

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Syed Refaat Ahmed,
Chief Justice
Mr. Justice Md. Ashfaqul Islam
Mr. Justice Md. Rezaul Haque
Mr. Justice S.M. Emdadul Hoque
Mr. Justice A.K.M. Asaduzzaman
Mrs. Justice Farah Mahbub

CIVIL APPEAL NO.83 OF 2015 WITH CIVIL APPEAL NO.69 OF 2017 AND CIVIL
PETITION FOR LEAVE TO APPEAL NOS.1902, 1844, 1884, 1940-1941 OF
2012, 2516-2519, 2599, 2572-2573, 2155, 2476, 2431-2432 All OF 2013,
662-663, 2536 OF 2014, 1491 OF 2010, 3145 OF 2016 AND 659 OF 2017.

(From the judgments and orders dated 07.12.2011, 21.07.2014, 15.02.2014, 14.03.2012, 15.02.2012, 11.12.2011, 12.06.2013, 05.05.2013, 07.07.2013, 24.11.2013, 28.01.2010 and 31.05.2015 passed by the High Court Division in Writ Petition Nos.4887 of 2011, 9732 of 2010, 7990, of 2010, 8283 of 2011, 9737 of 2011, 5114 of 2010, 5566 of 2010, 8129 of 2011, 8282 of 2011, 7753-7754 of 2011, 2959 of 2011, 1265 of 2011, 2574 of 2011, 16996 of 2012, 9325 of 2011, 1456 of 2012, 1907 of 2011, 4364 of 2011, 7518 of 2011, 554 of 2011, 1427 of 2009, 520 of 2011 and 3398 of 2011).

Platinum Jubilee Jute Mills Limited,
represented by the Deputy General Manager,
(Project Chief) P.O. and P.S.-Town Khalishpur, : Appellant.
Khulna. : (In C.A. No.83 of 2015)

Eastern Jute Mills Limited, represented by its Deputy
General Manager (Chief of Project), P.O-Atra
Industrial Area, P.S-Khan Jahan Ali, District-Khulna. : Appellant.
: (In C.A. No.69 of 2017)

Chittagong Urea Fertilizer Limited, represented by
its Managing Director, Rangadia, Chattagong-4000
and another. : Petitioners.
: (In C.P. No.1902 of 2012)

Ashuganj Fertilizer and Chemical Company
Limited, represented by its Managing Director,
Ashuganj, Brahmanbaria and another. : Petitioners
: (In C.P. Nos.1844 and 1884 of 2012)

Urea Fertilizer Factory Limited, represented by its Managing Director, Ghorashal, Narshingdi and another. : Petitioners.
 (In C.P.No.1940-1941 of 2012)

Ashuganj Fertilizer and Chemical Company Limited, represented by its Managing Director, Ashuganj, Brahmanbaria and another. : Petitioners.
 (In C.P.Nos.2516-2519 of 2013)

Managing Director, National Tubes Limited, 131-142, Tongi Industrial Area, Tongi, Gazipur. : Petitioners.
 (In C.P. No.2599 of 2013)

Bangladesh Steel and Engineering Corporation, represented by its Chairman, BSEC Bhaban, 102 Kazi Nazrul Islam Avenue, Kawran Bazar, Dhaka, and others. : Petitioners.
 (In C.P.Nos.2572-2573 of 2013)

Ashuganj Fertilizer And Chemical Company Limited, represented by its Managing Director, Ashuganj, Brahmanbaria and another. : Petitioners.
 (In C.P. No.2155 of 2013)

Chittagong Urea Fertilizer Limited, represented by its Managing Director, Post Office-Chittagong Urea Fertilizer Rangadia, Chittagong and another. : Petitioners.
 (In C.P. No.2476 of 2013)

Jamuna Fertilizer Company Limited, represented by its Managing Director, Tarakandi, Police Station-Sharishabari, Jamalpur and others. : Petitioners.
 (In C.P. No.2431-2432 of 2013)

The Project In-Charge (Chief Project Officer), Karim Jute Mills Limited, Demra, Dhaka. : Petitioner.
 (In C.P. No.662 and 2536 of 2014)

