

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 NO.30 OF 2015.

(From the judgment and order dated 04.01.2012 passed by the High Court Division in Writ Petition No.2910 of 2011.)

Election Commission for Bangladesh, Appellants.
represented by the Secretary, Election
Commission, Secretariat and another :

=Versus=

Md. Golam Mostafa and others : Respondents.

For the Appellants : Mr. M.K. Rahman, Senior
Advocate instructed by Mr.
Syed Mahbubar Rahman,
Advocate-on-Record.

For the Respondents : Mr. Sharifuddin Chacklader,
Advocate (with Mr. Khorshed
Alam Khan, Advocate)
instructed by Mrs. Sufia
Khatun, Advocate-on-Record.

Date of hearing on : 16.10.2018 & 23.10.2018.

Date of judgment on : 30.10.2018.

J U D G M E N T

Hasan Foez Siddique, J: This appeal is directed against the judgment and order dated 04.01.2012 passed by the High Court Division in Writ Petition No.2910 of 2011 making the Rule absolute in part.

The relevant facts, for the disposal of this appeal, are that the writ petitioner-respondents filed Writ Petition No.2910 of 2011 stating, inter

alia, that they were appointed in a Development Project, namely, "Strengthening the Election Commission for Improvement in the Electoral Process" (in short, the project) under the Election Commission Secretariat (in short, ECS) through rigorous selection process pursuant to an employment notification dated 05.06.2000 which was published in the "Daily Jugantor" in its issue dated 18.06.2000. For strengthening the electoral process Election Commission, the project started in July, 1997 and ended in June, 2005. Considering the necessity and importance of the service of the appellants, they were not terminated even after completion of the project. They have been performing their duties without any financial benefits or salaries since July, 2005. In 1995, the United Nations Electoral Assistance Division launched a "Needs Assessment Mission" to identify the areas of intervention in which the United Nation could support the electoral process in Bangladesh. In 1996, the donor agencies of Norway, Canada, Netherland, Denmark, Asian Foundation and UNDP rendered technical assistance to the Government of Bangladesh for holding parliamentary elections and to run the country through democratic process. This project was launched and built following the earlier projects and for

linking forthcoming assistance from all those agencies as well as parties interested to support the democratic electoral process in Bangladesh. Such project has achieved its highest target due to honest, dedicated and committed service of the writ petitioner-respondents. In the Project Proforma (PP), it was a declared policy of the ECS that after completion of the project its manpower would be transferred to the revenue budget. Due to dedication, devotion and sincerity of the respondents, the objectives of the project were achieved beyond the target, for which, before completion of the project the authority took several steps and sent formal proposals to the highest authority for absorption of the service of the writ petitioner-respondents in the revenue budget.

In similar situation pursuant to the proposal and recommendations of the ECS, the Ministry of Establishment for greater public interest and also to continue with the success of a project, namely, Preparation and Distribution of the Voter ID cards vide memo No.Shomo/Shabo/Team 1(2)-19/2000-63 dated 01.04.2004 had consented to absorb 25 personnel of the said project in the revenue budget. The employees of the preparation and

distribution of the Voter ID cards project were exactly on the same footing with the respondents and were appointed in the project under the same terms and conditions. Thus, it was the bonafide expectation of the respondents that their service would be absorbed under the revenue budget in the same manner without any impediment but the writ respondents have been showing deliberate inaction over the matter for a long time. The writ petitioner-respondents submitted different applications to the writ respondent-appellants and on many occasions they were verbally assured that they would be absorbed. It is further stated that the concerned department had taken initiative time and again by sending proposals but in vain. Thus, the writ petitioners moved the High Court Division and obtained the Rule Nisi.

The writ respondent-appellants did not file any affidavit-in-opposition in the instant case.

The High Court Division heard the instant writ petition and another writ petition being Writ Petition No.7657 of 2010 together and by a judgment and order dated 04.01.2012, made the Rule absolute in part directing the writ respondents to absorb/regularize the service of the writ petitioners in revenue set up in accordance with

law within 30 days from the date of receipt of a copy of the judgment.

Against the said judgment and order of the High Court Division, the writ respondent-appellants have preferred this appeal getting leave.

Mr. M.K. Rahman, learned Senior Counsel appearing for the appellants, submits that the writ petitioners were appointed in a project purely on temporary basis and their services were never meant for permanent appointment or absorption in the revenue budget. He further submits that there was no specific promise on the part of the government or on the part of the Election Commission to absorb the writ petitioners in the revenue budget, the High Court Division erred in law in making the Rule absolute. He further submits that there was no legal obligation to the Government or upon the Election Commission to absorb those employees of the project in the revenue budget, the High Court Division erred in law in making the Rule absolute.

