

In the Supreme Court of Bangladesh
 High Court Division
 (Special Original Jurisdiction)
 Present
 Madam Justice Kashefa Hussain
 And
 Madam Justice Fatema Najib
Writ Petition No. 11837 of 2021

In the matter of:

An application under Article 102 read with Article 44 of the Constitution of the People's Republic of Bangladesh.

-And-

In the matter of:

Enforcement of Fundamental Rights guaranteed under Articles 27, 29 and 31 of the Constitution of the People's Republic of Bangladesh.

And

In the matter of:

Abdus Salam Talukder and others
 Petitioners.

Vs.

The Government of Bangladesh and others.

.....Respondents.

Mr. Md. Oziullah, Advocate with
 Mr. S.M Jahangir Alam, Advocate
for the petitioners.

Mr. Noor Us Sadik Chowdhury, D.A.G
 with Mr. Md. Awlad Hossain, A.A.G
 with Mr. Rashedul Islam, A.A.G

... for the respondents

**Heard on: 07.04.2022, 11.04.2022,
 13.04.2022 and judgment on:
 19.04.2022.**

Kashefa Hussain, J:

Rule nisi was issued calling upon the respondents to show cause as to why a direction should not be given upon the respondents to appoint the petitioners to the post of Chainman field level under the Ministry of Land as per selection and recommendation dated 26.10.2004 by the selection committee of the Ministry of Land (as of

Annexure-B) and/or such other or further order or orders passed as to this Court may seem fit and proper.

The 38 petitioners case inter alia in short is that pursuant to an advertisement on 24.05.2004 was published under the heading নং-ভূঃ মঃ শাঃ-১২(প্রশিক্ষণ) সহঃ তহঃ-৬/২০০২-১৬৬ তারিখ-১৭.০৫.২০০৪ in the Daily Ittefaq. The office of the respondent published it. Applications were asked to be submitted within 10.06.2004. It was asked by the authority to submit Tk. 100/- in the form of pay order/Bank draft along with the application. The advertisement published in the news paper for the post of 7(seven) categorists in which 176 posts were for Chainman. That thousands of people applied to the concerned authority for job and everyone deposited requisite Bank Draft. In this way the authority collected huge money. That the petitioners also applied for the post of Chainman and submitted their application to the authority. After scrutinizing the applications of the petitioners, the authority being satisfied issued admit cards to the petitioners to appear before the selection Board for interview. That the authority formed a selection/appointment committee consisting of 4 members and recommended the qualified persons for the post. In a meeting of the committee, it was decided that the candidates who obtained 10 marks in the viva board would be qualified. On the basis of that criteria, a merit list of the successful candidates were published on 26.10.2004 by the appointment committee. The petitioners' names were in that list. It was recommended by the committee to appoint those successful candidates in their respective posts. They also prepared a waiting list. In the said merit list names of the petitioners appeared in various

serial district wise. That as per the instructions of the authority many applicants appeared before the interview Board and subsequently were selected by the authority and their names were published names in the merit list including the petitioners. That on 16.06.2004 the Ministry of Establishment issued a circular allowing the others Ministries to appoint 70 percent of the vacant posts without sanction from the Ministry of Establishment. That as per circular the appointment committee recommended the post for appointment. That on 26.10.2004 the respondent No. 5 placed the recommendation for appointment to the respondent No. 2 for his approval. Thereafter the Ministry of Establishment withdrew the injunction upon the appointment. That on 02.02.2005 the respondent No. 5 sent a letter to the Ministry of Establishment and requested them for issuing appointment cards to the selected persons. That on 15.02.2006 the respondents no. 5 sent another letter to the Ministry of Establishment and informed them that the full statement of the vacant post has been submitted to the Establishment Ministry. Thereafter on 08.03.2006 the Ministry of Establishment sent a sanction letter for appointment to the vacant posts. That the petitioners were waiting for appointment letters upon pursuing the authority from time to time, but the authority did not reply. That the authority did not take any steps for appointment of the petitioners. Thereafter on withdrawal of injunction upon the appointment the respondent No. 5 again placed the matter before the respondent No. 2 for approval but the respondent No. 2 did not take any proper steps. That while the petitioners were ready to receive the appointment and posting letters from the authority, they were

suddenly informed that an advertisement was published in the “Daily Ittefaq” for new recruitment in the post of Chainman under the Ministry of Land. The advertisement was published on 06.06.2006 and was issued by the respondent No. 4. In the advertisement, applications were invited for the post of Chainman who were earlier qualified candidates including the petitioners were selected for appointment by a proper recruitment process. That a news was published in the news paper that by passing the earlier selected persons for the post of Chainman in the field level of the Ministry of land, the authority is going to start a new appointment process. It was also mentioned in that news that the corrupt officials of the Ministry of Land have taken such steps. Some writ petitions were also filed arising out of the issue of appointment of chainman by the respondents.

