

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

**Writ Petition No. 2720 of 2021 with
Writ Petition No. 7517 of 2021**

In the matter of:

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

- **AND**-

In the matter of:

Dr. Md. Amirul Momin and others,

.....Petitioners (In W.P. No. 2720 of 2021)

Md. Fakhrul Islam and others,

....Petitioners (In W.P. No. 7517 of 2021).

-**Versus**-

Bangladesh, represented by the Secretary,
Ministry of Industry, 91 Motijheel
Commercial Area, Dhaka and others,

....Respondents (In both Writ Petitions).

Mr. M.M. Zulfikar Ali Hyder, Advocate,

...For the petitioners(In both Writ Petitions).

Mr. Bepul Bagmar, D.A.G

..For respondent No.1 (In both Writ Petitions).

Ms. Nusrat Jahan, Advocate,

..For respondent No.2 (In both Writ Petitions).

Judgment on: 15.6.2023

Present:

Mr. Justice Md. Khasruzzaman

And

Mr. Justice Md. Khairul Alam

Md. Khasruzzaman, J:

These two writ petitions being cropped up from the self
same impugned memo and common question of law and facts
involved in both the petitions being same and identical have

been heard analogously and are being disposed of by this single consolidated judgment.

In both writ petitions the *Rules Nisi* under adjudication were issued calling upon the respondents to show cause as to why the decision of respondent No.2 of downgrading the pay scale of the writ petitioners from second grade to third grade of pay scale and anticipated recovery of the alleged extra amount of salaries from them as contained in the impugned Memo No. 36.93.0000.016.02.061.18.838 dated 08.02.2021 issued by the respondent No. 2 (Annexure-H-1) so far it relates to the both writ petitioners should not be declared to have been issued without lawful authority and is of no legal effect and/ or such other or further order or orders passed as to this Court may seem fit and proper.

Facts in Writ Petition No. 2720 of 2021, necessary for disposal of the *Rule Nisi*, in short, are that on 30.08.1984 the petitioner No.1 joined in the post of Assistant Metallurgical Engineer of Chittagong Steel Mills Limited under the control of the Bangladesh Steel and Engineering Corporation (hereinafter referred to as 'the BSEC'). Thereafter, he was gradually promoted to the posts of Metallurgical Engineer, Deputy Chief Engineer, Additional Chief Engineer and General Manager (Production) on 01.01.1992, 01.07.2000, 09.11.2005 and 27.02.2011 respectively. It is stated that his promotion to the

said post of General Manager (Production) was made in third grade of the then National Pay Scale which was in force. On 21.06.1989 the petitioner No.2 joined as Assistant Chief Accountant (Cost and Budget) in the service of the BSEC. Thereafter, he was gradually promoted to the posts of Deputy Chief Accounts Officer, Manager, Deputy General Manager and General Manager (MIS) on 01.01.1996, 10.03.1999, 10.09.2001 and 17.12.2007 respectively. His last promotion to the post General Manager (MIS) was made in the third grade of the then National Pay Scale which was in force. On 10.06.1989 the petitioner No.3 joined as Assistant Accounts Officer in the service of the BSEC. Thereafter, she was gradually promoted to the posts of Deputy Chief Accounts Officer, Additional Chief Accounts Officer and Chief Accounts Officer respectively. Her last promotion to the post of Chief Accounts Officer on 25.05.2011 was made in the third grade of the then National Pay Scale which was in force. On 20.11.1978 the petitioner No.4 joined in the service of the BSEC. Thereafter, he was gradually promoted to the posts of Personnel Officer, Senior Personnel Officer, Manager (Administration), Deputy General Manager and General Manager(Administration) on 01.01.1991, 01.07.1996, 20.11.2002, 26.06.2008 and 29.09.2013 respectively. His last promotion to the post of General Manager (Administration) was made in the third grade of the then National Pay Scale

which was in force. On 15.06.1989 the petitioner No.5 joined as Assistant Chief Accounts Officer in the service of the BSEC. Thereafter, he was gradually promoted to the posts of Deputy Chief Accounts Officer, Additional Chief Accounts Officer and Chief Accounts Officer on 19.08.1996, 18.06.2002, and 17.12.2007 respectively. He was lastly placed in the post of Controller of Accounts on 04.12.2011. However, his last promotion to the post of Chief Accounts Officer was made in the third grade of the then National Pay Scale which was in force.

