয়। অবশিষ্ট ৫১ টি মহিলা মুক্তিযোদ্ধা কোটায় পদ উপযুক্ত প্রার্থী না পাওয়ায় পূরণ করা সম্ভব হয়নি।

অনুরূপভাবে আনসার ভিডিপি ২১টির মধ্যে ১৫ টি মহিলা আনসার ভিডিপি কোটার প্রার্থী দ্বারা পূরণ সম্ভব হয়, ৬টি পদ পূরণ সম্ভব হয়নি: এতিম প্রতিবন্ধী ২১ টির মধ্যে ২১ টিই পূরণ সম্ভব হয়নি; এবং ১১ টি ক্ষুদ্র নৃ-গোষ্ঠী পদের ১১ টিই পূরণ করা সম্ভব হয়নি। মহিলা কোটার মোট ৮৯টি পদ উপযুক্ত প্রার্থী না পাওয়ায় পূরণ করা সম্ভব হয়নি। অনুরূপভাবে পোষ্য ও পুরুষ কোটার পদগুলো একই পদ্ধতি অনুসরণপূর্বক পূরণ করা হয়।

The learned Deputy Attorney General appearing for the respondent No.1 takes us through the Affidavit in Opposition and elaborates the issues pointed out. He submits that the Rule is misconceived and therefore, liable to be discharged.

The respondent No.2 also filed an Affidavit in Opposition. The respondent No.2 through the Affidavit in Opposition points out that there is a requirement to “subdivide” the quota system in terms of the circulars issued on 17.03.1997 and 05.04.2018. In this regard, the respondent No.3 relies upon Regulation 7(2) of the 2013 Regulations which reads as follows:

(২) উপবিধি (১) এ উল্লিখিত মহিলা, পোষ্য ও পুরুষ কোটা পূরণের ক্ষেত্রে, আপাততঃ বলবৎ অন্য কোন বিধি বা সরকারি সিদ্ধান্তে কোন বিশেষ শ্রেণীর কোটা নির্ধারিত থাকিলে সেই কোটা সংক্রান্ত বিধান অনুযায়ী নিয়োগ করিতে হইবে।

The respondent No.2 points out that because the appointment process followed the circulars referred to aforesaid, it cannot be said that the appointment process was illegal. The learned Counsel appearing for the respondent No.2 took us through the relevant Affidavit in Opposition and elaborated his submissions. He submits that the Rule is misconceived and accordingly, should be discharged.

We have heard the learned Counsels for the contending parties. We have also perused the pleadings and the documents annexed.

At the outset, we would wish to address the argument advanced by the learned Counsel for the respondent No.1 that the selection process is a part of Government policy and cannot be interfered with.

Policy decisions are for the Government to take. Policy decisions primarily follow from the Government's election mandate. Policy decisions are therefore within the exclusive realm of the executives. The High Court Division is not equipped to deal with policy matters since the Courts do not have expertise and are not equipped to deal with competing claims and conflicting interests in complex social, economic and commercial matters; more importantly policy decisions are not concerns of the High Court Division. As such, when any dispute relates to policy decision, the High Court Division is slow to intervene; it is never the case that the High Court Division shall cease to interfere when plea of policy is raised.

When "policy" is pleaded, the High Court Division is required to assess whether the issue is infact a policy matter or executive decision. If the decision in question is a policy decision, then the High Court Division can proceed to decide whether in the taking the policy decision or in its implementation, there will be any violation of law or fundamental rights. If the answer is in the affirmative, this Division is constitutionally mandated to intervene. In this regard, we refer to the

views expressed in the celebrated case of *Narmada Bachao Andolon V Union of India [(2000) 10 SCC 664]* where the Supreme Court held:

*“... Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of the policy-making process and the courts are ill equipped to adjudicate on a policy decision so undertaken. The courts, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people’s fundamental rights are not transgressed upon except to the extent permissible by the Constitution...”*

What is the policy consideration in the present context? The intention of the Government to introduce “quota system” is the policy decision which is carried out through the 2103 Regulations. Given the wordings of Article 28(4) of the Constitution, it is not for this Division to question introduction of “60% quota” for female candidates, unless it appears that the introduction is absurd, or violates any law or any other fundamental provisions of the Constitution. Having said so, the selection process adopted by the executives cannot be termed as policy decision; whether the executives applied the correct law or took account of relevant considerations is reviewable.

In the instant case, we are not called upon to review the propriety of the Government’s policy but rather we are called upon to deal with



the propriety of the manner in which the policy was furthered by the executives. Certainly this is reviewable.

The petitioners were not appointed to the post of Assistant Teacher. It is not the contention of the respondents that the petitioners did not pass the viva voce. Therefore, the presumption is that they passed. The reason why the petitioners were not appointed was that the respondents appeared to have created “quota within quota” in reliance upon Regulation 7(2) of the 2013 Regulations. This is evident from the Affidavits filed by the respondents and also from the explanation given though Annexure-4 of the Affidavit in Opposition filed by the respondent No.1, the relevant part of which is quoted above.

