

In the Supreme Court of Bangladesh  
High Court Division  
(Special Original Jurisdiction)

**Present**

**Madam Justice Kashefa Hussain**

**And**

**Madam Justice Fatema Najib**

**Writ Petition No. 4940 of 2021**

**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:**

Muhammad Mahmudur Rahman and  
others

..... Petitioners.

Vs.

The Government of Bangladesh and  
others.

.... Respondents

Mr. M. Moniruzzaman Asad, Advocate

.....for the petitioners.

Mr. Noor Us Sadik Chowdhury, D.A.G

with Mr. Md. Awlad Hossain, A.A.G

with Mr. Rashedul Islam, A.A.G

.....for the respondent nos1-3

Mr. Kamruzzaman Bhuiyan, Advocate

.....for the respondent nos 4-8

**With**

**Writ Petition No. 4941 of 2021**

**In the matter of :**

Md. Asraful Alam and others

.... petitioners

Vs.

Government of Bangladesh and others

.... respondents

Mr. M. Moniruzzaman Asad, Advocate

.....for the petitioners.

Mr. Noor Us Sadik Chowdhury, D.A.G

with Mr. Md. Awlad Hossain, A.A.G

with Mr. Rashedul Islam, A.A.G

.....for the respondent nos1-3  
Mr. Kamruzzaman Bhuiyan, Advocate  
.....for the respondent nos 4-8

**With**

**Writ Petition No. 4942 of 2021**

**In the matter of:**

Md. Salim Rana and others

.... petitioners

Vs.

Government of Bangladesh and  
others.

.... respondents

Mr. M. Moniruzzaman Asad, Advocate

.....for the petitioners.

Mr. Noor Us Sadik Chowdhury, D.A.G

with Mr. Md. Awlad Hossain, A.A.G

with Mr. Rashedul Islam, A.A.G

.....for the respondent nos1-3  
Mr. Kamruzzaman Bhuiyan, Advocate  
.....for the respondent nos 4-8

**With**

**Writ Petition No. 6451 of 2021**

**In the matter of:**

Md. Sohag Howlader and others

.... petitioners

Vs.

Government of Bangladesh and others

..... respondents

Mr. M. Moniruzzaman Asad, Advocate

.....for the petitioners.

Mr. Noor Us Sadik Chowdhury, D.A.G

with Mr. Md. Awlad Hossain, A.A.G

with Mr. Rashedul Islam, A.A.G

.....for the respondent nos1-3  
Mr. Kamruzzaman Bhuiyan, Advocate  
.....for the respondent nos 4-8

**With**

**Writ Petition No. 8074 of 2021**

**In the matter of:**

Md. Yeasinur Rahman and others  
 ..... petitioners  
 Vs.  
 Government of Bangladesh and others  
 .... respondents  
 Mr. M. Moniruzzaman Asad, Advocate  
 .....for the petitioners.  
 Mr. Noor Us Sadik Chowdhury, D.A.G  
 with Mr. Md. Awlad Hossain, A.A.G  
 with Mr. Rashedul Islam, A.A.G  
 .....for the respondent nos1-3  
 Mr. Kamruzzaman Bhuiyan, Advocate  
 .....for the respondent nos 4-8

**With**  
**Writ Petition No. 4665 of 2021**

**In the matter of:**

Md. Atiqul Islam Mukul and others  
 ..... petitioners  
 Vs.  
 Government of Bangladesh and others  
 .... respondents  
 Mr. Md. Faruk Hossein, Advocate  
 .....for the petitioners.  
 Mr. Noor Us Sadik Chowdhury, D.A.G  
 with Mr. Md. Awlad Hossain, A.A.G  
 with Mr. Rashedul Islam, A.A.G  
 .....for the respondent nos1-3  
 Mr. Kamruzzaman Bhuiyan, Advocate  
 .....for the respondent nos 4-8

**With**  
**Writ Petition No. 3499 of 2021**

**In the matter of:**

Md. Suman and others  
 ..... petitioners  
 Vs.  
 Government of Bangladesh and others  
 .... respondents  
 Mr. Yusuf Hussain Humayun, Senior Advocate  
 with Mr. Nazmul Hasan Rakib, Advocate

.....for the petitioners.

Mr. Noor Us Sadik Chowdhury, D.A.G

with Mr. Md. Awlad Hossain, A.A.G

with Mr. Rashedul Islam, A.A.G

.....for the respondent nos1-3

Mr. Kamruzzaman Bhuiyan, Advocate

.....for the respondent nos 4-8

**With**

**Writ Petition No. 8484 of 2021**

**In the matter of:**

Md. Zahangir Alam and others

..... petitioners

Vs.

Government of Bangladesh and others

..... respondents

Mr. Md. Faruk Hossein, Advocate

.....for the petitioners.

Mr. Noor Us Sadik Chowdhury, D.A.G

with Mr. Md. Awlad Hossain, A.A.G

with Mr. Rashedul Islam, A.A.G

.....for the respondent nos1-3

Mr. Kamruzzaman Bhuiyan, Advocate

.....for the respondent nos 4-8

**With**

**Writ Petition No. 9417 of 2020**

**In the matter of:**

Md. Waliullah and others

... .. petitioners

Vs.

Government of Bangladesh and  
others.

.... respondents

Mr. Md. Siddique Ullah Miah, Advocate

.....for the petitioners.

Mr. Noor Us Sadik Chowdhury, D.A.G

with Mr. Md. Awlad Hossain, A.A.G

with Mr. Rashedul Islam, A.A.G

.....for the respondent nos1-3

Mr. Kamruzzaman Bhuiyan, Advocate  
.....for the respondent nos 4-8

**Heard on: 18.05.2022, 19.05.2022, 23.05.2022,  
26.05.2022, 30.05.2022, 31.05.2022 and judgment  
on: 01.06.2022.**

**Kashefa Hussain, J:**

Supplementary affidavit do form part of the main petition.

