

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 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 as Serial at 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 the other BCS Cadres along with BCS (General Education) Cadre (Annexure-F) should not be declared *ultra vires* the Constitution of the People's Republic of Bangladesh direction upon the respondent concerned along with in the form of *mandamus* not to take any step 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 order of injunction restraining the respondents concerned for filling up the respective posts by recruitment/deputation from the members of other BCS Cadre Services except BCS (General Education) members.

Challenging the said ad-interim order, the respondents-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 the Bangladesh Civil Service (General Education) Cadre. They were appointed in the cadre service through different BCS examination after being selected through a rigorous selection process. They duly joined in their respective posts with expectation that as a special service the quality and standard would always be maintained.

In this regard, it has been stated that the Hon'ble President of the Republic in exercise of power as provided under Article 133 of the Constitution of the People's Republic of Bangladesh (in short, the Constitution) had promulgated BCS (Educations: General Education) Composition and Cadre Rules, 1980 and BCS Recruitment Rules, 1981 (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 cadre and composition rules for every individual cadre containing the total cadre 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 pre-supposes the framing of Recruitment Rules and once rules are framed there cannot be any breach 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 (BPSC) for BCS (General Education) hence, they are specially trained for that purposes any board/directorate established by way of bifurcation must be administered by the same cadre.

However, the petitioners 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 duties and functions in due compliance of law till 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 Madrasah Education Directorate for modernisation and development of Madrasah education the Ministry of Public Administration vide Memo 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 institute in the country established in 2000. Said institute provides quality human resources offering different types of in-service and pre-service training for madrasa and secondary school and college teachers. It works independently under the Madrasa Education Division, Ministry of Education and all the Class-I posts were being filled up through the BCS (General Education).

The terms and conditions of the service of the officers and employees of the BMTTI is regulated and governed by the Bangladesh Madrasah Teachers Training Institute (Officers of Employees) Recruitment Rules, 2014, as promulgated by the Hon'ble President of the Republic in exercise of power as provided under Article 133 of the Constitution.

However, Serial 01-05 of the schedule of the said Rules prescribe that those posts would be filled up by promotion ; if however, eligible candidates were not available there were to be filled up on deputation from the officers holding equivalent respective post. However, the post of Lecturer as

contained at serial No.6 were to be filled up 70% by direct Recruitment and 30% by way of deputation from the officers holding equivalent respective post for instance, “অধ্যাপক পদমর্যাদার কর্মকর্তাদের মধ্য হইতে”. 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.

While 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 including other petitioners i.e. petitioners Nos.3-19 with expectation that they have scope to be appointed in BMTTI on deputation as being the officers of the BCS (General Education) Cadre 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,” as published in the official gazette dated 02.05.2021 vide SRO No.91-Ain/2021 (Annexure-F).

Petitioners as being the officers of BCS (General Education) Cadre are aggrieved with serial Nos.1-6 of the 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 with required educational degrees 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 by the respective officers by promotion and in the absence of eligible candidates to be considered for promotion on deputation from the officers of BCS (General Education) Cadre. But under the new Service Rules, 2021 those respective posts are now opened to be filled up from different other cadres; hence, is *ultra vires* the Constitution.

Being aggrieved by and dissatisfied with the petitioners have filed the instant application challenging the vires of Rules, 2021 so far it relates to filling up the respective posts as contained at Serial Nos. 1-6 of on Schedule I of the Service Rules, 2021 on deputation from different other cadres along with the officers of BCS (General Education) Cadre and obtained the present Rule along with interim injunction.

Challenging the interim order of injunction, the respondent-government moved the Appellate Division by filing CPLA No.2572 of 2022. However, without interfering with the order of injunction passed by this Court the Appellate Division vide order dated 28.11.2022 directed this Bench to hear and dispose of the Rule on merit.

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. In this regard, he 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. 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 obligation 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 the Schedule-1, on deputation from the members of other BCS cadre services along with BCS (General Education) Cadre having required qualifications in education, which is a naked interference to occupy the posts of one independent cadre service by another 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; *ultra vires* the Constitution.

