

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

Present

Madam Justice Kashefa Hussain

And

Madam Justice Kazi Zinat Hoque

Writ Petition No. 6671 of 2021

In the matter of:

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

-And-

In the matter of:

Md. Waliul Islam and others
..... Petitioners.

Vs.

Government of Bangladesh and
others.

..... Respondents.

Mr. Mohiuddin Md. Hanif, Advocate

.....for the petitioners

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

with Mr. Prahlad Debnath A.A.G

with Mr. Md. Hafizur Rahman A.A.G

with Ms. Farida Parvin Flora, A.A.G

... for the respondents No. 1-2

Mr. Kamruzzaman Bhuiyan, Advocate

.... for the respondent No. 3.

Heard on: 01.06.2022, 13.06.2022, 07.08.2022.

08.08.2022 and judgment on: 10.08.2022.

Kashefa Hussain, J:

Rule nisi was issued calling upon the respondents to show cause as to why the provision of clause- 11.11 of the বেসরকারি শিক্ষা প্রতিষ্ঠানের (স্কুল ও কলেজ) জনবলকাঠামো ও এম,পি,ও নীতিমালা-২০২১, provision of clause- 11.6 of the বেসরকারি শিক্ষাপ্রতিষ্ঠানের (মাদ্রাসা) জনবল কাঠামো ও এম,পি,ও নীতিমালা-২০১৮, to the extent of বেসরকারি শিক্ষা প্রতিষ্ঠানের শিক্ষক-কর্মচারীদের

চাকরিতে প্রথম প্রবেশের সর্বোচ্চ বয়সসীমা ৩৫ বছর। should not be declared as ultra vires, illegal, malafide and to have been passed without lawful authority and is of no legal effect for the petitioners and/or such other or further order or orders passed as to this Court may seem fit and proper.

The petitioner No. 1 Md. Waliul Islam along with 54 others are the citizen of Bangladesh having permanent addresses shown in the cause title of the Writ petition some of whom eventually added as party pending the Rule. The respondent No. 1 is the Secretary, Secondary and Higher Education Division, Ministry of Education, Bangladesh Secretariat, Ramna, Dhaka, respondent No. 2 is the Secretary, Technical and Madrasah Division, Ministry of Education, Bangladesh Secretariat, Ramna, Dhaka, respondent No. 3 is the Chairman, Non-Government Teachers' Registration and Certification Authority (NTRCA), Red Crescent Borak Tower, Level-04 and 05, 37/3/A, Eskatan Garden Road, Ramna, Dhaka-1000, the respondent No. 4 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, 37/3/A, Eskatan Garden Road, Ramna, Dhaka-1000, the respondent No. 5 is the Member (Joint Secretary), Pedagogy, Non-Government Teachers' Registration and Certification Authority (NTRCA), Red Crescent Borak Tower, Level-04 and 05, 37/3/A, Eskatan Garden Road, Ramna, Dhaka-1000.

The petitioner's case inter alia is that the petitioners have taken part in "14th Teachers' Registration Examination-2017" where there

was no provision of age-limit. That the circular of “14th Teachers’ Registration Examination-2017” was published on 30.05.2017, which was regulated by a পরিপত্র namely “বেসরকারী শিক্ষা প্রতিষ্ঠান (স্কুল, কলেজ, মাদ্রাসা ও কারিগরি শিক্ষাপ্রতিষ্ঠানসমূহ) এর শিক্ষক ও কর্মচারীদের বেতন ভাতাদির সরকারী অংশ প্রদান এবং জনবলকাঠামো সম্পর্কিত নির্দেশিকা, ২০১০” (hereinafter referred as “নির্দেশিকা, ২০১০”) (published on 04.02.2010 and later amended on 24.03.2013), where there was no provision regarding the age limit for entering in the service of teacher in non-government educational institutions. That the present petitioners are the candidates of “14th Teachers’ Registration Examination-2017”, they appeared in preliminary MCQ Examination held on 25.08.2017, which is before the publication of বেসরকারী শিক্ষাপ্রতিষ্ঠানের (স্কুল ও কলেজ) জনবলকাঠামো ও এম.পি.ও নীতিমালা-২০২১, বেসরকারী শিক্ষাপ্রতিষ্ঠানের (স্কুল ও কলেজ) জনবলকাঠামো ও এম.পি.ও নীতিমালা-২০১৮, বেসরকারী শিক্ষা প্রতিষ্ঠানের (মাদ্রাসা) জনবল কাঠামো ও এম.পি.ও নীতিমালা-২০১৮, (herein all referred as : “জনবল কাঠামো ও এম.পি.ও নীতিমালা ২০১৮ ও ২০২১”). That the petitioners after passing of Preliminary MCQ Examination, appeared in Written Examination held on 08.12.2017 (school)-09.12.2017 (college), which is earlier than publication of “জনবল কাঠামো ও এম.পি.ও নীতিমালা ২০১৮ ও ২০২১”. That the successful candidates passed in written examination appeared in the viva-voce which was started from 24.06.2018. Public Notice for the viva-voce of the candidates of the 14th Teachers’ Registration Examination-2017 was published on dated 07.06.2018. That the final result of petitioners was published on 27.11.2018 and the petitioners obtained Certificates from the NTRCA. That the office of the respondent NO. 3, Chairman, NTRCA published Circular of “15th Teachers’ Registration Examination-2018” on

