

In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)

Present

Madam Justice Kashefa Hussain

And

Madam Justice Kazi Zinat Hoque

Writ Petition No. 2901 of 2020

In the matter of:

An application under Article 102(2)(a)(i) and 102(2)(a)(ii) of the Constitution of the People's Republic of Bangladesh.

-And-

In the matter of:

Md. Al-Amin son of Md. Sahin Kadir and Razia Khatun of Village-Ghagra, Post Office- Ghorashal, Police Station- Palash, District-Narshingdi.

..... Petitioner.

Vs.

Bangladesh, represented by the Secretary, Ministry of Public Administration and others.

.....Respondents.

Mr. Muhammad Shafique Ullah, Advocate

.....for the petitioner

Mr. Noor Us Sadik Chowdhury, D.A.G

with Ms. Sayeda Sabina Ahmed Moli A.A.G

with Ms. Farida Parvin Flora, A.A.G

... for the respondents No. 1

Heard on: 01.11.2022, 02.11.2022, 10.11.2022

and judgment on: 13.11.2022.

Kashefa Hussain, J:

Supplementary affidavit do form part of the main petition.

Rule nisi was issued calling upon the respondents to show cause as to why the impugned orders contained in “প্রজ্ঞাপন নম্বর”

০৫.০০.০০০০.১৪৭.৩৬.০১৬.১৭-১৫০ dated 31.07.2018, (Annexure-B) which

published a list of 2202 candidates who have been appointed in various posts based upon the results of the 36th BCS Examination and “প্রজ্ঞাপন নম্বর” ০৫.০০.০০০০.১৪৭.৩৬.০১৬.১৭-১৮৮ dated 19.09.2018 (Annexure B-1) which published a list of further 19 candidates who have been appointed in various posts based upon the results of the 36th BCS Examination and “প্রজ্ঞাপন নম্বর” ০৫.০০.০০০০.১৪৭.৩৬.০১৬.১৭-২৮৬ dated 12.12.2018 (Annexure B-2) which published a list of further 30 candidates who have been appointed in various posts based upon the results of the 36th BCS Examination without including the name and registration number of the petitioner, should not be declared to have been made without lawful authority and is of no legal effect and to show cause as to why the respondents should not be directed to appoint the petitioner in the Bangladesh Civil Services in Cadre name Technical/Professional Cadre, Post Name- Medical Science [771] and count his seniority and pay his salary with effect from 03.09.2018 i.e. the date of joining of most candidates who have been appointed in various posts based upon the results of the 36th BCS Examination vide “প্রজ্ঞাপন নম্বর” ০৫.০০.০০০০.১৪৭.৩৬.০১৬.১৭-১৫০ dated 31.07.2018, (Annexure-B) and/or such other or further order or orders passed as to this Court may seem fit and proper.

The petitioner Md. Al-Amin son of Md. Sahin Kadir and Razia Khatun of Village-Ghagra, Post Office- Ghorashal, Police Station-Palash, District- Narshingdi is the citizen of Bangladesh. The respondent No. 1 is the Secretary, Ministry of Public Administration, Bangladesh Secretariat, Shahbagh, Dhaka -1000, the respondent No. 2 is the Chairman, Bangladesh Public Service Commission, Agargaon,

Sher-E-Bangla Nagar, Dhaka-1207, the respondent No. 3 is the Controller of Examination (Cadre), Bangladesh Public Service Commission, Agargaon, Sher-E-Bangla Nagar, Dhaka-1207, the respondent No. 4 is the Deputy Secretary, Ministry of Public Administration, New Recruitment Branch, Bangladesh Secretariat, Shahbagh, Dhaka and the respondent No. 5 is the Directorate General, National Security Intelligence (NSI), 1, Segunbagicha, Ramna, Dhaka-1000.

