

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson & Member (A)

**Case No. – OA 140 of 2021**

*Nuhul Akhter & Ors.* -- **VERSUS** – The State of West Bengal & Ors.

Serial No. and Date of order	For the Applicants	: Mr. K. Alam, Ld. Advocate.
	For the State respondent	: Mr. M.N. Roy, Ld. Advocate.
<u>11</u> 10.08.2023	For the PSC, WB	: Mr. S. Bhattacharjee, Ld. Advocate.

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638-WBAT/2J-15/2016 (Pt.-II) dated 23<sup>rd</sup> November, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

On consent of the learned counsels for the contesting parties, the case is taken up for consideration sitting singly.

The prayer in this application is for a direction to the respondent authorities to appoint the applicants to the post of Assistant Master/Mistress in Arabic in the English Medium Government High Madrasah under the Department of Minority Affairs and Madrasah Education.

It appears that the Public Service Commission, West Bengal on behalf of the Department had conducted the recruitment for this post. From the reply submitted by the Commission, it appears that for the post of 10 vacancies under unreserved category, a total of 365 applications were received, out of 365, 161 candidates including the present applicants participated in the preliminary screening test held on 09.03.2018. Based on such PST, a merit list was prepared on the basis of this test and scrutiny of the documents, it was found that only 12 candidates had fulfilled the requisite essential qualifications as per the advertisement. Accordingly, these 12 candidates were invited to appear for an interview. Out of the 12 candidates, only 10 candidates appeared for the interview and out of these 10 candidates, only one candidate scored the qualifying marks of 40% for UR category in the interview/personality test. In the same reply, the Commission has also stated that applicant no. 1, Nuhul Akhtar scored only 12; applicant no. 2, Md. Ebrahim Shaikh scored 10; applicant no. 3, Md. Najmul Islam scored 35; applicant no. 4, Sk.

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Ahamadullah scored 20 and applicant no. 5, Jahan Gir scored on 12. The Commission states that since the qualifying marks was fixed at 40% for the interview, the applicants having scored less than 40% were not qualified. Accordingly, they were not recommended for selection. Appearing on behalf of the applicants, Mr. Alam, learned counsel submits that the private respondent, Sk. Nazrul Islam was appointed under OBC-A category whereas in the reply of the Commission, it has been stated clearly that all the 10 vacancies were under UR category.

Submitting on behalf of the Commission, Mr. Bhattacharjee, learned counsel states that although Sk. Nazrul Islam being successful in the interview belonged to the OBC-A category, but since he was the only candidate, who had qualified, therefore, the Commission did not find any impediment to list him under the UR category. In support, attention is drawn to page 8 of the Commission's reply and appearing at IV para, the cut off marks for general is shown as 40%. Since the successful candidate, Sk. Nazrul Islam scored the cut off marks fixed for general category at 40%, therefore, he was recommended for selection under the general category. Further, since Sk. Nazrul Islam belonging to the OBC category had not availed any relaxation, therefore, he was considered for appointment under the UR category.

Submission of Mr. Alam is that though Sk. Nazrul Islam has been recommended under the UR category, but the Commission's letter for his recommendation mentions OBC-A as his category. This has been clarified by Mr. Bhattacharjee that though OBC-A category candidates have been recorded that his name, but it does not mean that this particular candidate was recommended for selection under OBC-A category. Any reserved category candidate can also apply under UR category and if such candidate scores the qualifying marks as fixed for UR candidate, such candidates can also be recommended for selection.

After hearing the submissions and perusing the records, the Tribunal has observed the following :

- (i) It is clear that all the 10 posts were reserved for UR category

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candidates,

- (ii) The advertisement has stated that the Commission reserves the right to fix the cut off marks during any stage of the recruitment – written, interview and aggregate. By a Resolution dated 19.09.2014, the Commission had fixed 40% as the qualifying percentage under the UR category,
- (iii) As per the Commission's reply since the only selected candidate Sk. Nazrul Islam, although belonging to OBC-A, having scored 40% during the interview had qualified for selection under the UR category, since he had also not availed any relaxation as OBC category.

The Tribunal having examined the papers and having heard the submissions of the learned counsels, is of the view that the applicants not having scored 40% or above as the cut off fixed by the Commission have failed to clear the main hurdle. The Commission has its own inherent powers to fix the cut off marks at any stage as mentioned in the advertisement. The contention of the applicants is that the only the successful candidate, Sk. Nazrul Islam having scored 40% during interview should not have been recommended under UR category since he was an OBC-A category is not satisfactory. Though the post may have been for the UR category, but it does not prohibit any candidate belonging to any other social category to apply and participate. Such candidates, if by their own dint of merit scores equal or above the qualifying marks for the UR are also entitled to be recommended for selection under the UR category. The applicants themselves belong to OBC-A category and participated in this process. In this case, the Tribunal is satisfied that the only selected candidates, although belonging to OBC-A category, but having scored 40% in the interview was validly recommended for selection. The Tribunal does not have any reason to question why the successful candidate, Sk. Nazrul Islam was recommended for selection. But it is also apparent from the documents that his name has been suffixed with his social category – OBC-A. Since the advertisement had not mentioned that these 10

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posts are under UR category, the Tribunal feels it was reasonable for the applicants to assume that the successful candidate was recommended for appointment under the OBC-A category. The fact that all these 10 vacant posts falls under the UR category has become known only through the reply of the Commission to which, neither the applicant nor any one outside was privy to it. The Commission should have not only mentioned that these posts are under UR category but should have also mentioned the same in their recommendation. The Tribunal feels that the Commission has not communicated clearly its position, therefore, this kind of misgivings is bound to happen. However, the Tribunal does not find any procedural lapse or violation of any rule in recommending the name of Pvt. Respondent No. 6, Sk. Nazrul Islam and therefore, no order is passed against the prayer.

Accordingly, the application is **disposed of** without any orders.

**SAYEED AHMED BABA**  
**Officiating Chairperson & Member (A)**

CSM/SS