

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

WRIT PETITION NO. 1147 OF 2024

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Md. Maruf Hossain and others

.... Petitioners

-VERSUS-

Bangladesh Public Service Commission,
represented by its Chairman, and others

...Respondents

Mr. Mohammad Humaun Kabir Pallob, Advocate

.....For the Petitioners

Mr. Munirujjaman, Advocate

.....For the Respondents

Present:

Mr. Justice Sashanka Shekhar Sarkar

And

Justice Urmee Rahman

**Heard on 23.02.2026, 03.03.2026, 11.03.2026 and
15.06.2026**

Judgment on 25.06.2026

Urmee Rahman, J:

In the instant matter, a Rule Nisi was issued on an application under Article 102 read with Article 44(1) of the Constitution of the People's Republic of Bangladesh, in the following terms:

"Let a Rule Nisi be issued calling upon the respondents to show cause as to why the recommendation of 642 candidates in the non-cadre posts of the 43rd BCS, vide circular under memo No. 80.00.0000.202.64.032-23-183 dated 26.12.2023 (Annexure-"D"), published by respondent No. 4, should not be declared to be without lawful authority and is of no legal effect; and as to why the non-publication of merit list of successful candidates who participated in the viva voce examination of 43rd BCS, and the non-preparation of the non-cadre list in accordance with Rule 5 of the "নন-ক্যাডার পদে নিয়োগ (বিশেষ) বিধিমালা, ২০১০ (সংশোধিত-২০১৪)", should not be declared to be without lawful authority and is no legal effect and as to why respondent No. 1 should not be directed to continue recommending non-cadre candidates from 43rd BCS non-cadre list to 9th-12th grade non-cadre vacant posts becomes available until publication of final result of 44th BCS, as per the "নন-ক্যাডার পদে নিয়োগ (বিশেষ) বিধিমালা, ২০১০ (সংশোধিত-২০১৪)"; and/or such other or further order or orders be passed as to this Court may seem fit and proper."

At the time of issuance of the Rule, it was further ordered that:

"Pending hearing of the Rule, respondent Nos. 1, 3 and 4 are directed to publish the entire list of non-cadre successful candidates in the 43rd BCS examination in accordance with Rule 5 of the "নন-ক্যাডার পদে নিয়োগ (বিশেষ) বিধিমালা, ২০১০ (সংশোধিত-২০১৪)", within a period of 30 (thirty) days from receipt of a copy of this order."

This writ petition was initially filed by 500 (five hundred) petitioners. By order dated 04.12.2025, co-petitioners No. 501-773 were subsequently added. An application was then filed to strike out the names of 307 petitioners who were no longer willing to proceed with the Rule, for reasons stated in that application. The application was allowed on 23.04.2026, and the names of the 307 petitioners named therein were struck out. The remaining 466 petitioners are now pressing the Rule.

The facts necessary for disposal of the Rule are, in short, are that the petitioners have completed graduation and/or post-graduation from various public universities in various subjects. All of them are non-cadre candidates of the 43rd Bangladesh Civil Service (BCS) examination. They took part in the 43rd BCS

examination, which commenced in 2020 pursuant to the recruitment circular dated 30.11.2020 published by respondent No. 1, in response to which 4,35,190 candidates applied. Of these, only 15,229 candidates passed the preliminary test. The written result was published on 20.08.2023, in which 9,841 candidates, including the petitioners, were declared successful. They were called for the viva voce examination by text message sent to their registered mobile numbers. After completion of the viva voce examination, respondent No. 1 published a circular on 14.12.2023 inviting applications from candidates who had attended the viva to submit their choices of desired non-cadre posts. The petitioners and others were required by respondent No. 1 to submit their choices by a deadline of 19.12.2023, communicated by text message. All the petitioners duly submitted their choices within the deadline.

Rule 5 of the নন-ক্যাডার পদে নিয়োগ (বিশেষ) বিধিমালা, ২০১০ (সংশোধিত-২০১৪) requires respondent No. 1 to publish the result of the non-cadre candidates in order to prepare a merit-based list of successful candidates, and only thereafter to invite applications from the successful non-cadre candidates. In the present case, however, the requirement of Rule 5 was not followed by respondent No. 1, as no merit list of successful non-cadre

candidates was ever published. Nevertheless, since all the petitioners participated in the viva voce examination and were asked to submit their choices for non-cadre posts, they are legally entitled to be considered for recommendation to their desired non-cadre posts, subject to their fulfillment of the requirements of the appointing authorities and to the availability of non-cadre posts, in accordance with the provisions of the নন-ক্যাডার পদে নিয়োগ (বিশেষ) বিধিমালা, ২০১০ (সংশোধিত-২০১৪). Owing to respondent No. 1's failure to publish the result, the petitioners have been deprived of their legitimate right to be considered for recommendation to their desired posts.