The petitioner's case inter alia is that the petitioner had passed the preliminary test, written examination as well as the viva voce with regard to the 36th BCS Examination in Cadre name- Technical/Professional Cadre, Post Name- Medical Science [771]. That the petitioner had also successfully undergone the medical examination. That the respondent No. 1 vide “প্রজ্ঞাপন নম্বর” ০৫.০০.০০০০.১৪৭.৩৬.০১৬.১৭-১৫০ dated 31.07.2018 published a list of 2202 candidates who have been appointed in various posts based upon the results of the 36th BCS Examination and the respondent No. 01 vide “প্রজ্ঞাপন নম্বর” ০৫.০০.০০০০.১৪৭.৩৬.০১৬.১৭-১৮৮ dated 19.09.2018 published a list of further 19 candidates who have been appointed in various posts based upon the results of the 36th BCS Examination and the respondent No. 01 vide “প্রজ্ঞাপন নম্বর” ০৫.০০.০০০০.১৪৭.৩৬.০১৬.১৭-২৮৬ dated 12.12.2018 published a list of further 30 candidates who have been appointed in various posts based upon the results of the 36th BCS Examination but the name and registration number of the petitioner was not listed anywhere in those 3(three) প্রজ্ঞাপন although the petitioner who is a meritorious candidate, had successfully passed the

preliminary test, the written examination as well as the viva in the 36th BCS Examination and moreover, the petitioner had also successfully undergone the medical examination. That the respondents has not given any show cause notice to the petitioner as to why his name has not been included in the final list of candidates who were appointed by the vide “প্রজ্ঞাপন নম্বর” ০৫.০০.০০০০.১৪৭.৩৬.০১৬.১৭-১৫০ dated 31.07.2018, “প্রজ্ঞাপন নম্বর” ০৫.০০.০০০০.১৪৭.৩৬.০১৬.১৭-১৮৮ dated 19.09.2018 and “প্রজ্ঞাপন নম্বর” ০৫.০০.০০০০.১৪৭.৩৬.০১৬.১৭-২৮৬ dated 12.12.2018. That no decision may be taken so as to adversely affect the interests of a person without first giving him/her a hearing according to the principles of natural justice or fairness. That the Controller of Examination (Cadre), Bangladesh Public Service Commission (respondent No. 03) has duties and obligations to carry out a part of it and is quasi-judicial in nature and hence, it was incumbent upon him to comply with the principles of natural justice. That local members of Parliament Mr. Kamrul Ashraf Khan, Mr. Anwarul Ashraf Khan and Chairman, Palash Upazilla Parishad, Narsingdi sent request letters dated 12.08.2018, 10.03.2019 and 07.03.2019 respectively to the respondent No. 1 to appoint the petitioner in the Health-Cadre, who is a meritorious candidate and had successfully passed the preliminary test, the written examination as well as the viva in the 36th BCS Examination. Hence the petitioner was constrained to file the instant writ petition.

Learned Advocate Mr. Muhammad Shafique Ullah along with Mr. Shariful Islam, learned Advocate appeared for the petitioner while learned D.A.G Mr. Noor Us Sadik Chowdhury along with Ms. Syeda

Sabina Ahmed Moli, A.A.G along with Ms. Farida Parvin Flora, A.A.G appeared for the respondent No. 1.

Learned Advocate for the petitioner submits that the respondents by not appointing the petitioner to the said post committed a gross violation of fundamental rights and principles of natural justice and therefore the conduct of the respondents is not unlawful. He draws attention of this bench to the supplementary affidavit wherefrom he attempts to assert that all the documents and all the academic certificates and other documents of the petitioner manifest that the petitioner is eligible for the said post. He next takes us to the নিয়োগ বিজ্ঞপ্তি which is Annexure-H of the supplementary affidavit which is the নিয়োগ বিজ্ঞপ্তি of the 36th BCS Examination dated 31.05.2015. He submits that from the নিয়োগ বিজ্ঞপ্তি it shows that there are 187 vacant posts in the health cadre for which the petitioners applied and appeared for the relevant examination. He submits that it is clear from the records that the petitioner was eligible and was recommended to be appointed for the post of Assistant Surgeon. He submits that it is further clear from the records that there are 187 vacant posts in health cadre but however for reasons best known to them the respondents appointed 181 successful candidates in the post of Assistant Surgeon. He submits that 185 candidates including the petitioner passed in the examination and therefore the petitioner is lawfully eligible to be appointed. He also submits that the petitioner passed preliminary examination, written examination and viva voce and he was selected provisionally with others and accordingly respondent No. 3 Bangladesh Public Service Commission (BPSC)