All these Rules in these writ petitions are taken up together for hearing since they involve similar questions of law and fact and therefore are now being disposed of by a single judgment.

We have perused the writ petitions before us which involve similar question of law and fact. Rule s were issued on the same terms in all the writ petitions. However for sake of convenience we are inclined to take up writ petition No. 4940 of 2021 in which Rule nisi was issued in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the action of the respondents in not taking immediate steps for the appointment by recommending the names of the petitioners pursuant to clause 5.0 of the Circular (Annexure-E to the writ petition) to the ascertained vacant posts as per clause 10(Jha) of the advertisement of 13<sup>th</sup> Teachers’ Registration Examination 2016 (Annexure-C to the writ petition) according to their issued certificates should not declared to be without lawful authority and of no legal And why the respondents should not be directed to take immediate steps for the appointment by recommending the names of the petitioners pursuant to clause 5.0 of the circular (Annexure-E to the writ petition) to the ascertained vacant posts as per clause 10(Jha) of the

advertisement of the 13<sup>th</sup> Teachers' Registration Examination 2016 (Annexure-C to the writ petition) according to their issued certificates and/or pass such other or further order or orders as to this court may seem fit and proper.”

The petitioners are all citizens of Bangladesh with their names and addresses in the cause title in all writ petitions being Writ Petition No. 4940 of 2021, Writ Petition No. 4941 of 2021, Writ Petition No. 4942 of 2021, Writ Petition No. 6451 of 2021, Writ Petition No. 8074 of 2021, Writ Petition No. 4665 of 2021, Writ Petition No. 3499 of 2021, Writ Petition No. 8484 of 2021 and Writ petition No. 9417 of 2020.

In all the writ petitions the respondent No. 1 is the Secretary, Ministry of Education, Secondary and Higher Secondary Division, Bangladesh Secretariat, Secretariat Building, Police Station: Shahabag, Dhaka, respondent No. 2 is the Secretary, Ministry of Education, Technical and Madrasha Division, Bangladesh Secretariat, Secretariat Building, Police Station: Shahabag, Dhaka, respondent No. 3 is the Director General, Secondary and Higher Secondary Division, Shikkha Bhaban, Police Station: Shahabagh, Dhaka, respondent No. 4 is the Chairman, Non-Government Teachers' Registration and Certification Authority (NTRCA), Red-crescent Borak Tower, Level – 04 and 05, 37 / 3A, Eskaton Garden, Ramna, Dhaka, respondent No. 5 is the Member (Joint Secretary), Examination Evaluation and Certification, Non-Government Teachers' Registration and Certification Authority (NTRCA), Red-crescent Borak Tower, Level – 04 and 05, 37 / 3A, Eskaton Garden, Ramna, Dhaka, respondent No. 6

is the Member (Theory of Education and Standard of Education), Non-Government Teachers' Registration and Certification Authority (NTRCA), Red-crescent Borak Tower, Level – 04 and 05, 37 / 3A, Eskaton Garden, Ramna, Dhaka, respondent No. 7 is the Director, Non-Government Teachers' Registration and Certification Authority (NTRCA), Red-crescent Borak Tower, Level – 04 and 05, 37 / 3A, Eskaton Garden, Ramna, Dhaka and the respondent No. 8 is the Secretary (Deputy Secretary), Non-Government Teachers' Registration and Certification Authority (NTRCA), Red-crescent Borak Tower, Level – 04 and 05, 37 / 3A, Eskaton Garden, Ramna, Dhaka.

The petitioners case also is that in order to appoint qualified Teachers in Non-Government Educational Institutions all over the country, on 15.02.2005 the Government of the Peoples' Republic of Bangladesh formulated a law under the heading of “বেসরকারী শিক্ষক নিবন্ধন পরীক্ষা ও প্রত্যায়ন কর্তৃপক্ষ আইন, ২০০৫”. That in exercise of the powers conferred by section 21 of the “বেসরকারী শিক্ষক নিবন্ধন পরীক্ষা ও প্রত্যায়ন কর্তৃপক্ষ আইন, ২০০৫” , the Ministry of Education adopted the Probidhanmala, naemly, “বেসরকারী শিক্ষক নিবন্ধন, পরীক্ষা গ্রহণ ও প্রত্যায়ন বিধিমালা, ২০০৬” containing the provisions of recruitment of teachers in Non-Government Educational Institutions. Subsequently the said Probidhanmala 2006 was amended on 22.10.2015 vide S.R.O No. 309 – আইন /2015 wherein also containing the provisions of recruitment of teachers in Non-Government Educational Institutions, namely Rule 3-Ka which has been inserted in the Rules of 2006

which is as follows: “ বিধি ৩ক, বেসরকারী শিক্ষক নিবন্ধন, পরীক্ষা গ্রহণ ও প্রত্যয়ন বিধিমালা, ২০০৬। শূন্যপদের সংখ্যা নিরূপণ:

১. কর্তৃপক্ষ, প্রতি বৎসর নভেম্বর মাসের মধ্যে, জেলা শিক্ষা অফিসারের মাধ্যমে জেলাধীন সংশ্লিষ্ট বেসরকারী শিক্ষা প্রতিষ্ঠানসমূহের পদ ও বিষয় ভিত্তিক শূন্য পদের তালিকা সংগ্রহ করিবে।
২. সংশ্লিষ্ট উপজেলা বা থানা মাধ্যমিক শিক্ষা অফিসার উপ-বিধি (১) এ উল্লেখিত তালিকা প্রণয়ন করিয়া অক্টোবর মাসের মধ্যে জেলা শিক্ষা অফিসারদের নিকট দাখিল করিবেন।
৩. জেলা শিক্ষা অফিসার উক্ত তালিকারসঠিকতা যাচাইক্রমে কর্তৃপক্ষের অনুকূলে প্রেরণ করিবেন এবং কর্তৃপক্ষ উক্ত তালিকার ভিত্তিতে পরীক্ষা গ্রহণের ব্যবস্থা করিবে। ”

