

**IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION**

PRESENT:

Mr. Justice Hasan Foez Siddique, C.J.

Mr. Justice Obaidul Hassan

Mr. Justice M. Enayetur Rahim

**CIVIL PETITION FOR LEAVE TO APPEAL NO.3922 OF 2017 WITH
CIVIL PETITION FOR LEAVE TO APPEAL NOS.1176, 1208, 1209, 1227,
1226, 1337, 1336, 1346, 1345, 1367, 1388, 1387, 1401, 1371, 1431, 1430, 1445,
1462, 1463, 1487, 1486, 1497, 1766, 1803, 1936, 1940, 1941, 1982, 1981, 1996,
1997, 2125, 2124, 2172, 2171, 2185, 2186, 2196, 2195, 2226, 2227, 2249, 2248,
2247, 2294, 2296, 2371, 2370, 2426, 2425, 2424, 2450, 2449, 2500, 2501, 2536,
2576, 2614, 2665, 2667 AND 1213 OF 2021.**

(From the judgment and order dated 22.03.2017, 08.11.2017, 08.11.2017, 11.12.2017, 01.02.2018, 08.11.2017, 11.12.2017, 23.10.2017, 17.05.2018, 23.10.2017, 11.12.2017, 23.10.2017, 08.11.2017, 12.04.2018, 23.10.2017, 29.01.2018, 17.05.2018, 08.11.2017, 15.03.2018, 01.02.2018, 24.08.2017, 22.03.2017, 01.12.2018, 01.02.2018, 11.12.2017, 30.05.2018, 11.12.2017, 11.12.2017, 01.12.2018, 08.11.2017, 01.02.2018, 01.02.2018, 15.03.2018, 11.12.2017, 01.02.2018, 23.10.2017, 24.08.2017, 01.02.2018, 01.02.2018, 08.11.2017, 01.02.2018, 11.12.2017, 08.11.2017, 24.08.2017, 01.02.2018, 08.11.2017, 23.10.2017, 08.11.2017, 24.08.2017, 24.08.2017, 23.10.2017, 11.12.2017, 08.11.2017, 08.11.2017, 11.12.2017, 12.04.2018, 11.12.2017, 08.11.2017, 01.12.2018, 15.03.2018, 08.11.2017 and 11.12.2017 passed by the High Court Division in Writ Petition Nos.1950, 5420, 3462, 5667, 5666, 4810, 4223, 3587, 6973, 4607, 14020, 3589, 5032, 11943, 3606, 7166, 7117, 11934, 7115, 7116, 8040, 1950, 6972, 4222, 14076, 12572, 4447, 3468, 5664, 4450, 5033, 5665, 4668, 4449, 5437, 3607, 3608, 4667, 6692, 4448, 4608, 4610, 5419, 8318, 6974, 8789, 4811, 4219, 8039, 3216, 4220, 3690, 11933, 8787, 4221, 5530, 6391, 5436, 6971, 14671, 8788 and 5668 of 2017 respectively).

Bangladesh, represented by the Secretary, Ministry of
Health and Family Welfare, Bangladesh Secretariat,
Dhaka and others

.....Petitioners
(In all the cases)

-Versus-

Md. Kamal Hossain and others

.....Respondents
(In C.P. No.3922 of 2017)

Formud Sarker and others

.....Respondents
(In C.P. No.1176 of 2021)

