

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

WRIT PETITION NO. 10381 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:

S.B. Humaun Kabir and others

..... Petitioners

versus

Government of Bangladesh and others

..... Respondents.

And

Mr. Gazi M.H. Tamim, Advocate

..... for the Petitioners.

Mr. Sk. Shafique Mahmud, Advocate

..... For the Respondent No. 7

Heard on: 09.11.2023, 28.11.2023

Judgment on 29.11.2023.

Present:

Mr. Justice Md. Jahangir Hossain

and

Mr. Justice S.M. Masud Hossain Dolon

S.M. Masud Hossain Dolon, J:

On an application under article 102 of the Constitution, the Rule Nisi was issued in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why failure of the respondent No. 1 to publish gazette notification including the Mymensingh City Corporation in section 16(7) of the চাকরি [স্ব-শাসিত (public Bodies) এবং রাষ্ট্রীয় প্রতিষ্ঠানসমূহ] (বেতন ও ভাতাদি) আদেশ, 2015 in compliance with the memo 27.00.0000.042.031.01.15-277 dated 02.09.2020 issued by the respondent No. 4 and as to why they should not be directed to publish a gazette notification in compliance with the memo 27.00.0000.042.031.01.15-277 dated 02.09.2020 passed by the respondent No. 4 including the name of

Mymensingh City Corporation in section 16(7) of the চাকরি [স্ব-শাসিত (public Bodies) এবং রাষ্ট্রীয়ত্ব প্রতিষ্ঠান সমূহ] (বেতন ও ভাতাদি) আদেশ, 2015 and/or pass such other or further order or orders as to this court may seem fit and proper.”

Fact relevant for disposal of the Rule are that the petitioners are employees of the Bangladesh Power Development Board (in short, PDB) now working at office situated at the Mymensingh City Corporation in the respective posts. As per section 16(7) of the চাকরি [স্ব-শাসিত (public Bodies) এবং রাষ্ট্রীয়ত্ব প্রতিষ্ঠান সমূহ] (বেতন ও ভাতাদি) আদেশ, 2015, there is an opportunity to get more 5% house rent allowance of all the employees, those are working under any expensive area like city corporation area. The Mymensingh Municipality was upgraded to a city corporation on 02.04.2018 at a meeting of the National Implementation Committee on Administrative Reforms (NICAR), after satisfying all eight criteria for forming a city corporation.

After declaration of Mymensingh City Corporation, living cost, house rent and other expenses in the Mymensingh City become higher like other expensive City Corporation areas. Considering the above facts the Finance Division of Finance Ministry issued a memo no. 27.00.0000.173.32.032.12-127 dated 12.12.2019 increased 30% daily allowance for all the employees of civil administration working under Mymensingh City Corporation area. The employees of PDB are getting salary and allowance under the চাকরি [স্ব-শাসিত (public Bodies) এবং রাষ্ট্রীয়ত্ব প্রতিষ্ঠান সমূহ] (বেতন ও ভাতাদি) আদেশ, 2015, but section 16 did not provide any

additional house rent allowance for Mymensingh City Corporation. Accordingly, a proposal was sent from PDB, Mymensingh addressing their higher authority to take appropriate step to include the name of Mymensingh City Corporation under section 16(7) of the Order of 2015 as the house rent of Mymensingh City Corporation has become high. Thereafter the Secretary of PDB sent a letter to the Secretary, Ministry of Power, Energy and Mineral Resources to take necessary step to publish a Gazette notification and incorporating the employees of PDB who are living in Mymensingh City Corporation in accordance with sub-section 7, section 16 of the Order of 2015. But no such Gazette has been published by incorporating the name of Mymensingh City Corporation in sub-section 7, section 16 of the Order of 2015 as yet.

Thereafter, having found no other equally efficacious remedy the petitioner filed the instant writ petition and obtained the Rule.

Mr. Gazi M H Tamim, the learned Advocate appearing for the petitioner submits that the petitioners are working in Bangladesh Power Development Board (PDB) at Mymensingh City Corporation area, which is declared as City Corporation area, inasmuch as it is the lawful rights of the petitioners guaranteed Section 16(7) of the order of 2015 to get additional 5% of house rent allowance. He further submits that all the employees of PDB are working in other City Corporations are getting additional 5% of house rent allowance, standing on the same footing the petitioners are also entitled to get additional 5% of house rent allowance

for ends of justice. Learned Advocate lastly submits that the respondents are not provided additional house rent allowance to the petitioners which is clear discrimination upon his own employees as their office is situated at the City Corporation area which is highly arbitrary, malafide discriminatory and without jurisdiction.

Mr. Sk. Shafiqur Mahmud, the learned Advocate on behalf of the respondent No. 07 opposes the Rule and submits that the present writ petition is not maintainable at all because of that whether additional allowance will be given by the government or not is the policy decision of the Government and as such the same cannot be assailed in the writ Jurisdiction under article 102 of the Constitution. He next submits that the petitioners have no locus standi to file this writ petition rather since the matter is purely a police decision of the Government, it should be left for the Government to decide with the need of time, considering the financial capacity for such the Rule Nisi is liable to be discharged.

We have perused the writ petition and all other relevant papers submitted by the parties in connection with the contents of this writ petition. It appears that the petitioners are employees of the Bangladesh Power Development Board (PDB) and they are enjoying salary and other financial benefits from the Bangladesh Power Development Board as per চাকরি [স্ব-শাসিত (public Bodies) এবং রাষ্ট্রীয় প্রতিষ্ঠান সমূহ] (বেতন ও ভাতাদি) আদেশ, 2015. The writ petitioners are claimed additional 5% house rent allowance according to Article 16(7) of the চাকরি [স্ব-শাসিত (public Bodies)

এবং রাষ্ট্রীয়ত্ব প্রতিষ্ঠান সমূহ] (বেতন ও ভাতাদি) আদেশ, 2015 that all other city corporation areas employees are getting additional house rent at the rate of 5%. The government formed Mymensingh City Corporation by Gazette notification. Admittedly they are employees of Bangladesh Power Development Board and for their job purpose they have to live in City Corporation area it is their lawful rights and also utmost necessary to get additional 5% of house rent allowance as per Article 16(7) of the চাকরি [স্ব-শাসিত (public Bodies) এবং রাষ্ট্রীয়ত্ব প্রতিষ্ঠান সমূহ] (বেতন ও ভাতাদি) আদেশ, 2015.

It appears that the Government has provided additional house rent allowance at the rate of 5% to the others City Corporation areas. The Government has the only authority to decide when house rent allowance will be provided but it did not provide house rent allowance to the Mymensingh City Corporation area for PDB employees for last 5(five) years is malafide and arbitrary. The petitioners are employees of the PDB who are living in the Mymensingh City Corporation for their Job purpose they and are entitled to get additional house rent allowance as per Article 16(7) of the চাকরি [স্ব-শাসিত (public Bodies) এবং রাষ্ট্রীয়ত্ব প্রতিষ্ঠান সমূহ] (বেতন ও ভাতাদি) আদেশ, 2015 and all the employees of other City Corporation are getting additional house rent allowance except the petitioners and the petitioners are suffering financial hardship and discrimination in comparison with the PDB employees who are working in the City Corporations area and this act of non-consideration of 5% house rent allowance is gross violation of rights guaranteed under

Articles 27, 29 and 31 of the Constitution of the people's Republic of Bangladesh, 1972 and, hence, the respondents are directed to take necessary steps to provide additional allowance as per law expeditiously.

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

Communicate the order at once.

Md. Jahangir Hossain, J:

I agree.