28.11.2018 inviting applications from the interested candidates; where there was a provision of age-limit in clause 20(b) stating that “২০(খ): এম.পি.ও. নীতিমালা-২০১৮ অনুযায়ী বেসরকারি শিক্ষাপ্রতিষ্ঠানে শিক্ষক পদের নিয়োগের সর্বোচ্চ বয়সসীমা ৩৫(পঁয়ত্রিশ) বছর।” That the Circular of 14th Teachers’ Registration Examination-2017 was published on 30.05.2017, which is certainly before the publication of বেসরকারি শিক্ষাপ্রতিষ্ঠানের (স্কুল ও কলেজ) জনবলকাঠামো ও এম.পি.ও. নীতিমালা-২০২১ (publication date 28.03.2021), বেসরকারি শিক্ষাপ্রতিষ্ঠানের (স্কুল ও কলেজ) জনবলকাঠামো ও এম.পি.ও. নীতিমালা-২০১৮ (publication date 12.06.2018) (repealed), বেসরকারি শিক্ষা প্রতিষ্ঠানের (মাদ্রাসা) জনবল কাঠামো ও এম.পি.ও. নীতিমালা-২০১৮ (publication date 19.07.2018). That the government enacted 4(four) separate নীতিমালা in 2018 and 1(one) in 2021 repealing its previous version of 2018, for schools and colleges, madrasahs, technicals and business management where provision of Clause- 11.11 of the বেসরকারি শিক্ষাপ্রতিষ্ঠানের (স্কুল ও কলেজ) জনবলকাঠামো ও এম.পি.ও. নীতিমালা-২০২১, provision of Clause- 11.6 of the বেসরকারি শিক্ষাপ্রতিষ্ঠানের (স্কুল ও কলেজ) জনবলকাঠামো ও এম.পি.ও. নীতিমালা-২০১৮ (repealed), Provision of Clause-11.6 of the বেসরকারি শিক্ষা প্রতিষ্ঠানের (মাদ্রাসা) জনবল কাঠামো ও এম.পি.ও. নীতিমালা-২০১৮, fixed 35 years as the maximum age limit of the teachers and employees to enter in the service of Non-government Educational Institutions, i.e. School, College, Madrasah, Technical and Business Management. That the public notice of viva-voce of the candidates of the 14th Teachers’ Registration Examination-2017 was published on 07.06.2018, so it is clearly evident that the whole process of the 14th Teachers’ Registration Examination-2017 is out of ambit of জনবল কাঠামো ও এম.পি.ও. নীতিমালা ২০১৮ ও ২০২১ and the certificate- holders of 14th

