

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Syed Refaat Ahmed,

Chief Justice

Mr. Justice Md. Ashfaqul Islam

Mr. Justice Zubayer Rahman Chowdhury

Mr. Justice Md. Rezaul Haque

Mr. Justice S.M. Emdadul Hoque

Mr. Justice A.K.M. Asaduzzaman

Mrs. Justice Farah Mahbub

CIVIL APPEAL NO.178 OF 2018.

(From the judgment and order dated 02.06.2016 passed by the High Court Division in Writ Petition No.6606 of 2014).

Biman Bangladesh Airlines Limited, represented by its Managing Director, Head Office, Balaka Bhaban, Kurmitola, Dhaka-1229. : ...Appellant.

-Versus-

Md. A.K. Azad, Cargo Helpers and others. :Respondents.

For the Appellant. : Mr. Ekramul Hoque, Advocate, instructed by Mr. Haridas Paul, Advocate-on-Record.

For Respondent Nos.1-31. : Mr. Probir Neogi, Senior Advocate with Mr. A. M. Mahbub Uddin, Senior Advocate, instructed by Mr. Md. Taufique Hossain, Advocate-on-Record.

For Respondent Nos.32-34. : Not represented.

Date of Hearing. : 07.05.2025.

Date of Judgment. : 07.05.2025.

JUDGMENT

Farah Mahbub,J:

This civil appeal by leave is directed against the judgment and order dated 02.06.2016 passed by the High Court Division in Writ Petition

No.6606 of 2014 disposing of the Rule with observations and necessary direction.

Facts of this civil appeal, in brief, are that for the last 15-20 years, the respondents-writ petitioners had been serving as casual workers under the appellant as Cargo Helpers and Traffic Helpers respectively on daily wage basis. In 2000, their Collective Bargaining Agent (CBA), however, made respective demand before the authority concerned of the appellant to make their service permanent. Pursuant thereto, a Committee was formed to consider said demand and to appoint them in the permanent setup. Later, the Board of Directors of Biman Bangladesh Airlines Ltd. (in short, Biman), in a meeting held on 05.08.2001, took a decision to appoint the casual workers who were working under the appellant for more than 10(ten) years, to the permanent post of Cargo Helpers and Traffic Helpers respectively. Accordingly, vide office letter dated 23.01.2001 the Manager of Personnel Department of Biman asked the casual workers who had been working continuously for more than 10(ten) years to submit necessary documents for consideration. In response thereof, the respondents submitted their documents and were called for interview vide office letter No. Niog/015/2001/812 dated 21.06.2001. In the meantime, the writ respondent No.4 vide office letter No. বিপম/বি-১/নিয়োগ-৬/২০০১-৯৯ dated 01.02.2003 also directed writ respondent No.1 to take necessary steps to appoint the eligible causal workers in the permanent set-up of Biman.

Despite inclusion of the names of the respondents-writ petitioners in the list for appointment as permanent workers for having completed more than 10(ten) years of service, no step whatsoever was taken by the appellant to that effect. Rather, the authority of Biman had been utilizing their services continuously for years together as casual workers. In the given context, when the respondents-writ petitioners agitated their demand for regularisation in the permanent set-up, they were intimidated and threatened with dire consequences. However, on 07.07.2014, the respondents-writ petitioners sent a notice demanding justice to the writ respondents claiming to make them permanent in their respective posts, but without any response whatsoever.

Being aggrieved, the respondents-writ petitioners invoked writ jurisdiction under Article 102 of the Constitution of the People's Republic of Bangladesh before the High Court Division and obtained the Rule *Nisi*.

The appellant-writ-respondent no.1 contested the Rule by filing affidavit-in-opposition denying all the material assertions so made therein stating, *inter alia*, that the writ petitioners were appointed by the erstwhile Bangladesh Biman Corporation and they were intermittently working on causal basis in the posts of Cargo Helpers and Traffic Helpers respectively for a period upto 90 (ninety) days at a stretch. In 2007, the Ministry of Civil Aviation and Tourism formed a Committee to submit a report on restructuring, commercialisation and rescheduling of routes of Biman

Bangladesh Airlines Ltd. In that view of the matter, said committee recommended to down size the manpower of Biman from 6883 to 3400 persons. Said recommendation was duly adopted in the 294th Board Meeting of Biman held on 31.02.2007. Resultantly, the posts of Cargo Helpers and Traffic Helpers were abolished from the approved manpower set-up of Biman. Persons in permanent posts of Cargo Helpers and Traffic Helpers were given the option of voluntary retirement under the Voluntary Retirement Scheme of 2007 (in short, VRS scheme). Those who did not opt for retirement under the said scheme were retained in supernumerary posts of Cargo Helpers and Traffic Helpers.

It has also been stated that the management of Biman duly initiated process to absorb its casual workers like the respondents-writ petitioners in 2000, but the said process was stayed in view of the decision of the Government. Consequent thereto the posts of Cargo Helpers and Traffic Helpers were abolished. However, at present, the manpower of Biman has been reduced to 3400.

Under the stated circumstances, there is no scope for appointing the respondents-writ petitioners in permanent setup of Biman Bangladesh Airlines Ltd.

Upon hearing both the respective contending parties, a Division Bench of the High Court Division disposed of the Rule vide judgment and order dated 02.06.2016 with the following observations and direction:

“The petitioners being casual employees are employed on contractual basis and cannot claim to have any legitimate expectation since at the time of their appointment they were not given any assurance that they would be regularized in due course in the revenue set up. This has been held in the case of Chief Engineer LGED Vs. Gazi Mizanur Rahman reported in 17 BLC (AD) 91. However, subsequently after the completion of 10 years of employment with the Respondent No.1 a list was prepared by Biman for making casual workers who have completed 10 years of service permanent and petitioners' names were included in the said list. This process created a legitimate expectation in them to be made permanent in their posts. However, due to the subsequent decision of the Government to down size the total man power of the Respondent No.1 to make it commercially viable the posts of Cargo Helpers and Traffic Helpers were abolished and the authority's aforesaid process of making the petitioners permanent in their posts was abruptly stopped.

Under the Labour Law, 2006 if a person has worked for more than 3(three) months, he is required to be made permanent. In the instant case the petitioners have worked for more than 10 years and from that point of view they have a right to be made permanent. This is supported by Bangladesh Biman Corporation Vs. Md. Jahangir and others 65 DLR (AD) 116. The power to make the petitioners permanent is no doubt discretionary but it was mandatory for the respondents to act fairly and there is nothing on record to indicate that the petitioners were not fit to be made permanent in their posts.

The petitioners have spent most of their life serving the Respondent No.1 and now it is too late in their lives to apply for permanent employment in any other organization. It has been submitted on behalf of the petitioners that most of the petitioners have come to the end of their working life and even if they are made permanent they will be left with about 5-10 years service life and that they are willing to accept appointment in other posts if vacancies in posts of Cargo Helpers and Traffic Helpers are not available provided it is in the permanent set-up of Biman. Therefore, for the ends of justice and fairness the petitioners should be appointed to permanent posts of Cargo Helpers and Traffic Helpers or any other suitable similar post of Biman.

For the ends of justice and fairness the respondents are therefore directed to consider the case of the petitioners sympathetically for appointment to permanent posts either as Cargo Helpers and Traffic Helpers or in similar posts on supernumerary basis.”

Being aggrieved, the writ respondent no.1 as petitioner preferred Civil Petition for Leave to Appeal No.1009 of 2017 before this Division.

