

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Md. Nuruzzaman

Mr. Justice Obaidul Hassan

Mr. Justice Borhanuddin

Mr. Justice M. Enayetur Rahim

Ms. Justice Krishna Debnath

CIVIL PETITION FOR LEAVE TO APPEAL NO.2771 OF 2018

(From the judgment and order dated the 21st day of March, 2018 passed by the Administrative Appellate Tribunal, Dhaka in A.A.T. Appeal No.202 of 2015 in A.T. Case No.02 of 2014)

Mr. Md. Sanaullah, (Retired) : . . . Petitioner

-Versus-

Government of Bangladesh and : . . . Respondents
others

For the Petitioner : Mr. Mohammad Bakiruddin Bhuiyan,
Advocate instructed by Mr. Md.
Zahirul Islam, Advocate-on-Record

For the Respondent No.1 : Ms. Chowdhury Mousumee Fatema,
Advocate instructed by Ms. Nahid
Sultana, Advocate-on-Record

For the Respondent Nos.2-4 : Not represented

Date of Hearing and order : **The 25th day of April, 2022**

ORDER

M. Enayetur Rahim, J: Delay in filing the leave petition is condoned.

This Civil Petition for Leave to Appeal at the instance of the defendant-Appellants is directed against the judgment and order dated 21.03.2018 passed by the Administrative Appellate Tribunal, Dhaka in A.A.T. Appeal No.202 of 2015 allowing the appeal and thereby setting aside the judgment and order dated 21.06.2015 passed by the Administrative Tribunal, Chattogram in A.T. Case No.02 of 2014 allowing the case.

The relevant facts, leading to the filing of this leave petition, in brief are as follows;

The petitioner filed A T Case No.02 of 2014 under section 4(2) of the Administrative Tribunal Act, 1980 in the Administrative Tribunal, Chattogram. It is the case of the petitioner that he was a service holder of the People's Republic of Bangladesh under the Ministry of Post, Telecommunication and Information Technology. Since the appointment to till retirement, he had served his duties most honestly and sincerely to the entire satisfaction to his superiors and during 31 years of his service there was no black spot, and that he did neither commit any professional misconduct nor committed any offence at any time which may cause him any punishment. After retirement when he demanded all his pension from his department on 22.05.2013, unfortunately the respondent No.3 passed an order on 21.08.2013 stopping to pay the pension to the petition on the plea that 'বিভাগীয় বাসা এবং জায়গা জমিতে কোন কর্মচারী বসবাস বা দখলে রাখিলে তা কর্মচারী কর্তৃক সংশ্লিষ্ট কর্তৃপক্ষের নিকট বুঝিয়ে না দেওয়া পর্যন্ত পেনশন মঞ্জুরীর কোন বিধান নাই।'

Being aggrieved by and dissatisfied with the aforesaid order dated 21.08.2013 the petitioner preferred a departmental appeal before the Managing Director, Bangladesh Tele Communication Ltd. (BTCL) Central Office, on 10.10.2013 but there is no result. Hence, he filed the case.

The respondent Nos.3 and 4 contested the case by filing written objection. The material case of these respondents was that the petitioner occupied the land of BTCL and he used to live there by making house long time and also the Government is entitled to get Tk.34,709.00 from him for the purpose of selling the telephone calls. The authority allowed the application of the petitioner for twelve months retirement

leave from 01.06.2011-31.05.2012 and paid him to arrear money for twelve months retirement leave with provident fund. But the authority ordered the petitioner for shifting his house from the land of BTCL but he did not care and illegally kept the possession of the said land and as such the A.T. Case No.02 of 2014 is liable to be dismissed.

The Administrative Tribunal, Chattogram by its judgment and order dated 21.06.2015 allowed the A.T. Case holding to the effect that the impugned order dated 21.08.2013 passed by the respondent No.3 is illegal and void.

Against the said judgment and order the respondents preferred an appeal being A.A.T. Appeal No.202 of 2015 before the Administrative Appellate Tribunal, Dhaka and the Appellate Tribunal after hearing the said appeal allowed the same and set aside the judgment and order dated 21.06.2015 passed by the Administrative Tribunal.

Feeling aggrieved by the same the petitioner has preferred this leave petition.

