

IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(SPECIAL ORIGINAL JURISDICTION)

[WRIT PETITION NO. 13493 of 2016](#)

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. Zahid Hossain and others

.... Petitioners

-versus-

Government of the Peoples Republic of Bangladesh
and others

.... Respondents

Mr. Md. Shahjahan, Advocate with

Mr. Jagadish Chandra Saha, Advocate with

Ms.Niru Shansun Nahar Siddiqa, Adv with

Ms. Mahmuda Khanom, Advocate

... for the petitioner

Mr. J.R. Khan Robin, DAG with

Mr. Md. Osman Chowdhury, DAG with

Mr. Ahmed Musanna Chowdhury, AAG with

Ms. Kamrunnahar Tamanna, AAG

....For the Respondents

Heard on: 25.01.2026

Judgment on: 27.01.2026

Abdur Rahman, J:

This *Rule Nisi*, at the instance of the petitioners, was issued on an application under Article 102 of the Constitution in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned circular being No. 07.00.0000.161.00.002.16 (Part-1)-232 dated 21.09.2016 issued by respondent No.5 as in Annexure-D to this petition should not be declared ultra vires of the constitution and/or passed such other or further order or orders as to this Court may seem fit and proper.

The facts leading to issuance of this Rule Nisi in brief are that the petitioners No.1 as an Sub-Register, in the office of the Registration Directorate, Ministry of law and the petitioners No. 2-27/50/64/112-121/123 are the Auditors Directorate of Commercial Audit, Bangladesh and the petitioners Nos. 28-38 are the Dental Surgeons, Medical Officers and Assistant Dental Surgeon in Dental

College Hospital, Dhaka and the petitioners Nos. 39-41/44-49/51-53/55-58/60/69 are the Instructors of Primary Training Institute (PTI) and petitioners Nos. 54-43/59/61-63/65-68/122 are the Education Officers and the petitioner No.70 is the Account Officer and the petitioners Nos. 71-101/125-128 are the Upazila Social Service Officers, Department of Social Service and the petitioner Nos.102/124 are the Superintendant of the Govt. Shishu Paribar, and petitioner No.103-105 are the Extension Officer of the BSCIC, and petitioner Nos.106-111 are the Home Economist of the Department of RTC, and they are the permanent employees of the said Institutions and due to the getting time scale they are facing troubles for the Government's circular and challenged the said circular being No. নং-০৭,০০,০০০০.১৬১,০০০০০২-১৬ (অংশ-১)-২৩১, তারিখঃ ২১-০৯-২০১৬ খ্রি (Annexure-D) which deliberately affecting the valuable services rights denied financial benefits of the petitioners and thus getting no other alternative invoked this forum.

Ms. Niru Shamsun Nahar Siddiqua, the learned advocate, appearing for the petitioner submits that the impugned circular is ex-facie illegal, mala fide, without lawful authority and void *ab initio* and *ultra vires* the constitution which has been issued without jurisdiction and by an authority incompetent to Issue it because neither in

Assistant Secretary of any Ministry nor a Ministry itself does have any authority to issue a circular in supersession of Pay Orders made by the President or by overriding a decision of the President of "the Republic of Bangladesh which has been done in the instant case as such the circular is liable to be declared ultra vires the constitution. Learned Advocate has further submits that under Article 133 of the Constitution the President of the Republic has been vested with the power to make conditions of service of the petitioners and other employees and therefore the government by order of the President has made the Pay Order of 2015 making clear provisions of some pecuniary benefits to those who cannot be accommodated for promotion for various reasons therefore, if the government wants to make any change in the Pay Order particularly any amendment in Para 7(1)(2) (3)(4) it has to be done by way of amendment of the Pay Order itself through gazette notification only with prior approval of the president but the impugned circular has been issued without minimum Assistant Secretary sitting over the order of the President for which it is ultra vires the constitution inasmuch as it is a clear *mala fide* act of the Executive Government. Learned Advocate has earnestly submits that when the pay order 2015 is very clear so as

the opinion of the CAG it was the duty of the respondents to act fairly, which duty has to be enforced as an implied statutory requirement because failure to observe will mean that the promulgation of circular was outside the statutory power, violative of the constitutional provisions, unjustified by law and therefore ultra virus and void, with the power to take steps in constitutional Provisions with the Public Service Commission under Article 140(2)(c) of the Constitution. Learned Advocate has further submits that the impugned circular has been declared ultra vires by the High Court Division of the Supreme Court of Bangladesh in Writ Petition No. 1483 of 2019. Moreover the same circular has also been declared ultra vires to the many writ petitions and finally the Government challenged those judgment through Civil Petition for Leave to Appeal Nos. 3204 of 2018, 574 of 2019, 586 of 2019, 1394 of 2019, 1513 of 2019, 1620 of 2019 and 1997 of 2019 and Hon'ble Appellate Division after hearing was pleased to uphold the judgment of the High Court Division disposed of with modification.

