

12 SCOB [2019] AD 23

APPELLATE DIVISION

PRESENT:

Mr. Justice Syed Mahmud Hossain,
Chief Justice
Mr. Justice Muhammad Imman Ali
Mr. Justice Hasan Foez Siddique
Mr. Justice Mirza Hussain Haider

CIVIL APPEAL NOS.429-468 OF 2015 WITH C.R.P.NO.61, 76-77 OF 2014 AND CIVIL PETITION FOR LEAVE TO APPEAL NO.784 OF 2011

(From the judgments and orders dated 05.08.2012, 05.05.2010, 25.05.2010, 08.05.2011, 18.01.2011, 09.05.2011, 08.06.2010, 05.08.2012, 14.08.2012, 12.08.2012, 26.07.2012, 25.7.2012 07.08.2012, 26.07.2012, 24.07.2012, 10.04.2012, 11.06.2012, 12.02.2014 and 05.05.2010 passed by the High Court Division in Writ Petition Nos.3643 of 2010; 7399, 8417 of 2009, 1417, 3176, 3421 of 2010, 8945 of 2009, 1540-1544 of 2010, 1672 of 2012, 4482 of 2009, 3659 of 2010, 10216 of 2012, 1402, 2451 of 2011, 6663, 1291, 2748 of 2010, 6151 of 2011, 8928 of 2009, 5256, 4259, 6368, 3358 of 2010, 3035, 6042, 3402, 8766 of 2009, 3845, 4008 of 2010, 7176, 7177 of 2011, 4071 of 2013, 6701, 934, 5835, 1788 of 2010, C.A.No.45, 46, 48 of 2012 and W.P. No.7950 of 2009.)

Bangladesh Agricultural Development Corporation, Appellants.
represented by its Chairman, Dhaka and others: (In all the appeals,
In C.P.784/11

Md. Ataur Rahman and others : Petitioner
(C.R.P.No.61/14)

Md. Abdur Rashid and others : Petitioner
(C.R.P.No.76/14)

Md. Saiful Alam Khondakar : Petitioner
(C.R.P.No.77/14)

=Versus=

Md. Shohidul Islam and others : Respondents. (In C.A.No.429/15)

Md. Alaz Miah and others : Respondents. (In C.A.No.430/15)

Md. Nurul Islam and others : Respondents. (In C.A.No.431/15)

Md. Omar Ali Fakir and others : Respondents. (In C.A.No.432/15)

Syed Emran Reza and others : Respondents. (In C.A.No.433/15)

Md. Abul Hasem and others : Respondents. (In C.A.No.434/15)

Iqbal Uddin Ahmed and others : Respondents. (In C.A.No.435/15)

Md. Abdul Barik and others : Respondents. (In C.A.No.436/15)

Md. Shahidur Rahman and others : Respondents. (In C.A.No.437/15)

Md. Mahatab Ali and others : Respondents. (In C.A.No.438/15)

Md. Yakub Ali Khan and others : Respondents. (In C.A.No.439/15)

Md. Nazrul Islam and others : Respondents. (In C.A.No.440/15)

Md. Rezaul Huq and others : Respondents. (In C.A.No.441/15)

Shamsul Alam and others : Respondents. (In C.A.No.442/15)

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| Md. Rezaul Karim and others | : Respondents. (In C.A.No.443/15) |
| Golam Rahmanul Alam and others | : Respondents. (In C.A.No.444/15) |
| Md. Abdul Awal Howlader and others | : Respondents. (In C.A.No.445/15) |
| Md. Abul Kalam Azad and others | : Respondents. (In C.A.No.446/15) |
| Md. Mokhlesur Rahman and others | : Respondents. (In C.A.No.447/15) |
| Md. Mofizul Islam and others | : Respondents. (In C.A.No.448/15) |
| Md. Rafiqul Islam and others | : Respondents. (In C.A.No.449/15) |
| Manotosh Biswas and others | : Respondents. (In C.A.No.450/15) |
| Md. Khalequzzaman Pramanik & others | : Respondents. (In C.A.No.451/15) |
| Md. Wahiduzzaman and others | : Respondents. (In C.A.No.452/15) |
| Md. Mostafa and others | : Respondents. (In C.A.No.453/15) |
| Md. Mojibur Rahman and others | : Respondents. (In C.A.No.454/15) |
| Md. Afzal Hossain and others | : Respondents. (In C.A.No.455/15) |
| Suresh Chandra Roy and others | : Respondents. (In C.A.No.456/15) |
| Md. Faizur Rahman and others | : Respondents. (In C.A.No.457/15) |
| Md. Wahidullah and others | : Respondents. (In C.A.No.458/15) |
| Md. Abu Siddique and others | : Respondents. (In C.A.No.459/15) |
| S.Saidur Rahman and others | : Respondents. (In C.A.No.460/15) |
| Md. Abdul Kuddus Sarder and others | : Respondents. (In C.A.No.461/15) |
| Md. Mahfuzul Haque and others | : Respondents. (In C.A.No.462/15) |
| Md. Abdus Salam and others | : Respondents. (In C.A.No.463/15) |
| Md. Kamruzzaman Lasker and others | : Respondents. (In C.A.No.464/15) |
| Md. Abed Ali Prodhhan and others | : Respondents. (In C.A.No.465/15) |
| Md. Mahfuzur Rahman and others | : Respondents. (In C.A.No.466/15) |
| Md. Wazed Ali Mondal and others | : Respondents. (In C.A.No.467/15) |
| Md. Abul Hossain Sarker and others | : Respondents. (In C.A.No.468/15) |

