

Both the writ petitions pertain to selection and appointment of Muslim Marriage Registrar/Kazi at Mankachar in the District of Dhubri. The area being confined to South Salmara, Mankachar Sub-division. The petitioners in both the writ petitions have challenged the selection of the respondent NO.5 Md. Eunus Ali. By Annexure-5 minutes of the meeting of the Permanent Committee constituted by the Govt. vide its letter dated 16.4.2008, the respondent No.5 has been recommended for appointment as MMR, Mankachar. As per the provisions of Section 3 of the Assam Moslem Marriages and Divorces Registration Act, 1935, the State Govt, may grant a licence to any person, being a Moslem, authorizing him to register Moslem marriages and Divorces which have been effected within certain specified limits, on application being made for such registration ; and may revoke or suspend such licence.

2. Rule 4 of the Assam Moslem Marriages and Divorces Registration Rules, 1935 provides that candidates for permanent posts of Moslem Registrar will be preferred if they have possessed the Assam Senior Madrassa Final Examination (in short FM) ; and they must be of good moral character. In the selection of Moslem Registrar, preference shall ordinarily be given to candidates who are natives or / or domiciled in Assam and who reside at a convenient place within the limits of the jurisdiction proposed ; but no person shall be nominated as Moslem Registrar merely because of some supposed hereditary right. The fact that a person is a pensioner shall not be a bar.

3. In the instant case, the petitioners have called in question the very recommendation of the respondent No.5 as MMR on the ground of lacking the prescribed qualification. According to the petitioners, the findings recorded in the impugned minutes of the Permanent Committee referred to above that the respondent No.5 is nearest to the place of MMR Office is also not correct, inasmuch as, there is no MMR Office as such and that whoever is appointed as MMR and sits at a particular place, the same becomes the MMR Office.

4. It will be pertinent to mention here that the Permanent Committee in its meeting held on 16.4.2008 did not deal with the first point of challenge i.e. the respondent No. 5 lacks the prescribed qualification. However, the same is confined only to one issue as to who is nearest to the place of MMR Office.

5. It will be pertinent to mention at this stage that initially it was the petitioner in WP(C) 943/2009 who was recommended for appointment as MMR. However, his recommendation was challenged by one Shri Jainal Abedin, by filing a writ petition being WP(C) 3742/2004. The writ petition was disposed of by order dated 15.12.2005.

6. In the advertisement dated 7.3.2003 (Annexure-2), the qualification prescribed was as follows :-

The educational qualification should be the Assam Senior Madrassa Examination passed and a certificate that possesses sufficient acquaintance with the Arabic languages and Islamic Law of Marriage and divorce signed by the respectable Mohammadan persons of respectability and position together with a certificate of good moral character.

The application should be submitted as per specific form enclosed herewith.

The candidates shall be ordinarily a native of Assam and who reside at a convenient place within the jurisdiction concerned.

7. According to the petitioners, the respondent No.5 lacks the aforementioned

ned qualification, inasmuch as, he does not possess FM qualification. On the other hand, it is the stand of the respondent No.5 that he having cleared Fazil examination of Darul Uloom, Deobond, U.P. and the same being equivalent to that FM qualification coupled with the fact that he has also obtained further higher qualification of Assam Madrassa Title Examination etc, he fulfills the requirement of the qualification prescribed in the advertisement.

8. At this stage, Mr. Buzarbaruah, learned counsel for the petitioner in WP (C) 943/2009 submits that even the petitioner also possess such higher qualification. Mr. Bhuyan, learned counsel for the respondent No.5 has also referred to the Annexure-D certificate dated 24.3.2003 so show that the respondent No.5 has also obtained MA degree in Arabic. Be that as it may, since in the present proceeding, we are with the question as to whether the respondent No.5 fulfills the requirement of the prescribed qualification in the advertisement, it will be appropriate at this stage, to refer to the certificate of equivalence dated 14.10.1999 (Annexure-B), on which the respondent No.5 has placed reliance. For a ready reference, the said certificate is quoted below :-

GOVT. OF ASSAM
OFFICE OF THE SECRETARY,
STATE MADRASSA BOARD
ASSAM, GUWAHATI-19

No. _____ Date 14/10/99

CERTIFICATE OF EQUIVALENCE
(Partial Equivalence)