He further 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 submits that each BCS Cadre members have 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 Rule absolute the respective designated posts as contained at Serial Nos.1-6 of Schedule-1 of the Bangladesh Madrasah Teachers Training Institute Recruitment 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.

Respondent Nos.1 and 5 entered appearance by filing separate sets of affidavit-in-opposition stating, *inter-alia*, that Bangladesh Madrasha Teachers Training Institute (BMTTI) was established for giving training to the respective madrasha teachers working all over Bangladesh. Initially it was started as a project under the finance of Government under the Directorate of Secondary and Higher Education named 'Madrasha Shikkha Prosikkhan Institute Staphon Prokalpo'. Said project was subsequently transferred under revenue head along with 44 posts including 25 - 1<sup>st</sup> Class posts.

Initially, the manpower of BMTTI was 6(six) amongst which 4(four) posts were Lecturer, one was Accounts Officers and one was Liberian. Rest of the posts were filled up on deputation from the education cadre due to short of manpower as trainer at the relevant time and that the deputed teachers are not the permanent manpower of BMTTI. He further submits that for running the institution primarily the cadre teachers of BCS General Education were attached to the institute by way of deputation for the time being these with opportunity to discharge duties as Principal and Vice-Principal for BMTTI. But these posts are non cadre 1<sup>st</sup> Class post, not a cadre post. As such, the cadre officers have no legal scope to be included in this post or to occupy those posts permanently.

For establishing a congenial atmosphere with specialist resources persons the Bangladesh Madrasa Teachers Training Institute (BMTTI) Recruitments Rules, 2021 has been framed by the Government with specific procedures for appointment of manpower with the task of giving training to the madrasa teachers of Dakhil, Alim, Fazel and Kamil. The training involves capable manpower having a B.Ed. or B.M.Ed. training related posts.

For running the BMTTI the government for the first time framed Bangladesh Madrasa Teachers' Training Institute (BMTTI) (Officers and Employees) Recruitment Rules, 2014. Serial No. 01-06 of the said Rules have prescribed that those posts would be filled up way of promotion and deputation. It has been further prescribed that 70% posts would be filled up through direct recruitment and 30% on deputation from the officers appointed in BCS (General Education) cadre.

For effective running of the BMTTI, a training institute wherein the task of its trainers is to give training to ten thousand madrasa teachers in different category, the government had framed Bangladesh Madrasa Teachers Training Institute Recruitment Rules, 2021 published in official gazette dated 02.05.2021 vide SRO No. 91-Ain/2021.

In this regard it has been contended that its teachers are required to have at least B.ed or B.M. Ed degree for giving training. That is why the qualification of the Lecturers of BMTTI required changed. Basically the institute has been suffering the worst for lack of specialized trainers. It can easily be realized that a trainer without having B.Ed, M.Ed and B.M.Ed degree cannot give proper training. Moreso, the training consists of

knowledge in teaching holy Al-Quran, Al-Hadith and Akaed with Fikah in Arabic medium/language. This is why the government has changed the qualification for the resource persons for greater public interest.

He further submits that the petitioners are the members of the BCS (General Education) Cadre who are being regulated by a separate division of the Ministry of Education i.e. Secondary and Higher Education Division who are trying to hold a non-cadre post in BMTTI. Conversely, the BMTTI is controlled under a separate division i.e. Technical and Madrasha Education Division. He further submits that 1<sup>st</sup> Class posts of BMTTI are non- cadre 1<sup>st</sup> class posts. Just to run the said institute a proportion of 30% of the post of Lecturers was posted on Deputation Under no circumstances, the members of BCS (General Education) Cadre can demand the posts to be reserved for them. Accordingly, he submits that the writ petitioners being under different service regulations cannot maintain the present writ petition.

He also submits that the petitioners Nos. 3 to 19 are not at all related with the BMTTI, for, 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. As such, they have no *locus standi* to prefer the instant writ petition.