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| Bangladesh Agricultural Development Corporation | Respondents. |
| represented by its Chairman and others | : (In C.R.P.Nos.61,76-77/14) |
| Bangladesh Agricultural Development Corporation | Petitioners. (In C.P.No.784/11) |
| represented by its Chairman and others | : |
| S.M. Ismail Hossain and others | : Respondents. (In C.P.No.784/11) |

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| For the Appellants (In C.A.Nos.429,433,435,436-444,446-468/15) | : Mr. Mahbubey Alam, Senior Advocate(with Mr. Hefzul Bari, Advocate), instructed by Mrs. Nahid Sultana, Advocate-on-Record. |
| For the Appellants (In C.A.Nos.430 & 432/15) | : Mr. Mahbubey Alam, Senior Advocate(with Mr. Hefzul Bari, Advocate), instructed by Mr. Md. Shamsul Alam, Advocate-on-Record. |
| For the Appellants (In. C.A. Nos.431 & 434/15) | : Mr. Mahbubey Alam, Senior Advocate(with Mr. Hefzul Bari, Advocate), instructed by Mr. Nurul Islam Bhuiyan, Advocate-on-Record. |
| For the Appellant (In C.A.No.445/15) | : Mr. Mahbubey Alam, Senior Advocate(with Mr. Hefzul Bari, Advocate), instructed by Mrs. Shahanara Begum, Advocate-on-Record. |
| For the Respondents (In C.A.No.429/15) | : Mr. Probir Neogi, Senior Advocate instructed by Mrs. Madhumaloti Chowdhury Barua, Advocate-on-Record. |
| For the Respondents (In C.A.No.430/15) | : Mr. Syed Mahbubar Rahman, Advocate-on-Record. |

- For the Respondents : Mr. Zainul Abedin, Advocate-on-Record.
(In C.A.No.431, 432, 435, 441, 452,
460-463,465,467-468/15)
- For the Respondents : Mr. Abdul Matin Khosru, Senior Advocate,
(In C.A.No.433/15) instructed by Mrs. Sufia Khatun, Advocate-on-Record.
- For the Respondents : Mr. Syed Mahbubar Rahman, Advocate-on-Record.
(In C.A.Nos.434, 436-440, 442-
448,450,453-456,458-460,466/15)
- For the Respondents : Mr. Sheik Reazul Haque, Advocate instructed
(In C.A.No.449/15) by Mr. Syed Mahbubar Rahman, Advocate-on-Record.
- For the Respondents : Mr. Giasuddin Ahmed, Advocate-on-Record.
(In C.A.No.451/15)
- For the Respondents : Mr. Md. Bodroddoza, Advocate instructed by
(In C.A.No.457/15) Mr. Syed Mahbubar Rahman, Advocate-on-Record.
- For the Respondents : Mrs. Sufia Khatun, Advocate-on-Record.
(In C.A.No.464/15)
- For the Petitioners : Mr. Abdul Wadud Bhuiyan, Senior Advocate
(In C.R.P.No.61/14) instructed by Mr. Zainul Abedin, Advocate-on-Record.
- For the Petitioners : Mr. N.K. Saha, Senior Advocate instructed by
(In C.R.P.Nos.76-77/14) Mr. Zainul Abedin, Advocate-on-Record.
- For the Respondents : Mr. Mahbubey Alam, Senior Advocate(with
(In C.R.P.No.61,76/14) Mr. Hefzul Bari, Advocate), instructed by Mr. Nurul Islam Bhuiyan, Advocate-on-Record.
- For the Respondents : Mr. Mahbubey Alam, Senior Advocate(with
(In C.R.P.No.77/14) Mr. Hefzul Bari, Advocate), instructed by Mr. Md. Shamsul Alam, Advocate-on-Record.
- For the Petitioners : Mr. Mahbubey Alam, Senior Advocate(with
(In C.P.No.784/11) Mr. Hefzul Bari, Advocate), instructed by Mr. Md. Shamsul Alam, Advocate-on-Record.
- Respondents : Mrs. Madhumaloti Chowdhury Barua,
(In C.P.No.784/11) Advocate-on-Record.