What we understand is that in the selection process, the respondents in reliance upon Regulation 7(2) of the 2013 Regulations applied the circulars issued on 17.03.1997 and 05.04.2018. The issue before us is whether, in the present context, the respondents were permitted to apply the said circulars.

The 2013 Regulations does not have general applicability. It applies only in respect of appointment of teachers in Government schools. The 2013 Regulations contemplate two types of appointment process. The first is appointment to a post directly and second is through promotion. Regulation 7 applies in cases of direct appointment only. Regulation 7 is an overriding provision and applies regardless of what is

contained any other regulations or Government decisions. Regulation 7(1) (ক) provides that any appointment under this Regulations should follow appointment on the basis of quota [এই বিধিমালার অধীন সরাসরি নিয়োগযোগ্য পদগুলির ৬০% মহিলা প্রার্থীদের দ্বারা, ২০% পোষ্য প্রার্থীদের দ্বারা এবং বাকী ২০% পুরুষ প্রার্থীদের দ্বারা পূরণ করা হইবে]. This does not mean that merit will be ignored; what it simply implies is that at the initial stage, merit is to be assessed by reference to “quota”. Thus to provide an example, if there are 100 posts, 60 posts would need to be filled by “female candidates”; if there are 70 female applicants, then the 60 posts would need to be filled on the basis of merit, to be assessed among the “female applicants”. This applies for males as well as পোষ্য প্রার্থী.

Regulation 7(1) (খ) deal with situation where it is not possible to fill up the quota. In such a case, the position is to be filled on the basis of merit. Thus for instance, in the example we have given, if the number of female applicants is 30, against 100 post, and assuming all 30 female candidates qualify, then the remaining 30 posts would need to be filled by reference to merit from general applicants of একই উপজেলা বা ক্ষেত্রমত থানা; in such a situation there is scope for male candidates to be appointed regardless of the fact that this would result in appointment of more than 20% male candidates.

Regulation 7(2) of the 2013 contemplates that in the event there is any Government rules or decision in respect of any বিশেষ শ্রেণীর কোটা then such rules or decisions are to be followed. From the Affidavit in

Opposition filed by the respondents, it seems that in the appointment process, Regulation 7(2) of the 2013 Regulations was relied upon and in reliance, circulars dated 17.03.1997 and 05.04.2018 were applied. This would be evident from the explanation provided, quoted above.

It is a cardinal principle that interpretation of statutory instruments must not result in absurdity. At the same time, principles of interpretation require that when two statutory instruments are required to be interpreted at the same time, the Court should ensure harmony in interpretation. Any interpretation that would result in absurdity or negative the meaning and spirit of the principal legislation should be avoided. Regulation 7(2) of the 2013 Regulations, on its own is clear. However, given that Rule 7 of the 2013 Regulations contemplate 100% appointment on the basis of “quota”, Regulation 7(2) necessarily implies that it shall apply in the event application of any other বিধি বা সরকারি সিদ্ধান্ত does not create absurdity and or nullifies the effect and impact of Regulation 7(1).

The order dated 17.03.1997 proceeds to set out quota system for appointment. The said order provides for the types of quota and the respective percentage. It is clear that this order was applied by the respondents in reliance upon Regulation 7(2) of the 2013 Regulations. The order dated 05.04.2018 supplements the order dated 17.03.1997. It provides for the selection process in the event a particular quota could not be filled up because of lack of eligible candidates.

What we note from the explanation provided is that the respondents applied the order dated 17.03.1997 in the selection process. This affected the eligibility and as a result, the order dated 05.04.2018 was applied. Had the order dated 17.03.1997 not been applied, issue of application of order dated 05.04.2018 would not have arose. Therefore, the issue is whether it was proper or rather permissible for the respondents to apply the order dated 17.03.1997 to begin with.

The relevant part of the order dated 17.03.1997 (Annexure-2 to the Affidavit in Opposition filed by respondent No.1) contains a chart which is reproduced below for ease of reference:

বিভিন্ন ধরনের কোটা	১ম ও ২য় শ্রেণীর পদসমূহের জন্য (শতকরা হার)	৩য় ও ৪র্থ শ্রেণীর পদসমূহের জন্য (শতকরা হার)
১। মেধা কোটা (জেলা কোটা বহির্ভূত)	৪৫%	--
২। এতিমখানার নিবাসী ও শারীরিক প্রতিবন্ধী (জেলা কোটা বহির্ভূত)	--	১০%
৩। জেলা কোটা (জনসংখ্যার ভিত্তিতে জেলা ওয়ারী বন্টন)	--	--
ক) মুক্তিযোদ্ধা এবং উপযুক্ত মুক্তিযোদ্ধা প্রার্থী পাওয়া না গেলে মুক্তিযোদ্ধা/শহীদ মুক্তিযোদ্ধার পুত্র ও কন্যা	৩০%	৩০%
খ) মহিলা কোটা	১০%	১৫%
গ) উপ-জাতীয় কোটা	০৫%	০৫%
ঘ) আনসার ও গ্রাম প্রতিরক্ষা সদস্যদের কোটা	--	১০%

ঙ) অবশিষ্ট (জেলার সাধারণ প্রার্থীদের জন্য)	১০%	৩০%
	মোট- ১০০%	১০০%

In the present context, this chart was followed to determine the eligibility.

