IN THE SUPREME COURT OF BANGLADESH

APPELLATE DIVISION

PRESENT:

Mr. Justice Syed Mahmud Hossain,

Chief Justice

Mr. Justice Muhammad Imman Ali

Mr. Justice Hasan Foez Siddique

Mr. Justice Md. Nuruzzaman

Mr. Justice Obaidul Hassan

CIVIL REVIEW PETITION NO. 404 OF 2019

(From the judgment and order dated 21.01.2019 passed by the Appellate Division in Civil Petition for Leave to Appeal No.850 of 2018)

WITH

CIVIL REVIEW PETITION NO. 07 OF 2020

(From the judgment and order dated 25.10.2018 passed by the Appellate Division in Civil Petition for Leave to Appeal No. 2135 of 2018)

WITH

CIVIL REVIEW PETITION NO. 30 OF 2020

(From the judgment and order dated 25.10.2018 passed by the Appellate Division in Civil Petition for Leave to Appeal No. 2133 of 2018)

WITH

CIVIL REVIEW PETITION NO. 42 OF 2020

(From the judgment and order dated 25.10.2018 passed by the Appellate Division in Civil Petition for Leave to Appeal No. 2134 of 2018)

WITH

CIVIL REVIEW PETITION NO. 62 OF 2020

(From the judgment and order dated 25.10.2018 passed by the Appellate Division in Civil Petition for Leave to Appeal No. 2138 of 2018)

Government of Bangladesh represented by the Secretary, Ministry of Housing and Public Works, Bangladesh Secretariat, Ramna, Dhaka and others :	Petitioner. (In C.R.P.Nos.404/19)
Government of Bangladesh represented by the Senior Secretary, Ministry of Public Administration, Secretariat Building, Ramna, Dhaka and others :	Petitioner. (In C.R.P.Nos. 42 & 30 of 2020)
Executive Engineer (Administration) Directorate of Public Works, Dhaka :	Petitioners (C.R.P.No.07 of 2020)
Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Public Administration, Secretariat Building, Bangladesh Secretariat, Police Station-Shahbagh,Dhaka :	Petitioner. (In C.R.P.No. 62 of 2020)

=Versus=

Md. Saiful Islam and others :	Respondents. (C.R.P.No.404/19)
Md. Anwar Hossain and others :	Respondents. (C.R.P.No.42/20)
Md. Sohidullah and others :	Respondents.

(C.R.P.No.07/20)

Md. Khokon and others : Respondents.

(C.R.P.No.30/20)

Md. Nur Hosen and others : Respondents

(C.R.P.No.62/20)

For the Petitioner (In all the petitions) : Mr. A.M. Aminuddin, Attorney General with Mr. Sk. Md. Morshed, Additional Attorney General instructed by Mr. Haridas Paul, Advocate-on-Record.

For the Respondents (In C.R.P.Nos.404/19,42,7 and 30/20) : Mr. Murad Reza, Advocate instructed by Mr. Zainul Abedin, Mr. Md. Abdul Hye Bhuiyan, and Ms. Madhu Maloti Chowdhury Barua, Advocate-on-Record.

Respondent (In C.R.P.No.62/20) : Not represented.

Date of hearing and judgment : 25.11.2021.

JUDGMENT

Hasan Foez Siddique, J: Delay in filing these review petitions is condoned.

The Government and others have filed Civil Review Petition Nos.42 of 2020, 404 of 2019, 30 of 2020, 07 of 2020 and 62 of 2020. All these review petitions have been heard together and they are being disposed of by this common judgment and order since facts and laws involved in these cases are identical.

The respondents as writ petitioners filed different Writ Petitions in the High Court Division and obtained directions upon the writ respondents to regularize/absorb their service in the revenue set up. The Government and others preferred different Civil Petitions for Leave to Appeal which were dismissed as being time barred. Thereafter, they have filed these review petitions.