Mr. Sharifuddin Chacklader, learned Counsel appearing for the respondents, in his submission supported the judgment and order of the High Court Division. He added that though the project was initially for a limited period but the same was

extended from time to time and after 2015 no further extension was given, consequently, the writ petitioners became unemployed and they have been suffering from extreme financial hardship inasmuch as they have legitimate expectation to be regularized/absorbed in the revenue budget.

It is not disputed that the writ petitioners were appointed in a project of Election Commission, namely, the Strengthening the Election Commission for Improvement in the Electoral Process. The said project was completed in 2005. Their claim is that they legitimately expected that their service would be absorbed in the revenue budget in view of the fact that they served in the project most efficiently and the authority assured them that after completion of the project their service would be absorbed in the revenue set up. At the time of hearing this appeal, we directed the parties to produce the project profile (PP) of the project to examine as to whether there was any assurance in the said PP that after completion of the project the service of the writ petitioners would be absorbed in the revenue budget or not. It has been stated in the writ petition that the writ petitioners had joined the project in 2004 and they served in the project till July 2005. It has been stated that the PP is

a declared policy of the ECS and in it there is a specific provisions that after completion of the project the manpower would be transferred to the revenue budget. The writ petitioners referred annexure A to the writ petition in this regard. From Annexure A it appears that the same was recommendation of the Special Project Evaluation Committee. In its internal evaluation, the Special Project Evaluation Committee, considering the opinion of the ECS, observed, "তবে প্রকল্প সমাপনান্তে এ কার্যক্রম অব্যাহত রাখার লক্ষ্যে নির্বাচন কমিশনের আওতায় রাজস্ব খাতে প্রকল্পের পদসমূহ স্থানান্তর কিংবা নতুন পদ সৃষ্টির উদ্যোগ গ্রহন করা হবে।"

On perusal of the PP, we do not find any such statement or written assurance that after completion of the project the service of the writ petitioners would be absorbed in the revenue budget.

The learned Counsel of the respondents, referring the above quoted portion of evaluation report, submits that in view of above observation the writ petitioners expected that their service may be absorbed in the revenue set up.

A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation, which would be within its powers to fulfill. When a person based his claim

on the doctrine of legitimate expectation, it is required to be satisfied that there is a foundation of such claim. A pious hope even landing to a moral obligation cannot amount to legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or customs or an established procedure followed in a natural sequence. In Halsbury's Laws of England it has been stated that a person may have a legitimate expectation of being treated in a certain way by an authority even though he has no legal rights in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority including an implied representation, or from consistent past practice. In Madras Wine Merchants' Association V. State of Tamil Nadu reported in (1994) V SCC 209 the Supreme Court of India has laid down the circumstances under which the principle of legitimate expectation may arise. Which are as follows:

(1) If there is express promise by a public authority; or

(2) because of the existence of regular practice which the claimant can legitimately expect to continue;

(3) such an expectation must be reasonable.

Before applying this principle, the Courts have to be cautious. It depends very much on the facts and recognized general principles of administrative law applicable to such facts and the concept of legitimate expectation must be restricted to general legal limitation. The Courts should restrain themselves and restrict claims duly to legal limitation.

In view of the facts and circumstances, it is difficult to accept submissions of the learned Counsel for the respondents that the writ petitioners' expectation to be absorbed has any foundation since there was no express promise or, assurance from the decision makers as such. We also perused the materials on record wherefrom we did not find any written or express assurance on behalf of the appointing authority of the project to the writ petitioners that after completion of the project the service of the writ petitioners would be absorbed in the revenue budget.

Absorption of the officers and staffs of a project can not be treated as valid ground to absorb the officers and staffs of another project in the revenue budget. Moreover, admittedly the writ petitioners joined in the service of the project in the months of August and September,

2004. It is also admitted that the project ended in June 2005. That is, they served only few months. They filed the instant writ petition in 2011. That is, after about 6 years of the completion of project. In such view of the matter, the High Court Division has committed error of law in directing to absorb the writ petitioners in Revenue budget upon making the Rule absolute in part.

Accordingly, we find substance in the appeal. Thus, the appeal is allowed without any order as to costs. The judgment and order of the High Court Division passed in Writ Petition No.2910 of 2011 is hereby set aside.

C.J.

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The 30th October, 2018.

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