

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

Writ Petition No. 3214 of 2018

IN THE MATTER OF :

An application under Article 102 of the Constitution
of the People's Republic of Bangladesh.

-And-

IN THE MATTER OF :

Reaj Parvej and others

..... Petitioners

-Versus-

The Government of Bangladesh and others.

..... Respondents

Mr. Md. Salahuddin Dolon with
Ms. Ainun Nahar, Advocates

.....for the petitioners

Mr. Amit Talukder, DAG
Mr. Titus Hillol Rema, AAG
Mr. Taufiq Sajawar, AAG and
Mr. Ashique Rubaiat, A.A.G

...for the respondent No.5

Heard on: 12.08.2018, 30.10.2018, 13.11.2018,

13.01.2019, 20.10.2018

& 29.01.2019.

Judgment on :25.02.2019

Present:

Ms. Justice Naima Haider

&

Mr. Justice Khzir Ahmed Choudhury

Naima Haider, J:

In this application under Article 102 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued calling upon the respondents to show cause as to why they should not be directed to grant the Grade-X Scale to the petitioners and to notify their names in the official gazette as Class-II (Gazetted Officer) Head Teacher of the Government Primary School with effect from 09.03.2014 and why a declaration shall not be made that the Pay

Order of 2015 so far as relates to exclusion of the previous benefits of selection grade and time scale on completion of 4,8 and 12 years service respectively shall not be declared ultra vires the Constitution also not applicable to the petitioners and/ or pass such other or further order or orders as to this Court may seem fit and proper.

The facts necessary for disposal of the Rule, in brief are:

The petitioners had joined on different dates in the Class-II post of Grade –XI & Grade-XII as Head Teacher of Government Primary School under the Ministry of Primary and Mass Education after being selected through the rigorous selection process taken by the Bangladesh Public Service Commission (PSC).

Since their joining in the novel profession of teaching as Head Teacher of the government primary school they have been working with their outmost passion as Nation Builder with the highest level of professionalism. The post of Head Teacher had been upgraded to a Class- II post from Class – III vide gazette notification dated 09.03.2014.

By the memo dated 20.04.2017, Class-III and IV employees of the government enjoy the salary scale in Grade XI and XII respectively therefore though by the gazette notification service of the petitioners have been upgraded in Class-II but their salary was fixed to Grade-XI (Trained) and Grade –XII (Non-Trained) which was one Grade lower than the other similarly situated officers.

The respondents are legally obligated to treat the petitioners at par with the other similarly situated Class-II officers who have been upgraded to Class-II. The Assistant Teachers of Secondary High School under the Ministry of Education and Senior Staff Nurses under the Ministry of Health and Family

Welfare have been enjoying Grade-X Scale under the pay Scale 2009 which was guaranteed to them vide gazette notification No. 37.00.0000.071.04.004.03 (Part)-530 dated 15.05.2012 and gazette notification No. 35.159.015.45.45.03.324.2010-22 dated 16.01.2012 respectively but the petitioners are being denied the same for the malafide reasons.

On 25.05.2015, the respondents had positively admitted that the petitioners should be treated as Class-II gazetted officer being at par with the similarly situated Class-II officers and their names also be published in the official gazette in the same manner but the word gazetted was missed erroneously and imprecisely which has been creating serious difficulties as to their status in service with the other similarly situated officers of Class-II.

Before the 1st July 2015, the petitioners had the scope of getting 1st Selection grade and on completion of 4 years service the 1st and 2nd Time scale on completion of 8 and 12 years service respectively and vide Pay Order of 2015 the benefit of selection grade and time scale were excluded and it was prescribed that on completion of 10 years of service they will get 1(one) higher scale and on completion of 15 years another higher scale thus had the previous provision of time scale and selection grade were not excluded, in the meantime many of the petitioners would have reached in Grade-X.

Being aggrieved by and dissatisfied with the action of the respondents the petitioners have moved this Court and obtained the instant Rule Nisi.

Respondent No.5 has entered appearance by filing affidavit in opposition.