Mr. A.M. Aminuddin, learned Attorney General appearing for the petitioners in all the petitions, submits that the writ petitioner-respondents are work-charged employees of the Housing and Public Works Department. They have no legal or vested right to be absorbed/regularized

in the revenue set up and that the High Court Division exceeded its jurisdiction directing the writ respondent-petitioners to absorb them in the revenue set up. Learned Attorney General, relying upon the decisions in the case of Secretary, Ministry of Fisheries and Livestock and others Vs. Abdul Razzak and others reported in 71 DLR (AD) 395 and BRDB V. Asma Sharif and others reported in 72 DLR(AD) 188, submits that a temporary employee or a casual wage worker if continued for a time beyond the term of his appointment, would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as per Rules. He submits that merely because some others had been regularized does not give any right to the respondents. An illegality cannot be perpetuated.

Mr. Murad Reza, learned Advocate appearing for the writ petitioner-respondents in all the review petitions submits that the writ petitioner-respondents have been working for a period of about 30 years and that initially they had been working in Muster Roll basis and, thereafter, they were engaged as work-charged employees for about 20 years and the writ petitioner-respondents have been receiving their salaries in National Pay Scale and that they got time scale as well. In such view of the matter, the High Court Division rightly directed the writ respondent-petitioners to absorb/regularize their service in the revenue set up.

From the writ petitions, it appears that all the writ petitioner-respondents initially started work as Muster Roll employees under Housing and Public Works Department and, thereafter, they were appointed as work-charged employees and have been getting salaries in the National Pay

Scale. In an office order dated 16.11.2000 (Annexure B to Writ Petition No.9480 of 2013) it was stated that, "প্রধান প্রকৌশলী, গণপূর্ত অধিদপ্তর, ঢাকার স্মারক নং-আর ১৬৮/সিই(৩)/৯৯/৪৮৫/(১৬০) তাং ১৫/১১/২০০০ ইং এর নির্দেশ মেতাবেক অত্র মূল আওতাধীন বিভাগ সমূহে বিভিন্ন পদে নিয়োজিত যে সকল মাষ্টার রোল কর্মচারীর চাকুরী কাল ১৫/১১/২০০০ ইং পর্যন্ত ১৩(তের) বৎসর পূর্ণ হয় তাহাদেরকে নিম্নবর্ণিত শর্ত সাপেক্ষে তাহাদের নামের পার্শ্বে উল্লেখিত পদে জাতীয় বেতন স্কেল/৯৭ এর প্রাপ্য সুবিধাদিসহ সম্পূর্ণ অস্থায়ী মতে কার্যভিত্তিক প্রতিষ্ঠানে আনয়ন করা হইল।" In the said letter it was further stated, "কার্যভিত্তিক কর্মচারীদের নিয়োগ, পদত্যাগ, ছাটাই এবং বেতন ভাতাদি ইত্যাদি সি.পি.ডব্লিউ.ডি কোডের ধারা ১০, ১১ ও ১২ দ্বারা পরিচালিত হইবে।" Clauses 10,11 and 12 of the Central Public Works Department (CPW) Code run as follows:

> "10. Temporary establishment includes all such non-permanent establishment, no matter under what titles employed, as is entertained for the general purposes of a division or sub-division, or for the purpose of the general supervision, as distinct from the actual execution, of a work or works. Work-charged establishment includes such establishment as is employed upon the actual execution, as distinct from the general supervision, of a specific work or of sub-works of a specific project or upon the subordinate supervision of departmental labour, stores and machinery in connection with such a work or sub-works. When employees borne on the temporary establishment are employed on work of this nature, their pay should, for the time being, be charged direct to the work. The entertainment of work-charged establishment is subject to the rules laid down by the Governor General in respect of the entertainment of temporary establishment generally. If the entertainment of work-charged establishment is contemplated in connection with any work, the cost

should invariably be shown as a separate sub-head of the estimate for that work.

