

In the Supreme Court of Bangladesh  
High Court Division  
(Special Original Jurisdiction)  
**Present**

**Madam Justice Kashefa Hussain**

**And**

**Madam Justice Kazi Zinat Hoque**

**Writ Petition No. 14578 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:**

Md. Khalilur Rahman and others  
..... Petitioners.

Vs.

Government of Bangladesh and  
others.

.....Respondents.

Mr. Md. Abu Sayeem, Advocate

.....for the petitioners

Mr. Noor Us Sadik Chowdhury, D.A.G

with Mr. Prahlad Debnath A.A.G

with Mr. Md. Hafizur Rahman A.A.G

with Ms. Farida Parvin Flora, A.A.G

... for the respondents No. 1

Ms. Nazneen Nahar, Advocate

.... for the respondent No.5.

**Heard on: 07.08.2022, 10.08.2022 and judgment  
on: 14.08.2022.**

**Kashefa Hussain, J:**

Rule nisi was issued calling upon the respondents to show  
cause as to why the inaction to impalement vide Memo No. স্বারক নং-  
৫৪.০১.২৬০০.০০৬.১১.০২৫.১২ dated 03.12.2017 issued by the Deputy  
Director (Establishment Section-3), Bangladesh Railway, Dhaka  
respondent No. 3 to take necessary steps to absorb their service in

pursuance of a decision on 03.05.2003 of the Cabinet Division bearing memo No. স্মারক নং-মপবি/ক:বি:শা:/কপগ-১১/২০১১-১১১ dated 03.05.2003 disclosing that the temporary/daily worker employees will be absorbed in the revenue set up or regularize their service after completion of 3(three) years service from the date of joining in their respective post (Annexure-B) and why the respondents should not be directed to regularize/absorb the petitioners in their respective or similar posts under the Revenue set up of Bangladesh Railway and/or such other or further order or orders passed as to this Court may seem fit and proper.

The petitioner No.1 Md. Khalilur Rahman along with 21 others are citizens of Bangladesh having permanent addresses shown in the cause title of the Writ petition.

The respondent No. 1 is the Secretary, Ministry of Railway, Bangladesh Rail Bhaban, Ramna, Dhaka, the respondent No. 2 is the Director General, Bangladesh Railway, Rail Bhaban of 16 Abdul Gani Road, Ramna, Dhaka, the respondent No. 3 is the Deputy Director (Establishment Section-3), Bangladesh Railway, Rail Bhaban of 16 Abdul Gani Road, Ramna, Dhaka, the respondent No. 4 is the Chief Engineer (West), Bangladesh Railway, Rail Bhaban, Rajshahi, the respondent No. 5 is the General Manager (West), Bangladesh Railway, Rail Bhaban, Rajshahi, the respondent No. 6 is the Chief personal Officer (West), Bangladesh Railway, Rail Bhaban, Rajshahi and the respondent No. 7 is the Divisional Railway Manager (DRM), Bangladesh Railway, Divisional Rail Bhaban, Lalmonirhat.

The petitioners case in short is that the petitioners joined in different dates in different posts and now they have been working in their respective posts in Bangladesh Railway and usually they are getting salary per month regularly at the ends of the month. They are still working with the Bangladesh Railway in their respective posts. That the petitioner No. 1 joined on 04.01.2014. The petitioner No. 2 joined on 03.10.2015. The petitioner No. 3 is joined on 05.01.2014. The petitioner No. 4 joined on 05.01.2014. The petitioner No. 5 joined on 05.01.2014. The petitioner No. 6 joined on 05.01.2014. The petitioner No. 7 joined on 05.01.2014. The petitioner No. 8 joined on 05.01.2014. The petitioner No. 9 joined on 03.10.2015. The petitioner No.10 joined on 05.01.2014. The petitioner No. 11 joined on 02.07.2015. The petitioner No. 12 joined on 16.09.2010. The petitioner No. 13 joined on 16.09.2010. The petitioner No. 14 joined on 16.09.2010. The petitioner No. 15 joined on 02.02.2015. The petitioner No. 16 joined on 09.03.2016. The petitioner No. 17 joined on 21.10.2015. The petitioner No. 18 joined on 03.10.2015. The petitioner No. 19 joined on 14.10.2014. The petitioner No. 20 joined on 03.10.2015. The petitioner No. 21 joined on 02.07.2010. The petitioner No. 22 joined on 01.08.2012. They have been working in the respective posts in different Districts till now. The petitioners are joining as temporary employee and they are getting salary per month regularly. The petitioners are still working with the Bangladesh Railway in their respective posts. That Bangladesh Railway for smooth operation and proper functioning of the affairs of their appointed temporary employees from its regular staff as to meet up