Teachers' Registration Examination 2017 cannot fall within the provision of age-limit of 35 years as fixed by জনবল কাঠামো ও এম.পি.ও নীতিমালা ২০১৮ ও ২০২১. That in the NTRCA certificates of the petitioners it has been clearly stated in the heading that this is "14th Teachers' Registration Examination 2017" and in the body parts it is stated clearly that has passed 14th Teachers' Registration Examination 2017" and which clearly indicates that the whole process of the 14th Teachers' Registration Examination 2017 is deemed to be held in 2017 and thus the exam or holder of the certificates are out of ambit of জনবল কাঠামো ও এম.পি.ও নীতিমালা ২০১৮ ও ২০২১ and thus the certificate holders of 14th Teachers' Registration Examination 2017" cannot fall within the provision of age-limit of 35 years as fixed by জনবল কাঠামো ও এম.পি.ও নীতিমালা ২০১৮ ও ২০২১. That on 30.03.2021 office of the respondent No. 3 published "৩য় গণবিজ্ঞপ্তি-২০২১" inviting e-applications from the eligible NTRCA certificate-holders for reruitment in the 52,097 vacant posts of the Non-Government Educational Institution of the Country, i.e. school, college, Madrasah, Technical and Business Management; wherein Clause- 4 a condition was added that "আবেদনকারীর বয়স ০১ জানুয়ারী, ২০২০ খ্রিস্টাব্দ তারিখে ৩৫ বছর বা তার কম হতে হবে। তবে শিক্ষক নিবন্ধন পরীক্ষায় উত্তীর্ণ ইনডেব্লুধারী প্রার্থী এবং মহামান্য সুপ্রিম কোর্টের আপিল বিভাগের ৩৯০০/২০১৯ নং মামলার রায় অনুযায়ী ১২.০৬.২০১৮ খ্রিস্টাব্দ তারিখের পূর্বে যারা নিবন্ধন সনদ লাভ করেছেন তাদের ক্ষেত্রে বয়সসীমা শিথিলযোগ্য।" That the present petitioners, though they are 14th NTRCA certificate-holders, but they could not take part in any recruitment process because of the age-bar of 35 years as fixed by জনবল কাঠামো ও এম.পি.ও নীতিমালা ২০১৮ ও ২০২১, which is illogical and unlawful. Hence the writ petition.

Learned Advocate Mr. Mohiuddin Md. Hanif appeared on behalf of the petitioners while learned D.A.G Mr. Noor Us Sadik Chowdhury with Mr. Prahlad Debnath, A.A.G along with Mr. Md. Hafizur Rahman, A.A.G along with Ms. Farida Parvin Flora, A.A.G appeared for the respondents No. 1-2 and learned Advocate Mr. Kamruzzaman Bhuiyan appeared for the respondent No. 3.

Learned Advocate for the petitioner submits that the provision of clause- 11.11 of the বেসরকারি শিক্ষা প্রতিষ্ঠানের (স্কুল ও কলেজ) জনবলকাঠামো ও এম,পি,ও নীতিমালা-২০২১, provision of clause- 11.6 of the বেসরকারি শিক্ষাপ্রতিষ্ঠানের (মাদ্রাসা) জনবল কাঠামো ও এম,পি,ও নীতিমালা-২০১৮, to the extent of বেসরকারি শিক্ষা প্রতিষ্ঠানের শিক্ষক-কর্মচারীদের চাকরিতে প্রথম প্রবেশের সর্বোচ্চ বয়সসীমা ৩৫ বছর is ultra vires and without lawful authority so far as it relates to all the petitioners case. Elaborating his submission he argues that the instant petitioners belong to the 14th Batch of examinees pertaining to the examination conducted by the NTRCA who are the authority for conducting examination for purpose of appointment of teachers to some of the educational institutions. He submits that when inviting application for the 14th Teachers' Registration Examination 2017 by way of advertisement did not contemplate or state any age limit for being eligible to appear for examination. He draws our attention to Annexure A which is the advertisement inviting application of the 14th Teachers' Registration Examination 2017 dated 30.05.2017. He asserts that nowhere in the advertisement was it written nor is there anything to indicate any age limit of 35 years whatsoever. He argues that relying on the advertisement that the petitioners accordingly applied online for the examination and subsequently the petitioners

passed the M.C.Q, written and viva-voce examination in which they were successful. He submits that viva-voce date was fixed on 28.06.2018 vide notice dated 7.06.2018. He next submits that viva-voce was also held on 28.06.2018 and the petitioners were also successful and subsequently they received NTRCA certificate on 27.11.2018. He however draws this bench's attention to the নীতিমালা which was promulgated by the respondents on 12.06.2018 in the middle of the procedure prior to the viva-voce. He submits that this নীতিমালা contemplated that any applicant who has completed 35 years and above shall not be eligible to the teacher. He draws attention of the Bench to the নীতিমালা dated 12.06.2018 which he challenged was suddenly published by the respondents when the appointment process was almost complete and only viva-voce was pending. He submits that however the petitioners were also invited to the viva-voce and they passed. He submits that however even after the petitioners had completed all the procedures and has been successful in the examination the respondents most arbitrarily refused the petitioners appointment in the respective posts. He submits that they are in the NTRCA merit list and received certificate on 27.11.2018 but however the respondents relying on the নীতিমালা dated 12.06.2018 refused to recommend the petitioners to be appointed as teacher in the respective institutions. He submits that such whimsical conduct of the respondents after completion of all procedures and even after the petitioners obtained the qualifying certificates is most unlawful and arbitrary and without lawful authority. He submits that since the petitioners relied on invitation to apply for the 14th batch of NTRCA