Deputy Manager (Administration), Karim Jute Mills Limited, Demra, Dhaka. : Petitioner.
 (In C.P. No.663 of 2014)

Bangladesh Chemical Industries Corporation, represented by its Chairman, BCIC Bhaban, 30-31, Dilkusha C/A, Dhaka, and others. : Petitioners.
 (In C.P. No.1491 of 2010)

Bangladesh Steel and Engineering Corporation, represented by its Chairman, BSEC Bhaban, 102, Kazi Nazrul Islam Avenue, Kawran Bazar, Dhaka, and another. : Petitioners.
 (In C.P. No.3145 of 2016)

The Managing Director, National Tubes Limited, 131-142, Tongi Industrial Area, Tongi, Gazipur. : Petitioner.
 (In C.P. No.659 of 2017)

-Versus-

Rahmatullah @ Md. Rahmatullah and others.	:	..... <u>Respondents.</u> (In C.A. No.83 of 2015)
Md. Abul Hossain and others.	:	..... <u>Respondents.</u> (In C.A. No.69 of 2017)
Md. Shah Jamal and others.	:	..... <u>Respondents.</u> (In C.P. No.1902 of 2012)
A.F.M. Maududur Rahman being dead his heirs: Monira Moudud @ Monira Munna and others	:	..... <u>Respondents.</u> (In C.P. No.1844 of 2012)
Md. Abul Kashem-1 and others.	:	..... <u>Respondents.</u> (In C.P. No.1884 of 2012)
Md. Siddiqur Rahman and others	:	..... <u>Respondents.</u> (In C.P. No.1940 of 2012)
Md. Nurul Hoque and others	:	..... <u>Respondents.</u> (In C.P. No.1941 of 2012)
Md. Asgar Ali and others.	:	..... <u>Respondents.</u> (In C.P. No.2516 of 2013)
Md. Abdur Rahman and others	:	..... <u>Respondents.</u> (In C.P. No.2517 of 2013)
Md. Harun-or-Rashid and others	:	..... <u>Respondents.</u> (In C.P. No.2518 of 2013)
Snchamoya Barua and others	:	..... <u>Respondents.</u> (In C.P. No.2519 of 2013)
Md. Seraj Mia and others	:	..... <u>Respondents.</u> (In C.P. No.2599 of 2013)
Md. Shamsuddin and another	:	..... <u>Respondents.</u> (In C.P. No.2572 of 2013)
Md. Abdul Kashem and others	:	..... <u>Respondents.</u> (In C.P. No.2573 of 2013)
Md. Helo Miah and others	:	..... <u>Respondents.</u> (In C.P. No.2155 of 2013)
Md. Jahangir Bhuiyan and others	:	..... <u>Respondents.</u> (In C.P. No.2476 of 2013)

Md. Joynal Abedin and others	:	.... <u>Respondents.</u>
		(In C.P. No.2431 of 2013)
Md. Abdul Alim and others	:	.... <u>Respondents.</u>
		(In C.P. No.2432 of 2013)
Md. Moslem Uddin and others	:	.... <u>Respondents.</u>
		(In C.P. No.662 of 2014)
Samsul Haque and others	:	.... <u>Respondents.</u>
		(In C.P. No.663 of 2014)
Md. Israel Hossain and others	:	.... <u>Respondents.</u>
		(In C.P. No.2536 of 2014)
Md. Siddiqur Rahman and another	:	.... <u>Respondents.</u>
		(In C.P. No.1491 of 2010)
Md. Mofizur Rahman and others	:	.... <u>Respondents.</u>
		(In C.P. No.3145 of 2016)
Abu Taher and others	:	.... <u>Respondents.</u>
		(In C.P. No.659 of 2017)

For the Appellant/ Petitioners : Mr. Tufailur Rahman, Senior Advocate
 (In all the cases) instructed by Mr. Md. Taufique Hossain, Advocate-on-Record, Mr. Md. Firoz Shah, Advocate-on-Record, Mr. Chowdhury Md. Zahangir, Advocate-on-Record (dead), Mr. Md. Tajul Islam Mazumder, Advocate-on-Record, Mr. Syed Mahbubar Rahman, Advocate-on-Record (dead).

