

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

Writ Petition No. 7631 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:

Md. Jahed Hossain and others

.....Petitioners

-Versus-

Government of the People's Republic of
Bangladesh represented by the Secretary,
Ministry of Railway, Bangladesh
Secretariat, Ramna, Dhaka and others.

..... Respondents

Present
Mr. Justice Sashanka Shekhar Sarkar
And
Mr. Justice Faysal Hasan Arif

Mr. Md. Khurram Jha Murad, Advocate

... For the petitioner.

Mr. Mohammad Waliul Islam, D.A.G.

...For the respondents

Judgment on: The 13th November, 2025

Sashanka Shekhar Sarkar, J:

This *rule nisi* at the instant of the petitioner was issued on an application under Article 102 of the Constitution in the following terms;

Let a Rule Nisi be issued calling upon respondents to show cause as to why inaction of the respondents in implementing the Memo bearing No. 54.01.0000.006.11.025.12 dated 03.12.2017 issued from the office of respondent No. 2 in respect of

regularization/absorption of Temporary Labors (TRL) into vacant posts of Railway as evident from (Annexure-F) to the writ petition and failure of the respondents No. 3, 4, 5 8 10 and 11 in recommending the names of the Temporary Labors (TRL) to be regularized/absorbed into revenue budget against vacant posts of Bangladesh Railway as per the Memo bearing No. বিপি/পাকশী/আত্মীয়করন/অঃজনবল/২০২০ dated 29.01.2020(Annexure-K) issued from the office of respondent No. 7 and/or pass such other or further order or orders as to this court may seem fit and proper.

During the pendency of the Rule, co-petitioner Nos. 12 to 55 were added as parties to the Rule by an order dated 03.01.2022.

The facts leading to issuance of the Rule Nisi, in brief, are that the petitioners are temporary employees of Bangladesh Railway. They were engaged as TLR for the posts of Gate Keeper, Porter, and Wayman under the Traffic Level Crossing Division (Traffic) of the West Zone (Pakshi) of Bangladesh Railway on different dates between 2016 to 2019 on the basis of Master Roll by the respondents. Since their appointment, the petitioners have been continuously and uninterruptedly discharging their duties with honesty, integrity, sincerity, and competence and were duly paid wages as Temporary Labour/TLR by the respondents. However, most unfortunately, from January, 2020, the respondents stopped paying the salaries of the petitioners and in respect of some of them, the respondents even

resorted to forcibly restraining them from signing the attendance register, notwithstanding their readiness and willingness to perform their assigned duties. Although the Cabinet Division, vide its Memo dated 03.05.2003, adopted a policy decision to regularize/absorb temporary employees after completion of a prescribed period of service, in furtherance of the said policy, respondent No. 2 issued Memo No. মপবি/কঃবিঃশাঃ/কপধ-১১/২০০১-১১১ dated 03.12.2017, resolving to regularize the service of TLR/Temporary Labourers of Bangladesh Railway upon completion of three years of service and directing the concerned authorities to take necessary steps in that regard. Pursuant thereto, the Office of the Chief Personnel Officer (West Zone), Bangladesh Railway, Rajshahi (respondent No. 4), on behalf of the General Manager (West Zone) (respondent No. 3), issued a letter vide Memo dated 25.10.2018 (Annexure-G) directing all Divisional Heads, including the Divisional Railway Manager, Pakshi and the Divisional Railway Manager, Lalmonirhat to take steps for absorption of the petitioners and other similarly situated employees into the revenue budget. Thereafter, the Office of the Chief Engineer (West Zone), Bangladesh Railway, Rajshahi, vide Memo dated 12.11.2018, instructed the Divisional Engineers (1 & 2), Pakshi, the Divisional Engineer, Lalmonirhat, and other concerned offices to furnish the necessary documents relating to TLR/Temporary Labourers for the purpose of absorption/regularization. Subsequently, respondent No. 4 issued a Memo dated 05.11.2019 outlining the absorption process and

constituted a three-member committee to submit a report in respect thereof. In continuation thereof, respondent No. 5 issued an office order vide Memo dated 06.01.2020, upon recommendation of the Director General, Bangladesh Railway, directing the authorities concerned to take all necessary steps to absorb the petitioners and other similarly situated employees. Thereafter, respondent No. 7, the Divisional Railway Manager (DRM), West Zone, issued a further office order directing respondents Nos. 3, 4, 5, 8, and 10 to proceed accordingly. A committee was formed and, upon completion of its proceedings, forwarded its recommendation vide Memo No. বিপি/পাকশী/আত্মীকরণ/অঃজনবল/২০২০ dated 29.01.2020, recommending the names of the present petitioners and directing necessary steps for their absorption into the revenue budget as regular employees. Despite such clear policy decisions, administrative directions, and specific recommendations, the respondents failed to take any final action and kept the matter pending for an unreasonable length of time. Having no other efficacious alternative, the petitioners were compelled to invoke the writ jurisdiction of this Hon'ble Court by filing the present writ petition and obtained the rule.