Mr. Md. Bakiruddin Bhuiyan, learned Advocate, appearing for the petitioner submits that the Administrative Appellate Tribunal committed serious error in setting aside judgment passed by the Administrative Tribunal without considering the facts that the respondent No.3 passed the order on 21.08.2013 without any show cause notice and without mentioning any provisions of law and hence ultimate departmental action there under was quite illegal.

He further submits that the departmental order dated 21.08.2013 against the petitioner was passed without supporting documents and there is no proofable evidence on record and thus, the Tribunal has opined that the allegations against the petitioner is false, concocted and fabricated one and those

were not proved against the petitioner by any legal evidence and the order imposed by the respondent No.3 against the petitioner is bad in law, but the Administrative Appellate Tribunal proceeded in the matter in a wrong way and as such the impugned order is liable to be set aside.

However, Ms. Chowdhury Mousumee Fatema, learned Advocate, appearing for the respondent Nos.2-4 has supported the impugned judgment passed by the Administrative Appellate Tribunal.

We have considered the submissions of the learned Advocates for the respective parties, perused the judgment of the Administrative Tribunal as well as the Administrative Appellate Tribunal and other documents as placed before us.

It is the case of the respondents that they have stopped the pension to the petitioner as he occupied some land of the respondents organization i.e., BTCL and the respondents are entitled to get Tk.34,709.00 from the petitioner.

On this issue the Tribunal on consideration of the materials placed before it has observed that-

“১ম পক্ষের দাবী ও যুক্তি এই যে, কথিত ঘর ২য় পক্ষ প্রতিষ্ঠানের স্বত্ব দখলীয় সম্পত্তির উপর প্রতিষ্ঠিত নহে। বরং এতদসংক্রান্তে রাঙামাটি জেলার যুগ্ম জেলা জজ আদালতে ৩২৫/১৪ নং একটি দেওয়ানী অপার মামলা বিচারাধীন রহিয়াছে। ১ম পক্ষের আরো যুক্তি এই যে, টেলিফোন কল বিক্রি বাবদ ৩৪,৭০৯ টাকা পাওনার বিষয়টি বাস্তবতা বিবর্জিত, কাল্পনিক ও মিথ্যা। প্রার্থী কখনো কোন অঙ্গীকারনামা প্রদান করে নাই এবং ২য় পক্ষের বরাদ্দকৃত কোন বাসায় বসবাস করেন না।
।

প্রথম পক্ষের দাখিলী এই অঙ্গীকারনামা ১ম পক্ষের এডমিশন হিসাবে গণ্য করা হইলে Law of estoppels দ্বারা এতদসংক্রান্ত (সম্পত্তির মালিকানা ও দখল) ১ম পক্ষের দাবী আইন বর্হিভূত গন্য হইবে। কিন্তু বিষয়টি নিষ্পত্তি ও আলোচনা পূর্বক সিদ্ধান্ত প্রদানের সম্পূর্ণ এখতিয়ার দেওয়ানী আদালতের। এই বিষয়ে ইতোমধ্যে রাঙামাটি জেলার যুগ্ম জেলা জজ আদালতে ৩২৫/১৪ নং দেওয়ানী মামলা থাকার তথ্য বিচারাধীন রহিয়াছে। দ্বিতীয়ত: ১ম পক্ষের নিকট ২য় পক্ষের ৩৪,৯০৭ টাকা বকেয়া পাওয়া সংক্রান্ত বিষয়টি দালিলীক ভাবে প্রমানের দায়িত্ব ২য় পক্ষের। কিন্তু ২য় পক্ষ গ্রহণযোগ্য কোন প্রমানপত্র দ্বারা এই পাওনার বিষয়টি প্রমানে সক্ষম না হওয়ায় কেবলমাত্র এই অজুহাতে পেনশন তথা অবসর গ্রহণ সংক্রান্ত পাওনাদি

পরিশোধ না করার কোন আইনগত ভিত্তি পরিলক্ষিত হয় না। ২য় পক্ষ ফিরিঙ্গি মূলে একটি জমা বিভাগের নির্ধারিত ছকে পূরণকৃত ২য় পক্ষের নামীয় কাগজ দাখিল করেন। কিন্তু এই জমা বিভাগের কাগজ দ্বারা ১ম পক্ষের অবৈধ দখল প্রমাণ হয় নাই।”

However, the Administrative Appellate Tribunal relying on an angikarnama dated 16.06.2013 allowed the appeal and set aside the judgment passed by the Administrative Tribunal.