examinees and the petitioners after successfully completing the procedure received the certificate on 27.11.2018 therefore so far as the petitioners are concerned the নীতিমালা promulgated on 12.06.2018 is not applicable and not at all binding on them. To substantiate his submissions he draws our attention to the advertisement of the invitation to apply for the 15th Batch which is annexure-E dated 28.11.2018. He submits that there is difference between the advertisement dated 27.11.2018. He submits that although the petitioners have not been recommended for appointment to the post however the NTRCA subsequently recommended for recruitment for purpose of appointment of several other applicants who are on similar footing and obtained certificate in similar post as the petitioners. He submits that therefore the respondents by their conduct discriminated between the petitioners and others who they recommended for appointment while excluding the writ petitioners and therefore the Respondents acted in violation of Article 29 of the Constitution.

He submits that two advertisements that the 14th Batch and 15th Batch must be distinguished in as much as that the advertisement of 14th Batch dated 30.05.2017 which is annexed as Annexure-A and the advertisement of 15th Batch dated 28.11.2018 which is annexed as Annexure-E are clearly distinguishable given that the advertisement dated 14th Batch do not contemplate any age limit whereas the advertisement dated 28.11.2018 inviting application for the 15th Batch clearly contemplate an age bar of 35 years. He argues that therefore it is a principle of law that no নীতিমালা can be given retrospective effect and can be only prospective. He argues that it is clear that the

petitioners' case is a violation of fundamental rights since it is the legitimate expectation of the petitioners to be recommended for appointment as teachers relying on their NTRCA certificate issued based on the merit list. He concludes his submission upon assertion that the Rules merits ought to be made absolute for ends of justice.

On the other hand learned Advocate for the respondent No. 3 opposes the rule. He relies on a judgment of our Apex court arising and involving similar cases involving application and examination of 13th Batch. He shows us that however the Appellate Division substantively reversed and expunged some directions given by the High Court division in Writ Petition No. 139 of 2019 along with some others. He draws our attention to Civil Petition for Leave to Appeal No. 3900 of 2019 which arose out of Writ Petition No. 139 of 2019. He also draws our attention to the judgment in Writ Petition No. 139 of 2019 and the case before us and the Appellate Division Judgment which he contends involve similar question of law and fact. He particularly draws our attention to the observation and the expunging of the direction given by the High Court Division. He submits that apparently in writ petition No. 139 of 2019 the High Court Division Gave a direction that so far as the petitioners case is concerned the নীতিমালা dated 12.06.2018 will be not applicable. He draws attention to the fact that the Appellate Division clearly held that the High Court Division committed an error in law in giving such direction. He submits that therefore while the Appellate Division judgment is binding on all under provisions of Article 112 of the Constitution, consequently any observation and direction whatsoever is also binding

on all and there is no scope to travel beyond the observation and/or direction of our Apex court.

Upon a query from this bench to the learned Advocate for the respondent however he concedes and admits that some other applicants were recommended to the post who are in similar footing as the petitioner and such recommendation was due to inadvertent and bonafide mistake of the respondents in understanding and comprehending the order of expunging passed in Civil Petition for Leave to Appeal No. 3900 of 2019. He admits that due to such miscomprehension and misinterpretation of the Appellate Division Judgment in Civil Petition for Leave to Appeal No. 3900 of 2019 such mistake in recommending several other applicants happened inadvertently and not due to any deliberate intent to deprive others including the petitioners. He concludes his submission upon assertion that however in the light of the Judgment in Appellate Division in Civil Petition for Leave to Appeal No. 3900 of 2019 the Rule bears no merit ought to be discharged for ends of justice.

