

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

WRIT PETITION NO. 1098 OF 2025

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:

Md. Naimur Rahman Tony and others
.....Petitioners

-VERSUS-

Bangladesh, represented by the Secretary, Medical Education and Family Welfare Division, Ministry of Health and Family Welfare and another
..... Respondents

Mr. Sheikh Mohammad Morshed, Advocate with
Mr. Md. Anisul Hassan, Advocate

..... For the Petitioners
Mr. Md. Faruk Hossein, Advocate
.....For the Respondent No. 1

Ms. Rumana Hoque, Advocate
.....For the Respondent No. 2

Present:

**Mr. Justice Sashanka Shekhar Sarkar
And
Justice Urmee Rahman**

Heard on 08.07.2026, 14.07.2026, 27.07.2026 and 03.08.2026
Judgment on 06.08.2026

Urmee Rahman, J:

In the instant matter a Rule Nisi was issued on an application under Article 102 read with Article 44 of the Constitution of the People's Republic of Bangladesh in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the purported failure and/or inaction of Respondent No. 2 in publishing or circulating the panel/waiting list of successful candidates for the post of Assistant Family Planning Officer, as confirmed and communicated vide memo no. 80.00.0000.301 (Goponiyo) 11.2617.2023-06 dated 16.01.2024 (Annexure-C) which records that a panel/waiting list was preserved following the recruitment examination conducted by the Controller of Examinations (Non-cadre) of the respondent no. 2, shall not be declared to be illegal, without lawful authority and is of no legal effect and as to why the purported failure and/or inaction of respondent no. 2 to consider and select the petitioners from panel/waiting list of successful candidates for the 81 vacant positions, as mandated pursuant to the requisition/instruction issued by Respondent No. 1 vide memo no. 59.00.0000.110.11.025.24.776 dated 03.11.2024 (Annexure-D) should the petitioners be found eligible within the panel/waiting list, shall not be declared to be illegal, without lawful authority and is of no legal effect and as to why the respondents shall not be directed to forthwith take the necessary steps to publish the preserved panel/waiting list of successful petitioners who passed the recruitment examination conducted by the Controller of Examinations (Non-cadre) of the Respondent No. 2 for the post of Assistant Family Planning Officer as evident from the Annexure-C and to proceed with the selection of successful petitioners from

the said panel/waiting list for direct appointment to the 81 vacant posts in compliance with the requisition and instructions issued by Respondent No.1 vide Annexure-D should the petitioners be found eligible within the panel/waiting list, and/or pass such other or further order or orders as to this Court may seems fit and proper.”

Short facts leading to the issuance of the instant Rule, are that, the petitioners, 25 (twenty five) in numbers, applied for the position of Assistant Family Planning Officer (10th grade) in response to appointment circular No. 80.00.0000.301.73.002.22-76, dated 27.04.2022, duly issued and published by Bangladesh Public Service Commission (PSC). The said recruitment process was undertaken by the PSC with the objective of effecting the direct appointment to 108 permanent posts within the Directorate of Family Planning. Following the submission of their respective applications, in strict conformity with the prescribed procedures, the Petitioners and others were issued admit cards with individual registration numbers, authorising them to participate in the recruitment examination and accordingly they appeared in the said examination. Thereafter, on 02.01.2024, the PSC published a list of 108 candidates selected provisionally for the position of Assistant Family Planning Officer by issuing memo dated 02.01.2024.

The Controller of Examinations (Non-cadre) of PSC, by memo dated 16.01.2024 informed the Respondent No. 1, Secretary of the Ministry of Health and Family Welfare that the PSC had prepared and maintained a panel/waiting list of successful candidates. Paragraph 5 of

the said memorandum explicitly stipulated that, in the event of non-joining by any selected candidate, and upon receipt of a requisition from the Respondent No. 1, the Ministry, notifying the PSC of such non-joining, the PSC could proceed to select candidates from the panel/waiting list.