Being aggrieved, and having no other equally efficacious alternative remedy available, the petitioners filed the instant writ petition and obtained the present Rule.

Learned Advocate Mr. Mohammad Humaun Kabir Pallob, appearing for the petitioners, stated at the outset that he was not pressing the first part of the Rule, in which the appointment of 642 candidates to non-cadre posts was challenged.

Mr. Pallob submitted that the facts and circumstances of the case show that the respondents dealt with the matter unfairly, depriving the petitioners of their legal right to be considered for recommendation to non-cadre posts, thereby violating their

fundamental rights under Articles 27, 29 and 31 of the Constitution. Article 27 guarantees equal protection of law. In this case, respondent No. 4 recommended 642 (six hundred and forty-two) candidates to non-cadre posts without publishing any merit list as required by Rule 5 of the নন-ক্যাডার পদে নিয়োগ (বিশেষ) বিধিমালা, ২০১০ (সংশোধিত-২০১৪). Such a recommendation raises a valid concern that a 'pick and choose' policy was applied, and is therefore arbitrary, mala fide and discriminatory. Article 31 of the Constitution guarantees the petitioners an inalienable right to be treated only in accordance with law. Respondent Nos. 1, 3 and 4, however, grossly failed to treat the petitioners in accordance with the provisions of the relevant law.

Learned Advocate further submitted that the 43rd BCS examination was held pursuant to the circular dated 30.11.2020 issued by respondent No. 4. Clause 32.0 of that circular clearly stipulated that, recommendations to all non-cadre posts would be made in accordance with the provisions of the নন-ক্যাডার পদে নিয়োগ (বিশেষ) বিধিমালা, ২০১০ (সংশোধিত-২০১৪). Respondent Nos. 1, 3 and 4 nevertheless recommended candidates to 642 (six hundred and forty-two) non-cadre posts by applying the new নন-ক্যাডার পদে নিয়োগ (বিশেষ) বিধিমালা-২০২৩, vide circular dated 26.12.2023, a Rule that does not apply retrospectively to the petitioners' case at all.

It was the petitioners' contention that respondent No. 1 may recommend candidates to non-cadre posts from the non-cadre list even after publication of the final result of a subsequent BCS examination, and that it has done so on several earlier occasions. For example, the final result of the 41st BCS examination was published on 03.08.2023, yet respondent No. 1 recommended candidates to various posts for the 40th BCS non-cadre list on 20.09.2023, under memo No. 80.00.0000.200.64.014.22 (part)-149. Similarly, the final result of the 37th BCS examination was published on 12.06.2018, yet respondent No. 1 recommended candidates to certain posts for the 36th BCS non-cadre list on 18.07.2019, under memo No. 80.200.064.00.00.007.2018-184. The PSC's submission at paragraph 13 of its affidavit-in-opposition, that there is no scope to recommend 43rd BCS candidates to non-cadre posts once the final result of the 44th BCS has been published, is therefore unsustainable in law and inconsistent with the PSC's own past practice. There is no legal impediment to recommending the petitioners to the non-cadre posts to which they are entitled.

Learned Advocate also submitted that it is apparent from the correspondence and notifications issued by respondent No. 2 that requisitions for a total of 12,525 vacant non-cadre posts were sent

to respondent No. 1, directing it to recommend candidates to those posts from the 43rd BCS non-cadre list. Respondent Nos. 1, 3 and 4, however, invited applications for only 1,342 posts and ultimately recommended candidates to only 642 posts from the 43rd BCS non-cadre list, leaving 11,883 posts vacant, to which the petitioners now seek recommendation according to their eligibility. It would therefore be just, fair and appropriate to direct the respondents to recommend the petitioners to their desired non-cadre posts, in order to uphold the rule of law and the petitioners' fundamental rights under the Constitution.

In support of this submission, learned Advocate relied on *Byezid Hossain and others v. Bangladesh, represented by the Secretary, Ministry of Public Administration and others*, Writ Petition No. 10766 of 2023, judgment dated 24.08.2025, in which another Bench of this Division held that there was nothing on record to show that the Commission had fixed any particular date by which the petitioners' right had to be availed, meaning that the relevant date remained unfixed; that the bar under Rule 5(3) of the Rules of 2010 had accordingly been lifted by the 2014 amendment, and no further bar existed on their recruitment until a date was fixed by the Commission; and that the petitioners' right to be recommended therefore survived under the amended 2014

provision. Similarly, in the present matter, the Commission has not fixed any closing date for the recruitment process.