We have heard the learned Advocate for both sides, perused the application, materials on record before us. Admittedly the petitioners relying on the 14th Batch advertisement dated 30.05.2017 which is annexed as Annexure-A applied online and subsequently they applied for the examination by way of M.C.Q and also appeared for the written examination and the petitioners also passed. Eventually date of viva-voce was also published on 24.06.2018 and the petitioners all passed and were listed in the merit list. Subsequently they received NTRCA certificate on 21.11.2018. However the বেসরকারি শিক্ষাপ্রতিষ্ঠানের

(স্কুল ও কলেজ) জনবলকাঠামো ও এম.পি.ও নীতিমালা- ২০১৮ was published on 12.06.2018 which was published pending the procedure for examination after the written examination and before the viva-voce. The বেসরকারি শিক্ষাপ্রতিষ্ঠানের (স্কুল ও কলেজ) জনবলকাঠামো ও এম.পি.ও নীতিমালা- ২০১৮ dated 12.06.2018 contemplate an age bar of 35 years for purpose of recommendation of appointment of teacher.

It is an admitted fact that when the 14th Batch advertisement was published there was no such age bar but however in the 15th Batch advertisement an age bar of 35 years was imposed . The petitioners contended that since the বেসরকারি শিক্ষাপ্রতিষ্ঠানের (স্কুল ও কলেজ) জনবলকাঠামো ও এম.পি.ও নীতিমালা- ২০১৮ dated 12.06.2018 was published when the petitioner had already passed the final examination and eventually after the promulgation of the নীতিমালা- that they applied to the NTRCA on 27.11.2018. Therefore the petitioners contended that their case will not be applicable to the বেসরকারি শিক্ষাপ্রতিষ্ঠানের (স্কুল ও কলেজ) জনবলকাঠামো ও এম.পি.ও নীতিমালা- ২০১৮ dated 12.06.2018. They argued that following the principle of legitimate expectation since the petitioners since the advertisement dated 30.05.2017 annexure-A inviting the application for the 14th Batch did not contemplate any such age bar, therefore such নীতিমালা cannot be applicable prospectively so far as the petitioners are concerned.

The learned Advocate for the respondent No. 3 relied on the Civil Petition for Leave to Appeal No. 3900 of 2019 arising out of a judgment in the High Court Division in Writ Petition No. 139 of 2019. The judgment in writ petition No. 139 of 2019 which involve applicants and examinees belonging to the 13th Batch of NTRCA, this

division held that it will not be applicable to the petitioners case since the বেসরকারি শিক্ষাপ্রতিষ্ঠানের (স্কুল ও কলেজ) জনবলকাঠামো ও এম.পি.ও নীতিমালা-২০১৮ dated 12.06.2018 are not applicable to the petitioners in those writ petitions. Since they applied relying on the 13th Batch advertisement which did not contemplate any age bar. We have perused the direction of the High Court Division in Writ Petition No. 139 of 2019. However we have particularly perused the judgment and direction in Civil Petition for Leave Petition No. 3900 of 2019. Upon careful perusal of the judgment in Civil Petition for Leave to Appeal No. 3900 of 2019 it is clear that the Appellate Division substantively reversed the decision of the High Court Division. We have drawn our attention to the relevant portion which is reproduced under below:

“The High Court Division has committed an error of law in giving directions stated above.

The observation made above, this civil petition is disposed of. The words, “and the impugned provision of Clause- 11.6 of the বেসরকারি শিক্ষাপ্রতিষ্ঠানের (স্কুল ও কলেজ) জনবলকাঠামো ও এম.পি.ও নীতিমালা-২০১৮ and the provision of Clause-11.6 of the বেসরকারি শিক্ষা প্রতিষ্ঠানের (মাদ্রাসা) জনবল কাঠামো ও এম.পি.ও নীতিমালা-২০১৮, and the provision of clause No. 14.7 of the বেসরকারী কারিগরী কারিগর শিক্ষা প্রতিষ্ঠান জনবল কাঠামো ও এম.পি.ও নীতিমালা-২০১৮ and the provision of Clause No. 14.6 of the বেসরকারী শিক্ষা প্রতিষ্ঠান (ব্যবসায় ব্যবস্থাপনা) জনবল কাঠামো ও এম.পি.ও নীতিমালা-২০১৮ are prospectively legal but not applicant to the petitioners. The respondents are directed to allow application of the petitioners in their respective post without imposing the age limit of 35 years and the respondents

are also directed to appoint them, who are eligible and qualified for the post in pursuance of merit and in accordance with law.