Mr. Md. Khurram Jha Murad, learned Counsel appearing for the petitioners, submits that, on earlier occasions, temporary employees of Bangladesh Railway engaged on a “no work no pay” basis filed several writ petitions, being Writ Petition Nos. 2263 and 5265 of 2011; 773, 1122, 4402, 6245, and 6958 of 2014; and 14155 of

2016, 14156 of 2016, and 3451 of 2016, seeking directions upon the respondents for absorption into service. Upon hearing the said writ petitions, this Hon'ble Court was pleased to dispose of the same by directing the respondents to absorb those temporary employees into the revenue set-up, and in compliance with the said judgments and orders, the respondents duly absorbed them.

He further submits that the present petitioners are similarly situated and stand on the same footing as the petitioners of the aforesaid writ petitions, having been engaged in the same manner, having rendered continuous service for a long period, and having acquired the requisite skills and experience while serving Bangladesh Railway. Despite this parity of status, the respondents failed to extend the same treatment to the present petitioners.

He further submits that even after issuance of the Memo dated 21.01.2020, whereby direction was given to recommend the names of the TLR/Temporary Labourers to the Divisional Railway Manager for absorption into the revenue set-up, the concerned committee neither took any effective step nor arrived at any final decision and kept the matter pending for an unreasonable length of time.

He finally submits that such inaction on the part of the respondents, despite clear policy decisions, previous judicial precedents, and express administrative directions, is illogical, arbitrary, and unlawful. Since the petitioners stand on the same footing as those already absorbed pursuant to earlier writ petitions, a

direction is required to be given upon the respondents to absorb the petitioners into the revenue set-up.

The learned Deputy Attorney General without filing any affidavit in opposition opposes the rule.

We have heard the learned counsels for both the sides and perused the writ petition along with all the annexures appended thereto.

On perusal of the record placed before us we find that the petitioners were employed on a temporary "no work no pay" basis in different posts under the Ministry of Communication, Government of the Peoples Republic of Bangladesh in Bangladesh Railway.

The government issued a circular on 28th March, 1969 which stated that the government has decided that all class III post of permanent nature which has been in existence for five year or more may be converted into permanent one in consultation with the Finance Department. The Circular is reproduced here which runs as under:

SERVICE AND GENERAL ADMINISTRATION DEPARTMENT.

Regulation Branch

Section-1

No. SCA/RI/IS-33/69/71(350), dated Dacca, the 28th March, 1969

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

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

1) All temporary class III and class IV 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)

(3)

L.R Khan

Deputy Secretary (Emphasis supplied)

Thus, all posts of class III and class IV which are in the category of contingency and those who have been continuing for 5(five) years or more may be made permanent in consultation with the Finance Department.

The government again issued a circular Memo No. Estb./RI/S-46/72/55, dated Dacca, 21st April, 1972, which runs as under:

Government of Bangladesh
Ministry of Cabinet Affairs
Establishment Division
Regulation Wing-1

Memo No. Estb/RI/S-46/72/55, dated Dacca, 21st April. 1972.

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

The Government under Memo No SGA/RI/IS-33/69/71(350), dated 28th March, 1969 (copy enclosed) issued orders for conversion of certain temporary posts into permanent ones and contingent and work charged staff into regular establishment. It appears that these decisions have not been fully implemented as a result of which the employees concerned have not 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 5/10 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 in retirement, 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 person who have already retired since the promulgation of the President's Order No. 14 of 1972 should also be given the benefit of absorption into regular establishment by since of orders retrospectively and giving retirement benefits provided they had the prescribed length of service.
3. The Ministry of Finance has been consulted.

M.M. Zaman.

Secretary

It was brought to our notice that the above two circulars have not been superseded by the circular dated 24.01.1996.

The learned Advocate for the petitioners also placed before us a Government Circular dated 03.05.2003 and submits that under the said Circular, those who have at least completed a period of 3 years in their service, are eligible for regularization.