For Respondent No.1 : Mr. Nesar Ahmed, Advocate with Mr. Mohammad Noor Hossain, Advocate
 (In C. A. No.83 of 2015 and C.P. Nos.662-663 of 2014) instructed by Mr. Md. Fakrul Islam, Advocate-on-Record and Mr. Md. Taufique Hossain, Advocate-on-Record.

For Respondent Nos.2-4 : Not represented.
 (In C. A. No.83 of 2015)

For Respondent No.1 : Mr. Md. Helal Amin, Advocate-on-Record.
 (In C. A. No.69 of 2017)

For Respondent Nos.2-4 : Not represented.
 (In C. A. No.69 of 2017)

For Respondent Nos.2-5 : Not represented.
 (In C. P. No.662 of 2014)

For Respondent Nos.2-4 : Not represented.
 (In C. P. No.663 of 2014)

For Respondent No.1 : Mr. Mohammad Noor Hossain, Advocate
 (In C. P. No.1902 of 2012 and 2599,
 2572, 2155, 2476, 2431-2432 of 2013) instructed by Mr. Syed Mahbubar
 Rahman, Advocate-on-Record (dead).

For Respondent Nos.2-4 : Not represented.
 (In C. P. No.1902 of 2012)

For Respondent Nos.2-5 : Not represented.
 (In C. P. No.2599 of 2012)

For Respondent Nos.2-3 : Not represented.
 (In C. P. No.2431-2432 of 2013)

For Respondent Nos.2-3 : Not represented.
 (In C. P. No.2572, 2155, 2476 of 2013).

For Respondent No.1 : Mr. A.K.M. Nurul Alam, Advocate-on-
 Record
 (In C. P. Nos.1844 of 2012
 and 2516-2519, 2573 of 2013)

For Respondent Nos.2-4 : Not represented.
 (In C. P. No.1844 of 2012)

For Respondent Nos.2-4 : Not represented.
 (In C. P. No.2516-2518 of 2013)

For Respondent Nos.2-3 : Not represented.
 (In C. P. No.2519, 2573 of 2013)

For Respondent No.1 : Mr. Syed Mahbubar Rahman, Advocate-
 on-Record (dead) and Mr. A.K.M. Nurul
 Alam, Advocate-on-Record.
 (In C. P. Nos.1884, 1940 of 2012)

For Respondent Nos.2-3 : Not represented.
 (In C. P. Nos.1884, 1940 of 2012)

For the Respondents : Not represented.
 (In C. P. No.1941 of 2012)

For Respondent No.1 : Mr. Mohammad Abdul Hai, Advocate-
 on-Record.
 (In C. P. No.2536 of 2014)

For Respondent Nos.2-4 : Not represented.
 (In C. P. No.2536 of 2014)

For the Respondents : Not represented.
 (In C. P. No.1491 of 2010)

For the Respondents : Not represented.
 (In C. P. No.3145 of 2016)

For Respondent No.1 : Mr. Md. Nurul Islam Chowdhury,
 (In C. P. No.659 of 2017) Advocate-on-Record.

For Respondent Nos.2-5 : Not presented.
 (In C. P. No.659 of 2017)

Date of Hearing. : 24.07.2025 and 31.07.2025.

Date of Judgment. : 07.08.2025.

JUDGMENT

Farah Mahbub, J:

Since common question of law and similar facts are involved in all those Civil Appeals and Civil Petitions for Leave to Appeal, as such, those have been heard together and are being disposed of by this single judgment.

Delay in filing all these Civil Petition for Leave to Appeal Nos. 662-663, 2536 of 2014, 1844 and 1940-1941 of 2012 are condoned.

Civil Appeals, bearing Nos. 83 of 2015 and 69 of 2017, preferred by leave, are directed against the judgments and orders passed in Writ Petition Nos.4887 of 2011 and 9732 of 2009 respectively whereby the High Court Division made the Rules absolute with consequential directions.

