

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

WRIT PETITION NO. 2548 OF 2017

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. Rezaul Islam and others

... Petitioners

-VERSUS-

Govt. of Bangladesh and others

... Respondents

Mr. B.M. Elias with

Mr. Mahdin Choudhury, Advocates

... for the Petitioner

Mr. Moyeen Alam Firozee, with

Mr. Muhammad Rafiul Islam, Advocates

... for the Respondent No. 4

Mr. Mohammad Hossain, Advocate

... for the Respondent Nos. 8-28

Heard on: 15.07.2018, 23.07.2018

& 02.08.2018

Judgment on: 13.08.2018

Present:

Ms. Justice Naima Haider

&

Mr. Justice Khizir Ahmed Choudhury

Naima Haider, J ;

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

*Let a Rule Nisi be issued calling upon the respondents
 to show cause as to why the amended Bangladesh Road
 Transport Authority (Officers and Staffs) Recruitment Rules,
 1992 published in the gazette notification dated 09.05.2016*

(Annexure-E) shall not be declared ultra vires to the Constitution so far as it relates to the petitioners and is of no legal effect and/ or such other or further order or orders passed as to this Court may seem fit and proper.

The instant writ petition is elaborately drafted with certain information which are not strictly relevant to the disposal of the instant Rule. Therefore, we are not inclined to set out elaborate facts.

The petitioners are law abiding citizens of Bangladesh. They are second class officers working for Bangladesh Road Transport Authority as Motor Vehicle Inspectors, carrying out responsibilities set out under the Motor Vehicle Ordinance 1983 (“1983 Ordinance”) and the Motor Vehicles Rules 1984. Bangladesh Road Transport Authority was established under Section 2(A) (1) of the 1983 Ordinance through SRO No. 303-Law/87. The petitioners were appointed to carry out the functions relating to, among others, registration of motor vehicles, providing driving licence etc. The petitioners who were directly appointed had the requisite qualifications as set out in the schedule of বাংলাদেশ রোড ট্রান্সপোর্ট অথরিটি (কর্মকর্তা ও কর্মচারী) নিয়োগ বিধিমালা- ১৯৯২ being “সরাসরি নিয়োগের ক্ষেত্রে বাংলাদেশ কারিগরী শিক্ষা বোর্ড কর্তৃক অনুমোদিত অটোমোবাইলস/পাওয়ার টেকনোসজিতে ০৩(তিন) বৎসর মেয়াদী ডিপ্লোমা অথবা উহার সমমানের ডিপ্লোমা পরীক্ষায় উত্তীর্ণ এবং তৎসহ অন্যান্য ০৩ (তিন) বৎসরের চাকুরী” (emphasis added)

The main grievance of the petitioners are as follows: In the বাংলাদেশ রোড ট্রান্সপোর্ট অথরিটি (কর্মকর্তা ও কর্মচারী) নিয়োগ বিধিমালা- ১৯৯২ the petitioners were placed in serial No.11. Revenue Officer was in serial No. 10 while প্রধান সহকারী was in serial No. 12. There was no post of Assistant Revenue

Officers. By the impugned amendment, a new post was created and the petitioners were allocated serial No.31 while the Assistant Revenue Officers were allocated serial No. 30 but the post of প্রধান সহকারী remained immediately below the petitioners, as was before. According to the petitioners, the respondents by placing Assistant Revenue Officers to a post higher than that of the petitioners committed illegality which should be remedied by this Division. It was further submitted that by the impugned amendment, the eligibility criteria for promotion was also changed. According to the learned Counsel, such amendments are not binding on the petitioners as they have been appointed and/or been rendering services under the original বাংলাদেশ রোড ট্রান্সপোর্ট অথরিটি (কর্মকর্তা ও কর্মচারী) নিয়োগ বিধিমালা-১৯৯২. The petitioners are also aggrieved by the order issued by the respondents allowing User ID, password and approval panel to the Assistant Revenue Officers in the computerized system of BRTA on experimental basis. According to the petitioners, this is contradictory to the provisions of the Motor Vehicle Ordinance 1983 and the Rules framed thereunder. The petitioners also contend that given the nature of the job, it is necessary to have the eligibility criteria set out the schedule of reproduced above; however by the impugned amendment the eligibility criteria was modified and the requirement of practical work experience had been omitted.

Assistant Revenue Officers filed an Application for Addition of Party. This Division, allowed the said application and added the Assistant Revenue Officers as respondent Nos.8-28 in the instant writ petition since they were necessary and proper parties to the proceedings.

