

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

**Writ Petition No. 7020 of 2006**

In the matter of an application under article 102 of the Constitution of the People's Republic of Bangladesh.

-AND-

In the matter of:

Md. Imam Hasan, S/O Muklesur Rahman, Upper Division Assistant, Board of Secondary and Higher Secondary Education, Chittagong and others.

.....Petitioner.

-Versus-

Secretary, Ministry of Education, Bangladesh Secretariat, Dhaka and others.

.....Respondents.

Mr. Abdur Rab Chaudhury with  
Mr. Md. Giasuddin, Advocates

.....For the Petitioner.

Mr. Sk. Zulfiqur Bulbul Chowdhury, Advocate

...For the respondent Nos. 5-7, 9,10&12

Mr. A.S.M. Rahmatullah, Advocate

For Respondent No. 11

Mrs. Amatul Karim, Deputy Attorney-General with

Mr. A.R.M. Hasanuzzaman, A.A.G

..For the Respondent No.1

**Heard on: 16.08.2015, 07.09.2015 & 12.11.2015**

**Judgment on: 25.11.2015**

**Present:**

**Justice Tariq ul Hakim**

**and**

**Justice Md. Farid Ahmed Shibli**

**Md. Farid Ahmed Shibli, J:**

This Rule Nisi has been issued calling upon the respondents to show cause as to why the impugned Gradation-list for the Upper Division Assistant contained in memo. No. Cha Shi Bo/Prasha-2/Seniority/ 276/

2002/954(26) dated 28.01.2004 (Annexure G) issued under the signature of Respondent no.4 making the Writ Petitioners junior to Respondent nos. 5-12 should not be declared to have been made without any lawful authority and is of no legal effect and why Respondent nos. 2-4 shall not be directed to make necessary amendments in the impugned Gradation-list.

Factual scores relevant for disposal of this Writ Petition are as follows:- The Board of Secondary and Higher Secondary Education in Chittagong (hereinafter termed as “the Board”) appointed the Writ Petitioners as Upper Division Assistants (UDAs) vide Office Order dated 20.04.2000 and subsequently the Board in its 34<sup>th</sup> meeting held on 27.06.2002 approved their appointments. By dint of the Office Order dated 19.12.2002 (Annexure “B”) the Writ Petitioners’ service as U.D.A. was confirmed with effect from 23.04.2000. According to the 34<sup>th</sup> meeting’s decision, the Writ Petitioners had to draw their salary in the scale of Lower Division Assistant (L.D.A) till 29.11.2003, on which they were given the scale of U.D.A. with other serving L.D.As including Respondent nos. 5-12, who got promotion to that post (U.D.A) vide Annexures-L&F. Since the Petitioners’ service as U.D.A. was confirmed with effect from 23.04.2000, as per rule they were supposed to become senior to Respondent nos. 5-12. But the Board ignoring existing rules and violating the principles of seniority issued the impugned Gradation-list as shown at Annexure “G”. Getting no efficacious remedy even after serving a justice demanding

notice, the Writ Petitioners had to file the Writ Petition under article 102 of the Constitution and obtain this Rule Nisi in above stated terms.

Respondent nos. 5-7, 9,10&12 have jointly contested filing Affidavit-in-Opposition contending inter alia that Writ Petitioners along with other candidates including Respondent nos. 5-12 took part in the processes of competitive examinations held in 1995 for appointment of some vacant posts of L.D.As and at that time the Respondents being successful were appointed as L.D.As. On the other hand the Writ Petitioners failed to succeed and did not get regular appointments like the Respondents. The Board however considering the prayers of Writ Petitioners appointed them on the Daily Wages basis as L.D.A. In view of a decision taken by the Board in its 26<sup>th</sup> meeting a 3-member Selection Committee headed by a College Inspector ultimately made a recommendation for appointment of the Writ Petitioners, owing to which on 20.04.2000 they got regular appointment as and in the scale of L.D.A against some vacancies of U.D.As of the Board. As at that time there was no vacancy of L.D.A, in order to accommodate the Writ Petitioners, the Board appointed them in that manner. When the Board realized the mistakes done in appointing the Writ Petitioners, then in its 30<sup>th</sup> meeting held on 07.04.2001 it decided to issue the notices upon the Petitioner as to why their appointments should not be cancelled. Challenging those show cause notices, at that time the Petitioners filed Writ Petition no. 1426 of 2001. However, in 34<sup>th</sup> meeting of the Board the matter was settled on

some conditions that the Writ Petitioners would remain as and in the scale of L.D.A and they would be entitled to get the scale and seniority as U.D.A. only with effect from the date on which other serving L.D.As including the Respondents get promotion and in the mean time the Petitioners should get the Writ Petition no. 1426/2001 withdrawn pending in another Bench. According to the Respondents, prior to 29.11.2003 the Petitioners had neither been appointed nor allowed to draw their salary as U.D.A. It has been stated in Affidavit-in-Opposition that in view of the decisions of the 34<sup>th</sup> Board meeting (Annexure-C) and recommendations of the Promotion Committee (Annexure-X31) the impugned Gradation-list has rightly been prepared and published. According to the Respondent nos. 5-7,9,10&12 this Writ Petition is liable to be discharged with costs.