That based on 3 Rule 3-Ka of amended Bidhimala, 2006 (amended on 22.10.2015), NTRCA on 30.12.2015 published a circular bearing Memo No. 37.00.0000.071.08.008.05(Aunsha)-1081 dated 30.12.2015. Based on the said amendment Rule 3-Ka and as well as circular dated 30.12.2015, NTRCA published a public notice in the website namely [www.ntrca.gov.bd](http://www.ntrca.gov.bd) under Title “13<sup>th</sup> Teachers’ Registration Examination-2016” inviting applications from interested candidates for sitting in the 13<sup>th</sup> Teachers’ Registration Examination-2016 for the purpose of fulfillment of the vacant post of teachers in Non-Government Educational Institutions as per Clause 10-Jha of said examination notice dated 24.02.2016. Relying on clause 10-Jha of said “13<sup>th</sup> Teachers’ Registration Examination-2016” notice dated 24.02.2016 all the writ petitioners sat for examination and passed preliminary, written as well as viva-voce examination as per Clause 10-Jha of said examination notice. Results were published on



04.06.2017 and the petitioners obtained certificate from NTRCA. The writ respondents pursuant to the relevant Rules of 2006 amended in 2015 and pursuant to the Guidelines prepared a merit list of qualified candidates to be appointed through NTRCA pursuant to recommendation in the vacant posts for which 13<sup>th</sup> Teachers' Registration Examination-2016 was held. The then Hon'ble Minister, Minister of Education made an announcement stating that the qualified candidates of 13<sup>th</sup> Teachers' Registration Examination would be appointed to their respective posts and the said announcement was published in different electronics as well as printing media. The predecessors of the writ petitioners earlier about 2207 in number being qualified candidates of 13<sup>th</sup> Teachers' Registration Examination -2016 filed writ petition Nos. 16307 of 2017, 18506 of 2017, 17896 of 2017, 17961 of 2017 , 18100 of 2017, 18727 of 2017 and 18728 of 2017 respectively before the Hon'ble High Court Division and sought for 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 (Annexure D of said writ petition) to the ascertained vacant posts as per Clause 10-Jha of the notice of 13<sup>th</sup> Teachers' Registration Examination-2016 in accordance with their issued certificates. Accordingly, Rule Nisi was issued and after hearing of the said Rules analogously, on 05.11.2018 a Division Bench of the High Court Division made the Rules absolute with a direction upon the respondents. Against the said judgment and order dated 05.11.2018 passed by the High Court division, NTRCA filed a Civil Petition for

Leave to Appeal before the Hon'ble Appellate Division of the Supreme Court of Bangladesh which was turned into Civil Appeal No. 343 of 2019. Upon hearing the said Civil Appeal No. 343 of 2019 the Hon'ble Appellate Division on 12.03.2020 vide judgment disposed of the appeal and upheld the judgment and direction passed by the Hon'ble High Court Division in said writ petitions. On 30.03.2021 one Member (Joint Secretary), NTRCA, Dhaka published a circular inviting the interested candidates for appointment as teachers in different institutions all over the country. In the said circular it has been noticed that about 2207 qualified candidates' posts have been reserved. Clause 6 of the said circular states that as per judgment of the Appellate Division passed in Civil Appeal No. 343 of 2019, the said 2207 qualified candidates (earlier writ petitioners i.e. the predecessors of present writ petitioners) do not have to give their choice, they will have to simply make an application.

That the instant petitioners case is also that although all these petitioners pursuant to their being in the merit list are entitled to be recommended by Non-Government Teachers' Registration and Certification Authority (NTRCA) who is the respondent No. 4 and all the petitioners are enlisted in merit list pursuant to Viva voce examination but till date the respondent No. 4 did not recommended the names of the petitioners for purpose of appointment and by their inaction committed illegally. Hence the writ petition.

Learned Advocate Mr. M. Moniruzzaman Asad appeared on behalf of the petitioners in Writ Petition Nos. 4940 of 2021, 4941 of 2021, 4942 of 2021, 6451 of 2021 and 8074 of 2021. Learned Senior

Advocate Mr. Mr.Yusuf Hussain Humayun along with Mr. Nazmul Hasan Rakib, Advocate appeared for the petitioners in Writ Petition No. 3499 of 2021. Learned Advocate Mr. Faruk Hussein appeared for the petitioners in Writ Petition No. 4665 of 2021 and Writ petition No. 8484 of 2021 and learned Advocate Mr. Md. Siddique Ullah Miah appeared for the petitioners in Writ Petition No. 9417 of 2020.

While in all the above mentioned writ petitions the learned D.A.G Mr. Noor Us Sadik Chowdhury with Mr. Md. Awlad Hossain, A.A.G along with Mr. Rashedul Islam, A.A.G appeared for the respondents No. 1-3 and learned Advocate Mr. Kamruzzaman Bhuiyan appeared for the respondent Nos. 4-8.

