

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO 1231 OF 2018

IN THE MATTER OF:

An application under Article 102 of the Constitution of the People's Republic of Bangladesh

AND

IN THE MATTER OF:

Abul Kalam Azad and others

... Petitioners

-VERSUS-

Govt. of Bangladesh, represented by the Secretary Ministry of Power, Energy and Mineral Resources and others.

... Respondents

Mr. Md. Abdullah Mahmood Hasan with
Mr. Md. Abul Kalam Azad, Advocates
... for the Petitioners

Ms. Samia Afroz Khan, Advocate
... for the Respondent No. 3

Mr. Md. Motaher Hossain Sazu, DAG
... for the Respondents

Heard on: 16.07.2018 & 26.07.2018

Judgment on: 03.10.2018

Present:

Ms. Justice Naima Haider
&
Mr. Justice Khizir Ahmed Choudhury

Naima Haider, J:

In this Application under Article 102 of the Constitution, Rule Nisi was issued in the following terms:

Let a Rule Nisi be issued calling upon the respondents to show cause as to why a mandatory direction should not be issued to grant the Time Scale in Grade IV to the petitioners with all arrears with effect from their respective date of entitlement and/or pass such other or further order or orders as to this Court may seem fit and proper.

The facts in brief, as set out in the writ petition, are as follows: the petitioners are citizens of Bangladesh and have joined the Bangladesh Power Development Board (“BPDB”) on different dates. Some of the petitioners have joined BPDB as early as in 1986.

BPDB is a public body within the meaning of Service (Re-organization and Conditions) Act 1975 (hereinafter referred to as the “1975 Act”). Under the 1975 Act, the terms and conditions of any person holding service in any public body is subject to uniform grades and scales and uniform terms and conditions.

The Government by SRO No. 203-Ain/2013 re-determined the manner of calculation of Time Scale. The relevant part of the aforesaid SRO is set out below:

“বিসিএস ক্যাডার কর্মকর্তাগণ ৫ম গ্রেডে সিলেকশন গ্রেড পদে ৮ (আট) বছর অথবা উপ-সচিব বা সমক্লেলের ক্যাডার পদসহ সাকুল্যে ৮ (আট) বছর সন্তোষজনক চাকরি পূর্তিতে ৪র্থ গ্রেডে টাকা ২৫৭৫০-৩৩৭৫০/- টাইম স্কেলে প্রাপ্য হইবেন। এই সুবিধা ১ জুলাই, ২০০৯ তারিখ হইতে প্রদেয় হইবে। এক্ষেত্রে সংশ্লিষ্ট কর্মকর্তাগণ শুধুমাত্র বেতন নির্ধারণী সুবিধা ছাড়া ০১/০৭/২০০৯ তারিখের পূর্বের কোন বকেয়া প্রাপ্য হবে না।

তবে শর্ত থাকে যে, যে কোন ক্যাডার কর্মকর্তা পদোন্নতি ব্যতিরেকে একই পদে একটির বেশি স্কেল সুবিধা প্রাপ্য হইবে না।”

Pursuant to the aforesaid SRO, 84 officers of Grade V of the Department of Public Works were granted time scale of Grade IV from the date of completion of 8 (eight) years by orders dated 28.07.2013 and 26.09.2013. These orders were cancelled and the beneficiaries of these orders filed a writ petition being Writ Petition No. 11958 of 2014. In the said writ petition, Rule was issued and subsequently the Rule was made absolute by this Division.

The petitioners are holders of Cadre Service and have completed 8 years of service in Grade V/equivalent posts; they are thus entitled to Grade IV Time Scale. However, the respondents did not take any steps in this regard. Being aggrieved, the petitioners moved this Division and obtained the instant Rule.

The learned Counsel for the petitioners, taking us through the writ petition and the documents annexed therein, submits that the petitioners are entitled to benefit of the SRO No. 203-Ain/2013 and they are thus entitled to Time Scale of Grade IV. The learned Counsel submits that the failure of the respondents to take necessary steps to grant Time Scale of Grade IV is illegal. The learned Counsel further submits that the failure of the respondents affected petitioners' rights and therefore, this Division should interfere. The learned Counsel points out that unless this Division makes the Rule absolute, the petitioners would be discriminated because others similarly situated were give Time Scale of Grade IV in term of SRO No. 203-Ain/2013. The learned

Counsel, on these, among others, submits that the instant Rule should be made absolute.

The Rule is opposed. The respondent No.3 filed an Affidavit in Opposition. The Affidavit in Opposition does not deny the contentions of the petitioners. However, through the Affidavit in Opposition, the respondent No.3 points out that the benefit under SRO No. 203-Ain/2013 can be extended to BCS Cadre Service holders only and therefore, the petitioners' claim is not tenable. The learned Counsel appearing for the respondent No.3 makes elaborate submission on the aforesaid and submits that the instant Rule should be discharged.

We have heard the learned Counsels at length. We have perused the writ petition and the Affidavit in Opposition. We have also perused the documents annexed therein.

We are unable to accept the contention of the learned Counsel for the respondents that the petitioners cannot rely upon SRO No. 203-Ain/2013 as they are not বিসিএস ক্যাডার কর্মকর্তাগণ. The wordings of SRO No. 203-Ain/2013 clearly provides that “উপ-সচিব বা সম্মেলনের ক্যাডার পদসহ” are entitled to the benefit. The petitioners are Cadre Service holders with equal scales to Deputy Secretary. The petitioners have served for more than 8 years in ৫ম গ্রেডে সিলেকশন গ্রেড. Therefore, the petitioners can very well rely on SRO No. 203-Ain/2013.

Furthermore, it is not denied by the respondents that others similarly situated were granted Time Scale of Grade IV after completion of 8 years of

service, in terms of SRO No. 203-Ain/2013. That being the position, if the respondents are not directed to treat the petitioners similarly, the petitioners would be discriminated.

The learned Counsel candidly submits in other writ petitions, similar point was decided in favour of the petitioners. When we asked the learned Counsel whether she wishes to place any arguments on maintainability and/or locus standi, the learned Counsel once again, candidly states that these issues have been settled by this Division in favour of the petitioners in other writ petitions and as such, she does not wish to advance any arguments on these points.

It is not denied that the petitioners have rendered services in excess of 8(eight) years in terms of SRO No. 203-Ain/2013. No issue regarding their competency has been raised. The petitioners therefore seem to be entitled to the benefits of the aforesaid SRO. The benefits should have been conferred long time back but the respondents did not do so. Their failure is unfortunate. However, we are duty bound to correct the wrong done. Therefore, in our view, an appropriate direction should be issued upon the respondents so that they grant Grade IV Time Scale to the petitioners within a stipulated period. The Grade IV Time Scale should be granted from the date of their entitlement and not from the date of judgment; if it is otherwise, then the petitioners would face further complications in their future promotions and benefits. They have suffered and they should not be suffering further.

In light of the aforesaid, we are inclined to dispose of the Rule with the following direction:

“The respondents are directed to positively grant Grade IV Time Scale to the petitioners from the date of their entitlement, within 2 months from the date of receipt of our Judgment and Order.”

(emphasis added by us)

The Rule is disposed of with the above direction, without any order as to costs.

Communicate the Judgment and Order at once for immediate compliance.

Khizir Ahmed Choudury, J:

I agree.