

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

Writ Petition No. 7469 of 2003.

In the matter of an application under Article 102 of the Constitution of the People's Republic of Bangladesh.

-AND-

In the matter of:

Musa Kalimullah, son of late Abul Hossain Patwary,
Stenographer (Retired) Water Development Board,
Chandpur; Resident at 44/K Endira Road, East Raza
Bazar, Tejgoan, Dhaka

.....Petitioner.

-Versus-

Secretary, Water Resources, Ministry of Water
Development, Secretariat Building, Ramna, Dhaka and
others.

.....Respondents.

Mr. Sarder Abul Hossain, Advocate,

.....For the Petitioner.

Mr. Md. Sayed Alom Tipu, Advocate.

..For the Respondent Nos. 2-8.

Heard on 25.08.2015, 03.11.2015, 17.11.2015

Judgment on: 23.11.2015

Present:

Justice Tariq ul Hakim

and

Justice Md. Farid Ahmed Shibli

Md. Farid Ahmed Shibli, J:

This Rule Nisi has been issued calling upon the respondents to show cause as to why the impugned memo. No. *ms⁻/cb/PaUBo(Hi)315* dated 07.05.2003 refusing the Petitioner to pay the benefits of 03 (three) Time Scales shall not be declared to be without any lawful authority and is of no

legal effect and/or pass such other order or orders as to this Court may seem fit and proper.

Factual scores relevant for disposal of this Writ Petition are as follows:- On 19.03.1969 the Writ Petitioner was appointed as a Steno-Typist in the Water Development Board (hereinafter termed as “the Board”) and on 11.10.1987 he was promoted to the post of Stenographer. According to the Government Order dated 21.05.1984, on completion of 8 & 12 years’ satisfactory service on 11.10.1995 and 11.10.1999 respectively the Writ Petitioner were allowed to draw the benefits of 02 (two) time-scales vide the Office Order dated 17.04.2001 (Annexure-C). On 12.10.2001 the Petitioner went on L.P.R. and he retired from the service on 11.10.2002. On completion of 15 years’ service he became entitled to draw the 3rd time-scale w.e.f. 11.10.2001. After granting the aforesaid 02 (two) time-scales eventually the Respondents arbitrarily and without any lawful authority deducted and adjusted Tk. 44,602/- from the Petitioners’ claim of pension issuing the impugned memo. No. *ms-1cb/Pa U B(Hi)*315 dated 07.05.2003 (Annexure-E). As no other efficacious and equitable remedy is available to the Writ Petitioner, he has thus filed the instant Writ Petition under article 102 of the Constitution.

Respondent nos. 2-8 have contested filing the Affidavit-in-Opposition contending that being a Steno-Typist the Writ Petitioner had earlier drawn 03 (three) time-scales on completion of 8,12 & 15 years of service and after changing his designation as a Stenographer on 11.10.1987

he drew 02 (two) more time-scales on completion of 8 and 12 years w.e.f. 11.10.1995 and 11.10.1999 respectively. As per Para- 3(2)(b) of the Ministry of Finance's Notification no. MF(ID)-I-5/78/1186 dated 31.10.1978 any change of designation of a Steno-Typist to Stenographer is not tantamount to promotion of the post, so the Writ Petitioner had no such entitlement to draw any time-scale as a Stenographer. It has been alleged that the Board granted the Writ Petitioner 2 (two) time-scales wrongly w.e.f. 11.10.1995 and 11.10.1999 respectively, but during the final calculation of his pension claims having those mistakes detected the concerned authority of the Board asked for adjustment of the amount drawn in excess on account of 02 (two) time-scales and issued the impugned Office Order (Annexure-E) to that effect. Since the Respondents did not violate the existing rules or orders of the Government, the Rule is liable to be dismissed with costs.

Mr. Sarder Abul Hossain, learned Advocate for the Petitioner and Mr. Md. Sayed Alom Tipu, learned Advocate for the Respondents have entered appearance and participated in the hearing.

According to the Government's Order and the Circulars from time to time issued, any employee of the Board shall be entitled to draw maximum three time-scales on completion of 8, 12 & 15 years satisfactory service at the same post. Admittedly the Petitioner being a Steno-Typist of the Board got the benefits of 3(three) time-scales on completion of 8, 12 & 15 years' satisfactory service. On 11.10.1987 the Petitioner's designation was

changed, as claimed, by way of promotion because of the result secured in the Speed Test Examination arranged by the Board. Being a Stenographer the Writ Petitioner subsequently drew 2 (two) time-scales on completion of 8 & 12 years' service w.e.f. 11.10.1995 & 11.10.1999 respectively vide the Office Order at Annexure-C.

