

IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(SPECIAL ORIGINAL JURISDICTION)

PRESENT:

Mr. Justice K.M. Hafizul Alam

And

Mr. Justice Abdur Rahman

WRIT PETITION NO. 5037 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. Saif Ullah and others

.... Petitioners

-versus-

Bangladesh, represented by the Secretary, Ministry of
Finance, Bangladesh Secretariat, and others

.... Respondents

Mr. Mohammad Najmul Huda, Advocate

... for the petitioners

Mr. Md. Faruk Hossein, Advocate

...for the respondent No.4.

Date of Hearing: 08.02.2026 and 22.02.2026

Date of Judgment: 02.03.2026, Monday; 17
Falgun, 1432 B.S.

Abdur Rahman, J:

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

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the discriminatory letter issued vide Memo No. 07.162.000.01.05.18.2010-200, dated 30.10.2011 by the Ministry of Finance i.e. the respondent No. 1 under the signature of a Deputy Secretary of Finance Division wherein it has been stated that the letter under Memo No. 07.161.000.00.00.021.2010-373, dated 25.11.2010 are only applicable for fixation of pay scale for the Steno Typist cum Computer Operator working in Ministries/Departments, but the said memo dated 25.11.2010 are not applicable to those who are working in Divisions, Districts and Upazilas in the similar post (Annexure-F) should not be declared to have been issued without lawful authority and is of no legal effect, and further as to why the respondents should not be directed to allow the petitioners to be treated as per by enjoying all services benefits in accordance with the fixation which was

done as per the Memo being No. 07.61.000.00.00.021.2010-373, dated 25.11.2010 (Annexure-C) what they are required by law to do and/or pass such other or further order or orders as to this Court may seem fit and proper.”

In the same sitting, this Division also stayed the operation of the letter issued under the Memo No. 07.162.000.01.05.18.2010-200, dated 30.10.2011, for a period of 6 (six) months (which has been extended later on), along with a direction upon the respondents to pay the petitioners all service benefits in accordance with the fixation which was done as per the Memo being No. 07.61.000.00.00.021.2010-373, dated 25.11.2010, as per contents of Annexure-C.

This is how the matter has been placed before us for proper adjudication of the merit of the Rule Nisi.

The magnetic facts leading to the issuance of this Rule Nisi in brief are that: all the writ petitioners (including added petitioners) were appointed in the post of Steno Typists and other co-equal posts vide different memos of the Government in their

respective service holding the status of permanent position, and thereafter the Ministry of Public Administration, i.e., respondent No.2 vide memo No. সম (সগব্য)-০১/২০০৯-১৭৩, তারিখ: ২৮ জুন, ২০০৯ wherein the posts of the petitioners were renamed from "Steno Typist" to "Steno Typist cum Computer Operator" and the said memo was circulated in all the ministries, departments, and other concerned offices. The Ministry of Finance, the respondent No. 1, issued a letter vide memo No. 07.161.000.00.021.2010-373, dated 25.11.2010, under the signature of a Joint Secretary of the Finance Division, wherein the pay scales of the petitioners were re-fixed, and the said letter was circulated amongst the ministries and concerned departments for necessary action. In compliance with the circular vide memo No. 07.161.000.00.021.2010-373 dated 25.11.2010, another circular was published by the Office of the Comptroller and Auditor General of Bangladesh, i.e., respondent No. 3, vide a letter under memo No. সিডিএ/পদ্ধতি-১/ পৃষ্ঠাংকন/০২-০৩/ ৪১৭ (খন্ড-১)/ ৩১৬৬, তারিখ- ০৩/০২/২০১১, wherein the government has re-fixed the pay scale of the Steno Typist cum Computer Operators i.e. the posts of the petitioners and others of similar posts in all Audits and Accounts Offices in the Division of Dhaka/ Chittagong/Rajshahi/ Khulna/ Barisal/ Sylhet; the respondent No.3 also ordered to

circulate the said letter to other offices subordinate to him. In the meantime, the petitioners have been enjoying the aforesaid benefits by way of fixation, which the respondents and other concerned departments have approved. They have completed their fixation in accordance with the memo No. 07.161.000.00.00.021.2010-373 dated 25.11.2010 and the guidelines of their higher authorities, on different dates in 2011. They have also been given a new pay scale and other financial benefits as per the Pay Scale of 2015. They have done their fixation as per the new pay scale of 2015 on different dates in 2016. At this juncture, while the petitioners have been enjoying their pay scale and service benefits as per the memo dated 25.11.2010 all on a sudden the impugned letter has been issued vide memo being No. 07.162.000.01.05.18.2010-200, dated 30.10.2011 by the Ministry of Finance i.e. respondent No.1 under the signature of a Deputy Secretary of Finance Division wherein it has been stated that the memo No. 373, dated 25.11.2010 are only applicable for fixation of pay scale for the Steno Typist cum Computer Operators working in Ministries/ Departments. Therefore, by the letter dated 30.10.2011, the respondents have discriminated against the petitioners and others who are working in Divisions, Districts, and Upazilas in the post of Steno Typist

cum Computer Operators. Being aggrieved by and dissatisfied with the said memo, the petitioners have invoked this jurisdiction.