The respondent No. 1 is the Secretary, Ministry of Land, Bangladesh Secretariat, Shahbagh, Dhaka, respondent No. 2 is the Joint Secretary, Ministry of Land Ain, Wadhi Shakha-1, Bangladesh Secretariat, Shahbagh, Dhaka, respondent No. 3 is the Deputy Secretary, Ministry of Land, Bangladesh Secretariat, Shahbagh, Dhaka, respondent No. 4 is the Senior Assistant Secretary, Surplus Employees Division, Ministry of Establishment, Bangladesh Secretariat, Shahbagh, Dhaka, respondent No. 5 is the Senior Assistant Secretary and Member Secretary, Appointment Committee, Ministry of Land, Bangladesh Secretariat, Shahbagh, Dhaka and the respondent No. 6 is the Senior Assistant Secretary, Division-12, Ministry of Land, Bangladesh Secretariat, Shahbagh, Dhaka.

Learned Advocate Mr. Md. Oziullah along with Mr. S.M. Jahangir Alam, Advocate appeared on behalf of the petitioners while learned D.A.G Mr. Noor Us Sadik Chowdhury with Mr. Md. Awlad Hossain, A.A.G along with Mr. Rashedul Islam, A.A.G appeared for the respondents.

Learned Advocate for the petitioners submits that although the 38 petitioners accrued vested and lawful right to be appointed as Chainman which accrued upon them pursuant following selection by the respondents but however the respondents are totally silent on the issue. He draws this court's attention to annexure A-A37 and submits that these annexures are the admit cards which show that all the 38 petitioners duly appeared in the interview for selection. He next draws attention particularly to annexure B of the writ petition. From Annexure B he shows that all the 38 petitioners were selected to the post of Chainman pursuant to proper procedure. He next submits that although Annexure B shows that the petitioners were selected for appointment on 26.10.2004, but however even after so many years the petitioners are still waiting for their appointment. He argues that the petitioners from time to time persuaded the respondents to consider the selection list and to duly appoint them to the post of Chainman but however the respondent totally ignored their pursuance. Upon a query from this bench questioning the petitioners diligences in pursuing their case the learned Advocate for the petitioners draws attention to Annexure-E wherefrom he submits that they made an application to the respondent on 28.11.2019. He next submits that although it was the petitioner's vested right to be appointed to the post of Chainman

but however the respondents most arbitrarily issued a fresh advertisement for appointment of Chainman. He continues that the advertisement was however stayed by judgment and order in writ petition No. 4685 of 2009 which judgment and order has been marked as annexure E in the writ petition . He submits that the petitioners in writ petition No. 4685 of 2009 and the instant petitioners stand on the same footing. He continues that by this judgment, this division gave direction to the respondents to appoint the petitioners to the post of Chainman in the Field Level of the Ministry of Land in pursuance of the recommendation dated 26.10.2004 by the selection committee. He Points out to the annexure B and contends that from Annexure B it is clear that the petitioners in the instant writ petition and the petitioners in Writ Petition No. 4685 of 2009 stand on the same footing and the petitioners have accrued a vested right as in the earlier writ petition. He continues that the inaction of the respondents in not appointing the petitioners in the posts even after so many years after being selected pursuant to interview such conduct is arbitrary tantamounting to infringement of their fundamental rights guaranteed under Articles 27 and 31 of the Constitution. He concludes his submissions upon assertion that the Rule bears merit ought to be made absolute for ends of justice.

On the other hand learned A.A.G appearing for the respondents vehemently opposes the Rule. Controverting the contention of the petitioners he draws this benches attention to the instant writ petition itself. He particularly draws attention to a স্বারক issued by the respondents on 26.08.2020. From the স্বারক dated 26.08.2020 which

has been reproduced in the instant writ petition he shows that from the স্বাক্ষরক dated 26.08.2020 it is clear that another writ petition was filed being writ petition No. 10189 of 2019 in which the instant petitioners were petitioners. He points out that however the instant petitioners upon suppression of facts did not annex the copy of the judgment and order in Writ Petition No. 10189 of 2019 with malafide intention. He further draws attention to the স্বাক্ষরক and submits that it is clear from the স্বাক্ষরক that the application made by the petitioners for appointment to the post of chainman is however an unsigned application. He submits that therefore it is clear that the petitioners did not come with clean hands since the application is an unsigned application and therefore those cannot be taken into consideration for purposes of the disposal of the instant Writ Petition. He next draws attention to annexure E . Annexure E which is the application to the respondent No. 1 to take immediate steps/dispose of the representation of the petitioners dated 28.11.2021. The learned A.A.G from Annexure E shows that this application is an undated application. He draws particular attention to the bottom of the application and shows that the petitioner resorted to malafide tactics upon subsequently penning down a date. He argues that such in transparent action of subsequent penned date makes it clear that the application is not a genuine application since there is no proper date in the application. He contends that therefore it is clear from annexure E and from the স্বাক্ষরক dated 26.08.2020 which has been reproduced in the writ petition itself that the petitioners did not come with clean hands and are trying to illegally obtain appointment to the post of chainman upon resorting to