However, leave was granted on the following 3(three) counts:

I. Because, the writ petitioners were appointed by the erstwhile Bangladesh Biman Corporation and they were intermittently working on casual basis in the posts of Cargo Helpers and Traffic Helpers for a period of upto 90(ninety) days at a stretch and as such, there is no scope to recognize and declare the writ-petitioners as permanent workers with effect

from engagement as casual workers and as such, the impugned judgment is liable to be set aside;

II. Because, in 2007, the Ministry of Civil Aviation and Tourism formed a committee to submit a report on the restructuring, commercialization and rescheduling of routes of Biman Bangladesh Airlines. Said committee had recommended to down size the man power of the Airline from 6883 to 3400 persons. Said recommendation was adopted in the 294th Board meeting of Biman Bangladesh Airlines held on 31.02.2007. As a result of downsizing, the manpower of Biman, the posts of Cargo Helpers and Traffic Helpers were abolished from the approved manpower set up of the Airline. Persons in permanent posts of Cargo Helpers and Traffic Helpers were given the option of voluntary retirement under the said Airline's Voluntary Retirement scheme of 2007; Those who did not opt for retirement under the VRS scheme were retained in supernumerary posts of Cargo Helpers and Traffic Helpers. At present the manpower of Biman has been reduced to 3400 and therefore, there is no scope for appointing the writ petitioners in permanent posts of respondent no.1; and

III. Because, writ-respondent No.1 management initiated a process to absorb its casual workers like the writ petitioners in 2000 but said process was stayed as per the Government decision pursuant to which the aforesaid VRS scheme was implemented resulting in abolishing the posts of Cargo Helpers and Traffic Helpers and therefore, there is no scope to appoint the writ petitioners to permanent posts.”

Consequently, the instant civil appeal arose.

Mr. Ekramul Haque, learned Advocate appearing for the appellant placed his respective arguments in line with the leave granting order

focusing mainly on the context that pursuant to the decision that was taken at the 294th Board Meeting of Biman on 31.02.2007 in order to restructuring, commercialisation and rescheduling routes of Biman, its manpower was downsized from 6883 to 3400 persons. Consequently, the posts of Cargo Helpers and Traffic Helpers were abolished from the approved manpower setup of Biman. However, he submits, subsequent to passing the judgment and order dated 02.06.2016 by the High Court Division in Writ Petition No.6606 of 2014, the Board Special Sub-Committee on casual employees related issues of Biman, at its meeting dated 15.11.2018 and 04.12.2018 respectively, recommended to appoint casual employees, who had completed 12(twelve) years of service on contract basis. Said recommendation was duly approved by the Board of Directors of Biman in its 221st meeting dated 02.05.2019. Pursuant thereto, Administrative Order No.13 of 2019 has been issued by Biman authority on 26.05.2019 with immediate effect. In response thereof, some writ petitioners have been appointed as contractual employees of Biman.

In this regard, he also submits that the respondents-writ petitioners were appointed by the erstwhile Biman Bangladesh Corporation as casual workers who were working intermittently in the posts of Cargo Helpers

and Traffic Helpers for periods of upto 90(ninety) days at a stretch. As such, there is no scope to appoint them as permanent workers.

Under the stated circumstances, he submits, upon allowing the appeal the impugned judgment and order of the High Court Division is liable to be set aside.

Mr. Probir Neogi, learned senior Advocate appearing for the respondent Nos.1-31 supports the impugned judgment and order passed by the High Court Division.

Admittedly, the respondents-writ petitioners were appointed by the erstwhile Bangladesh Biman Corporation as casual workers who have been working on casual basis in the posts of Cargo Helpers and Traffic Helpers for more than 10 to 25 years respectively. In this regard, the categorical assertion of the appellant-writ respondent No.1 is that on being appointed they worked intermittently on casual basis for a period of 90(ninety) days from time to time, but not continuously; hence, their claim cannot be entertained in the eye of law.

Fact remains, pursuant to Memo No. ঢাকা/নিয়োগ/০১৫/২০০১/৮১২ dated 2308.2001 the appellant enlisted the names of only those casual workers who had completed more than 10(ten) years of continuous employment with Biman in the post of Cargo Helpers and Traffic Helpers with

satisfactory service record. The respondents-writ petitioners having fulfilled those criteria their names were duly enlisted in the respective list, which was prepared by the authority concerned of Biman with a view to make them permanent in the posts of Cargo Helpers and Traffic Helpers respectively.