Learned Advocate for the petitioners in Writ Petition Nos. 4940 of 2021, 4941 of 2021, 4942 of 2021, 6451 of 2021 and 8074 of 2021 submits that the petitioners are all qualified candidates for purpose of recommendation by the respondent No. 4, Chairman, Non-Government Teachers' Registration and Certification Authority (NTRCA) and they were selected from the merit list following the relevant laws in particular the relevant বিধিমালা amended in the year 2015. He submits that however the respondents particularly the respondent No. 4 upon violating and bypassing the statutory Rules showed complete inaction by refraining to recommend the petitioners in accordance with the merit list for purpose of appointment to the respective posts and thereby committed gross illegality and deprived the petitioners of their fundamental rights guaranteed under Article 27, 29, 31 and also Article 40 of the constitution. He contends that it is an admitted fact, admitted by the respondents that all these

petitioners are examinees appearing in the examination conducted by the NTRCA in the 13<sup>th</sup> batch. He submits that it is evident from the Rules that in 2015 the previous rules for procedure of appointment of teachers to the respective institutions were amended by way of Annexure B-2 whereby some new clauses were inserted. He draws attention to the amended বিধিমালা dated 22.10.2015 vide S.R.O No. 309-আইন/2015. He particularly draws attention to Rule 3 Ka which is the new amended clause pursuant to the amended S.R.O of 2015. Upon drawing attention to the amended new Rule 3 Ka which is the procedure laid down to be followed for purpose of appointment of teacher to Educational institutions, the learned Advocate for the petitioners particularly draws takes us to the terms শূন্যপদ (vacant posts). He agitated that the newly inserted Rule 3 Ka to which the 13<sup>th</sup> batch of examinees the instant petitioners are subject to clearly contemplates that when the initial list is being prepared that list shall reflect the number of vacant posts available for purposes of appointment. He contends that the petitioners relying on the amended Rule 3 Ka particularly 3 Ka of 2015 appeared for their examination particularly relying on the fact that they are appearing for the examination based on শূন্যপদ (vacant posts) and that accordingly the merit list shall be prepared. It is clear that the rules contemplate that merit list will be prepared in accordance with the proportion of শূন্যপদ (vacant posts) that is keeping in mind the vacant posts available at any particular institution.

He next draws attention to a circular (পরিপত্র) issued by the respondent No. 4 dated 30.12.2015. He takes us to clause 3.0 of the

circular (পরিপত্র) which clearly states that NTRCA shall conduct examination every year on the basis of demand of the number of teachers in vacant posts and results shall be published in accordance with the merit list. He next draws attention to clause 5.0 of the circular (পরিপত্র) which set out the procedures for recommendation of appointment of teachers who have been successful in the examination followed by enlistment in the merit list. He submits that it is evident from annexure – D series that all the petitioners in all these writ petitions have been successful in their examination pursuant to a written examination followed by viva-voce in which they obtained minimum 40% marks separately in the written and viva-voce examination which is the criteria for enlistment being in the merit list. He next draws attention to Annexure-C which is the নিয়োগ বিজ্ঞপ্তি dated 24.02.2016 relying on which the instant petitioners all made their application and were subsequently selected in the merit list. He points out to clause 10(Jha) of the বিজ্ঞপ্তি wherein it is clearly stated that a written examination shall be conducted and successful candidates in the written examination shall appear for the viva-voce. He submits that all the petitioners relying on clause 10(Jha) of the 13<sup>th</sup> teacher examination 2016 following notice dated 24.02.2016 appeared for examination and that passed the preliminary written test followed by viva-voce examination as per clause 10(Jha) of the said examination notice. He draws attention to the certificates which are marked as Annexure D series and points out that the results were published on 04.06.2017 and accordingly the petitioners were all granted certificates.

He contends that it is evident from the materials on record read along with the relevant laws and rules that the 13<sup>th</sup> Teachers' Registration Examination -2016 were all qualified candidates based on the merit list for recommendation by the NTRCA for purposes of appointment to vacant posts. He agitates that therefore respondent No. 4's inaction upon refraining from recommending the instant petitioners is completely without lawful authority. He argues that the petitioners earned their legitimate right to be recommended upon success in the examination being enlisted in the merit list pursuant to following the relevant rules in particular Rule 3 Ka read along with clauses 3, 4 and 5 of the circular (পরিপত্র) dated 30.12.2015 which has been annexed as annexure-E. He points out that upon comparison of Rule 3 Ka read with clause 3, 4 and 5 of the circular (পরিপত্র) dated 30.12.2015 it is clear that those candidates who have been selected in the merit list and whose names appear in the merit list shall relying on the provisions of Rule 3 Ka of the Rules pertaining to availability of vacant posts shall receive recommendation for appointment. He submits that therefore in this case apart from legal and statutory rights, the doctrine of legitimate expectation may also be drawn upon. He submits that since relying on the relevant rules along with the fact that the petitioners are enlisted in the merit list following the rules made to the effect followed by their selection in the merit list following the proper procedure in the examination, therefore it is the legitimate expectation of the petitioners to obtain recommendation from the NTRCA.

He submits that the principles of legitimate expectation are enforced in order to achieve fairness. He contends that in this case it is clear that the action of the respondent No. 4 by unreasonably refusing to recommend the petitioners to their respective posts is clearly unfair and unreasonable and belies the doctrine of legitimate expectation.

There was a query from the Bench to the learned Advocate for the petitioner regarding a judgment relied upon by the learned Advocate for the respondent No. 4 passed by this division in Writ Petition No. 1324 of 2017 including several other writ petitions. The learned Advocate for the respondent No. 4 showed that in this judgment the High Court Division gave direction to prepare a national combined merit list of the candidates to avoid discrimination and to avoid violation under Article 29 of the constitution and the learned Advocate for respondent No. 4 persuaded that the respondents acted upon the direction of the High Court Division complying with the direction by preparing a national merit list as per the direction of this Division.

