

**6 SCOB [2016] HCD 66****HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)**

Mr. Humayun Kabir Sikder, Advocate  
.....For the petitioners

WRIT PETITION No. 5853 of 2011

Mr. Syed Mafizur Rahman, Advocate  
..... For the respondent No. 2 and 3

**Md. Yousuf Ali Akon and others**  
.....Petitioners.

-Versus-

**Chairman, Bangladesh Inland Water  
Transport Authority and 11 (eleven)  
others**

Heard on: 16.04.2015, 06.05.2015,  
24.05.2015, 16.06.2015 and judgment on:  
08.07.2015.

..... Respondents.

**Present:**

**Mr. Justice Moyeenul Islam Chowdhury  
And  
Mr. Justice Md. Ashraful Kamal**

**Legitimate expectation:**

**In the advertisement dated 19.01.2004, the authority has given an express promise to that effect that the appointee shall be on a probation period of 1 (one) year and after satisfactory completion of the said probationary period, the appointee shall be absorbed and therefore, the petitioners' legitimate expectation arises. The petitioners successfully made out a case of legitimate expectation. The petitioners had a legitimate expectation to be absorbed against the permanent posts on the basis of the advertisement published in the "Daily Observer" on 19.01.2004. In the background of the advertisement dated 19.01.2004, there was reasonable expectation of their being permanently absorbed in the post of Master Pilots.** ... (Para 20)

**The respondents failed to show any reasons why they did not absorb the petitioners in the post of Master Pilots permanently, though, they have already rendered their service approximately 11 (eleven) years. The inaction of the respondents is found arbitrary, unreasonable, is in gross abuse of power and is in violation of the principles of natural justice.** ... (Para 22)

**Judgment****Md. Ashraful Kamal, J:**

1. This Rule Nisi was issued calling upon the respondent Nos. 1 to 8 to show cause as to why they should not be directed to treat the petitioners as permanent in their post of Master Pilots and allow them to enjoy the benefits of permanent Master Pilots according to law and/or pass such other or further order or order as to this Court may seem fit and proper.

2. Brief facts, necessary for the disposal of this rule, are as follows;

Bangladesh Inland Water Transport Authority (BIWTA) made an advertisement which was published in the "Daily Observer" on 19.01.2004 inviting applications from suitable candidates for appointment to the post of Master Pilots in the National Pay Scale of Tk. 2550-5505/- alongwith several other posts. In the aforementioned advertisement, it was mentioned that in respect of the post of Master Pilots' their probationary period would be 1(one) year and after successful completion of the said probationary period they will be absorbed in due course. According to the aforesaid advertisement published in the Daily Observer dated 19.01.2004, the petitioners applied for the post of Master Pilots.

3. Thereafter, the petitioners sat for the written test and viva voice examination against their posts and on the basis of the result thereof, the authority found them fit, competent and suitable for the posts. Accordingly, the petitioners were appointed by the Bangladesh Inland Water Transport Authority (BIWTA) vide office order No. 167 of 2005, 168 of 2005, 169 of 2005 170 of 2005, 171 of 2005, 172 of 2005 and 174 of 2005 dated 20.12.2005 as Master Pilots and they have been working in the said posts since then.

4. Although, in the advertisement dated 19.01.2004 it has been clearly mentioned that the appointees shall be on a probation for a period of one year and after satisfactory completion of the said probationary period, the appointees shall be absorbed in the posts on permanent basis. But, in the appointment letters, it was stated that the petitioners' appointments are on daily basis and their salary is Tk. 200/- per day per appointee. With a hope to get benefits according to the terms of the advertisement dated 19.01.2004, the petitioners joined the posts of Master Pilots. Thereafter, the petitioners successfully completed their probationary period. But, as per terms of the advertisement dated 19.01.2004, the authority did not make the petitioners permanent in the post of Master Pilots. Then, the petitioners filed representations dated 27.09.2007, 02.10.2007, 09.08.2009, 17.08.2009 and 30.05.2011 respectively before the respondents praying for absorbing them in their jobs on regular basis and to give service benefits to them, but in vain. Though the respondents did not appoint the petitioners in the post of permanent Master Pilots according to the terms of the advertisement dated 19.01.2004, but recently the authority appointed respondent Nos. 9,10,11 and 12 in the post of permanent Master Pilots.

