

IN THE SUPREME COURT OF BANGLADESH
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

Ms. Justice Zinat Ara

Mr. Justice Abu Bakar Siddiquee

Mr. Justice Md. Nuruzzaman

CIVIL APPEAL NOS.48-54 OF 2017 WITH C.R.P NO.325 OF 2017 AND CIVIL PETITION FOR LEAVE TO APPEAL NO.1882 OF 2018 WITH CONTEMPT PETITION NO.15 OF 2016 WITH C.R.P.NO.611 OF 2018 & C.R.P.NO.31 OF 2013.

(From the judgment and order dated 02.02.2012 and 30.07.2012 passed by the High Court Division in Writ Petition Nos.1539,4298,4299,4519,4521 and 2343 of 2009 with W. P. No.8911 of 2012, judgment and order dated 12.01.2016 passed by the Appellate Division in C.A.No.181/07, judgment and order dated 31.10.2017 passed by High Court Division in W.P.No.6069/2014, judgment and order dated 19.04.2012 passed by the Appellate Division in C.A.No.12 of 2006)

Secretary, Ministry of Agriculture, Bangladesh Secretariat Dhaka and others:	Appellants. (In C.A.No.48-54/17)
Mohammad Hasan and others :	Petitioners. (In C.R.P.No.325/17)
The Managing Director, Gas Transmission Company Ltd. Dhaka :	Petitioners. (In C.P.No.1882/18)
Abul Hashem and others :	Petitioners. (In Cont.P.No.15/16)
Bangladesh, represented by the Secretary, Ministry of Industry, Govt. of Bangladesh and another :	Petitioners. (In C.R.P.No.611/18)
The Chairman Bangladesh Sugar and Food Industries Corporation, Dhaka :	Petitioners. (In C.R.P.No.31/18)

=Versus=

Kh. Mosaddeq Hossain and others :	Respondents. (In C.A.No.48/17)
Md. Islam Uddin Mondal and others :	Respondents. (In C.A.No.49/17)
Dr. Abdul Awal and others :	Respondents. (In C.A.No.50/17)
Dr. M.A. Jabbar and others :	Respondents. (In C.A.No.51/17)
Dr. M. Anwarul Quader Sheik and others :	Respondents. (In C.A.No.52/17)
M.M. Anwarul Islam and others :	Respondents. (In C.A.No.53/17)
Md. Mozammel Haque and others :	Respondents. (In C.A.No.54/17)
Bangladesh, represented by the Secretary, Ministry of Local Govt. and Rural Development (LGRD) and Co-operative, Dhaka and others :	Respondents. (In C.R.P.No.325/17)
Md. Mahbubur Rahman and another :	Respondents. (In C.P.No.1882/18)
Md. Mosharraf Hossain Bhuiyan & others :	Respondents. (In Cont.P.No.15/16)

Obaidul Islam Chowdhury and others : Respondents.
(In C.R.P.No.611/18)

Obaidul Islam Chowdhury and others : Respondents.
(In C.R.P.No.31/13)

For the Appellant : Mr. Murad Reza, Additional
(In C.A.Nos.48-54/17) Attorney General with Mr. Sk. Shaifuzzaman, Deputy Attorney General & Mr. Irin Jahan, Assistant Attorney General, instructed by Mr. Haridas Paul, Advocate-on-Record.

For the Petitioner : Mr. Rokanuddin Mahmud, Senior
(In C.R.P.No.325/17) Advocate (with Mr. Tanjib-ul-Alam, Advocate), instructed by Mr. Md. Helal Amin, Advocate-on-Record.

For the Petitioner : Mr. Murad Reza, Additional
(In C.P.No.1882/18) Attorney General, instructed by Mr. Md. Helal Amin, Advocate-on-Record.

For the Petitioner : Mr. A.F.M. Meshbahuddin, Senior
(In Cont.P.No.15/16) Advocate, instructed by Mr. Md.Abdul Hye Bhuiyan, Advocate-on-Record.

For the Petitioner : Mr. Murad Reza, Additional
(In C.R.P.No.611/18) Attorney General with Mr. Sk. Shaifuzzaman, Deputy Attorney General & Ms. Irin Jahan, Assistant Attorney General, instructed by Mr. Haridas Paul, Advocate-on-Record.

For the Petitioner : Mr. Mahbubey Alam, Senior
(In C.R.P.No.31/13) Advocate instructed by Mr. Md. Zahirul Islam, Advocate-on-Record.

For the Respondents : Mr. Rokanuddin Mahmud, Senior
(In C.A.Nos.48-54/17) Advocate, instructed by Mr. Md. Helal Amin, Advocate-on-Record.

For the Respondents : Not represented.
(In C.R.P.No.325/17)

For the Respondents : Mr. Tanjib-ul-Alam, Advocate,
(In C.P.No.1882/18) instructed by Mr. Syed Mahbubar Rahman, Advocate-on-Record.

For Respondent Nos.1,3 & 6: Mr. A.F.M. Meshbahuddin, Senior
(In Cont.P.No.15/16) Advocate, instructed by Mr. M. Asrafuzzaman Khan, Advocate-on-Record.

For Respondent No.2 : Mr. A.F.M. Meshbahuddin, Senior
(In Cont.P.No.15/16) Advocate, instructed by Mr. Zainul Abedin, Advocate-on-Record.

For Respondent No.5 : Mr. A.F.M. Meshbahuddin, Senior
(In Cont.P.No.15/16) Advocate, instructed by Mrs. Madhumaloti Chowdhury Barua, Advocate-on-Record.

Respondent No.4 : Not represented.
(In Cont.P.No.15/16)

For the Respondents : Mr. A.F.M. Meshbahuddin, Senior
(In C.R.P.No.611/18) Advocate, instructed by Mr. Md. Abdul Hye Bhuiyan, Advocate-on-Record.

For the Respondents : Mr. A.F.M. Meshbahuddin, Senior
(In C.R.P.No.31/13) Advocate, instructed by Mr. Md. Abdul Hye Bhuiyan, Advocate-on-Record.

Date of hearing on : 06.02.2019,16.04.2019 & 17.04.2019.
Date of judgment on : 02.05.2019.

J U D G M E N T

Hasan Foez Siddique, J: Delay in filing Civil Review Petitions No.31 of 2013 and 611 of 2018 and Civil Petitions for Leave to Appeal No.2581 of 2016 and 1882 of 2018 is condoned.

All these Civil Appeals, Civil Petition for leave to appeal and Civil Review Petitions have been heard together. Since the points for determination of all the matters are identical we have heard all the matters together and these are being disposed of by this common judgment.