In reply to such contention of the respondents the learned Advocate for the petitioners points out that there is a difference between the footing of the petitioners in that writ petition with the writ petitioners before us. He particularly points out that the writ petitioners in those writ petitions inter alia Writ Petition No. 1324 of 2017 belong to the 1<sup>st</sup> – 12<sup>th</sup> batches of examinees for purpose of recommendation by NTRCA. He particularly points out to the fact that when the 1<sup>st</sup> – 12 batches examinees appeared for their examination the new Rule 3 Ka of the বিধিমালা of 2015 was not inserted

and did not come into force. He points out that it is evident from the records that 1<sup>st</sup> – 12<sup>th</sup> batches of examinees appeared in their examination before 2015. He continues that the new Rule 3 Ka came into force after their examination that is in the year 2015. He next draws attention to the fact that the instant petitioners applied for their post pursuant to a circular in the year 2016 and also appeared in the examination and received certificate after that. The learned Advocate for the petitioners persuaded that the footing of the writ petition in those writs and the footing of the present petitioners are evidently not the same and are distinguishable since they are not subject to the same rules. He further persuaded that the instant writ petitioners appeared for the examination after the amendment of 2015 by way of Rule 3 Ka came into force. He argues that such being the facts, the petitioners are on a separate footing and shall avail the benefit of the amended Rule 3 ka by relying inter alia on the term শূন্য পদ (vacant post) and মেধা তালিকা.

He next draws attention that on similar matter and similar issue as the instant writ petitioners some other examinees belonging also to the 13<sup>th</sup> batch of examinees filed several writ petitions before this division including Writ Petition No. 16307 of 2017. He points out that in this decision categorically relying on the amended Rule 3 ka read with the পরিপত্র of 2015 and read with particularly 10(Jha) of the নিয়োগ বিজ্ঞপ্তি 2016 this division directed the respondents to recommend the petitioners pursuant to clause 5.0 of the circular to the ascertained vacant posts as per clause 10(Jha) of the নিয়োগ বিজ্ঞপ্তি advertisement of 13<sup>th</sup> Teachers' Registration Examination – 2016 in accordance with



their issued certificates. He next submits that this judgment arising out of several Writ Petitions including Writ Petition No. 16307 of 2017 was up held by our Apex Court in Civil Appeal No. 343 of 2019. He particularly takes us to the operative portion of the judgment of our Apex Court dated 12.03.2020 in Civil Appeal No. 343 of 2019 which is as follows:

*“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.”*

He draws attention to the operative portion and submits that it is clear from the observation of the Appellate Division that the principle of the judgment in the High Court Division was substantively upheld. He submits that therefore it is clear that it has been already decided by our Apex court that the 13<sup>th</sup> batch of examinees who were selected and obtained certificate on the basis of merit list pursuant to examination following proper procedures, they have earned a vested right to obtain recommendation from NTRCA and which principle in spirit was substantively upheld by our Apex court. He agitates that apart from the existing rules setting the criteria of the eligibility of the petitioners, the respondents are also bound to follow the directions of the High Court Division since those were upheld by the Appellate Division and therefore binding upon all under Article 111 of the Constitution. He submits that by refraining to recommend the petitioners to their respective posts upon bypassing the rules the

respondents are clearly flouting the clear decision of the Appellate Division and also flouting and bypassing the existing laws and Rules.

He next draws attention to Annexure J of the writ petition which is the *৩য় গনবিজ্ঞপ্তি* dated 30.03.2021. Drawing attention to clause 2 of Annexure-J he points out that it is clear that the NTRCA following the direction of the High Court Division which was upheld by the Appellate Division has meanwhile complied with the decision of our Apex court and already recommended the writ petitioners in Writ Petition No. 16307 of 2017 and those writ petitioners have been recommended for purpose of appointment to their respective posts.

He asserts that it is clear from the facts available on record that the instant writ petition and the writ petitioner in writ petitioner No. 16307 of 2017 all appeared in the 13<sup>th</sup> batch of examination conducted by NTRCA and they were all selected for enlistment in the merit list followed by certificates issued to all of them by NTRCA.

He persuades that it is clear from the materials before us that the instant writ petitioners are on the same footing as those writ petitioners in Writ Petition No. 16307 of 2017 along with the other writ petitions. He continues that consequently by refraining from recommending the instant petitioners, the respondents are committing continuous wrong and illegality by refusing to recommend the instant petitioner to their respective posts.

In the light of his submissions and placing his reliance in the judgment by our Apex court in Civil Appeal No. 343 of 2019 which upheld the High Court Division judgment in Writ Petition Nos. 16307 of 2017, 17506 of 2017, 17896 of 2017, 17961 of 2017, 18100 of

2017, 18727 of 2017 and 18728 of 2017, he concludes his submission upon assertion that all the Rules in Writ petition No. 4940 of 2021, Writ Petition No. 4941 of 2021, Writ Petition No. 4942 of 2021, Writ Petition No. 6451 of 2021 and 8074 of 2021 bears merits ought to be made absolute for ends of justice.

On the other hand learned Advocate Mr. Md. Faruk Hossein appeared for the petitioners in Writ Petition No. 4665 of 2021 and Writ Petition No. 8484 of 202. He substantively supports the submissions of the learned Advocate Mr. M. Moniruzzaman Asad appearing for the petitioners in writ petition No. 4940 of 2021, Writ Petition No. 4941 of 2021, Writ Petition No. 4942 of 2021, Writ Petition No. 6451 of 2021 and 8074 of 2021 and prayed that Rules bear merits ought to be made absolute for ends of justice.

Learned Senior Advocate Mr. Yusuf Hussain Humayun along with Mr. Nazmul Hasan Rakib, Advocate appeared for the petitioners in Writ Petition No. 3499 of 2021 also substantively support the submission of the learned Advocate Mr. M. Moniruzzaman Asad appearing for the petitioners in writ petition No. 4940 of 2021, Writ Petition No. 4941 of 2021, Writ Petition No. 4942 of 2021, Writ Petition No. 6451 of 2021 and 8074 of 2021 and prayed that the Rule bear merits ought to be made absolute for ends of justice.