We have also perused the Circular dated 03.05.2003 which has been issued by the Cabinet Division. The Circular is reproduced below:

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
মন্ত্রিপরিষদ বিভাগ

কমিটি বিষয়ক শাখা।

নং- মপবি/কঃ/বিঃ/শাঃ/কপগ-১১/২০০১-১১১ তারিখঃ ০৩,০৫,২০০৩ খ্রিঃ
২০.০১.১৪১০ ঘঃ

সরকারি আদেশ

সরকার সিদ্ধান্ত গ্রহণ করেছে যে, রাজস্বখাতে অস্থায়ীভাবে পদ সৃষ্টি, উন্নয়ন প্রকল্প থেকে রাজস্বখাতে পদ স্থানান্তর, পদ সংরক্ষণ, পদ স্থায়ীকরণ ইত্যাদি বিষয়ে নিম্নরূপ নীতি ও পদ্ধতি অনুসৃত হবেঃ

(১) বিভিন্ন মন্ত্রণালয়/ বিভাগ/ অধিদপ্তর/ পরিদপ্তর/ স্বায়ত্বশাসিত সংস্থা/ অধীনস্থ অফিসসমূহে রাজস্বখাতে অস্থায়ীভাবে পদ সৃষ্টি এবং উন্নয়ন প্রকল্প থেকে রাজস্বখাতে পদ স্থানান্তরের জন্য প্রশাসনিক মন্ত্রণালয়ের প্রস্তাব সংস্থাপন মন্ত্রণালয় ও অর্থ বিভাগ কর্তৃক অনুমোদনের পর ০৩ (তিন) বছর পর্যন্ত বছর ভিত্তিক পদ সংরক্ষণের ক্ষমতা নিম্নলিখিত শর্তে প্রশাসনিক মন্ত্রণালয়কে দেয়া হইলঃ

(ক) প্রতি বছর পদ সংরক্ষণের ক্ষেত্রে প্রশাসনিক মন্ত্রণালয় সংরক্ষণের যৌক্তিকতা যথাযথভাবে যাচাই করবে:

(খ) প্রশাসনিক মন্ত্রণালয় কোনো পদের পদনাম ও বেতনস্কেল পরিবর্তন-করতে পারবে না। পদনাম ও বেতনস্কেল পরিবর্তন করতে হলে সংস্থাপন মন্ত্রণালয় ও অর্থ বিভাগের সম্মতি গ্রহণ করতে হবে;

(গ) কোন পদ এক নাগাড়ে ০২(দুই) বছর শূণ্য থাকলে সংস্থাপন মন্ত্রণালয় ও অর্থ বিভাগের অনুমোদন ছাড়া সংরক্ষণ করা যাবে না;

(ঘ) প্রশাসনিক মন্ত্রণালয় কর্তৃক জারিকৃত পদ সংরক্ষণের জি.ও-এর কপি, সংস্থাপন মন্ত্রণালয় ও অর্থ বিভাগে প্রেরণ করতে হবে;

(ঙ) উন্নয়ন প্রকল্পের পদ রাজস্ব বাজেটে স্থানান্তরের সময় কোনো শর্ত আরোপিত হয়ে থাকলে প্রশাসনিক মন্ত্রণালয়কে তা পালন করতে হবে।

(২) এই নীতিমালা বাস্তবায়নের পূর্বে অস্থায়ীভাবে সৃজনকৃত পদ সমূহের মধ্যে যে সকল পদের মেয়াদ ০৩(তিন) বছর পূর্ণ হয়নি, সে সকল পদ প্রশাসনিক মন্ত্রণালয় (১) উপঅনুচ্ছেদে বর্ণিত শর্ত অনুসরণপূর্বক তিন বছর পর্যন্ত বছর ভিত্তিক সংরক্ষণ করতে পারবে।

(৩) এই নীতিমালা বাস্তবায়নের পর কোন কারণে অস্থায়ীভাবে সৃষ্ট পদ তিন বছরের মধ্যে স্থায়ী করা সম্ভব না হলে, সংস্থাপন মন্ত্রণালয় ও অর্থ বিভাগের সম্মতিক্রমে প্রশাসনিক মন্ত্রণালয় পরবর্তী বছরের জন্য উক্ত পদসমূহ সংরক্ষণ করতে পারবে।

(৪) অধিদপ্তর/পরিদপ্তর/স্বায়ত্বশাসিত সংস্থার ন্যায় মন্ত্রণালয়/বিভাগের অস্থায়ী পদও সংশ্লিষ্ট মন্ত্রণালয়ের দায়িত্বে নিয়োজিত মাননীয় মন্ত্রীর সম্মতি নিয়ে সংরক্ষণ করা যাবে।