Civil Petition for Leave to Appeal bearing Nos.1902, 1844, 1884, 1940-1941 of 2012, 2516-2519, 2599, 2572-2573, 2155, 2476, 2431-2432 of 2013, 662-663, 2536 of 2014, 1491 of 2010, 3145 of 2016 and 659 of 2017 are preferred against the judgments and orders passed in Writ

Petition Nos.7990 of 2010, 8283 of 2011, 9737 of 2011, 5114 of 2010, 5566 of 2010, 8129 of 2011, 8282 of 2011, 7753-7754 of 2011, 2959 of 2011, 1265 of 2011, 2574 of 2011, 16996 of 2012, 9325 of 2011, 1456 of 2012, 1907 of 2011, 4364 of 2011, 7518 of 2011, 554 of 2011, 1427 of 2009, 520 of 2011 and 3398 of 2011 respectively whereby the High Court Division, upon due deliberation and for reasons recorded therein, made all the Rules absolute.

The facts, in brief, relating to Civil Appeal No. 83 of 2015 arising out of Writ Petition No.4887 of 2011 is that the writ petitioner being appointed as a Clerk in Platinum Jubilee Jute Mills Ltd., Khalishpur, Khulna, was subsequently promoted to the post of Upper Division Assistant, as evidenced by his retirement letter dated 29.05.2011. While serving efficiently in that post, he was served with Memo No. Proshashon/83-Aboshar/1485 dated 19.05.2011 retiring him on attaining 57 years of age with effect from 29.06.2011.

In Civil Appeal No.69 of 2017, arising out of Writ Petition No.9732 of 2009, the petitioner being a permanent worker of Eastern Jute Mills Ltd., was appointed as a Tally Clerk (Mill Side) vide letter dated 30.11.1979. While he was serving diligently he was retired from service by the authority concerned, vide Memo No.ইজেএম/প্রশা/ব্যংনথি/২০৮৭ dated 28.11.2010 with effect from 31.12.2010.

In Civil Petition for Leave to Appeal Nos.1902 of 2012 and 2476 of 2013 arising out of Writ Petition Nos.7990 of 2010 and 9325 of 2011

respectively, both the writ petitioners were employees of Chittagong Urea Fertilizer Limited, a unit of Bangladesh Chemical Industries Corporation.

In Writ Petition No.7990 of 2010, the writ petitioner being appointed as permanent worker in the post of Record Shorter/Peon, was served with a notice dated 26.05.2009, retiring him with effect from 01.07.2009 on account of attaining the age of 57 years.

In Writ Petition No.9325 of 2011, the writ petitioner was appointed as a Compounder on 15.11.1987. Later, he was promoted to the post of Pharmacist. On 08.09.2011 an office order was issued retiring him with effect from 26.10.2011 on the ground of attaining 57 years of age.

In Civil Petition for Leave to Appeal Nos.1844 and 1884 of 2012 and 2516-2519 of 2013 arising out of Writ Petition Nos.8283 and 9737 of 2011 and 8129, 8282, 7753 and 7754 of 2011 respectively, all the writ petitioners were employees of Ashuganj Fertilizer and Chemical Company Limited, a unit under the administrative control of Bangladesh Chemical Industries Corporation.

In Writ Petition No.8283 of 2011, the writ petitioner was appointed as Junior Operator (App) (Ammonia) on 21.01.1980. Later, he was promoted to the post of Office Assistant. Subsequently, He was served with a notice dated 21.09.2011, retiring him with effect from 11.12.2011 on attaining the age of 57 years.

In Writ Petition No.9737 of 2011, the writ petitioner was appointed on 06.10.1978 as Driver. Later, he was promoted to the post of Senior

Driver. Subsequently, He was served with a notice dated 21.09.2011, retiring him with effect from 23.09.2011 on account of attaining the age of 57 years.

In Writ Petition No.8129 of 2011, the writ petitioner was appointed on 05.01.1989 as Security Guard. Subsequently, vide order dated 26.12.2010 he was retired on attaining the age of 57 years.

In Writ Petition No.8282 of 2011, the writ petitioner was appointed on 29.06.1981 as Fire and Safetyman. Later, he was promoted to Fire Squadron-I for having satisfactory service record. However, he was retired on attaining the age of 57 years.

