

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

**Writ Petition No. 10532 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:**

Mohammed Nurul Absar and others

... Petitioner

-Versus-

The Managing Director, Chittagong WASA and  
others.

... For the Respondents

Mr. Md. Salahuddin Dolon, Senior Advocate with

Ms. Ainun Naher, with

Mr. Muhammad Mizanur Rahman, Advocates

... For the petitioners

Mr. A.M. Masum, with

Mr. Md. Nahiyan-Ibn-Subhan, Advocates

...For respondent No.2

**Heard on : 16.03.2023 and 05.04.2023,**

**Judgment on : 07.06.2023**

**Present:**

**Mr. Justice Zafar Ahmed**

**And**

**Mr. Justice Md. Bashir Ullah**

**Md. Bashir Ullah, J**

On an application under Article 102 of the Constitution of Bangladesh, this Rule Nisi was issued calling upon the respondents to show cause as to why they should not be directed to grant the benefit of 3<sup>rd</sup> time scale in Grade VI to the petitioners with retrospective effect from the respective date of their entitlement and why they should not be directed to count the service of the petitioners as Class II (Non-Gazetted) Officers from the date i.e. from 03.12.1994 when their status was

upgraded from Class-III to Class-II (Non-gazetted) and/or pass such other or further order or orders as to this Court may seem fit and proper.

The fact of the case narrated in the writ petition is summarized as follows:

The petitioners have been serving as Sub-Assistant Engineers under the Chittagong Water Supply and Sewerage Authority (CWASA). Petitioner No.1 joined on 29.06.1988; the petitioner Nos. 2 and 4 had joined on 23.01.1988; the petitioner Nos. 3 and 8 had joined on 03.07.1983; the petitioner Nos. 5, 6, 7 and 9 had joined on 16.06.1984; the petitioner Nos.10 and 11 had joined on 15.09.1979 in the salary scale of Taka 470-1135/- with grade XI status. Subsequently, their status was upgraded from Class III to Class II in 1994, and they were granted one selection grade and two time scales on completion of the required service period of 08(eight) and 12(twelve) years as per the instructions and rules of the Government. Now, they have been drawing the salary at grade VII. Their claim to the benefit of upgradation and pay protection is based on the initial date of joining.

It is stated that the respondents denied the benefit of 3<sup>rd</sup> time scale to the present petitioners on the plea that the new National Pay Scale of 2015 does not provide provision for time scale and they are the 2<sup>nd</sup> Class gazetted officers. Such a denial is illegal and without lawful authority. Because the petitioners are entitled to get the benefit of 3<sup>rd</sup> time scale under the provisions of the National Pay Scales of 1985, 1991, 1997, 2005 and 2009 and not under the National Pay Scale of 2015. All the

petitioners have completed the requisite service period of 15(fifteen) years as Non-Gazetted government officers much earlier before the promulgation of the National Pay Scale of 2015.

It is further stated that earlier, many Sub-Assistant Engineers of the Bangladesh Water Development Board (BWDB) and the Roads and Highways Department filed Writ Petition Nos.2480 of 2014 and 6920 of 2014 seeking similar direction upon the respondents and upon hearing this Division made the Rules absolute with direction on 16.09.2014. Against the said judgment and order dated 16.09.2014 the respondents filed Civil Petition for Leave to Appeal No. 2566 of 2015. Upon hearing the Appellate Division dismissed the Civil Petition on merit on 19.02.2017. Against the aforesaid judgment the leave petitioner filed Civil Review Petition No. 89 of 2017, which was also dismissed on 03.01.2019.

Subsequently, the issue on entitlement of time scale and selection grade was decided on 02.05.2019 by this Court in Writ Petition Nos. 3545 of 2018, 3848 of 2018 and 3925 of 2018.

The petitioners submitted several representations before the concerned authority and having failed to get their time scale in Grade VI with all arrears, they served a Notice Demanding Justice on 15.09.2019 through their Advocate but the respondents did not pay any heed.

Being aggrieved by and dissatisfied with the inaction of the respondents for giving the petitioners the benefit, the petitioners have moved this Court and obtained the Rule Nisi.

The respondent No.2 entered an appearance in the instant writ petition by filing affidavit in opposition.

The case of respondent No. 2 is that the writ petitioners were provided selection grade and time scale as per National Pay Scales 1985, 1991, 1997, 2005 and 2009 at various occasions. However, subsequently they were not provided with the same benefits as the mentioned benefits have not been retained in the New National Pay Scale, 2015. The Chittagong WASA authority neither committed illegality in not providing selection grade and time scale to the petitioners nor even denied any rights or privileges to its officers/employees which the petitioners are entitled to enjoy in accordance with law.

