

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

WRIT PETITION NO.8756 of 2022

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. Ali Islam and others

..... Petitioners.

-vs-

***Government of the People's Republic of Bangladesh
represented by the Secretary, Technical and Madrasah
Education Division, Ministry of Education and others.***

.....Respondents

And

Mr. Md. Salahuddin Dolon, Senior Advocate with
Mr. Muhammad Mizanur Rahman, Advocate and
Mr. Md. Sharif Khan, Advocate

..... For the petitioners.

Mr. Sk. Shafique Mahmud, Advocate with
Ms. Sharmim Yeasmin, Advocate

.....For the respondent No.1

Mr. Muhammad Rafiul Islam, Advocate with
Mr. Mohammad Pavel Mahmud, Advocate

..... For the respondent No.5.

Mr. Samarendra Nath Biswas, D.A.G. with
Mr. Md. Abul Kalam Khan (Daud), A.A.G. with
Mr. Md. Modersher Ali Khan (Dipu), A.A.G. and
Mr. Md. Taufiq Sajawar (Partho), A.A.G.

....For the Respondents-government.

***Heard on: 31.05.2023, 03.08.2023, 17.08.2023,
18.10.2023, 02.11.2023 and Judgment on: 09.11.2023***

Present:

Mrs. Justice Farah Mahbub.

And

Mr. Justice Muhammad Mahbub Ul Islam

Farah Mahbub, J:

In this application filed under Article 102 of the Constitution of the
People's Republic of Bangladesh, the petitioners, as being the members of

the BCS (General Education) Cadre have challenged the impugned provisions of the respective posts as contained at Serial Nos.1-6 of Schedule-1 of the Bangladesh Madrasah Teachers' Training Institute Recruitment Rules, 2021 published in Bangladesh gazette dated 02.05.2021 vide SRO No.91-Ain/2021 making provisions for filling up the respective posts of Principal/Vice-Principal/ Associate Professor/ Assistant Director/ Assistant Professor/ Lecturer by deputation from other BCS Cadres along with BCS (General Education) Cadre (Annexure-F), to be declared as *ultra vires* the Constitution of the People's Republic of Bangladesh. At the same time, the petitioners have also sought for a direction upon the respondents concerned in the form of *mandamus* not to take any step whatsoever causing adverse effect upon the BCS (General Education) Cadre by way of creating opportunity to other BCS Cadre members to encroach into the BCS (General Education) Cadre.

Having found *prima facie* substance to the contentions of the writ petition instant Rule Nisi was issued by this Court along with an ad-interim order of injunction restraining the respondents concerned from filling up the respective posts by recruitment/deputation from the members of other BCS Cadre services except the members of BCS (General Education) Cadre.

Challenging the said interim order, the respondent-government moved the Appellate Division by filing Civil Petition to Leave to Appeal No.2572 of 2022. The Appellate Division upon hearing the respective contending parties vide order dated 28.11.2022 directed both the parties to maintain *status-quo* with direction upon this Bench to hear and dispose of the Rule on merit.

Facts, in brief, are that the petitioners are the members of Bangladesh Civil Service (General Education) Cadre. They were appointed in the cadre service after being selected through a rigorous selection process. They duly joined in their respective posts with expectation that the quality and standard of the respective services would always be maintained.

It has been stated that pursuant to the order passed by the Hon'ble President of the Republic under Article 133 of the Constitution of the People's Republic of Bangladesh (in short, the Constitution) BCS (Education: General Education) Composition and Cadre Rules, 1980 as well as BCS Recruitment Rules, 1981 were framed (Annexures- A and B respectively).

In this regard, the contention of the petitioners are that Article 29 of the Constitution has obligated the government to ensure equality in the service of the Republic in respect of appointment and other terms of conditions of service. In order to protect the dignity, integrity, sanctity of each cadre the government had promulgated different cadres and composition rules for every individual cadre containing the total cadres strength, posts and procedures to be followed for filling up those posts by the persons having requisite qualifications etc. It was done to maintain integrity of each cadre and also, to avoid trespass of member of one cadre to another inasmuch as to strengthen the civil service of Bangladesh by ensuring appointment and posting of eligible candidates with brilliant academic and educational qualifications.