In Writ Petition No.7753 of 2011, the writ petitioner being appointed on 18.11.1974 in Eagle Box and Carton Mfg. Co. Ltd., was subsequently, transferred to Ashuganj Fertilizer and Chemical Company as an Office Assistant. He was similarly retired by the authority concerned at the age of 57 years.

In Writ Petition No.7754 of 2011, the writ petitioner being appointed as Pathological Assistant on 08.05.1981, was subsequently promoted to the post of Laboratory Technician. He was also retired by the authority concerned upon reaching the age of 57 years.

In Civil Petition for Leave to Appeal Nos.1940-1941 of 2012 arising out of Writ Petition Nos.5114 and 5566 of 2010, both the writ-petitioners were employees of Urea Fertilizer Factory Limited, a unit

under the administrative control and supervision of Bangladesh Chemical Industries Corporation.

In Writ Petition No.5114 of 2010, the writ petitioner was appointed as a permanent worker on 17.03.1971. Later, he was promoted to various posts. Lastly, he was serving as Store Keeper. On 03.05.2010 he was served with an office order of retirement with effect from 22.06.2010 on account of attaining the age of 57 years.

In Writ Petition No.5566 of 2010, the writ petitioner was appointed as Driver, a permanent worker, on 05.03.1975. On 19.07.2008 he was served with an office order of retirement with effect from 30.09.2008 on account of attaining the age of 57 years.

In Civil Petition for Leave to Appeal Nos.2599 of 2013 and 659 of 2017, preferred against Writ Petition Nos.2959 and 3398 of 2011 respectively, both the writ petitioners were employees of National Tubes Ltd, Gazipur.

In Writ Petition No.2959 of 2011, the writ petitioner was appointed as a cleaner in National Tubes Ltd, Tongi, Gazipur on 16.07.1974. Later, he was promoted to the post of peon. On 15.01.2011 he was placed on retirement on attaining the age of 57 years.

In Writ Petition No.3398 of 2011, the writ petitioner was appointed as permanent worker in National Tubes Ltd, Tongi, Gazipur on 11.01.1980. Initially, he was appointed as a peon; later, he was promoted to the post of Store Keeper. However, on 29.09.2010 an order of

retirement was issued on him with effect from 31.12.2010 on the ground of attaining the age of 57 years.

In Civil Petition for Leave to Appeal Nos.2572-2573 of 2013 and 3145 of 2016, preferred against the judgments and orders passed in Writ Petition Nos.1265, 2574 and 520 of 2011 respectively, all the writ petitioners were employees of Bangladesh Steel and Engineering Corporation.

In Writ Petition No.1265 of 2011, the writ petitioner was appointed as Maintenance Helper on 01.06.1972. Later, he was promoted to the post of Gestatener Operator; however, he was placed on retirement on attaining the age of 57 years on 05.01.2011.

In Writ Petition No.2574 of 2011, the writ petitioner was appointed as permanent worker. Starting as peon he was later promoted to the post of Office Assistant. On 12.05.2010 he was placed on retirement on attaining the age of 57 years.

In Writ Petition No.520 of 2011, the writ petitioner was appointed as a permanent worker on 18.03.1981. Initially, he was appointed as a Junior Clerk; later, he was promoted to the post of Office Assistant. However, pursuant to the order dated 19.12.2010 he was retired with effect from 05.02.2011 on the ground of attaining the age of 57 years.

In Civil Petition for Leave to Appeal Nos.1491 of 2010 and 2155 of 2013, preferred against the judgment and order passed in Writ Petition

Nos.1427 of 2009 and 16996 of 2012 respectively, both the writ-petitioners were employees of Zia Fertilizer Company Ltd., Ashuganj.

In Writ Petition No.16996 of 2012, the writ petitioner was appointed as a Welder at the Company on 22.09.1983. Later, he was promoted to the post of Master Technician. His date of birth, as per the school certificate and service book, is 15.05.1954 and accordingly, his due date of retirement was 14.05.2014 on attaining the age of 60(sixty) years. Despite the same, the Managing Director of the company retired him on 08.11.2012 on the plea of attaining the age of 60(sixty) years, as endorsed in the medical certificate.

