

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

Writ Petition No. 14377 of 2019

In the matter of:

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

- AND-

In the matter of:

Md. Masud Iqbal and others,

.....**Petitioners.**

-Versus-

Bangladesh represented by the Secretary,
Ministry of Finance, Bangladesh
Secretariat, Ramna, Dhaka and others,

..... **Respondents.**

Mr. Mohammad Ibrahim Khalil, Advocate with
Mr. Mansurul Haque Shafi, Advocate and
Mr. Md. Dulal Sheikh, Advocate

.....**For the petitioners.**

Mr. M.A. Sobhan, Advocate,

...**For respondent Nos.3 & 4.**

Judgment on: 05.11.2023

Present:

**Mr. Justice Md. Khasruzzaman
and
Mr. Justice Md. Khairul Alam.**

Md. Khasruzzaman, J.

On 15.12.2019 the *Rule Nisi* under adjudication was issued in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the provision of para 6 of the Services (Pay and Allowances) Order, 2015 so far it

relates to creating an embargo upon the entitlement of the petitioners to the benefits of 'Selection Grade' under the provision of para 7(7) and 7(9) of the Services (Pay and Allowances) Order, 2009 should not be declared to have been made without lawful authority and is of no legal effect and why they should not be directed to allow the petitioners the benefits "Selection Grade" on completion of four years of service counting from the date of their joining and/ or such other or further order or orders passed as to this Court may seem fit and proper".

Facts, necessary for disposal of the *Rule Nisi*, in short, are that the writ petitioners were appointed vide office orders of different dates i.e. on 16.02.2012, 20.09.2012, 20.09.2012, 20.06.2013, 22.01.2012, 22.01.2012, 22.01.2012, 22.01.2012, 22.07.2012 respectively to the post of Librarian, Assistant Research Officer, Research Officer, Assistant Director, Budget Officer, Extension Officer, and Accounts Officer in the service of Bangladesh Sericulture Research and Training Institute (FSRTI), Rajshahi and Bangladesh Sericulture Board, Rajshahi under the Service Rules, namely "Services (Pay and Allowances) Order, 2009". In paragraphs 7(7) and 7(9) of the said Order, 2009 it has been provided that all Class-I and Class-II Officers are entitled to get

selection grade on completion of 04(four) years of service from the date of joining. It is stated that the concept of such time scale and selection grade was introduced as an incentive to the officers and employees of the Republic who were not given promotion due to lack of higher post and as such they had to work in the same post for a long time. In the meantime, the petitioners have satisfactorily completed four years of service and as such, they are entitled to get selection grade under the provision of paragraphs 7(7) and 7(9) of the Services (Pay and Allowances) Order, 2009. But they were not allowed to get selection grade on the ground of operation of paragraph 6 of the Services (Pay and Allowances) Order, 2015 by which the benefit of time scale and selection grade under Services (Pay and Allowances) Order, 2009 was abolished. It is stated that the petitioners were appointed during the existing of Services (Pay and Allowances) Order, 2009 and as such, they have a right to get selection grade under paragraphs 7(7) and 7(9) of the Services (Pay and Allowances) Order 2009 and this right cannot be denied or taken away by the subsequent enactment of the Services (Pay and Allowances) Order, 2015. It is further stated that on similar point Writ Petition Nos. 3545 of 2018, 3848 of 2018 and 3925 of 2018 were filed by the employees/officers of different departments. After

hearing, the Rules issued in those writ petitions were disposed of with a direction to consider the time scale and selection grade to the petitioners of those writ petitions under paragraphs 7(7) and 7(9) of the Services (Pay and Allowances) Order, 2009. It is also stated that some officers of the High Court Division who were appointed in 2014 were granted selection grade as per paragraphs 7(7) and 7(9) of the Services (Pay and Allowances) Order, 2009 vide Notification No.606-G dated 13.11.2018. As such, the petitioners are also entitled to get the same benefits in accordance with law. But due to the embargo created by the impugned provision of the Services (Pay and Allowances) Order, 2015 they were not given the selection grade. Accordingly, the petitioners issued notice demanding justice on 16.11.2019 requesting the respondents to provide the petitioners with the selection grade. But they did not make any response to the same.

Under such circumstances, the petitioners challenged the provision of paragraph 6 of the Services (Pay and Allowances) Order 2015 so far it relates to creating an embargo upon the entitlement of the petitioners to the benefits of selection grade under paragraphs 7(7) and 7(9) of the Services (Pay and Allowances) Order, 2009 and obtained the present *Rule Nisi* in the manner as stated hereinabove.

The respondent No. 3 and 4 contested the *Rule Nisi* by filing two separate affidavits-in-opposition denying the material facts as stated in the writ petition contending *inter alia* that none of the petitioners completed four years of service before coming into being the Services (Pay and allowances) Order, 2015 and therefore the petitioners can not claim to attain the selection grade under the Services (Pay and allowances) Order, 2009. The petitioners are not entitled to the benefits of selection grade of paragraphs 7(7) and 7(9) of the National Pay Scales, 2009 in view of the fact that the appointment letter as well as joining letter of the petitioners speak that four years of service has not been completed from the date of joining to the publication of the pay scale and benefits, 2015 in such circumstances para 6 of the said Services (Pay and allowances) Order 2015 not to be declared unlawful.

Mr. Mohammad Ibrahim Khalil, the learned Advocate appearing on behalf of the petitioners submits that as per paragraphs 7(7) and 7(9) of the Services (Pay and Allowances) Order, 2009 all first class officers irrespective of cadre and non cadre under Grade-IX and the second class officers will be entitled to get selection grade on satisfactory completion of four years of service and the petitioners were appointed

during existing of the said provision of Services (Pay and Allowances) Order, 2009 and hence, they are entitled to get the selection grade as per paragraphs 7(7) and 7(9) of the Services (Pay and Allowances) Order, 2009. So, the exclusion of the said provision by Paragraph 6 of the Services (Pay and Allowances) Order, 2015 cannot operate as a bar for the petitioners to get selection grade under paragraphs 7(7) and 7(9) of the Services (Pay and Allowances) Order, 2009.

On the question of maintainability of the writ petition, the learned Advocate for the petitioners submits that since the petitioners have challenged paragraph 6 of the Services (Pay and Allowances) Order, 2015 so far it relates to creating an embargo upon the entitlement of selection grade of the petitioners and since the said order has been issued by the order of the President, the same becomes a law and as such, filing of the writ petition by challenging the said paragraph 6 of the Services (Pay and Allowances) Order, 2015 is maintainable. He also submits that there is a long line of decision of our apex court that right created under the existing regulations cannot be taken away by the subsequent change of regulation and therefore, the Rule Nisi is liable to be made absolute. In support of his contention he has relied on the cases of **Bakhrabad Gas System Limited Vs. Al**

Masud-ar-Noor and others, 66 DLR(AD)187; Bangladesh Bank and another Vs. Sukamal Sinha Choudhury and another, 21 BLC(AD), 212; Md. Rokab Ali Dewan and 19 others Vs. the Government of Bangladesh passed in Writ Petition No.9049 of 2016(unreported); BADC Vs. A.K.M. Abdus Salam and others, 58 DLR(AD)58; Emdad Hossain and others Vs. Bangladesh Biman Corporation and others, 13 BLC(HCD) 541 and Moinur Rahman and others Vs. Chairman BADC, 23 BLD(AD)147. He has also relied on an unreported Judgment delivered on 15.7.2018 in Civil Petition for Leave to Appeal No. 4717 of 2017 (**Sahel Ahmed and others Vs. Government of Bangladesh represented by the Secretary, Ministry of Industries and others**). He has also relied on the cases of **Md. Abdus Salam and others Vs. Bangladesh (In Writ Petition No. 3545 of 2018); Ayesha Ferdours Taher and others Vs. Bangladesh (In Writ Petition No.3848 of 2018) and Babul Akter and others Vs. Bangladesh (in Writ Petition No. 3925 of 2018)**. All these three writ petitions were disposed of vide judgment and order dated 02.05.2019 directing the authority to consider the case of time scale and selection of the petitioners of those writ petitions.

Mr. M.A. Sobhan, the learned Advocate appearing on behalf of the respondent Nos. 3 and 4 by referring to the affidavit-in-opposition and supplementary affidavit-in-opposition submits that all the petitioners were appointed in 2012 and none of them completed 04(four) years of service for getting selection grade as required under paragraphs 7(7) and 7(9) of the Services (Pay and Allowances) Order, 2009 before the impugned Services (Pay and Allowances) Order, 2015 came into force and as such, their claim of accruing vested right under paragraphs 7(7) and 7(9) of the Services (Pay and Allowances) Order, 2009 does not arise at all. He further submits that as per section 5 of the Services (Reorganization and Conditions) Act, 1975 the Government is empowered to make Services (Pay and Allowances) Order, 2015 withdrawing the benefit of time scale and selection grade scale under the Services (Pay and Allowances) Order, 2009 and as such, the petitioners cannot claim selection grade scale under the law and accordingly, he prays for discharging the *Rule Nisi*. He also submits that granting or refusing of selection grade is a matter relating to the terms and conditions of the service of the petitioners and the petitioners remedy is available elsewhere not under the judicial review under article 102 of

the Constitution and as such, the Rule Nisi is liable to be discharged.

We have considered the submissions of the learned Advocate for both the parties, perused the writ petition and other papers annexed thereto as well as the decisions as referred to above.

Let us take up first the question of maintainability of the writ petition as raised by the respondents. There are long line of decisions of our apex Court including Bangladesh Vs. Sontosh Kumar Saha, 21 BLC (AD) 94 that where vires of any law was under challenged, judicial review can be invoked under article 102 of the Constitution. In the present case, paragraph 6 of the Services (Pay and Allowances) Order, 2015 has been challenged so far it relates to creating an embargo upon the entitlement of selection of the petitioners. It appears that the said Services (Pay and Allowances) Order, 2015 has been issued under the order of the President and as such, the same becomes a law of the land and challenging of which the writ petition filed by the petitioners is well maintainable.

The issue raised in this writ petition is whether the petitioners are entitled to get selection grade scale as per paragraphs 7(7) and 7(9) of the Services (Pay and Allowances) Order, 2009 despite of the fact that those provisions were

abolished by paragraph 6 of the Services (Pay and Allowances) Order, 2015. In this respect, the petitioners asserted in the writ petition that they were appointed during the existence of the Services (Pay and Allowances) Order, 2009 wherein the provision of giving financial benefit in the name of time scale and selection grade scale were available in paragraphs 7(2), 7(7) and 7(9) of the Services (Pay and Allowances) Order, 2009 which cannot be taken away by subsequent enactment in the present case the Services (Pay and Allowances) Order, 2015. In support of the claim the petitioners relied on the decisions as referred above.

The point involved in this writ petition has elaborately been dealt with by this Division in Writ Petition Nos. 3545 of 2018, 3848 of 2018 and 3925 of 2018 by judgment and order dated 02.05.2019. In that judgment, another Bench of this Division held:

“Since the petitioners have successfully completed their service, they were entitled to be Time Scale and Selection Grade according to existing Rules/Laws when they were working as per the Services (Pay & Allowances) Order, 2009. True, an appointing authority enjoys the power and the authority to frame new rules to regulate the service

of its employees, but that in no way, can take away the accrued/vested rights of its employees, who were entitled to at the time of entering into their services. The respondents do not have any unguided, unfettered and arbitrary power to make Rules which would adversely affect the existing employees of any department/institution who have accrued legal rights from the existing Rules by which their service had been governed for long years. We have taken into account that there is long line of judicial decisions of our apex Court that rights accrued under the provisions of the previous Recruitment Rules cannot be changed or alter to the disadvantage of the existing employees by subsequent amendment. Thus, it is well settled principle of law that vested rights created under previous Recruitment Rules cannot be taken away by any subsequent amendment or change through new Recruitment Rules. Reverting back to the case in hand, we are of the view that in order to do substantial justice, there is a fair scope to give proper relief to the petitioners' in exercise of our jurisdiction under Article 102 of the Constitution

without touching the vires of law in question. We therefore refrain from declaring the provision of the para 6 of the Services (Pay and Allowances) Order, 2015 as ultra vires to the Constitution.”

In the said judgment it has further been held:

“Right of every employees to achieve/get the time scale and selection grade would be governed by the Rules under which they have acquired their rights. But the impugned Rules have devastatingly affected the petitioners’ right to avail Time Scale and Selection Grade. That being the situation, we are of the view that since the petitioners were appointed before come into play of the Services(Pay and Allowances) Order, 2015 and the terms and conditions of service of the petitioners are regulated and controlled under the Services (Pay and Allowance) Order, 2009 and, the omission and exclusion of Time Scale and Selection Grade in the Services(Pay and Allowances) Order, 2015 is disadvantageous to the petitioners and, therefore, the petitioners case in respect of Time Scale and Selection Grade should be considered according to the provision of the para 7(2) and 7(9) of the

National Pay Scale, 2009 in the light of 66 DLR(AD)187 and 21 BLC(AD)212 cases.”

In view of the decisions referred above and the facts and circumstances of the case in hand, we are inclined to subscribe the same views as taken by another Bench of this Division.

Accordingly, the *Rule Nisi* issued in the instant Writ Petition No. 14377 of 2019 is hereby disposed of with the following directions.

The respondents are directed to consider the petitioners' selection grade under the provision of paragraphs 7(7) and 7(9) of the Services (Pay and Allowances) Order, 2009 within 03(three) months from the date of receipt of a copy of this judgment and order provided they are not found otherwise disqualified in accordance with law.

There will be order as to costs.

Communicate the order.

MD. KHAIRUL ALAM, J.

I agree