Mr. Sarder Abul Hossain, learned Advocate for the Writ Petitioner submits that the Petitioner was entitled to draw the benefits of 02 (two) more time-scales counting his service from the date of promotion as a Stenographer. Mr. Hossain alleges that after allowing the Petitioner to draw the benefits of 2 time-scales w.e.f. 11.10.1995 and 11.10.1999 the Board had no lawful authority to issue the impugned letter dated 07.05.2003 (Annexure-E) directing the Writ Petitioner to adjust or deduct the amount drawn as the benefits of the said 2 time-scales from his pension claims.

Mr. Md. Sayed Alom Tipu, learned Advocate for the Respondents contends that the Petitioner's change of post from Steno-Typist to the Stenographer should not be tantamount to promotion of the post, because the pay-scales of both those posts are the same. The learned Advocate further contends that in view of Para- 3(2)(b) of the Ministry of Finance's Notification no. MF(ID)-I-5/78/1186 dated 31.10.1978 there was no scope at all for the Writ Petitioner to become Stenographer from Steno-Typist by way of promotion and the Board merely changed his designation on 11.10.1987 evaluating the result secured in the Speed Test Examination.

Crux of the problem to be determined is- whether on 11.10.1987 the Petitioner's change of post from Steno-Typist to Stenographer was a promotion or not. In this context Mr. Tipu has drawn our attention to the Notification dated 30.10.1978 issued by the Ministry of Finance (Annexure-X). For proper appreciation of the facts in dispute relevant part of Para- 3(2)(b) of the Notification is stated below in verbatim-

“Appointment of Stenographer and Personal Assistants on the New Scale of TK. 400-825 will be made on the basis of merit through open competition in which serving Steno-Typists and outsiders may take part. There will be no reserved quota for promotion of Steno-Typists as Stenographers.”

On careful reading of the Notification above, it transpires that for a Steno-Typist of the Board the post of Stenographer is a promotion post and the decision of promotion is to be made on the basis of merit through open competition in which serving Steno-Typists and outsiders may take part. It is true that the Petitioner had earlier drawn the benefits of 3 time-scales as a Steno-Typist. So, on being promoted as Stenographer he has become entitled again to get the benefits of a new-slot of time-scales subject to fulfilling essential conditions like- satisfactory service of 8, 12 or 15 years. Besides, Para- (Ka) of the audit-opinion bearing no. *cñmWDi (Dtubt)/199/633 ZwiL- 01.08.1990* circulated by the Office of the Accountant General, Bangladesh provides us that even after drawing 03 (three) time-scales in a lower post, an employee may be given the same benefit again at his

promoted post. In such a situation, it is not understood as to how and on what basis the Respondents decided to deprive the Writ Petitioner from the benefit of the time-scales and issued the impugned Office Order to that effect.

Mr. Sarder Abul Hossain, learned Advocate for the Writ Petitioner submits that being a Stenographer the Writ Petitioner drew the benefits and during his service period the concerned authority did not raise any objection in that score. He further submits that the Board took an unkind decision against the Writ Petitioner deducting the benefits from his pension claim which clearly violates the principles of equity. Mr. Hossain contends that once an employee be allowed to draw a financial benefit rightly or wrongly cannot be taken away afterwards in an abrupt manner without assigning any valid cause or reason. We find strong substance in the said submission of the learned Advocate for the Writ Petitioner and inclined to hold that on promotion to the post of Stenographer, the Writ Petitioner acquired a fresh entitlement to draw the benefits of time-scales and the Board by allowing him to draw 2 time-scales (Annexure-C) has not committed any error or unlawful act.

Writ Petitioner was promoted as Stenographer on 11.10.1987. So, his 3rd time-scale supposed to be due on completion of 15 years' service i.e. on 11.10.2002. Since the Writ Petitioner retired on 11.10.2002, he therefore cannot claim any benefit of the 3rd time-scale. However, the Respondents have no legal scope to realize the benefits of the 1st and 2nd time-scale,

which had already been drawn by the Writ Petitioner as a Stenographer.

We are therefore inclined to hold that being a Stenographer of the Board, the Writ Petitioner is legally entitled to get the benefits of 02 (two) time-scales and the impugned order dated 07.05.2003 (Annexure-E) issued to that effect is of without any lawful authority. The Respondents are directed to allow the Writ Petitioner to draw the benefits which have already deducted or adjusted from his pension claim and take further steps if any as per law.

Consequently, the Rule is made absolute. Parties are directed to bear the respective costs.

Tariq ul Hakim, J

I agree.