urgent necessity under different circumstances and this practice is prevalent since the establishment of Bangladesh Railway. That the Bangladesh Railway thus appointed the petitioners as temporary employees against the vacancies and since their appointment they have been rendering service in their respective positions as Wayman, Cook-cum-Bayarar and Gatekeeper. That the petitioners are all temporary employees of Bangladesh Railway serving for a long period of time as Wayman, Cook-cum-Bayarar and Gatekeeper with utmost satisfaction of the concerned authority. The petitioners are skilled, hardworking and dutiful. They were stationed in different places from time to time after being appointed under Bangladesh Railway in different posts and as such they have been working for a considerable period of time. That the Deputy Director (Establishment Section-3), Bangladesh Railway, Rail Bhaban of 16 Abdul Gani Road, Ramna, Dhaka issued a letter bearing memo No. স্বারক নং- ৫৪.০১.২৬০০.০০৬.১১.০২৫.১২ dated 03.12.2017 requesting to take necessary steps to absorb their service in pursuance of a decision on 03.05.2003 of the Cabinet Division bearing memo No. স্বারক নং- মপবি/ক:বি:শা:/কপগ-১১/২০১১-১১১ dated 03.05.2003 disclosing that the temporary/daily worker employees will be absorbed in the revenue set up or regularize their service after completion of 3(three) years service from the date of joining in their respective posts. That subsequently the petitioners submitted an application on different dates and requested the Respondents to take necessary steps to absorb their service in pursuance to memo No. 54.01.2600.006.11.025.12 dated 03.12.2017 which memo stated that the temporary/ daily worker

employees will be absorbed in the revenue set up and/or regularize their service after completion of 3(three) years service from the date of joining in their respective posts. That the said application was forwarded on 25.03.2018 to the Director General Bangladesh Railway, Dhaka respondent No. 2. That the petitioners on several occasions requested and made several correspondence to the concerned authority to regularize their service in the respective post by absorbing them as permanent employees. But the respondents did not do the needful and without following any rules or guidelines upon pick and choose policy already absorbed some of the employees as permanent employees which is discriminatory and violative of the fundamental rights of the petitioners as guaranteed by the constitution of the People's Republic of Bangladesh. That the Bangladesh Railway for the smooth operation and proper functioning of the affairs appoints temporary employees to meet up its urgent necessity in different circumstances and found 2(two) office note bearing No. নথি নং ই/৯ (টিএলআর)-১১ তারিখ ২২/০১/২০১৮ ইং and নথি নং ২/২-৪১ তাং ২৫/০১/২০১৮ ইং dated 25.01.2018 the authority have taken steps time to time without following any rules or guidelines by using pick and choose as per their wishes and absorbed some of the employees as permanent employees which is discriminatory. That the petitioners have been serving with utmost honesty and sincerity but no effective steps have been taken to absorb the petitioners as permanent employees although the petitioners have been working in their respective posts i.e. Wayman, Cook-cum-Bayarar and Gatekeeper under Bangladesh Railway for a considerable period of time and have acquired a legitimate

expectation and vested right which cannot be taken away arbitrarily. That the petitioners should be regularized/absorbed in the revenue set up of the Bangladesh Railway in their respective posts. That several other employees on the same footing filed writ petitions in this division in which Rule was made absolute and those petitioners were duly recognized and which judgment and order was also affirmed by the Appellate Division. However another 8 employees (as petitioners) filed an application before the respondents in the light of judgment being appointed in the same footing but the respondents showed complete inaction which is arbitrary and therefore 8 of the applicants including some others upon serving demand of justice notice are also petitioners in the instant writ petition.

Learned Advocate Mr. Md. Abu Sayeem appeared on behalf of the petitioners while learned D.A.G Mr. Noor Us Sadik Chowdhury with Mr. Prahlad Debnath, A.A.G along with Mr. Md. Hafizur Rahman, A.A.G along with Ms. Farida Parvin Flora, A.A.G appeared for the respondents No. 1 and learned Advocate Ms. Nazneen Nahar appeared for the respondent No. 5.

Learned Advocate for the petitioners submits that the respondents by their inaction in not absorbing/regularizing the post of the petitioners in the revenue budget committed serious injustice violating the fundamental rights of the petitioner. He argues that although the petitioners are in similar footing with several other employees who joined in similar post during the same period of time approximately but however although the respondents appointed some others to the post but they arbitrarily and whimsically excluded the