Learned Advocate Mr. Md. Siddique Ullah Miah appeared for the petitioners in Writ Petition No. 9417 of 2020 also substantively support the submission of the learned Advocate Mr. M. Moniruzzaman Asad appeared for the petitioners in writ petition No. 4940 of 2021, Writ Petition No. 4941 of 2021, Writ Petition No. 4942

of 2021, Writ Petition No. 6451 of 2021 and 8074 of 2021 and prayed that the Rule bear merits ought to be made absolute for ends of justice.

On the other hand learned Advocate Mr. Kamruzzaman Bhuiyan appeared for the respondent No.4 and upon filing affidavit in opposition vehemently opposes all the Rules. At the onset of his submissions he argued that writ is not maintainable in the instant writ petitions since the petitioners have no locus standi. He elaborates that the validity period of their certificates obtained from NTRCA expired on 8.6.2020 and the writ petitions were filed in 2021. He continues that the validity of the certificates issued by the NTRCA are only valid for 3 (three) years therefore the validity of the instant writ petitioner's certificates having already expired since the certificates were all obtained on 2017 consequently the instant writ petitioners do not have any legal footing to file the writ petitions. He continues that the provisions of section 10(1) of the NTRCA Rules provides that the validity of a period of a certificate shall expire after 3 (three) years of obtaining the certificate therefore evidently the petitioners who obtained the certificate in 2017 automatically the validity of their certificates expired in 2020 while it is evident that the writ petitions were filed as late as 2021.

He next argues that that nowhere in the বিধিমালা nor in the পরিপত্র is it stated that an examinee just because he has been enlisted in the merit list has earned any vested right to be recommended for purposes of appointment. He argues that mere enlistment in the merit list does not automatically bestow any vested right on any examinee for purposes of appointment to the post of teacher. He elaborates his

submissions upon arguing that recommendation for appointment to the post of teacher shall pursuant to examination depend on the number of vacant posts available in a particular subject and pursuantly after ascertaining the vacant post in any particular subject the examinee shall be appointed in accordance with their merit list. To substantiate his submissions he draws attention to clause- 5.0 and 8.0 of the পরিপত্র dated 30.12.2015. He submits that from the পরিপত্র dated 30.12.2015 clause 5.0 of the পরিপত্র it is clear that only being enlisted from the merit list initially does not confer any vested right and/or legal right to receive recommendation from NTRCA. He submits that clause 5.0 of the পরিপত্র dated 30.12.2015 clearly contemplate a merit list shall be made to meet the demand of teachers upon following the merit list chronologically. On the same issue he contends that against every vacant post one person will be recommended following the chronology in the merit list by the NTRCA and appointment shall be made accordingly by the concerned institution within 1(one) month of receiving the recommendation. He next draws attention to clause 8.0 of the পরিপত্র wherefrom he attempts to show that clause 8.0 also clearly contemplates that for purpose of recommendation of appointment arising out of such merit list shall be followed for appointment of teacher to a particular subject.

He contends that the Respondent prepared a combined merit list following the High Court Division Judgment earlier passed in Writ Petition No. 1324 of 2017. He submits that following the High Court Division judgment in writ petition No. 1324 of 2017 the respondents have already implemented the directions of this division upon

preparing a combined merit list which also includes 13<sup>th</sup> batch. He submits that as per the directive of the High Court Division and the combined merit list prepared by the respondent No. 4 meanwhile selected candidates who are top in the list in accordance with the merit list in chronological order have already been recommended by respondent No. 4.

He agitates that only after receiving enlistment the preliminary merit list after obtaining 40% marks in written and viva-voce examination does not ipso facto entail that an examinee is eligible to be recommended for appointment as teacher. He argues that Article 29 of the constitution has not been violated in the instant petitioners case since the petitioners are not on the same footing as those recommended for purposes of appointment. He argues that since the petitioners obtained lower marks than those candidates who have received recommendation therefore evidently, they are not on the same footing as those examinees who have already been recommended. Relying on his submissions he concludes his submissions that therefore the Rules bears no merits ought to be discharged for ends of justice.

Learned D.A.G Mr. Noor Us Sadik Chowdhury appeared on behalf of the respondent Nos. 1-3 and substantively supports the submissions of the learned Advocate for the respondent No. 4 and concludes his submissions that the Rules bears no merits ought to be discharged for ends of justice.

We have heard the learned Advocates for both sides, perused the application and materials on records. We have examined the

relevant rules and particularly the amended বিধিমালা of 2015. We have further also perused the judgment passed by the High Court Division in several writ petition including writ petition No. 16307 of 2017 and which has been upheld by the Appellate Division in Civil Appeal No. 343 of 2019. The learned Advocate for the respondent No. 4 argued that a merit list does not indicate any finality regarding recommendation for purpose of appointment to the post of teacher in the concerned institution. He further argued that mere merit list does not ipso facto indicate that an examinee is eligible for recommendation for purpose of appointment. He contended that merit list shall be prepared keeping in mind particularly the demand of teachers to a vacant post available for a particular subject in the concerned institution. He also argued that examinees will be selected from the merit list. He further contended that a mere certificate holder is not automatically entitled to receive recommendation to a post of a teacher. He agitated that recommendation essentially depend on the number of vacant posts available and the recommendation must be followed in accordance with the merit list in chronological order.

On these contentions, he particularly relied upon clause 5.0 and clause 8.0 of the পরিপত্র dated 30.12.2015. Clause 5.0 and clause 8.0 of the পরিপত্র dated 30.12.2015 is reproduced hereunder:

“৫.০: এন.টি.আর.সি.এ. অন-লাইনে আবেদন প্রাপ্তির পর চাহিদা ও মধোক্রম 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।

৮.০: ইতোপূর্বে নিবন্ধিত মেধাতালিকা বহির্ভূত প্রার্থীদের ক্ষেত্রে নিবন্ধন সনদে উল্লিখিত ঐচ্ছিক বিষয়ে প্রাপ্ত নম্বরের ভিত্তিতে নিয়োগের জন্য মেধাক্রম নির্ধারিত হবে।”

Upon perusal of clause-5.0 it appears that pursuant to the examination the NTRCA shall submit the name of the candidates of one selected candidate of one subject to the অধিযাচনকারী প্রতিষ্ঠান .