Conversely, the respondent No.4 made an appearance, filing an affidavit-in-opposition, contending *inter alia* that the admitted facts of the case are that the Petitioners were appointed in the post of 'Steno Typist' and other co-equal posts vide different Memos of the Government. They joined in their respective posts on different dates. On 28.06.2009, the Ministry of Public Administration issued a letter vide Memo No. সম (সওব্য)-০১/২০০৯-১৭৩, তারিখ: ২৮ জুন, ২০০৯ renaming the posts of 'Steno Typist' to 'Steno Typist cum Computer Operator'. Thereafter, on 25.11.2010, the Finance Division of the Ministry of Finance, i.e., the respondent No. 1, issued a circular being Memo No. 07.161.000.00.00.021.2010-373, dated 25.11.2010 re-fixing the pay scale for the post of 'Steno Typist cum Computer Operator working in Ministries/Departments, and the said circular was sent to different ministries and concerned departments for taking necessary action. Since then, the petitioners illegally enjoyed the benefit of Memo No. 07.161.000.00.00.021.2010-373, dated 25.11.2010, keeping the concerned higher authority in a state of misconception &

misunderstanding. On 30.10.2011, the Ministry of Finance, i.e. the respondent No.1 being informed of same issued circular being the Memo No. 07.162.000.01.05.18.2010-200, dated 30.10.2011 stating that the Memo No. 07.161.000.00.00.021.2010-373, dated 25.11.2010 is only applicable for fixation of the pay scale for the post of 'Steno Typist cum Computer Operator' working in the Ministries/Departments and the 'Steno Typist cum Computer Operator of Division, District and Upazilla will not be treated under the pay scale re-fixation of the aforesaid circular. Accordingly, the petitioners with *mala fide* intention took the benefit of the Memo dated 25.11.2010 without having been permitted to take the same, and as such, the Rule is liable to be discharged.

Mr. M. Nazmul Huda, the learned Counsel, appearing for the petitioners exposed us all the documents annexed to the writ petition and submits that the Ministry of Finance i.e. respondent No. 1 has increased the pay scale for the post of 'Steno Typist cum Computer Operators and the same was approved by the concerned authorities; the petitioners have been enjoying those benefits since long and it has been acted upon but the respondents have recently taken some steps to

curtail those benefits which are not permitted by law and hence the circular No. 07.162.000.01.05.18.2010-200 dated 30.10.2011 is liable to be declared to have been issued without lawful authority and is of no legal effect.

He further submitted that the petitioners have got fixation as per memo No. 07.161.000.00.00.021.2010-373, dated 25.11.2010 and they have been enjoying pay scale and service benefit since 2011, but by the memo dated 30.10.2011 their rights have been taken away which is violative of the equality principle guaranteed by Article 27 of the Constitution and as such the memo dated 30.10.2011 is liable to be declared ultra vires to the provisions of constitution.

Learned Counsel for the petitioners also submitted that the memo dated 30.10.2011, the equality of the similarly situated has been taken away by discriminating against those who are working in the same or similar posts, which is also against the principle of natural justice, and therefore, a mandatory direction is necessary declaring the said memo as discriminatory and not binding upon the petitioners and others.

Learned Counsel has earnestly submitted that memo dated 30.10.2011, the employees of same level appointed under the same recruitment rules will get different pay scale which is *ex facie* illegal, arbitrary, *mala fide* and discriminatory in nature which is also violative of Article 29 and 31 of the Constitution of the People's Republic of Bangladesh and therefore, the said memo is necessary to be declared *ultra vires* to the constitution.

Mr. Md. Faruk Hossein, learned Counsel appearing for the respondent No. 4 submitted that the petitioners under misconceived views used the said memo for taken other financial benefits which is *mala fide* in nature and the Government is empowered to issue circular as per rules of business made by Article 55(4) and 55(6) of the Constitution of Bangladesh and as such, no illegality has been done in issuing the circular dated 30.10.2011. He further submitted that issuing a circular and enacting a law are policy decisions and internal affairs of the Government, which cannot be challenged under the periphery of judicial review.