Mr. Md. Salauddin Dolon, learned Senior Advocate appearing for the petitioners submits that the petitioners had joined as Sub-Assistant Engineers under the Chittagong Water Supply and Sewerage Authority (CWASA) in class III post on different dates from 1979 to 1988. They were granted 1<sup>st</sup> and 2<sup>nd</sup> time scales but have not yet been granted 3<sup>rd</sup> time scales in grade VI under the provisions of National Pay Scales of 1985, 1991, 1997, 2005 and 2009. The service of the petitioner should be counted as class II (Non-gazetted) officer from 03.12.1994 as per the gazette dated 19.11.1994. However, the respondents denied the benefit of 3<sup>rd</sup> time scale on the plea that the new National Pay Scale of 2015 does not provide provision for time scale which is arbitrary and without lawful authority.

He further submits that earlier many Sub-Assistant Engineers of the Bangladesh Water Development Board (BWDB) and the Roads and Highways Department filed Writ Petition Nos. 2480 of 2014 and 6920 of 2014 seeking similar direction and upon hearing this Division made the Rules absolute on 16.09.2014. Therefore, the petitioners are entitled to the same benefit.

He next submits that the respondents have no legal right to deny “any right or benefit” which the petitioners already acquired in their favour after the successful completion of 15(fifteen) years of satisfactory service under the National Pay Scale of 2009. He next submits that the petitioners are entitled to be treated at par with the other employees of various departments of the Government.

Per contra, Mr. A.M. Masum, learned Advocate appearing on behalf of the respondent No.2 submits that the writ petitioners do not have any cause of action to prefer the present petition. The CWASA authority neither committed any illegality in not providing selection grade and time scale to the petitioners nor even denied any rights or privileges to its officers/employees that the petitioners are entitled to enjoy in accordance with law.

Heard the learned Advocate for the petitioners and learned Advocate for the respondents, perused the writ petition, affidavit-in-opposition, annexures and other materials on record.

The record shows that all the petitioners had joined as Sub-Assistant Engineers in Class III with the Grade XI status under the

CWASA. The petitioner No.1 joined on 29.06.1988; the petitioner Nos.2 and 4 joined on 23.01.1988; the petitioner Nos.3 and 8 joined on 03.07.1983; the petitioner Nos. 5, 6, 7 and 9 joined on 16.06.1984; the petitioner Nos.10 and 11 joined on 15.09.1979 in the salary scale of Taka 470-1135/-. They are seeking relief based on their date of joining in the service. All the petitioners have preferred the instant writ petitions for retrospective fixation of pay and arrears by granting them their entitled benefits.

It is to be mentioned here that the Ministry of Finance issued an order on 5<sup>th</sup> August, 1985 under S.R.O.355-L/85/MF/FD(Imp)-1/MNS-17/85/59. Order 8(1) of the S.R.O. which runs as follows:

**8. Admissibility of Higher Scale (Time Scale) in**

**the Modified New Scale.-** (1) For employees other

than officer's belonging to any of the Modified New Scales of Tk. 500-860 to Tk. 1350-2750, the Higher Scale (Time Scale) for moving to the next higher scale shall be allowed after completion of eight, twelve and fifteen years of service in a post, on satisfactory service records:

Provided that none shall move to more than three higher scales than the scale of the post he would actually be holding except on promotion to a higher post:

Provide further that none shall get the benefit of more than three Higher Scales (Time Scale) in the Existing Scale and the Modified New Scale taken together except on promotion.

As per the above-mentioned order dated 05.08.1985, the petitioner No. 1 was entitled to 1<sup>st</sup> time scale on 29.06.1996, 2<sup>nd</sup> time scale on 29.06.2000 and 3<sup>rd</sup> time scale on 29.06.2003. The Petitioner Nos. 2 and 4 were entitled to 1<sup>st</sup> time scale on 23.01.1996, 2<sup>nd</sup> time scale on 23.01.2000 and 3<sup>rd</sup> time scale on 23.01.2003. The Petitioner Nos. 3 and 8 were entitled to 1<sup>st</sup> time scale on 03.07.1991, 2<sup>nd</sup> time scale on 03.07.1995 and 3<sup>rd</sup> time scale on 03.07.1998. The Petitioner Nos.5, 6, 7 and 9 were entitled to 1<sup>st</sup> time scale on 16.06.1992, 2<sup>nd</sup> time scale on 16.06.1996 and 3<sup>rd</sup> time scale on 16.06.1999 and the petitioner Nos.10 and 11 were entitled to 1<sup>st</sup> time scale on 16.09.1987, 2<sup>nd</sup> time scale on 16.09.1991 and 3<sup>rd</sup> time scale on 16.09.1994.