In this regard he also submits that on the similar footing the respective petitioners claiming the post of Madrasa Education Directorate filed Writ Petition No.10428 of 2020. However, the Rule Nisi was issued by this Hon'ble Court was ultimately discharged.

In view of the policy decision of the government new Rules may be framed or even amended considering the necessity and need with the passage

of time. The BMTTI is a training institute where the madrasa students after obtaining required academic degree take professional training. Hence, the institute needs the Lecturers having required educational qualifications i.e. Master Degree in Arabic, Al Quran Teaching, Islamic Studies, Bengali, English, Mathematics, Education, Islamic History, Information and Communication Technology, Physics and Political Science or 4 year Honours degree or a Second Class degree having the equal CGPA in B.ed, M ed, B.M. Ed or Education. But the members of BCS (General Education) Cadre have no degree in the subject of Arabic or Al Quran Teaching since they are for a separate discipline.

In this regard, he also submits that the petitioners are government servants serving in different categories of cadre/post and that the terms and conditions of their service are also different.

He accordingly, submits that for being an aggrieved person the petitioners have to show that their fundamental rights or any other rights guaranteed under the statute or Rules have been violated because of framing of Service Rules, 2021 which is squarely applicable for filling up non-cadre posts of BMTTI, which they have miserably failed to show. Furthermore, except petition Nos.1-2, petitioner Nos. 3-19 were never posted at BMTTI on deputation. 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. Accordingly, he goes to contend that this Rule is liable to be discharged.

Mr. Muhammad Rafiul Islam, the learned Advocate appearing Respondent No.5 also entered appearance by filing separate sets of affidavit-

in-opposition as well as supplementary affidavit to the affidavit-in-opposition stating, *inter alia*, that 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 Bangladesh Madrasah Teachers Training Institute (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.

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 vide memo bearing 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 the 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 the Madrasah Education.

“ উক্ত কর্মপরিধির আলোকে মাদ্রাসা শিক্ষা সংক্রান্ত সকল কার্যক্রম পরিচালনার স্বার্থে গাজীপুরস্থ বাংলাদেশ মাদ্রাসা শিক্ষক প্রশিক্ষণ ইন্সটিটিউট (বিএমটিটিআই)-কে মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা অধিদপ্তরের পরিবর্তে মাদ্রাসা শিক্ষা অধিদপ্তরাধীন প্রশিক্ষণ প্রতিষ্ঠান হিসেবে নির্দেশক্রমে ন্যস্ত করা হলো।”

Subsequently, as per Rule 3 of the Rules of Business, 1996, the Government of Bangladesh re-constituted the Ministry of Education into two Divisions namely:

“1. Secondary and Higher Education Division

(মাধ্যমিক ও উচ্চ শিক্ষা বিভাগ); এবং

2. Technical and Madrasah Education Division

(কারিগরি ও মাদ্রাসা শিক্ষা বিভাগ)।”

Vide a Notification No.04.00.0000.423.22.006.15.120 dated 30.11.2016 (Annexure-5).

On 01.12.2016, the Cabinet Division issued a Gazette Notification amending the allocation of Business among the 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 1<sup>st</sup> appointment and administration of the officers of BCS (General Education) Cadre and that administration and control of the Directorate of Secondary and Higher Educations, amongst others, were placed under the said Division [serial No.25 (a)]. However, Technical and Madrasah Education Division including the matters relating to Administration and control of the respective subordinate officers and organization were placed under the said Division wherein BMTTI has been included at Serial No.22 (d).

In 2016, the Ministry of Education was divided into two divisions as Secondary and Higher Education Division and Technical and Madrasah Education Division. Directorate of Secondary and Higher Education remained under Secondary and Higher Education Division. However, for Madrasah Education a new directorate has been established namely Directorate of Madrasah Education and was placed under Technical and Madrasah Education Division. Accordingly, the contention of the respondent

concerned that the 1<sup>st</sup> appointment and administrative of the officers of BCS (General Education) Cadre i.e. the terms and conditions of the services including promotion, leave or even deputation are being controlled by the Secondary and Higher Education Division. As such, in no manner whatsoever the petitioner can claim to have permanent respective posts in BMTTI created under the impugned Service Rules 2021.