Thereafter, upon completion of service in the feeder post to the satisfaction of the authority and as per the long standing practice of the respondent corporation and on the basis of the recommendations of the Standing Selection Committee of respondent No.2-corporation, all the petitioners were given selection grade scale in the immediate higher scale i.e. the 2nd grade of National Pay Scale by office orders dated 22.04.2014, 26.04.2015, 22.09.2014, 11.06.2017 and 23.11.2011 respectively (Annexures-B, B-1 to B-4). Accordingly, all the petitioners enjoyed their respective pay scale in the 2nd Grade of the National Pay Scale.

It is stated that the petitioner Nos. 1-5 retired from their respective service on 07.12.2018, 30.06.2017, 24.06.2018, 15.06.2017 and 24.05.2018 respectively and as such, the post retirement benefits of all the petitioners were calculated by the

respondent No.2 on the basis of 2nd grade of pay scale and they were intimated by issuing office orders dated 22.06.2020, 03.10.2018, 26.08.2019, 03.09.2018 and 15.07.2019 respectively (Annexures-C, C-1 to C-4).

But without making payment as per the aforesaid office orders, the respondent No.3 being the Chairman of the Corporation issued letter dated 02.09.2020 to the respondent No.1 Ministry seeking clarification as to whether the officers in service in the post of General Manager or equivalent post can be given 2nd Grade as selection grade scale vide Annexure-D to the writ petition. In response, referring to the pay scale of the officers fixed by the BSEC in 2011 the respondent No.1-Ministry by its Memo dated 06.10.2020 requested the respondent No.3 Chairman of the Corporation to maintain the third grade of pay scale to the officers in service to the posts of Managing Director/General Manager/equivalent posts (Annexure-G). Accordingly, the respondent No.2 Corporation under the signature of respondent No.4 issued office order vide Memo dated 27.12.2020 directing the Accounts Division of the BSEC to realize the extra money from the 3rd graded officers who had already withdrawn and received the same after being obtained higher scale in 2nd grade vide Annexure-H to the writ petition. Thereafter, the respondent No.2-corporation by its Memo dated 08.02.2021 again issued office order cancelling the earlier office order dated 27.12.2020 and thereby directing

the Accounts Division to realize the extra money withdrawn by the 3rd graded officers after being obtained higher scale in 2nd grade vide Annexure-H-1 to the writ petition.

Facts in Writ Petition No. 7517 of 2021, necessary for disposal of the *Rule Nisi*, in short, are that on 15.05.1984 the petitioner No.1 joined in the post of Assistant Engineer (Electrical) of Eastern Cables, Patenga, Chittagong under the control of the BSEC. Thereafter, he was gradually promoted to the posts of Electrical Engineer, Deputy Chief Engineer, Additional Chief Engineer and Chief Engineer on 01.10.1992, 25.11.2001, 13.05.2008 and 29.09.2013 respectively. His last promotion to the said post of Chief Engineer was made in third grade of the then National Pay Scale which was in force. In 1981 the petitioner No.2 joined as Assistant Engineer (Electrical) in the service of the BSEC. Thereafter, he was gradually promoted to the posts of Mechanical Engineer, Deputy Chief Engineer, Additional Chief Engineer and General Manager (Marketing and Quality Control) in 1986, 1996, 2002 and 2008 respectively. Later on he was appointed as Managing Director of General Electrical Manufacturing Company Limited in 2013. However, his last promotion to the post of General Manager was made in the third grade of the then National Pay Scale which was in force. On 29.08.1981 the petitioner No.3 joined as Assistant Engineer (Mechanical) in the service of the BSEC. Thereafter, he was gradually promoted to the posts of

Mechanical Engineer, Deputy Chief Engineer, Additional Chief Engineer and General Manager on 01.01.1986, 01.01.1996, 10.09.2001 and 11.05.2008 respectively. Later on he was appointed as Managing Director of Progoti Industries Limited on 31.01.2009. His last promotion to the post of General Manager was made in the third grade of the then National Pay Scale which was in force. In 1981 the petitioner No.4 joined as Assistant Engineer (Mechanical) of Chittagong Dry Dock, Chittagong under the control of the BSEC. Thereafter, he was gradually promoted to the posts of Mechanical Engineer, Deputy Chief Engineer, Additional Chief Engineer and General Manager (Production) in 1986, 1996, 2001 and 2009 respectively. His last promotion to the post of General Manager was made in the third grade of the then National Pay Scale which was in force. The petitioner No.5 joined as Assistant Engineer (Mechanical) in the service of the BSEC. Thereafter, he was gradually promoted to the posts of Mechanical Engineer, Deputy Chief Engineer, Additional Chief Engineer and General Manager on 01.01.1986, 01.01.1996, 18.06.2002 and 08.05.2008 respectively. Later on, he was appointed as Managing Director at Easter Tubes Limited on 02.09.2010. However, his last promotion to the post of General Manager was made in the third grade of the then National Pay Scale which was in force.