petitioners from being appointed. He submits that it is clear from the materials on record that all these petitioners were appointed in their post between 2010 and 2016. He submits that although they were appointed as temporary and daily worker employees and are on similar footing as the petitioners but they were absorbed in the revenue budget whereas the petitioners were excluded. He submits that by regularizing service of others and on the other hand refraining from regularizing the petitioners is a clear discrimination between the same class of persons and is violative of the Article 29 of the Constitution. He draws this bench's attention to a judgment in writ petition No. 8308 of 2009 along with writ petition No. 5843 of 2009 and writ petition No. 5193 of 2009 in which Rules were made absolute and direction was given upon the respondents to absorb those employees as petitioners in those writ petitioners in view of their previous service record. He submits that nevertheless the petitioners in those writ petitioners and the instant petitioners stand on the same footing and they are also temporary and daily basis employees. He now takes us to Annexure-G-1 which is the Civil Petition for Leave to Appeal No. 3058 of 2014 with Civil Petition for Leave to Appeal No. 3062 of 2014 which arises out of judgment in writ petition No. 5193 of 2009 and writ petition No. 5843 of 2009. He takes us to the operative portion and submits that it is clear from the judgment in Civil Petition for Leave to Appeal No. 3058 of 2014 and Civil Petition for Leave to Appeal No. 3062 of 2014 that the Appellate Division upheld and affirmed the judgment of the High Court Division in these writ petitions. He now takes us to Annexure H which is the office

order dated 21.05.2018 issued by the respondents. He submits that this office order mentions some other writ petitions wherein employees on the similar footing as the instant petitioner were regularized and absorbed in the revenue budget. He next draws attention to the Annexure-D which is a recommendation issued by the respondent Bangladesh Railway dated 22.01.2018 recommending the employees on similar footing as the instant petitioners for purposes of absorption and regularization in the revenue budget. He agitated that from the date of appointment of these employees who feature in Annexure D, upon comparison of date of appointment it is revealed that the length of the service of the petitioners and the length of service of some of the employees therein are approximately at similar point of time. He submits that therefore in the light of the judgment of the Appellate Division in Civil Petition for Leave to Appeal No. 3058 of 2014 and Civil Petition for Leave to Appeal No. 3062 of 2014 affirming the judgment of the High Court Division in writ petition No. 5193 of 2009 and writ petition No. 5843 of 2009 and in the light of others being recommended and appointed which is evident by Annexure-D and Annexure-E and Annexure-F respectively therefore it is the legitimate expectation and legal and fundamental right of the petitioner also to be regularized and absorbed in the revenue budget. He submits that the inaction of the respondents are therefore completely discriminatory and is violative of the fundamental right of the petitioners. He concludes his submission upon assertion that the Rule bears merit ought to be made absolute for ends of justice.



On the other hand learned Advocate for the respondent No. 3 vehemently opposes the Rule. She submits that the petitioners are temporary and daily basis employees and they do not have any lawful right and cannot have legitimate expectation for their services to be regularized in the revenue budget. Upon a query from this bench regarding the judgment in Civil Petition for Leave to Appeal No. 3058 of 2014 and Civil Petition for Leave to Appeal No. 3062 of 2014, she controverts that the judgment in Civil Petition for Leave to Appeal No. 3058 of 2014 and Civil Petition for Leave to Appeal No. 3062 of 2014 in the light of the judgment in the case of BRDB vs. Asma Sharif reported in 72 DLR(AD)(2020) is overruled. She submits that therefore in the light of the 72 DLR(AD)(2020) case the petitioners cannot have any legitimate expectation being temporary and daily basis workers in the Bangladesh Railway. Upon another query from this bench on appointment of some other employees who are on the same footing as the petitioners the learned Advocate for the respondent No. 3 argued that these employees who are recommended and appointed by way of Annexure D and E respectively they were recommended before the 72 DLR(AD)(2020) judgment was passed. She submits that therefore after the 72 DLR(AD)(2020) judgment there is no scope to regularize and absorb the petitioners since they were appointed as temporary and daily basis employees. Upon another query from this bench she however concedes that the employees whose services are absorbed in the regularization in the revenue budget by way of Annexure D and E respectively however the petitioners in the instant writ petition and those employees stand on

similar footing. She concludes her submission upon assertion that therefore the Rule bears no merits ought to be discharged for ends of justice.

Learned D.A.G upon a query from this bench regarding the 72 DLR(AD)(2020) judgment submits that 72 DLR(AD)(2020) judgment also reflect that Article 29 of the Constitution mandates discrimination between same classes of persons as violative of the constitutional right of any citizen or any other person. He particularly draws attention to para-19 and 32 of the 72 DLR(AD)(2020).

We have heard the learned counsels perused the writ petition and materials on records. It is an admitted fact that the instant writ petitioners are temporary and daily basis workers and some others who have been recommended for appointment by way of Annexure-D and H however stand on the same footing. Article 29 of the Constitution mandates that discrimination between class of persons similarly placed is violative of the fundamental rights of any person ,therefore we must examine whether such discrimination took place in the instant case. The learned Advocate for the respondent No. 3 contended that the judgment in Civil Petition for Leave to Appeal No. 3058 of 2014 and Civil Petition for Leave to Appeal No. 3062 of 2014 has been overruled by way of the judgment in the case of BRDB vs. Asma Sharif reported in 72 DLR(AD)(2020) is overruled. Upon perusal of the 72 DLR(AD)(2020) it also appears that the judgment in Civil Petition for Leave to Appeal No. 3058 and 2014 and in Civil Petition for Leave to Appeal No. 3062 of 2014 has not been specifically overruled.

