

10 SCOB [2018] HCD

**HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

Writ Petition No. 6070 of 2012
With
Writ Petition No. 7155 of 2012 and
With
Writ Petition No. 7156 of 2012

Vs.
**Bangladesh, represented by the
Secretary, Ministry of Establishment,
Bangladesh Secretariat, Dhaka and
others.**

.....Respondents.

Md. Safiqul Islam and others
.... Petitioners in Writ Petition No.
6070 of 2012

Mr. Humayun Ali Reza Advocate
..for the petitioners in all the Writ
Petitions.

-AND-

Md. Hafizur Rahman and others
.... Petitioners in Writ Petition No.
7155 of 2012

Mr. Shams-ud Doha Talukder A.A.G.
.....for the Respondent No. 4 .

-AND-

Md. Jalal Ahmed and others
.... Petitioners in Writ Petition No.
7156 of 2012

Heard on 30.04.2013
Judgment on 02.05.2013.

Present:

Mr. Justice Tariq ul Hakim

And

Mr. Justice Abu Taher Md. Saifur Rahman

Kew word

It is true that the petitioners cannot claim as of right to be regularized in their jobs. However, after having served the authority for 10-15 years as temporary contingent staffs they cannot be blamed to expect being regularized in their posts especially when their superior authority has been satisfied by their work and has recommended their regularization. ... (Para 30)

In view of long standing period of service of the petitioners the Government consider their cases for absorption and regularization in the revenue budget if they have requisite qualifications and subject to availability of vacancies according to their seniority. They however must have the requisite qualification for the post in which they are seeking regularization, continuity in service and satisfactory service record even though they may exceed their age limit required for fresh appointment in that post (Para 32)

Judgment

Tariq ul Hakim, J.

1. Rules Nisi have been issued calling upon the respondents to show cause why they should not be directed to comply with the recommendations and directives stated in Annexures B,C and D to regularize the service of the petitioners to the post of Sepoys and

MLSS and/or pass such other or further order or orders as to this Court may seem fit and proper.

2. All these Rules concern common questions of law and facts and as such were taken up together for hearing and are being disposed of by this single judgment.

3. In Writ Petition No. 6070 of 2012 the petitioner No. 1 Md. Safiqul Islam was appointed as a contingent/ work charged employee on 12.7.2001 and joined his duty on 15.7.2001. Presently he is working as a Cleaner on daily basis at the rate of Tk. 150/- per day on condition of no work no pay at Commissioner of Customs, Excise and VAT Commissionerate, Rajshahi (the Respondent No.4).

4. Petitioner No. 2 Md. Aminul Islam was appointed as Driver of Motor Car as contingent employee on 1.4.2002 and joined his duty on 2.4.2002 and is presently working as a Driver of Motor Car on daily basis at the rate of Tk. 150/- per day on condition of no work no pay under the Respondent No.4 at Commissioner of Customs, Excise and VAT Commissionerate, Rajshahi.

5. Petitioner No. 3 Md. Sadequl Islam was appointed as contingent/ work charged employee on 19.8.1997 and joined his duty the same date and is presently working as a Cleaner on daily basis at the rate of Tk. 150/- per day on condition of no work no pay at Commissioner of Customs, Excise and VAT Commissionerate, Rajshahi (Respondent No.4).

6. Petitioner No. 4 Md. Abul Kalam Azad joined his duty on 21.12.1997 as contingent employee and is presently working as a Cleaner on daily basis at the rate of Tk. 150/- per day on condition of no work no pay at Bogra Sadar Divisional office under the Commissioner of Customs, Excise and VAT Commissionerate, Rajshahi (Respondent No.4).

7. Similarly in Writ Petition No. 7155 of 2012 Petitioner No. 1 Md. Hafizur Rahman was appointed as contingent employee on 13.2.1992 and joined his duty on 26.9.1992 and presently is working as MLSS on daily basis on condition of no work no pay at Customs House, Jessore Sadar, Customs, Excise and VAT Commissionerate, Jessore.