(৫) বর্তমানে রাজস্বখাতে অস্থায়ীভাবে সৃষ্ট পদ ৫(পাঁচ) বছর এবং উন্নয়ন প্রকল্প থেকে রাজস্বখাতে স্থানান্তরিত পদ ৩(তিন) বছর পর স্থায়ী করার যে বিধান রয়েছে তা রহিত করে রাজস্বখাতে অস্থায়ীভাবে সৃষ্ট এবং উন্নয়ন প্রকল্প থেকে রাজস্বখাতে স্থানান্তরিত উভয় ধরনের পদই ৩(তিন) বছর পর স্থায়ী করা যাবে।

(৬) অস্থায়ীভাবে সৃষ্ট পদ তৃতীয় বছর সংরক্ষণের পর স্থায়ী করার প্রয়োজন হলে যৌক্তিকতাসহ প্রশাসনিক মন্ত্রণালয়, সংরক্ষণের মেয়াদ উত্তীর্ণের কমপক্ষে ৬(ছয়)

মাস পূর্বে সংস্থাপন মন্ত্রণালয়ে প্রস্তাব প্রেরণ করবে। উক্ত প্রস্তাব সংস্থাপন মন্ত্রণালয় পরীক্ষা করে প্রয়োজনীয় সংখ্যক পদ স্থায়ী করার সুপারিশ করবে।

(৭) সংস্থাপন মন্ত্রণালয়ের সুপারিশ পাবার পর অর্থ বিভাগের সম্মতি নিয়ে প্রশাসনিক মন্ত্রণালয় অন্যান্য আবশ্যিকীয় আনুষ্ঠানিকতা পালন করে সংশ্লিষ্ট মন্ত্রীর অনুদোনান্তে পদ স্থায়ী করার আদেশ জারি করবে তবে শর্ত থাকে যে, মন্ত্রণালয়/বিভাগের প্রথম শ্রেণীর/কর্মকর্তার পদ স্থায়ী করার ক্ষেত্রে প্রধানমন্ত্রীর অনুমোদনের প্রয়োজনীয় হবে।

(৮) এই নীতিমালা বাস্তবায়নের পূর্বে অস্থায়ীভাবে সৃষ্ট পদ উপানুচ্ছেদ ৯(৫), (৬) ও (৭) এর বিধান অনুসরণ পূর্বক স্থায়ী করা যাবে।

২। এতদ্বারা সংশ্লিষ্ট বিষয়ে বিদ্যমান প্রাসংগিক আদেশ, নীতি-পদ্ধতি বাতিল/সংশোধন করা হল।

৩। এই আদেশ জনস্বার্থে জারি করা হল এবং অবিলম্বে কার্যকর হবে।

স্বাক্ষরিত

০৩-০৫-০৩

(বদিউর রহমান)

যুগ্ম-সচিব

ফোন ৭১৬৫৫১০

বিতরণঃ ১) মন্ত্রিপরিষদ সচিব/মুখ্য সচিব/ সচিব/ ভারপ্রাপ্ত সচিব, অর্থ মন্ত্রণালয়/বিভাগ

(২) মন্ত্রী/প্রতিমন্ত্রী/উপ-মন্ত্রীর একান্ত সচিব ----- মন্ত্রণালয়/বিভাগ

(৩) প্রধান তথ্য কর্মকর্তা, পিআইডি

(৪) উপনিয়ন্ত্রক, বাংলাদেশ ফরমস ও প্রকাশনা অফিস, তেজগাঁও, ঢাকা।

The petitioners have been rendering unblemished service for more than 3 years and they have been continuing their service in their respective offices. Therefore, they have legitimate expectation that they would be absorbed against the permanent posts. In this connection we may refer the case of Bangladesh Biman Corporation vs-Rabeya Bashir Irene and others reported in 55 DLR (AD) 132.

In the case referred to above, the Appellate Division has held that *“In the background of the existing practice of absorbing the employee of the petitioner’s category on satisfactory completion of the initial period of employment under a contract, it can be said that there was a reasonable ground for the writ petitioners to expect for being absorbed permanently in the service of the corporation”*

Since the question of facts and point of law involved in the instant case have already been discussed and decided in earlier judgments on similar facts and laws, we do not feel it necessary to elaborate the judgment. The petitioners of earlier writ petitions succeeded in getting favourable orders. The same fate must follow here.

In view of the discussions narrated above, we find merit in the rule.

In the result, the Rule is made absolute.

The respondents are directed to absorb/regularize the petitioners into revenue budget against vacant posts of Bangladesh Railway as per memo bearing No. বিপি/পাকশী/আত্মীকরন/অঃজনবল/২০২০ dated 29.01.2020 (Annexure-K) issued from the office of respondent No. 7 as expeditiously as possible, if they are otherwise not disqualified.

However, there shall be no order as to costs.

Communicate the judgment and order, at once.

Faysal Hasan Arif, J:

I agree.