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

Present
Mr. Justice Sikder Mahmudur Razi
And
Ms. Justice Fatema Anwar

Writ Petition No. 14166 of 2026

Md. Monirul Islam and others
.....Petitioners.

-Versus-

Secretary, Secondary and Higher Education Department, Ministry of Education, Bangladesh Secretariat, Ramna, Dhaka and others.
.....Respondents.

Mr. Md. Uzzal Hossain, Advocate
For the Petitioner.

Mr. Nur Mohammad Azami, DAG
Mr. Zasidul Islam Jony, DAG
Mr. Md. Asif Imran, AAG
Mr. Md. Mostofa Kamal Bachchu, AAG
Mr. Minhazur Rahman, AAG
Mr. Md. Mosaddek Billah, AAG
Mr. S.M. Emamul Musfiqur, AAG
For the respondents.

The 2nd November, 2026

Sikder Mahmudur Razi, J:

By filing the instant writ petition the petitioners who are Assistant Headmaster/Assistant Headmistress of different recognized Non-Government Secondary Schools prays for the following reliefs:

(i) As to why the impugned Notification issued vide memo no. 37.00.0000.000.073.08.006.16.33 dated 27.01.2026 prescribing the procedure for examination and the criteria to be followed by the Non-Government Teachers' Registration and Certification Authority (NTRC) for selection and recommendation for appointment to the post of Assistant Headmaster/Headmaster in Non-Government Secondary Schools (Annexure- D to the writ petition) should not be

declared ultra virus to the provision of section 10 of Non-Government Teachers' Registration and Certification Authority Act, 2005

(ii) Inaction and failure of the respondents to amend the Recognized Non-Government Secondary School Teachers Terms and Conditions of Service Regulations, 1979, so far to provide a lawful, transparent and effective avenue of promotion from the post of Assistant Headmaster to the post of Headmaster;

(iii) A direction upon the respondents to introduce the provision of promotion from the post of Assistant Headmaster to the post of Headmaster in the Secondary Schools.

As interim prayers the petitioners further pray for staying the notification dated 27.01.2026 and for an order of status-quo in respect of the subject matter of the writ petition.

In support of such prayers the submissions of the learned advocate for the petitioners are that the legislature by enacting the Non-Government Teachers' Registration and Certification Authority Act, 2005 has established a specific statutory framework governing the functions of the Non-Government Teachers' Registration and Certification Authority (NTRC) including the conduct of examinations and the registration and certification of qualified teachers and section 10 of the said Act confers statutory functions upon the NTRC in relation to the examination, preparation of lists, registration and certification of qualified teachers for appointment. The learned advocate further submits that section 10 contemplates that the

procedure for examination and criteria to be followed in connecting therewith shall be determined in accordance with the Regulations to be made by the NTRCA but despite said statutory scheme and in violation of the said authority the respondent no. 1 has issued the impugned circular dated 27.01.2026 without lawful authority and in absence of any express authority conferred by the Non-Government Teachers' Registration and Certification Authority Act, 2005. It has further been submitted that the said notification purported to prescribe the procedure for examination and the criteria to be followed by NTRC in conducting such examination and in making selection and recommendation for appointment. The learned advocate further submits that the respondents, being responsible for regulating the service conditions of teachers serving in recognized Non-Government Secondary Schools, are under a public duty to maintain a rational, fair and workable service structure and the continued failure to provide appropriate promotional channel from Assistant Headmaster /Assistant Headmistress to Headmaster/Headmistress particularly when corresponding promotional avenues exist in other comparable educational service structures, constitutes a failure to discharge such public duty and therefore, the petitioners are aggrieved by such continuous inaction of the authority and prays for a direction upon the respondents to introduce the provision of promotion from the post of Assistant Headmaster/Assistant Headmistress to the post of Headmaster/Headmistress in the Secondary Schools.