Further contentions of the petitioners are that any recruitment/promotion/transfer presupposes the framing of recruitment Rules and once rules are framed there cannot be any breach thereof and that the government

is to follow the same strictly since breach of recruitment Rules will invite judicial interference. Since the cadre officers are recruited through Bangladesh Public Service Commission for BCS (General Education) hence, they are specially trained for that purposes; as such, any Directorate established by way of bifurcation must be administered by the same cadre.

The petitioners, however, having satisfactory and unblemished record of service were promoted to the respective higher posts namely Professor/Associate Professor/Assistant Professor/ Assistant Director/ Deputy Director under the BCS (General Education) Cadre. Since then they have been discharging their respective duties and functions in due compliance of law to date. However, petitioner Nos. 1 and 2 have been serving in the post of Assistant Professor under the Directorate of Technical and Madrasah Education on deputation since 2020 and 2022 (Annexures- I and I-1 respectively to the supplementary affidavit filed today).

With a view to establish a separate Directorate for modernisation and development of madrasah education the Ministry of Public Administration vide Memo No.০৫.১৫৫.০১৫.০১.০১.০৪১. ২০১০-৪৩৫ dated 11.11.2010 (Annexure-C) gave approval to create 36 substantive posts including the posts of Director General, Director, Deputy Director, Assistant Director along with 17 posts to be filled up from out sourcing subject to obtaining approval of the Ministry of Finance. Subsequently, the Ministry of Finance gave approval towards creation of the aforesaid posts vide Memo No.07.00.0000.162.37.026.12-205 dated 05.09.2012. However, the scale of those posts were also vetted vide Memo No.07.00.0000.162.37.026.13-56 dated 27.03.2013. Later, the aforesaid proposals were approved by the Cabinet Division vide resolution dated 29.08.2013 and thus, those posts had

been retained on year to year basis till framing of the respective Service Rules.

The Bangladesh Madrasah Teachers' Training Institute (in short, BMTTI) is the only public institution in the country established in 2000. Said institute provides quality human resources offering different types of in- service and pre-service training for madrasah and secondary school and college teachers. It works independently under the Madrasha Education Division, Ministry of Education and all the Class-I posts were being filled up from BCS (General Education) Cadre. The terms and conditions of service of the officers and employees of BMTTI were regulated and governed by the Bangladesh Madrasah Teachers' Training Institute (Officers and Employees) Recruitment Rules, 2014 (in short, Rules, 2014), as framed under the order of the Hon'ble President of the Republic in exercise of power as provided under Article 133 of the Constitution. Serial Nos. 1-5 of the Schedule of the said Rules prescribed that those posts would be filled up by promotion; if, however, eligible candidates were not available those were to be filled up by the officers on deputation holding equivalent respective posts. The post of Lecturer as contained at serial No.6 was to be filled up 70% by direct recruitment and 30% by way of deputation from the officers holding equivalent respective post. In other words, respective posts under BMTTI Rules, 2014 were to be filled up from the officers of the BCS (General Education) Cadre, on deputation.

The petitioner Nos.1 and 2, who are the respective officers of the BCS (General Education) Cadre, have been discharging their duties in their respective posts under the Ministry of Education on deputation. The other petitioners i.e. petitioners Nos.3-19 were under the expectation that they also

had scope to be appointed in BMTTI on deputation as being the officers of the BCS (General Education) Cadre. At this juncture, the government upon repealing the service Rules, 2014 of BMTTI framed new service Rules for the said institution in the name and style “Bangladesh Madrasah Teachers’ Training Institute Recruitment Rules, 2021” (in short, Rules, 2021) as published in the official gazette dated 02.05.2021 vide SRO No.91-Ain/2021 (Annexure-F).

The petitioners as being the officers of BCS (General Education) Cadre are aggrieved with Serial Nos.1-6 of Schedule I of the said Service Rules, 2021 so far it relates to filling up the respective posts of Principal /Vice Principal/Associate Professor/Assistant Director/ Assistant Professor/ Lecturer from amongst the officers of BCS (General Education) Cadre or officers having equivalent post “.....অথবা সমপদমর্যাদা কর্মকর্তাদের মধ্য হইতে।”

In this regard, the categorical contention of the petitioners are that under the Service Rules, 2014 of BMTTI the post of Principal/Vice-Principal/Associate Professor/Assistant Director/Assistant Professor/ Lecturer were being filled up by the respective officers by promotion and in the absence of eligible candidates to be considered for promotion, to be filled up from the officers of BCS (General Education) Cadre on deputation. But, under the new Service Rules, 2021 those respective posts are now open to be filled up from different other cadres; hence, is *ultra vires* the Constitution.

