

**IN THE SUPREME COURT OF BANGLADESH**  
**APPELLATE DIVISION**

PRESENT:

**Mr. Justice Hasan Foez Siddique**  
**-Chief Justice**  
**Mr. Justice Md. Nuruzzaman**  
**Mr. Justice Obaidul Hassan**  
**Mr. Justice Borhanuddin**  
**Mr. Justice M. Enayetur Rahim**

**CIVIL PETITION FOR LEAVE TO APPEAL NO.3590 OF 2018**

With

**CIVIL PETITION FOR LEAVE TO APPEAL NO.61 OF 2022.**

(From the judgment and orders dated 01.11.2017 and 13.12.2018 passed by the High Court Division in Writ Petition Nos.4780 and 3452 of 2016).

Probashi Kallyan Bank, represented : .....Petitioner.  
by its Managing Director, Dhaka. (In both the petitions)

-Versus-

Md. Bazlur Rashid and others. : .....Respondents.  
(In C.P. No.3590 of 2018)

Md. Rejaur Rahman Rajib and others. : .....Respondents.  
(In C.P. No.61 of 2022)

For the Petitioner. : Mr. A. M. Amin Uddin, Attorney  
(In C.P. No.3590 of 2018) General instructed by Ms. Madhumalati Chowdhury Barua, Advocate-on-Record.

For the Petitioner. : Mr. A. M. Amin Uddin, Attorney  
(In C.P. No.61 of 2022) General instructed by Mr. Md. Abdul Hye Bhuiyan, Advocate-on-Record.

For Respondent Nos.1-27. : Mr. A. F. M. Abdur Rahman, Senior  
(In C.P. No.3590 of 2018) Advocate with Mr. Kazi Waliul Islam, Advocate instructed by Mr. Mohammad Ali Azam, Advocate-on-Record.

For Respondent Nos.28-32. : Not represented.  
(In C.P. No.3590 of 2018)

For Respondent No.1. : Mr. Sudipta Arjun, Advocate  
(In C.P. No.61 of 2022) instructed by Mr. Md. Nurul Islam Chowdhury, Advocate-on-Record.

For Respondent No.2-4. : Not represented.  
(In C.P. No.61 of 2022)

Date of Hearing. : **The 23<sup>rd</sup> October, 2022.**

Date of Judgment. : **The 23<sup>rd</sup> October, 2022.**

## J U D G M E N T

**Borhanuddin, J:** Delay in filing these Petitions is hereby condoned.

Both the Civil Petitions for Leave to Appeal are directed against the judgment and order dated 01.11.2017 and 13.12.2018 respectively passed by the High Court Division in Writ Petition Nos.4780 and 3452 of 2016 disposing of the Rule with directions.

Facts of Writ Petition No.4780 of 2016 in a nutshell are that:

The respondent nos.1-27 herein as petitioners filed Writ Petition No.4780 of 2016 invoking Article 102 of the Constitution impugning recruiting advertisement no.49.03.999.02.03.2015-097 dated 08.11.2015 issued by the writ-respondent no.6 so far it relates to serial no.1 i.e. Junior Executive Officer and also prayed for a direction upon the respondents to absorb/regularize the petitioners in the permanent post of Junior Executive Officer under the regular setup of the Probashi Kallyan Bank with continuity of service and other attendant benefits,

contending interalia, that the petitioners joined in the Bank as Interne Officer for temporary basis with a consolidated amount on various dates in the year 2013 and 2014; The petitioners initially appointed as Interne Officer for a period of 03(three) months but the Bank for the greater interest of the public and the Bank itself had retain the petitioners in service on temporary basis instead of absorbing them under the regular setup of the Bank; The petitioners though appointed as Interne Officer but practically they are discharging functions of a regular officer of the Bank; In numerous occasion the petitioners were given a hope by their employer that they would be absorbed/regularized under the regular setup of the Bank; Lastly, the respondent no.4 by a letter dated 29.12.2014 again had given a hope and assurance to the petitioners that the process for their regularization/absorption under the regular establishment of the Bank was under active consideration; But due to inaction and failure of the respondents and after waiting for a long time ultimately on 07.03.2016 the petitioners filed an application to the writ-respondent no.5, Chairman of the

Probashi Kallyan Bank, to regularize them under the regular setup but without any result; Due to employer's highest level of satisfactions the petitioners have been retained in the service which had created a legitimate expectation to be regularized/absorbed in the regular establishment of the Bank as Junior Executive Officer; The petitioners entered into the job with required academic qualification, skills and having age of service but now after so many years most of them have crossed their age to get any Government employment; The petitioners gained experience by serving a long period in the Bank as an officer in the cash department and the respondents have ample opportunity, authority and power to regularize/absorb them or make them permanent in the regular post under the revenue setup of the Bank.

Upon hearing the learned Advocate for the writ-petitioners, a Division Bench of the High Court Division issued a Rule Nisi upon the respondents in terms of the prayer.

Respondent no.4 contested the Rule by submitting an affidavit-in-opposition.