8. Petitioner No. 2 Mrs. Karnali Sarder was appointed as contingent employee on 2.5.1993 and joined her duty on 4.5.1993 and is presently working on daily basis on condition of no work no pay at Customs House, Jessore Sadar, Customs, Excise and VAT Commissionerate, Jessore.

9. Petitioner No. 3 Mrs. Selina Akhondo was appointed as contingent employee on 24.7.1994 and joined her duty on 1.8.1994 and is presently working on daily basis on condition of no work no pay at Customs House, Jessore Sadar, Customs, Excise and VAT Commissionerate, Jessore.

10. Petitioner No. 4 Md. Mehedi Hasan was appointed as contingent employee on 31.5.2004 and joined his duty on 1.6.2004 and is presently working on daily basis on condition of no work no pay at Customs House, Jessore Sadar, Customs, Excise and VAT Commissionerate, Jessore.

11. Petitioner No. 5 Md. Kamal Hossain was appointed as contingent employee on 31.5.2004 and joined his duty on 1.6.2004 and is presently working on daily basis at the

rate of Taka 50/- on condition of no work no pay at Customs House, Jessore Sadar, Customs, Excise and VAT Commissionerate, Jessore.

12. Petitioner No. 6 Zahir Hossain Khan was appointed as contingent employee on 29.5.2006 and joined his duty on the same date and presently is working on daily basis at the rate of Taka 50/- on condition of no work no pay at Customs House, Jessore Sadar, Customs, Excise and VAT Commissionerate, Jessore.

13. Petitioner No. 7 Md. Rashidul Islam was appointed contingent employee on 29.05.2006 and he joined his duty on the self same date on daily basis at the rate of Tk. 50/- on condition of no work no pay at Kushtia Customs, Excise and VAT, Kushtia.

14. Petitioner No. 8 Md. Abdus Salam was appointed contingent employee on 19.03.1992 and he jointed his duty on the self same date at the rate Tk. 800/- per month on no work no pay basis. His appointment was made by Nathi No. ২৪/৫ (৪র্থ)-২-ইসি/৮৯ dated 19.03.1992 .

15. Petitioner No. 9 Minto Mondol was appointed contingent employee by the Commissioner of Customs , Excise and VAT Commiserate Jessore, on 31.05.2004 at the rate of Tk. 50/- per day on no work no pay basis. He joined on 01.06.2004 and is working till to day.

16. Petitioner No. 10 Md. Farid Sikder was appointed as contingent employee on 30.06.1994 by the Collector Customs, Excise and VAT Collector, Jessore at the rate Tk. 50/- per day on no work no pay basis. He joined on 02.07.1994 and is working as such .

17. Petitioner No. 11 Md. Sumon was appointed by the Commissioner of Customs, Excise and VAT Commissionerate, Jessore on 29.05.2006 as contingent employee at the rate of Tk. 50/- per day on condition of no work no pay . He joined his duty on the self same date .

18. Petitioner No. 12 Md. Abdus Sattar Mondal was appointed as contingent employee by the Commissioner of Customs, Excise and VAT Commissionerate, Jessore on 29.05.2006 at the rate of Tk. 50/- per day on condition of no work no pay basis . He joined his duty on the self same date and has been working as such.

19. In Writ Petition No. 7156 of 2012 Petitioner No. 1 Md. Jalal Ahmed was appointed as contingent employee on 2.5.1993 and joined his duty on the same date and is presently working on daily basis on condition of no work no pay at Customs House, Benapole Commissioner, Benapole, Jessore.

20. Petitioner Nos. 2 Md. Anowar Hossain (Minto) and 3 Md. Musa Mollah were appointed as contingent employees on 29.3.2001 and presently are working on daily basis on condition of no work no pay at Customs House, Benapole Commissioner, Benapole, Jessore.