Respondent Nos.1 and 5 entered appearance by filing separate sets of affidavit-in-opposition making similar line of averments stating, *inter-alia*, that Bangladesh Madrasah Teachers’ Training Institute (BMTTI) was established for giving training to the respective madrasah teachers working all over Bangladesh. Earlier, it was started as a project under the Directorate

of Secondary and Higher Education named '*Madrasah Shikkha Prosikkhan Institute Staphon Prokalpo*'. Said project was subsequently transferred under revenue head along with 44 posts including 25 Class I posts. Initially, the manpower of BMTTI was 6(six), amongst which 4(four) posts were Lecturer, 1(one) was Accounts Officer and (1) one was Librarian; rest of the posts were being filled up on deputation from the education cadre due to shortage of manpower at the relevant time. Ministry of Public Administration vide Memo No.35.00.0000.155.15.005.01 dated 23.07.2015 gave approval to 33 temporary posts of BMTTI as permanent subject to obtaining approval of the Ministry of Finance. However, vide Memo No. শিম/শাঃ২৪/বিবিধ-২-৮/২০০৮(অংশ)/১৭৪ dated 09.09.2015 the authority concerned had determined the respective duties and functions (কর্মপরিধি) of the said institute. In this regard, the categorical contention of both the respondents is that for running the institution primarily the cadre teachers of BCS (General Education) were attached to the said institute by way of deputation on temporary basis until establishment and approval of organogram as well as creation of posts for the office and that those posts are non-cadre 1st Class posts.

However, on 01.06.2015, as per direction of the Hon'ble President of the Republic the Ministry of Education issued a notification approving to establish the Directorate of Madrasah Education. On 22.08.2016, a notification bearing Memo No. 27.00.0000.085. 025.128.16.1271 was issued under the signature of the Assistant Secretary (Madrasah-2) of the Ministry of Education handing over Bangladesh Madrasah Teachers' Training Institute (BMTTI) to the Directorate of Madrasah Education in place of Secondary and Higher Secondary Education for the sake of operation of

madrasah education. Subsequently, as per Rule 3 of the Rules of Business, 1996, the Government of Bangladesh re-constituted the Ministry of Education into 2(two) Divisions namely, Secondary and Higher Education Division and Technical and Madrasah Education Division vide Notification No.04.00.0000.423.22.006.15.120 dated 30.11.2016 (Annexure-5 of the affidavit-in-opposition).

On 01.12.2016, the Cabinet Division issued a gazette notification (Annexure-6) amending the allocation of business amongst different Ministries and Divisions in particular the Ministry of Education and thereby allocated respective duties and functions of the Secondary and Higher Education Division incorporating, amongst others, at serial No.20 with regard to 1st appointment and administration of the officers of BCS (General Education) Cadre and that administration and control of the Directorate of Secondary and Higher Education, amongst others, were placed under the said Division [at serial No.25 (a)]. However, Technical and Madrasah Education Division including the matters relating to administration and control of the respective subordinate offices and organizations were placed under the said Division wherein BMTTI has been included at Serial No.22 (d).

However, for running BMTTI, a training institute wherein the task of its trainers is to give training to 10(ten) thousand madrasah teachers of Bangladesh in different categories, the government for the first time framed Bangladesh Madrasha Teachers' Training Institute (BMTTI) (Officers and Employees) Recruitment Rules, 2014. Serial No. 01-06 of the said Rules prescribed that those posts would be filled up by way of promotion and deputation respectively. It has further been prescribed that 70% posts of

Lecturer would be filled up by direct recruitment and 30% on deputation from the officers of BCS (General Education) Cadre.

Later, the government upon repealing Rules, 2014 had framed Bangladesh Madrasah Teachers' Training Institute Recruitment Rules, 2021 published in official gazette dated 02.05.2021 vide SRO No. 91-Ain/2021.