5. Being aggrieved by the 'inaction' of the respondents in appointing the petitioners to the post of permanent Master Pilots, the petitioners filed this writ petition and obtained the present Rule.

6. Mr. Humayun Kabir Sikder, the learned Advocate appearing for the petitioners submits that according to the terms of the advertisement dated 19.01.2004, the petitioners probationary period was one year and after satisfactory completion of the said probationary period, the petitioners ought to have been absorbed in the permanent post of Master Pilots but the respondents did not do so. He further submits the petitioners have been rendering their service in the post of Master Pilots on daily basis for more than 5 years with a hope that the authority will absorb them in the post of Master Pilots on permanent basis. He also submits that according to circular dated 28.03.1969 and 21.04.1972 issued by the government, the petitioners are entitled to be absorbed to the permanent post of the Master Pilots. He further submits that in order to deprive the petitioners, the respondents have already appointed respondent Nos. 9-12 in the permanent post of Master Pilots. Mr. Sikder further submits that on satisfactory completion of probationary period, the petitioners have acquired a vested right to be absorbed in the permanent post of Master Pilots, but the respondents most illegally refrained from doing so. He further submits that as Master Pilots the petitioners have already

completed more than 9½ years service with satisfaction, therefore, they reasonably expect to be absorbed in the permanent post of Master Pilots. In support of his submission, Mr. Sikder cited the case of Bangladesh Biman Corporation, represented by Managing Director Vs. Rabia Bashri Irene and others reported in 55DLR(AD) 2003 page-132 and the case of Government of Bangladesh of Bangladesh and others Vs. Md. Gazi Shafiqul and others reported in 19 BLC (AD) (2004) 163 and an unreported case of Md. Shahidul Islam and others Vs. Bangladesh, represented by the Secretary Ministry of Water Transport, Bangladesh Secretariat, Ramna, Dhaka and others in Writ Petition No. 1652 of 2011.

7. Mr. Md. Mafizur Rahman, the learned Advocate appearing for the respondent Nos. 2 and 3 by filing affidavit-in-opposition submits that the respondents Nos. 2 and 3 appointed the petitioners, only to meet the urgent requirement of Master Pilots, for 3 (three) months, on purely temporary basis at a salary of Tk. 200/- per day. He further submits that after completion of 3 months the petitioners were not found fit for the post, however, the authority being merciful to the petitioners decided to continue them in service in the post of Master Pilots on the same terms and conditions i.e. on daily basis. He further submits that since the authority found no improvement of the efficiency of the petitioners as Master Pilots, they were compelled to invite fresh applications for appointment of efficient Master Pilots offering the scale of Tk. 6400-14255 publishing in 'the Dainik Amader Samay' on 12.03.2010 and accordingly, on due process, appointed the respondent Nos. 9-12 in the permanent post of Master Pilots.

8. We have gone through the writ petition alongwith the annexures annexed thereto, affidavit-in-opposition filed by the respondent Nos.2 and 3 and considered the submissions made by the learned Advocate for the petitioners and the learned Advocate for the respondent Nos. 2 and 3.

9. The doctrine of legitimate expectation is a concept which has been evolved to exercise control over the discretionary power conferred on the executive. This doctrine imposes a duty on public authority taking into consideration the entire relevant factor relating to such expectation. The origin of legitimate expectation can be traced in German concept of *Vertrauensschutz* – the protection of trust. Legitimate expectation includes expectation which goes beyond an enforceable right, provided it has some reasonable basis. Expectation may be based upon some express statement, or undertaking by or on behalf of public authority which has the duty of making the decision or from the existence of regular practice which the claimant can reasonably expect to continue.

10. The basic principle of legitimate expectation was explained by Lord Diplock in **Council of Civil Service Union V/s. Minister for the Civil Service, reported in (1985) AC374(408-409)**. It was observed in that case that for legitimate expectation to arise, the decisions of the administrative authority must affect the person by depriving him of some benefit or advantage which either

- (i) *he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it and which he has been given an opportunity to comment*  
or
- (ii) *he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of*

*advancing reason for contending that they should not be withdrawn.*

11. In *Union of India v. Hindustan Development Corpn.*<sup>10</sup> reported in (1993) 3 SCC 499, the Supreme Court of India observed thus: (SCC pp. 540-541, para-29).