Khairul Islam and others

.....Respondents

| | |
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| Md. Matiur Rahman and others | (In C.P. No.1208 of 2021) Respondents (In C.P. No.1209 of 2021) |
| N. A. M. Jebaul Hoque and others | Respondents (In C.P. No.1227 of 2021) |
| Md. Alamgir Hossain and others | Respondents (In C.P. No.1226 of 2021) |
| Anupam Biswas and others | Respondents (In C.P. No.1337 of 2021) |
| Rokan Uddin and others | Respondents (In C.P. No.1336 of 2021) |
| Md. Morshedul Alam and others | Respondents (In C.P. No.1346 of 2021) |
| Md. Mehedi Hasan and others | Respondents (In C.P. No.1345 of 2021) |
| Md. Rezaul Karim Mollah and others | Respondents (In C.P. No.1367 of 2021) |
| Md. Zaman Hossain and others | Respondents (In C.P. No.1388 of 2021) |
| Md. Paris Hossain and others | Respondents (In C.P. No.1387 of 2021) |
| Md. Ataur Rahman and others | Respondents (In C.P. No.1401 of 2021) |
| Khayrul Hasan Khan and others | Respondents (In C.P. No.1371 of 2021) |
| Md. Masud Hossain Khan and others | Respondents (In C.P. No.1431 of 2021) |
| Md. Suhrab Uddin and others | Respondents (In C.P. No.1430 of 2021) |
| Md. Fokrul Hoque Khandoker and others | Respondents (In C.P. No.1445 of 2021) |
| Md. Zakir Hossain and others | Respondents (In C.P. No.1462 of 2021) |
| Md. Mosharraf Hoshen and others | Respondents (In C.P. No.1463 of 2021) |
| H. M. Arifur Rahman and others | Respondents (In C.P. No.1487 of 2021) |
| Md. Kamal Hossain and others | Respondents (In C.P. No.1486 of 2021) |
| Aeub Hossain and others | Respondents (In C.P. No.1497 of 2021) |
| Sagar Sen and others | Respondents (In C.P. No.1466 of 2021) |
| Nasir Uddin and others | Respondents (In C.P. No.1803 of 2021) |
| Abdullah Chowdhury and others | Respondents (In C.P. No.1936 of 2021) |
| Md. Monzur Siddique and others | Respondents (In C.P. No.1940 of 2021) |

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| Mohammad Masudur Rahman and others |Respondents (In C.P. No.1941 of 2021) |
| Saim Hassan and others |Respondents (In C.P. No.1982 of 2021) |
| Md. Arif Chowdhury and others |Respondents (In C.P. No.1981 of 2021) |
| Masud Islam and others |Respondents (In C.P. No.1996 of 2021) |
| Jamal Uddin and others |Respondents (In C.P. No.1997 of 2021) |
| Md. Rasel Kabir and others |Respondents (In C.P. No.2125 of 2021) |
| Abdur Rahman Rubel and others |Respondents (In C.P. No.2124 of 2021) |
| Sheikh Mohammad Ibrahim Ali and others |Respondents (In C.P. No.2172 of 2021) |
| Md. Tariquzzaman and others |Respondents (In C.P. No.2171 of 2021) |
| Md. Nur Islam Sheikh and others |Respondents (In C.P. No.2185 of 2021) |
| Abdul Qaium and others |Respondents (In C.P. No.2186 of 2021) |
| Shakila Bebe Neela and others |Respondents (In C.P. No.2196 of 2021) |
| Ali Reza and others |Respondents (In C.P. No.2195 of 2021) |
| Md. Niaz Morshed and others |Respondents (In C.P. No.2226 of 2021) |
| Md. Ashaduzzaman and others |Respondents (In C.P. No.2227 of 2021) |
| Md. Asadul Islam and others |Respondents (In C.P. No.2249 of 2021) |
| Md. Helal Uddin and others |Respondents (In C.P. No.2248 of 2021) |
| Md. Sarfaraj Chowdhury and others |Respondents (In C.P. No.2247 of 2021) |
| Ziaur Rahman and others |Respondents (In C.P. No.2294 of 2021) |
| Jahangir Alam and others |Respondents (In C.P. No.2296 of 2021) |
| Md. Saiful Islam and others |Respondents (In C.P. No.2371 of 2021) |
| Md. Fakhrul Islam and others |Respondents (In C.P. No.2370 of 2021) |
| Md. Jashim Uddin Khan and others |Respondents (In C.P. No.2426 of 2021) |
| Md. Al Amin and others |Respondents (In C.P. No.2425 of 2021) |

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| Md. Hafizur Rahman and others | Respondents (In C.P. No.2424 of 2021) |
| Md. Sharif Mahmud and others | Respondents (In C.P. No.2450 of 2021) |
| Abul Khair and others | Respondents (In C.P. No.2449 of 2021) |
| Polash Chandra Sen and others | Respondents (In C.P. No.2500 of 2021) |
| S. M. Rezaul Karim and others | Respondents (In C.P. No.2501 of 2021) |
| Md. Humayun Kabir and others | Respondents (In C.P. No.2536 of 2021) |
| Md. Ashraful Islam and others | Respondents (In C.P. No.2576 of 2021) |
| Mohammad Khairul Islam and others | Respondents (In C.P. No.2614 of 2021) |
| Md. Abdullah Al Mamun and others | Respondents (In C.P. No.2655 of 2021) |
| Md. Salek Ahmed and others | Respondents (In C.P. No.2667 of 2021) |
| Md. Zahirul Islam and others | Respondents (In C.P. No.1213 of 2021) |

