

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

Writ Petition No. 7348 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:

Sk. Hasibur Rahman and others

....Petitioners

Versus

The Government of Bangladesh and
others

....Respondents

Mr. A.K.M. Faiz, Senior Advocate

....For the Petitioner

Mr. Nowraz M.R. Chowdhury, DAG with

Mrs. Afroza Nazneen Akther, AAG with

Mrs. Anna Khanom (Koli), AAG

....For the Respondents

Present:

Mr. Justice Md. Jahangir Hossain

And

Mr. Justice S. M. Masud Hossain Dolon

Heard on: 11.12.2023, 03.01.2024

Judgment on: 22.01.2024.

S.M. Masud Hossain Dolon, J:

On an application under article 102 of the Constitution,
the Rule Nisi has been issued in the following terms:

"Let a Rule Nisi be issued calling upon the
respondents to show cause as to why the
appointment process under appointment

advertisement contained in Memo No. 05.44.0100.010.11.001.16-274(200) dated 08.03.2017 for appointment in the post of Office Assistant (Grade-20) under the office of the Deputy Commissioner, Bagerhat (as Annexure-D) and there under the final result for appointment under Memo No. 05.44.0100.010.11.001.16 dated 24.06.2019 (as Annexure-F) should not be declared to have been done without lawful authority and is of no legal effect and as to why the Respondents should not be directed to issue appointment letter in favour of the petitioners on the basis of the written test result and experience and /or pass such other or further order or orders as to this Court may seem fit and proper.”

Facts relevant for disposal of the Rule in short, are that the petitioners are temporary Omeder Peon in the office of the Deputy Commissioner, Bagerhat on the hope that while appointment advertisement will be given they will be considered on priority basis. The petitioner No. 1 has been serving since 19.12.2004, petitioner No. 2 has been serving since 20.04.2002, petitioner No. 3 has been serving since 19.07.2005, petitioner No. 4 has been serving since 14.03.2005 and the petitioner No. 5 has been serving since the year, 2004 and all the petitioners have gathered experience of more than 13 years.

The petitioners have been regularly attending in the office since their joining as “Omeder Peon” and they are signing in the attendance sheet and in different times they have been deployed in different types of work. In the year, 2011 they were given some festival allowance on the occasion of Eid-UI-Azha thus the petitioners have been recognized as the office staff (without pay) under the office of the Deputy Commissioner, Bagerhat and in proof of the same an attendance sheet of the Month of August, 2011 and some duty distribution sheet/letter/office order of year, 2015,2016,2017,2018 and 2019.

After long about 15 years of joining the petitioners in their post of “Omeder Peon” without pay basis, an advertisement for appointment in the post of Office Assistant (Grade-20) was published dated 08.03.2017 for appointing 27 persons in the said post. Then the petitioners duly applied for the post of Office Assistant and received the Admit Card to attend in the written test and successfully passed the said written examination. Therefore they were given Admit Card to attend in the viva voce and accordingly the petitioners participated in the viva-voce. The final result for appointment has been published

dated 24.06.2019 and very surprisingly none of the petitioners name is found there, in such circumstances, the petitioners made an application before the Deputy Commissioner, Bagerhat to give them appointment but did not pay any heed.

Thereafter, having found no other equally efficacious remedy the petitioner filed the instant writ petition and obtained the Rule.

Mr. A.K.M Faiz, the learned Senior Advocate on behalf of the petitioner submits that since about 15 years the petitioners have been working under the office of the Deputy Commissioner, Bagerhat without pay basis on the hope for appointing them while the appointment will be made and they acquired necessary experience and became legitimate expectation for being appointed but very cruelly after their 15 years of free service, they have not been selected inspite of qualifying in the written test and hence the appointment process is liable to be declared to have been done without lawful authority and is of no legal effect. Mr. Foiz further submits that petitioners experience and their voluntary service has not been considered at the time of final selection in the viva-voce and most arbitrarily all the petitioners have been left

which is violation of their fundamental right and as such the impugned appointment process and the final result for appointment is liable to be declared to have been done without lawful authority and is of no legal effect. Mr. Foiz lastly submits that the petitioner's age for appointment almost over and for long 15 years they have given their effort without payment only on the hope of being appointed in the instant post under the office of the Deputy Commissioner, Bagerhat.

Mr. Nawroz M.R. Chowdhury, the learned Deputy Attorney General opposes the Rule and submits that the writ petition is not maintainable in the eye of law. He further submits that all legal formalities followed by the Deputy Commissioner, Bagerhet and the final result for appointment has been published in the concerned post. He further submits that the writ petitioners have knowledge about their fate and their service being contractual in nature, continuation of their service in the voluntary basis did not create any right for their favour. Mr. Chowdhury lastly submits that whole process of their appointment was completed in transparent manner following the lawful rules and procedures. The petitioner were not appointed in the office of the Deputy Commissioner since

they were not qualified and didn't pass the oral examination. Therefore, this instant writ petition is based on without lawful authority and as such the Rule is liable to be discharged.

We have heard the learned Advocate for both the sides, perused the writ petition, supplementary affidavit, Affidavit-in-opposition and all other relevant papers submitted by the petitioner in connection with the contents of this writ petition. It appears that the main pertinent of the writ petition is that the writ petitioners have been working as Omeder Peion for long 15 years on voluntary service. Thereafter an advertisement was published for appointing 27 persons to the post of Office Assistant. The petitioners were attended written examination and successfully passed said written examination and the final result for appointment has been published but the petitioners name were not found then present writ petition was filed on the ground that the petitioners have been working long time without pay basis on the hope for appointing them on regular basis.

It appears from the record that the concerned authority recruitment circular was published on the basis of which the petitioners applied and participated in the recruitment

examination. The candidates who have passed the written and oral examination have been appointed but the present petitioners have passed the written examination but did not pass the oral examination, so the authorities could not appoint them.

On carefully examination of the annexures and also scrutinized the present writ petition and submission of the learned Deputy Attorney admittedly the petitioners have been working long about 15 years but the authority concerned completed the recruitment process as per rules in which the petitioners participated but the concerned authority could not appoint them as they were not qualified for the post but how such non qualified persons have been continued their job for long 15 years. We also considered affidavit in opposition submitted by the Deputy Attorney General that he failed to produce viva voce result sheet.

Since the petitioners successfully completed the written examination and the petitioners are working long 15 years without any payment and gathered experience. The petitioners have legitimate expectations that they would be selected for their respective post. But due to illegality, arbitrariness and

“pick and chose policy” of viva voce the petitioners have been dropped out and they have no possibility getting any government job since their government stipulated service age is already over. Surprisingly the petitioners have been working for 15 years but they are not qualified in the viva voce though they are successfully passed written examination therefore directing respondents to dispose of the application dated 02.12.2021 as annexure-I positively and expeditiously.

Accordingly, the Rule is disposed of.

However, there would be no order as to costs.

Md. Jahangir Hossain, J:

I agree.