In Writ Petition No.1427 of 2009, the writ petitioner was appointed as an Electrician at the Company on 16.10.1977. Later, he was promoted to the post of Master Technician after serving in different posts. On 06.04.2008 an office order was issued retiring him with immediate effect on the ground of attaining the age of 57 years.

In Civil Petition for Leave to Appeal Nos.2431 and 2432 of 2013, preferred against Writ Petition Nos.1456 of 2012 and 1907 of 2011 respectively, both the writ-petitioners were the employees of Jamuna Fertilizer Company Ltd., an unit of Bangladesh Chemical Industries Corporation.

In Writ Petition No.1907 of 2011, the writ petitioner was appointed as LDA-cum-Typist on 19.08.1988 and he joined in his respective post on 01.10.1988. Later, he was promoted to Grade-I. On 27.09.2010 an office

order was issued retiring him with effect from 31.12.2010 on the ground of attaining the age of 57 years.

In Writ Petition No.1456 of 2012, the writ petitioner was appointed as Office Bearer on 02.07.1974. Lastly, he was promoted to the post of Record Sorter. However, pursuant to order dated 01.01.2011 he was retired with effect from 14.03.2011 on the ground of attaining the age of 57 years.

In Civil Petition for Leave to Appeal Nos.662, 663 and 2536 of 2014, preferred against Writ Petition Nos.4364, 7518 and 554 of 2011 respectively, all the writ-petitioners were employees of Karim Jute Mills Ltd. under Bangladesh Jute Mills Corporation.

In Writ Petition No.4364 of 2011, the writ petitioner, a Time Keeper of the Mill was initially appointed as a permanent worker. However, pursuant to order dated 27.04.2011 he was retired with effect from 31.05.2011 on the ground of attaining the age of 57 years.

In Writ Petition No.7518 of 2011, the writ petitioner, a Time Keeper of the Mill was appointed as a permanent worker. However, vide order dated 07.08.2010 he was retired from service with effect from 10.09.2010 on the ground of attaining the age of 57 years.

In Writ Petition No. 554 of 2011, the writ petitioner was appointed in the post of “উচ্চমান সহকারী” in the said Mill. However, in view of the order dated 05.01.2010 he was retired from service with effect from 31.01.2010 on the ground of attaining the age of 57 years.

The core contention of all the respondents-writ petitioners is that they qualify as “workers” as defined in Section 2(e) of the Public Corporation (Management Co-ordination) Ordinance, 1986 (in short, the Ordinance, 1986) read with Section 2(65) of the Bangladesh Labour Act, 2006 (in short, the Act, 2006). Consequently, their age of retirement should be governed by Section 14A of the Ordinance, 1986, which prescribes 60(sixty) years as the age of retirement, notwithstanding the earlier provision of 57(fifty seven) years, as provided under Section 28 of the Act, 2006 prior to its amendment in 2010. Being a special law with overriding effect, they assert, the Ordinance, 1986 prevails to the extent of any inconsistency and operates in a manner more beneficial in determining their service tenure, in consonance with Section 336 of the Act, 2006. More so, following its amendment in 2010, the Act, 2006 has also, been brought into conformity with the Ordinance, 1986 by fixing the retirement age at 60(sixty) years.

Their further contention is that the impugned office orders retiring the writ petitioners at 57(fifty seven) years are inconsistent with the statutory framework and alleged to have violated their fundamental rights as guaranteed under Articles 27 and 29 of the Constitution.

Having found *prima facie* substance the *Rules Nisi* were issued by the High Court Division in all these writ petitions.

The aforesaid *Rules Nisi* were duly contested by the appellants-writ respondents by filing affidavits-in-opposition in their respective cases.

While controverting the assertions of the writ petitioners their categorical contentions, *inter alia*, were that the writ petitioners, having rendered service under public corporations or enterprises, were governed by the service rules of their respective employing authorities, wherein the age of retirement was fixed at 57(fifty-seven) years.