For the Petitioners : Mr. A.M. Aminuddin, Attorney General (with Mr. Samarendra Nath Biswas, Mr. Biswajit Debnath, Deputy Attorney General and Ms. Abanti Nurul, Assistant Attorney General instructed by Mr. Haridas Paul, Advocate-on-Record.
(In all the cases)

For the Respondents : Mr. Probir Neogi, Senior Advocate (with Mr. Md. Khurshid Alam Khan, Senior Advocate) instructed by Ms. Madhu Malati Chowdhury Barua, Advocate-on-Record.
(In C.P. No.3922 of 2017)

For the Respondents : Mr. Mainul Hosein, Senior Advocate
(In C.P. No.1176 of 2021)

For Respondent Nos.1-22, : Mr. Rokanuddin Mahmud, Senior Advocate (with
24-28, 30-31 & 33 Mr. Md. Khurshid Alam Khan, Senior Advocate)
(In C.P. No.1208 of 2021) instructed by Ms. Madhu Malati Chowdhury Barua,
Advocate-on-Record.

Respondent Nos.23, 29, : Not represented.
32, 34-76
(In C.P. No.1208 of 2021)

Respondents : Not represented.
(In C.P. No.1209 of 2021)

Respondents : Not represented.
(In C.P. No.1227 of 2021)

Respondents : Not represented.
(In C.P. No.1226 of 2021)

- For Respondent Nos.1-16,** : Mr. Rokanuddin Mahmud, Senior Advocate
19-22, 24-26, 28, 31-42, 44, instructed by Mr. Md. Nurul Islam Chowdhry,
46-47, 49-54, 56, 58-68, Advocate-on-Record.
70-77, 79-80, 83, 86-87, 89,
91-96 & 98-103
(In C.P. No.1337 of 2021)
- Respondent Nos.17-18, 23,** : Not represented.
27, 29-30, 43, 45, 48, 55,
57, 69, 78, 81-82, 84, 88,
90, 97, 104-107
(In C.P. No.1337 of 2021)
- Respondents** : Not represented.
(In C.P. No.1336 of 2021)
- For Respondent Nos.40-** : Mr. Rokanuddin Mahmud, Senior Advocate (with
59, 94-99 Mr. Md. Khurshid Alam Khan, Senior Advocate)
(In C.P. No.1346 of 2021) instructed by Mr. Md. Nurul Islam Chowdhury,
Advocate-on-Record.
- Respondent Nos.1-39, 60-** : Not represented.
93, 100-108
(In C.P. No.1346 of 2021)
- Respondents** : Not represented.
(In C.P. No.1345 of 2021)
- Respondents** : Not represented.
(In C.P. No.1367 of 2021)
- For Respondent Nos.1-86** : Ms. Madhu Malati Chowdhury Barua, Advocate-
(In C.P. No.1388 of 2021) on-Record.
- Respondent Nos.87-101** : Not represented.
(In C.P. No.1388 of 2021)
- Respondents** : Not represented.
(In C.P. No.1387 of 2021)
- Respondents** : Not represented.
(In C.P. No.1401 of 2021)
- For Respondent Nos. 1-** : Mr. Rokanuddin Mahmud, Senior Advocate
23, 25-30, 32-54, 56-77, 79, instructed by Mr. Md. Nurul Islam Chowdhury,
81-82, 86-94, 96-111 & Advocate-on-Record.
113-137
(In C.P. No.1371 of 2021)
- Respondent Nos. 24, 31,** : Not represented.
55, 78, 80, 83-85, 95 & 112
(In C.P. No.1371 of 2021)
- For the Respondents** : Mr. Sayed Ahmed Raza, Senior Advocate
(In C.P. No.1431 of 2021) instructed by Ms. Madhu Malati Chowdhury Barua,
Advocate-on-Record.