21. Petitioner Nos. 4 Md. Anwar Hossain and 5 Md. Sadequr Rahman were appointed as contingent employees on 15.12.2003 and presently are working as Computer Operator on daily basis at the rate of Taka 120/- per day on condition of no work no pay at Customs House, Benapole Commissioner, Benapole, Jessore.

22. It is stated that being satisfied with the works of the petitioners, the National Board of Revenue through its Second Secretary Md. Golam Rahman under office Nothi No.7(1) Sha: Bho: Pro-2/2002/332 dated 25.6.2003 informed the Commissioner of Customs, Excise and VAT Commissionerate, Rajshahi that for the contingent employees letter of request has been sent to the Internal Resources Division to regularize them. Subsequently the National Board of Revenue by another letter dated 22.5.2004 requested the Internal Resources Division of the Finance Ministry of the Government to give sanction to regularize the aforesaid employees in the post of MLSS and Sweeper.

23. It is further stated that Mr. Md. Mafizal Islam Patwary, Senior Assistant Secretary of the Internal Resources Division of the Ministry of Finance by his letter No. M/Asni 3/Excise/22/2008/184 dated 24.3.2008 after getting order from the higher authority requested the Commissioner of Customs, Excise and VAT Commissionerate, Rajshahi to give preference to the contingent/work charged employees after clearance from the Ministry of Establishment for appointment. Senior Assistant Secretary of the Ministry of Establishment by letter dated 25.8.2008 informed all concerned that to fill up 80% vacant posts there would be no necessity of clearance from the Establishment Ministry. Besides, in case of filling up directly recruitable vacant posts there was necessity for taking clearance from the Establishment Ministry. By letter dated 29.9.2008 the Second Secretary of the National Board of Revenue informed all the Commissioners of Customs, Excise and VAT Commissionerate, Rajshahi Benapole, Jessore and others that there would be no necessity for clearance for filling 80% vacant posts and as such with the order of the higher authority requested all concerned to take necessary steps on emergency basis. It is further stated that the Respondent No.4 after receiving representation of 32 contingent/worked charged employees praying for regularization of their job as MLSS sent a letter under Nothi no. 2-5(3)-1ET/ Sadar/ niog/2004/ 2364 dated 17.4.2008 to the Member of National Board of Revenue stating inter-alia that their service as contingent/work charged was indispensable and the same is sent for information and necessary action. It is further stated that the Respondent No.4 sent a letter under Nothi no. 2(10) 4(1) ET/ Sadar/2005/338 dated 15.1.2009 to give information about the contingent employees on daily basis with a photo copy of the letter No. 2(10)-4/1/ET/Sadar/2005/6189 dated 12.11.2008 for information and necessary action that 45 contingent employees have been working on daily basis (no work no pay) as office cleaners. One of them is working as Driver of a Motor Car and that it is Commissioner's jurisdiction to appoint and give remuneration to those people. It is further stated that with reference to the letter no. 7(1) Shu:Bho: Pro-2/2001/561 dated 13.11.2003 issued by the National Board of Revenue, 25 employees' job was regularized on 1.09.2004 to the posts of MLSS and under this circumstances as 45 contingent employees have been working as daily basis (no work no pay) for a longer period so if the National Board of Revenue agrees on principle that they can be regularized as MLSS and for that necessary steps can be taken.

24. Thus despite various recommendations from different Ministries and Departments of the Government to regularize the posts of the petitioners, no satisfactory response is being received and the petitioners despite performing long periods of service for the Republic are continuing to remain in uncertainty as to their livelihood and chance of being regularized in their jobs; being aggrieved, the petitioners have come to this Court and obtained the present Rules.

25. The Rules are being opposed by the learned Assistant Attorney General and in Writ petition No. 7156 Affidavit-in-Opposition has been filed on behalf of Respondent No. 4

stating inter alia that the Ministry of Establishment has given instruction to the concerned office to fill up 80% vacant posts in accordance with established rules and that since there is no law or rule or even directive to regularize the job of contingent employees who have been employed after 1990 the petitioners have not been regularized in their posts as per the recommendation from different authorities.