The respondents Khandaker Mosaddeq Hossain and others in Civil Appeal No.48 of 2017 filed Writ Petition No.1539 of 2009 against the Bangladesh Agricultural Development Corporation (the BADC) and others in the High Court Division and obtained Rule challenging the orders bearing No.কৃষি-৩/জে-২২/২০০১/৪৪৯ dated 26.06.2002 (hereinafter referred to as order dated 26.02.2002) and স্মারক নং-বিএডিসি/হিসাব/সম/২০০১-০২/০৪(৩০) dated 03.07.2002 (hereinafter referred to as letter dated 03.07.2002) to recover excess amount so paid as gratuity pursuant to notification No.অম/অবি(বাস্ত-১)/বিবিধ-৫/৯৫/২৩০ dated 19.11.1995 issued by the Ministry of Finance (hereinafter referred to letter dated 19.11.1995).

The respondents Md. Islam Uddin Mondal and others in Civil Appeal No.49 of 2017 filed Writ Petition No.4298 of 2009 against the Bangladesh Agricultural Development Corporation (the BADC) and others challenging the aforesaid letters dated 26.06.2002 and 08.07.2002 and obtained Rule.

The respondents Dr. Abdul Awal and others in Civil Appeal No.50 of 2017 filed Writ Petition No.4299 of 2009 against the Bangladesh Sugarcane Research Institute (the BSRI) and others challenging the aforesaid identical letters dated 26.06.2002 and also the letters dated 15.09.2007 and 04.11.2007 and obtained Rule.

The respondents Dr. M.A. Jabbar and others in Civil Appeal No.51 of 2017 filed Writ Petition No.4519 of 2009 against the Bangladesh Sugarcane Research Institute (the BSRI) and others challenging the aforesaid two letters dated 26.06.2002 and 15.09.2002 and obtained Rule.

The respondents Dr. M. Anwarul Quader Shaikh and others in Civil Appeal No.52 of 2017 filed Writ Petition No.4521 of 2009 against the Bangladesh Institute of Nuclear Agriculture (the BINA) and others challenging the aforesaid identical letters dated 26.06.2002 and 15.09.2002 and obtained Rule.

The respondents M.M. Anwarul Islam and others in Civil Appeal No.53 of 2017 filed Writ Petition No.2343 of 2009 against the Bangladesh Jute Research Institute (the BJRI) and others for implementation of the letter dated 19.11.1995 issued by the Ministry of Finance and some other letters and obtained Rule.

All those writ petitions were heard analogously by a Division Bench of the High Court Division comprising Farah Mahbub and Abdur Rob J.J., who by a common judgment and order, dated 02.02.2012 made all those Rules absolute and declared the letter dated 26.06.2002 to have been passed without lawful authority. In the said judgment, the concerned writ respondents were also directed to implement office order dated 19.11.1995 in respect of the writ petitioners of all those writ petitions. Against the aforesaid judgment and order, the writ respondents of the respective writ petitions preferred above mentioned Civil Appeals.

In Civil Appeal No.54 of 2017 respondents Md. Mozammel Hoque and others filed Writ Petition No.8911 of 2012 against the Bangladesh Agricultural Development Corporation (the BADC) and others in the High Court Division challenging

the letters dated 26.06.2002 and 15.09.2002 and obtained Rule. The High Court Division comprising Mamnoon Rahman and Abu Zafor Siddique, J.J., by a judgment and order dated 30.07.2012, made the said Rule absolute and directed the writ respondents to pay the outstanding retirement benefits as per notification dated 19.11.1995.

Facts of the Civil Review Petition Nos.31 of 2013 and Civil Review Petition No.611 of 2018, in short, are that the review respondents Obaidul Islam Chowdhury and others filed Writ Petition No.3502 of 2001 in the High Court Division against the Bangladesh Sugar and Food Industries Corporation and others challenging letters issued by the Corporation refusing to pay gratuity to the writ petitioners as per direction of the Government order dated 19.11.1995 and also prayed for a direction upon the writ respondents to calculate payment of gratuity to the writ petitioners as per direction of the Ministry of Finance and obtained Rule. A Division Bench of the High Court Division comprising Md. Hamidul Haque and Salma Masud Chowdhury, J.J., by a judgment and order dated 07.11.2002, discharged the said Rule. Against the said judgment and order, the writ petitioners preferred Civil Appeal No.12 of 2006

in this Division and 7(seven) member bench of this Division, by a judgment and order dated 19.04.2012, allowed the said appeal (judgment was delivered by Surendra Kumar Sinha, J. as his lordship then was). Against the said judgment and order dated 19.04.2012 passed by this Division, the Chairman, Bangladesh Sugar and Food Industries Corporation, filed Civil Review Petition No.31 of 2013 and the Government filed Civil Review Petition No.611 of 2018 in this Division.

That is, in these two Review Petitions the issue is whether the judgment delivered in Civil Appeal No.12 of 2006 by the 7 member bench of this Division is to be reviewed or not.

Facts of Civil Petition for Leave to Appeal No.2581 of 2016, in short, are that the respondents A.K.M Shahiduddin and others filed Writ Petition No.3495 of 2010 against the Bangladesh Shipping Corporation (the BSC) and others for a direction for implementation of the office order dated 19.11.1995 and obtained Rule. A Division Bench of the High Court Division comprising Gobinda Chandra Tagore and S.M. Mozibur Rahman, J.J., by a judgment and order dated 02.03.2016, made the said Rule absolute with a direction upon the writ respondents to implement

the circular dated 19.11.1995 and to pay the writ petitioners' gratuity. Against which, the Bangladesh Shipping Corporation has filed the instant civil petition for leave to appeal.

The facts of Civil Petition for Leave to Appeal No.1882 of 2018, in short, are that the respondents Md. Mahbubur Rahman and others filed Writ Petition No.6069 of 2014 against the Bangladesh Gas Transmission Company Ltd. which is a Company of Bangladesh Oil, Gas and Mineral Corporation (Petrobangla) for a direction upon the writ respondents to pay gratuity as outstanding dues to the writ petitioners which they are entitled as per office order dated 19.11.1995 and obtained Rule. A Division Bench of the High Court Division comprising Gobinda Chandra Tagore and A.K.M. Shahidul Huq, J.J., by a judgment and order dated 31.10.2017, made the said Rule absolute directing the writ respondents to pay the gratuity to the writ petitioners under the pension scheme. Against which, the Managing Director, Gas Transmission Company Limited, has filed the aforesaid Civil Petition for leave to appeal.

Facts of Civil Review Petition No.325 of 2017, in short, are that the respondents Amanullah and others filed Writ Petition No.2877 of 1999

against Dhaka City Corporation and others challenging the letter dated 02.09.1997 issued by the writ respondent No.3 stopping payment of gratuity to the writ petitioners in view of the letter of communication dated 28.10.1998. According to the writ petitioners, they are entitled to get gratuity in view of the office order dated 19.11.1995. A Division Bench of the High Court Division comprising Syed J.R. Mudassir Hussain and Md. Arayesuddin, J.J., by a judgment and order dated 12.06.2000, made the said Rule absolute directing the writ respondents to implement the decision issued in office order dated 19.11.1995. Against the said judgment and order dated 12.06.2000 passed in Writ Petition No.2877 of 1999, the Government represented by the Secretary Ministry of Local Government and Rural Development and Co-operatives (Local Govt. Division) preferred Civil Appeal No.181 of 2007 in this Division and this Division, by a judgment and order dated 12.01.2016, allowed the appeal upon setting aside the judgment and order of the High Court Division.