*“It has to be noticed that the concept of legitimate expectation in administrative law has now, undoubtedly, gained sufficient importance. It is stated that ‘legitimate expectation is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action and this creation takes its place beside such principles as the rules of natural justice, unreasonableness, the fiduciary duty of local authorities and in future, perhaps, the principle of proportionality’ A passage in Administrative Law, 6<sup>th</sup> Edn, by H.W.R. Wade page 424 reads thus:*

*“These are revealing decisions. They show that the courts now expect government departments to honour their published statements or else to treat the citizen with the fullest personal consideration. Unfairness in the form of unreasonableness here comes to unfairness in the form of violation of natural justice, and the doctrine of legitimate expectation can operate in both contexts. It is obvious, furthermore, that this principle of substantive, as opposed to procedural, fairness may undermine some of the established rules about estoppel and misleading advice, which tend to operate unfairly. Lord Scarman has stated emphatically that unfairness in the purported exercise of a power can amount to an abuse or excess of power, and this seems likely to develop into an important general doctrine.*

*Another passage at page 522 in the above book reads thus:*

*“It was in fact for the purpose of restricting the right to be heard that legitimate expectation’ was introduced into the law. It made its first appearance in a case where alien students of ‘scientology’ were refused extension of their entry permits as an act of policy by the Home Secretary, who had announced that no discretionary benefits would be granted to this sect. The Court of Appeal held that they had no legitimate expectation of extension beyond the permitted time, and so no right to a hearing though revocation of their permits within that time would have been contrary to legitimate expectation. Official statements of policy, therefore, may cancel legitimate expectation, just as they may create it, as seen above. In a different context where car-hire drivers had habitually offended against airport bye-laws with many convictions and unpaid fines, it was held that they had no legitimate expectation of being heard before being banned by the airport authority.*

*There is some ambiguity in the dicta about legitimate expectation, which may mean either expectation of a fair hearing or expectation of the licence or other benefit which is being sought. But the result is the same in either case; absence*

*of legitimate expectation will absolve the public authority from affording a hearing. (emphasis supplied)*

*Again, at pages 56-57 it is observed thus: (SCC p. 547, para 33)*

*“A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfil. The protection is limited to that extent and a judicial review can be within those limits. But as discussed above a person who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there is a foundation and thus has locus standi to make such a claim. In considering the same several factors which give rise to such legitimate expectation must be present. The decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. If it is a question of policy, even by way of change of old policy, the courts cannot interfere with a decision. In a given case whether there are such facts and circumstances giving rise to a legitimate expectation, it would primarily be a question of fact. If these tests are satisfied and if the court is satisfied that a case of legitimate expectation is made out then the next question would be whether failure to give an opportunity of hearing before the decision affecting such legitimate expectation is taken, has resulted in failure of justice and whether on that ground the decision should be quashed. If that be so then what should be the relief is again a matter which depends on several factors. ”----- (emphasis supplied)*

*Again at pages 57-58 it is observed thus: (SSC pp 548-49, para 35)*

*“Legitimate expectations may come in various forms and owe their existence to different kind of circumstances and it is not possible to give an exhaustive list in the context of vast and fast expansion of the governmental activities. They shift and change so fast that the start of our list would be obsolete before we reached the middle. By and large they arise in cases of promotions which are in normal course expected, though not guaranteed by way of a statutory right in cases of contracts, distribution of largess by the Government and in somewhat similar situations. For instance discretionary grant of licences, permits or the like carry with it a reasonable expectation, though not a legal right to renewal or non-revocation, but to summarily, disappoint that expectation may be seen as unfair without the expectant person being heard. But there again the court has to see whether it was done as a policy or in the public interest either by way of GO, rule or by way of a legislation. If that be so, a decision denying a legitimate expectation based on such grounds does not qualify for interference unless in a given case, the decision or action taken amounts to an abuse of power. Therefore the limitation is extremely confined and if the according of natural justice does not condition the exercise of*

*the power, the concept of legitimate expectation can have no role to play and the court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the legislature is presumed to have intended. Even in a case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. For instance if an authority who has full discretion to grant a licence prefers an existing licence-holder to a new applicant, the decision cannot be interfered with on the ground of legitimate expectation entertained by the new applicant applying the principles of natural justice. It can therefore be seen that legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited. It would thus appear that there are stronger reasons as to why the legitimate expectation should not be substantively protected than the reasons as to why it should be protected. In other words such a legal obligation exists whenever the case supporting the same in terms of legal principles of different sorts, is stronger than the case against it. As observed in Attorney General for new South Wales case.*