Accordingly, they were granted 1<sup>st</sup> and 2<sup>nd</sup> time scales.

The provisions of the gazette dated 05.08.1985 was also incorporated in the National Pay Scale of 2009. The relevant provision of the National Pay Scale of 2009 is reproduced below:

৭। জাতীয় বেতনস্কেল ২০০৯ এ উচ্চতর স্কেল (টাইম স্কেল) ও সিলেকশন গ্রেড স্কেলের প্রাপ্যতা-

(১) জাতীয় বেতন স্কেল, ২০০৯ এর টাকা ৪১০০-৭৭৪০ (২০ নং গ্রেড) হইতে টাকা ৮০০০-১৬৫৪০ (১০ নং গ্রেড) বেতনস্কেল বিশিষ্ট পদের আওতাভুক্ত নন-গেজেটেড সরকারী কর্মচারীগণ একই অথবা সমপর্যায়ের পরস্পর বদলিযোগ্য পদে ৮, ১২ ও ১৫ বৎসর চাকুরি পূর্তি

এবং চাকরির সন্তোষজনক রেকর্ডের ভিত্তিতে এতদসংক্রান্ত প্রচলিত শর্তাদি পূরণ সাপেক্ষে, যথাক্রমে ১ম, ২য় ও ৩য় পরবর্তী উচ্চতর বেতন স্কেলে, উচ্চতর স্কেল (টাইম স্কেল) হিসেবে প্রাপ্য হইবেনঃ

তবে শর্ত থাকে যে, একই কর্মচারী পদোন্নতি ব্যাতিত সমগ্র চাকরি জীবনে ৩টির অধিক টাইম স্কেল প্রাপ্য হইবেন না। আরও শর্ত থাকে যে, সিলেকশন গ্রেড স্কেল এবং উচ্চতর স্কেল (টাইম স্কেল) যুগপৎভাবে প্রদান সংক্রান্ত অর্থ বিভাগ, অর্থ মন্ত্রণালয়ের ১০-১১-১৯৯৭ তারিখের অব/আবি(বাস্ত-৩)/টাইমস্কেল-৩/৯৬(অংশ)/৭২(২০০) নং স্মারকে বর্ণিত ব্যাখ্যা বলবৎ থাকিবে।

Notwithstanding, the respondents stopped granting 3<sup>rd</sup> time scales and selection grade to the petitioners.

Subsequently, as a part of the reorganization of the services of the Statutory Bodies and Public Bodies the government decided to upgrade the post of the Diploma Engineers and other equivalent government officials from Class III to Class II and accordingly, the then Ministry of Establishment issued a gazette notification on 19.11.1994 which runs as follows:

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার  
সংস্থাপন মন্ত্রণালয়  
বিধি-২ শাখা।

নং-সম(বিধি-২)পদোন্নতি-২৭/৯৪-১৬৪

তারিখ ১৯-১১-১৯৯৪ ইং  
০৫-০৮-১৪০১ বাং

প্রজ্ঞাপন

সরকার এতদ্বারা বিভিন্ন মন্ত্রণালয়/বিভাগে ও অধীনস্থ অফিস সমূহে উপ-সহকারী প্রকৌশলী ও সমমানের পদসমূহে কর্মরত ইঞ্জিনিয়ারিং এ ডিপ্লোমাধারীদেরকে ২য় শ্রেণি পদ মর্যাদা প্রদানের ও বেতন স্কেল টাঃ ১৭২৫-৩৭২৫/- হইতে টাঃ ২৩০০-৪৪৮০/- উন্নিত করনের সিদ্ধান্ত গ্রহণ করিলেন। একই সংগে ডিপ্লোমা প্রকৌশলীদের জন্য নির্ধারিত পদগুলিকে ও দ্বিতীয় শ্রেণীতে উন্নীত করা হইল।

২। সকল মন্ত্রণালয়/বিভাগকে তাহাদের অধীনস্থ অফিস সমূহে উপ-সহকারী প্রকৌশলী ও সমমানের পদে কর্মরত ইঞ্জিনিয়ারিং এ ডিপ্লোমাধারীদেরকে দ্বিতীয় শ্রেণীর পদ মর্যাদায় উন্নীত করনের আদেশ জারী করিতে এবং সংশ্লিষ্ট নিয়োগ বিধিতে প্রয়োজনীয় সংশোধনী আনয়নের প্রক্রিয়া গ্রহণ করিতে অনুরোধ করা হইল।

৩। ইহাতে অর্থ বিভাগের সম্মতি রহিয়াছে।

রাষ্ট্রপতির আদেশক্রমে  
কাজী আবুল কাশেম  
উপ-সচিব (বিধি-১)  
সংস্থাপন মন্ত্রণালয়।



As per the provisions of the above-mentioned gazette and office order, the posts of the petitioners were upgraded from Class III to Class II.

Earlier, some of the Sub-Assistant Engineers of the Bangladesh Water Development Board (BWDB) and the Roads and Highways Department filed Writ Petition Nos. 2480 of 2014 and 6920 of 2014 seeking similar direction upon the respondents and upon hearing this Division made the Rules absolute with direction on 16.09.2014. Against the said judgment and order dated 16.09.2014 the respondents filed Civil Petition for Leave to Appeal No. 2566 of 2015 and upon hearing the Appellate Division dismissed the civil petition on 19.02.2017. Against the aforesaid judgment the leave petitioner filed Civil Review Petition No. 389 of 2017 which was dismissed on 03.01.2019.

In *Md. Ashraf Uddin and others Vs. Bangladesh, represented by the Secretary Ministry of Water Resources* (Writ Petition No. 2480 of 2014 and Writ Petition No. 6920 of 2014)(unreported) this Court held:

“Over 95% of the Government Servants in the Grade X with the scale of Tk. 1350-2750/- under the 1985 Pay order and Tk. 3400-6625/- under the Pay Order are not Gazetted Officers. All of them are getting the benefits of Time Scale. But there is no definition of “Officers” in public bodies and under the discriminatory and irrational provisions made in paragraph 8(1) of the SRO dated 05.08.1985 the

petitioners are being deprived of their Time Scale. Accordingly, we are of the view that since the protection of Pay is very important in service which has an important nexus and relationship with the Selection Grade as well inasmuch as the principle arose from the established notion that the status of senior employees being hierarchical, the junior employee cannot get pay at higher scale, conversely if a senior gets lower pay than his junior, the pay of the senior should be protected. In the cases in hand due to failure of the respondents to protect the pay of the petitioners the juniors of the petitioners in other departments and public bodies are getting much higher pay than them which is destroying the image, dignity, and sanctity of the respective department.

Against this backdrop and the aforesaid observations and discussions made hereinabove, we are constrained to hold that the Rules have substance and are bound to succeed.

In the result the Rule is made absolute.”

It appears from the record that the respondents denied to grant the benefit of 3<sup>rd</sup> time scale to the present petitioners on the plea that the new National Pay Scale of 2015 does not provide provision for time scale and they are the 2<sup>nd</sup> Class gazetted officers. But this plea is not acceptable as

the issue of entitlement of time scale and selection grade was decided in *Md. Abdus Salam and others Vs. Bangladesh represented by the Secretary, Ministry of Education, Secondary and Higher Secondary Division, Bangladesh and others* in Writ Petition Nos. 3545 of 2018, 3848 of 2018 and 3925 of 2018(un-reported) wherein it is held:

“Right of every employee 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 Allowances) Order 2009 and, the omission and exclusion of Time Scales 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.”

Since the facts of the instant case on material points are not different from those of the decided cases and the learned Advocate for the respondent could not point out any distinguishing factor, we find no reason to take a different view in the matter.

In view of the above-mentioned facts, circumstances and decisions, we are of the view that since Sub-Assistant Engineers were upgraded from Class III to II, the service of the petitioners should be counted as Class II (Non-gazetted) officers with retrospective effect and they are entitled to get the benefit of 3<sup>rd</sup> time scale in Grade VI.

Accordingly, the Rule is disposed of.

The respondents are directed to grant the benefit of 3<sup>rd</sup> time scale in Grade VI as per entitlement of the petitioners with retrospective effect and also directed to count the service of the petitioners as Class II (Non-gazetted) officers from 03.12.1994 when their status was upgraded from Class III to Class II within 03(three) months from the date of receipt of a copy of this judgment and order.

There is no order as to costs.

Communicate the judgment and order immediately.

**Zafar Ahmed, J.**

I agree.