- Respondents** : Not represented.
(In C.P. No.1430 of 2021)
- For Respondent Nos. 1,** : Mr. Rokanuddin Mahmud, Senior Advocate
71-83, 122, 124-126, 128-132, & 136-137
(In C.P. No.1445 of 2021) Advocate instructed by Mr. Md. Nurul Islam Chowdhury, Advocate-on-Record.
- Respondent Nos. 2-70, 84-** : Not represented.
121, 123, 127, 133-135 & 138
(In C.P. No.1445 of 2021)
- Respondents** : Not represented.
(In C.P. No.1462 of 2021)
- Respondents** : Not represented.
(In C.P. No.1463 of 2021)
- For the Respondents** : Mr. Ruhul Quddus, Advocate instructed by Mr. Md.
(In C.P. No.1487 of 2021) Abdul Hye Bhuiyan, Advocate-on-Record.
- Respondents** : Not represented.
(In C.P. No.1486 of 2021)
- Respondents** : Not represented.
(In C.P. No.1497 of 2021)
- Respondents** : Not represented.
(In C.P. No.1766 of 2021)
- Respondents** : Not represented.
(In C.P. No.1803 of 2021)
- For Respondent Nos. 1-23** : Mr. Rokanuddin Mahmud, Senior Advocate
& 25-169, instructed by Mr. Md. Nurul Islam Chowdhury,
(In C.P. No.1936 of 2021) Advocate-on-Record.
- Respondent Nos. 24 &** : Not represented.
170-269
(In C.P. No.1936 of 2021)
- Respondents** : Not represented.
(In C.P. No.1940 of 2021)
- Respondents** : Not represented.
(In C.P. No.1941 of 2021)
- For Respondent Nos. 1-9,** : Mr. Rokanuddin Mahmud, Senior Advocate
11-12, 16-19, 22-, 24 & 48-64
(In C.P. No.1982 of 2021) instructed by Mr. Md. Nurul Islam Chowdhury, Advocate-on-Record.
- Respondent Nos. 10, 13-** : Not represented.
15, 20-21, 23, 25-47 & 64-73
(In C.P. No.1982 of 2021)

- Respondents** : Not represented.
(In C.P. No.1981 of 2021)
- For the Respondents** : Mr. Rokanuddin Mahmud, Senior Advocate
(In C.P. No.1996 of 2021) instructed by Mr. Md. Nurul Islam Chowdhury,
Advocate-on-Record.
- For Respondent No.1** : Mr. Md. Zahirul Islam, Advocate-on-Record.
(In C.P. No.1997 of 2021)
- Respondent Nos.2-93** : Not represented.
(In C.P. No.1997 of 2021)
- Respondents** : Not represented.
(In C.P. No.2125 of 2021)
- Respondents** : Not represented.
(In C.P. No.2124 of 2021)
- Respondents** : Not represented.
(In C.P. No.2172 of 2021)
- For Respondent Nos. 1-** : Mr. Rokanuddin Mahmud, Senior Advocate
28, 30-98 & 100 instructed by Mr. Md. Nurul Islam Chowdhury,
(In C.P. No.2171 of 2021) Advocate-on-Record.
- For Respondent Nos. 29 &** : Not represented.
99
(In C.P. No.2171 of 2021)
- For the Respondents** : Mr. Rokanuddin Mahmud, Senior Advocate
(In C.P. No.2185 of 2021) instructed by Ms. Nahid Sultana, Advocate-on-
Record.
- For Respondent Nos.1-4** : Ms. Madhu Malati Chowdhury Barua, Advocate-
(In C.P. No.2186 of 2021) on-Record.
- For Respondent Nos.83-** : Mr. Md. Nurul Islam Chowdhury, Advocate-on-
93, 95-98 & 100 Record.
(In C.P. No.2186 of 2021)
- Respondent Nos.5-82, 94,** : Not represented.
99
(In C.P. No.2186 of 2021)
- Respondents** : Not represented.
(In C.P. No.2196 of 2021)
- For Respondent Nos.4, 7** : Mr. Mohammad Mizanur Rahman Masum,
& 9 Advocate instructed by Mr. Depwnker Debnath,
(In C.P. No.2195 of 2021) Advocate-on-Record.
- Respondent Nos.1-3, 5-6,** : Not represented.
8 & 10-98
(In C.P. No.2195 of 2021)