Certified that the qualification of pass in the Fazil Examination of Darul Uloom, Deobond, U.P. of 1994 of Md. Eunus Ali, son of Md. Abdul Hamid of vill. Sonarp ara under Mankachar P.O. in the district of Dhubri born on 05-12-73 has been verified as per rules of the State Madrassa Board, Assam, and found his qualification to be equivalent to the theological subjects of Islam of the Assam Madrassa Final (F.M./Fadilul Ma'arif) Examination of this Board for the purpose of teaching theological subjects and / or Arabic upto H.S.L.C. or Assam Madrassa Intermediate stage only.

Sd/-
Secretary
State Madrassa Board, Assam,
Kahilipara, Guwahati-19.

9. If we go by the said certificate of equivalence, same certifies partial equivalence. As per the said certificate, the particular qualification possessed by the respondent No.5 is equivalent to the theological subjects of Islam of the Assam Madrassa Final(FM/Fadilul Mar'arif) examination of the Madrassa Board for the purpose of teaching theological subjects and / or Arabic upto HSLC or Assam Madrassa Intermediate stage only.

10. It is in the above context, both Mr. Buzarbaruah, learned counsel appearing for the petitioner in WP(C) 943/2009 and Mr. A.K. Sarkar, learned counsel for the petitioner in WP(C) 5437/2009, submit that the aforesaid certificate of equivalence is of no help to the case of the respondent No.5. They submit that the said certificate certifies qualified equivalence as indicated in the certificate itself and thus the same cannot be said to be in the form of conferring equivalence with that of FM qualification. They further submit that even if the said qualifying examination is said to be equivalent to that of FM but having regard to the provisions of Rule 4 of the aforesaid Rules of 1935, the candidates with FM qualification will have to be preferred. In this connection, Mr. Buzarbaruah, learned counsel for the petitioner in WP(C) 943/2009 has placed reliance on the decision of this Court reported in 2000(2) GLT 217 (Matiur Rahman Vs. State of A

ssam and others), in which it has been held that if one candidate possess the qualification of Assam Senior Madrassa Final Examination passed (FM) and the other candidate resides at a convenient place within the limits of the jurisdiction proposed, the candidate possessing the qualification of FM, will be preferred than the later and vice-versa.

11. According to the learned counsel for the petitioners, the term preference having been indicated in Rule 4 of the Rules, the candidate with FM qualification will have to be preferred, if the candidates are found to be equal in other respects.

12. On a perusal of the minutes of the Permanent Committee, nothing is discernible as to how the said Committee had considered the respective qualification of the candidates. The said minutes of the meeting is only confined to the question of place of residence of the candidate and who is nearest to the place of MMR Office. The same is because of the fact that the impugned decision is by way of a review of the earlier decision of the Permanent Committee as per which it was the petitioner in WP(C) 943/2009 was recommended for appointment as MMR. However, while doing so, there was no occasion to deal with the allegation that the respondent No.5 does not possess the requisite qualification in terms of the provisions of the aforesaid Act and the Rules.

13. For all the aforesaid reasons, I am of the considered opinion that the matter requires a fresh consideration of the Permanent Committee on the following aspects :-

(i) Whether the respondent No.5 has the prescribed qualification conforming to the requirement of the qualification prescribed in the advertisement and Rule 4 of the aforesaid Rules. The committee is also required to look into the plea of the petitioners that in case of equivalence in qualification, preference will have to be given to the candidates possessing FM qualification.

(ii) The Committee should also look into the plea of the petitioners that there is no MMR Office as such and the MMR Office starts functioning from the convenient place once the MMR is appointed. In this connection, the petitioners have also questioned the certificate that has been issued in favour of the respondent No.5 certifying him to the nearest to the MMR Office.

(iii) The Permanent Committee shall consider the issue No.2 in reference to the qualification prescribed, about which mention has been made in *Matiur Rahman* (supra) judgement.

14. Let the entire exercise be carried out as expeditiously as possible, preferably within 31.5.2011, by way of passing appropriate order. Thereafter the matter shall be placed before the State Government for its necessary approval and grant of licence.

15. With the aforesaid directions and observations, both the writ petitions stand disposed of, without however, any order as to costs.