Against the said judgment and order dated 12.01.2016 passed by this Division in Civil Appeal No.181 of 2007 the writ petitioner-

respondents have filed Civil Review Petition No.325 of 2017.

Facts of the Contempt Petition No.15 of 2016, in short, are that the Government and others failed to implement the judgment and order dated 19.04.2012 passed in Civil Appeal No.12 of 2006. Accordingly, the writ petitioner-respondents of the said appeal have filed the instant contempt petition bringing allegations of non-implementation of the judgment and order passed in said Civil Appeal against writ respondent-contemners.

From the facts of all the cases, it appears to us that the leading point for adjudication in all the cases is, whether the officers and employees of the different semi-Government Organizations, autonomous bodies, Corporations, nationalised banks and financial institutions are entitled to get gratuity in the manner of pension scheme as provided for retired Government officers and employees in view of the Government circular dated 19.11.1995 or not.

Mr. Murad Reza, learned Additional Attorney General appeared on behalf of the appellants in Civil Appeal Nos.48-54 of 2017, for the petitioners in Civil Petition for leave to appeal

No.1882 of 2018 and for the petitioner in Civil Review Petition No.611 of 2018. Mr. Mahbubey Alam, learned Senior Counsel appeared for the petitioner in Civil Review Petition No.31 of 2013, Mr. A.F.M. Mesbahuddin, learned Senior Counsel appeared for the petitioner in Contempt Petition No.15 of 2016, Mr. Rokanuddin Mahmud, learned Senior Counsel appeared for the petitioners in Civil Review Petition No.325 of 2017. He also appeared for the respondents in Civil Appeal Nos.48-54 of 2017. Mr. Tanjib-ul Alam, learned Counsel appeared for the respondents in Civil Petition for leave to Appeal No.1882 of 2018 and Mr. A.F.M. Meshbahuddin Ahmed, learned Senior Counsel also appeared for the respondents in Civil Review Petition No.611 of 2018 and Civil Review Petition No.31 of 2013.

In fact, the result of the Review Petition Nos.31 of 2013 and 611 of 2018 filed against the judgment and order dated 19.04.2012 passed in Civil Appeal No.12 of 2006 has got material bearings upon all other cases. So, we shall take up those two Review Petitions first for consideration and decision.

The judgment and order dated 19.04.2012 passed in Civil Appeal No.12 of 2006 was delivered by 7(seven) members bench of this Division and the

judgment of the said appeal is binding upon the High Court Division as well as the parties concerned until this Division reviewed and set aside the said judgment and order.

In an elaborate judgment the 7 member bench of this Division, in Civil Appeal No.12 of 2006, allowed the appeal observing that the officers and employees of the Corporations and other semi Government Organizations are also entitled to get gratuity benefits alike other Government employees, since different provisions dealing with the matter in this regard are discriminatory.

Mr. Murad Reza, learned Additional Attorney General and Mr. Mahbubey Alam, learned Senior Counsel appeared on behalf of the Government and different Corporations in their respective submissions stated that in Civil Appeal No.12 of 2006 this Division, on the one hand, held that the office order dated 19.11.1995 has no force of law and that the writ petitioners could not claim the gratuity pursuant to the office order dated 19.11.1995 as of right, on other hand, allowed the appeal holding that the employees of different corporations have been discriminated since they have been performing similar functions as those of

the other Government employees which is an error of law apparent on the face of the record.

Mr. Rokanuddin Mahmud, learned Senior Counsel appearing for the petitioners in Civil Review Petition No.325 of 2017 in his submission stated that 4(four) member bench of this Division in Civil Appeal No.181 of 2017 has committed an error of law in allowing the appeal holding that the employees of the City Corporation are entitled to get gratuity following their own laws without taking into consideration of the judgment and order passed in Civil Appeal No.12 of 2006 delivered by the 7(seven) member bench of this Division. Mr. Mahmud and other learned Counsel, appearing for the respondents in the appeals, submit that the gratuity schemes of different Corporations are discriminatory to those of the provisions of pension scheme provided for other Government servants and this Division, after proper consideration and appreciation of the relevant laws and facts, rightly observed so in Civil Appeal No.12 of 2006.

Before discussing the merit of the Civil Appeals and Review Petitions let us peruse the contents of the relevant office orders. First office order was the order dated 19.11.1995, by

virtue of which, all the officers and employees of the semi Government Organizations, autonomous bodies and Corporations claimed their gratuity benefits similar to the provisions of pension scheme provided for other Government officers and employees.

The contents of the said office order dated 19.11.1995 run as follows:

“গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
অর্থ মন্ত্রণালয়, অর্থ বিভাগ
বাস্তবায়ন ও প্রবিধি অনুবিভাগ
বাস্তবায়ন শাখা-৯

স্মারক নং- অম/অবি (বাস্ত-১)/ বিবিধ-৫/৯৫/২৩০

তারিখঃ ১৯/১১/৯৫ইং

বিষয়ঃ আধা সরকারী /স্বায়ত্ব শাসিত সংস্থা/রাষ্টায়ত্ব ব্যাংক ও অর্থলগ্নী প্রতিষ্ঠান সমূহের কর্মকর্তা/ কর্মচারীদের আনুতোষিক (গ্র্যাচুইটি) নির্ধারণ প্রসংগে।

উপরোক্ত বিষয়ে সরকার এই মর্মে সিদ্ধান্ত গ্রহন করিয়াছেন যে, যে সমস্ত সংস্থায় পেনশন প্রথার পরিবর্তে আনুতোষিক (গ্র্যাচুইটি) প্রথা চালু রহিয়াছে, সেই সমস্ত সংস্থায় কর্মরত কর্মকর্তা/কর্মচারীদের, সরকারী কর্মকর্তা/ কর্মচারীদের পেনশন প্রদানের ক্ষেত্রে যেভাবে বেতন নির্ধারণ করা হয়, আনুতোষিক (গ্র্যাচুইটি) প্রদানের ক্ষেত্রে ঐ একই নিয়ম প্রযোজ্য হইবে।

২। যাহারা ০১-০১-১৯৯৫ ও ০১-০৭-১৯৯৫ইং তারিখ সমূহে অবসর প্রস্তুতিমূলক ছুটিতে আছেন, তাহারা ঐ তারিখ সমূহে ১০% বেতন বৃদ্ধির সুবিধাসহ আনুতোষিক (গ্র্যাচুইটি) প্রাপ্য হইবেন।

স্বাঃ
(মোঃ ফারুক শিকদার)
সিনিয়র সহকারী সচিব”

(Bold and underlined by us)

From close reading of the office order dated 19.11.1995 it appears that subject matter of the same is in respect of calculation of the gratuity of the officers/employees of the semi government organizations/autonomous bodies/nationalized banks and financial institutions. From the contents of the said office order it further appears that the Government had taken decision that the procedure followed for fixation of salary for the purpose of payment of pension of the Government officers/employees should also be followed for the purpose of fixation of salary for payment of gratuity of the officers and employees of the autonomous bodies, semi Government organizations, corporations, nationalized banks and other financial institutions who have been realizing gratuity instead of pension. In the said office order, it has not been stated that the officers and employees of semi-government/autonomous bodies/nationalized banks and financial institutions shall get their gratuity following the provisions of pension scheme adopted for the government officials. The said office order was issued only for fixation of salary for the purpose of paying gratuity. Thereafter, the Ministry of Finance on 15.09.2002 issued another office order

to clarify its earlier office order dated 19.11.1995.