It is also been stated that the respective petitioners as being the officers of BCS (General Education) Cadre, the Lecturers challenged the vires of serial Nos.1-5 and 7 of the Schedule No.1 of Madrasah Education Directorate, the Rules so have been framed for the directorate of Madrasah Education (an organization under Technical and Madrasah Education Divisions), Employees Recruitment Rules, 2020 published in gazette on 29.09.2020 vide SRO No.264- Ain/2020 filed with writ petition No.10428 of 2020 with a direction upon the respondent to restrain themselves from allowing other BCS Cadre members to enter into the BCS Education Cadre.

Said writ petitions was filed mainly on the contention that although the respective post in connection with Rules, 2020 which were in duly incorporate provisions regarding the recruitment memers and required qualifications by way of promotion and deputation, but there is no specification of BCS (General Education) Cadre in the said post. However, while disposing of the said Rule by this Hon'ble Court vide judgment and order dated 21.11.2022 it was formed *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 detriming 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.”

He submits 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 Madrash Education Training Institute”. After the expiry of the said project on 30.06.2001, the government completed all the 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) Account Officer and 01(one) Librarian were recruited directly under the Manpower Scheme, who were transferred to the Revenue as own manpower. In the remaining posts of the first class (Principal, Vice-Principal, Associate, Professor, Assistant Professor, Assistant Director and Lecturer) officers of various levels of education cadre were being appointed on deputation.



He further submits that after establishing Bangladesh Madrasah Teachers Training Institute (BMTTI) the Government deputed some employees who have been discharging their duties at the different college under the Directorate of Secondary and Higher Secondary Education. However, as per the “সরকারী কর্মচারী শ্রেণণ বিধিমালা, ২০২০” (shortly, the Deputation Rules, 2020), the petitioner Nos. 1 and 2 are functioning in the Bangladesh Madrasah Teachers Training Institute (BMTTI) on deputation, absolutely on temporary basis and, as such, they do not have any right to challenge the service Rules applicable for the employees of the Bangladesh Madrasah Teachers Training Institute (BMTTI). After completing the recruitment process of Bangladesh Madrasah Teachers Training Institute (BMTTI), 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 and, as such, the petitioners have no legal right to Bangladesh Madrasah Teachers Training Institute (BMTTI), serial Nos. 1-6. Hence, he submits 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 Directorate of Secondary and Higher Education, Ministry of Education for the purpose of giving/providing training to the respective teachers of all categories of madrasah in Bangladesh under the project namely “Project for Establishment of Madrasah Education Training Institute like Dakhil, Alim, Fazil and Kamil”. 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 revenue head. The remaining posts including 1<sup>st</sup> Class posts were filled up on deputation in order to manage the institution temporarily.

Meanwhile, the Hon'ble President of the Republic in exercise of power as provided under Article 133 of the Constitution framed a Service Rules for the officers and employees of BMTTI in the name and style “বাংলা-দশ 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 officers BCS (General Education) cadre were only eligible to fill up those posts on deputation.

In the meanwhile, vide notification dated 01.06.15 (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 instead of the Directorate of Secondary and Higher 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.

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) along with the Directorate of Secondary and Higher Education were brought under 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 Technical and Madrasah Education, as contained [at Serial Nos.19 and 22(b) and (d)].

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 respective 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 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.

Admitted, 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 factual and legal 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 Scheduled on the plea that those posts are to be kept open for the members of BCS (General Education) Cadre. 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. However, during the course of their service vide order dated 12.01.2020 and 11.10.2022 respectively (Annexes-I and I-1 of the supplementary affidavit) they were posted at BMTTI as Assistant Professor and the 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 others officers of different 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 statues, 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*.

As has been observed earlier, BMTTI is a specialized institution which deals with the matters 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 2<sup>nd</sup> 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)7SCC 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 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 to be continued till disposal of the Rule lost its force of law.

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

**Muhammad Mahbub Ul Islam, J:**

I agree.

Montu (B.O)