

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

**Writ Petition No. 4486 of 2017**

**with**

**Writ Petition No. 12230 of 2017**

**with**

**Writ Petition No.11737 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 :**

Khandaker Razib and others

..... Petitioners  
in W.P. No.4486/2017

Sheikh Faruk Ahmed and others

..... Petitioners  
in W.P. No.12230/2017

Shibli Ahmed and others

..... Petitioners  
in W.P. No.11737/2017

-Versus-

Government of the Peoples Republic of Bangladesh ,  
Represented by the Secretary, Ministry of Water  
Resources, Bangladesh Secretariat, Ramna, Dhaka-1000  
and others

.....Respondents  
in all the writ petitions

Mr. Sk. Md. Morshed, with

Mr. Md. Akbar Hossain, Advocates

.....for the petitioners  
in W.P. nos. 4486/2017

Mr. A.B.M. Waliur Rahman Khan, with

Mr. Md. Akbar Hossain, Advocates

.....for the petitioners  
in W.P. nos. 12230/2017

Mr. Sk. Md. Morshed, with

Mr. Shahjada Al Amin Kabir, Advocates

.....for the petitioners  
in W.P. no. 11737/2017

Mr. Murad Reza, with

Mr. S.K. Shafiuzzaman, Advocates

.....for the respondent Nos. 2-5  
in all the writ petitions

**Heard on : 23.07.2018 & 06.08.2018**

**Judgment on : 14.08.2018**

**Present:**

**Ms. Justice Naima Haider  
&  
Mr. Justice Khizir Ahmed Choudhury**

**Naima Haider, J;**

As identical questions of fact and law are involved in these writ petitions, they were taken up together for hearing and are being disposed of by this single judgment.

In these applications under Article 102 of the Constitution of the People's Republic of Bangladesh, Rules were issued under the following terms:

Let a Rule Nisi be issued calling upon the respondents to show cause as to why a direction should not be given upon the respondents to absorb the petitioners in the vacant posts of the Dredger Department of Bangladesh Water Development Board and make their job permanent and/or pass such other or further order or orders passed as to this Court may seem fit and proper.

The petitioners' case, as set out in the writ petition, in brief, is as follows:

The petitioners are temporary employees of the Bangladesh Water Development Board, Dredger Department. They have been working in various posts from 1997 and have acquired experience for more than 15 years and the authority concerned have assured them to absorb in the regular setup. The petitioners have been working with high hope and expectation that they would be regularized under the regular revenue setup but till date, the respondents have not absorbed/regularized the petitioners

under the regular setup rather the authority concerned on different dates had advertised for appointment in the vacant posts.

After publication of the said advertisements, the Additional Chief Engineer sent an official letter with recommendation to Chief Engineering Department for giving opportunity to submit application for 322 irregular employees but the authority concerned without absorbing them had advertised in the newspaper for taking new employees.

Finding no other efficacious remedy, the petitioners have moved this Court and obtained the instant Rule Nisi.

The Respondent Nos.2-5 have entered appearance by filing affidavit in opposition. The case of Respondent Nos.2-5, in short is that : The petitioners were employed on daily basis through contractor as out sourcing employees and thus they will not fall within the meaning of development project defined in the section 2(ka) of the “উন্নয়ন প্রকল্প হইতে রাজস্ব বাজেটে স্থানান্তরিত পদের পদধারীদের নিয়মিতকরণ ও জ্যেষ্ঠতা নির্ধারণ বিধিমালা, ২০০৫” and as such they are not entitled to be absorbed in the revenue setup on the ground of legitimate expectation.

The further case of the respondent Nos.2-5 is that the Bangladesh Water Development Board is an autonomous body and its employees are guided by their own service rules i.e., Bangladesh Water Development Board Employees’ Service Rules, 2013 and in presence of the rules for recruitment none of the writ petitioners can claim as of right to be absorbed since they were not regular employees of the authority of the Dredger Directorate. The petitioners were appointed by the contractors and their wages were also paid through the particular contractors and they were not

given any hope or promise that they will be absorbed or engaged on a permanent basis.

Mr. Sk. Md. Morshed, learned Advocate appearing with learned Advocate Mr. A.B.M. Waliur Rahman on behalf of the petitioners submits that the petitioners served golden years of their lives in the service and none of them has any scope to apply for a fresh government job due to age. A legitimate expectation has accrued in the minds of the petitioners that they would be transferred to the revenue set up with continuity of service. Mr. Morshed further contends that in the similar circumstances of facts, a number of writ petitions were filed and those writ petitioners were absorbed. He next submits that the present petitioners stand exactly on the same footing and have filed the instant case. In such scenario, the respondents are legally obliged to treat the petitioners similarly situated by absorbing them under revenue budget.

Mr. Murad Reza, learned Advocate appearing on behalf of the respondent nos.2-5 submits that the petitioners cannot be termed as a worker under the meaning of Surplus Public Servant's Absorption Ordinance, 1985 (Ordinance No.XXIV of 1985), rather they have been working through outsourcing suppliers by the different contractors, and are therefore not entitled to be absorbed. Mr. Reza further submits that the Dredger Directorate is an important government organization under the Bangladesh Water Development Board and in order to run the Directorate, the authority had taken a decision for appointing the new labours in order to fill the vacant posts who were provided by the contractor on a daily basis. These Writ Petitioners were categorically told that they were not appointed by the authority of the Dredger Directorate and were also not

regular employees of the authority of the Dredger Directorate. They were paid their wages through the particular contractors. Mr. Reza further contends that it was not known to the Dredger Directorate as to who will be provided by the contractor which was absolutely under the control of the contractor. The writ petitioners were engaged by the different contractors and were not promised by the board authority as contended by the learned Advocate for the petitioners to be absorbed in the revenue set up. Mr. Reza lastly submits that the writ petition being No.10541 of 2011 in which the Rule was made absolute and direction was given to concern authority to absorb them was stayed by the Appellate Division.