The Respondent No. 1, the Ministry, confirmed by issuing a memo dated 03.11. 2024 to the Respondent No. 2, PSC that only 63 out of the 108 recommended candidates had taken up their respective positions and the said memo further confirmed that 81 positions for the post of Assistant Family Planning Officer remained vacant; and also instructed the Respondent No. 2, BPSC, to take the necessary measures to recommend the successful candidates from the panel/waiting list for appointment to the said vacant posts. Notwithstanding the existence of a duly maintained panel/waiting list, the Respondent No. 2 i.e. the PSC has, till date, failed to issue any subsequent list of selected candidates from the said panel/waiting list.

The petitioners issued a Notice Demanding Justice dated 15.01.2025 upon the Respondents through their lawyers requesting them for taking necessary actions to resolve the grievance raised by them. However, no response has been made thereto till date.

Being aggrieved thereby and there having no other alternative and equally efficacious remedy available, the petitioners have filed the instant writ petition and obtained the present Rule.

Learned Advocate Mr. Sheikh Mohammad Morshed with Learned Advocate Mr. Md. Anisul Hassan, appearing on behalf of the petitioners submits that, the failure of Respondent No. 2 to act upon the requisition and instructions of Respondent No. 1, requiring the fulfilment of 81 vacant positions from the panel/waiting list maintained by Respondent No. 2 is unlawful, arbitrary, and tainted with mala fide and therefore is liable to be declared without lawful authority and of no legal effect. Consequently, the Respondents are liable to be directed to select the Petitioners from the said panel or waiting list, subject to their eligibility therein.

Learned Advocate further submits that, the Respondent No. 2's communication, annexed hereto as Annexure- C, explicitly stated that vacancies arising from the non-joining of selected candidates would be filled up from the panel/waiting list. Subsequently, Respondent No. 1, through Annexure- D, confirmed the existence of 81 vacant positions for the post of Assistant Family Planning Officer. Based on these representations, the Petitioners reasonably developed a legitimate expectation that, should their names appear in the panel/waiting list, they would be selected for the said post. The failure of the Respondents to act in accordance with this assurance constitutes a breach of the Petitioners' legitimate expectation, and therefore, necessary directions are needed to be passed by the Hon'ble Court in order to uphold justice and fairness.

On the other hand, learned Advocate Ms. Rumana Hoque entered appearance on behalf of the Respondent No. 2, namely, the Bangladesh

Public Service Commission (PSC). Initially, she contested the Rule by filing an affidavit-in-opposition dated 18.02.2026, wherein it was contended, inter alia, that the PSC had acted strictly in accordance with the requisition made by the Government and the specific directions contained therein. It was, therefore, asserted that the PSC had neither exceeded its lawful authority nor acted in any manner contrary to the applicable rules and regulations.

However, at the time of hearing of the Rule, the learned Advocate appearing for the Respondent No. 2 made a candid and significant submission by filing a supplementary affidavit dated 30.07.2026. In the said supplementary affidavit, it has been disclosed that the Respondent No. 2, by a resolution adopted on 23.05.2026 in its 7th Special Meeting of 2026, resolved to make recommendations against the 45 vacant posts from amongst the candidates included in the panel/waiting list, who had successfully passed the viva voce examination for the post of Assistant Family Planning Officer (10th Grade) pursuant to the circular dated 27.04.2022.

The learned Advocate, however, submitted that the PSC is presently unable to implement the aforesaid resolution on account of the expiry of the one year validity period of the panel/waiting list, as stipulated in the circular dated 27.04.2022.

Learned Advocate Mr. Md. Faruk Hossein, entered appearance on behalf of the Respondent No. 1 without filing any affidavit in opposition and submitted that as per letter dated 03.11.2024 issued by the Health

Education and family Welfare Division, the Ministry requested the Bangladesh Public Service Commission i. e. respondent no. 2, for taking necessary steps of recommendation from the waiting list/panel. If the office of the respondent No. 2 recommended or published the waiting list/Panel, then the respondent no. 1, is ready to give appointment to the candidates.