It was further asserted that, as the nature of the duties and responsibilities of the writ petitioners did not fall within the ambit of “worker” as defined under the relevant statutory provisions, and given that they were employed in government-owned corporations and enterprises, their terms and conditions of service were governed by the Public Servants (Retirement) Act, 1974 (in short, the Act, 1974). Hence, as public servants within the meaning of the said Act, any dispute concerning their retirement lie before the Administrative Tribunal, to the exclusion of the writ jurisdiction of the High Court Division.

Moreover, if the writ petitioners were to be reckoned as workers under the relevant provisions of the Ordinance, 1986 or the Act, 2006, the proper forum for adjudication of their grievances would, in that event, be the Labour Court, as prescribed by law, rather than the writ jurisdiction of the High Court Division.

Upon hearing the contending parties, respective Benches of the High Court Division disposed of all the writ petitions, making the Rules absolute with direction upon the writ respondents in each case to allow the writ petitioners to remain in their employments until they reach the

age of 60(sixty) years and to pay all arrears of salary and other service benefits in accordance with law to those who had already attained the age of 60(sixty) years. Relevant part of the observations and findings are quoted below:

“...However, we find that since there were ambiguities in the laws of our land as to the definition of the "worker" and also on the issue of the "retirement age" for the workers and more importantly this petitioner being a 'worker' within the purview of Section 2(e) of the Public Corporation (Management Co-Ordination) Ordinance, 1986 and the same Ordinance having not prescribed for any forum to address petitioner's grievance, we hold that the Constitutional Court is the proper forum to adjudicate such like applications. As such, we hold that the instant writ petition is held to be maintainable on this ground...”[C.A. No. 83 arising out of Writ Petition No. 4887 of 2011]

“...We find in a series of unreported decisions of the High Court Division...that the workers, who are working in any public enterprise/corporation, are regulated by the provisions of section 14A of the Public Corporation (Management Co-Ordination) Ordinance, 1986 and, thus, entitled to be in service till completion of 60 years of age... We further find that Service Rules of government owned enterprise or corporation as to retiring their workers after completion of 57 years of age is not conducive for the workers and, as such, the provisions of the Proviso of Section 3(1) as well as section 336 of Labour Act, 2006 will operate here in these cases to make the petitioners entitled to be in their respective service till they complete 60 years of their respective age...”
[C.P.L.A no. 2599 OF 2013 arising out of Writ Petition No.2959 of 2011]

“...We also find that the spirit of enactment of the Labour Law was to endow the workers with better amenities as has been reflected by the subsequent amendment of Section 28 of the Labour Act 2006 by incorporating the retirement age of the labour to be 60 years in place of 57 and thereby eliminating the ambiguities of the laws...”
[C.P.L.A. No.1941 of 2012 arising out of Writ Petition No.5114 of 2010]

“...as the Administrative Tribunal Act has not included the corporations of the petitioners in its schedule, they are ineligible to make any application in the Tribunal. However, they might have approached the Civil Court, but again, since here in these cases interpretation of a number of Statues and Rules are involved, therefore, Constitutional Court is the better forum for such like matters...”
[C.P.L.A No.2431 of 2013 arising out Writ Petition No. 1456 of 2012]

“...we find that the Public Corporation (Management Co-Ordination) Ordinance, 1986 will be applicable for being a special law with an overriding power on the Public Service Retirement Act, 1974...”
[C.P.L.A No. 1844 of 2012 arising out Writ Petition No.8283 of 2011]

“...we find that pragmatically it would be an unworthy order by this Court to ask the petitioners to seek redress from the Labour Court in that usually most of our Tribunal does require an average time of more than a year and thereafter if the respondent opts to exhaust its appellate forum and other forum including approaching this Court, it may take more than three years time and in that event the respondent/government would have to pay the petitioners' salaries without being served by the petitioners for this three years, which would be an wastage of public money...”
[C.P.L.A No.1884 of 2012 arising out of Writ Petition No.9737 of 2011]

Being aggrieved by and dissatisfied with, the writ respondents as appellants have preferred the instant Civil Appeals and Civil Petitions for Leave to Appeal before this Division.