From our perusal it is however not actually clear as to what the legislators or authorities formulating the Rules actually implies by the terms অধিযাচনকারী প্রতিষ্ঠান. Clause 5.0 is certainly not clear as to its intention and actually who is the অধিযাচনকারী প্রতিষ্ঠান . Therefore we find lack of clarity in clause 5.0 of the পরিপত্র. Such lack of clarity in the Rules may lead to disharmony and confusion in the education system and which is undesirable.

Next we have perused clause 8.0 of the পরিপত্র. The terms মেধাতালিকা বহির্ভূত প্রার্থী obviously indicate those candidates who are not in the merit list. Whereas the latter portion of the provision indicate that মেধাক্রম will be ascertained from those who have obtained the highest number in a particular subject to be recommended to the particular post. From a plain reading of clause 8.0 it appears that clause 8.0 contemplate even those candidates who are not in the merit list for purposes of recommendation. Clause 8.0 contemplate the selection of a candidate who have not been successful in average in all subjects, however they may be eligible for recommendation to a particular post of teacher if they have obtained the highest number in any optional subject in a particular subject. Such provision in clause 8.0 of the



পরিপত্র actually causes a matter of anxiety since neither in the scheme of the Rules of 2013 nor in any other law does it contemplate that examinees who are outside the merit list shall even though they are not in the general merit list will however be entitled to received recommendation just because they have earned highest number in an optional subject only. Clause 8.0 of the পরিপত্র is clearly inconsistent with the scheme of the বিধিমালা of 2006 including the amended বিধিমালা of 2015. Such inconsistency as noticed in clause 8.0 and vagueness in the intention of the law is also noticed in clause 5.0(as discussed above) which is undesirable. Our considered view is that for purpose of clarity and harmony in the education system which needless to state includes the process of appointment of teacher, more unambiguous clarification on the criteria for appointment is necessary.

The learned Advocate for the petitioners persistently argued that the instant petitioners are not entitled to receive recommendation following their enlistment in the merit list. To substantiate his submissions he argued that the following a directive of the High Court Division in Writ Petition No. 1324 of 2017 along with some other writ petitions, the respondents have already prepared a combined merit list following the judgment in writ petition No. 1324 of 2017. He also contended that according to the direction all the examinees in the 13<sup>th</sup> batch have been enlisted in the national combined merit list and recommendation have been made to the post of teacher accordingly. The learned Advocate for the petitioners further argued that those who obtained lower mark in the merit list have not been recommended since chronological order of merit list was followed depending on

number of vacant posts. He argued that therefore the respondents are not contravening any of the provisions of the constitution and have only abided by the direction of this Division in Writ Petition No. 1324 of 2017.

The learned Advocate for the petitioners to controvert this point raised by the learned Advocate for the respondent No. 4 drew our attention to a relevant and significant fact that the instant petitioners belong to the 13<sup>th</sup> batch of examinees for purpose of recommendation by the NTRCA. The learned Advocate for the petitioners also drew attention to the fact that the other writ petition No. 1324 of 2017 in which direction was passed by this Division to prepare a national combined merit list those writ petitioners belonged to the 1<sup>st</sup> – 12<sup>th</sup> batches Examinees. He further drew attention to a significant factor that after the 12<sup>th</sup> batch of examinees appeared for the examination and received their certificate however, the new amended Rule inserting i Rule 3 Ka of the বিধিমালা was enacted by gazette notification dated 22.10.2015. He points out that it is evident from the records that the 13<sup>th</sup> batch of examinees applied online and prepared for the examination and registration for the examination after 22.10.2015 relying upon the new amended Rule 3ক of 2015.

Therefore it also our considered view that from the facts itself it clearly appears that the 1<sup>st</sup> – 12<sup>th</sup> batches of examinees are not subject to the new amended Rule 3 Ka whereas the instant petitioners who are the 13<sup>th</sup> batch examinees are subject to avail the benefit Rule of 3 Ka. Therefore we are also of the considered view that the legal status so far pertaining to the rules are clearly distinguishable between the 1<sup>st</sup> –

12<sup>th</sup> batches examinees and the 13<sup>th</sup> batches examinees. To address the issue raised by the 13<sup>th</sup> batches examinees of the বিধিমালা of 2006 by way of S.R.O insert Rule 3Ka in the original Rule of 2006, it is reproduced below:

“বিধি ৩ক, বেসরকারী শিক্ষক নিবন্ধন, পরীক্ষা গ্রহণ ও প্রত্যয়ন বিধিমালা, ২০০৬।

শূন্যপদের সংখ্যা নিরূপণ:

১. কর্তৃপক্ষ, প্রতি বৎসর নভেম্বর মাসের মধ্যে, জেলা শিক্ষা অফিসারের মাধ্যমে জেলাধীন সংশ্লিষ্ট বেসরকারী শিক্ষা প্রতিষ্ঠানসমূহের পদ ও বিষয় ভিত্তিক শূন্য পদের তালিকা সংগ্রহ করিবে।
২. সংশ্লিষ্ট উপজেলা বা থানা মাধ্যমিক শিক্ষা অফিসার উপ-বিধি (১) এ উল্লেখিত তালিকা প্রণয়ন করিয়া অক্টোবর মাসের মধ্যে জেলা শিক্ষা অফিসারদের নিকট দাখিল করিবেন।
৩. জেলা শিক্ষা অফিসার উক্ত তালিকার সঠিকতা যাচাইক্রমে কর্তৃপক্ষের অনুকূলে প্রেরণ করিবেন এবং কর্তৃপক্ষ উক্ত তালিকার ভিত্তিতে পরীক্ষা গ্রহণের ব্যবস্থা করিবে।”

We have carefully examined the language of Rule 3 Ka. It is a general Rule of interpretation of statutes that clear language of statutes must be followed for purposes of interpretation. Keeping this principle in mind we have examined clause 3ka. It appears that clause 3 Ka particularly mention শূন্যপদ by expressly stating শূন্যপদের সংখ্যা নিরূপন in the heading and also clause No. 1 of Rule 3K has repeated শূন্যপদের তালিকা সংগ্রহ করিবে .