However we have examined the matter which is before us. Upon examination of annexure- H which is the office order dated 21.05.2018 issued by the respondent, it appears that the respondents are recommended to absorb and regularize some employees who are on similar footing as the instant petitioners subject to scrutiny into their service records and other matters and also state that they may be recommended for the post subject to satisfactory report. It is clear that these employees (who are admittedly on same footing as the instant petitioners) have been recommended subject to ascertainment upon enquiry and satisfactory of factual matter. It is also evident that although the respondents recommended some employees on similar footing with the petitioners subject to satisfaction of factual matters but however they refrained from recommending the present petitioners here. We have also perused Annexure-C series which are the application filed by 8 of the petitioners to the respondents by some of the petitioner to consider their application. It is also evident that however the respondents did not respond and showed total inaction with regard to the petitioners application. It is also clear that 14 other petitioners filed the writ petition along with the 8 petitioners and they also claim to be on similar footing as the petitioners.

Regarding the issue of being on similar footing the learned Advocate for the respondent No. 3 concedes that they are on similar footing. She however agitated that these employees were recommended before the 72 DLR(AD)(2020) judgment was passed. She also agitated that after the 72 DLR(AD)(2020) was passed there is

no scope to absorb and regularize service of temporary and daily basis workers.

However we have carefully perused the 72 DLR(AD)(2020) judgment. Although the 72 DLR(AD)(2020) judgment has in general held that casual employees and development project employees etc. even though ideally may get some benefit for long period of service but however in 72 DLR(AD)(2020) judgment also found that they do not have any legal right in their service.

Our considered view is that for purpose of proper disposal of the instant rule we have to examine the petitioners' contention of discrimination of Article 29 of the Constitution. The 72 DLR(AD)(2020) judgment although in general gave finding that temporary and casual employees are not entitled for purpose of regularization. But however the 72 DLR(AD)(2020) judgment has also categorically in para Nos. 19 and 32 of the judgment given observation that no appointment can be made in the concerned statutory body whatsoever in contravention of Article 29 of the Constitution. The relevant portion in para No. 19 in 72 DLR(AD)(2020) judgment is reproduced hereunder:

*“Any appointment in the service of the Republic violating the spirit of Articles 27, 29, 133 and 140 of the Constitution is not only irregular but also illegal and that cannot be sustained in view of the constitutional provisions.”*

The relevant portion of the para No. 32 in 72 DLR(AD)(2020) judgment reproduced hereunder:

*“The BRDB, an autonomous body, while making any recruitment must strictly follow its rules and no appointment can be made in the BRDB in contravention of its rules which is not a conformity with Article 29 of the Constitution.”*

Therefore relying on Article 29 of the Constitution and further relying on the 72 DLR(AD)(2020) principle of Article 29, it is clear and settled principle that Article 29 of the Constitution cannot be violated under any circumstances. Violation and contravention of Article 29 of the Constitution if any is absolutely unlawful and without lawful authority.

With these views in mind we have carefully perused the materials before us particularly Annexure D, F and H. Upon perusal of these Annexures it appears that some other employees who are admittedly on similar footing as the petitioners have been recommended for absorption of their service to their respective posts as Wayman, Cook-cum-Bayarar and Gatekeeper etc subject to inquiry and ascertainment and upon other some satisfactory of the respondents. Therefore relying on Article 29 of the Constitution, we are of the considered view that the petitioners are admittedly on similar footing as these other employees who feature in Annexure- D, F and H subject to factual satisfaction regarding the service benefits. Therefore the petitioners are also entitled to be treated similarly and we are of the considered view that the respondents shall absorb and regularized the petitioners in their respective posts subject to enquiry and ascertainment of their eligibility upon satisfaction.

Under the facts and circumstances and from the foregoing discussion made above and after hearing the learned Advocate for both sides and relying on the judgment and order passed by our Apex court in Civil Petition for Leave to Appeal No. 3058 of 2014 and Civil Petition for Leave to Appeal No. 3062 of 2014 we are inclined to dispose of the Rule with directions and observations made above. .

In the result, the Rule is disposed of. The respondents are hereby directed to recommend the petitioners for purpose of absorption and regularization in the service of the revenue budget subject to their certification and ascertainment of their service record and any other rules which may be applicable to the other employees.

Communicate this judgment at once.

**Kashefa Hussain, J:**

I agree.

**Kazi Zinat Hoque, J:**