Date of hearing on : 18.02.2018, 06.03.2018, 27.03.2018.

Date of judgment on : 11.04.2018.

Voluntary retirement of service;

After 10 years of their voluntary retirement and after receiving full financial benefits as offered the prayers for reinstatement cannot be termed as reasonable and fair. After having applied for voluntary retirement of service and taken the money it is not open to contend that they exercised the option under any kind of coercion and undue influence. Who had accepted the ex gratia payment or any other benefit under the scheme, could not have resiled therefrom. It became past and closed transaction. The writ petitioners having accepted the benefit could not be permitted to approbate and reprobate nor they be permitted to resile from their earlier stand.

J U D G M E N T

Hasan Foez Siddique, J:

1. The above mentioned Civil Appeals, Civil Petitions for leave to appeal and Civil Review Petitions have been heard analogously since the facts and the questions of law involved in all the appeals, civil petitions and review petitions are identical.

2. The respondents of the appeals and civil petitions and the petitioners of Review petitions were the employees of the Bangladesh Agricultural Development Corporation (BADC, for short). All of them went on voluntarily retirement from service (VRS, for short) before the age of superannuation and before 25 years of their respective service in the BADC. The High Court Division, on the basis of writ petitions filed by the respondents, directed the BADC to re-instate the writ petitioners, who have not yet crossed their 57 years of age, to join their service with continuity of their service and to pay the benefits with effect from the date of their respective VRS. The High Court Division also directed the BADC to pay the remaining benefits up to the age of superannuation to the writ petitioners who have already crossed the age of retirement.

3. In the writ petitions, the writ petitioners, inter alia, stated that the BADC is a statutory body of the Government and its all employees are directly under administrative control, supervision and monitoring of the Ministry of Agriculture. The Government, by notification in the year 1990, framed Bangladesh Agricultural Development Corporation Employees Service Regulation, 1990 (Service Regulations, for short) and the service of the writ petitioners are governed by the said Service Regulation. The Ministry of Agriculture issued a notification communicated under Memo No.Krishi-5/5-2/52(Part-1) dated 13.12.1992 regarding the option of VRS for the employees of the BADC. Last date of filing the application for VRS was fixed on 31.01.1993. Thereafter, the BADC extended the time for filing application for VRS from time to time. It was the case of the writ petitioners that the BADC Authority under coercion, threat and undue influence compelled the writ petitioners to go on prematured retirement by the impugned orders. It was stated in the writ petition that they were threatened by the authority uttering that they would lose their job and other service benefits if they do not seek VRS. They contended that VRS was an unilateral act of the employees but in the instant cases, the employer had done everything and by creating pressure had obtained signature of the writ petitioners and others under threat, coercion and undue influence. Though the writ petitioners had been retrenched from service in the name of VRS on the ground of downsizing the excess manpower in the BADC, subsequently, the BADC had appointed many employees who were terminated with three months notice, have also been reinstated in compliance with the orders of the Court. The said act of retrenchment of the BADC manifestly proved that they have been ousted malafide for the collateral purposes. The VRS have been implemented without any guideline and policy. The authority had adopted policy of “pick and choose” while dealing with the similarly situated employees. Those unguided and arbitrary action are liable to be declared unlawful. It was further contended that the provisions of Services (Reorganization and Condition) Act, 1975 ensured that all the public bodies and nationalized enterprises are found to ensure equal term and service of its employees. Furthermore, under the provision of Constitution the writ petitioners cannot be discriminated with regard to their right to continue in service till the age of 57 years in service (at present 59 years). Under section 4 of Public Servant (Retirement Act), 1974 a Public Servant shall retire from service on the completion of 57th year of his age.

Thus, the writ petitioners, impugning prematured retirement before 57th year age, filed different writ petitions and obtained Rules.

4. The common case of the BADC in those writ petitions was that the writ petitioners voluntarily signed the VRS forms without any intimidation or undue influence whatsoever. It was added that with a view to reorganize the manpower structure of the BADC it offered the VRS scheme on 13.11.1992 which was thereafter extended from time to time. The writ petitioners voluntarily accepted the incentives offered for VRS and that their prayers for voluntary retirement from service were accepted by the authority. For the reason best known to the writ petitioners they had subsequently made a summersault from their own original stand, which they resorted to of their own volition being allured by the financial incentive of the VRS offer.

5. The High Court Division, hearing the parties, made all the Rules absolute. Then BADC filed Civil Petitions for Leave to Appeal and obtained leave. Thus, are the appeals. In Civil Petitions, the BADC sought for leave against the judgment and order of the High Court Division passed in separate writ petitions directing the BADC to re-instate the writ petitioners of those writ petitions. In the review petitions, the petitioners sought review of the judgment and order of this Division passed in Civil Appeals No.45-48 of 2012. In those appeals, this Division set aside the judgment and order of the High Court Division passed in connected writ petitions, by which, the High Court Division directed the BADC to re-instate the petitioners of those writ petitions.

6. Mr. Mahbubey Alam, learned Senior Counsel appearing for the BADC, submits that since the writ petitioner-respondents voluntarily retired from service and, thereafter, withdrew voluntary retirement benefit/facilities and after about 10 years of their retirement they filed the instant writ petitions, they were not entitled to get any relief, the High Court Division erred in law in making the Rules absolute. He submits that the writ petitioners had availed the opportunity of voluntary retirement programme about 10 years ago and almost all the employees of the BADC including the writ petitioners, who applied for VRS, accepted almost all of their service benefits and that the BADC Authority had accepted their prayers for VRS, the High Court Division erred in law in making the Rules absolute.

7. Mr. Abdul Wadud Bhuiyan, Mr. Abdul Matin Khasru, Mr. Md. Badrozza and Mr. Shaikh Reazul Haque, learned Counsel appeared for the respondents in their respective appeals. They submit that under the terms of the provision of section 2D of the Public Servant (Retirement) Act 1974 “public servant” includes any person in the service of any Corporation and that the writ petitioners having been in service of the BADC they are public servants and their retirement should be governed by the provision of Public Servant (Retirement) Act, 1974. He submits that the provisions of section 4 and 9(1) of the said Act are applicable to the writ petitioners and that in view of those provisions the retirement of the writ petitioners before they completed 25 years of service is illegal, so the judgment and orders of the High Court Division are sustainable in law. He submits that there can be no waiver of the fundamental right of the writ petitioners and estoppel against statute, their alleged application for VRS would not deprive them from their fundamental and statutory right, the judgment and order of the High Court should not be interfered with.

8. Mr. N.K. Saha, learned Senior Counsel appearing for petitioners of the Review petitions also endorsed the submissions of Mr. Bhuiyan and submitted that this Division erred

in law apparent on the face of the record in allowing the Civil Appeal Nos.45-48 of 2012 inasmuch as writ petitioners are legally entitled to be re-instated.

9. In these appeals, Civil petitions and Review petitions, the only question is whether the employees of the BADC who accepted the VRS programme and received almost all of their service benefits and incentives offered for VRS are entitled to be reinstated to their services in their respective former posts on the plea that their signatures were obtained in the forms prepared for voluntary retirement from service by exercising coercive force inasmuch as BADC in its affidavit-in-opposition contended that such story of taking signatures by exercising force in the forms of VRS is absolutely false. It is the case of the writ petitioners that since the writ petitioners are public servants the provisions of their retirement should be regulated by the provision of Public Servant (Retirement) Act and they were terminated from the service in the garb of VRS. Their service tenure is protected by the law.

10. It appears from the materials on record that in order to downsize the strength of staffs of BADC, the Ministry of Agriculture issued a circular regarding voluntary retirement scheme, in which, some privileges were specially offered to its employees who would express their intention of retirement from their service voluntarily. Accordingly, the employees, who sought for voluntary retirement as per terms of the circular, were offered to accept the ex-gratia payment mentioned therein. There was a clause in the circular that, “এই ব্যবস্থা সম্পূর্ণ ঐচ্ছিক। তবে একবার অবসর গ্রহণের ইচ্ছা প্রকাশ করলে তা পরে প্রত্যাহার করা যাবে না।” This clause speaks that the programme is purely voluntary. Once an employee has applied for VRS under the scheme, the option cannot be withdrawn. Such a programme is ordinarily floated with a purpose of downsizing the employees. When pursuant to or in furtherance of such a Voluntary Retirement Scheme an employee opts and he makes an offer which upon acceptance by the employer gives rise to a contract. Thus, the matter relating to voluntary retirement is not governed by any statute, the provisions of the Contract Act, 1872, therefore, would be applicable. [Bank of India V.O.P. Swarnakar (2003) 2SCC 721]. Similar view has been expressed by the Supreme Court of India in the case of HEC Voluntary Retd. Employees Welfare Society V. Heavy Engg. Corpn. Ltd. reported in (2006) 3 SCC page 708 where it was observed,

“An offer for voluntary retirement in terms of a scheme, when accepted, leads to a concluded contract between the employer and the employee. In terms of such a scheme, an employee has an option either to accept or not to opt therefor. The scheme is purely voluntary, in terms whereof the tenure of service is curtailed, which is permissible in law. Such a scheme is ordinarily floated with a purpose of downsizing the employees. It is beneficial both to the employees as well as to the employer.”