The contents of which run as follows:

“গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
অর্থ মন্ত্রণালয়, অর্থ বিভাগ
বাস্তবায়ন ও পরিদর্শন অনুবিভাগ
বাস্তবায়ন শাখা-১

নং- অম/অবি (বাস্ত-১)/বিবিধ-৫/৯৫/১৩৮

তারিখঃ ১৫/০৯/২০০২

বিষয়ঃ আধা সরকারী /স্বায়ত্ব শাসিত সংস্থা/রাষ্টায়ত্ব ব্যাংক ও অর্থলগ্নী প্রতিষ্ঠান সমূহের কর্মকর্তা/ কর্মচারীদের বেতন বৃদ্ধির সুবিধা প্রদান প্রসংগে।

সূত্রঃ- অম/অবি (বাস্ত-১)/বিবিধ-৫/২৩০, তাং ১৯/১১/৯৫

নির্দেশক্রমে জানানো যাইতেছে যে, কতিপয় আধা সরকারী /স্বায়ত্বশাসিত সংস্থা/রাষ্টায়ত্ব ব্যাংক ও অর্থলগ্নী প্রতিষ্ঠান সমূহের অবসরপ্রাপ্ত কর্মকর্তা ও কর্মচারীদেরকে অর্থ বিভাগের ১৯/১১/৯৫ তারিখের অম/অবি (বাস্ত-১)/বিবিধ-৫/২৩০ নং আদেশের ভুল ব্যাখ্যা করিয়া নিজ নিজ সংস্থা/প্রতিষ্ঠানের বিধি, বিধান ও পদ্ধতি অনুসরণ না করিয়া অবসরপ্রাপ্ত সরকারী কর্মকর্তা/কর্মচারীদের ক্ষেত্রে প্রযোজ্য হারে ও পদ্ধতিতে আনুতোষিক (গ্র্যাচুইটি) প্রদান করা হইতেছে বলিয়া অর্থ বিভাগের গোচরীভূত হইয়াছে যাহা চরম আর্থিক অনিয়ম।

২। পেনশন/গ্র্যাচুইটি(যেই ক্ষেত্রে যাহা প্রযোজ্য) নির্ধারণের পূর্ব শর্ত হইতেছে আহরিত শেষ বেতন নির্ধারণ। অর্থ বিভাগের বর্ণিত আদেশের মর্মার্থ ছিল ‘৩১/১২/৯৭ তারিখের বেতনের উপর ভিত্তি করিয়া ১০% বেতন বৃদ্ধির সুবিধা’ বিষয়ে বর্ণিত সংস্থা/প্রতিষ্ঠান সমূহের ১/১/৯৫ ও ১/৭/৯৫ তারিখের অবসর প্রস্তুতিমূলক ছুটিতে থাকা কর্মকর্তা/কর্মচারীর ক্ষেত্রেও প্রযোজ্য হইবে। উক্ত আদেশ কোনভাবেই সংস্থার গ্র্যাচুইটি নির্ধারণের বিদ্যমান পদ্ধতি পরিবর্তন করিয়া সরকারী কর্মকর্তা/কর্মচারীদের ক্ষেত্রে প্রযোজ্য পদ্ধতিতে আনুতোষিক প্রদানের কথা বলা হয় নাই।

৩। আধা সরকারী /স্বায়ত্বশাসিত সংস্থা/রাষ্টায়ত্ব ব্যাংক ও অর্থলগ্নী প্রতিষ্ঠান সমূহের কর্মকর্তা/কর্মচারীদের ১০% বেতন বৃদ্ধি প্রদান প্রসংগে অর্থ বিভাগের ১৯/১/১৯৯৫ইং তারিখে জারীকৃত অম/অবি (বাস্ত-১)/বেতন বৃদ্ধি-১/৯৫/০৯নং স্মারকের প্রেক্ষিতে “যে সকল কর্মকর্তা /কর্মচারী ১/১/৯৫ ও ১/৭/৯৫ তারিখে অবসর প্রস্তুতিমূলক ছুটিতে থাকিবেন তাহারা উপরোক্ত বেতন বৃদ্ধির সুবিধা আনুতোষিক নির্ধারণের ক্ষেত্রে প্রাপ্য হইবেন কিনা” এ মর্মে কতিপয় সংস্থা কর্তৃক অর্থ বিভাগের মতামত চাওয়া হইলে অর্থ বিভাগের ১৯/১১/৯৫ তারিখের অম/অবি (বাস্ত-১)/বিবিধ-৫/৯৫/২৩০ নং অফিস আদেশটি জারী করা হইয়াছিল।

আধা সরকারী /স্বায়ত্বশাসিত সংস্থা/রাষ্টায়ত্ব ব্যাংক ও অর্থলগ্নী প্রতিষ্ঠান সমূহের কর্মকর্তা/কর্মচারীগণ নিজ নিজ সংস্থা/প্রতিষ্ঠানের বিধি, বিধান ও পদ্ধতি অনুযায়ী আনুতোম্বিক (গ্র্যাচুইটি) প্রাপ্য হইবেন।

স্বাঃ
(আবদুল বারী)
সিনিয়র সহকারী সচিব”

(Bold and underlined by us)

Some Officials of the semi-government organizations, autonomous bodies etc. misconstrued and misinterpreted the office order dated 19.11.1995 issued by the Ministry of Finance, which resulted in the ensuing litigations and harassment of the parties. Subsequent office order dated 15.09.2002 was issued only to simplify the language and to make the office order dated 19.11.1995 more clear. However, in our earlier judgments, we have also failed to interpret and construe the exact spirit of the contents of the office order dated 19.11.1995 and intention of its makers, consequently, one after another litigations have cropped up.

The Ministry of Finance issued another circular on 03.10.2002 to clarify its position again. The contents of which run as follows:

“গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
অর্থ মন্ত্রণালয়, অর্থ বিভাগ
বাস্তবায়ন ও পরিদর্শন অনুবিভাগ
বাস্তবায়ন শাখা-১

নং- অম/অবি (বাস্ত-১)/ বিবিধ-৫/৯৫/১৪৫

তারিখঃ ৩/১০/২০০২

বিষয়ঃ আধা সরকারী /স্বায়ত্ব শাসিত সংস্থা/রাষ্টায়ত্ব ব্যাংক ও অর্থলগ্নী প্রতিষ্ঠান সমূহের কর্মকর্তা/ কর্মচারীদের বেতন বৃদ্ধির সুবিধা প্রদান প্রসংগে।

সূত্রঃ- অম/অবি (বাস্ত-১)/ বিবিধ-৫/২৩০, তাং ১৯/১১/৯৫

অর্থ বিভাগ কর্তৃক জারীকৃত ১৫/৯/২০০২ তারিখের ১৩৮ নং স্বাকের অনুবৃত্তিক্রমে আদিষ্ট নিম্নরূপ ব্যবস্থা গ্রহণের জন্য অনুরোধ করা হলো।

(ক) অর্থ বিভাগের ১৯/১১/১৯৯৫ইং তারিখের ২৩০ নম্বর অফিস আদেশটি ভুল ব্যাখ্যা করে সকল মন্ত্রণালয়/সংস্থা কর্তৃক নিজ নিজ সংস্থা /প্রতিষ্ঠানের বিধি, প্রবিধান ও পদ্ধতি অনুসরণ না করে অবসরপ্রাপ্ত সরকারী কর্মকর্তা/কর্মচারীদের ক্ষেত্রে প্রযোজ্য হারে ও পদ্ধতিতে আনুতোষিক (গ্র্যাচুইটি) প্রদান করার অফিস আদেশ জারী করা হয়েছে উক্ত আদেশ সমূহ ও বাতিল করার জন্য সংশ্লিষ্ট মন্ত্রণালয়/বিভাগ সমূহকে অনুরোধ করা হলো।

(খ) ১৯/১১/৯৫ তারিখের ২৩০ নম্বর আদেশের ভুল ব্যাখ্যা করে বিভিন্ন মন্ত্রণালয়ের বিরুদ্ধে দায়েরকৃত রীট পিটিশনের বিষয়ে দায়িত্ব ব্যবস্থা গ্রহণ এবং কোন মামলায় সরকারের সংশ্লিষ্ট মন্ত্রণালয়/বিভাগ সমূহকে অনুরোধ করা হলো।

(গ) অর্থ বিভাগের ১৯/১১/৯৫ তারিখের ২৩০ নম্বর আদেশের ভুল ব্যাখ্যা করে অতিরিক্ত অর্থ প্রদান করা হয়ে থাকলে প্রদানকৃত অতিরিক্ত অর্থ আদায় অর্থ সমন্বয় করার জন্য সংশ্লিষ্ট মন্ত্রণালয়/বিভাগ সমূহকে অনুরোধ করা হলো।

স্বাঃ

(আবদুল বারী)

সিনিয়র সহকারী সচিব”

Those are contents of the Government orders and circulars.

The claim of the litigant officers and employees of different semi Government Organizations, autonomous bodies etc. are based on

total misinterpretation and misconstruction of the words used in the office order dated 19.11.1995 of the Ministry of Finance. The words, “সরকারী কর্মকর্তা কর্মচারীদের পেনশন প্রদানের ক্ষেত্রে যেভাবে বেতন নির্ধারন হয়” have not been interpreted and construed for the purpose of which those words were used. In the said office order the words, “আনুতোষিক (গ্রাচুইটি) প্রদানের ক্ষেত্রে ঐ একই নিয়ম” were used for the purpose of fixation of salary for calculating and paying the gratuity of the officers and employees of the autonomous bodies, corporations and other semi government organizations.

From plain reading of contents of the order it appears that the autonomous bodies, Corporations and semi government organizations would follow their own rules, regulations and methodology in respect of payment of gratuity, but the procedure of fixation of the salaries of their officers and employees for the purpose of calculating the gratuity would be done following the procedure adopted for fixation of salaries of the Government employees while paying their pensions. The office order dated 19.11.1995 did not provide any provision that the officers and employees of the autonomous bodies, corporations and other semi-government organizations would get their gratuity

following the same method as other government officers and employees. The entitlement of gratuity or pension benefits should be regulated by their respective service Rules. Moreover, 7 member bench of this Division has observed that the office order dated 19.11.1995 has no force of law. Since the said order has got no force of law, the same can not be enforced by issuing mandamus.

It is relevant here to mention that for the purpose of regulating the terms and conditions of the service of the employees, each of the aforesaid autonomous bodies, corporations semi government organizations, nationalized banks and financial institutions has specific service Rules. The terms and conditions of the service of the officers and employees of each organization, body bank and institution as mentioned earlier, shall be regulated by their respective service rules. For example, for the officers and employees of Bangladesh Agricultural Development Corporation there is specific service Rules in the name of “বাংলাদেশ কৃষি উন্নয়ন কর্পোরেশনের কর্মচারী চাকুরী বিধিমালা, ১৯৯০”

In Chapter-8 of the said বিধিমালা, the provisions of “অবসর গ্রহণ ও অন্যান্য সুবিধা” have been provided which run as follows:

“ অবসর গ্রহণ ও অন্যান্য সুবিধা”

৫১। ভবিষ্যৎ তহবিল।- কর্পোরেশন উহার কর্মচারীদের জন্য, যাহার প্রবিধান ৫৩ এর অধীনে অবসরভাতা ও অবসরজনিত সুবিধাদি গ্রহণের ইচ্ছা প্রকাশ করিবেন না, তাহাদের জন্য অংশ প্রদায়ক ভবিষ্যৎ তহবিল নামে একটি তহবিল গঠন করিবে, যাহাতে প্রত্যেক কর্মচারী এবং কর্পোরেশন, সরকার কর্তৃক সময় সময় নির্ধারিত চাঁদা প্রদান করিবে, এবং উক্ত তহবিলের ক্ষেত্রে, Bangladesh Agricultural Development Corporation (Contributory Provident Fund) Regulations, 1967, প্রয়োজনীয় অভিযোজনসহ প্রযোজ্য হইবে।

৫২। আনুতোষিক।-(১) নিম্নোক্ত যে কোন কর্মচারী আনুতোষিক পাইবেন, যথাঃ-

(ক) কর্পোরেশনে কমপক্ষে তিন বৎসর অব্যাহতভাবে চাকুরী করিয়াছেন এবং শাস্তিস্বরূপ চাকুরী হইতে বরখাস্ত বা অপসারিত হন নাই বা যাহার চাকুরীর অবসান ঘটানো হয় নাই।

(খ) কমপক্ষে তিন বৎসর চাকুরী করিবার পর যিনি কর্তৃপক্ষের অনুমতিসহ চাকুরী হইতে পদত্যাগ বা চাকুরী ত্যাগ করিয়াছেন।

(গ) তিন বৎসর পূর্ণ হওয়ার পূর্বে নিম্নরূপ কারণে যে কর্মচারীর চাকুরীর অবসান হইয়াছে, যথাঃ-

(অ) তিনি যে পদে নিযুক্ত রহিয়াছেন সেই পদ বিলুপ্ত হইয়াছে অথবা পদ সংখ্যা হ্রাসের কারণে তিনি চাকুরী হইতে ছাঁটাই হইয়াছেন।

(আ) সম্পূর্ণ বা আংশিক অসামর্থের কারণে তাহাকে চাকুরী হইতে বরখাস্ত বা অপসারিত করা হইয়াছে, অথবা

(ই) চাকুরীরত থাকাকালে তিনি মৃত্যুবরণ করিয়াছেন।

(২) কোন কর্মচারীকে তাহার চাকুরীর প্রত্যেক পূর্ণ বৎসর বা আংশিক বৎসরের ক্ষেত্রে (একশত বিশটি কার্যদিবস বা তদুর্ধ্ব কোন সময়ের চাকুরীর জন্য) দুই মাসের মূল বেতনের হারে আনুতোষিক প্রদান করা হইবে।

(৩) সর্বশেষ গৃহীত বেতন আনুতোষিক গণনার মূল ভিত্তি হইবে।

(৪) কোন কর্মচারীর মৃত্যুর কারণে আনুতোষিক প্রাপ্য হইলে যাহাতে তাহার মনোনীত ব্যক্তি বা ব্যক্তিগণ উহা পাইবার অধিকারী হন তজ্জন্য প্রত্যেক কর্মচারী উপযুক্ত কর্তৃপক্ষ কর্তৃক নির্ধারিত ফরমে এক বা একাধিক মনোনয়ন দান করিবেন, এবং ফরমটি উক্ত কর্তৃপক্ষ কর্তৃক নির্দেশিত কর্তৃপক্ষে নিকট জমা দিবেন।

(৫) কোন কর্মচারী উপ-প্রবিধান (৪) অনুযায়ী একাধিক ব্যক্তিকে মনোনয়নদান করিলে, মনোনয়নপত্রে তাহাদিগকে প্রদেয় অংশ এইরূপ উল্লেখ করিবেন যেন আনুতোষিকের সম্পূর্ণ টাকা উহাতে অন্তর্ভুক্ত হয়, এবং যদি এইরূপ উল্লেখ করা না হয় তবে টাকার পরিমাণ সমান অংশে ভাগ করা হইবে।

(৬) কোন কর্মচারী যে কোন সময়ে লিখিত নোটিশ দ্বারা উক্ত মনোনয়নপত্র বাতিল করিতে পারেন এবং এইরূপ বাতিল করিলে, তিনি উক্ত নোটিশের সহিত উপ-প্রবিধান (৪) ও (৫) এর বিধান অনুসারে একটি নুতন মনোনয়নপত্র জমা দিবেন।

(৭) কোন কর্মচারী মনোনয়নপত্র জমা না দিয়া মৃত্যু বরণ করিলে, তাহার আনুতোষিকের টাকা উত্তরাধিকার প্রমাণ পত্রের ভিত্তিতে বৈধ ওয়ারিশ বা ওয়ারিশগণকে প্রদান করা হইবে।

৫৩। অবসরভাতা ও অবসরজনিত সুবিধাদি।-(১) কর্পোরেশন, সরকারের পূর্ব অনুমোদনক্রমে, লিখিত আদেশদ্বারা, সাধারণ ভবিষ্য তহবিল, অবসর ভাতা ও অবসরজনিত সুবিধাদি পরিকল্পনা চালু করিতে পারিবে এবং এইরূপ পরিকল্পনা সংক্রান্ত যাবতীয় বিষয়ে সরকারি কর্মচারীগণের ক্ষেত্রে প্রযোজ্য বিধিমালা ও সরকার কর্তৃক তৎসম্পর্কে সময় সময় জারীকৃত আদেশ বা নির্দেশ, প্রয়োজনীয় অভিযোজনসহ প্রযোজ্য হইবে।

(২) উপ-প্রবিধান (১) এ উল্লিখিত পরিকল্পনা চালু করা হইলে, প্রত্যেক কর্মচারী, কর্পোরেশন কর্তৃক এতদুদ্দেশ্যে নির্ধারিত তারিখের মধ্যে, উক্ত পরিকল্পনার আওতাধীন হইবার বা না হইবার ইচ্ছা জ্ঞাপন করিয়া উপযুক্ত কর্তৃপক্ষকে অবহিত করিবেন।

(৩) উক্ত পরিকল্পনার আওতাধীন হইবার জন্য উপ-প্রবিধান (২) এর অধীন ইচ্ছা প্রকাশকারী কোন কর্মচারী উক্তরূপ ইচ্ছা প্রকাশের সময় প্রদেয় ভবিষ্যৎ তহবিলে চাঁদা প্রদানকারী কর্মচারী হইয়া থাকিলে,

(ক) উক্ত তহবিলে তাহার প্রদত্ত চাঁদা ও উহার উপর অর্জিত সুদ সাধারণ ভবিষ্যৎ তহবিলে তাহার প্রদত্ত চাঁদা ও উহার উপর অর্জিত সুদ সাধারণ ভবিষ্যৎ তহবিলে স্থানান্তরিত হইবে।

(খ) কর্পোরেশন কর্তৃক প্রদত্ত চাঁদা ও উহার উপর অর্জিত সুদ কর্পোরেশন ফেরত পাইবে এবং কর্পোরেশন উক্ত চাঁদা ও সুদ, উহার সিদ্ধান্ত মোতাবেক, অবসর ভাতা পরিকল্পনা বা অন্য কোন খাতে ব্যবহার করিতে পারিবে।

(গ) কর্পোরেশন সিদ্ধান্ত সাপেক্ষে, তাহার পূর্বতন চাকুরীকাল অবসর ভাতা ও অবসরজনিত সুবিধাদি প্রাপ্তির উদ্দেশ্যে গণনাযোগ্য চাকুরীকাল হিসাবে গণনা করা হইবে।”

The Service Rules of the semi-government organizations, autonomous bodies, Nationalized banks or Financial Institutions are almost identical. Their respective service rules provides specific provisions for recruitment of the

officers and employees, their requisite educational qualifications and other particulars, that is, eligibility for filing applications for employment, the procedure adopted for the recruitment, different sources of recruitment, fixation of salaries and other service benefits of the recruited employees as well as their retirement benefits. The respective service regulations / rules are distinguishable from those of the government officers and employees. For example, BADC Employees Service Rules provides special provisions of higher pay scale at the time of appointment of a meritorious candidate. Rule 11(2) provides, “কোন ব্যক্তিকে তাহার বিশেষ মেধার স্বীকৃতি স্বরূপ, সংশ্লিষ্ট বাছাই কমিটির সুপারিশের ভিত্তিতে উচ্চতর প্রারম্ভিক বেতন প্রদান করা যাইতে পারে।” For the officers and employees of the BADC there are specific provisions for ‘ছুটির নগদায়ন’, ‘ভ্রমণভাতা’, ‘সম্মানী’, ‘দায়িত্ব ভাতা’ and ‘উৎসব ভাতা’ ও ‘বোনাস’, etc. Similarly, গ্যাস টোলমিশন কোম্পানী লিমিটেড (জিটিসিএল) এর চাকুরী প্রবিধানমালা, ১৯৯৬ provides special provisions for salaries and other benefits of its officers and employees. Regulation 9 provides, ‘বেতন ভাতা : কোম্পানী বিভিন্ন সময়ে যে রূপ নির্ধারণ করিবে, কর্মকর্তা/কর্মচারীদের বেতন ও ভাতা সে রূপ হইবে।’ Regulation 10 provides, ‘(১) স্বাভাবিকভাবে কোন পদে কোন ব্যক্তিকে প্রথম নিয়োগের সময় উক্ত পদের জন্য নির্ধারিত বেতনক্রমের সর্বনিম্ন ক্রম হইবে তাহার প্রারম্ভিক বেতন। (২) কোন ব্যক্তিকে তাহার বিশেষ মেধার স্বীকৃতি স্বরূপ, সংশ্লিষ্ট বাছাই কমিটির সুপারিশের ভিত্তিতে কোম্পানী কর্তৃপক্ষ উচ্চতর প্রারম্ভিক বেতন প্রদান করা হইবে।’

Regulation 12(4) provides, 'প্রশংসনীয় বা অসাধারণ কর্মদক্ষতার জন্য কোম্পানী উহার কোন কর্মকর্তা/কর্মচারীকে একসঙ্গে অনধিক দুইটি বিশেষ বেতন বৃদ্ধি মঞ্জুর করিতে পারিবে।' Provisions relating to retirement benefits of retirees of the GTCL are also different. The High Court Division, while deciding the Writ Petition No.6069 of 2014 did not at all consider those special provisions of salaries and retirement benefits of the officers and employees of GTCL. On perusal of the respective Service Rules/ Regulations it appears that the salaries and service benefits provided for the employees of different autonomous bodies, corporations and other semi government organizations are not identical to those with the government servants.

From the judgment passed in Civil Appeal No.12 of 2006 it appears that seven member bench of this Division categorically held that **the office order dated 19.11.1995 has no force of law and the writ petitioners could claim their pension benefits pursuant to the said office order as of right.**

(underlined by us). Thereafter, said bench allowed the appeal holding that the officers and employees of the different Corporations have been discriminated from the Government Servants in respect of payment of the gratuity and other pension benefits. While drawing such conclusion

this Division failed to examine the respective service Rules/ Regulations, terms and condition of service, the nature of job, the appointment process of the officers and employees, their pay scales and other service benefits, etc. provided in their respective service Rules/ Regulations.

It is relevant here to state that two schemes, that is, pension scheme and gratuity scheme are distinguishable which, in short, are as follows:

Pension scheme for Government employees	gratuity scheme for semi-Government autonomous bodies, etc.
(1)Regulated by the General Provident Fund Rules, 1979.	(1)Regulated by the Contributory Provident Fund Rules, 1979.
(2)General Provident Fund (G.P.F.)procedure is to be followed for the officers and employees under pension scheme.	(2)General Provident Fund (G.P.F.) procedure is to be followed for the officers and employees under gratuity scheme.
(3)Subscriptions are to be deposited in every month in the respective name of the officers and employees opening GPF accounts.	(3)Contributions are to be deposited in every month in the respective name of the officers and employees opening GPF accounts and <u>the appointing authority used to deposit 8.33% of the principal amount of salaries in the said accounts.</u>
(4)Government used to pay interest on	(4)Government used to pay interest

the amount deposited.	on the amount contributed.
<p>(5)In case of pension scheme the Memo No.অম/বিধি ১/৩ পি-২৪/৮৫/৬২ dated 05.07.1989 and memo No. (বিধি-১)৩পি-২৮/৮৫/১০৬ dated 04.11.1989 are to be followed for fixation of pension of the officers and employees.</p>	<p>(5)In case of gratuity scheme the Memo No. অম/অবি/স্বাশাপ্র/শা-১/৭১১/৮৯/৩৭(১০০) dated 27.03.1990 and memo No. অম/অবি/স্বাশাপ্র/শা-১/৭১১/৮৯/৪৬(১০০) dated 08.04.1990 are to be followed for fixation of gratuity of the officers and employees.</p>
<p>(6)In pension scheme, retiree after serving 25 years or more would get 80% of his latest salary as pension.</p>	<p>(6)In gratuity scheme a retiree would get latest salary X number of years served X 2 as gratuity.</p>

Aforesaid provisions clearly show that there are some distinguishable features between the two different schemes. Those two schemes are created by two different laws. The system and method for calculation of the gratuity and pension are also different. Those laws are still in force and are being followed. The very purpose of legislation is to draw the line in such a way that different employees are treated differently.

In the case of State of Karnataka V. Suvana Malini reported in AIR 2001 SC 606 Supreme Court of India observed that the legislature as well as the executive government, while diverse problems arising out of an infinite variety of human

relations must of necessity, have the power of selection or classification of persons and things upon which such laws are to operate.

Well established principle, to be always borne in mind, is that Constitution prohibited classification but it does not forbid reasonable classification. In order to pass the test of permissible classification two conditions must be fulfilled, namely,

- i. that the classification must be founded on intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and
- ii. that the differentia must have a rational relation to the object sought to be achieved by the statute in question.

By nature, attainment or circumstances all persons are not in the same position and the varying needs of different classes of persons often require different treatment. There can be no discrimination alleged where the nature of duties performed is different. The nature of duties and responsibilities performed by the officers and employees of Corporations, semi government organizations and autonomous bodies and the

government officers and employees are different and there is no parity.

Equality before law, means that amongst equals one should be equal and equally administered and that like should be treated alike. It does not forbid different treatment of unequals. The rule is rather that like should be treated alike and that unlike should be treated differently. "Equality before law" as provided in article 27 of the Constitution does not mean the same law should be applicable to all the employees of the government, semi-government, autonomous bodies and corporations. The concept basically postulates the application of the same law alike and without discrimination to all the persons similarly situated. It can not be said that the Government or its instrumentalities acted arbitrarily or practised discrimination between the two classes who are not similar and do not stand on the same footing. Classification between employees of different Corporations and Government employees is legal, valid and reasonable. If certain benefits are provided for pure government servants and those benefits are not extended to employees of the corporations and vice versa it cannot be satisfactorily contended that there is

discrimination. Two categories of employees are different. They form different classes and cannot be said to be similarly situated.