11. Members of the temporary and work-charged establishments, who are engaged locally, are on the footing of monthly servants. If they are engaged for a specific work, their engagement lasts only for the period during which the work lasts. If dismissed, otherwise than for serious misconduct, before the completion of the work for which they were engaged, they are entitled to a month's notice or a month's pay in lieu of notice; but, otherwise, with or without notice, <u>their engagement terminates when the work ends.</u> If they desire to resign their appointments they must give a month's notice of their intention to do so, failing which they will be required to forfeit a month's pay in lieu of such notice. The terms of engagement should be clearly explained to men employed in the circumstances mentioned above.

(emphasis supplied)

12. Superintending Engineers and Divisional Officers may, subject to limits of pay of Rs. 250 and Rs. 100 per mensem, respectively, for each post, and to any general or special restrictions which the minor local Government may impose, sanction the entertainment of temporary and work-charged establishment subject to the conditions that, in the case of temporary establishment, provision for the purpose exists in the budget and that, in the case of work-charged establishment, provision for the same has been made in a separate sub-head of the sanctioned estimate. Provided, further, that the pay of no such temporary or work-charged post shall exceed the prescribed rates in cases where such rates have been definitely laid down by a higher authority for any particular class of posts."

Mr. Reza relied upon notification of the Ministry of Cabinet Affairs Establishment Division, Regulation wing-1 communicated under memo NO.SGA/RI/IS-33/69/71(350) Date: Dacca, 28 March 1969. In that notification it was stated:

"Sub: **Conversion of temporary posts into permanent ones and contingent and work-charged staff into regular establishment.**

In supersession of all previous orders on the subject noted above, Government have been pleased to decide in consultation with the Finance Department as follows:-

1. All temporary class-III and class-IV posts of permanent nature, which have been in existence for five years or more, may be converted into permanent ones in consultation with the Finance Department.

2. All posts in class-III and class-IV, which are paid from contingency and continuing for ten years or more may be brought into regular establishment in consultation with Finance Department.

3. Fifty percent of the non-gazetted posts in the work-charged establishment existing for ten years or more may be brought into regular establishment in consultant with Finance Department.

All Departments and Directorates are requested to take up the question of converting the temporary posts into permanent ones and bringing the posts paid from contingency and 50% of the posts in the work-charged establishment into regular establishment on the principle enunciated in items 1, 2 and 3 respectively in consultation with the Finance Department.

In the notification communicated under Memo No. Esib/RI/S-46/72/55 dated 21 April 1972 it was stated,

"Sub: **Conversion of temporary posts into permanent ones and contingent and work-charged staff into regular Establishment.**

1. The Government under Memo. No **SGA/R1/1S-33/69/71(350),** dated 28.03.1969 (copy enclosed) issued orders for conversion of certain temporary posts into permanent ones and contingent and workcharged staff into regular establishment. It appears that these decisions have not been fully implemented as a result of which the employees concerned have not yet got the benefit of the said decisions. It has, therefore, been decided that the decisions referred to above should be implemented immediately. It has further been decided that the conversion as decided earlier, of the posts which have been in existence for 5/l0 years or more, should be done with effect from the date the posts were created and the employees should be absorbed against the posts with effect from the date of their appointment. In absorbing the employees the persons who have the longest period of service and are retiring or are on the verge of retirement should be given preference so that they get retirement benefit on retirement under the President's Order No 14 of 1972.
2. The persons who having already retired since the promulgation of the President Order No 14 of 1972 should also be given the benefit of absorption into regular establishment by issue of orders retrospectively and giving retirement benefits provided they had the prescribed length of service.

3. The Ministry of Finance has been consulted.”

The question is whether the service rendered as daily wage employee and work-charged employee can be absorbed in revenue set up as of right and whether the High Court Division can issue mandamus directing the employer to absorb them in the revenue set up.