11. Here, in these cases, in view of the offer, the writ petitioners accepted the same and they themselves prayed for voluntary retirement from their service and also prayed for their service benefits and incentives mentioned in the circular and, accordingly their prayers for VRS were duly accepted and approved by the BADC Authority. The entire scheme was offered to the employees as a package and the same had to be treated as such and in that view of the matter, it being within the realm of contract, statutory regulation cannot be said to have any application whatsoever.

12. Almost in an identical circumstances, this Division in the case of Md. Nurul Haque V. Govt. of Bangladesh and others reported in 18 BLD(AD)142 has observed:

“Sections 4 and 9 of the Public Servant’s (Retirement) Act, 1974 have no application in this case. The scheme of retirement of the petitioners were under some special

circumstances and that was outside the ambit of the Public Servant's (Retirement) Act, 1974. It was in fact a special arrangement made for those who voluntarily want to retire on getting certain monetary and other financial benefits. There was no compulsion on any of the petitioners to accept the special scheme of retirement. The petitioners finding the scheme to be beneficial in their interests applied in the prescribed form and got the retirement. The petitioners themselves accepted the scheme out of their free will on some special considerations as given by the Government and went under voluntary retirement and as such the petitioners cannot now say that the scheme is illegal and violative of the provisions of Public Servant's (Retirement) Act, 1974. Further, Public Servant's Retirement Act, 1974 has no bearing at all with their acceptance of the special scheme with benefits. The petitioners having accepted the benefit cannot now term the same as illegal. The learned Judges of the High Court Division in exercising their writ jurisdiction which is a discretionary relief rightly refused to exercise their discretion in favour of the petitioners as it is unconscionable to blow hot and cold in the same breadth."

13. It is relevant here to peruse the nature of application for VRS submitted by the employees. Contents of one of such prayers run as follows:

“বাংলাদেশ কৃষি উন্নয়ন কর্পোরেশনের কর্মকর্তা/কর্মচারীদের স্বেচ্ছায় অবসর গ্রহণ ও তৎসংক্রান্ত আর্থিক সুবিধাদি মঞ্জুরীর আবেদন পত্র।

বরাবর,

সচিব,

বাংলাদেশ কৃষি উন্নয়ন কর্পোরেশনের

কৃষি ভবন

৪৯/৫১, দিলকুশা বানিজ্যিক এলাকা,

ঢাকা।

মহোদয়,

নিম্ন স্বাক্ষরকারী গণপ্রজাতন্ত্রী বাংলাদেশ সরকারের কৃষি মন্ত্রণালয়ের স্মারক কৃষি-৫/ম-২/৯২ (অংশ-১)/১২৪ তারিখ ১১/৬/১৯৯৪ইং এর আওতায় ৩০/৯/১৯৯৪ইং তারিখ থেকে স্বেচ্ছায় চাকুরি থেকে অবসর গ্রহণের ইচ্ছা প্রকাশ করছি।

আমার আবেদন ও উল্লেখিত স্মারক অনুযায়ী আর্থিক সুবিধাদি মঞ্জুরীর জন্য অনুরোধ করছি।

আমি অবহিত আছি যে, এই দরখাস্তের মাধ্যমে অবসর গ্রহণের ইচ্ছা প্রকাশ করার পর তা প্রত্যাহার করার অবকাশ নেই এবং যথাযথ কর্তৃপক্ষ এই প্রস্তাব গ্রহণ বা প্রত্যাখ্যান করতে পারেন।

আমি এই মর্মে অংগীকার করছি যে, আমাকে প্রদত্ত অর্থ যদি প্রাপ্যের অতিরিক্ত বলে পরবর্তীতে প্রমানিত হয়, তাহলে আমি তা ফেরত প্রদানে বাধ্য থাকব এবং পাওনা থেকে কর্তন করতে আমার সম্মতি আছে।

সম্পূর্ণ পাওনা পরিশোধের পূর্বে আমার মৃত্যু হলে অবশিষ্ট পাওনা অর্থ নিম্ন বর্ণিত উত্তরাধিকারীগণ পাবেনঃ

| ক্রমিক নং | নাম | সম্পর্ক | অংশ* |
|-----------|--------------------|---------|------|
| ১। | মোছাঃ ফজিলাতুননেছা | স্ত্রী | ১০০% |

২।

৩।

৪।

আবেদন পত্রের সাথে নিম্ন বর্ণিত দলিলাদি সংযুক্ত করলামঃ

১। পাসপোর্ট সাইজের সত্যায়িত ছবি ৩(তিন)কপি।

২। নমুনা স্বাক্ষর ও পাঁচ আংগুলের ছাপপত্র ৩(তিন) কপি।

আপনার অনুগত

স্বাক্ষরঃ অস্পষ্ট

নামঃ মোঃ শহিদুল ইসলাম

পিতার নামঃ মোঃ কোরবান আলী

পদবীঃ সহকারী মেকানিক

কর্মস্বহলঃ বিএডিসি (সেচ) গাবতলী ইউনিট,
গাবতলী, বগুড়া।
যোগাযোগের ঠিকানাঃ ঐ”