The petitioners, however, are the members of the BCS (General Education) Cadre who are being regulated under the Secondary and Higher Education Division, Ministry of Education. Conversely, the BMTTI is controlled by the Technical and Madrasah Education Division of the said Ministry. Moreover, the posts of BMTTI are non- cadre 1st Class posts whereas the posts of BCS (General Education) Cadre are cadre posts. As such, under no circumstances, the members of BCS (General Education) Cadre can demand non-cadre posts to be reserved for them.

In this regard, Mr. Md. Salauddin Dolon, the learned Senior Advocate appearing for the petitioners submits that the government has the authority to bifurcate any department but it does not have any authority to do so by creating opportunity to different cadre members to hold the post of a particular cadre. He further goes to argue that all the posts of education related institutions, directorates, departments are being filled up by the BCS (General Education) Cadre members for the betterment of education system. In this connection he also submits that each and every cadre has been created for particular purposes and the respective members of the said cadre are being trained for fulfilment of their obligations in their respective cadres, not in other cadres.

He further submits that vide the impugned Service Rules, 2021 the respondents have opened a flood gate to make recruitment to the posts of

Principal/Vice-Principal/ Associate Professor/ Assistant Director/ Assistant Professor/ Lecturer as contained at Serial Nos.1-6 of Schedule-1, on deputation from the members of other BCS cadre services along with BCS (General Education) Cadre having required qualifications in education. Said creation of scope, he submits, is a naked interference to occupy the posts of one independent cadre service by other cadres in violation of the sanctity, integrity and independence of the cadre service under the BCS (General Education) Composition and Cadre Rules, 1980 and BCS Recruitment Rules, 1981; hence, is *ultra vires* the Constitution.

He again submits that the respective provisions of the impugned Rules so far as it relates to creating scope for the members of BCS Administration Cadre and other cadres to hold the posts, which are currently being held by the members of the BCS (General Education) cadre, is detrimental to the rights and privileges of the present petitioners. He also contends that each BCS Cadre member has adequate and ample scope for being posted in different categories of posts and departments under their respective cadre and if they are not restrained from encroachment in different cadres, at one point of time advancement in career of other cadre members will ultimately be stopped and they will be subordinate to the BCS Administration cadre despite at par and on equal footing.

Accordingly, he submits that upon making the Rule absolute the respective designated posts as contained at Serial Nos.1-6 of Schedule-1 of the Rules, 2021 is liable to be declared to have been issued without lawful authority as being *ultra vires* the Constitution of the People's Republic of Bangladesh.

Mr. SK. Shafique Mahmud, the learned Advocate appearing for the respondent No.1 and Mr. Muhammad Rafiul Islam, the learned Advocate appearing for the respondent No.5 by filing separate sets of affidavit-in-opposition as well as supplementary affidavit to the affidavit-in-opposition conjointly submit that Bangladesh Madrasah Teachers' Training Institute (BMTTI) was established in 1995 under the Directorate of Secondary and Higher Education under the Government of Bangladesh for the purpose of imparting training to madrasah teachers in the country through the project for establishment of "Madrasah Education Training Institute". After the expiry of the said project on 30.06.2001, the government completed all necessary formalities and transferred the said institution under revenue head from July-2001 along with a total 44 posts including 25 Class-1 posts. However, 6(six) Class-1 posts (4 out of 10 Lecturer posts and 01 (one) Accounts Officer and 01(one) Librarian were recruited directly under the manpower scheme, who were transferred under revenue head as its own manpower. In the remaining 1st Class posts i.e. Principal, Vice-Principal, Associate Professor, Assistant Professor, Assistant Director and Lecturer, officers at various levels of education cadre were being appointed on deputation.

Further it has been contended that after establishing BMTTI the government deputed some employees, who had been discharging their respective duties at different colleges under the Directorate of Secondary and Higher Secondary Education. In this regard, it has been argued that the petitioner Nos. 1 and 2 are functioning in the Bangladesh Madrasah Teachers' Training Institute (BMTTI) on deputation as per the "সরকারী কর্মচারী শ্রেণি বিধিমালা, ২০২০" absolutely on temporary basis. After completing the