*‘To strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the courts adrift on a featureless sea of pragmatism. Moreover, the notion of legitimate expectation (falling short of a legal right) is nebulous to form a basis for invalidating the exercise of a power when its exercise otherwise accords with law.’*

*If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles.(emphasis supplied)*

*From the above it is clear that legitimate expectation may arise-*

- (a) if there is an express promise given by a public authority; or*
- (b) because of the existence of a regular practice which the claimant can reasonably expect to continue,*
- (c) Such an expectation must be reasonable.*

*However, if there is change in policy or in public interest the position is altered by a rule or legislation, no question of legitimate expectation would arise.*

12. In the case of **Madras city Wine Merchants Assn Vs State of Tamil Nadu** reported in (1994) 5 SCC509 circumstances were laid down which may arise legitimate expectation –

- 1) *if there is express promise held out or representation made by a public authority or*
- 2) *because of the existence of past practice which the claimant can reasonably expect to continue and*
- 3) *such promise or representation is clear and unambiguous.*

13. In the case of **Chairman Bangladesh Textile Mills Corporation Vs. Nasir Ahmed Chowdhury** reported in 22 BLD(AD) 2002, wherein their Lordships observed;

*“ 21. Sir William Wade in his book Administrative Law, Seventh Edition has referred to the ratio laid down in some cases to show how cases of legitimate expectation arose herein, “the principle that a public authority is bound by its undertakings as to the procedure it will follow, provided they do not conflict with its duty. (1983)2 AC 629), “if the published policy was to be changed, the applicant should be given full and serious consideration whether, there is some overriding public interest justifying the new departure. [(1984) 1 WLR 1337)], “a public authority has a duty to act with fairness and consistency in its dealings with the public, and that if it makes inconsistent decisions unfairly or unjustly it misuses its powers”. In the case reported in (1988) 1 WLR 1482 “it was held that the Home Secretary’s published Criteria for regulating this form of espionage created a legitimate expectation that they would be properly observed and that the court might grant relief if they were violated without any published change of policy. In the case of a student from Nigeria who was given oral assurance that she would have no difficulty in returning after going home for Christmas, yet was refused leave to enter on returning, the refusal was quashed on the ground of legitimate expectation and unfairness. Reference has also been made to a case where a committal for trial was quashed where the police broke their promise not to prosecute. (1993) QB769).*

*22. Passage in Administrative Law, 7<sup>th</sup> Edition, by Sir William Wade reads thus; “These are revealing decisions. They show that the courts now expect government departments to honour their statements of policy or intention or else to treat the citizen with the fullest personal consideration. Unfairness in the form of unreasonableness is clearly allied to unfairness by violation of natural justice. It was in the latter context that the doctrine of legitimate expectation was invented, but it is now proving to be a source of substantive as well as of procedural rights. Lord Scarman has stated emphatically that unfairness in the purported exercise of power can amount to an*

*abuse or excess of power, and this may become an important general doctrine.”*

**23.** *Another passage in the above book reads thus:-*

*“ It is obvious that his principle of substantive, as opposed to procedural, fairness may undermine some of the established rules about estoppel and misleading advice, which tend to operate unfairly, Claims based on legitimate expectation have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on estoppel. The argument under the label ‘estoppel’ and the ‘legitimate expectation’ argument are substantially the same. In this conflict of doctrines the demands of fairness are proving the stronger. But those demands cannot be pressed to the point where they obstruct changes of policy which a government should be at liberty to make within its discretionary powers or legitimate practices such as selective prosecution of tax offenders by the Inland Revenue.”*

**24.** *A passage in Administrative Law (Eighth Edition) by David Foulkes reads thus:*

*“ The right to a hearing, or to be consulted, or generally to put one’s case, may also arise out of the action of the authority itself. This action may take one of two, or both forms: a promise (or a statement or undertaking) or a regular procedure. Both the promise and the procedure are capable of giving rise to what is called a legitimate expectation, that is an expectation of the kind which the courts will enforce. The analogy with estoppel will be apparent.” “Existence of a regular practice which could reasonably be expected to continue”.*

**25.** *In the said book upon referring to NG’s case (1983)2 All 386=(1983)2 AC629) illustration has been given as to enforceable legitimate expectation can arise from a statement or undertaking and then upon referring to the ratio of the case of Council of Civil Service Unions (1985)AC 374, (1984) 3 All ER 935) has observed therein legitimate expectation arose not out of a promise, but out of the existence of a regular practice which could reasonably be expected to continue.*

**26.** *Another passage in the above book reads thus;*

*“Some rules about the circumstances in which such promises or practices will be binding must be noticed.*

- (i) The statement or practice must be sufficiently clear and unambiguous, and expressed or carried out in such a way as to show that it was intended to be binding. Thus a statement will not be binding if it is tentative, or if there was uncertainty as to what was said. Where it was said that a recommendation from X was ‘almost invariably’ accepted there was no legitimate expectation that it would be accepted.*
- (ii) The statement or practice must be shown to be applicable and relevant to the present case, and stand*



*four square with it. Thus where an offer of an interview had been made in 1986, but action was taken in 1988 without an interview, there was no legitimate expectation of an interview in 1988 as the circumstances then were quite different. In North East Thames Regional Health Authority, ex p de Groot it was held that a legitimate expectation to be re-appointed to the Authority on the nomination of the TUC on the expiry of a term of office could not arise from the practice of acting on such nomination. There might be many reasons for non re-appointment, and to allow the argument would fetter the authority's discretion. It followed that there was (that was sought) no right to be heard before the decision not to re-appoint was taken. And an attempt to show that a legitimate expectation that a Lord Mayor would vote in a not-partisan way arose out of (not a practice but) an agreement to that effect, failed when it was shown that the agreement did not cover that point.*

- (iii) *Legitimate expectations are enforced in order to achieve fairness. Thus where it was argued that a previous practice of giving an oral hearing gave rise to a legitimate expectation of a hearing, the House of Lords said that the question was whether the official in question ( the district auditor) had acted unfairly: he had not in the circumstances a decision on the papers was fair.*
- (iv) *If the statement said to be binding was given in response to information from the citizen, it will not be binding if that information is less than frank, and if it is not indicated that a binding statement is being sought.*
- (v) *He who seeks to enforce must be a person to whom (or a member of the class to which) the statement was made or the practice applied. Where a department told all health authorities including B that C was amongst those who should be consulted, it was accepted that this gave rise to a legitimate expectation on the part of C that they would be consulted by B. But where a particular practice had operated in relation to one class of taxpayer so that a legitimate expectation arose from it, the benefit of it could not be claimed by taxpayers not in that class.*

*However certain legitimate expectations may arise in connection with policies and their application, and changes to them.*

*Where a policy has been published, it must be applied to cases falling within it.*

*Where it has been the practice to publish a policy, there may be a legitimate expectation that changes to it will be published.*

*It might be unfair to make a change in policy in such circumstances unless the body announces in advance its intention to do so as to allow an affected person to make representations before any change is carried out.”*

*27. In the context of the authority expresses about the principle of legitimate expectation in the light of the ratio of the cases referred to in the afore mentioned illuminative books let us now go for consideration of the facts placed on record by the respondents how far it can be said they have a case of legitimate expectation for having the enterprise i.e. National Cotton Mills Ltd., denationalized and the facts placed from the side of the Government in refutation of the claim of the respondents for having the mill in question denationalized.*

*31. About the situation in the back ground whereof a plea of legitimate expectation may be raised it has been observed in (1994) 1 All E.R.517, (1994) 1 WLR 74 “A public authority may, by an express undertaking or past practice or a combination of the two, have represented to those concerned that it will give them a right to be heard before it makes any change in its policy upon a particular issue which affects them. If so, it will have created a legitimate expectation that it will consult before making changes, and the court will enforce this expectation save where other factors, such as considerations of national security, prevail. This species of legitimate expectation may be termed ‘procedural’, because the content of the promise or past practice consists only in the holding out of a right to be heard: a procedural right. ”*

14. In the case of Bangladesh Biman Corporation Vs. Rabeya Bashri Irene and other reported in (2003) 55 DLR(AD) 132 Para -10, wherein their Lordships observed;