Thereafter, upon completion of service in the feeder post to the satisfaction of the authority and as per the long standing practice of the respondent corporation and on the basis of the recommendations of the Standing Selection Committee of respondent No.2-Corporation, all the petitioners were given selection grade scale in the immediate higher scale i.e. the 2nd grade of National Pay Scale by office orders dated 18.02.2018, 23.11.2011, 23.11.2011, 05.03.2014 and 23.11.2011 respectively. Accordingly, all the petitioners enjoyed their respective pay scale in the 2nd Grade of the National Pay Scale.

It is stated that the petitioners retired from their respective service on 22.02.2018, 01.03.2014, 25.04.2014, 07.02.2015 and 05.07.2014 respectively and as such, the post retirement benefits of all the petitioners were calculated by the respondent No.2 on the basis of 2nd grade of pay scale and they were intimated by issuing office orders dated 02.01.2020, 30.12.2015, 29.12.2015, 08.08.2016 and 12.03.2016 respectively (Annexures-C, C-1 to C-4 respectively).

But without making payment as per the aforesaid office orders, the respondent No.3 being the Chairman of the Corporation issued letter dated 02.09.2020 to the respondent No.1-Ministry seeking clarification as to whether the officers in service in the post of General Manager or equivalent post can be given 2nd Grade as selection grade scale vide Annexure-D to

the writ petition. In response, referring to the pay scale of the officers fixed by the BSEC in 2011 the respondent No.1-Ministry by its Memo dated 06.10.2020 requested the respondent No.3 Chairman of the Corporation to maintain the third grade of pay scale to the officers in service to the posts of Managing Director/General Manager/equivalent posts (Annexure-G). Accordingly, the respondent No.2 Corporation under the signature of respondent No.4 issued office order vide Memo dated 27.12.2020 directing the Accounts Division of the BSEC to realize the extra money from the 3rd graded officers who had already withdrawn and received the same after being obtained higher scale in 2nd grade vide Annexure-H to the writ petition. Thereafter, the respondent No.2-corporation by its Memo dated 08.02.2021 again issued office order cancelling the earlier office order dated 27.12.2020 and thereby directing the Accounts Division to realize the extra money withdrawn by the 3rd graded officers after being obtained higher scale in 2nd grade vide Annexure-H-1 to the writ petition.

Under such circumstances, finding no other alternative, both the writ petitioners filed these writ petitions challenging the aforesaid impugned Memo dated 08.02.2021 so far as it relates to the petitioners (Annexure-H-1) and obtained the present *Rules Nisi* in the manner as stated above.

The respondent No. 2 filed two separate affidavits-in-opposition denying all material allegations made in the writ

petitions and contending *inter-alia* that although in the pay scale of 1977 the pay scale of the Secretary/ General Manager of the Head Office of the BSEC and the Managing Director/General Manager/similar post holders of different industrial units under the control of the BSEC was in 2nd grade but the same was re-fixed as 3rd grade in the organogram of 2011. Despite of re-fixation of the salary the BSEC in Board Meeting dated 15.02.2018 fixed the pay scale of the Managing Director/General Manager/similar post holders of its Industrial Units from 3rd grade to 2nd grade and as such, the BSEC by its letter dated 02.09.2020 sought opinion from the Ministry as to whether the 3rd graded officers in service can be given selection grade/higher scale in the 2nd grade and in reply, the Ministry asked the Corporation to maintain 3rd grade pay scale by Annexure-G to the writ petition. As such, there is no illegality in issuing the impugned memo and as such, it is prayed that the *Rules nisi* are liable to be discharged.

