

IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(SPECIAL ORIGINAL JURISDICTION)

Writ Petition No. 2458 of 2020

In the matter of:

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

And

In the matter of:

Mosh. Arfuna Khatun and others.
...Petitioners.

-Vs-

Bangladesh Represented by the Secretary, Ministry of Public Administration, Bangladesh Secretariat, Dhaka-1000 and others.

...Respondents.

With

Writ Petition No. 2157 of 2020

A.B.M. Mehedi and others.

...Petitioners.

-Vs-

Bangladesh Represented by the Secretary, Ministry of Public Administration, Bangladesh Secretariat, Dhaka-1000 and others.

...Respondents.

With

Writ Petition No. 3929 of 2020

Naimur Rahman and others.

...Petitioners.

-Vs-

Bangladesh Represented by the Secretary, Ministry of Public Administration, Bangladesh Secretariat, Dhaka-1000 and others.

...Respondents.

Present

Mr. Justice Mamnoon Rahman

And

Mr. Justice Khandaker Diliruzzaman

With

Writ Petition No. 2760 of 2020

Babu Marma and others.

...Petitioners.

-Vs-

Bangladesh Represented by the Secretary, Ministry of Public Administration, Bangladesh Secretariat, Dhaka-1000 and others.

...Respondents.

With

Writ Petition No. 2274 of 2019

Ahsan Habib and others.

...Petitioners.

-Vs-

Bangladesh Represented by the Secretary, Ministry of Law, Justice and Parliamentary Affairs, Bangladesh Secretariat, Dhaka-1000 and others.
...Respondents.

Mr. Mohammad Siddique Ullah Miah, Adv.
...For the petitioners (in W.P. Nos. 2458 of 2020, 2157 of 2020 & 3929 of 2020).

Mr. Salahuddin Dolon, Adv.
...For the petitioners (in W.P. No. 2760 of 2020).

Mr. Md. Faizullah, Adv.
...For the petitioners (in W.P. No. 2274 of 2019).

Mr. Amit Das Gupta, DAG. with
Mr. Mohammad Shaiful Alam, AAG
Mr. Md. Lokman Hossain, AAG &
Mr. Apurbo Kumar Biswas, AAG.
...For the other respondents.

Heard on: 28.06.2021 and 31.08.2021.

And

Judgment on: The 5th January, 2022

Mamnoon Rahman,J:

All these rules were heard together and now disposed of by a common judgment as they do involve in similar questions of facts as well as the law though the petitioners and respondents are different.

In Writ Petition No. 2458 of 2020 the petitioners obtained rule in following terms;

“Let a Rule Nisi calling upon the Respondents to show cause as to why the Gazette notification No. 05.00.0000.147.37.007.18-90 dated 20.03.2019, Gazette notification No 05.00.0000.147.37.007.18-121 dated 17.04.2019, Gazette notification No 05.00.0000.147.37.007.18-132 dated 05.05.2019, Gazette notification No. 05.00.0000.147.37.007.18-149 dated 30.05.2019, Gazette notification No. 05.00.0000.147.37.007.18-195 dated 16.07.2019 and Gazette notification No. 05.00.0000.147.37.007.18-265 dated 29.07.2019 issued by the Respondent No. 1

appointing 1248 (one thousand two hundred forty eight) candidates in the different cadre services of the Republic against their respective posts upon the result of 37th BCS examination without including name and roll number of the petitioners in (ANNEXURE-E, F, F-1, F-2, F-3 & F-4) to this petition should not be declared to have been published without lawful authority and are of no legal effect and also as to why a direction should not be given upon the respondents to appoint the petitioners in the different cadre services of the Republic against their respective post upon of the result of 37th BCS examination with effect from 20.03.2019 and/or pass such other or further orders as your lordships may deem fit and proper”.

In Writ Petition No. 2157 of 2020 the petitioners obtained rule in following terms;

“Let a Rule Nisi calling upon the Respondents to show cause as to why the Gazette notification No. 05.00.0000.17.39.010.19-482 dated 18.11.2019, Gazette notification No 05.00.0000.147.39.010. 19-517 dated 08.12.2019, Gazette notification No 05.00.0000.147.39.010.19.31 dated 20.01.2020 issued by the Respondent No. 1 appointing 4629 (four thousand six hundred twenty nine) candidates in Bangladesh Civil Service (Health) cadre against the post of Assistant Surgeon and Assistant Dental Surgeon upon the result of 39th BCS (Special) examination without including name and roll number of the petitioners (ANNEXURE-E, F & F-1 to this petition) should not be declared to have been published without lawful authority and are of no legal effect and also as to why a direction should not be given upon the respondents to appoint the petitioners in Bangladesh Civil Service (Health) cadre against the post

of Assistant Surgeon and Assistant Dental Surgeon upon of the result of 39th BCS (Special) examination with effect from 18.11.2019 and/or pass such other or further orders as your lordships may deem fit and proper”.

In Writ Petition No. 3929 of 2020 the petitioners obtained rule in following terms;

*“Let a Rule Nisi calling upon the Respondents to show cause as to why the Gazette notification No. 05.00.0000.147.37.007.18-90 dated 20.03.2019, Gazette notification No. 05.00.0000.147.37.007.18-121 dated 17.04.2019, Gazette notification No. 05.00.0000.147.37.007.18-132 dated 05.05.2019, Gazette notification No. 05.00.0000.147.37.007.18-149 dated 30.05.2019, Gazette notification No. 05.00.0000.147.37.007.18-195 dated 16.07.2019, Gazette notification No. 05.00.0000.147.37.007.18-265 dated 29.07.2019 and Gazette notification No. 05.00.0000.147.37.007.18-70 dated 18.03.2020 issued by the Respondent No. 1 appointing 1249 (one thousand two hundred forty nine) candidates in the different cadre services of the Republic against their respective posts upon the result of 37th BCS examination without including name and roll number of the petitioners (**ANNEXURE-E, E, F-1, F-2, F-3, F-4 and F-5** to this petition) should not be declared to have been published without lawful authority and are of no legal effect and also as to why a direction should not be given upon the respondents to appoint the petitioners in the different cadre services of the Republic against their respective post upon of the result of 37th BCS examination with effect from 20.03.2019 and/or pass such other or further orders as your lordships may deem fit and proper”.*

In Writ Petition No. 2760 of 2020 the petitioners obtained rule in following terms;

“Let a rule be issued calling upon the respondents to show cause as to why they should not be directed to consider the appointment of the petitioners in their respective cadre posts of the 36th BCS as recommended by the BPSC with effect from 31.07.2018 when their mates were appointed through the official gazette notification and/or pass such other or further order or orders as to this court may seem fit and proper”.

In Writ Petition No. 2274 of 2019 the petitioners obtained rule in following terms;

“Let a rule be issued calling upon the respondents to show cause as to why the impugned Gazette Notification Nos. 10.00.0000.125.11.001.17.112 dated 15.02.2018 and 10.00.0000.125.11.001.17.271 dated 10.04.2018 (Annexures D and D-1) issued by the respondent No. 1 appointing 198 candidates of 10th BJS examination 2015 in the posts of Assistant Judges, so far it relates to the non-inclusion of the names of the petitioners, should not be declared be without lawful authority and are of no legal effect, and as to why the respondents should not be directed to appoint the petitioners in the posts of Assistant Judge from the 10th BJS as recommended by the Bangladesh Judicial Services Commission (BJSC) vide notification No. জেএসসি/পনিদ/নিয়োগ-১০ম বিজেএস-২/২০১৬-০৭ (Annexure-C) with effect from 15.02.2018 by treating them at par with the other candidates of 10th BJS who have already been appointed and/or pass such other or further order or orders as to this court may seem fit and proper”.

The short facts relevant for the disposal of these rules, are that, the petitioners are the law abiding citizens of the country. They were

pursuing their study in different universities and after completion of their degree they applied for appointment on the basis of the notification published by the Public Service Commission for cadre services in different times. The respective petitioners successfully obtained admit card and thereafter they participated in the preliminary examination. Being successful they were called for the final written examination and they also succeeded in the same. Subsequently, they appeared before the competent authorities, namely Public Service Commission (PSC)/Bangladesh Judicial Service Commission (BJSC). Thereafter, the said authorities issued notification by selecting the present petitioners for the post applied for. The respondents however failed to issue final letter of appointment as well as their names were not within the final gazette notification regarding appointment. Being aggrieved the petitioners moved before this court and obtained the present rules.

The respondents government filed affidavit-in-opposition in Writ Petition No. 3929 of 2020 on the prayer of the learned Deputy Attorney General this court reconsidered the said affidavit-in-opposition for the other writ petitions.

Mr. Salah Uddin Dolon along with Mr. Mohammad Siddique Ullah Miah and Mr. Md. Faizullah, the learned Advocates appearing on behalf of the petitioners submitted that the respondents most illegally and in an arbitrary manner passed the impugned gazette notification excluding the names of the petitioners and thereby the respondents committed an illegality which requires interference by this court. The

learned Advocate for the petitioners placed the writ petitions, papers and documents annexed herewith and submits that pursuant to the notification for appointment by the respective authorities the petitioners applied for the same. The petitioners after obtaining admit card appeared in different examinations and they were finally selected by the authorities, namely Public Service Commission (PSC)/Bangladesh Judicial Service Commission (BJSC). He submits that the respective authorities mentioned herein above finally recommended their names by specific notification and nothing left on the part of the respondents but to appoint them in accordance with the law and rules. The learned Advocate also placed the relevant rules of the Bangladesh Civil Service Recruitment Rules, 1981 and submits that there is no bar in appointing the petitioners as they were finally selected by the commissioners who are the appropriate authority for final recommendation. He further submits that in the absence of any specific allegations or violation of Rule 4(3)(b) of the Bangladesh Civil Service Recruitment Rules, 1981 the denial of the respondents in appointing the petitioners vigorously affected the right of the petitioners as emphasized to the Constitution of the People's Republic of Bangladesh as such the petitioners aggrieved the legitimate right to invoke the jurisdiction of this court and to get remedy. The learned Advocate referred the decisions reported in 3CLR(HCD) 22 which has been affirmed by their lordships of our apex court in Civil Petition for Leave to Appeal No. 2656 of 2014.

Mr. Amit Das Gupta, the learned Deputy Attorney General appearing on behalf of the respondents submits that the respondents

committed no illegality as there is no scope to give appointment in violation of the relevant rules of the Bangladesh Civil Service Recruitment Rules, 1981. As per the learned Deputy Attorney General if there is any adverse report available against the particular applicant the respondents are at liberty not to give any appointment as there is a specific bar forced by the said rules. He submits that the respondents are also not under legal obligation to disclose the adverse report against the applicants.

We have heard the learned Advocate for the petitioners as well as the learned Deputy Attorney General for the respondents. We have also perused the applications under Article 102 of the Constitution of the People's Republic of Bangladesh, necessary papers and documents annexed herewith, affidavit-in-opposition filed by the respondents, provisions of law as well as the decision as referred to.

On perusal of the same, it transpires that the petitioners who are the law abiding citizens of the country applied for appointment pursuant to notification published by the Public Service Commission (PSC) as well as Bangladesh Judicial Service Commission (BJSC). There is no denial that the petitioners obtained admit card and they appeared all the examinations time to time. It is also admitted fact that the petitioners were successfully appeared before the *viva voce* examination which is the final stage for the process of an appointment. It further appears from the papers and documents that the respective commissions recommended their names for an appointment vide their notification. However, when the final appointment was published the

names of the petitioners were excluded. Finding no other alternative the petitioners moved before this court and invoked the provisions of Article 102 of the Constitution of the People’s Republic of Bangladesh to enforce their legal right.

It is apparent that Public Service Commission (PSC) as well as Bangladesh Judicial Service Commission (BJSC) are the appropriate authorities to take examination and to recommend the appointment. However, such appointment is to be finalized subject to the report obtained by the authorities as per Rule 4(3)(b) of the Bangladesh Civil Service Recruitment Rules, 1981.

Rule 4(3)(b) of the Bangladesh Civil Service Recruitment Rules, 1981 runs as follows;

“Appointment by direct recruitment—

(1)-(2).....

(3) No appointment to a Service by direct recruitment shall be made until—

(a).....

(b) the antecedents of the person so selected have been verified through appropriate agencies and found to be such as do not render him unfit for appointment in the service of the Republic”.

So, it appears that no appointment to a service by direct recruitment shall be made until the antecedent of the person so selected have been verified through appropriate agency and found to be such as do not render him unfit for appointment in the service of the republic. So, it appears that after recommendation made by the Public Service Commission (PSC) or Bangladesh Judicial Service Commission (BJSC) the respondents are to obtain a report regarding the antecedent

of the applicant. In the decision reported in 3CLR(HCD)22 this court held as follows;

“Admittedly, both the petitioners have passed preliminary test, written examination as well as viva voce examination in the 32nd (Special) BCS Examination in the Cadre service named Bangladesh Civil Service (Health) as well as (Roads and Highways), against the post of Assistant Surgeon and Assistant Engineer (Civil) under freedom fighter’s quota, for their father was a freedom fighter who receives honorarium allowance from the Ministry of Liberation War Affairs. However, their names have not been included in the impugned notification dated 08.10.2013 (Annexure-C) while publishing the final list of the selected candidates, for allegedly there was an adverse report of the NSI (National Security Intelligence)

In this regard the assertion of the petitioners is that the National Security Intelligence (NSI) had issued a classified report bearing officer Letter No. ৮৩৪-৬-৮৯(শ্রম)/লুজ-১ dated 28.09.2013 wherein an adverse report had been given regarding their father allegation, *inter-alia*, that he is actively involved with politics with certain political party and that there are criminal cases pending against him. The said assertion has not been specifically denied by the respondent-government in its affidavit-in-opposition with supporting documents. However, from Annexure-A-2 of the affidavit-in-opposition, the officer order dated 13.01.2014, it appears that NSI had raised “পুনঃ আপত্তি” against 18 (eighteen) candidates including the petitioners without specifying the allegations so brought against them.

However, rule 3(3)(b) of the Bangladesh Civil Service Recruitment Rules, 1981 provides as follows;

"No appointment to a service by direct recruitment shall be made until the antecedents of the person so selected have been verified through appropriate agencies and found to be such as do not render him unfit for appointment in the service of the republic", which goes to mean verification with regard to the antecedent of the person concerned so is selected for appointment. The respondent government does not come forward with the allegation that the petitioners are involved with any activities which can be termed as prejudicial to the interest of the State; rather the statements so have been made in paragraph 7 of the writ petition that NSI vide office letter No. ৮৩৪-৬-৮৯(শম)/সুজ-১ dated 28.09.2013 has alleged that the father of the petitioners is actively involved in politics and that criminal cases are pending against him, have not been denied by the respondent government in its affidavit in opposition.

Be that as it may, the respondents concern cannot decline to appoint the petitioners in the respective posts for the alleged pending criminal cases against and political involvement of their father. The said view of ours finds support in the case of ***Gazi Jashimuddin-vs- Bangladesh and others*** reported in ***50 DLR page 31*** wherein one of the Benches of this Division has categorically observed, ***inter-alia,***

"Articles 27 and 29 of the Constitution do not prohibit the prescription of reasonable rules for selection of employment in the service of the republic. It is upon the respondents i.e. the appointing authorities of lay down the requisite qualifications for recruitment and the requisite condition of appointment in the service of Republic as would be conducive to the maintenance of discipline in the service of the Republics. The government as appointing

authority may lay down selective test or rules of the qualification of the candidates appearing in Bangladesh Civil Service Examination. This qualification need not only be technical but may be general relating to the suitability of the candidates in the service of the Republic. Accordingly, the Public service Commission is entrusted with the duty of assess the relative merits and general suitability of the candidates for government service. But the verification of the character and the antecedents of the candidates, provisionally selected by the Public Service Commission, is left to other channels of the government.

What Articles 27 and 29 require is that such rules, tests or qualification must be reasonable and not arbitrary and must have a rational relationship with suitability of the candidates for appointment to a particular post or a particular cadre. Any rule as to qualification for the employment or appointment in the service of the Republic must be applicable to all citizens and indeed should be consistent with the doctrine of the equality of opportunity. The framers of the Constitution definitely attached immense importance to the service of the Republic and guaranteed equal opportunity under Article 29. The words "in respect of employment" is so wide, that it includes all matters in relation to employment both prior and subsequent to initial appointment subject to reasonable rules framed by the Government as the employing authority.

This Court will not normally concern itself as to whether the respondents are justified in coming to the conclusion against the petitioner, on the basis of the material evidence available before them. But it is hard to overlook the fact, as observed by the Public Service Commission, that there is no comment in the report of the

*special branch of the police that the student organization with which the petitioner had link, as a student, has been banned by the government, nor does it state that the petitioner was ever involved in activities subversive to the State or discipline or his activities were against the sovereignty of the country. His only offence is that he belonged to a particular students front known as "Shibir" of a political party. Even the Public Service Commission found the opinion of the special branch, to omit him from police or any other administrative cadre, not in consonance with the usual practice, as most of the students now a days participate in students politics (Annexure-P). In the case reported in **Bangladesh Vs. Md. Matiar Rahman 1982 BLD (AD) 109** it is held:*

"It is true that the Government is not bound by the opinion of the Public Service Commission, but certainly it being a constitutional authority, its opinion demands a careful consideration".

The government is definitely entitled to be satisfied about a candidate possessing a clean record, his loyalty to the country, personal integrity and discipline and may make necessary verification but at the same time should always be careful not to violate ones fundamental right. We have already observed that 'Shibir' is not banned in this country and it is allowed to carry on its activities legally. To single out the petitioner from all the candidate as not suitable for police cadre, on the ground of his involvement with Shibir, leads us to believe that uniform principle had not been applied for the employment of the candidates. It also justifies the petitioner's charge that he is discriminated by the respondents. He has been discriminated for his political affiliation with a student from.

In view of the above the Rule is made absolute without any order as to costs. The respondents are directed to appoint the petitioner to the Police cadre within four months from the date of receipt of this order."

In the view of the above observations as quoted above as well as the facts and circumstances of the case we find substance in the instant Rules Nisi and accordingly, both the Rules are made absolute.

So, it appears that the decision of the High Court Division was affirmed by their lordships of our apex court in CPLA No. 2656 of 2014. On meticulous perusal of the judgment passed by this court duly affirmed by our apex court, it transpires that their lordships endorsed the provisions of rule 4(3)(b) of the Bangladesh Civil Service Recruitment Rules, 1981 and came to a conclusion that if there is any specific report or anything available which is detrimental to the interest of the state the respondents are at liberty not to give any appointment. But the report has to be obtained by the respondents very carefully and such report only relates to the applicants only. If the report contained any allegation or contained any information about cases only relates to the particular applicant the embargo as put in rule 4(3)(b) of the Bangladesh Civil Service Recruitment Rules, 1981 shall be applicable. In the present case in hand the respondents have failed to show any such allegations available against the petitioners nor placed any such report which is against the petitioners or regarding the antecedents.

Considering the facts and circumstances, we do not find any reason to deviate ourselves from the decision arrived at by the High Court Division. As such the rules are made absolute without any order

as to cost. The respondents are directed to appoint the petitioners in their respective cadre posts as recommended by the Public Service Commission (PSC)/Bangladesh Judicial Service Commission (BJSC) forthwith.

Communicate the judgment and order to the respective authorities at once.

(Mamnoon Rahman, J;)

I agree.

(Khandaker Diliruzzaman, J;)

Emdad.B.O.