- Respondents** : Not represented.
(In C.P. No.2226 of 2021)
- For Respondent Nos.1-38** : Mr. Rokanuddin Mahmud, Senior Advocate (with
(In C.P. No.2227 of 2021) Mr. Ruhul Quddus, Advocate) instructed by Mr. Md. Abdul Hye Bhuiyan, Advocate-on-Record.
- Respondent Nos.39-104** : Not represented.
(In C.P. No.2227 of 2021)
- For Respondent Nos.1 & 77** : Mr. Md. Khurshid Alam Khan, Senior Advocate
(In C.P. No.2249 of 2021) instructed by Mr. Md. Abdul Hye Bhuiyan, Advocate-on-Record.
- Respondent Nos.2-76 & 78-100** : Not represented.
(In C.P. No.2249 of 2021)
- Respondents** : Not represented.
(In C.P. No.2248 of 2021)
- Respondents** : Not represented.
(In C.P. No.2247 of 2021)
- Respondents** : Not represented.
(In C.P. No.2294 of 2021)
- Respondents** : Not represented.
(In C.P. No.2296 of 2021)
- For Respondent Nos. 1-13, 15-36, 38-50, 52-57, 59-61** : Mr. Rokanuddin Mahmud, Senior Advocate
(In C.P. No.2371 of 2021) instructed by Mr. Md. Nurul Islam Chowdhury, Advocate-on-Record.
- Respondent Nos. 14, 37, 51, 58 & 62** : Not represented.
(In C.P. No.2371 of 2021)
- Respondents** : Not represented.
(In C.P. No.2370 of 2021)
- Respondents** : Not represented.
(In C.P. No.2426 of 2021)
- Respondents** : Not represented.
(In C.P. No.2425 of 2021)
- Respondents** : Not represented.
(In C.P. No.2424 of 2021)
- Respondents** : Not represented.
(In C.P. No.2450 of 2021)
- Respondents** : Not represented.
(In C.P. No.2449 of 2021)

- For Respondent Nos. 1-3,** : Mr. Rokanuddin Mahmud, Senior Advocate
5-28, 30, 32, 33, 35-37, 39-
42, 44-46, 58-57, 60-62,
65-78, 80-98, 116 & 119
(In C.P. No.2500 of 2021)
- Respondent Nos. 4, 29, 31,** : Not represented.
34, 38, 43, 47, 58-59, 63-
64, 79, 99-115, 117-118
(In C.P. No.2500 of 2021)
- For the Respondents** : Mr. Md. Khurshid Alam Khan, Senior Advocate
(In C.P. No.2501 of 2021) : instructed by Ms. Shirin Afroz, Advocate-on-Record.
- For Respondent No.1** : Mr. Md. Zahirul Islam, Advocate-on-Record.
(In C.P. No.2536 of 2021)
- Respondent Nos.2-32** : Not represented.
(In C.P. No.2536 of 2021)
- Respondents** : Not represented.
(In C.P. No.2576 of 2021)
- Respondents** : Not represented.
(In C.P. No.2614 of 2021)
- Respondents** : Not represented.
(In C.P. No.2655 of 2021)
- For Respondent No.55** : Mr. Md. Khurshid Alam Khan, Senior Advocate
(In C.P. No.2667 of 2021) : instructed by Mr. Md. Taufique Hossain, Advocate-on-Record.
- Respondent Nos.1-54, 56-** : Not represented.
150
(In C.P. No.2667 of 2021)
- Respondents** : Not represented.
(In C.P. No.1213 of 2021)
- Date of hearing : The 06th March, 2022.

ORDER

M. Enayetur Rahim, J: Delay is condoned in filling the Civil Petition for Leave to Appeal Nos.1176, 1208, 1209, 1227, 1226, 1337, 1336, 1346, 1345, 1367, 1388, 1387, 1401, 1371, 1431, 1430, 1445, 1462, 1463, 1487, 1486, 1497, 1766, 1803, 1936, 1940, 1941, 1982, 1981, 1996, 1997, 2125, 2124, 2172, 2171, 2185, 2186, 2196, 2195, 2226, 2227, 2249, 2248, 2247, 2294, 2296, 2371, 2370,

2426, 2425, 2424, 2450, 2449, 2500, 2501, 2536, 2576, 2614, 2665, 2667 and 1213 OF 2021.

Identical question of law and more or less similar facts are involved in these leave petitions and as such those have been heard together and are being disposed of by this common judgment.

The Respondents of each leave petition as writ petitioners (here in after referred to as Respondents) filed various writ petitions under article 102 of the Constitution of the Peoples Republic of Bangladesh before the High Court Division for a direction upon the Government that the present leave petitioner to absorb them under revenue budget with continuation of service and other benefits in their respective/ equivalent posts.

It is contended by the respondents that all of them had joined in a Development Project named “Revitalization of Community Health Care Initiatives in Bangladesh (RHCIB)” as Community Health Care Provider (CHCP) after being selected through a regular selection process of written and viva voce examinations against recruitment advertisements.

The respondents since their joining have been working and discharging their duties without any blemish and with highest level of satisfaction of the authority with an expectation to be regularized and absorbed under the revenue setup of department as it is their “Legitimate expectation” that they would be absorbed under revenue budget like the other employees of various development projects who have already been absorbed even their appointment was after 30th June, 1997. The “Revitalization of Community Health Care Initiatives in Bangladesh (RHCIB)” project was started in July, 2009.