Mr. MM Zulfikar Ali Hyder, the learned Advocate appearing on behalf of the petitioners, submits that before taking the impugned decision none of the petitioners were given any opportunity to show cause and as such, the respondents have miserably failed to comply the basic principle of natural justice before taking such decision and hence, the impugned office order is liable to be declared to

have been issued without lawful authority. He further submits that granting selection grade scale to the writ petitioners during their respective service with the respondent No.2 Corporation is a result of long standing practice which is preceded by the recommendation from the Standing Selection Grade Committee of the respondent No.2 and as such, they are entitled to avail the selection grade as per 2nd grade pay scale, already granted and enjoyed by them and as such, the impugned decision of downgrading the pay scale of the petitioners from 2nd grade to 3rd grade and the anticipated recovery of the alleged extra amount of salaries as contained in the impugned decision is liable to be declared to have been made without lawful authority and is of no legal effect. He also submits that the petitioners having been appointed in their respective posts under the Bangladesh Steel and Engineering Corporation Recruitment Rules, 1985 rendering their services since long with unblemished record and as such their service conditions should be governed by the said Recruitment Rules of 1985. He contends that rights and benefits accrued under the previous Recruitment Rules cannot be taken away by any subsequent amendments of the existing Rules by any way and as such, right of getting selection grade or higher grade as accrued under the Rules namely the aforesaid Recruitment Rules of 1985 cannot be taken away or curtailed by dint of memo dated 20.10.2011 (Annexure-F to the writ petition) and

hence, the impugned office order dated 08.02.2021 is without lawful authority and is of no legal effect so far it relates to the petitioners. In making the aforesaid submissions, the learned Advocate has prayed for making both the *Rules Nisi* absolute.

Mr. Bepul Bagmar, the learned Deputy Attorney General appearing on behalf of the respondent No.1 submits that the respondent No.1-Ministry has rightly issued the Memo dated 06.10.2020 in line with the pay scale as fixed by the BSEC in 2011 and as such, the respondent Ministry did not commit any illegality and as such, the *Rules Nisi* are liable to be discharged.

Ms. Nusrat Jahan, the learned Advocate appearing on behalf of the respondent No.2 submits that since as per pay scale of 2011, the petitioners were in 3rd grade at the time in relate to organogram of the corporation and since the respondent Ministry directed to maintain the salary of the petitioners as 3rd grade of the National Pay Scale, the respondent No.2-Corporation rightly issued the office order in compliance of the order of the Ministry. Moreover, without challenging the order of the Ministry the writ petitioners challenging the order of the BSEC is not maintainable and as such, the *Rules Nisi* are liable to be discharged.

Heard the learned Advocates of both the sides, perused the writ petitions alongwith other materials on record.

From the writ petitions it appears that the petitioners claim to have been appointed under the aforesaid Recruitment Rules of 1985 and they have been rendering their respective services to the utmost satisfaction of the authority with unblemished record and as such, they have acquired rights and benefits to get selection grade/higher grade i.e. in 3rd grade and 2nd grade as provided in serial No.1 of the schedule to the Service Rules of 1985 wherein it has been provided that the incumbents described in serial No.1 of the schedule would be entitled to get salary as per 3rd grade and 2nd grade of the National Pay Scale including the writ petitioners subject to completion of 03(three) years service.

The petitioners being the incumbents as described in serial No.1 of the schedule to the Service Rules of 1985 they were given the selection grade scale under the 2nd grade of the National Pay Scale of 2009 as evident from Annexures-B, B-1 to B-4 to the writ petition. Accordingly, they have enjoyed the salaries at the 2nd grade pay scale and retired from their respective services within a period between 2014 and 2018.

From Annexures-C, C-1 to C-4 of the writ petition, it appears that the authority by its office orders calculated the post retirement benefits on the basis of 2nd grade pay scale as were granted to them and communicated the same to the petitioners.

It appears that after completion of all the procedures and before making payment of the post retirement benefits, the respondent No.3 by its letter dated 02.09.2020 sought clarification from the Ministry as to whether the officers in 3rd grade would be entitled to get selection grade scale in 2nd grade whereupon the Ministry upon considering the Organogram of 2011 regarding the Officers and Employees of the Head Office of the BSEC directed the respondent No.3 to maintain the salaries of the petitioners in 3rd grade which is the background for issuing the impugned decision.