The case of respondent No.5 in short is that: The petitioners are not claim grade X scale as a matter of right under services (Re-organization and condition) Act, 1975. However, the petitioner claim the equal opportunity but

the equal opportunity should be given to those who stand on the same footing. An employee of different department cannot be equated with another employee of another department hence fundamental right of the petitioners guaranteed under Article 27,29 and 31 of the constitution was not at all violated.

Mr. Md. Salahuddin Dolon, learned Advocate appearing on behalf of the petitioners submits that denial of the Grade-X in the pay scale of the petitioners allowing the same to the similarly situated Class-II Officers with Grade-X in the pay scale is a clear case of “hostile discrimination in the service” therefore to bring equality among the similarly situated officers it is badly needed to eliminate such unequal and unjust treatment as per the provisions of Article 27,29 and 31 of the Constitution. He next contends that exclusion of benefit of selection grade and time scale should not be applicable to the petitioners because they entered into the service long before the Pay Scale of 2015 came into force. He further submits that the continuous appointment for a long period as permanent employees entitles the petitioners to equal pay with the other similarly situated permanent employees and the doctrine of “Equal pay for equal work” would apply on the premise of similar work and it does not mean there should be complete identity in all respect inasmuch as similar posts in two departments under one employer is entitled to same pay therefore under the same doctrine the petitioners are entitled to get the benefit of Grade-X with effect from 09.03.2014. He lastly submits that the respondents have been adopting the policy of “Pick and Choose” while treating similarly situated employees, on their whims and sweet will and it is the bonafide belief of the petitioners that they are legally entitled “Grade” in the pay scale but the respondents had been discriminated to them.

Mr. Ashique Rubaiat, learned Assistant Attorney General appearing on behalf of Respondent No. 5 submits that it is not a case of hostile discrimination in public employment at all. They are not entitled to get grade-X scale as a matters of right; hence, issue of importance is irrelevant. He further submits that the proper forum to agitate any dispute regarding pay scale is administrative tribunal but without exhausting that forum, the petitioners filed this instant writ petition, hence the Rule is liable to be discharged.

We have perused the writ petition, its annexures, affidavit in opposition filed by respondent No.5 and other materials on record.

It appears from the record that the terms and conditions of the service of the petitioners are regulated and governed under the Bangladesh Public Service Commission (Recommendation) Regulations, 1979 and the Non-Cadre Recruitment (Special) Rules, 2010 (as amended in 2014). Under the Non-Cadre Recruitment (Special) Rules, 2010(as amended in 2014) 898 successful candidates of 34th BCS have been recommended for the Non Cadre Class-II post of Assistant Teachers of Government Secondary High School and 495 successful candidates of 34th BCS have also been recommended in the post of Head Teachers of the Government Primary School vide gazette notification dated 14.08.2016 and 10.08.2016 respectively. Accordingly they have been given salary scale in Grade-X but though the petitioners stand on the similar position and status they are being denied the salary scale in Grade-X at par with the above mentioned employees.

It is also vital to put on record that the Assistant Teachers of Secondary High School under the Ministry of Education and Senor Staff Nurses under the Ministry of Health and Family Welfare have been enjoying Grade-X (8000-16540) Scale under the pay Scale 2009 which was guaranteed to them vide

gazette notification No. 37.00.0000.071.04.004.03 (Part)-530 dated 15.05.2012 and gazette notification No. 35.159.015.45.45.03.324.2010-22 dated 16.01.2012 respectively but the petitioners are being denied the same for the malafide reasons.

Admittedly, the government had promulgated the Services (Re-organization & Conditions) Act,1975 [Act No.XXXII of 1975] for reorganization of the services of the Republic and other public bodies and nationalized enterprises and prescribing unified Grades and Scales of pay and other terms and conditions of service for such persons employed in such services. Under the provisions of the said Act the respondents are bound to ensure uniform grades and scales of pay of the petitioners as Class-II officers with Grade-XI(Trained) and Grade-XII(Non-Trained) equally with the other Class –II officers with Grade-X in pay scale and their inaction and denial are violative of the provisions of the mandatory provisions of law.

It has not been disputed that before the 1st July 2015, the petitioners had the scope of getting 1st Selection grade and on completion of 4 years service, the 1st and 2nd Time scale on completion of 8 and 12 years service respectively and vide Pay Order of 2015 the benefit of selection grade and time scale were excluded and it was prescribed that on completion of 10 years of service they will get 1(one) higher scale and on completion of 15 years another higher scale thus had the previous provision of time scale and selection grade were not excluded, in the meantime many of the petitioners would have reached in Grade-X.

We cannot be oblivious of the fact that by the resolution dated 25.05.2015 the respondents had positively admitted that the petitioners should be treated as Class-II gazetted officer being at par with the similarly situated

Class-II officers and their names also be published in the official gazette in the same manner but the word gazetted was missed erroneously and imprecisely which has been creating serious difficulties as to their status in service with the other similarly situated officers of Class-II.

For proper adjudication the said resolution dated 25.05.2015 is quoted under:

গণপ্রজাতন্ত্রী বাংলা-দশ সরকার
প্রাথমিক ও গণশিক্ষা মন্ত্রণালয়
সমন্বয় ও মনিটরিং অধিশাখা
www.mopme.gov.bd

সকল শিশু-ক প্রাথমিক বিদ্যালয় ভর্তি করে, বারে পড়া রোধ এবং নিরক্ষরতা দূরীকরণ সংক্রান্ত জাতীয় টাস্ক-ফোর্সের প্রথম সভার কার্যবিবরণীঃ

সভাপতি : শেখা হাসিনা, মাননীয় প্রধানমন্ত্রী, গণপ্রজাতন্ত্রী বাংলা-দশ সরকার
ও উপ-দপ্তা, জাতীয় টাস্ক-ফোর্স
সভার তারিখ ও সময় : ১৮ মার্চ ২০১৫খ্রিঃ, সকাল ১১.৩০টা।
সভার স্থান : প্রধানমন্ত্রীর কার্যালয়, তেজগাঁও ঢাকা।
সভায় উপস্থিত মাননীয় মন্ত্রীবর্গ ও কর্মকর্তাগণের তালিকা পরিশিষ্ট “ক” তে পর্দাশিত।

৩.১৬ এ মন্ত্রণালয়ের অতিরিক্ত সচিব (উন্নয়ন) জনাব সিরাজুল হক খান সভায় ব-লন যে, মাননীয় প্রধানমন্ত্রী কর্তৃক ২০১৪ সা-ল প্রধান শিক্ষক-দের দ্বিতীয় শ্রেণীর পদমর্যাদা প্রদান করা হ-য়-ছ। প্রধান শিক্ষক-দের ২য় শ্রেণীর পদ মর্যাদা প্রদান ক-র তিনি যু-গর চাহিদা মিটি-য়-ছেন। কিন্তু অসাবধানতা বশতঃ উক্ত ২য় শ্রেণীর গেজেটেড পদমর্যাদা প্রদা-নের বিজ্ঞপ্তিতে গেজেটেড শব্দটি উহা থাকায় অনেক ক্ষেত্রে এ বিষ-য় জটিলতা সৃষ্টি হয়। এ প্রসঙ্গে তিনি বিষয়টি স্পষ্টীকরণ ল-ক্ষ একটি সম্পূরক সারসং-ক্ষ-প মাননীয় প্রধান মন্ত্রী সদয় সম্মতির নিমিত্ত উপস্থাপ-নের জন্য তাঁর সানুগ্রহ সম্মতির অনুমতি প্রার্থনা ক-রেন। মাননীয় প্রধানমন্ত্রী এ ল-ক্ষ্য প্র-য়াজনীয় পদ-ক্ষপ নি-ত ব-লন।

(emphasis supplies)

It was further brought to the notice of this Court that the petitioners submitted various representations before the respondents and also to the office of the Prime Minister and on 14.09.2015, the office of the Prime Minister directed the respondent no.2 to take necessary steps to eliminate the anomalies and discrimination in respect of the pay of the petitioners in accordance with law.