The overall objective of RHCIB Project was to improve the overall health situation of the country through ensuring comprehensive primary health

care service for 3/4th of the total population of Bangladesh living in the rural area functioning and strengthening 13861 community clinics.

The Government in the year of 1996 planned to establish Community Clinic (CC) to extend PHC at the door steps of the villagers all over the country. Community Clinic is the brain child of Hon'ble Prime Minister Sheikh Hasina. Construction started in 1998 and in this context in 2009 Government planned to revitalize CCs through a project "Revitalization of Community Health Care Initiatives in Bangladesh" (RHCIB) and the original (RHCIB) project has been commenced in July 2009 and it was a project of 5 years duration from 2009-2014 and 1st Revised commencement in July 2009 and completed in December 2014. Thereafter the span of the project has been extended for 1 year more i.e. up to 30.06.2015 and due to tremendous success of the project it was extended till 31.12.2016.

The Ministry, Senior Assistant Secretary, Ministry of Health and Family Welfare (respondent No.4) issued an office order vide Memo No.45.174.015.01.00.001.2011.398 dated 31.10.2011 for absorbing the Respondents in the revenue budget and the respondents issued several office orders in several times to absorb the petitioners in the revenue budget but yet they are not absorbed in the revenue budget.

The director of the "Revitalization of Community Health Care Initiatives in Bangladesh" (RHCIB) project, sent a letter vide Memo No. সাঃঅধিঃ/সমন্বয়/২০১২/০৯ dated 07.02.2012 along with a proposal to absorb the Respondents in the revenue budget but till date no progress has been done.

It is further contended that total 45,826 Community Health Care Provider (CHCP) posts were approved in the "Revitalization of Community Health Care Initiatives in Bangladesh" (RHCIB) Development Project and 13500 CHCP posts were approved under the project. On the other hand 32326 CHCP post was

kept reserved in the revenue budget and total 32326 CHCP posts are available in the revenue budget but the leave petitioner did not appoint the Respondents in the revenue budget.

Difference Bench's of the High Court Division after hearing the Rules disposed of the same with the observations that all the cases of the respondents are covered by the principle of natural justice and the decision reported in 18 MLR (AD) 372. Accordingly, the concerned authorities are directed to regularize/absorb the respondents under the revenue budget with continuity of service and other benefits under the Ministry of Health and Family Welfare of the Government in accordance with law provided that they have requisite qualifications subject to availability of the same/equivalent posts as admissible in law as expeditiously as possible.

Feeling aggrieved by the judgments and orders passed by the High Court Division the Government has preferred these civil petitions for leave to appeal before this Court.

Mr. A. M. Amin Uddin, the learned Attorney General appearing for the petitioner submits as under:

- i) The judgments of the High Court Division are contrary to the decision given by this Division in the case of Secretary, Ministry of Fisheries and Livestock and others Vs. Abdul Razzak and others reported in 71 DLR(AD) 395 and the Director General represented by Bangladesh Rural Development Board (BRDB) Dhaka Vs. Asma Shorif, Shariatpur and others reported in 72 DLR(AD) 188;
- ii) the ratio-decidenti in the above mentioned cases are equally applicable in the present cases, as such the judgment of the High Court Division is not tenable and liable to be set aside;

- iii) the writ petitioners-respondents were appointed in projects and there was a specific terms in their appointment letters to the effect that their service will be terminated after completion of the project and will not be allowed to claim any continuity of service on the basis of the appointment and as such the writ petitioner respondents have no legal right to be absorbed in revenue budget.

Learned Attorney General having placed ‘কমিউনিটি ক্লিনিক স্বাস্থ্য সহায়তা ট্রাস্ট আইন, ২০১৮’ and further submits that the Government in the meantime has enacted the above law for the officers and employees who were appointed in ‘Revitalization of Community Health Care Initiative in Bangladesh (RCHCIB)’ and ‘Community Base Health Care’ projects and by operation of the said law the service of the said officers and employees has already been placed under the Trust framed present to the said law and as such the respondents are now the officers and employees of the said Trust and there terms of service and other service benefits will be regulated and guided by the Probidhanmala framed under the said law and as such the impugned judgments and orders passed by the High Court Division have become redundant.

Mr. Moynul Hossain, learned Advocate, appearing for the respondents in C.P. No.1176 of 2021 submits that the Government has promulgated the above Trust law to deprive the respondents from absorbing them in the revenue budget and the said law is a malafide one. He further submits that it is the public duty of the Government to absorb the respondents in revenue budget as directed by the High Court Division.