26. Mr. Humayun Ali Reza, the learned Advocate for the petitioners has drawn our attention to Annexure B, letter from the National Board of Revenue recommending absorption and regularization of the petitioners and stating clearly that it would not be in the interest of the Government to terminate their posts and submits that the petitioners due to their long period of service with the Government have legitimate expectation to be regularized in permanent posts of the Republic to compensate them for the extremely low wages that they have been receiving all this time. The learned Advocate also has drawn our attention to Annexures C and D, letters from the National Board of Revenue to the Internal Resources Division of the Ministry of Finance recommending that the petitioners' service be regularized due to their long period of service with the Government and submits that the respondents' act of not regularizing the service of the petitioners is arbitrary, illegal and against all the principles of fairness and in this respect he has drawn our attention to the judgment passed by a Division Bench of this Court in Writ Petition No.9537 of 2010 along with others (unreported) where their Lordships in a similar matter directed the respondents to regularize the service of the petitioners.

27. As against this, Mr. Shams-ud Doha Talukder, the learned Assistant Attorney General appearing on behalf of the Respondent No. 4 submits that since there is no circular, Rule, law or directive of the Government to regularize the posts of the petitioners who are contingent employees the Government is not able to regularize their post even though some of their services may have become indispensable in certain cases.

28. Heard the learned Advocates, perused the Writ Petition and the Annexures.

29. The instant petitioners have been working as contingent employees for the Government for 10-15 years up to the satisfaction of the employer. Annexures BCD clearly show that the National Board of Revenue has recommended their absorption and regularization in their respective post. The respondents however are not regularizing their posts without stating clearly any reasons. It appears from the Petition Nos. 4, 5 Affidavit-in-Opposition and from the submissions of the learned Assistant Attorney General that the reasons for not regularizing them is that there is no specific rule, provision or even directive from any appropriate authority to regularize them. Such a directive exists for those employees who were employed prior to 1990. The fact however remains that these petitioners have been working since the year 2000 for the Government and that they have been reassured from time to time that they would be regularized in their posts which has given rise to a legitimate expectation on their behalf. As has been held in the case of *Ashutosh Chakma and others Vs. Rajdhani Unnayan Kartripakkha (Rajuk) and others reported in 60 DLR (2008) 273* legitimate or reasonable expectation arises whenever there is an express promise given on behalf of a public authority or from the existence of regular practice which the claimant can reasonably expect to continue. The doctrine of legitimate expectation owes its origins in English jurisprudence but has been judicially approved by our Courts in a number of decisions and gives the petitioners sufficient locus standi for judicial review.

30. It is true that the petitioners cannot claim as of right to be regularized in their jobs. However, after having served the authority for 10-15 years as temporary contingent staffs they cannot be blamed to expect being regularized in their posts especially when their superior authority has been satisfied by their work and has recommended their regularization. In an unreported decision of this Court in Writ Petition No. 9537 of 2010 along with others a Division Bench of this Court consisting Justice Farah Mahbub and Justice Abdur Rob directed the respondents to regularize the posts of the petitioners who are in the same footing as the present petitioners.

31. In the case of Chief Engineer, Local Government & Engineering Department Vs. Kazi Mizanur Rahman and others reported in 17 BLC (AD) (2012) page 91 the Appellate Division held that the Government may consider the absorption of the petitioners under the revenue budget if there is any vacancy in regular post in accordance with law and certain guidelines.

32. In the instant case agreeing with the said decision of the Appellate Division we also hold that in view of long standing period of service of the petitioners the Government consider their cases for absorption and regularization in the revenue budget if they have requisite qualifications and subject to availability of vacancies according to their seniority. They however must have the requisite qualification for the post in which they are seeking regularization, continuity in service and satisfactory service record even though they may exceed their age limit required for fresh appointment in that post.

33. With the above directions this Rules are disposed of. There will be no order as to costs.