Learned Counsel finally submitted that the service conditions of the employees of the Ministries/Divisions levels do

not apply equally to the petitioners; moreover, the petitioners already got a new Pay Scale, 2015, and they were also given promotion to the next higher posts as per the said Pay Scale; consequently, the instant rule is liable to be discharged.

Learned Deputy Attorney General Mr. J.R. Khan Robin advanced an argument contending that the petitioners, being Government employees, the only forum available to them is the Administrative Tribunal formed under Article 117 of the Constitution of the People's Republic of Bangladesh.

Considering the writ petition, affidavit-in-opposition, and documents annexed thereto, as well as the vibrant submissions of the learned Counsels of both sides, it is admitted that the Government vide *Memo being No. 07.61.000.00.00.021.2010-373, dated 25.11.2010 (Annexure-C)* re-fixating the salary of the petitioners and others as per the Pay-Scale, 2009 and accordingly the petitioners and other employees of the same status got fixation as per the said memo and enjoyed their salary and others service benefits as per the said fixation. Thereafter, it is evident from Annexure-F that the Finance Division of the Ministry of Finance vide the Memo

No. 07.162.000.01.05.18.2010-200, dated 30.10.2011, issued the following circular:

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার

অর্থ বিভাগ, অর্থ মন্ত্রণালয়

বাস্তবায়ন অনুবিভাগ

বাস্তবায়ন শাখা ২

নং - ০৭.১৬২.০০০১.০১.০৫.১৮.২০১০-২০০, তারিখঃ ৩০/১০/২০১১ খ্রিঃ।

বিষয়ঃ মাঠ প্রশাসনে কর্মরত সাঁট-মুদ্রাক্ষরিক-কাম কম্পিউটার অপারেটরদের সচিবালয়ে একই পদে দায়িত্বরত কর্মচারীদের মত বেতনস্কেল প্রদানের আবেদন প্রসঙ্গে।

সূত্রঃ জনপ্রশাসন মন্ত্রণালয়ের ১৮/১০/২০১১ তারিখের

০৫.১২৩.৯৯৯.০০.০০.০০৯.২০০২-৩৬৫ নং স্মারক।

উপর্যুক্ত বিষয় ও সূত্রোক্ত পত্রের প্রেক্ষিতে জানানো যাচ্ছে যে, অর্থ বিভাগের ২৫/১১/২০১০ তারিখের ৩৭৩ অফিস স্মারকে কেবলমাত্র মন্ত্রণালয় / বিভাগ সমূহের সাঁট-মুদ্রাক্ষরিক-কাম কম্পিউটার অপারেটরদের পদের বেতনস্কেল পুনঃ নির্ধারণ করা হয়েছে। বিভাগ, জেলা ও উপজেলা পর্যায়ে অনুরূপ পদে কর্মরতদের উক্তরূপ বেতন পুনঃ নির্ধারণের আওতাভুক্ত করা হয়নি মর্মে নির্দেশক্রমে জানানো হলো।

Upon a careful comparison of **Annexure-C** and **Annexure-F**, it transpires that the Government had earlier vested the petitioners with the said benefit, but subsequently withdrew the same without assigning any lawful justification, thereby creating discrimination amongst employees holding **co-equal status**. Such withdrawal of a benefit once granted is manifestly arbitrary, discriminatory, and devoid of lawful authority. The impugned memo contained in **Annexure-F dated 30.10.2011** has thus been issued in clear violation of the **principles of natural justice**, resulting in hostile discrimination among similarly situated employees and causing serious prejudice to the petitioners. The said action of the respondents is therefore **mala fide in law**, arbitrary and without lawful authority, and is liable to be declared illegal, being in gross violation of the **due process of law guaranteed under Article 31 of the** Constitution of the People's Republic of Bangladesh.

Now, to address the submission advanced by the learned Deputy Attorney General for Bangladesh, the pivotal question that falls for determination is whether the petitioners, being Government employees, are constrained to seek redress

exclusively before the Administrative Tribunal constituted under Article 117 of the Constitution of the People's Republic of Bangladesh, or whether they may legitimately invoke the writ jurisdiction of this Court. In resolving this issue, it is apposite to advert to the law enunciated in the case popularly known as the Santosh Kumar case, wherein the Apex Court authoritatively held that the existence of the Administrative Tribunal does not altogether eclipse the constitutional power of judicial review vested in the High Court Division. The Apex Court also observed that in circumstances involving patent illegality, manifest discrimination, or a palpable violation of law occasioning grave miscarriage of justice, the bar of the Administrative Tribunal cannot operate as an absolute impediment to the exercise of writ jurisdiction. It is manifested that the determination or alteration of pay scale is governed by independent statutory instruments and does not, in its strict sense, fall within the ambit of the terms and conditions of service; rather, its object is to secure equitable financial treatment and to obviate discrimination among employees holding coequal status. Consequently, where the impugned action gives rise to discriminatory treatment or infringes the constitutional