Said facts have not been disputed by the appellant. It is also not disputed that said process of appointment could not see the light of finality due to introduction of VRS by Biman with a view to downsize the manpower from 6883 to 3400. Consequently, Biman authority abolished the posts of Cargo Helpers and Traffic Helpers from the approved manpower setup. However, the respondents-writ petitioners are still working with Biman as casual employees, except few who claimed to have been appointed by Biman as contractual employees.

At this juncture, the question remains, whether the respondents-writ petitioners, who are still discharging their duties as casual workers, have legal right to seek direction upon the appellant to absorb/appoint them in permanent set-up of Biman in view of Section 4 of the Employment of Labour (Standing Orders) Act, 1965 (in short, the Act, 1965).

Section 4 of the Act, 1965 is quoted below for cursory glance:

“4. Classification of workers and period of probation.

(1). *A worker employed in any shop or commercial industrial establishment shall be classified in any of the following classes according to the nature and condition of work and in the manner provided in this Act-*

- (a) apprentices.
- (b) badlis.
- (c) casual.
- (d) permanent
- (e) probationer and
- (f) temporary.

(2) *The period of probation for a worker whose function is of clerical nature, shall be six months and for other workers such period shall be three months, including breaks due to leave, illegal lock-out or strike (not being an illegal strike) in the shop or commercial or industrial establishment.*

Provided that in the case of a skilled worker, the period of probation may be extended by an additional period of three months if, for any circumstances, it has not been possible to determine the quality of his work within three months' period of his probation.

(3) *If any worker, whose service has been terminated during his probationary period, including the extended period of three months in case of a skilled worker as mentioned in sub-section (2), is again appointed by the same employer within a period of three years, he shall, unless appointed on a permanent basis, be deemed to be a probationer and the period or periods of his earlier probation shall be counted for determining his total period of probation.*

(4) If a permanent worker is employed as a probationer in a new post, he may, at any time during the probationary period be reverted to his old permanent post.”

Even, under Section 4 of the Labour Act, 2006, said right of the workers to become permanent after expiry of the respective period, has been secured.

The respondents writ petitioners, no doubt, are workers and their respective functions are not clerical in nature. Also, Biman vide Memo dated 23.08.2001 had duly acknowledged their continuous employment with satisfactory performance of more than 10(ten) years by enlisting their names in the list to make them permanent.

Said undisputed context has given rise to legal right coupled with Article 40 of the Constitution, to make the respondents writ petitioners permanent in their respective posts. The right, rooted in statute, cannot be negated on the plea of adopting VRS by Biman with a view to downsizing the manpower from 6883 to 3400 pursuant to the decision of the 294th Board Meeting of Biman dated 31.02.2007, which was an outcome of the policy decision of the Government. Consequently, the plea of the appellant that the respective posts of Cargo Helpers and Traffic Helpers

have been abolished due to adopting the said scheme, has no leg to stand; hence, falls through.

The High Court Division while disposing of the Rule with direction upon the appellant writ respondent duly considered the position of law as well as facts that the respondents writ petitioners do qualify to become permanent in their respective posts having served for more than the required period with unblemished record of service.

For the reasons as stated hereinabove, we do not find any illegality in the impugned judgment and order dated 02.06.2016 passed by the High Court Division in Writ Petition No.6606 of 2014.

The appellant Biman is, hereby, directed to take necessary steps to make the service of the respondents writ petitioners permanent, who are still working with Biman as casual workers in the posts of Cargo Helpers and Traffic Helpers with satisfactory service record, within 3(three) months from the date of receipt of the copy of this judgment and order.

Meanwhile, the respective respondents writ petitioners shall get half of the service benefits from the date of the judgment and order dated 02.06.2016 of the High Court Division till their services are made permanent in their respective posts.

However, on attaining their age of superannuation, Biman will be at liberty to abolish the respective posts, in accordance with law.

With the above observations and direction, this civil appeal is, accordingly, disposed of.

C J

J.

J.

J.

J.

J.

J.