On the other hand, Mr. Md. Osman Chowdhury, the learned Deputy Attorney General, submits that the matter has already been

settled by the Appellate Division of the Supreme Court of Bangladesh, and the instant Rule has become infructuous.

We have heard the learned Advocate for the petitioners and the learned Deputy Attorney General for the respondents, and also perused the writ petition along with all the documents appended to it, and got substances in the submission of the learned Counsel for the petitioners.

On perusal of the records it appears that the Pay Order of 2015 has given financial benefits to the employees through the provisions of Para-7 in the following way:

অনুচ্ছেদ নং ৭(১) মোতাবেক কোন কর্মচারী পদোন্নতি ব্যতিরেকে একই পদে ১০ (দশ) বছর পূর্তিতে এং চাকরি সন্তোষজনক হওয়া সাপেক্ষে স্বয়ংক্রিয়ভাবে ১১তম ০৭সরে পর০র্তি উচ্চতর গ্রেড প্রাপ্য হই০েন।

অনুচ্ছেদ নং ৭(২) মোতাবেক কোন স্থায়ী কর্মচারী তাহার চাকরির ১০ (দশ) বছর পূর্তিতে উচ্চতর গ্রেডে ০েতন প্রাপ্তির পর পর০র্তী ৬ (ছয়) ০৭সর পর০র্তি প্রাপ্ত না হইলে ৭ম ০৭সরে চাকরি সন্তোষজনক হওয়া সাপেক্ষে, স্বয়ংক্রিয়ভাবে পর০র্তি উচ্চতর গ্রেডে ০েতন প্রাপ্য হই০েন।

অনুচ্ছেদ নং ৭(৪) মোতাবেক কোন কর্মচারী দুই ০া ততোধিক সিলেকশন গ্রেড স্কেল ০া উচ্চতর স্কেল (টাইম স্কেল) ০া কোন স্কেলের সর্০োচ্চ সীমায় পৌছাই০ার এক বছর পর পর০র্তি উচ্চতর স্কেল প্রাপ্ত ইহয়াছেন তিনি এই অনুচ্ছেদের অধনি উচ্চতর গ্রেড প্রাপ্য হই০েন না।

From the plain reading it is manifested that there is no ambiguity in the said para 7 to understand but the Ministry of Finance sought for clarification and opinion of the Comptroller General of Accounts in respect of the provisions of 7(1) and 11(1) of the pay order of 2015 and the CGA office vide letter dated 30.05.2016 categorically opined that “higher scale” would mean “next higher scale” of the existing scale while extending the benefits of 7(1)(2) of the Pay Order of 2015 are as follows:

মতামত (অতিরিক্ত মহা হিসাব নিয়ন্ত্রক)

প্রশাসনিক পূর্ণমঞ্জুরীর প্রয়োজন নাই। তবে সংশ্লিষ্ট কর্মচারীর চাকরি সন্তোষজনক মর্মে প্রশাসনিক কর্তৃপক্ষের নিকট হতে প্রত্যয়ন প্রয়োজন।

(ক) চলমান গ্রেড স্কেলের পরৗর্তি উচ্চতর গ্রেডস্কেল োঝাোে। তবে ০১.০৭.২০১৫ তারিখের পূর্ের েকেয়া প্রাপ্য হেন না।

এ ক্ষেত্রে একই চাকুরীতে োগদানের তারিখ া সংশ্লিষ্ট পদোন্নতির তারিখ হতে ১০ োছর পূর্তির পরৗর্তী দিেসে ১ম উচ্চতর গ্রেড ং পদোন্নতি না হলে ঐ একই পদে পরৗর্তী ৬ োছর পূর্তির পরৗর্তী দিেসে ১ম উচ্চতর গ্রেড প্রাপ্য হে তবে ০১.০৭.২০১৫ তারিখের পূর্ের েকেয়া প্রাপ্য হেন না। ১০ োছর পূর্তির পরের দিন ১টি ং পরৗর্তী ৬ োছর পূর্তির পরের দিন ১টি উচ্চতর গ্রেড প্রাপ্য হে। তবে ০১.০৭.২০১৫ তারিখের পূর্ের েকেয়া প্রাপ্য হেন না।

উচ্চতর গ্রেড প্রাপ্তির ক্ষেত্রে সকল কর্মচারী (কর্মকর্তা/কর্মচারী) নিম্ন গ্রেডে প্রাপ্ত েতনের ধাপ উচ্চতর গ্রেডে থাকলে ঐ ধাপে, না াড়লে পরৗর্তী উচ্চতর ধাপে মিলানোর পর আরো ১টি ইনক্রিমেন্ট দিয়ে েতন নির্ধারিত হে।

After this clarification respondent No.5 further issued the impugned Circular (Annexure-D) by way imposing restriction upon the benefits of the petitioners as provided in the said Pay Scale, in the name and style of clarification and then one B.M. Sanaul Huq challenged the said circular through Writ Petition No. 1483 of 2019 before the Hon'ble High Court Division where the Court held that:

“16. The lexical meaning of "clarification" is the action of making a statement or situation less confused and more comprehensible. It does not imply to make any change or amendment in the original situation by means of substitution of a newer one. The object of granting up gradation as provided in paragraph 7 of the Pay Order, 2015 is to improve and inspire the efficiency of those employees working in the same post without promotion for scarcity of vacancy. But the impugned circular by way of imposing restriction on such benefit has virtually impeded the generous policy of up gradation. The impugned circular, therefore, appears to us to be not

commensurate with but in clear conflict with the provisions of paragraphs 7 (1) and 7(2) of the instant Pay Order. No circular can surpass the express provision of original law under the color of clarification in derogation of the right of the incumbent. Clarification cannot exceed the scope of a given legal institution or its meaning which has happened in the case at issue. It is quite relevant to refer here that the Pay Order 2015, as per paragraph 1(2) thereof, stood effected on 01.07.2015 but meanwhile the petitioner has completed his required service duration of 10-6-16 years ending on 06.01.2006 and 06.01.2012 respectively and thereby his right to receive the higher grades as above has accrued in his favour on the very date of the Pay Order having taken effect on 01.07.2015. But the impugned circular mandates that the benefits provided under paragraphs 7(1) and 7(2) shall not be payable before 15.12.2015. Respondent No. 5 does not

have any such authority to substitute a new provision in place of the original one. But paragraph 35(2) of the Pay Order, 2015, clearly states that notwithstanding the repeal of the "চাকরি (পেতন ও ভাতাদি) আদেশ, ২০০৯" under subparagraph (1), the provisions relating to allowances and facilities of the said Order, 2009 and the notifications, orders, office memorandum and circulars relating thereto, shall be deemed to remain in force subject to the consistency with the allowances and facilities under this Order. As already stated that rights already accrued in favour of a person under any legal authority/law are incapable of being subjected to any abrogation or derogation under any device of modification, rectification, clarification or interpretation. The impugned circular, in our view, is no doubt a derogatory one ultimately resulting in the taking away of petitioners legally created right and those of many others of equal footing."

However, the alleged matter afterward stirred before the Hon'ble Appellate Division Civil Petition for Leave to Appeal Nos. 23-24 and 55-56 of 2020 after hearing was pleased to dispose of with modification holding that:

“Accordingly, the operating part of the impugned judgments and orders dated 04.01.2017 and 04.12.2017 respectively passed by the High Court Division in Writ Petition Nos.13300 of 2016 and 10912 of 2017 so modified thus stand as under: "In the result, the Rule is made absolute in part without any order as to costs. Clause (ga) as contained in the impugned Paripatra being Circular No.07.00.0000.161.00. 002.16 (Part-1)-232 dated 21.09.2016 issued by the respondent No.3 (Annexure-c) is hereby declared to have been issued without lawful authority and is, of no legal effect as being ultra vires the Constitution.”

In the light of the above decisions, the case in our hand has got the same footing. Thus, the petitioners and others have to place their grievances through many writ petitions. In this connection, it is mentionable that our Apex Court in Government of Bangladesh and

others -Vs- Md. Mosharraf Hossain, reported in 64 DLR (AD)-21 held that:

“The moment of High Court Division passed judgment and order, it became the law of the land in view of the provisions of Article 111 of the Constitution unless the same was modification/set aside or operation of the same was stayed. ---19”

Having the force of those decisions of the Supreme Court of Bangladesh, the respondents are yet reluctant to redress the grievances of the petitioners. In this gaze it is worthwhile to mention that the Hon’ble Appellate Division of the Supreme Court of Bangladesh held in **Nurunnabi Bhuiyan (Md) and others Vs. Md. Abdullah Al Masud Chowdhury, 77 DLR (AD) 32** that-

“It indeed baffles us when we see that the contemnor-respondents after receiving the decision of the highest judiciary of the country slept over the matter without implementing the

same. They showed very much reluctance to comply with the order of this Court until initiating contempt proceeding against them. This trend can never be accepted. ---14."

Considering the aforementioned facts and circumstances, submissions and annexed documents as well as proposition of law, we are of the view that any circular for clarification cannot bypass the spirit of the parent law, and consequently, the impugned circular so far as it relates to Clause (ga) as contained in the impugned Paripatra being Circular No.07.00.0000.161.00. 002.16 (Part-1)-232 dated 21.09.2016 issued by the respondent No.5 (Annexure-D) has got no force in the eye of law, which is already declared *ultra vires* to the Constitution by our Apex Court, and now the respondents are under obligation to follow the decisions of the Supreme Court of Bangladesh in respect of the matter in our hand as *in rem*. Accordingly, there is no need to declare the impugned circular as *ultra vires* to the constitution in the instant case, because the main grievance part of the said circular has got no existence in the legal domain. The petitioners are entitled to get their benefits as per the Pay Order, 2015.

Thus the Rule is disposed of as per above observation and directions.

There is no order as to cost.

Communicate this order to the concerned respondents forthwith.

(Abdur Rahman, J)

K.M. Hafizul Alam, J:

I agree.