Given these facts and circumstances, learned Advocate for the petitioners submitted that the respondents have at no point stated that the petitioners are ineligible in any respect. This has given rise to a legitimate expectation that the petitioners will be recommended to the requisitioned posts by respondent No. 1 if they fulfil all the requirements. *Sirajul Islam v. Bangladesh*, (2008) reported in 60 DLR 79, establishes that a failure to consider and give due weight to a legitimate expectation may render a decision arbitrary, and that due consideration of legitimate expectation forms part of the principle of non-arbitrariness, itself a necessary component of the rule of law. Where a number of persons are selected for appointment or promotion and only some of them are appointed or promoted, preparing a fresh list for appointment or promotion without first appointing the remainder of the original list derogates from legitimate expectation and cannot be sustained, as held in *Syed S.M. Hasan v. Bangladesh*, (2008) 60 DLR (AD) 76, and *Director General, BWDB v. B.J. Geo Textiles Ltd.*, (2005) 57 DLR (AD) 1.

Learned Advocate finally submitted that, in this backdrop, it would be just, fair and appropriate to direct the respondents to

recommend the petitioners to their desired non-cadre posts, so as to uphold the rule of law and the petitioners' fundamental rights. Failing this, the respondents would be permitted to continue their arbitrary, unfair and illegal actions, which cannot be expected of a public body or statutory authority of the State. The Rule, he submitted, should accordingly be made absolute.

Mr. Munirujjaman, learned Advocate appearing for respondent No. 1, the Chairman of the Public Service Commission (PSC), contested the Rule by filing an affidavit-in-opposition.

Mr. Munirujjaman submitted that the circular for the 43rd BCS examination dated 30.11.2020 expressly provided for a total of 1,814 cadre posts but remained silent as to the number of non-cadre posts. Clause 32.0 of the circular provided that, after recommendation to cadre posts, the remaining successful candidates from the written and viva voce examinations of the 43rd BCS would be recommended by the Public Service Commission to non-cadre posts under the Rules of 2010 and the amended Rules of 2014, but that such recommendation would carry no assurance of recruitment to non-cadre posts.

Learned Advocate further submitted that the Commission first recommended candidates to cadre posts in order of merit, and

thereafter published an advertisement on 14.12.2023, vide memo No. 80.00.0000.202.64.032-23-183, inviting choices for non-cadre posts from the 43rd BCS candidates, specifying a deadline by which choices were to be submitted; the candidates duly submitted their choices accordingly. After receiving the choices, the Commission first recommended a total of 2,163 posts for cadre services, and thereafter recommended 642 posts for non-cadre services on the basis of the choices, by notification dated 26.12.2023.

The Commission prepared a merit list on the basis of the written and viva voce examinations of the 43rd BCS candidates, and thereafter made recommendations first to cadre posts and then to non-cadre posts, in accordance with the candidates' stated choices and the Recruitment Rules for Non-Cadre Posts, 2023. The Commission, however, refrained from publishing the merit list of successful candidates of the 43rd BCS examination and kept it confidential, pursuant to Rule 12 of the Bangladesh Civil Service (Age, Qualification and Test for Direct Recruitment) Rules, 2014. No error of law was therefore committed by respondent No. 1, and the Rule Nisi is without merit and liable to be discharged.

He further submitted that, since one recommendation had already been made from the 43rd BCS candidates to both cadre and non-cadre posts, any second or further recommendation would produce less qualified appointees to posts already filled, and that the posts sought by the petitioners need not be reserved for them.

Learned Advocate finally submitted that, having completed the recruitment process for both the cadre and non-cadre posts of the 43rd BCS, the Commission had proceeded to the 44th BCS examination process, which has now itself been completed; accordingly, it is no longer worthwhile to reserve posts for 43rd BCS candidates.

We have heard learned Advocates for the respective parties and perused the writ petition, the supplementary affidavits thereto, the affidavit-in-opposition, and all documents annexed thereto.

For disposal of the present Rule, the following issues fall for determination:

1. Which Rules of appointment apply to the petitioners' case?
2. Was due process followed in publishing the result of the 43rd BCS examination?

3. Can the PSC still make recommendations after the final publication of the result of the subsequent 44th BCS? And, finally,

4. Are the petitioners eligible to be recommended by the PSC?

Issue No. 1:

The circular for the 43rd BCS Examination-2020 was published on 30.11.2020, inviting applications for 1,814 vacant posts across various cadres of the Bangladesh Civil Service. Clause 32.0 of the circular stated that candidates who could not be recommended to cadre posts owing to a shortage of such posts would be considered for appointment to non-cadre posts, in accordance with the ‘নন ক্যাডার পদে নিয়োগ (বিশেষ) বিধিমালা, ২০১০’, under which the PSC was to initiate the process of recommending candidates for appointment to first- and second-class starting posts. Before publication of the written result of the 43rd BCS examination, a new Rule came into force on 14.06.2023. Rule 9 of the 2023 Rules categorically provides that the earlier 2010 Rule stands repealed, and that any examination process commenced under the previous Rule which remains pending must be completed under the provisions of the new 2023 Rules.

For clarity, Rule 9(3) is reproduced below:

"৯(৩) উপ-বিধি (১) এর অধীন রহিত হওয়া সত্ত্বেও, উক্ত বিধিমালার অধীন গৃহীত কোনো কার্য বা কার্যধারা অনিষ্পন্ন থাকিলে উক্ত কার্য বা কার্যধারা, এই বিধিমালার সহিত সামঞ্জস্যপূর্ণ হওয়া সাপেক্ষে, এই বিধিমালার অধীন নিষ্পন্ন করিতে হইবে।"

Given this clear stipulation, the new 2023 Rules came into effect on 14.06.2023. As this new Rule addresses only procedural matters relating to appointment to non-cadre posts and does not affect any substantive right of the candidates, we find that the latest 2023 Rules shall apply to the candidates of the 43rd BCS examination, including the present petitioners, notwithstanding that the circular was published under the previous Rules.

Issue No. 2:

The second issue is whether due process was followed in publishing the result of the 43rd BCS examination. This requires us to examine the procedure the PSC was obliged to follow.

The circular for the 43rd BCS examination was published on 30.11.2020. Clause 32.0 of the circular provides that candidates who pass the written and viva voce examinations but cannot be recommended to the cadre posts named in the circular, owing to a shortage of available posts, will be considered by the Commission for appointment to non-cadre posts, in accordance with the

Appointment in Non-Cadre Posts (Special) Rules, 2010, and the amended Rules of 2014. The circular also makes clear that this process carries no guarantee of recommendation for service.

It is thus clear from the circular that, in the instant case after appointments to cadre posts are made, the remaining successful candidates are to be considered for non-cadre posts in accordance with the "নন-ক্যাডার পদে নিয়োগ (বিশেষ) বিধিমালা, ২০২৩", since the new Rule has come into force by this time.

Under Rule 4(1) of the 2023 Rules, the Commission must state the description and number of posts in the circular for appointment to non-cadre posts, based on the government's requisition for the relevant posts.

Under Rule 5(1), the Commission must prepare a merit list of 'successful candidates', and under Rule 5(2) it must invite applications from interested candidates. After receiving applications, the Commission must compile and preserve a list of such candidates. Nothing has been mentioned in this Rule as to the time period until which the list shall remain valid, though in the previous Rule, there was a specific stipulation in this regard.

The legal position, therefore, is that while the Commission is obliged under the BCS Rules of 1982 to keep the result

confidential, once appointments to cadre posts have been made, the remaining candidates who wish to be considered for non-cadre posts must be treated as 'successful candidates' for that purpose, and the Commission is under a legal obligation to publish a merit-based result of those candidates, in accordance with the non-cadre service recruitment Rules.

Under Rule 6, upon receiving requisitions from the relevant appointing authorities, the Commission must select candidates from the merit-based list, subject to the candidates meeting the required qualifications and in accordance with the choices made by the candidates and the provisions of the Rules.

Finally, upon receiving the Commission's recommendation, the appointing authority will make the appointment accordingly.

The question, then, is how far this process was followed by the PSC in the 43rd BCS examination. Of the 15,229 candidates who passed the preliminary test and sat the written examination, only 9,841 passed; the result was published on 20.08.2023. This result was not merit based. The petitioners' names appear on this list. They were thereafter called for the viva voce examination, in which the petitioners and others duly participated.

On 14.12.2023, the PSC invited choices for appointment to 1,342 non-cadre posts from all candidates who had participated in the viva — before any appointments to cadre posts had been made, and without publication of any merit list. The relevant part of that memo is reproduced below:

"৪৩তম বিসিএস পরীক্ষা-২০২০ এর মৌখিক পরীক্ষায় অংশগ্রহণকারী প্রার্থীদের মধ্য হতে যারা "নন-ক্যাডার পদে নিয়োগ (বিশেষ) বিধিমালা-২০২৩" অনুযায়ী ৯ম থেকে ১২তম গ্রেডের নন-ক্যাডার পদে চাকরি পেতে আগ্রহী তাদের নিকট হতে সংশ্লিষ্ট নিয়োগ বিধি অনুযায়ী যোগ্যতা রয়েছে এমন প্রার্থীদের মেধার ভিত্তিতে সুপারিশের জন্য নিম্নবর্ণিত পদ সমূহে পছন্দক্রম প্রদানের জন্য অনলাইনে দরখাস্ত আহবান করা যাচ্ছে। উল্লেখ্য, "বাংলাদেশ সিভিল সার্ভিস (বেস, যোগ্যতা ও সরাসরি নিয়োগের জন্য পরীক্ষা) বিধিমালা, ২০১৪" অনুযায়ী ক্যাডার পদে সুপারিশের পর অবশিষ্ট প্রার্থীদের মধ্য হতে নন-ক্যাডার পদে সুপারিশের কার্যক্রম গ্রহণ করা হবে।"

The memo dated 14.12.2023 also stated that (1) submission of a choice list would not guarantee a non-cadre post, and (2) candidates would be recommended according to their choice list, required qualifications, as well as merit.

We find that inviting choices for non-cadre posts at this stage was done in complete violation of the non-cadre recruitment

Rules and of the stipulations in the circular itself. The petitioners and others nevertheless submitted their choice lists accordingly.

After receiving the choice lists from all candidates who had taken the viva, the PSC, by memo dated 26.12.2023, provisionally nominated 2,163 candidates for appointment to various cadre posts. By the same memo, 642 candidates were provisionally nominated for appointment to non-cadre posts, against the 1,342 posts named in the earlier circular of 14.12.2023. The memo further stated that nominations could not be made for 646 non-cadre posts owing to the unavailability of eligible candidates, and that 54 posts had been recalled by the Ministry of Public Administration, so that nominations could not be made against those posts either.

Clause 4 of the aforesaid memo dated 26.12.2023 provides as follows:

০৪. “লিখিত ও মৌখিক উভয় পরীক্ষায় কৃতকার্য হলেও ক্যাডারের শূন্য পদের সংখ্যা কম হওয়ায় উত্তীর্ণ সকল প্রার্থীকে নিয়োগের জন্য মনোনয়ন দেয়া সম্ভব হয়নি। তাদের মধ্য হতে মেধা ও নিয়োগ যোগ্যতা অনুযায়ী "নন-ক্যাডার পদে নিয়োগ (বিশেষ) বিধিমালা, ২০২৩ এর বিধান অনুসারে সরকারের নিকট হতে প্রাপ্ত অধিযাচন অনুযায়ী পর্যায়ক্রমে ৯ম, ১০ম ও ১২তম গ্রেড এর নন-ক্যাডার পদে মনোনয়ন প্রদান করা হয়েছে।”

Clause 7 of the memo dated 26.12.2023 further stipulates that the nomination carries no guarantee of appointment to either cadre or non-cadre posts.

From the stipulations in the circular dated 30.11.2020 and the provisions of the Non-Cadre Appointment Rules of 2023, it is apparent that, after appointments to cadre posts, a merit list of the remaining successful candidates must be published and preserved by the Public Service Commission. The PSC must then invite applications from those successful candidates for their choice of non-cadre posts. After receiving these choice lists, the commission then nominate candidates for recommendation, subject to requisition (অধিষাচন) from the relevant government authority and to the candidates' required qualifications and merit position.

From the results of the 37th and the subsequent 44th BCS examinations, we find that, after nomination to cadre posts, a merit list was published among the remaining candidates aspiring to non-cadre posts, in accordance with the Non-Cadre Appointment Rules, and nominations were made progressively thereafter. The 44th BCS examination, though conducted under the latest 2023 Rules, likewise sought choice lists from non-cadre candidates only after nomination to cadre posts.

On the basis of the foregoing discussion, we find that the PSC did not follow the provisions of the Non-Cadre Appointment Rules in the 43rd BCS examination, for reasons known only to itself. If the PSC does not publish a merit list for appointment to non-cadre posts, it is difficult to see how it could begin a merit-based selection process at all. Learned Advocate for the PSC could offer no satisfactory answer on this point. The fact remains that the PSC invited choices from all candidates who had taken the viva before nominating candidates to cadre posts, and without publishing a merit list among the remaining candidates aspiring to non-cadre posts. This departure created disorder, and, as the annexures show, a number of appointing authorities consequently withdrew their requisitions.

After issuance of the Rule Nisi on 05.02.2024, the petitioners made representations to the PSC and the Ministry of Public Administration, describing these circumstances and noting that, whereas earlier BCS examinations had produced a substantial number of non-cadre recommendations, the present 43rd BCS examination had produced worryingly few (Annexure-B to the petitioners' application for reservation of 8,501 non-cadre posts). Upon considering that application, the Ministry of Public Administration wrote to the PSC, as evidenced by Annexure-B1

dated 13.02.2025. It appears from that memo that the PSC, in reply to the Ministry's letter, stated:

"৪৩তম বিসি এস হতে নন-ক্যাডারের শূন্য পদ পূরণের লক্ষ্যে ২,৯২৬টি পদের অধিযাচন কমিশনে প্রেরণ করা হয়েছে। উক্ত অধিযাচন পর্যালোচনা করে নন-ক্যাডার পদে নিয়োগ (বিশেষ) বিধিমালা ২০২৩ বিধি অনুযায়ী বিসিএস হতে পূরণযোগ্য ১,৩৪২টি পদের সুপারিশকরণের লক্ষ্যে ৪৩তম বিসিএস এর নন-ক্যাডার পদের পছন্দক্রম আহবান করে বিজ্ঞাপন জারি করা হয়। উক্ত বিজ্ঞপ্তির পরিপ্রেক্ষিতে ৭,৪৪০ জন প্রার্থী পছন্দক্রম প্রদান করেন এবং ১,৮৪৫ জন প্রার্থী পছন্দক্রম দেননি। প্রার্থীদের মেধা, শূন্য পদের নিয়োগ যোগ্যতা ও পছন্দক্রম অনুযায়ী ১,৩৪২টি পদের মধ্যে ৬৪২টি পদে সুপারিশ করা হয়। এছাড়াও পদ শূন্য না থাকা, সরাসরি নিয়োগ অভিজ্ঞতা, পদ প্রত্যাহার ইত্যাদি উল্লেখ থাকার কারণে পছন্দক্রম আহ্বানকৃত বিজ্ঞপ্তিতে ১,৫৮৪টি পদের বিজ্ঞাপন জারি করা সম্ভব হয়নি। তাছাড়া সংশ্লিষ্ট নিয়োগ বিধির যোগ্যতা অনুযায়ী ৪৩তম বিসিএস এ যোগ্য প্রার্থী না পাওয়ায় ৯ম থেকে ১২তম গ্রেড ভুক্ত ৬৪৬টি নন-ক্যাডার পদের সুপারিশ করা সম্ভব হয়নি।"

In this manner, the PSC sought to justify its failure to nominate a substantial number of candidates to non-cadre posts from among the 43rd BCS candidates.

In the same memo, the PSC also informed the Ministry of Public Administration:

"নন-ক্যাডার পদে নিয়োগ (বিশেষ) বিধিমালা, ২০২৩ অনুযায়ী ১৪ ডিসেম্বর ২০২৩ তারিখে জারিকৃত বিজ্ঞপ্তির পরিপ্রেক্ষিতে ৪৩তম বিসিএস নন-ক্যাডার ফলাফল বাতিলের বিধিগত কোন সুযোগ নেই এবং নন-ক্যাডার পদে নিয়োগ (বিশেষ) বিধিমালা, ২০২৩ অনুযায়ী ক্যাডার ও নন-ক্যাডার এর ফলাফল একই সাথে প্রকাশ করা হয়েছে। ফলে পৃথকভাবে উত্তীর্ণ প্রার্থীদের পূর্ণাঙ্গ তালিকা প্রকাশের বিধিগত সুযোগ নেই মর্মেও কমিশন অভিমত জ্ঞাপন করেছেন।"

On examining the relevant provisions, we find this explanation by the PSC to be misconceived and unsupported by the actual text of the Rules. Although the latest 2023 Rules do introduce a new requirement that the PSC's circular should contain both cadre and non-cadre posts together, Clause 4(3) of the 2023 Rules clearly provides:

"(৩) উপ-বিধি (১) এ যাহা কিছুই থাকুক না কেন, এই বিধিমালা কার্যকর হইবার পূর্বে নন-ক্যাডার পদে নিয়োগের জন্য অপেক্ষমাণ যে সকল বিসিএস পরীক্ষার জন্য প্রকাশিত বিজ্ঞপ্তিতে সুপারিশের বিষয় উল্লেখ ছিল, কিন্তু নন-ক্যাডার পদের সুনির্দিষ্ট বিবরণ ও সংখ্যা উল্লেখ ছিলনা, সেই ক্ষেত্রে সংশ্লিষ্ট বিসিএস পরীক্ষায় উত্তীর্ণ প্রার্থীদের ক্ষেত্রে, সরকার কর্তৃক বিসিএস ওয়ারী, নন-ক্যাডার পদের সুনির্দিষ্ট বিবরণ ও সংখ্যা উল্লেখক্রমে কমিশনকে অনুরোধ করা সাপেক্ষে এই বিধিমালার অধীন প্রদত্ত সুবিধাদি প্রযোজ্য হইবে।"

"(৪) কমিশন, উপ-বিধি (৩) এর উদ্দেশ্য পূরণকল্পে, উক্ত উপ-বিধিতে বর্ণিত নন-ক্যাডার পদে নিয়োগ লাভে আগ্রহী প্রার্থীদের নিকট হইতে, সরকারের কর্তৃক প্রাপ্ত

শূন্য পদের বিবরণী ও সংখ্যার ভিত্তিতে যথাসময়ে নির্ধারিত ফরমে পছন্দক্রম
আহ্বান করিবে।"

This provision creates a transitional accommodation for BCS examinations already commenced under the previous 2010 Rules. In such cases, the PSC must, in due course (যথাসময়ে), invite choice lists from successful candidates on the basis of requisitions with the description and number of vacant posts received from the government. We are of the view that "যথাসময়ে" (in due course), in this context, means after publication of the merit list of successful candidates, together with the number and description of vacant non-cadre posts — since, without publishing a merit list, the PSC could not properly begin a merit-based selection process for nomination.

“”Learned Advocate for the PSC submitted that, under the BCS Service Rules of 2014, the PSC is under a legal obligation not to publish the result of either the written or the viva voce examination. Rule 12 of the BCS Service Rules, 2014, provides as follows:

“(১২) লিখিত পরীক্ষার উত্তরপত্র এবং মৌখিক পরীক্ষা সংক্রান্ত গোপনীয়তা।—

(১) লিখিত পরীক্ষার সকল উত্তরপত্র গোপনীয় দলিল হিসাবে গণ্য হইবে এবং

কোন অবস্থাতেই কোন প্রার্থী বা তাহার প্রতিনিধিকে উহা প্রদর্শন করা যাইবে না।

(২) উত্তরপত্র পুনঃপরীক্ষণের কোন আবেদন বিবেচনা করা হইবে না, তবে সরকার কর্তৃক নির্ধারিত ফি জমা প্রদান পূর্বক কোন প্রার্থী কমিশন কর্তৃক নির্ধারিত পদ্ধতিতে লিখিত পরীক্ষার নম্বর পত্র প্রাপ্তির জন্য কমিশনের পরীক্ষা নিয়ন্ত্রক (ক্যাডার) বরাবর আবেদন করিতে পারিবেন।

(৩) উপ-বিধি (২) এর অধীনকৃত আবেদন কমিশন কর্তৃক নির্ধারিত পদ্ধতিতে প্রক্রিয়ায়ণ শেষে নিষ্পন্ন করা হইবে।

(৪) মৌখিক পরীক্ষার নম্বর গোপনীয় থাকিবে এবং উক্ত পরীক্ষার নম্বর বা এতদ-সংশ্লিষ্ট তথ্য প্রার্থী বা তাহার প্রতিনিধিকে প্রদর্শন বা প্রদান করা হইবে না।"

It is thus clear that, under this provision, the PSC is barred from publishing or disclosing the result of the written or viva voce examination, or related information, insofar as appointment to cadre posts is concerned. However, once recommendations to cadre posts have been made, the process of recommendation to non-cadre posts proceeds under the Non-Cadre Appointment Rules. Under Rule 5 of those Rules, the PSC is under a legal obligation to publish a merit list of successful candidates. The relevant provision is reproduced below:

"৫। এই বিধিমালার উদ্দেশ্য পূরণকল্পে, কমিশন প্রত্যেক বিসিএস পরীক্ষায় উত্তীর্ণ প্রার্থীদের মেধা ক্রমানুসারে একটি তালিকা প্রস্তুত করিবে।"

"উত্তীর্ণ প্রার্থী" is defined in Rule 2(ka) as follows: "উত্তীর্ণ প্রার্থী" অর্থ বাংলাদেশ সিভিল সার্ভিস (বেয়স, যোগ্যতা ও সরাসরি নিয়োগের জন্য

*পরীক্ষা) বিধিমালা, ২০১৪ এর বিধি ১৭তে বর্ণিত কৃতকার্য প্রার্থীদের মধ্যে যাহারা
ক্যাডার সার্ভিস বা পদে নিয়োগের জন্য কমিশন কর্তৃক সুপারিশকৃত নহেন।’*

Our specific finding, therefore, is that while the PSC is barred from disclosing the written or viva voce results relating to cadre appointments, there is no corresponding bar on publishing a merit list for the purpose of recommending candidates to non-cadre posts.