Respondent no. 11 has contested filing a separate Affidavit-in-Opposition controverting the substantive portion of the Writ Petition. However, he has added that along with other Respondent nos. 5-7,9,10&12 he was appointed as L.D.A. on 12.11.1996, but in the Gradation-list for L.D.As issued on 30.12.2002 (Annexure-C) his name has been entered after Respondent nos. 5-10, who are junior to him by age and stating those facts this Respondent has already challenged the Gradation-list for L.D.As in Writ Petition no. 10209 of 2013, which is still pending. The Respondent has further added that the impugned Gradation-list of U.D.A. at Annexure-G requires to be amended by inserting his name at serial no. 4 taking it from serial no. 10. Apart from that, this Respondent has more or less

supported all other averments and claims made by Respondent nos. 5-7,9,10&12 in their Affidavit-in-Opposition.

Mr. Abdur Rab Chaudhury, learned Advocate for Petitioners, Mr. Sk. Zulfiqur Bulbul Chowdhury, learned Advocate for Respondents nos. 5-7, 9, 10 &12 and Mr. A.S.M. Rahmatullah, learned Advocate for the Respondent no.11 have entered appearance and participated in hearing of the Writ Petition.

It is noted that Writ Petitioner no.1 has got his name omitted from this Writ Petition and presently it is being pursued by remaining Petitioners i.e. Writ Petitioner nos. 2-7.

On perusal of the documents enclosed with the Writ Petition, it appears that initially the Petitioners were temporarily appointed in 1995 on the daily wages basis and on 20.04.2000 they got regular appointment as and in the scale of L.D.A against some vacancies of U.D.A. Admittedly both the Writ Petitioners and Respondent nos. 5-12 were given the scale of U.D.A. (Tk. 2250--4735/-) issuing two separate Office Orders dated 29.11.2003 as shown at “Annexures-L&F” pursuant to the decision taken by the Board in its 34<sup>th</sup> meeting. It is not disputed that prior to 29.11.2003 both Writ Petitioners and Respondents had drawn their salary in the scale of an L.D.A. (Tk. 1975—3920/-).

Moot questions to be resolved here is whether on 29.11.2003 the Writ Petitioners got the scale of U.D.A. by way of promotion or not. Mr. Abdur Rab Chaudhury, learned Counsel for the Writ Petitioners agitates

mainly following 2 points:- firstly, on 23.04.2000 the Petitioners were appointed as U.D.A, so in the impugned Gradation-list (Annexure-G) their names should be entered above the Respondent nos. 5-12, who were promoted as U.D.A. on 29.11.2003; and secondly, before being appointed as U.D.A. the Petitioners had been serving as L.D.A from 1995, so their service length had been longer than Respondent nos. 5-12 who got appointment as L.D.A. in 1996. On either count, as contended by Mr. Rab Chaudhury, the Writ Petitioners are senior to the Respondents both as L.D.A. and also as U.D.A. and that is why the impugned Gradation-list (Annexure-G) prepared for the Upper Division Assistants (U.D.As) needs be amended and the Writ Petitioners deserve a verdict to that effect under article 102 of the Constitution.

In reply, Mr. Sk. Zulfiqur Bulbul Chowdhury, learned Advocate for Respondent nos. 5-7, 9, 10 &12 retorts stating that Writ Petitioners had been appointed as L.D.A on 20.04.2000 despite no vacancy of such post, but the Board accommodated them violating existing rules. Mr. Bulbul Chowdhury submits that as the very decision of appointing Writ Petitioners was completely arbitrary and contrary to the existing rules, the Board in its 30<sup>th</sup> meeting held on 07.04.2001 decided to issue show cause notices as to why the Writ Petitioners' appointment shall not be cancelled.

Mr. Bulbul Chowdhury has appraised the facts that in 1995 along with other candidates both the Writ Petitioners and Respondent nos. 5-12 took part in the Competitive Examinations held for appointment of L.D.As

in 1995 and at that time the Respondents came out with flying colours but Writ Petitioners could not. Even then the Board, as stated by Mr. Bulbul Chowdhury, considering prayers of Writ Petitioners temporarily appointed them as L.D.As on daily basis @ Tk. 70/- per day (Annexure-Q series). Mr. Bulbul Chowdhury contends that Writ Petitioners' service on daily basis should not be counted and added to their regular service as commenced on 23.04.2000 through their substantive appointment as L.D.A.

It appears that the Board, in its 34<sup>th</sup> meeting, taking all attending facts and relevant principles of seniority into consideration decided all disputes as cropped up between the Writ Petitioners and Respondent nos. 5-12. Now we may have a glimpse of the relevant portion of the 34<sup>th</sup> meeting's decision, which runs as follows-

*'th 7(mvZ) Rb wbagvb mnKvixK 20/04/2000 Bs ZwiL t\_K D"Pgvb mnKvixi kb" ct` wbtqvM t`qv ntqtQ Zvt` iK wbagvb mnKvixi teZb I t`tj D"Pgvb mnKvixi ct` wbtqvM Abtgv`b Kiv nj | tevWP Ab`vb" wbagvb mnKvixiMY D"Pgvb mnKvix ct` ct`vbnZ c`Bi ZwiL t\_K D<sup>3</sup> 07(mvZ) RbtK D"Pgvb mnKvixi teZb t`j c`vb Kiv nte Ges H w`b t\_K Zvt` I D"Pgvb mnKvix ct` tR`oZv MYbv Kiv nte| G wmvš- KvhKi Kivi kZ© wmvte KgPviMY Zvt` i `vtqiKZ.ixU wcvUkb cZ`vni KiZ nte|0*

Neither the Writ Petitioners nor the Respondents have raised any objection regarding the aforesaid decision rather they have agreed to put forward their claims of seniority as U.D.A. in line with terms and conditions of the decision. According to the Board's decision, the Writ Petitioners, who had been appointed as L.D.A, would be entitled to draw

salary in the scale of U.D.A. from the date, on which other serving L.D.As including Respondent nos. 5-12 got promotion as U.D.A. Since 1996, as it reveals, the Respondents had been serving as L.D.A till 29.11.2003, on which they were promoted as U.D.A vide the Office Order as shown at “Annexure-F” and on the same date i.e. 29.11.2003 Writ Petitioners were also given the scale of U.D.A vide Office Order as shown at “Annexure-L”.

Mr. Rab Chaudhury has drawn our attention to some Office Orders dated 19.12.2002, 30.12.2002 & 18.02.2003 (Annexures-B,D&E) and argued that Writ Petitioners’ service as U.D.A. was confirmed with effect from their date of joining i.e. 23.04.2000 and for that reason they are senior to the Respondents, who got promotion as U.D.A. long after 23.04.2000 i.e. on 29.11.2003.

In those Office Orders followings have been stated- ‘GB Zvwj Kv tR“ôZvi Zvwj Kv wntmte MY” nte bVô or ‘D†j - wLZ D”Pgub mnKvi x†` i tR“ôZvi tevW©KugwUi 27.06.2002 Bs Zwi tLi 34Zg mfvi 03 bs wmxvš- tgvZvteK cieZ†Z wba†† Y Kiv nte|’

We have carefully gone through recital of those Office Orders and found nothing in support of the Petitioners’ claims of seniority. Rather they have unfolded the pre-emptive conditions that the Writ Petitioners’ claim of seniority as U.D.A. should be decided pursuant to the decision of 34<sup>th</sup> meeting held on 27.06.2002.

On analysis of the documents filed as Annexures and the submissions advanced by learned Advocates above, it becomes evident that



the Writ Petitioners were appointed on 20.04.2000 as L.D.A not as U.D.A vide the Office Orders (Annexure-A series). The Writ Petitioners, as it is gathered, did not perform any higher responsibility or drew any scale higher than that of L.D.A. So, on any consideration it cannot be said that by dint of the appointment orders dated 20.04.2000 (Annexure-A series) the Writ Petitioners were appointed as U.D.A. We are of the view that being appointed as and in the scale of a lower post like L.D.A no employee can claim to count his service in a higher post like U.D.A. Besides, there is no existing rules or regulation to appoint a person in a lower post allowing him on the very date of his appointment to perform the responsibility of the higher post. Under any circumstance an employee shall not be allowed to discharge the responsibility of any higher posts immediately after his appointment in a post lower than that. Having regard to the above facts and general principles related to the seniority of employees of the Government offices and other Statutory Bodies, we are of the opinion that the Petitioners' service as L.D.A will be counted from 23.04.2000 and as U.D.A. from 29.11.2003.

In the decision of the 34<sup>th</sup> meeting, it is stated that- 'tevtWP Ab"vb" wbagvb mnKvixMY D"Pgyb mnKvix ct` ct`vbwZ cÜBi ZwiL t\_†K D³ 07(mvZ) Rb†K D"Pgyb mnKvixi teZb t~j cÜvb Kiv nte Ges H w`b t\_†K Z†` I D"Pgyb mnKvix ct` †R"öZv MYbv Kiv nte/ô Both the Writ Petitioners and Respondent nos. 5-12 were promoted as U.D.A. on the same date i.e. on 29.11.2003 (Annexures-F&L). In such a position, how can we determine the seniority of those two groups

of employees? In order to find a way out of the above situation, Mr. Bulbul Chowdhury has taken us through *Probidhi-10* of the draft *Service Probidhanmala, 1997*. In as much as the Board has not yet obtained approval from the Government regarding the said draft *Probidhanmala* in view of section 39 of the Intermediate and Secondary Education Ordinance, 1961, so we are unable to take any decision on the basis that *Probidhanmala*.

Being requested by Mr. A.S.M. Rahmatullah, learned Advocate for Respondent no.11 we have gone through the Report dated 17.07.2006 (Annexure-D to the Affidavit-in-Opposition), which provides that in the absence of any specific rules inter se seniority of the employees of the Board shall be determined following general principles of seniority. In this regard Mr. Bulbul Chowdhury, learned Advocate for Respondent nos. 1-7, 9,10&12 contends that since there is no such *Probidhanmala* or Rules to determine any question of seniority of the Board employees, in such a situation principles laid down in rules-4, 7(2) of the '*bb-K`Wwi KgRZP I KgPvix (tR`ôZv I c`vbZ) weWagvj v, 2011ô*' may provide a guide-line to settle the dispute as cropped up between the parties.

We are inclined to hold that both the Writ Petitioners and the Respondent nos. 5-12 for all practical purposes got promotion in the scale of U.D.A. with effect from 29.11.2003. In such a position we have no other alternative but to decide the matter applying the principles laid down in rule-7(2) of the '*bb-K`Wwi KgRZP I KgPvix (tR`ôZv I c`vbZ) weWagvj v, 2011ô*'

and examine as to who had served the longer period in earlier lower post i.e. as L.D.A. We cannot legally allow the Writ Petitioners to get their service as L.D.A on daily wages basis counted and added to their regular service as L.D.A with effect from 23.04.2000. In the absence of any Government Order or policy decision, no employee serving on daily basis shall be entitled to get that period added or counted with his later service in the regular establishment. It is noted that Respondent nos. 5-12 were serving as L.D.A from 1996 till the date of their promotion on 29.11.2003. So, on comparative calculation, it becomes evident that the length of service of Respondent nos. 5-12 as L.D.A. is longer than that of the Writ Petitioners. In view of the above it is clear like anything that on no account the Writ Petitioners' claim of seniority has any legal force or basis. We are, therefore, inclined to hold that the Board has not committed any error or mistake, as alleged, and there was nothing unlawful on the part of the Board in preparing or publishing the impugned Gradation-list dated 28.02.2004 (Annexure-G) giving Respondent nos. 5-12 seniority over the Writ Petitioners.

Before concluding the hearing of this Writ Petition, Mr. A.S.M. Rahmatullah, learned Advocate for Respondent no. 11 submits that this Respondent was appointed as L.D.A. and subsequently promoted as U.D.A along with other Respondents, but despite being senior in age, the Board did not give him the seniority over other Respondents i.e. Respondent nos. 5-10 & 12 owing to which stating his claims a separate Writ Petition no.

10209 of 2013 has been filed, which is still pending in the Court.

Since the entire gamut of claims and counter claims on the question of seniority amongst the Respondent nos. 5-12 are going to be decided in a separate Writ Petition which is still pending, in such a plight all points relating to inter se seniority of the Respondents themselves should be resolved there. Besides, the terms of this Rule Nisi do not cover the matters relating to the claims of the Respondent. We are of the opinion that Respondent no.11 would get ample opportunity to raise and argue his claim of seniority in the pending Writ Petition, so in this case it would be proper for us to refrain from giving any decision.

Having regard to what we have discussed above and attending facts and circumstances to the case, we are inclined to hold that the Board has not committed any mistake or wrong, as alleged, in preparing or publishing the Gradation-list as shown at Annexure-G, so the Writ Petitioners do not deserve any remedy as prayed for under article 102 of the Constitution.

Consequently, the Rule is made discharged. Parties are directed to bear their respective costs.

**Tariq ul Hakim, J**

I agree.