*“The contention of the learned Counsel for the petitioner as regards maintainability of the writ petition and granting of relief by the High Court Division beyond the relief sought in the writ petition or that relief granted is different from the relief sought in the writ petition appears to be not well founded since the writ petitioners were appointed by the Corporation which has been established by a Statute and that terms and conditions of service of the petitioners are not only governed by the contract by which they have been employed in the service of the Corporation but also by the Rules and regulations made by the Corporation empowered by the Statute. It is also not correct to say that the reliefs granted by the High Court Division or, in other words, directions made by the High Court Division are beyond the reliefs sought for in the writ petitions and the Rules issued by the High Court Division in that reliefs articulated in the manner although not granted by the High Court Division in that form but reliefs that have been granted to the tenor of the writ petition framed and the reliefs sought. The other contention that no case of legitimate expectation was*

made out, or that as the writ petitioners were employed by the contracts between the Corporation and them there cannot be a case of legitimate expectation beyond the contracts or that in the background of the terms of contracts there was no reasonable expectation of their being permanently absorbed in the employment of the Corporation is also of no merit since materials have been brought on record and particularly the resolution of the 174<sup>th</sup> Board meeting of the Corporation clearly shows that it was the existing practice in the Corporation, when the writ petitioners were employed for absorption permanently the employees of the petitioners category on completion of the initial period of employment made on contract subject to satisfactory performance. In the background of the existing practice of absorbing the employees of the petitioners category on satisfactory completion of the initial period of employment under a contract it can be said that there was reasonable ground for the writ petitioners to expect for being absorbed permanently in the service of the Corporation. The other contention that service in connection with which the writ petitioners by their respective contracts were employed in the service in the Corporation and in the background of the past experience as regard the service the writ petitioners are performing the “Corporation changed the retirement age of the stewards and the stewardesses at different periods and the change so made cannot be considered discriminatory since the matter of fixation of retirement age of employees of the Corporation is within its competency. The matter of fixing the age of retirement of the stewards and stewardesses being gender based the same has rightly been held by the High Court Division discriminatory and further the discrimination so made being violative of the Article 28 of the Constitution is not legal. There is another aspect as regards the matter of discrimination between the writ petitioners and the employees of the Corporation of the writ petitioners category employed immediately before them. It is not disputed that employees of batch Nos. 1-27 of the writ petitioners category although were employed on contract but on satisfactory completion of initial period of employment they have absorbed permanently in the service of the Corporation, but in the case of the writ petitioners that has not been followed, rather on completion of the initial period of employment instead of renewal of their agreement of employment they were given fresh employment. Since some employees of the Corporation inter se standing in the similar situation have not been treated in the similar manner or, in other words have been treated differently from the others the contention of the writ petitioners that they have been discriminated against has rightly been found genuine by the High Court Division. ”

15. In the case of LGED Vs Sanjoy Kumar Halder & others reported in 21 BLD (AD)2013 where Mr. Justice Syed Mahmud Hossain held that;

*“ The High Court Division has observed that since the writ petitioners have got the required qualifications and since they have been working in the development projects of LGEd as Sub-Assistant Engineers with reputation for quite a long time they have the legitimate expectation that they would be absorbed in the newly created posts. The High Court Division considered all the relevant aspects relating to absorption of LGED personnel while rendering judgment in Writ Petition 1522 of 2004 heard along with ninety-nine other writ-petitioners. The High Court Division, therefore, concluded that there was no reason for not applying the ratio of the said decision in the present cases. The findings arrived at and the decisions made by the High Court Division having been made an proper appreciation of laws and facts do not call for interference,”*

16. In the case of Dhaka City Corporation Vs. Firoza Begum reported in 65 DLR (AD)2013 where Mr. Justice Syed Mahmud Hossain observed thus;

*“20. The phrase “legitimate expectation” first emerged in its modern public law context in the judgment of Lord Denning in smith Vs Secretary of State for Home Affairs (1969) 2 Ch.149 170 and it has gained an ever more prominent presence in the case reports. Despite this increasing visibility, however, many of its features remain undefined. In order to establish legitimate expectation there must be a commitment which can be characterized as a promise.*

*21. The root of the principle of legitimate expectation is constitutional principle of rule of law which requires regularly, predictability and certainty in Government’s dealing with the public.*

*22. In the case of Council of Civil Service Union vs Minister for the Civil Service 1985 Ac 374, the House of Lords observed:-*

*“Legitimate expectation may arise either from an express promise given on behalf of a public authority or from the existence of regular practice which the claimant can reasonably expect to continue.”*