14. The writ petitioners, making statements in the writ petitions, made an attempt to exclude the contents of their prayers for VRS stating that their signatures were obtained by the BADC authority by exercising coercive force and undue influence inasmuch as such claims are essentially a question of facts. In writ jurisdiction, it is dangerous to decide the allegation of departure from the contents of the written documents where signatures of the executants are admitted and the writ petitioners virtually did not deny the statements made therein specifically subsequent to making such prayers rather they themselves upon admitting the contents of their prayers received financial benefits.

15. The BADC authority, accepting the prayers, sanctioned the financial benefits as per circular issued by the Ministry of Agriculture. Contents of the specimen copy of the financial sanction letters are as follows:

“ বাংলাদেশ কৃষি উন্নয়ন কর্পোরেশনের
কৃষি ভবন
৪৯/৫১, দিলকুশা বানিজ্যিক এলাকা, ঢাকা-১০০০।
(অর্থ সেল)

মঞ্জুরী নং স্বেঃঅঃ ০০১৮২৯/৯৫-৯৬

তাং ২৫/০৩/১৯৯৬

বিষয়ঃ স্বেঃ অঃ গ্রহন সংক্রান্ত কৃষি মন্ত্রণালয়ের ১৩/১২/১৯৯২ ইং তারিখের স্মারক নং ৫/ম-২/৯২/(অংশ-১)৩৭৫ এবং কৃষি ৫/ম-২/৯২(অংশ-১)/১২৪ তাং ১১/৬/১৯৯৪ এর আলোকে =২,৭৯,৪১২/- টাকা পরিশোধ বাবদ অর্থ মঞ্জুরী।

সূত্রঃ নথি নং স্বেঃ অঃ গ্রহন (২য় পর্যায়) নথি নং ২৬৯৮।

স্বেচ্ছা অবসর গ্রহন সংক্রান্ত কৃষি মন্ত্রণালয়ের ১১/৬/১৯৯৪ ইং তারিখের স্মারক নং ৫/ম-২/৯২/(অংশ-১)৩৭৫ এবং কৃষি ৫/ম-২/৯২(অংশ-১)/১২৪ তাং ১১/৬/১৯৯৪ এর আলোকে স্বেচ্ছা সেল প্রধানের/সংস্থাপন বিভাগের প্রস্তাবনুযায়ী নিম্নোক্ত খাত সমূহের নিরূপিত টাকা =২,৭৯,৪১২/- (দুই লক্ষ উনাশি হাজার চারশত বার) নিম্নবর্ণিত শর্ত পালন পূর্বক জনাব মোঃ শহিদুল ইসলাম, পদবী-সহঃ মেকানিক, বর্তমান অফিস বগুড়া সেচ জোন বগুড়া কে পরিশোধ করার নিমিত্তে অর্থ মঞ্জুরী দিতে আদিষ্ট হয়েছি।

কর্মকর্তা/কর্মচারীর পাওনা টাকা

সংস্থার পাওনা টাকা

১।ক)আনুতোষিক বাবদ=১,৩০,৬০০/-
খ)আনুতোষিকের উপর অতিরিক্ত সুবিধাদি ১৭ ১/২
হিসাবে = ২২,৮৫৫/-
২।এলপিআর বাবদ = ৪৬,৮৫৭/-
৩।বোনাস = ৬,৫৩০/-
৪।ছুটি নগদী করন বাবদ = ৩৭,৫৭০/-
৫।পরিবার নিরাপত্তা তহবিল = ৩৫,০০০/-
সর্বমোট টাকা = ২,৭৯,৪১২/-

১। গৃহ নির্মান ঋণ ও সুদ

২। মটর সাইকেল/মটর কার/সাইকেল ঋণ সুদ
৩। অতিরিক্ত গৃহীত বেতন=২৩,৩১৪/-
৪। নিরাপত্তা তহবিলের চাঁদ=৭২০/-
৫। ইঞ্জিনের মূল্য=২৪০০/-
সর্বমোট টাকা=২৬,৪৩৪/-

শর্তাবলীঃ-

১।মঞ্জুরীকৃত টাকা ২,২৩,৫৩০/- (দুই লক্ষ তেইশ হাজার পাঁচশত ত্রিশ) মাত্র হতে সংস্থার উপরোক্ত পাওনা টাকা=২৬,৪৩৪/= সমন্বয়করে বাকী টাকা =১,৯৭,০৯৬/=(এক লক্ষ সাতানব্বই হাজার ছিয়ানব্বই) পরিশোধ যোগ্য হবে।
২। অবশিষ্ট ২০% টাকা ৫৫,৮৮২/- টাকা সান্ডি ক্রেডিট খাতে বুকিং করে রাখতে হবে যা সংশ্লিষ্ট কর্মকর্তা/কর্মচারীদেরও হিসাব সংক্রান্ত সমাপ্ত করে।