The Rule was opposed. Two separate Affidavits in Opposition were filed by respondent No.4 and respondent Nos. 8-28. The learned Counsel appearing for the respondent No.4-Bangladesh Road Transport Authority, takes us through the Affidavit in Opposition and submits that the petitioners and Assistant Revenue Officers are holding equivalent posts and holding the same status having similar pay scales. The learned Counsel submits that the amendment to the বাংলাদেশ রোড ট্রান্সপোর্ট অথরিটি (কর্মকর্তা ও কর্মচারী) নিয়োগ বিধিমালা- ১৯৯২ does not, in any way curtail the rights and privileges of the petitioners and therefore, the instant writ petition is misconceived. The relevant part of the Affidavit in Opposition is reproduced for ease of reference “... *It is stated by this respondent that the posts of Motor Vehicle Inspectors and the Assistant Revenue Officers are equivalent posts; holding same status and their pay scale are similar. It is further stated that an amended gazette notification of Bangladesh Road Transport Authority (Officers and Staffs) Recruitment Rules 1992 was published on 09.05.2016 wherein the post of the petitioners are placing in serial No.31 immediately below the post of Assistant Revenue Officers (Serial No. 30) as the petitioners and the Assistant Revenue Officers are holding equivalent posts of second class officers, same status and having same pay scale and, as such, the post of the petitioners could not be placed in the serial No. 30 with the posts of Assistant Revenue Officers and hence, the same was placed in serial No. 31, the rights and privileges of the petitioners granted by the original recruitment Rules neither curtailed nor prevented...*”. The learned Counsel further submits that the respondents adopted a resolution and decided to create user ID and password for Assistant Revenue Officers of BRTA so that they can report to the

authority properly. The learned Counsel further submits that the amendment, impugned by the petitioners, have been made following due process of law and the amendment was to ensure that the authority can operate properly and therefore, there is nothing wrong with the amendments, as alleged or at all. On these counts, the learned Counsel submits that the instant Rule should be discharged.

The learned Counsel appearing for respondent Nos. 8-28 takes us through the Affidavit in Opposition and makes elaborate submissions, especially by reference to paragraph No.10, on the allocation of business of the Assistant Revenue Officers and the Motor Vehicle Inspectors. According to the learned Counsel, the functions of the posts are different and therefore, no illegality was committed by the respondent-BRTA in issuing the impugned amended Rules. The learned Counsel further submits that if a new post is created, there is no requirement that the new post must be placed in accordance with the Government GO. He further refers to the organogram of the respondent -BRTA to show that the reporting lines of Assistant Revenue Officers and Motor Vehicle Inspectors are different; consequentially, it was necessary to place them in different serials. He further submits that it was necessary that the added respondents be provided with the pass words and IDs so that they can perform their functions properly. The learned Counsel also submits that the petitioners have failed to show how the impugned amendment is illegal and therefore, on this, among other counts, he submits that the instant Rule should be discharged. It is to be mentioned that the learned Counsel for the added respondents did not take any stance different from that taken by the respondent No.4-BRTA.

We have heard the learned Counsels for the petitioners and the respondents. We have also perused the writ petition and the Affidavits in Opposition and the documents annexed therein.

At the outset, we would like to point out that this Division has certain limitations in exercising its powers under Article 102 of the Constitution. This Division, in exercise of powers under the Constitution, should not interfere with the internal affairs of an executive authority. By this, we mean that this Division should be reluctant to interfere with allocation of functions within an executive authority, unless, the allocation of functions is illegal or manifestly arbitrary or is such that the same could be regarded as “absurd”. In the instant case, the post of Assistant Revenue Officers was created by the impugned amendment and the officers were assigned certain duties. We are not inclined to interfere on whether the allocation was proper as the learned Counsel for the petitioner could not show any of the exceptional circumstances which would justify our interference.

We have taken a note that the respondent No.4, through affidavit confirmed that the posts of Assistant Revenue Officers and the Motor Vehicle Inspectors stand on the same footing, for all material purposes. Since both cannot be placed under the same serial, both the posts had to be under two separate serials. We are not fully convinced with this argument. By the impugned Gazette Notification dated 09.05.2016, certain amendments were made to বাংলাদেশ রোড ট্রান্সপোর্ট অথরিটি (কর্মকর্তা ও কর্মচারী) নিয়োগ বিধিমালা- ১৯৯২. The Schedule to the বাংলাদেশ রোড ট্রান্সপোর্ট অথরিটি (কর্মকর্তা ও কর্মচারী) নিয়োগ বিধিমালা- ১৯৯২ was substituted. We note a pattern of hierarchy

in the Schedule. For instance, Directors appears above the Deputy Directors and the Deputy Directors appear above the Assistant Directors etc. By that analogy, Assistant Revenue Officers have higher standing than that of the petitioners.

To understand whether the submissions advanced by the learned Counsel for the respondent No.4 has any merit, we had perused the Warrant of Precedence (Revised up to December 2003) as an aid to our interpretation. The Warrant of Precedence sets out the hierarchy. For instance the Hon'ble President is ranked No.1 and the Hon'ble Prime Minister is ranked No.2. However, when different persons have same status, their designations are set out in the same serial. Under the Warrant of Precedence, Cabinet Minister, Deputy Speaker of the Parliament, Leader of the Opposition have the same rank. All of them rank under the same serial being serial No. 5. Likewise, Election Commissioners and the Judges of the Supreme Court (High Court Division) rank equally and are placed under serial No.9. Thus, when within a Authority, there are different posts ranking similar in all respects, these posts should be placed in the organogram under the same serial.