*23. In the case in hand not only DCC but also the Government in the Ministry of Local Government have made express promise to absorb the service of respondent Nos. 1-88 in the revenue set –up of the DCC. Because of shifting responsibility on the shoulders of each other by the Government and DCC, respondent Nos. 1 to 88 could not yet be absorbed in the revenue set-up of DCC.*

*24. In his book “Constitutional law of Bangladesh”, Third Edition, Mr. Mahmudul Islam, having considered a large number of reported cases of English, Indian and our jurisdictions deduced the principles emerged from those cases as under:*

- (i) *The statement or practice giving rise to the legitimate expectation must be sufficiently clear and unambiguous, and expressed or carried out in such a way as to show that it was intended to be binding. A statement will not be binding if it is tentative, or if there is uncertainty as to what was said. Where it was said that a recommendation from X was 'almost invariably' accepted there was no legitimate expectation that it would be accepted. Legitimate expectation cannot be based on departmental not to which concurrence of the relevant authority has not been obtained.*
- (ii) *Legitimate expectation cannot be pressed in aid when the policy or practice on which the expectation is based is ultra vires.*
- (iii) *Substantive protection of legitimate expectation will generally require that the promise is made to a small group and a general announcement of policy to a large group is unlikely to be presented substantively.*
- (iv) *An expectation to be legitimate must be founded upon a promise or practice by the public authority that is said to be bound to fulfill the expectation and a Minister cannot found an expectation that an independent officer will act in a particular way or an election promise made by a shadow Minister does not bind the responsible Minister after the change of the government.*
- (v) *A person basing his claim on the doctrine of legitimate expectation has to satisfy that he relied on the representation of the authority and the denial of that expectation would work to his detriment. The court can interfere only if the decision taken by the authority is found to be arbitrary, unreasonable or in gross abuse of power or in violation of the principles of natural justice and not taken in public interest.*
- (vi) *The statement or practice must be shown to be applicable and relevant to the case in hand. Thus where an officer of an interview had been made 1986, but action was taken in 1988 without an interview, there was no legitimate expectation of an interview in 1988 as the circumstances then were quite different.*
- (vii) *Legitimate expectations are enforced in order to achieve fairness. Thus where it was argued that a previous practice of giving an oral hearing gave rise to a legitimate expectation of a hearing, the court said that the question was whether the official in question has acted unfairly and in the*

*circumstances the decision on the papers was held fair. Even if a case of legitimate expectation is made out, the decision or action of the authority will not be interfered with unless it is shown to have resulted in failure of justice. There cannot be any legitimate expectation ignoring a mandatory provision of law requiring permission to be obtained*

- (viii) *Clear words in the statute or in the policy statement override legitimate expectation.*
- (ix) *If the statement said to be binding was given in response to information from the citizen, it will not be binding if that information is less than frank, and if it is not indicated that a binding statement is being sought.*
- (x) *He who seeks to enforce must be a person to whom ( or a member of the class to which) the statement was made or the practice applied.*
- (xi) *Even though a case is made out, a legitimate expectation shall not be enforced if there is overriding public interest which requires otherwise.*
- (xii) *A claim based on legitimate expectation cannot be sustained when there is non-compliance with a mandatory provision of law.*

**25.** *The principles expounded above may be the guiding principles for deciding the cases on legitimate expectation.*

*It has been consistent view of this Court that the government is debarred from making discrimination among the same class of employees. As held in Director General NSI vs. Md. Sultan Ahmed reported in 1996 BLD (Ad) 76, their Lordships in the Appellate Division held that “A double standard treatment meted out to different employees by the executive Government is deprecated.”*

17. It is necessary to quote the schedule of the Bangladesh Inland Water Transport Authority Employee Service Regulations, 1990, which runs thus:-

“বাংলাদেশ অভ্যন্তরীণ নৌ-পরিবহন কর্তৃপক্ষ এর কর্মচারী চাকুরী প্রবিধানমালা, ১৯৯০”

তফসিল

১	২	৩	৪	৫	৬	৭
১	১	১	১	১	১	১
৯৫	মাস্টার পাইলট	২৫-৪৫ বৎসর	সরাসরি নিয়োগের মাধ্যমে পূরণ করিতে হইবে		কর্ণফুলী এডভোর্সমেন্টসহ ২য় শ্রেণীর ইনল্যান্ড মাস্টারের কম্পিটেন্সী সনদপত্র। সরাসরি নিয়োগকৃত প্রার্থীগণের শিক্ষানবিসকাল ১ বৎসর হইবে যাহার সফল সমাপ্তিতে চাকুরীতে আত্মীকরণ করা হইবে।	