৩। সংস্থার প্রচলিত নিয়ম কানুন পালন পূর্বক পরিশোধ করতে হবে।

৪। প্রঃভঃতঃ এর পাওনা বিভিন্ন ভাবে হিসাব বিভাগ কর্তৃক পরিশোধিত সমন্বিত হবে।

৫। সংস্থাপন বিভাগ কর্তৃক অবসর গ্রহন সংক্রান্ত অফিস আদেশ জারীর পর মঞ্জুরী কার্যকর হবে।

উপরোক্ত খরচ বাকুউকর ১৯৯৫-৯৬ সালের 'স্বৈচ্ছা অবসর(২য় পর্য্যায়)' এর বরাদ্দকৃত অর্থ হতে নির্বাহিত হবে।

সহকারী অর্থ উপদেষ্টা(স্বৈঃ সেল)

বাকুউক, ঢাকা

তাং ২৫/৫/১৯৯৬ইং

স্মারক নং সেঃ অঃ (২য় পর্য্যায়)/৯৫-৯৬/২৮২১(৮)

অনুলিপিঃ-

১। স্বৈচ্ছা সেল প্রধান, বিএডিসি, ঢাকা।

২। সচিব, বিএডিসি, ঢাকা।

৩। সংশ্লিষ্ট বিভাগীয় প্রধান প্রকৌশলী (সেচ) বাকুউক, ঢাকা।

৪। উহিনি (স্বৈঃসেল), বিএডিসি, ঢাকা।

৫। আহরন ও ব্যয়ন কর্মকর্তা, বিএডিসি, সহঃ প্রকৌঃ সেচ বগুড়া জোন।

৬। জনাব মোঃ শহিদুল ইসলাম, সহঃ মেকানিক

৭। অ/ক/মাঃফাঃ

অনুলিপি

বিল পরিশোধ যোগ্য

মোট=২,৭৯,৪১২/-

মঞ্জুরী অর্থ=২,৭৯,৪১২/-

কর্তন=২৬,৪৩৪/-

৮০% প্রদেয় ১,৯৭,০৯৬/- (এক লক্ষ সাতানব্বই হাজার ছিয়ানব্বই)

(সেল প্রধান)

প্রতিক নং ১৮৯২

তারিখঃ ৩০/৬/১৯৯৬

বি,পি আর নং

পরিশোধকৃত টাকা=১,৯৭,০৯৬/-

(এক লক্ষ সাতানব্বই হাজার ছিয়ানব্বই)

খরচের হিসাব নং ০১৩/০৩৮৫

স্বাঃ অল্পস্ট

পরিশোধ ও বাতিল

স্বাঃ অল্পস্ট,

চেক নং ২৪৩৫১৯২

তাং ৩০/৬/১৯৯৬

সোনালী ব্যাংক কৃষি ভবন শাখা

৪৯-৫০ দিলকুশা, বা/এ, ঢাকা।

স্বাঃ অল্পস্ট।”

16. The identical prayers were made and sanction letters were issued in respect of almost all the cases of the writ petitioners. It is clear from the undisputed facts that the writ petitioners prayed in the prescribed form to accept their prayers for VRS with immediate effect. The learned Counsel for the writ petitioner-respondents failed to notice any exception. About 10 years thereafter the writ petitioners filed the writ petitions. It is not the case of the writ petitioners that after tendering applications of VRS they filed any application for withdrawal of those applications. On acceptance by the BADC of the request for voluntary retirement made by the writ petitioners their jural relationship ceases.

17. Mr. Bhuyian submits that inspite of withdrawal of benefits, the writ petitioners are entitled to get relief since there can be no waiver of fundamental right of the writ petitioners and estoppel against statute. Estoppel is a bar or impediment preventing a party from asserting or putting up claim inconsistent with the position, he previously took, either by conduct or words. According to Black's Law Dictionary, in estoppel, a party is prevented by

his own act from claiming a right to the detriment of the other party who was entitled to rely on such conduct and has acted accordingly. Submission of Mr. Bhuiyan is correct that there cannot be any estoppel against a statute and such doctrine cannot be used against or in favour of the administration as to give de facto validity to ultra vires administrative acts. But estoppel is a mixed question of law and fact. It appears from the materials on record that in these cases the writ petitioners, in fact, abandoned their right. Firstly by not filing the application for withdrawal of their prayers for VRS. Secondly, by accepting the benefits and incentives. In fact, the writ petitioners intentionally relinquished their rights. The writ petitioners long after making their prayers for voluntary retirement and acceptance of those prayers and receiving financial benefits have filed the writ petitions. They are guilty of acquiescence in accepting the retirement. By not asserting their right in time they allowed it to lapse by delay, laches and acquiescence and accepting the VRS by conduct, the Court cannot come to the rescue of such persons where they themselves withdrew the financial benefits accepting VRS.