recruitment process of the said institute, the petitioners and others, who have been working in the BMTTI, will be reverted back to their parent Directorate i.e. the Directorate of Secondary and Higher Education. As such, the petitioners have no legal right to challenge the provisions as contained at Serial Nos.1-6 of the Schedule-1 of the Rules, 2021 which are applicable for the employees of BMTTI. Furthermore, as has been contended, the petitioners have miserably failed to show that their fundamental rights guaranteed under the Constitution or any other rights as are secured under the respective service law or Rules have been violated because of framing of Service Rules, 2021, which is squarely applicable for filling up non-cadre posts of BMTTI; whereas, the posts of BCS (General Education) Cadre are Cadre posts. Moreover, except petitioner Nos.1-2, petitioner Nos. 3-19 were never posted at BMTTI on deputation. Rather, they are working either in the office of the Directorate of Secondary and Higher Education or NAEM, or in different parts of Bangladesh as teachers of government colleges. Thus, it is apparent that in order to obtain undue privilege at the behest of a vested quarter they have filed the instant writ petition without having *locus standi* to challenge the same. Hence, this Rule is liable to be discharged.

In this connection, it has also been contended that earlier the respective petitioners as being the officers of BCS (General Education) Cadre by filing writ petition No.10428 of 2020 challenged the impugned provisions of Serial Nos.1-6 of Schedule-1 of the Madrasah Education Directorate Employees Recruitment Rules, 2020, which has been framed for the Directorate of Madrasah Education (an organization under Technical and Madrasah Education Division), published in gazette on 29.09.2020 vide SRO No.264- Ain/2020 with direction upon the respondent to restrain

themselves from allowing other BCS Cadre members to enter into the BCS Education Cadre. Said writ petition was filed mainly on the contention that although the respective posts in connection with Rules, 2020 were to be filled up by the members having required qualifications by way of promotion and deputation, but there was no specification of BCS (General Education) Cadre in the said post. However, while disposing of the said Rule this Hon'ble Court vide judgment and order dated 21.11.2022 observed, *inter alia*:

“The aforesaid Rules, 2020 has been framed in accordance with Section 59 of the Act, 2018 which is definitely a different law in order to make the recruitment in the office of the Directorate of Madrasah Education. In the cited cases reported in 66 DLR (AD) 187 and 21 BLC (AD) 212, the apex Court held that the Rules cannot be amended or newly framed to the disadvantage and detrimenting the right of the existing employees under the same Rules. But here the petitioners admittedly and apparently are officers under the different Rules, 1981. It is a new department established under the Ministry of Education, Technical and Madrasah Education Division and the Rules is being framed under the Act, 2018 both the cited cases do not help the petitioners in the present Rule Nisi. As such, the petitioners cannot be aggrieved by the said Rules, 2020.”

In view of the above, the assertion of both the respondents is that this Rule being devoid of any substance it is liable to be discharged.

Bangladesh Madrasah Teachers' Training Institute (in short, BMTTI), a specialized institution, was established in the year 1995 under the project namely "*Project for Establishment of Madrasah Education Training Institute like Dakhil, Alim, Fazil and Kamil*" under the Directorate of Secondary and Higher Education, Ministry of Education for the purpose of providing training to the respective teachers of all categories of madrasah in Bangladesh. Subsequently, on completion of all necessary formalities the government had transferred the said project under revenue head with effect from 2001 along with 44 posts including 25 Class I posts. However, 6 Class I posts, 1 post of Accounts Officer and 1 Librarian were recruited directly under the revenue head. The remaining posts including 1st Class posts were filled up on deputation in order to manage the institution temporarily.

Meanwhile, pursuant to the order of the Hon'ble President of the Republic issued under Article 133 of the Constitution the Ministry of Education framed a service rules for the officers and employees of BMTTI in the name and style "বাংলাদেশ মাদ্রাসা শিক্ষক প্রশিক্ষণ Institute (BMTTI) এর কর্মকর্তা ও কর্মচারী নিয়োগ বিধিমালা, ২০১৪", published in gazette on 27.11.2014 (Annexure-E). However, the respective posts namely Principal, Vice Principal, Associate Professor, Assistant Director, Assistant Professor, as described in the Schedule of the said Rules were to be filled up by promotion. For non-availability of eligible candidates for promotion empowered the authority concerned to fill up those posts on deputation by the officers holding the respective posts of Professor, Associate Professor and Assistant Professor respectively. However, the post of Lecturer was to be filled up 70% by direct recruitment and 30% on deputation by the officers holding the post of Lecturer. In other words, the respective members of BCS

(General Education) cadre were only eligible to fill up those posts on deputation.