recommended his name to be appointed. He next points out that Annexure-A and A1 of the writ petition wherefrom he submits that it is clear from Annexure A and A1 that the petitioner's registration No. 045010 manifest that the petitioner was recommended by the Bangladesh Publish Service Commission (BPSC) for the post of Assistant Surgeon. He assails that it is clear from the respondent's own documents that the petitioner was successfully recommended for the post of Assistant Surgeon. He contends that it is clear from the overall documents that the petitioner was eligible for the said post but still he is not being appointed in the post of Assistant Surgeon inspite of all the qualifications, recommendation whatsoever. He prayed that a direction be given by this court to appoint him to the designated post. He concludes his submission upon assertion that the Rule bears merit ought to be made absolute for ends of justice.

On the other hand learned D.A.G vehemently opposes the rule. In course of his submissions he takes us to page 12 paragraph 10 of the writ petition. He submits that from the petitioner's own statement in the writ petition it appears that National Security Intelligence (NSI) had issued a classified report wherein an adverse report was given regarding the father of the petitioner that he had political involvement with a certain political party. He submits that the petitioners claiming that he has not being able to obtain the NSI report from the concerned authority is not sustainable. Upon a query from this Bench he admits that the petitioner was otherwise recommended for the post of Assistant Surgeon but subsequently he was not appointed for the reasons stated in paragraph 10 of the writ petition. He concludes his

submission upon assertion that the Rule bears no merit ought to be discharged.

We have heard the learned counsels from both sides, perused the application and materials on records. It manifests from the various documents including other annexures and also annexure A and A-1 of the writ petition that the petitioner admittedly qualified in the 36th BCS Examination pursuant to a নিয়োগ বিজ্ঞপ্তি and he was also recommended for the post of Assistant Surgeon being followed by preliminary examination, written examination, viva voce and medical test which is in his favour. It also appears that there are 6(six) remaining vacant posts for the post of Assistant Surgeon and it is manifest that academically the petitioner is eligible to be appointed for the post of Assistant Surgeon since he was successful and passed requisite examinations followed by recommendation and positive medical report.

However the learned D.A.G takes us to page 12 paragraph 10 of the writ petition. In page 12 paragraph 10 of the writ petition the petitioner has stated that

“The petitioner has come to learn that the National Security Intelligence (NSI) had issued a classified report wherein adverse report was given regarding the father of the petitioner that he has political involvement with a certain political party; that the petitioner was unable to obtain a copy of the said National Security Intelligence (NSI) report.”

The petitioner has also claimed in paragraph 10 of the writ petition that the petitioner himself has no involvement with any student organization and he has never been found guilty of any criminal offence.

However we are of the considered view as it appears from the petitioners own statement in the writ petition implying some allegation against close members of his family, therefore for purpose of larger interest the petitioner may be only appointed to the designated post after further inquiry regarding the past record of the petitioner whatsoever. It also appears that although police verification report is done pursuant to selection of every qualified candidate in government service but however we do not find any police verification report in the records. We are inclined to dispose of the Rule with direction and observation.

In the result, the Rule is disposed of.

The respondent No. 1 is hereby directed to appoint the petitioner to the post of Assistant Surgeon subject to the absence of any adverse allegation against the petitioner himself in the police verification report or any other document whatsoever.

Communicate this judgment at once.

I agree.

Kazi Zinat Hoque, J: