In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)
Present
Justice Md. Badruzzaman
And
Justice Sk. Tahsin Ali

Writ Petition No. 5379 of 2019

In the matter of:

An application under Article 102 read with Article 44 of the Constitution of the People's Republic of Bangladesh.

-And-

In the matter of:

Md. Al Amin and others

……. Petitioners

Vs.

Government of Bangladesh and others

…Respondents

Mr. Md. Kaisaruzzaman, Advocate

... for the petitioner

Mr. Md. Abdul Aziz Miah, Advocate

… for the respondent Nos. 3

Mr. Mohammad Imam Hossain Tareq, DAG with
Mr. Mohammad RashedulHassan,DAGwith
Mr. Shakir Uddin Ahmed Bappy, DAG with
Mr. Mohammad Anowar Hossain, AAG with
Mr. Md. Shahidul Islam, AAG with
Ms. KamrunnaharLipi, AAG

..... For the State

Heard on: 26.10.2026, 27.10.2026 and
Judgment on: 01.11.2026

Sk. Tahsin Ali, J:

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh filed by the petitioner, a Rule Nisi was issued calling upon the respondents to show cause as to why the impugned appointment letter dated 25.04.2019 issued under the signature of the respondent No. 4 vide memo No. পপঅ/প্রশা-১/নিয়োগ-

৩২৭/২০১৬/১১৯৫ (Annexure-E-1) bearing the lists of finally selected candidates for the post of উপসহকারী কমিউনিটি মেডিকেলঅফিসার (SACMO) under the directorate of Family Planning, should not be declared to be without lawful authority and is of no legal effect and as to why the respondents should not be directed to appoint the petitioners as উপ সহকারী কমিউনিটি মেডিকেল অফিসার (SACMO) under the directorate of Family Planning considering Freedom Fighter Quota and/or such other or further order or orders as to this court may seem fit and proper.

The relevant facts necessary for the disposal of this Rule are that the petitioners had earlier applied for appointment to the post of উপ সহকারী কমিউনিটি মেডিকেল অফিসারunder the quota reserved for the children of freedom fighters, as evidenced by Annexures-C9 to C11 to the writ petition. All three petitioners were found qualified in the result published on 11.07.2018 by the concerned authority through a notification issued under the signature of respondent No. 4. Accordingly, the petitioners appeared in the viva voce examination. Subsequently, the final result was published by the authority (Annexure 1 to the affidavit-in-opposition), wherein petitioner No. 1 secured the fourth position in the merit list, while the other two petitioners were also declared successful. Despite having been finally qualified, no appointment letters have been issued in favour of the petitioners till date, nor has any lawful or satisfactory reason been assigned for withholding their appointments.

During the course of hearing, the learned Advocate for the petitioners placed before us a circular dated 30.06.2019 issued by the Ministry of Public Administration concerning the reservation of quota for the children of freedom fighters. Upon perusal of the said circular, it appears that the quota facility reserved for the children of freedom fighters was retained in respect of appointments to Class III and Class IV posts in government service. Since the post in question falls within the aforesaid category, the petitioners were prima facie eligible to be considered for appointment under the said quota, subject to fulfillment of the other applicable requirements.

In this regard, it is pertinent to refer to the letter dated 30.06.2019 issued by the Ministry of Public Administration, annexed to the writ petition as Annexure-K, which has a material bearing on the controversy involved in the instant Rule. For better appreciation of the matter, the relevant contents of the said letter are reproduced below:

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
জনপ্রশাসন মন্ত্রণালয়
বিধি-১শাখা।
(www.mopa.gov.bd)

স্মারকনং-০৫.০০.০০০০.১৭০.২২.০৬২.১৩-১৫২ তারিখ:৩০জুন, ২০১৯

বিষয়: সরকারিদপ্তর, স্বায়ত্তশাসিত/আধা-স্বায়ত্ত শাসিত প্রতিষ্ঠান এবং বিভিন্ন কর্পোরেশনের চাকুরিতে সরাসরি নিয়োগের ক্ষেত্রে মুক্তিযোদ্ধা কোটা বহাল সম্পর্কিত তথ্যস্পষ্টিকরণ।

সূত্রঃনং-৪৮,০০,০০০০,০০২.১০.২৬২৪.২০১৭-৭০, তারিখ-১২/০৬/২০১৯খ্রি:

উপর্যুক্ত বিষয় ও সূত্রস্থ স্মারকের পরিপ্রেক্ষিতে নির্দেশক্রমে মতামত দেয়া যাচ্ছে যে-

(ক) জনপ্রশাসন মন্ত্রণালয়ের বিধি-১ শাখার ০৪.১০.২০১৮ তারিখের ০৫,০০,০০০০. ১৭০.১১. ০৭.১৮.২৭৬ নং স্মারক অনুযায়ী '৯ম গ্রেড (পূর্বতন- ১ম শ্রেণি) এবং ১০ম-১৩তম গ্রেডের (পূর্বতন ২য়শ্রেনি) পদে সরাসরি নিয়োগের ক্ষেত্রে মেধার ভিত্তিতে নিয়োগ প্রদান করা হইবে এবং উক্ত পদ সমূহে সরাসরি নিয়োগের ক্ষেত্রে বিদ্যমান কোটা পদ্ধতি বাতিল করা হইল মর্মে পরিপত্র জারি করায় কোটা পদ্ধতি বিদ্যমান নেই; এবং

(খ) জনপ্রশাসন মন্ত্রণালয়ের ৫ এপ্রিল ২০১৮ তারিখের জারীকৃত ০৫.০০.০০০০.১৭০.১১,০৩৫. ১৭/৯৬ নং স্মারকের (খ) অনুচ্ছেদ অনুযায়ী ৩য় ও ৪র্থ শ্রেণির পদে সরাসরি নিয়োগের ক্ষেত্রে কোনো বিশেষ কোটার (মুক্তিযোদ্ধা, মহিলা, ক্ষুদ্রনৃ-গোষ্ঠী, এতিম ও শারিরিক প্রতিবন্ধী এবং আনসার ও গ্রাম প্রতিরক্ষা সদস্য) কোনো পদ যোগ্য প্রার্থীর অভাবে পূরণ করা সম্ভব না হইলে অপূর্ণ পদসমূহ জেলার প্রাপ্যতা অনুযায়ী স্ব-স্ব জেলার সাধারণ প্রার্থীদের মধ্য হইতে মেধা তালিকার শীর্ষে অবস্থানকারী প্রার্থীদের দ্বারা পূরণ করিতে হইবে।

স্বাঃ ৩০/০৬/১৯
(দীপংকর বিশ্বাস)
উপ-সচিব
ফোননং- ৯৫১৫৫৫২

It is evident from the materials on record that the petitioners have successfully completed all the requisite procedures and were finally declared qualified by the competent authority for appointment to the respective posts. Despite having fulfilled the prescribed requirements and having been declared successful in the selection process, the respondents have failed to issue appointment letters in their favour without assigning any lawful justification. In the circumstances, such inaction on the part of the respondents appears to be arbitrary, discriminatory and without lawful authority.

Mr. Md. Abdul Aziz Miah, learned Advocate appearing on behalf of respondent No. 3, filed an affidavit-in-opposition wherein he admitted that, on an earlier occasion, five candidates had been appointed to the post of "উপ সহকারী কমিউনিটি মেডিকেল অফিসার" under the quota reserved for the children of freedom fighters by an office order dated 27.05.2019. Such admission lends support to the petitioners' contention that the said quota had, in fact, been implemented by the respondents in making appointments to the same post. However, despite being similarly situated and having successfully qualified in the selection process, the petitioners

have not been afforded the same treatment. No reasonable or legally sustainable explanation has been furnished by the respondents for adopting such a differential approach. This, prima facie, demonstrates discriminatory treatment towards the petitioners and is inconsistent with the guarantee of equality before law and equal protection of law enshrined in Article 27 of the Constitution of the People's Republic of Bangladesh.

It is evident from the affidavit-in-opposition filed on behalf of the respondents that the petitioners were finally selected for appointment to the respective posts. However, the respondents have failed to assign any valid or legally sustainable reason for withholding the appointment letters in their favour. In the absence of any lawful justification, the petitioners cannot be arbitrarily deprived of the benefit of their final selection. Such inaction on the part of the respondents, if otherwise unsupported by law, is arbitrary and discriminatory and cannot be sustained in law. Consequently, the petitioners are entitled to lawful consideration of their claim for appointment in accordance with the applicable recruitment rules and quota provisions.

Having considered the facts and circumstances of the case and upon careful perusal of the materials on record, including the documents annexed to the writ petition and the affidavit-in-opposition filed by the respondents, we are of the considered view that the petitioners have succeeded in substantiating their claim and that the Rule has merit.

In the result, the Rule is made absolute. The respondents are hereby directed to issue appoint letters in favour of the petitioners for the respective posts of "উপ সহকারী কমিউনিটি মেডিকেল অফিসার" within 30(thirty) days from date of receipt of this judgment and order without having any order as to costs.

Communicate this judgment and order to the respondents at once.

Md. Badruzzaman, J

I agree.

Shokat (B.O)(F)