Mr. Rokon Uddin Mahmud, Mr. Probir Neogi, Mr. Md. Khurshid Alam Khan, and Mr. Sayed Ahmed Raja, learned Senior Advocates appearing for the respondents in different leave petitions all most made similar submissions. They at the very outset conceded that in view of the Trust Ain,2018 the service of the

respondents has been transferred to the Trust automatically and in view of the above, the government has already taken steps to protect the interest of the respondents by enacting the above law and as such this Division may dispose of the leave petition with necessary observations.

We have considered the submissions of the learned Attorney General appearing on behalf of the petitioner as well as the learned Advocates for the respondents, perused the impugned judgments as well as the কমিউনিটি ক্লিনিক স্বাস্থ্য সহায়তা ট্রাস্ট আইন, ২০১৮.

From a plain reading of the impugned judgments it transpires that the High Court Division relying on the case reported in 18 MLR (AD) page-372 disposed of all the writ petitions giving direction to regularize/absorb the writ petitioner-respondents under the revenue budget with continuity of service and other benefits in accordance with law provided.

However, eventually this Division in the case of Secretary Ministry of Fisheries and Live stock and others Vs. Abdul Razzak reported in 71 DLR(AD), 395 has dealt with the similar issue of absorption, regularization and transfer of the employees in the revenue budget from project.

In the above case this Division held that:

“No court can direct the Government or its instrumentalities to regularize the service of the officers and employees of the development project in the revenue budget in the cases where statutory requirements have not been fulfilled. Regularization cannot be claimed as a matter of right. It is statutory requirement that opportunity shall be given to eligible persons by public notification and recruitment should be according to the valid procedure and appointment should be

of the qualified persons found fit for appointments to a post or an office under the Government.”

It is further observed to the effect:

“The legitimate expectation would not override the statutory provision. The doctrine of legitimate expectation cannot be invoked for creation of posts to facilitate absorption in the offices of the regular cadres/non cadres. Creation of permanent posts is a matter for the employer and the same is based on policy decision”

In the case of the Director General, represented by Bangladesh Rural Development Board (BRDB), Dhaka Vs. Asma Sharif, Shariatpur and others report in 72 DLR (AD) page-188 this Division also held that:-

“The theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the Government has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The Government cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.”

And

“However, sympathy, empathy or sentiment by itself, cannot be a ground for passing an order where the litigants miserably fail to establish legal right. It is true that the respondents had been working for a long time, the same by itself would not be a ground for directing regularization of the service.”

In the above case it is also held by this Division that:

“Government has no authority to issue any orders granting regularization/absorption or appointment in violation of the Constitutional scheme and recruitment rules in force. All recruitment in matters of Public employment must be made in accordance with prevailing rules.”

In view of the above two reported cases the earlier decision by this Division as reported in 18 MLR(AD), 372 has become in-operative and redundant. So it is now well settled that Court cannot pass an order to absorb the employees/officers of a project who have been appointed on contract basis under the revenue budget unless there is any statutory provision and thus the respondents claim of absorption in revenue budget on the principal or theory of legitimate expectation has got no legal basis.

Thus, the submissions made by Mr. Mainul Hoque, have no leg to stand.

We have already noticed that the Government on 8th October, 2018 has promulgated ‘কমিউনিটি ক্লিনিক স্বাস্থ্য সহায়তা ট্রাস্ট আইন, ২০১৮’ for the officers and employees who were in ‘Revitalization of Community Health Care Initiative in Bangladesh (RHCIB)’ and ‘Community Best Health’ Care.

Section 24 (ka) of the said law speaks as follows:

“২৪। হেফাজত।- আপাতত বলবৎ অন্য কোনো আইন, সমঝোতা স্মারক, চুক্তি বা অন্য কো-না দলি-ল যাহা কিছুই থাকুক না কেন, এই আইন কার্যকর হইবার সঙ্গে সঙ্গে-

(ক) ৩০ জুন ২০১৫ এ সমাপ্ত ‘Revitalization of Community Health Care Initiatives in Bangladesh (RHCIB)’ শীর্ষক প্রকল্প, অতঃপর সমাপ্ত প্রকল্প বলিয়া উল্লিখিত, এবং ‘Community Based Health Care’ শীর্ষক অপা-রশনাল প্ল্যান, অতঃপর উক্ত প্ল্যান বলিয়া উল্লিখিত, উহার কার্যালয়ের