It is also declared that, this judgment would operate as a judgment in-rem in respect of all candidates, who were in the Combined National merit list and obtained NTRCA certificate before the impugned guideline coming into force” are hereby expunged.”

Upon perusal of the Appellate Division judgment in Civil Petition for Leave to Appeal No. 3900 of 2019 it is clear that whatever direction was issued by the High Court Division in writ petition No. 139 of 2019 relating to the 13th Batch and which Writ Petition involved similar fact and law as the present petitioners, some directions of the High Court Division were set aside by way of expunging the operative portion.

Needless to state that the instant writ petition involve similar facts and laws as in the writ petitions which gave rise to the Judgment in which Civil Petition for Leave to Appeal No. 3900 of 2019. Under Article 111 of the Constitution we are bound by any finding and observations and principle of the Appellate Division. There is no scope for us to travel beyond the appellate division judgment.

However our attention was drawn to an admitted fact that pursuant to the direction in Civil Petition for Leave to Appeal No. 3900 of 2019 inspite of the expunging and substantively setting aside the direction of the High Court Division in Writ Petition No. 139 of 25019, the respondents nevertheless recommended some others applicants and examinees who are on similar footing as the present

petitioners. We have particularly drawn our attention to Annexure- G of the writ petition. From Annexure-G which is the ৩য় গণবিজ্ঞপ্তি-২০২১ dated 30.03.2021 we have examined clause 4 of the ৩য় গণবিজ্ঞপ্তি-২০২১ dated 30.03.2021 and which is reproduced hereunder:

“৪. আবেদনকারীর বয়স ০১ জানুয়ারি-২০২০ খ্রিষ্টাব্দ তারিখে বয়স ৩৫ বছর বা তার কম হতে হবে। তবে শিক্ষক নিবন্ধন পরিক্ষায় উত্তীর্ণ ইনডেক্সধারী প্রার্থী এবং মহামান্য সুপ্রীম কোর্টের আপিল বিভাগের ৩৯০০/২০১৯ নং মামলার রায় অনুযায়ী ১২.০৬.২০১৮ খ্রিষ্টাব্দ তারিখের পূর্বে যারা শিক্ষক নিবন্ধন সনদ লাভ করেছেন তাদের ক্ষেত্রে বয়সসীমা শিথিলযোগ্য।”

It is clear from the ৩য় গণবিজ্ঞপ্তি-২০২১ dated 30.03.2021 that in spite of the judgment and order in Civil Petition for Leave to Appeal No. 3900 of 2019 particularly the respondent No. 3 for reasons best known to them was nevertheless relying on judgment in Writ Petition No. 139 of 2019 even though the direction and substantive finding in Writ Petition No. 139 of 2019 was already set aside and expunged by judgment and order passed by the Appellate Division in Civil Petition for Leave to Appeal No. 3900 of 2019 dated 11.10.2020. Although the respondents claim that it was an inadvertent mistake on their part, nevertheless we are baffled as to why the respondents recommended those petitioners in spite of the clear judgment and order in Civil Petition for Leave to Appeal No. 3900 of 2019. Whether the mistake was inadvertent or not we are not in a position to presume or whether it was with malafide intent or lack of understanding or non comprehension of the purport of the judgment in Civil Petition for leave to Appeal No. 3900 of 2019 is beyond our knowledge. We are inclined to observe that such clear violation of the order of our Apex

court is unacceptable and undesirable. By such conduct of the bureaucracy the instant petitioners are also deprived. The petitioners contended that by recommending others by way of Annexure- G to be appointed as a teacher whereas excluding the petitioners the respondents clearly violated Article 29 of the Constitution.

Our considered view however is that even if Article 29 of the Constitution has been violated but however in the light of the judgment in Civil Petition for Leave to Appeal No. 3900 of 2019 and clear findings of the Appellate Division we are not in a position to traverse beyond that decision. Whatever discrimination might have occurred due to the conduct of the Respondents, nevertheless the Appellate Division judgment is binding for us.

Under the facts and circumstances and the foregoing discussion made above and after hearing the learned Advocates for both sides and relying on the judgment and order passed by our Apex court in Civil Petition for Leave to Appeal No. 3900 of 2019 we do not find any merit in this Rule.

In the result, the Rule is discharged without any order as to costs.

Communicate this judgment at once.

Kashefa Hussain, J:

I agree.

Kazi Zinat Hoque, J:

Arif(B.O)