At this juncture, Mr.Tufulur Rahman, the learned Senior Advocate appearing for the appellant-writ respondents in all the cases submits that the High Court Division erred in law in passing the impugned judgments and orders without duly considering the cardinal issue, i.e. the writ petitions were not maintainable, inasmuch as the matter in question directly pertains to the terms and conditions of service of the workers, for which the Bangladesh Labour Act, 2006 provides comprehensive provisions, making the Labour Court as appropriate forum. In this regard, he goes to argue that the respondents-writ petitioners had equally efficacious alternative remedy and without invoking said forum they have directly approached the High Court Division by filing application under Article 102 of the Constitution.

He further goes to submit that, in the facts and circumstances of the case, the question as to whether the writ petitioners are “workers” within the ambit of law and entitled to further termination benefits is essentially a matter of fact, which can only be determined upon taking evidence before the competent court of law.

In the backdrop of the aforesaid events, he submits, the impugned judgments and orders passed by the High Court Division are liable to be set aside.

Conversely, Mr. Nesar Ahmed, the learned Advocate with Mr. Mohammad Noor Hossain, the learned Advocate appearing for the respondents-writ petitioners made his respective submissions in support of the impugned judgments and orders passed by the High Court Division in their respective cases.

The moot question in the cases in hand revolves around the core issue i.e. the maintainability of the writ petitions under Article 102 of the Constitution.

It has been consistently held by this Division in numerous decisions that where the impugned action has been taken without jurisdiction, or the dispute involves a pure question of law or interpretation of statute, there exists no bar to invoking the writ jurisdiction notwithstanding the availability of an alternative remedy.

In *Assessor Officer, Narayanganj Range v. Burmah Eastern Ltd. 1 BLD (AD) 450* it was held by this Division “...As we have found the impugned action without jurisdiction, the question of availing statutory alternative remedy does not arise. We are of opinion that the High Court Division has rightly held that the writ petition was maintainable.”

In *M. A. Hai & Others v. Trading Corporation of Bangladesh 40 DLR (AD) 206* this Division observed that “..if the writ jurisdiction is sought to be invoked raising purely a question of law or interpretation of statute, as in these cases, availability of an alternative remedy will not stand in the way.”

Similiar views can be found in ***Uttar Pradesh Power Transmission Corporation Ltd. and ors. v. CG Power and Industrial Solutions Ltd. and ors., 2021 INSC, 294, Para-67*** wherein the Indian Supreme Court held that “*availability of an alternative remedy does not prohibit the High Court from entertaining a writ petition in an appropriate case. The High Court may entertain a writ petition, notwithstanding the availability of an alternative remedy, particularly (i) where the writ petition seeks enforcement of a fundamental right; (ii) where there is a failure of principles of natural justice; or (iii) where the impugned orders or proceedings are wholly without jurisdiction; or (iv) the vires of an Act, is under challenge.*”

Said observations have also been echoed in ***National Stock Exchange of India Ltd. v. Assistant Provident Fund Commissioner and another:2023 LLR 1334 para 11.***

Upon a careful consideration of the above propositions, submissions, and the relevant statutory provisions, we find that the High Court Division rightly held the petitioners to be “workers” employed under the Government-owned enterprises or corporations, having regard to the factual stance of each petitioner and in view of the definitions contained in Sections 2(e) and 14 of the Public Corporation (Management Coordination) Ordinance, 1986, read with Sections 2(65), 28, and 336 of the Bangladesh Labour Act, 2006. This finding derives support from a number of reported and unreported decisions of the High Court Division, as well as from the decision of this Division in ***M.A. Hai and others v.***

Trading Corporation of Bangladesh, reported in **40DLR(AD)207**, observing, *inter alia*, that the services of workers employed in any public enterprise or corporation are governed by Section 14A of the said Ordinance, and accordingly, such workers are entitled to remain in service until completion of sixty (60) years of age.

Considering the facts and circumstances stated hereinabove and also, the legal stances and decisions of this Division, we find no ground to intervene with the decisions delivered by the different Benches of the High Court Division in their respective cases on the matter in hand.

Accordingly, both the Civil Appeals and all the Civil Petitions for Leave to Appeal are dismissed without any order as to costs.

C.J.

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