For felicity of reference the said order dated 14.09.2015 is quoted below;

গণপ্রজাতন্ত্রী বাংলা-দশ সরকার
প্রধানমন্ত্রীর কার্যালয়

পুরাতন সংসদ ভবন

স্মারক নং ০৩.০৭৩.০৪৬.০৭.০০.০০৩.২০১১(অংশ-১)-১৬০

তারিখঃ----- ২৮ ভাদ্র, ১৪২২
১৪ সে-প্টেম্বর ২০১৫

বিষয়ঃ প্রধান শিক্ষক-দর উন্নীত দ্বিতীয় শ্রেণীর গে-জ-টড কর্মকর্তার পদমর্যাদা বাস্তবায়ন ও বেতন বৈষম্য দূর ক-র জাতীয় -বতন স্কেল/২০০৯ এর দশম ৮০০০-১৬৫৪০/- টাকার স্কে-ল উন্নীতকরণ এবং প্রধান শিক্ষক থে-ক উপ-রর পদসমূ-হ শতভাগ বিভাগীয় প-দান্নতি বিধান চালু করার জন্য স্মারকলিপি।

সূত্রঃ বাংলাদেশ সরকারি প্রাথমিক বিদ্যালয় প্রধান শিক্ষক সমিতির ০৬/০৮/২০১৫ তারি-খর স্মারকলিপি।

সূত্রঃ বাংলা-দশ সরকারি প্রাথমিক বিদ্যালয় প্রধান শিক্ষক সমিতির ০৬/০৮/২০১৫ তারি-খর স্মারকলিপি।

উপর্যুক্ত বিষয়ে আহ্বায়ক, বাংলা-দশ সরকারি প্রাথমিক বিদ্যালয় প্রধান শিক্ষক সমিতি কর্তৃক মাননীয় প্রধানমন্ত্রী বরাবর দাখিলকৃত স্মারকলিপিটি বিধি মোতা-বক প্রয়োজনীয় ব্যবস্থা গ্রহণের জন্য নির্দেশক্রমে এতদসঙ্গে প্রেরণ করা হলো।

সংযুক্তিঃ বর্ণনামতে

(মোহাম্মদ মোখ-লছুর রহমান সরকার)

পরিচালক

ফোনঃ ৯১১০১৯০/ফ্যাক্স ৯১২৩৬১৬

১। সিনিয়র সচিব, অর্থ বিভাগ, বাংলা-দশ সচিবালয়, ঢাকা।

২। সচিব, প্রাথমিক ও গণশিক্ষা মন্ত্রণালয়, বাংলা-দশ সচিবালয়, ঢাকা।

We note that for the continuous appointment of a long period as permanent employees entitles the petitioners to equal pay with the other similarly situated permanent employees and the doctrine of “Equal pay for equal work” would apply on the premise of similar work and it does not mean there should be complete identity in all respect inasmuch as similar posts in two departments under one employer is entitled to same pay therefore under the same doctrine the petitioners are entitled to get the benefit of Grade-X with effect from 09.03.2014 otherwise it would be gross violation of the fundamental rights of the petitioners under Article 29 of the Constitution.

We further note that the Apex Court has already observed in several cases that right accrued under the previous law/rules/order cannot be changed or altered by any subsequent actions. Since all the petitioners have acquired

right to get grade-X scale long before the pay order of 2015 came into force, they now cannot be denied the said grade-X.

Against the facts and the circumstances narrated hereinabove, we are inclined to dispose of the Rule.

Accordingly the Rule is disposed of.

The respondents are directed to grant the Grade-X Scale to the petitioners and to notify their names in the official gazette as Class-II (Gazetted Officer) Head Teacher of the Government Primary School and also to grant the benefit of selection grade and time scale on completion of 4, 8 and 12 years service respectively, expeditiously.

No order as to costs.

Communicate the Judgment at once.

Khizir Ahmed Choudhury, J.

I agree.