guarantees embodied in Articles 27 and 29 of the Constitution, the extraordinary jurisdiction of this Court under Article 102 may legitimately be invoked. Thus, while ordinary service disputes may ordinarily fall within the exclusive domain of the Administrative Tribunal, issues involving constitutional discrimination and violation of fundamental rights remain amenable to judicial scrutiny under the writ jurisdiction.

However, the learned Counsel for the petitioners provided us with a decision of a Division Bench of the High Court Division of the Supreme Court of Bangladesh comprising their Lordships, Ms. Justice Naima Haider and Mr. Justice Abu Taher Md. Saifur Rahman, in writ petition No.6753 of 2015, held that-

“We note that after upgradation from 14th grade to 13th grade, the petitioners have been serving with the salaries and benefits as per the said upgraded scale, but all on a sudden, the respondent no. I vide an impugned Memo No. ০৭,০০,০০০০,১৬৪,১৭,০০৩,২০১৩-৫৮, dated 29.05.2014, denied to grant the benefit vide office Memo No. ০৭,১৬১,০০০,০০,০২১.২০১০০-৩৭৩, dated

25.11.2010, to the petitioners without assigning any reasons whatsoever. The benefit once given cannot be taken away without any rhyme or reason.”

Thereafter, the respondent of the said writ petition preferred Civil Petition for Leave to Appeal No. 251 of 2019, and the Hon’ble Appellate Division vide judgment and order dated 02.03.2020 dismissed the said Civil Petition for Leave to Appeal as barred by limitation; and hereinafter, the Government also filed Civil Review Petition No. 230 of 2020, which was also dismissed by the Hon’ble Appellate Division as barred by limitation.

The case in our hand profoundly indicates a similar footing merit based on the Memo being No. 07.61.000.00.00.021.2010-373, dated 25.11.2010 (Annexure-C) re-fixating the salary of the petitioners as per the Pay-Scale, 2009, and accordingly, the petitioners and other employees of the same status got fixation as per the said memo and enjoyed their salary and others service benefits as per the said fixation. Conversely, the Memo being No. 07.162.000.01.05.18.2010-200, dated 30.10.2011, issued by the Ministry of Finance, i.e., respondent No.1 under the

signature of a Deputy Secretary of Finance Division, wherein it has been stated that the memo No. 373 dated 25.11.2010 is only applicable for fixation of pay scale for the Steno Typist cum Computer Operators working in Ministries/ Departments, which deliberately, made discriminations against the petitioners and others who are working in Divisions, Districts, and Upazilas in the post of Steno Typist cum Computer Operators and other equal footings.

At this stage, one aspect needs to be noted that the gravamen of laws relating to services is to ensure equal footing and protection among the co-equals, specifically, considering the governing law at the time of joining in the service; or it might be said, the central tenet of service jurisprudence is to uphold equality and ensure protection among employees of equal standing.

From the above scenario, we find merit in the Rule Nisi, and are constrained to hold that the discriminatory letter issued vide Memo No. 07.162.000.01.05.18.2010-200, dated 30.10.2011 (Annexure-F) by the Ministry of Finance i.e. the respondent No. 1 under the signature of a Deputy Secretary of

Finance Division wherein it has been stated that the letter under Memo No. 07.161.000.00.00.021.2010-373, dated 25.11.2010 are only applicable for fixation of pay scale for the Steno Typist cum Computer Operator working in Ministries/Departments, is hereby declared to have been issued without lawful authority and is of no legal effect, and further the respondents are directed to allow the petitioners to be treated as per by enjoying all pay-scale benefits in accordance with the fixation which was done as per the Memo being No. 07.61.000.00.00.021.2010-373, dated 25.11.2010 (Annexure-C).

As a result, the Rule is disposed of with the above observations and directions.

There is no order as to costs.

The order of stay granted earlier by this Court is hereby recalled and vacated.

The office is directed to communicate the judgment and order forthwith.

The Court acknowledges with appreciation the diligent efforts of the learned Counsels representing the respective parties.

(Abdur Rahman, J)

K.M. Hafizul Alam, J:

I agree

(K.M. Hafizul Alam, J)