After contested hearing, a Division Bench of the High Court Division disposed of the Rule with the following observation and direction:

*"In view of the above, we take the view that the Bank ought not to have neglected to take steps to regularize the petitioners, given, among others, their length of service after the expiry of the internship period and the fact that they had been rendering the services to the satisfaction of the Bank. We are therefore inclined to dispose of the Rule with the direction that:*

- (i) The petitioners should be given the opportunity to apply for the posts of Junior Executive Officer or any other equivalent or similar posts;*
- (ii) The applications of those petitioners who apply, should be given priority over the other applicants and their experience and service record in the Bank are to be taken into consideration; and*
- (iii) These petitioners must be appointed prior to appointing others.*
- (iv) The respondents are further directed to consider the petitioners by relaxing their age."*

Having aggrieved, writ-respondent no.4 as petitioner preferred Civil Petition for Leave to Appeal No.3590 of 2018 invoking Article 103 of the constitution.

Similarly, in Writ Petition No.3452 of 2016 the petitioner challenged inaction of the writ-respondents in absorbing the petitioner as permanent employee in view of Rule-VII of the 'Probashi Kallyan Bank (Kormokorta and Kormochari) Chakri Pro-Bidhimala, 2013'.

After issuing Rule by a Division Bench of the High Court Division, respondents contested the Rule by filing power.

Upon hearing the respective parties, a Division Bench of the High Court Division disposed of the Rule directing the writ-respondents to regularize/absorb the petitioner in the permanent post whenever vacancy arises, if they are otherwise not disqualified.

Having aggrieved, the writ-respondent no.1 as petitioner preferred Civil Petition for Leave to Appeal No.61 of 2022 invoking Article 103 of the Constitution.

Mr. A. M. Aminuddin, learned Attorney General appearing for the petitioner in both the Civil Petitions submits that the policy of the Bank and the condition imposed in the appointment letter of the respondents

clearly bars to have any legitimate expectation of the respondents. In this score learned Attorney General referred appointment letter of the respondents and appointment letter of temporary appointees on daily basis wherein it is stated in condition no.(4) of the appointment letter of respondents herein that 'শিক্ষানবীশকালের সমাপ্তিতে চাকুরীর স্থায়ী নিয়োগের নিশ্চয়তা ব্যাংক বহন করবে না।' On the contrary, in the temporary appointees on daily basis condition no.(5) stipulates that 'কাজের সন্তোষজনক ফলাফলের উপর আপনার চাকুরী স্থায়ীকরণ করা যেতে পারে' and as such the impugned judgment and order is liable to be set-aside. He also submits that direction given by the High Court Division to the effect that 'petitioners must be appointed prior to appointing others' will raise ambiguity on the transparency and accountability of appointment process as such the impugned judgment and order is liable to be set-aside.

On the other hand, Mr. A. F. M. Abdur Rahman, learned Senior Advocate appearing for the respondents submits that the respondents are serving as Interne Officer of the Bank for a long period and though initially they are appointed for 03(there) months but the Bank authority

retained them in the Bank considering their efficiency and sincerity and by it's conduct the Bank assured the petitioners that they would be make permanent. He also submits that on the same footing many of the Interne Officers were regularized by the Bank. He lastly submits that the petitioners may be given an opportunity to apply for the post relaxing their age considering their length of service as Interne Officers of the Bank.

Mr. Sudipta Arjun, learned Advocate appearing for the respondent in Civil Petition for Leave to Appeal No.61 of 2022 adopts the submissions made by the learned Senior Advocate Mr. A. F. M. Abdur Rahman.

Heard the learned Attorney General for the petitioner and the learned Advocates for the respondents. Perused the impugned judgment and orders and the papers/documents contained in the paper book.

Admittedly, the respondents herein as Interne Officers are serving in the Bank for a long period. It also appears that though the respondents initially appointed as an Interne Officers for 03(three) months but



the Bank authority retained them after expiry of the Interne period. The petitioners are working as Interne Officers till now. The Bank through its conduct assured the petitioners that they would be regularized/absorbed in the regular setup of the Bank which creates a legitimate expectation that they would be made permanent in the Bank.

Naturally, the petitioners after their length of service as Interne Officers in the Bank lost their age for Government service. Contrary, the directions in the impugned judgment and orders passed in Writ Petition Nos.4780 of 2016 and 3452 of 2016 may raise ambiguity and transparency of appointment process of the Bank. Considering all the aspects, we are inclined to expunge the directions issued by the High Court Division in the impugned judgment and order dated 01.11.2017 as well as direction passed in the judgment and order dated 13.12.2018.

Accordingly, we are disposing of both the civil petitions with the following direction:

*The respondent nos.1-27-writ petitioners (Writ Petition No.4780 of 2016) and respondent no.1-writ petitioner (Writ Petition No.3452 of 2016) should be given the opportunity to apply for the posts of Junior Executive Officers or any other equivalent or similar posts by relaxing their age.*

Accordingly, with the above observation and directions both the civil petitions are disposed of.

However, no order as to costs.

**C.J.**

**J.**

**J.**

**J.**

**J.**