We have considered the submissions of the learned Advocates for the respective parties, perused the writ petitions its annexures, affidavit in opposition filed by the respondent Nos.2-5 and other materials on record placed before us.

The point to be addressed for consideration in this writ petition is whether these writ petitioners have accrued a right to be absorbed on the basis of working for a substantial period of time.

On perusal of the record it appears that these writ petitioners have been working under different contractors for rendering services to the authority concern as outsource workers.

The concept of "Outsourcing" is a not something new. Labour services and the professional services may be procured through outsourcing. In India, this process has been going on and is a process by which the recipient of service enters into a specific agreement with a contractor / service provider who engages these persons to render services

to the service recipient. In such a situation, there is no employment contract between the service recipient and the service renderer. The contract only exists between the service recipient and the contractor and consideration for the service are provided by the service recipient or the contractor, as the case may be. It is also to be noted here that if the service recipient is not satisfied with the service rendered by the persons who are engaged by the contractor then his particularly remedy lies for breach of the terms and conditions of the agreement against the contractor and not by invoking the writ jurisdiction under Article 102 of the Constitution for regularization of their services with the authority concerned. Likewise, if the contractor does not receive adequate consideration for providing his service through his appointed employees, his remedy also lies against the service recipient. The service recipient is generally not concerned who renders the service to him as long as the services sought is rendered adequately. As can be reasonably expected, the service recipient may set certain criteria and conditions to be observed by the service renderer and he has a discretion to reject any person through whom the service is provided by the contractor; but in such cases the matter is governed by the contract between the service recipient and contractor. It is a contract of services as opposed to a contract of employment.

In an unreported decision in Writ Petition No.7068 of 2011 in **Sharmeen Annie vs. First Labour Court, Dhaka and another** it has been held :

*“To be an employee one has to be in the employer’s pay roll and subject to the letter’s control on questions of employment. There has to be a contract of employment inter se, containing terms of employment. Nothing like that is*

*present in the file before us. It transpires, the respondent No.2 is indeed an employee of an independent contractor named TEAM Services. The contractual relationship is between the petitioner and TEAM Services, the respondent No. 2 is not a privy to it. So, he has no cause of action against the petitioner.”*

Reliance was placed before us by Mr. Murad Reza on the case of **Chief Engineer, The Local Government & Engineering Department & ors vs. Kazi Mizanur Rahman and others** reported in 17 BLC (AD) 91. The contention of Mr.Reza is that the plea taken by these petitioners on the doctrine of legitimate expectation that they have accrued right to be absorbed by working for a substantial period of time does not hold good. While submitting, Mr. Reza draws attention of this Court and submits that merely because the time of service of a temporary employee or a casual wage worker is continued for a time beyond the term of this appointment, he would not be entitled to be absorbed in regular service or made permanent only on the strength of such continuation, if the original appointment was not made by following a due process of selection.

Mr. Reza further submits that the employee and officers who have been working in respect of these projects will be eligible for consideration for absorption in the revenue set up but since in this case these petitioners have been working under the contractors the question of absorption does not arise at all and he further adds that no promise was ever given by the authority concerned.

We further note that it is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointments do not acquire any right. This Court sitting in

writ jurisdiction should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly. The Courts must be careful in ensuring that they do not interfere unduly with the economic instrumentalities or send themselves the instruments to facilitate bypassing the constitutional and statutory mandates.

We find force in the submission of Mr. Reza that it is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointments do not acquire any right.

In earlier writ petitioner, writ petition being No.10541 of 2011, some facts relating to out sourcing of employees were not placed before this Court and we cannot be oblivious of the fact these petitioners are mere workers through outsource supplier by the contractors.

Reliance is placed by on the case of *Karnaphuli Paper Mills Workers Union vs. Karnaphuli Paper Mills Ltd. Employees Union and another* reported in 2ADC (AD) 300, that the terms of employment must establish a relationship of a master and servant or employer and employee between the person employed and the establishment and it is not that a person is working in the premises of a certain establishment for a longer period of time.

It also cannot be said that so-called casual labourers supplied by the contractors are the real employees of the contractors over whom they have absolute control and supervision. They receive payment from the contractors. They are in the payroll of the contractors which is separately



and independently maintained by the contractors themselves. Their attendance sheet is maintained by the contractors who are responsible for their discipline. They are hired and fired by the contractors on their own terms and conditions over which the authority has no control at all. The contractors are also liable to compensate the authority for any loss suffered by it for the negligence, carelessness or wilful default of the workers. There is thus no contract of service between the petitioners and respondents. So these labourers cannot be termed as the workers of authority.

Against this backdrop and the discussions made hereinbefore, we do not find any merit.

The Rules being devoid of any merit are bound to fail.

In the result, the Rules are discharged.

No order as to costs.

**Khizir Ahmed Choudhury, J;**

***I agree***