A government officer/employee is entitled to get pension and other retirement benefits after his retirement and such right of pension cannot be taken away on any unreasonable and unfounded plea. On the mere allegation of occupying the land of the respondents by the petitioner is not a ground to stop pension privilege.

Section 10 of the Public Servants (Retirement) Act, 1974 runs as follows:

“10. Public Servants not entitled to retirement benefits in certain cases-If any judicial proceedings instituted by the Government or, as the case may be, employer or any departmental proceedings are pending against a public servant at the time of his retirement or, as the case may be, ceasing to be in service, he shall not be entitled to any pension or other retirement benefits, except his subscriptions to any provident fund and the interest thereon, till the determination of such proceedings, and the payment to him of any pension or other retirement benefits shall be subject to the findings in such proceedings.”

If we analyse the above provision of law, then it would be clear that authority may withhold or stopped the pension or other retirement benefits if there is any judicial proceedings, initiated by the government or as the case may be or departmental proceedings is pending against a public servant at

the time of his retirement subject to the finding of the said proceedings after determination of the proceedings.

In the case of **Air Marshal Jamaluddin Ahmed (Retd) vs. Government of Bangladesh and others**, reported in 57 DLR 1, a Division Bench of the High Court Division held that:

"On a plain reading of the above provision it would appear that in order to bring a public servant within the mischief of section 10, the Government has to show that a judicial proceeding or a departmental proceeding was pending at the time of his retirement."

Chapter XVII of Bangladesh Service Rules, Part-1 deals with pension.

Rule 246 of the above Rules contemplated that-

"Future good conduct is an implied condition of every grant of a pension. Government reserves to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner be convicted of serious crime or be guilty of grave misconduct." (under lines supplied).

Rule 247 of the above Rules is as follows:-

"The president reserves to himself the right to order the recovery from the pension of an officer who entered service on or after 23rd February, 1939 of any amount on account of losses found in judicial or departmental proceedings to have been caused to Government by the negligence or fraud of such officer during his service:

Provided that-

- (1) Such departmental proceedings, if not instituted while the officer was on duty,-

- (i) shall not be instituted save with sanction of the president;
 - (ii) shall be instituted before the officer's retirement from service or within a year from the date on which he was last on duty whichever is later;
 - (iii) shall be in respect of an event which took place not more than one year before the date on which the officer was last on duty; and
 - (iv) shall be conducted by such authority and in such places whether in Bangladesh or elsewhere, as the president may direct;
- (2) all such departmental proceedings shall be conducted, if the officer concerned so requests in accordance with the procedure applicable to departmental proceedings on which an order of dismissal from service may be made; and
- (3) such judicial proceedings, if not instituted while the officer was on duty, shall have been instituted in accordance with sub-clauses (ii) and (iii) of clause (1).

Rule 249 also speaks that-

"No pension may be granted to an officer dismissed or removed of misconduct, insolvency or inefficiency; but to officers so dismissed or removed compassionate allowances may be granted when they are deserving of special consideration; provided that the allowance granted to any officer shall not exceed two-thirds of the pension which would have been admissible to him if he had retired on medical certificate."

In the instant case the petitioner neither convicted nor found guilty of grave misconduct by any competent authority

during his entire 31 years service period. In the instant case there was no judicial or departmental proceedings pending against the petitioner at the time of his retirement; even no proceedings either judicial or department had been initiated against him within a year of his retirement. Thus, the action taken by the authority stopping the pay of the pension to the petitioner has no legal basis. The respondents have failed to show us that the impugned action has been taken within the ambit of the above provisions of law or any other relevant law.

Having considered and discussed as above, we are of the opinion that the Administrative Appellate Tribunal in passing the impugned judgment considered some irrelevant and unfounded issues, rather than the legal aspect and as such the impugned judgment cannot be sustained and same is liable to be interfered.

Accordingly, the leave petition is disposed of.

Judgment and order dated 21.03.2018 passed by the Administrative Appellate Tribunal, Dhaka in A.A.T. Appeal No.202 of 2015 allowing the appeal is set aside and the judgment and order dated 21.06.2015 passed by the Administrative Tribunal, Chattogram in A.T. Case No.02 of 2014 is maintained.

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