Work-charged employee is the one who is engaged temporarily and his appointment is made as such, from the very beginning of his employment till the completion of the specified work. Work-charged employees constitute a distinct class and they cannot be equated with any other category or class of employees much less regular employees. Further, the work-charged employees are not entitled to the service benefits which are admissible to regular employees under the relevant rules or policy framed by the employer. In the case of State of Rajasthan V. Kunji Raman reported in AIR 1997 SC 693, it was observed by the Supreme Court of India:

> “A work-charged establishment thus differs from a regular establishment which is permanent in nature. Setting up and continuance of a work-charged establishment is dependent upon the Government undertaking a project or a scheme or a 'work' and availability of fund for executing it. So far as employees engaged on work-charged establishments are concerned, not only their recruitment and service conditions but the nature of work and duties to be performed by them are not the same as those of the employees of the regular

> establishment. A regular establishment and a work-charged establishment are two separate types of establishments and the persons employed on those establishments thus form two separate and distinct classes. For that reason, if a separate set of rules are framed for the persons engaged on the work-charged establishment and the general rules applicable to persons working on the regular establishment are not made applicable to them, it cannot be said that they are treated in an arbitrary and discriminatory manner by the Government. It is well-settled that the Government has the power to frame different rules for different classes of employees."

Similarly, in the case of State of Himachal Pradesh V. Suresh Kumar Verma reported in AIR 1996 SC 1565 it was observed,

> "It is settled law that having made rules of recruitment to various services under the State or to a class of posts under the State, the State is bound to follow the same and to have the selection of the candidates made as per recruitment rules and appointments shall be made accordingly. From the date of discharging the duties attached to the post the incumbent becomes a member of the services. Appointment on daily wage basis is not an appointment to a post according to the Rules.
>
> It is seen that the project in which the respondents were engaged had come to an end and that, therefore, they have necessarily been terminated for want of work. The Court cannot give any directions to re-engage them in any other work or appoint them against existing vacancies. Otherwise, the judicial process would become other mode of recruitment dehors the rules.

> ....
>
> Under these circumstances, the view of the High Court is not correct. It is accordingly set aside. It is mentioned that the respondents have become overaged by now. If they apply for any regular appointment by which time if they become barred by age the State is directed to consider necessary relaxation of their age to the extent of their period of service on daily wages and then to consider their cases according to rules, if they are otherwise eligible."

The work-charged, daily wage and contingent paid employees are generally hired for a short time to execute a specific work. But quite a large number of such employees have been working for indefinite time spans stretching over years. Since the writ petitioner respondents have been working for a long time, it shows that the posts they were occupying were permanent in nature and not casual or temporary. It further indicates that the services of the respondents are not only required but also beneficial to the department. The persons employed as work-charged employees perform identical functions and discharge their duties as good as men on the regular establishment and, therefore, differential treatment to them may be considered as discriminatory dealings with them. Given the lengths of service actually rendered by them, those posts have to be considered to be of permanent nature.

Work-charged employees have not only been deprived of their due emoluments during the period they served on less salary but have also been deprived from the pensionary benefits as if services had not been rendered by them though the Government has been benefitted by the services rendered by them. The concept of work-charged employment has been

misused by offering the employment on exploitative terms for the work which is regular and perennial in nature. The concept of equality as envisaged in the constitution is a positive concept which cannot be enforced in a negative manner. Therefore, the service rendered by work-charged employees for a considerable period, like 20 years or more, may be considered to be permanent employees and they may be qualified for grant of pensionary benefit, inasmuch as, pension is not a charity, rather, it is the deferred portion of compensation for past service. The Supreme Court of India observed in All India Reserve Bank Retired Officers Assn. v. Union of India, 1992 Supp (1) SCC 664 as under:

> "The concept of pension is now well known and has been clarified by this Court time and again. It is not a charity or bounty nor is it gratuitous payment solely dependent on the whim or sweet will of the employer. It is earned for rendering long service and is often described as deferred portion of compensation for past service. It is in fact in the nature of a social security plan to provide for the December of life of a superannuated employee. Such social security plans are consistent with the socioeconomic requirements of the Constitution when the employer is a State within the meaning of Article 12 of the Constitution..."