suppression of facts. He reiterates that Annexure E clearly shows that the date was inserted at a later time after filing of the affidavit in the writ petition. He draws attention to the affidavit in the writ petition which was sworn on 05.11.2021 and points out that the date as penned down by the petitioner appears to be 28.11.2021 that is after filing of the Writ Petition. He persuades that therefore the petitioners did not come with clean hands since there has been several suppression of facts including the unsigned application of 2019. He assails that the স্বাক্ষর issued by the respondents also clearly shows that the application they made did not have any signature of the applicant. He also submits that it is clear from the স্বাক্ষর that the matter was disposed of by the respondent on 26.08.2020 on the basis of it being an unsigned application. He concludes his submissions upon assertion that the petitioners resorted to malafide tactics and therefore they have not gained any vested right to be appointed as chairman and the Rule bears no merit ought to be discharged for ends of justice.

We have heard the learned Advocate for the petitioners and also heard the learned A.A.G, perused the writ petition and the annexures thereto including the related laws. The petitioners contended that pursuant to the selection by the respondents the petitioners acquired a vested right to be appointed as chairman. The petitioners also relies on a judgment in Writ petition No. 4685 of 2009 in which judgment this division give direction to the petitioners in that writ petition to appoint the petitioners in Writ Petition No. 4685 of 2009 as Chairman. The petitioners also contended that the writ petition No. 4685 of 2009 and the instant writ petitioners stand on the same footing

by virtue of annexure B. Annexure B is the list of the selected candidates in the year 2004 and which list also bears the name of the instant 38 petitioners. The petitioners relying upon the judgment in writ petition No. 4685 of 2009 persuaded that since the petitioners stand on the same footing as in writ petition No. 4685 of 2009 therefore the instant petitioners also have accrued vested right to be appointed by the respondents. The petitioners further claimed that since the instant writ petitioners stands on the same footing therefore the respondents refraining from appointing them as Chainman is discriminatory in nature and violative of their fundamental rights guaranteed under Articles 27, 29, 31 and 40 of the Constitution.

The learned A.A.G however drew our attention to the স্বাক্ষর which has been reproduced is page No. 31 of the writ petition.

From the স্বাক্ষর it appears that another writ petition was filed by the instant petitioners being writ petition No. 10189 of 2019 and judgment was also delivered in the Writ Petition. Strangely enough the instant writ petitioners did not annex a copy of the judgment in Writ Petition No. 10189 of 2019 in which the instants petitioner were also petitioners there. It also appears from the স্বাক্ষর that the application which the writ petitioners made to the respondents to be appointed as chainman is an unsigned application and the respondents disposed of the matter in pursuance thereof. It is a principle of law and also under rules of business that an unsigned application cannot be accepted as a proper application. Upon a query from this Bench as to why the application is unsigned the petitioners could not provide satisfactory reply.

We have also noted annexure E which is an undated application made by the petitioners. There is no formal date of the application in annexure E but only a hand written penned down date being 28.11.2001. However the affidavit in page No. 42 of the writ petition shows that the affidavit was sworn on 05.11.2021. Therefore it is clear that the hand written date being 28.11.2021 which was subsequently inserted by the petitioner is not a genuine date.

Upon scrutiny through these documents, we are of the considered view that the petitioners several intransparent conduct shows that they did not come with clean hands.

Firstly the petitioners filed the another writ petitioners in this Division being writ petition No. 10189 of 2019 but however they did not annex a copy of the judgment and order in that writ petition. Secondly the স্বাক্ষর dated 26.08.2020 issued by the respondents shows that the respondents disposed of the application on the ground that the application of the petitioners for appointment was an unsigned application. Lastly by annexure E it shows that the writ petitioners although they filed instant the writ petition earlier on 05.11.2021 but only at a subsequent stage they inserted a date by 28.11.2021 by penning down.

From such conduct of the petitioners it is clear that the petitioners conduct is not transparent and they did not come with clean hands. Therefore we are of the considered view that the petitioners conduct not being transparent and not having come with clean hands therefore no vested right of the petitioners have accrued

upon them to be appointed as Chainman. Nor has any of their fundamental rights been infringed.

Under the facts and circumstances and upon hearing the learned counsels of both sides and upon examination of the materials inter alia the annexures, we find no merits in this Rule.

In the result, the Rule is discharged without any order as to costs.

Communicate this judgment at once.

(Kashefa Hussain, J)

I agree.

(Fatema Najib, J)

Arif(B.O)