It goes without saying that Rule 3 Ka in clear terms only contemplates the initial steps to be taken for purpose of recommendation of appointment of teachers following further procedures including written examination and viva-voce etc. It is clear

from the language of Rule 3 Ka that the legislature while inserting Rule 3 ka intended that the initial enlistment which shall be prepared by the NTRCA upon following the statutory procedures shall be on the basis of vacant posts.

It is our considered view the petitioners particularly the 13<sup>th</sup> batch (the instant petitioners) while applying for purpose of registration for appearing in examination evidently and correctly relied upon Rule 3 Ka of the বেসরকারী শিক্ষক নিবন্ধন, পরীক্ষা গ্রহণ ও প্রত্যয়ন বিধিমালা, ২০০৬. We have clearly noticed some inconsistency in the পরিপত্র of 2015. However whatever inconsistency there might be in the পরিপত্র it is a general principle of law that পরিপত্র being only a circular does not have force of law and can be a guideline only. On the other hand the amended বিধিমালা of 2015 is an enactment of law by way of gazette notification and therefore has the force of law. It is needless to state that between the বিধিমালা which has the force of law and the পরিপত্র, evidently the clear Rules of the বিধিমালা shall prevail over any পরিপত্র that may be issued.

Furthermore we have already stated that the পরিপত্র itself particularly clause 5.0 and clause 8.0 of the পরিপত্র is not clear and needs further elaboration and clarification by unambiguity by the legislator/ authorities as to their intention.

Therefore relying on Rule 3 Ka of the বিধিমালা 2006 as amended in 2015 we are of the considered opinion that the instant petitioners examinees who have been enlisted in the merit list following the proper procedures and following the নিয়োগ বিজ্ঞপ্তি while making their

initial application relying on the provision of the বিধিমালা including the amended Rule 3 ক of 2015, therefore it is our considered view that the writ petitioners have apart from their statutory right under Rule 3 Ka has also a legitimate exception to be recommended for a particular subject for appointment to a post in a particular subject by the respondents as a constitutional right.

Besides we have also perused the judgment in writ petition No. 16307 of 2017 including others writ petitions which were disposed of by another Bench by a single judgment inter alia in which the High Court Division gave a specific direction to the respondents which is re-produced hereunder:

*“Respondents are directed to recommend the petitioners pursuant to Clause 5.0 of the Circular (Annexure D) to the ascertained vacant posts as per Clause 10(Jha) of the advertisement of the 13<sup>th</sup> Teachers Registration Examination – 2016 (Annexure B) according to their issued certificates within 60(sixty) days from the date of receiving the judgment.”*

We have read the principle on which the direction was given in this judgment and it is clear that the same principle as we have applied in disposing of this judgment including relying on Rule 3 Ka of the amended Rule 2015 read with particularly Clause 10(Jha) of the advertisement of the 13<sup>th</sup> Teachers Registration Examination – 2016 and the other rules those same principles have been followed. It also appears that the substantive principle of that judgment of this division

was upheld by our Apex court in Civil Appeal No. 343 of 2019 and binding on all.

It was also brought to our attention by the learned Advocate for the petitioners by way of Annexure J that the respondents have already taken steps to implement the direction of the High Court Division. It goes without saying that the instant writ petitioners and the writ petitioners in Writ Petition No. 16307 of 2017 including other writ petitions belong to the same class and category as they are all examinees of the 13<sup>th</sup> Teachers Registration Examination – 2016 conducted by the NTRCA. All the writ petitioners in all these writ petitions are selected from the merit list and listed for recommendation and therefore they stand on the same footing and class.

The learned Advocate for the respondent No. 4 argued that the petitioners have no locus standi to file these writ petitions since the validity of the certificate already expired on 08.06.2020. He contended that the petitioners sat for the examination and received their certificates in 2017. Regrettably the contention of the Respondent on this issue is also not sustainable. It may be pertinent to note that the writ petitioners in Writ Petition No. 16307 of 2017 including others in which the judgment was upheld by the Appellate Division also belong to the 13<sup>th</sup> Teachers Registration Examination – 2016 and they also received their certificate in 2017. It is also pertinent to note that they were recommended to their respective post by respondent No. 4, NTRCA thereafter following the direction of the Appellate Division and which is revealed to us by way of Annexure

‘J’ of the writ petition which is the ৩য় গণবিজ্ঞপ্তি dated 30.03.2021. Therefore such submission of the learned Advocate for the respondent No. 4 regarding their certificates being ‘invalid’ after expiry of certain period or time does not lie and is not sustainable in the instant case.

Upon hearing the submissions of the learned Advocate for both sides and upon perusal of the relevant Rules and Laws and materials on records and relying on the High Court Division Judgment which was upheld by the Appellate Division in Civil Appeal No. 343 of 2019, we find merit in the Rules.

In the result, all the Rules are made absolute with directions and the observations made above.

The respondents are hereby directed to recommend 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 13<sup>th</sup> Teachers Registration Examination – 2016 according to their issued certificates within 60(sixty) days from the date of receiving the judgment.

Communicate this judgment at once.

**Fatema Najib, J:**

I agree.

**Arif(B.O)**