Even if we take the argument of the learned Counsel for the respondents that the petitioners and Assistant Revenue Officers rank the same in all aspects, in our view, they should have been in the same serial. It was wrong to create a separate serial, one for the petitioners and one for Assistant Revenue Officers who, according to the respondent No.4 are ranked equally. The different ranking creates confusion and most certainly, gives a wrong impression about the hierarchy. That being the position, relying on the submissions advanced by the learned Counsel for respondent

No.4, we are inclined to hold that a direction should be passed by this Division to place both the petitioners and the Assistant Revenue Officers under the same serial. Consequentially, the respondents should be directed to take steps in this regard.

Now, let us examine the nature of the two posts. The post of Assistant Revenue Officers have been recently created while the post of the petitioners were in the original schedule to বাংলাদেশ রোড ট্রান্সপোর্ট অথরিটি (কর্মকর্তা ও কর্মচারী) নিয়োগ বিধিমালা- ১৯৯২.

In the বাংলাদেশ রোড ট্রান্সপোর্ট অথরিটি (কর্মকর্তা ও কর্মচারী) নিয়োগ বিধিমালা- ১৯৯২ the petitioners were placed in serial No.11. Revenue Officer was in serial No. 10 while প্রধান সহকারী was in serial No. 12. There was no post of Assistant Revenue Officers. By the impugned amendment, a new post was created and the petitioners were allocated serial No.31 while the Assistant Revenue Officers were allocated serial No. 30 but the post of প্রধান সহকারী remained immediately below the petitioners, as was before.

Under the original Schedule, প্রধান সহকারী was promoted to Revenue Officer. However, under the impugned amended Schedule, প্রধান সহকারী is promoted to Assistant Revenue Officer. If under the old schedule, which regulated the terms and conditions of service of the petitioners, Revenue Officers were immediately above the post of the petitioners, in our view, the post of Assistant Revenue Officers cannot be regarded as superior to that of Motor Vehicle Inspectors.

Therefore, we are of the view that the petitioners should be placed before the Assistant Revenue Officers while placing both the petitioners

and the Assistant Revenue Officers under the same serial in light of our observation above.

Before we part with the judgment, we would also like to point out that the terms of service of the petitioners were regulated under the provisions of the previous বাংলাদেশ রোড ট্রান্সপোর্ট অথরিটি (কর্মকর্তা ও কর্মচারী) নিয়োগ বিধিমালা- ১৯৯২. The impugned amendments made certain changes to the eligibility criteria for promotion. Since the petitioners were rendering the services under the provisions of the original বাংলাদেশ রোড ট্রান্সপোর্ট অথরিটি (কর্মকর্তা ও কর্মচারী) নিয়োগ বিধিমালা- ১৯৯২, the impugned amendments would not be applicable in respect of the petitioners.

We would also like to point out that the nature of petitioners' job requires specialized skills and it seems desirable and proper that a candidate for the post of Motor Vehicle Inspectors have both requisite educational practical work experience. Therefore, the impugned amendment which no longer requires practical work experience for direct appointment to the post of Motor Vehicle Inspectors is erroneous. We are of the view that the respondents should take steps to ensure that work experience of 03(three) years (তৎসহ অন্যান্য ০৩ (তিন) বৎসরের চাকুরী) is also made mandatory for direct appointment as was originally required.

In light of the aforesaid discussions, we are inclined to dispose of the instant writ petition with the following direction and observation:

- (a) The respondents are directed to place the petitioners and the Assistant Revenue Officers under the same serial in the amended Schedule and in doing so, the respondents are further directed to ensure that Motor Vehicle Inspectors are placed above the Assistant Revenue Officers;

- (b) The respondents should take steps to ensure that work experience of 03(three) years (তৎসহ অন্যান্য ০৩ (তিন) বৎসরের চাকুরী) is also made mandatory for direct appointment of Motor Vehicle Inspectors as was originally required;
- (c) The provisions of the amended বাংলাদেশ রোড ট্রান্সপোর্ট অথরিটি (কর্মকর্তা ও কর্মচারী) নিয়োগ বিধিমালা- ১৯৯২ particularly the part of the Schedule which deals with the eligibility criteria for promotion shall not be applicable in case of the petitioners since the petitioners had been appointed and/or rendering service under the provisions of the original বাংলাদেশ রোড ট্রান্সপোর্ট অথরিটি (কর্মকর্তা ও কর্মচারী) নিয়োগ বিধিমালা- ১৯৯২.

Communicate the Judgment and Order at once for immediate compliance.

Khizir Ahmed Choudhury, J;

I agree.