Having considered the submission of the learned advocate for the petitioners and perused the writ petition, it appears that the petitioners attempted to make a clever subterfuge to hide the বেসরকারি শিক্ষক নিবন্ধন পরীক্ষা গ্রহণ, নিবন্ধন ও প্রত্যয়ন বিধিমালা, 2025 made/passed by the government in exercise

of its power under section 21 of the Act, 2005 to give effect to the purpose of section 10 of the act. This Rules has been brought to the notice of the court by the learned Deputy Attorney General. On going through the said Rules, it appears that the same has been passed and made with and under proper authority addressing the issues and purposes as provide in section 10 of the act. The impugned circular is nothing but an instruction by the respondent no. 1 in the light of the said Rules upon the Authority which is covered by section 8 (ta) of the act. We therefore find no illegality warranting interference by the court.

As to inaction and consequent direction upon the respondents to amend the law to introduce the provision of promotion from the post of Assistant Headmaster/Assistant Headmistress to the post of Headmaster/Headmistress in the Secondary Schools it is by now settled proposition of constitutional law that courts exercising extraordinary writ jurisdiction under Article 102 of the Constitution cannot act as a legislative body or issue directions to the executive to exercise its law-making/rule-making powers. The judiciary also cannot, directly or indirectly, require the executive to frame a specific rule or incorporate any particular amendment into existing service regulations. Under Article 102 of the Constitution of Bangladesh, the High Court Division exercises judicial review to enforce statutory duties and fundamental rights. However, this jurisdiction is strictly bound by the separation of powers. Cadre structuring, determining whether posts are filled by direct recruitment or promotion, and framing service regulations are exclusive executive and legislative functions.

As held in Government of Bangladesh vs. Md. Mizanur Rahman 2023(31)BLT(AD)89: LEX/BDAD/0174/2021, the High Court Division cannot issue directions to the executive to frame or amend service rules, and any such directive represents an unconstitutional overreach that must be expunged. The Hon'ble Appellate Division held that writ courts cannot compel rule-making authorities to amend service regulations. Pleadings requesting mandamus to mandate a promotional channel must be rejected as an infringement of the executive domain. Their Lordships in clear language observed that, "*Exercising the power vested under article 102 of the Constitution, the High Court Division is not authorized to direct the Government or its instrumentality or the legislature to amend or make any law which is the domain of the legislature. No organ of the State can encroach the constitutional limit. Self-restraint is of the essence in the observance of the judicial oath. The Constitution has not authorized the Judges to sit in judgment on the wisdom of what the legislative and the executive branch do. The three organs should be in consonance and in accordance with constitutional limit. The direction given by the High Court Division to make law is transgression of the judicial power, so such direction should be expunged*."

In Government of Bangladesh and Ors. vs. Kazi Mofizul Haque and Ors. 20ADC(2023)879: LEX/BDAD/0126/2023 their Lordships giving references of a large number of judgments maintained that writ courts cannot compel the executive to finalize proposed recruitment rule, amendments or create promotional avenues where existing rules prescribe direct recruitment. Unfinalized inter-departmental proposals, inter-ministerial communications, or recommendations to introduce a promotional quota confer no vested legal

right or legitimate expectation upon employees to mandate rule amendments via mandamus under Article 102.

In Government and Ors. vs. Md. Mainul Haque and Ors. 2022 26 ALR (AD) 44: LEX/BDAD/0083/2022 it was the ultimate observation of their Lordships that mandamus under Article 102 cannot lie against the government without a pre-existing legal right and a corresponding statutory obligation. The import of that decision is that courts cannot bypass established cadre structures, manpower patterns, or executive policy limits based on broad notions of fairness or legitimate expectation.

Similarly the Supreme Court of India in plethora of decisions held that the court can neither legislate nor issue a direction to the legislature to enact in a particular manner and courts cannot issue a mandamus commanding the executive to frame or amend recruitment rules to create promotion channels.