In the meanwhile, vide notification dated 01.06.2015 (Annexure-3 of the affidavit in opposition filed by the respondent No.5) pursuant to the direction of the Hon'ble President of the Republic Directorate of Madrasah Education was established, which was subsequently transferred under the Directorate of Madrasah Education vide notification dated 22.08.2016 (Annexure-4). Later, the Ministry of Education was reconstituted as per direction of the Hon'ble President of the Republic vide notification dated 30.11.2016 (Annexure-5) with the creation of Secondary and Higher Education Division and Technical and Madrasah Education Division respectively.

However, on 01.12.2016 (Annexure-6 of the affidavit-in-opposition) the Hon'ble President of the Republic in exercise of power as provided under Article 55(6) of the Constitution made amendment of the Rules of Business, 1996 in particular with regard to allocation of business of the Ministry of Education. Vide the said amendment first appointment and administration of the officers of BCS (General Education) Cadre along with the Directorate of Secondary and Higher Education were brought under the Secondary and Higher Education Division, as contained at serial Nos. 20 and 25(a). At the same time, matters relating to recruitment of teachers including the Directorate of Madrasah Education and BMTTI, were brought under the Technical and Madrasah Education Division, as contained at Serial Nos.19 and 22(b) and (d) respectively.

Admittedly, all the petitioners are the members of the Bangladesh Civil Service (General Education) Cadre who were recruited earlier through

competitive recruitment process conducted by the Bangladesh Public Service Commission and were appointed in the respective cadre posts of the Civil Service of Bangladesh under BCS (Education: General Education) Composition and Cadre Rules, 1980 and Bangladesh Civil Service (BCS) Recruitment Rules, 1981. It also appears from record that the petitioners are serving in different offices, organizations, even projects i.e. Directorate of Secondary and Higher Education (DSHE), National Academy for Educational Management (NAEM), respective colleges and projects under DSHE respectively. However, petitioner Nos. 1 and 2 while working as Assistant Professor under the DSHE joined BMTTI as Assistant Professor on deputation dated 12.01.2020 and 11.10.2022 respectively (Annexues-I and I-1 to the supplementary affidavit).

The cause of action arose with the framing of “বাংলাদেশ মাদ্রাসা শিক্ষক প্রশিক্ষণ Institute নিয়োগ বিধিমালা, ২০২১,” by the government in exercise of power as provided under Section 59 of the “সরকারী চাকুরী আইন, ২০১৮” published in gazette on 02.05.2021 (Annexure-F) upon repealing the Service Rules, 2014, whereby the respective posts as contained at Serial Nos. 1-6 of Schedule-1 can be filled up on deputation from “সমপদমর্যাদাসম্পন্ন কর্মকর্তাদের মধ্য হইতে।”

In this regard, the categorical contention of the petitioners is that previously under Rules, 2014 the respective posts were being filled up on deputation from the respective officers of the BCS (General Education) Cadre only. However, vide the impugned service Rules, 2021 opportunities have now been created for the other equivalent posts of different other cadres to be appointed in those posts on deputation to the detriment and disadvantage of the members of BCS (General Education) Cadre.

As has been observed earlier, vide notification dated 30.11.2016 (Annexure-5) 2 (two) Divisions have been constituted under the Ministry of Education namely Secondary and Higher Education Division and Technical and Madrasah Education Division. Also, vide notification dated 01.12.2016 (Annexure-6) the service of the members of BCS (General Education) Cadre is maintained with the Secondary and Higher Education Division, Ministry of Education. However, BMTTI is an organization which is being administered and controlled by the Technical and Madrasah Education Division and that the terms and conditions of services of the respective officers and employees of BMTTI are being governed by the said Division. Moreover, all posts of BMTTI are non-cadre posts; whereas, the members of BCS (General Education), like the petitioners, are holding cadre posts. In addition, the officers and employees of BMTTI are being governed by the Rules, 2021 (previously under Rules, 2014); whereas, the service of the petitioners, the officers of BCS (General Education) Cadre, are being governed by the Bangladesh Civil Service Recruitment Rules, 1981. Thus, it is apparent that they have no dealing with the Technical and Madrasah Education Division.