In the case of Ashutosh Gupta V. State of Rajasthan reported in AIR 2002 SC page 1533 it has been observed:

“The concept of equality before law does not involve the idea of absolute equality amongst all which may be a physical impossibility. All that Article 14 guarantees is the similarity of treatment and not identical treatment. The protection of equal laws does not mean that all laws must be uniform. Equality before the law means that among equals the law should be equal and should be equally administered and that the likes should be treated alike. Equality before the law does not mean that things which are different shall be treated as though they were the same. It is true that Article 14 enjoins that the people similarly situated should be treated similarly but what amount of dissimilarity would make the people disentitled to be treated equally is rather a vexed question. A Legislature, which has to deal with diverse problems arising out of an infinite variety of human relations must of necessity, have the power of making special laws, to attain particular objects; and for that purpose it must have large powers of

selection or classification of persons and things upon which such laws are to operate. Mere differentiation or inequality of treatment does not 'per se' amount to discrimination within the inhibition of the equal protection clause. The State has always the power to make classification on a basis of rational distinctions relevant to the particular subject to be dealt with. In order to pass the test of permissible classification, two conditions must be fulfilled, namely: (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others who are left out of the group, and (ii) that differentia must have a rational relation to the object sought to be achieved by the Act. What is necessary is that there must be a nexus between the basis of classification and the object of the Act."

(underlined by us)

The Constitution permits reasonable classification founded on different basis. It is now well established that classification can be based on some quality or characteristics of the person grouped together. The guarantee of equality is not applicable in between members of distinct and different classes of the service holders. The

Constitution does not command that in all matters of employment absolute symmetry be maintained. Classification based on reason, executive pragmatism and experience having direct relation with efficiency in administration, is permissible. It has a rational nexus with the object thereof, to hold otherwise would be detrimental to the interest of the service itself. Government officers are recruited by the Public Service Commission through competitive examination, but the officers of semi government organizations and autonomous bodies, etc. are not. There are qualitative differences as regards merit, reliability, efficiency and responsibility. In some cases, it is found that the officers of the corporations, semi-government organizations and autonomous bodies are more qualified than the officers of the government offices and vice versa. A classification will be reasonable if it is based upon material and substantial difference having a reasonable relation between the objects or persons dealt with and the governmental objective sought to be achieved. Equality before the law or equal protection of law does not at all imply absolute equality and does not exclude classification on the basis of difference in status. Article 27 does

not guarantee absolute equality requiring the law to treat all persons alike [S.A. Sabur V. Returning Officer 41 DLR(AD)30]. Semi government organization, Corporations and other autonomous bodies can be treated separately from the government servants. In the case of Bangladesh Rtd. Government Employees Welfare Association V. Bangladesh reported in 51 DLR(AD)121 it was observed by this Division that for the purpose of calculation of pension on the basis of last pay drawn is a real and rational classification. It was further observed that a legislative enactment or a government action cannot be knocked down as unconstitutional even if it results in inequity or is even shocking to the conscience unless such enactment or such action is violative of any provision of the Constitution or law and that inequity or unconscionable effect cannot be rectified by the Court by applying Article 27.

This Division while taking decision as to discrimination totally failed to take into consideration the distinguishing features of retirement benefits, that is, gratuity as given by law of the respective officers and employees of the semi Government organisation, Corporations etc. and the pension benefits of Government

servants, who have been serving in the Service of the Republic. This Division abruptly drew conclusion that the provision of giving retirement benefits to the officers and employees of the service in the Republic and those of the Corporation are discriminatory.

However, it is to be borne in mind by all that extending benefits to the employees is not a charity or bounty nor is it gratuitous payment solely dependent on the whim or sweet will of the employer. It is earned for rendering long past service and is often described as deferred portion of compensation for past services. The employers, whoever they are, shall pay the gratuity or pension benefits in accordance with law to the retirees .

So far as the jurisdiction of this Division to review its judgment is concerned, it is relevant to quote a passage from the judgment passed in the case of Mahbubur Rahman Sikder and others Vs. Mujibur Rahman Sikder and others reported in 37DLR(AD) page 145 is as under:

"From the foregoing submissions made by the learned Counsels and the cases cited by them it is clear that there is no controversy regarding this Court's power to review its judgment. The power

has been conferred by the Constitution which has also provided how the exercise of this power will be regulated. Article 105 provides that Parliament may enact law as to how the power will be exercised or this Court may make rule for its exercise. So far, no Act for Parliament has been passed as mentioned in the article. The Court has not framed any rules, but has adopted the rules which were made under similar provisions of review in the Constitution of Pakistan, 1962. Review matters at present are governed and regulated by the rules of the Supreme Court, already quoted above. In practice, the Court also regards the provisions of Order 47, Rule 1, C.P.C. for the purpose of reviewing its judgment, though these provisions are not binding upon it. As a matter of practice and rule this Court proceeds to review a judgment pronounced earlier by it upon an application for review by an aggrieved party. Prior to hearing a review petition the Court has to be satisfied that grounds for review as mentioned in Order XXVI of the Rules of the Supreme Court exist. There is no controversy regarding the power, practice and procedure for review in this respect. The question is whether this Court can proceed suo motu to exercise this power. The power to review is derived from the Constitution, so this power cannot be restricted in any manner whatsoever excepting by what has

been provided in the Constitution itself. There is mention of an Act of Parliament and rules of the Court itself. Neither of them has anything to do with the conferment of power or prescribing any limitation or restriction upon it. They can only regulate the manner of exercising the power of review. Neither Parliament nor the Court has until now made any provisions against exercising the power suo motu. Since the power to review has been conferred by the Constitution, they cannot, I think, negate this power if the Court wants to exercise it on its own.

This view finds support from the provisions of Article 104. This article has empowered the Court to do 'complete justice' in any cause or matter pending before it. Since the judgment under consideration laid down certain conditions to be fulfilled by the parties, the appeal in which the judgment was pronounced may be considered to be pending. Applying the test laid down in (1979)2 All England Reports referred to above the conditions laid down in the judgment may, in the case of non-fulfillment, require to be varied. The expressions 'doing complete justice' as

occur in Article 104 are of great significance. Their importance cannot be whittled down. Nor can the Court give up even a fraction of this power. It is a great power with which the Court has been armed."

Since the provisions relating to retirement benefits of the officers and employees of the semi government, autonomous bodies, corporations, banks and other financial institutions are regulated by their specific laws, they are bound by the provisions of the respective laws and they are not entitled to get any benefit, which the law does not permit.

In view of the aforesaid facts and circumstances, the Civil Appeal Nos.48-54 of 2017 are allowed. The Civil Review Petition No.325 of 2017 is dismissed. The Civil Petition for Leave to Appeal No.1882 of 2018 is disposed of. The judgment and orders of the High Court Division passed in Writ Petition Nos.1539,4298,4299, 4519, 4521,2343 of 2009, 8911 of 2012 are set aside. Contempt Petition No.15 of 2016 is dismissed. The Civil Review Petition No.611 of 2018 and 31 of 2013 are allowed, consequently, the judgment and order passed in Civil Appeal No.12 of 2006 is

hereby reviewed and set aside. Judgment and order passed in Writ Petition No.3502 of 2001 is hereby restored. All the semi government organizations/ autonomous bodies/corporations/ nationalized banks and financial institutions should follow the respective laws for the purpose of fixation and payment of the retirement benefits/gratuity etc. of their officers and employees.

C.J.

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The 2nd May, 2019.
M.N.S./words-7399/