18. Mr. Bhuiyan mainly relied upon the provisions of Section 9 of the Public Servants (Retirement) Act, 1974 which run as follows:

“**9.Optional retirement-**(1) A public servant may opt to retire from service at any time after he has completed twenty five years of service by giving notice in writing to the appointing authority at least thirty days prior to the date of his intended retirement; Provided that such option once exercised shall be final and shall not be permitted to be modified or withdrawn.

(2) The Government may, if it considers necessary in the public interest so to do, retire from service a public servant at any time after he has completed twenty five years of service without assigning any reason.”

19. The aforesaid provisions of the Act is not applicable for the writ petitioners. Voluntary retirement is an early retirement. Incentive is offered to the staffs to reduce workforce and right size the organizations. Such scheme is completely voluntary and different. It is virtually a contract between employer and employees.

20. Section 9 of the Act provides for voluntary retirement from service on completion of 25 years’ service by giving notice in writing to the appointing authority at least 30 days prior to the date of his intended retirement. The words “may opt to retire” clearly indicate that the aforesaid provision does not confer on the employee a right to retire. It confers on the employee a right to make an option to permit him to retire. An employee who has put in less number of years of service would not be on better footing than the employee who has put in longer service. The words “opt to retire” indicate that the right which is conferred by it is not the right to retire but a right to ask for retirement. The words “opt to retire” imply a request by the employee and corresponding acceptance by the authority. Here in the case, some of the writ petitioners claimed that since they opted to retire from service before completion of 25 years of service so their option itself was bad in law as such the same was not acceptable and those do not carry any legal validity and those offers were not offers at law. It is upon the authority whether they shall accept such option or not. It cannot be said that an employee retires only on superannuation and there is no other circumstance under which an employee can retire. Retirement on superannuation is not the only mode of retirement known to service jurisprudence. There can be other types of retirements like premature retirement, either compulsory or voluntary. Here the proper authority, accepting those offers, sanctioned the retirement benefits and the writ petitioners withdrew those benefits. Since the appointing authority did not refuse to grant the permission for retirement rather accepted the same their retirement became effective from the date of acceptance. It was, in fact, a contract. The employer offered the proposal and the employees accepted such proposal voluntarily.

21. In the case of ITI Ltd. V. ITI Ex/VR Employees/Officers Welfare Association and others reported in (2010) 12 SCC 347 Supreme Court of India observed that “if an employee has got benefits under the VRS scheme, whether right or wrong, it cannot be reopened...”.

22. Moreover, we have considered the whole scheme of VRS and found that there was specific stipulation to the effect, “এই ব্যবস্থা সম্পূর্ণ ঐচ্ছিক। তবে, একবার অবসর গ্রহণের ইচ্ছা প্রকাশ করলে তা পরে প্রত্যাহার করা যাবে না।” That is scheme was purely voluntary and once an option to voluntary retirement is exercised by an employee and the same is accepted by the BADC authority the employee is not entitled to withdraw from voluntary retirement.

23. We have already found that the writ petitioners did not file any application for withdrawal of their prayers for VRS and after 10 years of termination of their service and withdrawal of the pensionaries and other benefits they have filed writ petitions. In all the cases it appears that the writ petitioners themselves by their own conduct abandoned the service in lieu of some consideration. The severance of the relationship of employer and employee takes place immediately on acceptance of the prayers for VRS. The moment their prayers are accepted by the BADC authority their retirement became effective. After 10 years of their voluntary retirement and after receiving full financial benefits as offered the prayers for reinstatement cannot be termed as reasonable and fair. Here, the writ petitioners in their wisdom thought that in view of the situation VRS was a better option available and chose the same. After having applied for VRS and taken the money it is not open to them to contend that they exercised the option under any kind of coercion and undue influence. Who had accepted the ex gratia payment or any other benefit under the scheme, could not have resiled therefrom. It became past and closed transaction. The writ petitioners having accepted the benefit could not be permitted to approbate and reprobate nor they be permitted to resile from their earlier stand.

24. In such view of the matter, our considered opinion is that the writ petitioner-respondents were not entitled to get any relief as prayed for. The High Court Division committed error of law in directing to reinstate the writ petitioner-respondents to their former posts and to pay their back salaries.

25. Accordingly, we find substance in all the appeals.

26. Thus, all the appeals are allowed. The judgment and order of the High Court Division are set aside. The Civil Petitions are disposed of in the light of the decision of the appeals. The review petitions are dismissed accordingly.