সকল স্হাবর ও অস্হাবর সম্পত্তি এবং নগদ ও ব্যাংকে গচ্ছিত অর্থ ও জামানত,

সকল দাবি, হিসাব বহি, রেজিষ্ট্রার, এবং অন্যান্য দলিল ট্রা-ষ্ট ন্যস্ত হই-ব;

(খ) সমাপ্ত প্রকল্প ও অপা-রশনাল প্ল্যা-নর অধীন প্রকল্প কার্যালয় বা কমিউনিটি

ক্লিনিক কর্তৃক কৃত কো-না কার্য বা গৃহিত ব্যবস্থা বা ইস্যুকৃত বিজ্ঞপ্তি ট্রাষ্ট কর্তৃক

কৃত, গৃহিত বা ইস্যুকৃত বলিয়া গণ্য হই-ব;

(গ) সমাপ্ত প্রকল্প ও অপা-রশনাল প্ল্যা-নর সকল দায়-দায়িত্ব ট্রা-ষ্টর দায়-দায়িত্ব

বলিয়া গণ্য হই-ব;

(ঘ) সমাপ্ত প্রকল্প ও অপা-রশনাল প্ল্যা-নর বিরু-দ্ধ বা তৎকর্তৃক দা-য়রকৃত মামলা

বা আইনগত কার্যধারা ট্রা-ষ্টর বিরু-দ্ধ বা ট্রাষ্ট কর্তৃক দা-য়রকৃত মামলা বা আইনগত

কার্যধারা বলিয়া গণ্য হই-ব;

(ঙ) ‘Revitalization of Community Health Care Initiatives in

Bangladesh (RCHCIB)’ প্রকল্প এবং ‘Community Based Health

Care’ শীর্ষক অপা-রশনাল প্ল্যা-নর সকল কর্মকর্তা-কর্মচারীর এবং কমিউনিটি

ক্লিনিকের সকল কর্মচারীর চাকরি স্বয়ংক্রিয়ভাবে ট্রাষ্টে ন্যস্ত হইবে এবং উক্ত প্রকল্প

ও প্ল্যা-নর অধী-ন চাকরির জ্যেষ্ঠতা অনুযায়ী তাহা-দর চাকরির জ্যেষ্ঠতা প্রবিধান

দ্বারা নির্ধারিত হই-ব এবং দে-শ প্রচলিত অন্যান্য সংবিধিবদ্ধ সংস্থায় কর্মরত

কর্মচারী-দর ন্যায় তাহা-দর স্থায়ীকরণ, বেতন বৃদ্ধি, প-দান্নতির সু-যাগ, গ্র্যাচুইটি

এবং অবসরভাতাসহ অন্যান্য সু-যাগ সুবিধা প্রাপ্য হই-ব।”

(Underlines supplies to give emphasis)

In view of the above provision, the officers and employees who were in the above two projects before 30 June 2015 their service has been automatically placed under the Trust.

The provision of sub-section (ঙ) of said section 24 has clearly stipulated that the officers and employees who belong to the said two projects have automatically placed under the Trust and their terms of service, salary, promotion and other service benefits will be determined by a Probidhanmala framed under the said law.

The learned Attorney General has informed the Court that the preparation of said Probidhanmala is under process and within a short span of time that may be framed.

It is desirable that the said Probidhanmala be framed as early as possible for the better interest of the officers and employees of the Trust, whose service has been placed under the Trust from the above two projects.

Having considered and discussed above we are inclined to dispose of all the leave petitions with the following observations:

- i. In view of the provision of section 24(ঙ) of the ‘কমিউনিটি ক্লিনিক স্বাস্থ্য সহায়তা ট্রাস্ট আইন, ২০১৮’ the officers and employees of “Revitalization of Community Health Care Initiatives in Bangladesh” (RCHCIB) and ‘Community Based Health Care’ projects who worked till 30 June, 2015 in these projects are now have become the officers and employees of the Trust, automatically;
- ii. the terms of service, salary, promotion and other service benefits will be regulated by the Probidhanmala framed under the Trust Ain, 2018;
- iii. the leave petitioner-government is directed to consider the case of the writ petitioner-respondents in the light of the provisions provided in “কমিউনিটি ক্লিনিক স্বাস্থ্য সহায়তা ট্রাস্ট আইন, ২০১৮”.

Accordingly, all the judgments and orders of the High Court Division are modified and all the Civil Petitions are disposed of.

C.J.

J.

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