It appears that in the Memo dated 02.09.2020 by which the authority sought clarification from the Ministry, the respondent No.3 admitted that in the National Pay Scale of 1977 the salary for the Secretary/General Manager of the Head Office of the BSEC and the General Manager/Managing Director/equivalent post holders of the Industrial Units were in 2nd grade but subsequently, in the organogram of 2011 for the Head Office the salaries of those officers mentioned above were re-fixed at 3rd grade. It is also admitted that since in the organogram of 2011 for the Head Office of the BSEC there was no indication about changing the pay scale for the General Manager/Managing Director employed in the Industrial Units under the control of the BSEC, selection grade has been granting to the 3rd graded officer of the Industrial Units of the BSEC to the 2nd grade scale. In such view of the matter, the

authority sought opinion as to whether the General Manager/Managing Director/similar post holders employed in Industrial Units under the control of the BSEC can be granted selection grade scale in 2nd grade. Rather to bring the equalization in the pay scale in respect of the Managing Director/General Manager/similar post holders serving at Head Office and its Industrial Units, the authority sought clarification from the Ministry.

Referring to the organogram of 2011 for the Head Office of the BSEC, the respondent No.1-Ministry of Industry by its letter dated 06.10.2020 opined that the salaries of General Manager/Managing Director/similar post holders of different industrial units under the control of the BSEC should be maintained in 3rd grade. On perusal of the letter of the Ministry as well as the organogram of 2011 in respect of the Head Office of the BSEC, it appears that for the purpose of bringing uniformity and equalization in the pay scale of the Managing Director/General Manager/equivalent post of the Head Office of the BSEC and those of the Industrial Units like the petitioners, the Ministry directed the respondent No.2-corporation to maintain the salary of the petitioners in 3rd grade. So, there cannot be any dispute in this regard.

But, fact remains that the petitioners did not challenge the order of the Ministry. Moreover, the petitioners already enjoyed the selection grade scale granted to them and as such,

the orders, by which selection grade scale was granted to them, have already been acted upon.

For the sake of discussion, let us go through the serial No.1 of the schedule attached to the BSEC Recruitment Rules, 1985 wherein it has been provided that the incumbents like the posts of the petitioners are entitled to get 3rd grade and 2nd grade pay scale and in compliance thereof the authority has been granting promotion in the higher scale or selection grade. There should not be any controversy. On the other hand, it appears that on 20.10.2011 the authority brought change in the organogram for the Head Office of the BSEC and thereby the salaries of the posts like the petitioners were re-fixed at 3rd grade of the National Pay Scale then in force without providing anything regarding change or re-fixation of the salaries of the posts of the petitioners employed in different industrial units under the control of the BSEC. Those are the reasons for which the selection grade scale/higher scale was given to those officers who are serving in the Industrial Units of the BSEC.

However, the respondent-corporation has rightly sought for clarification from the Ministry in this regard and the Ministry by referring to the Organogram of 2011 for the Head Office of the BSEC has rightly directed the Corporation to maintain the salary of the posts like the petitioners in 3rd grade.

Be that as it may, the petitioners cannot be held responsible in getting the selection grade scale/higher scale since they did not have any hand in this respect. Moreover, the petitioners have already enjoyed the 2nd grade scale and gone to retirement and as such, the respondent authority is barred from claiming the extra amount from the petitioners which have been drawn by them after being obtained selection grade scale in 2nd grade.

It would be benefited if we rely on the decision in the case of **Union of India Vs. Indian Railway SAS Staff Association and others, 1995 Supp (3) Supreme Court Cases 600** wherein it has been held in paragraph No.8 as follows:

“The result, therefore, is that the respondent-employees in the present proceedings would be entitled to the revised pay scales only with effect from 1-4-1987 since the revised pay scales will be fixed for the first time with effect from that date. They are not entitled to any difference on the basis of the notional fixation of pay w.e.f. 1-1-1986. The arrears, if any, paid to the respondent-employees on account of the notional fixation of their pay w.e.f. 1-1-1986 may be recovered from their future salaries. It is, however, made clear that the said arrears shall not be recovered from those of the employees who have already retired from service.(underlined for emphasis)”.

In the case in hand, it appears that the petitioners have already retired from their respective services during the period between 2014 and 2018 and as such, the decision cited above is squarely applicable in the facts and circumstances of the present case and hence, we are of the view that the respondents are barred from claiming the extra salaries from the petitioners on the ground that the same shall not be recovered from them being retired from service in the meantime.

In the view of the discussions and observations made hereinabove the *Rule Nisi* is disposed of.

There will be no order as to costs.

Md. Khairul Alam, J.

I agree.