After toiling for the benefit of the government and the people of this country continuously for a considerable amount of time, i.e. for 20 or more years, if the government leave a work-charged employee to face the wrath of unpaid, uncertain and bleak retirement period, and we turn a blind eye to his miserable condition, that would be totally unethical and wholly contrary

to constitutional philosophy of socio-economic justice. The Supreme Court of India in Robert D'Souza vs. The Executive Engineer, Southern Railway and another, AIR 1982 SC 854 has observed:

> "We would be guilty of turning a blind eye to a situation apart from being highly unethical, wholly contrary to constitutional philosophy of socio-economic justice if we fail to point out that Rule 2501 which permits a man serving for 10, 20, 30 years at a stretch without break being treated as daily-rated servant, is thoroughly opposed to the notions of socio-economic justice and it is high time that the Railway Administration brings this part of the provision of the Manual, antequarian and antidiluvian, in conformity with the Directive Principles of State Policy as enunciated in Part IV of the Constitution.
>
> ....
>
> ....the appellant, a daily-rated workman, continued to render continuous service for 20 years which would imply that there was work for a daily-rated workman everyday for 20 years at a stretch without break and yet his status did not improve and continued to be treated as daily-rated casual labour whose service can be terminated at the whim and fancy of the local satraps. It is high time that these utterly unfair provisions wholly denying socio-economic justice are properly modified and brought in conformity with the modern concept of justice

> and fair play to the lowest and the lowliest in Railway Administration."

We are of the same view that after receiving continuous service for 20 years from a work-charged employee without break, if he is left in uncertainty over his future, that is wholly denying socio-economic justice and completely contrary to Fundamental Principles of State Policy as enumerated in part II of our Constitution. The Government should formulate a policy instrument for giving pensionary and other benefits to the work-charged employees who have served without break for a considerable period of time i.e for 20 years or more. All the authorities should take immediate appropriate action in that behalf.

In India in order to protect the interest of the work-charged employees Rules have been framed in different names in different States. For example, rule 2(c) of the Madhya Pradesh (Work Charged and Contingency Paid Employees) Pension Rules, 1979 have given status of a "permanent employee" to a work-charged employee who has completed fifteen years of service in such capacity. Under rule 4 such permanent employees have been given benefit of pension and gratuity available to regular employees of the State under the Madhya Pradesh New Pension Rules, 1951 and the Madhya Pradesh Civil Services (Pension) Rules, 1976. One thing, however, is to be borne in mind that mere attainment of status of a permanent employee by a work-charged employee does not ipso facto make him a regular employee if he is not regularized/absorbed in the revenue set up (See State of Madhya Pradesh and Ors. Vs. Amit Shrivas, AIR 2020 SC 4541: (2020)10 SCC 496). The Chhattisgarh Civil Services (Medical Attendance) Rules, 2013 and the Andhra Pradesh Integrated

Medical Attendance Rules, 1972 have included persons employed in the work-charged establishment to be eligible for receiving facilities under these rules. The Orissa Civil Services (Compassionate Grant) Rules, 1964 have been made applicable to all State Government servants including the work charged, job-contract and contingency paid employees other than daily-rated employees. Under these rules the family of a Government servant shall be eligible to "Compassionate Grant" in the event of death of the Government servant while in service.

In a welfare State a Government by the people and for the people should not return the work-charged employees at the end of the day with empty hand. A political society which has a goal of setting up of a welfare State, should introduce welfare measure wherein benefit is grounded on "considerations of State obligation to its citizens who having rendered service during the useful span of life must not be left to penury in their old age." It is the obligation of the State to take steps so that their lives do not fall in total ruination. For that reason, separate Rules are required to be framed for the persons who have been working as work-charged employees, if necessary, for protecting their future interest so that they do not fall in total disaster at the end of their work.

With the observation made above, all the petitions are disposed of.

C.J.

J.

J.

J.

J.

The 25th November, 2021.
M.N.S./words-3627/