In Mallikarjuna Rao and Ors. vs. State of Andhra Pradesh and Ors. AIR1990SC1251: MANU/SC/0450/1990 it was held that, "*It is neither legal nor proper for the High Courts or the Administrative Tribunals to issue directions or advisory sermons to the executive in respect of the sphere which is exclusively within the domain of the executive under the Constitution.*" It was further held that "*The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309 of the Constitution. The Courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule making power in any manner. The Courts cannot assume to itself a supervisory role over the rule making power of the executive under Article 309 of the Constitution*."

In State of Himachal Pradesh and Ors. vs. Satpal Saini AIR 2017 SC 810: MANU/SC/0151/2017 the Supreme Court of India held that-

> *(i) The High Court while issuing the above directions acted in a manner contrary to settled limitations on the power of judicial review Under Article 226 of the Constitution. A direction, it is well settled, cannot be issued to the legislature to enact a law. The power to enact legislation is a plenary constitutional power which is vested in Parliament and the state legislatures Under Articles 245 and 246 of the Constitution. The legislature as the repository of the sovereign legislative power is vested with the authority to determine whether a law should be enacted. The doctrine of separation of powers entrusts to the court the constitutional function of deciding upon the validity of a law enacted by the legislature, where a challenge is brought before the High Court Under Article 226 (or this Court Under Article 32) on the ground that the law lacks in legislative competence or has been enacted in violation of a constitutional provision. But judicial review cannot encroach upon the basic constitutional function which is entrusted to the legislature to determine whether a law should be enacted. Whether a provision of law as enacted subserves the object of the law or should be amended is a matter of legislative policy. The court cannot direct the legislature either to enact a law or to amend a law which it has enacted for the simple reason that this constitutional function lies in the exclusive domain of the legislature. For the Court to mandate an amendment of a law-as did the Pradesh High Court-is a plain usurpation of a power entrusted to another arm of the state. The High Court transgressed the limitations imposed upon the power of judicial review Under Article 226 by issuing the directions to the state legislature to amend the law. The government owes a collective responsibility to the state legislature. The state legislature is comprised of elected representatives. The law enacting body is entrusted with the power to enact such legislation as it considers necessary to deal with the problems faced by society and to resolve*

issues of concern. The courts do not sit in judgment over legislative expediency or upon legislative policy. This position is well settled.

(ii) The judiciary is one amongst three branches of the State; the other two being the executive and the legislature. Each of the three branches is co-equal. Each has specified and enumerated constitutional powers. The judiciary is assigned with the function of ensuring that executive actions accord with the law and that laws and executive decisions accord with the Constitution. The courts do not frame policy or mandate that a particular policy should be followed. The duty to formulate policies is entrusted to the executive whose accountability is to the legislature and, through it, to the people. The directions issued by the High Court for amending the provisions of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 and the Rules were manifestly unsustainable. The directions were accordingly set aside.

In K. Narayani Hegde (Dead) by Lrs. vs. State of Karnataka and Ors. (2000)9SCC175: MANU/SC/2559/2000 it was held that courts cannot issue judicial directions to create promotional avenues retrospectively or mandate subordinate legislation to amend service conditions, as prescribing avenues of promotion is an exclusive policy and rule-making function of the State.

In Chairman and Managing Director, Central Bank of India v Central Bank of India SC/ST Employees Welfare Association (2015)12 SCC 308: MANU/SC/0017/2015 it was reiterated that while an employee has a right to be considered for promotion if the existing statutory rules provide for a promotional channel, they do not possess a legal right to compel the State to alter its recruitment scheme or create new promotional avenues where the rules explicitly prescribe direct recruitment. It was observed in that judgment that, "*What is to be highlighted is that existence of provision for reservation in the matter of selection or promotion, as the case may be, is the sine qua*

non for seeking mandamus as it is only when such a provision is made by the State, a right shall accrue in favour of SC/ST candidates and not otherwise."

Therefore, we do not find any reason to hold otherwise in this issue and therefore, we are not inclined to interfere into this matter.

Accordingly, the instant petition is rejected summarily.

(Sikder Mahmudur Razi, J:)

I agree.

(Fatema Anwar, J:)