18. It is further necessary to quote the advertisement, which was published in “The Daily Observer” dated 19.01.2004, runs thus:

বাংলাদেশ অভ্যন্তরীণ নৌ-পরিবহন কর্তৃপক্ষ  
১৪১-১৪৩, মতিঝিল বাণিজ্যিক এলাকা, ঢাকা-১০০০।

নিয়োগ বিজ্ঞপ্তি

বাংলাদেশ অভ্যন্তরীণ নৌ-পরিবহন কর্তৃপক্ষের নিম্নলিখিত পদগুলি বিধি মোতাবেক প্রদেয় অন্যান্য ভাতাসহ প্রত্যেক পদের পার্শ্বে বর্ণিত বেতনক্রম অনুযায়ী পূরণের নিমিত্তে বাংলাদেশের প্রকৃত নাগরিকদেরনিকট হইতে দরখাস্ত আহবান করা যাইতেছে।

নং	পদের নাম	বেতন স্কেল	বয়সসীমা	শিক্ষাগত যোগ্যতা
১।	.....	.....	.....	.....
১৪	মাস্টার পাইলট	২৫৫০-৫৫০৫	২৫-৪৫	কর্ণফুলী এডভোর্সমেন্টসহ ২য় শ্রেণীর ইনল্যান্ড মাস্টারের কম্পিটেন্সী সনদপত্র। সরাসরি নিয়োগকৃত প্রার্থীগণের শিক্ষানবিসকাল ১ বৎসর হইবে যাহার সফল সমাপ্তিতে চাকুরীতে আত্মীকরণ করা হইবে।

19. According to the schedule of the Bangladesh Inland Water Transport Authority Employees Service Regulations as well as the advertisement dated 19.01.2004, in respect of the post of Master Pilots, the appointees shall be on a probation for a period of one year and after satisfactory completion of the said probationary period, the appointees shall be absorbed in the said post on permanent basis. But, curiously enough in the appointment letters, it has been stated that the petitioners’ appointments as Master Pilots are on daily basis and their salary is Tk. 200/- per day per appointee. So, how could the respondents issue such appointment letters in favour of the petitioners?

20. In the advertisement dated 19.01.2004, the authority has given an express promise to that effect that the appointee shall be on a probation period of 1 (one) year and after satisfactory completion of the said probationary period, the appointee shall be absorbed and therefore, the petitioners’ legitimate expectation arises. The petitioners successfully made out

a case of legitimate expectation. The petitioners had a legitimate expectation to be absorbed against the permanent posts on the basis of the advertisement published in the “Daily Observer” on 19.01.2004. In the background of the advertisement dated 19.01.2004, there was reasonable expectation of their being permanently absorbed in the post of Master Pilots.

21. The respondents did not say anything in their affidavit-in-opposition to the effect that the petitioners did not successfully complete their probationary period or the petitioners’ services were unsatisfactory. Rather, it appears from the record that the petitioners have been working in the post of Master Pilots, since 2004 to the full satisfaction of the respondents.

22. Apart from that, the respondents failed to show any reasons why they did not absorb the petitioners in the post of Master Pilots permanently, though, they have already rendered their service approximately 11 (eleven) years. The inaction of the respondents is found arbitrary, unreasonable, is in gross abuse of power and is in violation of the principles of natural justice.

23. In light of the aforesaid facts and circumstances of the case and *ratio decidendi* as discussed above, we find substance in the submissions of the learned Advocate for the petitioners.

24. In the result, the Rule is made absolute without any order as to costs.

25. The respondent Nos. 1-8 are, hereby, directed to absorb the petitioners No.1-4 in the vacant posts of permanent Master Pilot in Bangladesh Water Transport Authority (BIWTA) within 2(two) months from the date of receipt of this judgment.

26. Further, respondent Nos. 1-8 are, hereby, directed to absorb the petitioner Nos. 5-7 in the post of Master Pilot in Bangladesh Water Transport Authority (BIWTA) subject to availability of vacant post of Master Pilot in future.

27. Further, without absorbing the petitioners as directed above, no advertisement could be published in respect of the permanent post of Master Pilot.

28. Communicate this judgment at once.