Two issues are relevant in the present context. First, the order dated 17.03.1997 has general applicability and second, the said order being executive order, cannot have precedence over the 2013 Regulations. Therefore, prior to application of the order dated 17.03.2017, the respondents should have assessed whether the application would result in absurdity in implementation of the 2013 Regulations.

In our view, the wordings of the 2013 Regulation does not permit applicability of the order dated 17.03.1997 because the application would not only create absurdity but at the same time would negate Regulation 7. Few examples will illustrate this:

- (i) Application of the order dated 17.03.1997 results in creation of “female quota” within “female quota”, which is absurd. Furthermore, under the 2013 Regulations, the female intake would be 60% but under the order dated 17.03.1997, it is 10% which in effect negatives Regulation 7;
- (ii) Application of order dated 17.03.1997 creates “female quota” of 10% within “male quota” [as contemplated under the 2013 Regulations], which is absurd. The fact that this was done would be evident from paragraph 12 of the

Affidavit in Opposition filed by the respondent No.3 where it is stated “ *Similarly, the posts reserved for the Dependent quota and Male quota were also divided*” and also from the explanation provided (Annexure-4 to the Affidavit in Opposition filed by respondent No.1) the relevant part of which reads as follows । অনুরূপভাবে পোষ্য ও পুরষ কোটার পদগুলো একই পদ্ধতি অনুসরণপূর্বক পূরণ করা হয় ।

- (iii) The order dated 17.03.1997 contemplates 45% intake on the basis of মেধা কোটা (জেলা কোটা বহির্ভূত). However, Regulation 7 does not contemplate জেলা বহির্ভূত appointments and this can be deduced from the following: (খ) উপজেলা/থানা ভিত্তিক শূন্যপদ অনুযায়ী কোন কোটায় উপযুক্ত প্রার্থী পাওয়া না গেলে মেধাক্রম অনুযায়ী একই উপজেলা বা ক্ষেত্রমত থানার উত্তীর্ণ সাধারণ প্রার্থীদের দ্বারা তাহা পূরণ করা হইবে। Therefore, the application of the order dated 17.03.1997 would negate the effect of Regulation 7 of the 2013 Regulations

(underlined by us)

Other anomalies also result if the order dated 17.03.1997 is applied in the selection process under the 2013 Regulations.

In our view, application of the order dated 17.03.1997 would have been permissible under the 2013 Regulations if the said order did not create absurdities or render Regulation 7 of the 2013 Regulations meaningless; that is not the case here. The application of the order dated 17.03.1997 in respect of “all the quotas” contemplated under the 2013 Regulations resulted in absurdity and negated the effect of Regulation 7(1) of the 2013 Regulations. It is because of the application of the order dated 17.03.1997 the number of eligible candidates dropped and the

respondents proceeded to follow the order dated 05.04.2018. Since there was no scope to apply the order dated 17.03.1997 in the present selection process, in our view, there was no scope to apply the order dated 05.04.2018. The application of the said orders in the selection process was clearly erroneous and based on misconstruction of the scope of Regulation 7(2) of the 2013 Regulations.

The erroneous application resulted in publication of merit list that seems to have deprived the petitioners the opportunity of being appointed. This requires intervention. In the Affidavits the respondents did not state that the all or some of the petitioners did not pass the viva voce examination. We cannot presume that they did. Since the basis of selection is flawed and we are not in a position to assess whether the petitioners would have been eligible had the order dated 17.03.1997 been applied, we are inclined to dispose of the Rule with the following observations and directions:

The application of the order dated 17.03.1997 in appointment process under the সরকারি প্রাথমিক বিদ্যালয় শিক্ষক নিয়োগ বিধিমালা, ২০১৩ is unlawful and consequentially the result published by the respondents is erroneous;

- (a) The respondents are directed to prepare a new merit list based on written and viva voce examination in compliance with Regulation 7 of the সরকারি প্রাথমিক বিদ্যালয় শিক্ষক নিয়োগ বিধিমালা, ২০১৩;

(b) Based on the new merit list, the respondents are directed to appoint the petitioners as Assistant Teachers in Government Primary Schools of respective Thana/Upazila of Bhola District unless otherwise disqualified; and

(c) The respondents are further directed to complete the appointment process within 6(six) months from the date of receipt of our Judgment and Order.

With the aforesaid observations and directions, the instant Rule is disposed of without any order as to costs.

Communicate the Judgment and Order at once for immediate compliance.

**Kazi Zinat Hoque, J.**

*I agree.*