In view of the above stated legal and factual position the petitioner Nos.3-19, who are the members of BCS (General Education) Cadre under Secondary and Higher Education Division and were never appointed on deputation at BMTTI, cannot be termed as aggrieved persons within the meaning of Article 102 of the Constitution for challenging the *vires* of Rules, 2021 in particular Serial Nos. 1-6 of the Schedule on the plea that those posts are to be kept open for the members of BCS (General Education)

Cadre only. Hence, they have no *locus standi* to maintain the instant writ petition.

Petitioner Nos.1 and 2 are also the members of the BCS (General Education) Cadre under the Directorate of Secondary and Higher Education. During the course of their service vide order dated 12.01.2020 and 11.10.2022 respectively (Annexures-I and I-1 of the supplementary affidavit) they were posted at BMTTI as Assistant Professor. However, petitioner No.1 is still discharging his duties in the said institution to date. Their specific contentions are that vide Rules, 2014 the respective posts were kept reserved for the BCS (General Education) Cadre to be filled up on deputation. But, vide the impugned Rules, 2021 the framers of the Rules have created accommodation for the officers of different other cadres holding equivalent post to fill up the respective posts at BMTTI on deputation.

Under the service law the true criterion for “equivalent post” “সমমর্যাদা সম্পন্ন পদ” are the status, nature and responsibility of the duties attached to the two posts. The mere circumstance that the two posts are carried on the same scale of pay is not enough, as has been observed in *Vice Chancellor, L.N. Mithila University Vs. Dayanand Jha (1986) 3 SCC 7: AIR 1986 (SC) 1200*.

BMTTI is a specialized institution which deals with the matter of giving training to the teachers of all kinds of madrasah like Dhakil, Alim, Fazil, and Kamil having educational qualifications i.e. Master Degree in Arabic, Al-Quran, Islamic Studies, Islamic History, Bengali, English, Mathematics, Education, Information and Communication Technology, Physics, Political Science or 4 years Hon’s Degree or a 2nd Class Degree having equal CGPA in B.Ed, M.Ed, B.M.Ed or Education. However, in

order to run the institution option has been reserved to fill up the respective posts on “*deputation*”

“*Deputation*” is deputing an employee (commonly referred to as the deputationist) of one department or cadre or even an organization (commonly referred to as the parent department or lending authority) to another department or cadre or organization (commonly referred to as to borrowing authority) on a temporary basis. After the expiry of the period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per Recruitment Rules: ***State of Punjab Vs. Inder Singh: (1997) 8 SCC 372***. The deputationist while on deputation will remain substantively attached to the parent department: ***Ashok Kumar Ratilal Patel Vs. UOI, (2012) 7 SCC 757***. However, there is no legal bar in filling up the posts by deputationist and providing a quota for them when the induction is from more than one source and in such case the deputationist, so appointed, retains his lien in the parent department: ***Pk Sandha Vs. Shiv Raj V Patil, (1997) 4 SCC 348***.

Thus, it can clearly be discerned that recruitment to a service may be made on a deputation basis. But in such cases, the deputation does not result in permanent retention in the service to which the employee is deputed. It is therefore, not recruitment in its true import and significance, for, the employee continues to be a member of the parent service/organization from where he is recruited on deputation.

Petitioner Nos.1 and 2 are admittedly the members of BCS (General Education) Cadre. However, prior to their deputation at BMTTI in the post of Assistant Professor they were functioning as Assistant Professor in the

respective colleges under the Directorate of Secondary and Higher Education. Since they are not the permanent officers of BMTTI recruited under the respective service Rules of BMTTI but are on deputation at BMTTI for the respective period temporarily retaining their lien in the parent department they have no legal right to challenge the BMTTI Service Rules, 2021 with a view to keep the respective posts reserved and to be filled up only by the officers of BCS (General Education) Cadre on deputation.

In view of the above facts and circumstances, observations and findings, we find no substance in the instant Rule.

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

Consequently, the order of *status-quo* granted earlier by the Appellate Division in CPLA No.2572 of 2022 to be continued till disposal of the present Rule, has lost its force of law.

Communicate the judgment and order to the respondents concerned at once.

Muhammad Mahbub Ul Islam, J:

I agree.