In view of the foregoing, we find that due process was not followed by the PSC in publishing the result of the 43rd BCS examination.

Issue No. 3:

The third issue is whether the PSC may still make recommendations from among the 43rd BCS candidates after final publication of the result of the subsequent 44th BCS examination. Non-cadre recruitment Rules of 2023 though requires preparing a merit list, it does not provide any period as to the validity of such list. Furthermore, from the memo dated 27.02.2025, annexed as Annexure-B-3 to the petitioners' application, we find that, once concern had been raised regarding the insufficient number of non-cadre appointments from the 43rd BCS, the PSC requested the Ministry of Public Administration to obtain requisitions for the

successful 43rd BCS non-cadre candidates, so that recommendations could be made. The Ministry of Public Administration accordingly wrote to the relevant departments requesting requisitions. The relevant part of the memo dated 27.09.2025 is reproduced below:

"এমতাবস্থায়, উক্ত বিজ্ঞপ্তি জারির পূর্ব পর্যন্ত নন-ক্যাডার পদে নিয়োগের লক্ষ্যে অধিযাচন প্রেরণ করার সুযোগ থাকা সত্ত্বেও অধিযাচন প্রেরণ করা হয় নাই/ আংশিক অধিযাচন প্রেরণ করা হয়েছে অথবা অধিযাচন প্রেরণ করা হয়েছে কিন্তু কমিশন কর্তৃক সুপারিশ করা হয়নি এরূপ সকল নন-ক্যাডার পদ ও পদসংখ্যা (যদি থাকে) উল্লেখ পূর্বক সংশ্লিষ্ট তথ্যসহ অধিযাচন আগামী ২০ (বিশ) কার্য দিবসের মধ্যে জন প্রশাসন মন্ত্রণালয়ের নব নিয়োগ শাখায় আবশ্যিকভাবে প্রেরণের জন্য নির্দেশক্রমে অনুরোধ করা হলো।"

We are accordingly of the view that, since both the PSC and the Ministry of Public Administration have themselves acknowledged the disorder created by the PSC's departure from the non-cadre recruitment Rules, and since the Ministry has already initiated steps for the concerned government departments to send requisitions, and moreover, since there is no time limit as to the validity of the list as per the Rules of 2023, there is no bar to the PSC taking the initiative to select and recommend candidates to non-cadre posts from among the successful candidates of the 43rd BCS examination.

Issue No. 4:

The final issue for determination is whether the present petitioners are eligible to be recommended to non-cadre posts, as prayed for in the writ petition.

It is evident from the appointment circular and from the memo inviting choices from candidates that, upon receipt of requisitions (অধিষাচন) from the relevant departments, the PSC is to initiate a selection process to recommend candidates, but that neither the merit list nor the selection process itself guarantees selection or recommendation to non-cadre posts. No vested right accrues merely after passing the viva voce examination followed by the written examination, or from the appearance of a candidate's name in the merit list. The selection process (মনোনয়ন প্রক্রিয়া) is at all times subject to the following pre-conditions:

1. Requisition (অধিষাচন) by the appointing authority;
2. The requisite qualifications of the candidates concerned;
3. The merit list; and
4. The choice list submitted by the candidates.

If the present petitioners are found eligible for selection, they will accordingly be considered for nomination.

In view of the facts and circumstances discussed above, we find that justice will best be served by disposing of the Rule with the following direction:

Respondent No. 1, the Public Service Commission, is hereby directed to publish the merit list of non-cadre candidates of the 43rd BCS examination, in accordance with Rule 5 of the 'নন-ক্যাডার পদে নিয়োগ (বিশেষ) বিধিমালা, ২০২৩', within 60 (sixty) days of receipt of this order, and thereafter to initiate the selection process for the purpose of making recommendations. If the petitioners' names appear on the merit list and they meet the requirements specified by the requiring government authority, they shall be considered accordingly.

The Rule is disposed of with the aforesaid direction.

There is no order as to costs.

Let a copy of this judgment and order be communicated to the concerned authorities at once.

Justice Sashanka Shekhar Sarkar, J:

I agree.