We have heard the learned advocates for the respective parties and perused the writ petition, affidavit in opposition, supplementary thereto and the documents annexed therewith.

It is evident from Annexure-5 to the supplementary affidavit filed by the Respondent No. 2 on 30.07.2026 that during pendency of the writ petition the Respondent No. 2 has finally come to a decision to make recommendation for the 45 vacant posts from the panel/waiting list of the participants who passed the viva voce examination for the post of Assistant Family Planning Officer (10th Grade) pursuant to the circular dated 27.04.2022. The explanation given by the PSC in not making the recommendation earlier from the panel/waiting list has also been given in that meeting. Relevant part of the resolution dated 23.05.2026 is quoted herein under:

“স্বাস্থ্য শিক্ষা ও পরিবার কল্যাণ বিভাগ কর্তৃক ০৩.১১.২০২৪ খ্রিঃ তারিখের ৫৯.০০.০০০০.১১০,১১,০২৫.২৪-৭৭ নম্বর স্মারকের মাধ্যমে "সহকারী পরিবার পরিকল্পনা কর্মকর্তা" (১০ম গ্রেড) এর ২৪৭ অনুমোদিত পদের মধ্যে কর্মরত ১৬৬টি এবং ৮১টি শূন্য পদের বিপরীতে অপেক্ষমান তালিকা হতে সুপারিশ করার প্রয়োজনীয় ব্যবস্থা গ্রহণের জন্য অনুরোধ করা হয় (সংলাপ-৮)। কমিশন

সচিবালয়ের ০১.১২.২০২৪ খ্রিঃ তারিখের ৭২২ নম্বর স্মারকের মাধ্যমে "অপেক্ষমাণ তালিকা প্যানেল হতে সুপারিশের প্রস্তাব প্রাপ্তির পূর্বেই পরিবার পরিকল্পনা অধিদপ্তরের "সহকারী পরিবার পরিকল্পনা কর্মকর্তা" (১০ম গ্রেড) এর ১২ (বারো) টি শূন্য পদ ৪৪তম ও ৫৮ (আটা) টি শূন্য পদ ৪৭তম বি.সি.এস, নন-ক্যাডার হতে পূরণের প্রস্তাব পাওয়ায় কমিশনের সিদ্ধান্ত মোতাবেক ৪৪তম ও ৪৭তম বি.সি.এস. নন-ক্যাডার হতে সুপারিশের কার্যক্রম গ্রহণ করায় অপেক্ষমাণ তালিকা/প্যানেল হতে সুপারিশের কোনো সুযোগ নেই-মর্মে কমিশন অভিমত ব্যক্ত করেছে" মর্মে সচিব, স্বাস্থ্য শিক্ষা ও পরিবার কল্যাণ বিভাগ-কে জানানো হয় (সংলাগ-৯)।

“৪৪তম বি.সি.এস. থেকে উক্ত শূন্য পদের বিপরীতে বিজ্ঞপ্তি জারি করা হয়নি (সংলাগ-১০)। তবে ৪৭তম বি.সি.এস. হতে "সহকারী পরিবার পরিকল্পনা কর্মকর্তা" (১০ম গ্রেড) এর ৫৮টি পদের বিপরীতে বিজ্ঞপ্তি জারি করা হয়েছে (সংলাগ-১১)। মোট ৮১টি শূন্য পদের বিপরীতে ৫৮টি পদ ৪৭তম বি.সি.এস. থেকে পূরণের কার্যক্রম চলমান। অবশিষ্ট শূন্য পদ (৮১-৫৮)-২৩টি। ৪৫টি অযোগ্যদানকৃত শূন্য পদে চূড়ান্ত সুপারিশকৃত নয় কিন্তু মৌখিক পরীক্ষায় উত্তীর্ণ প্রার্থীদের প্যানেল/ অপেক্ষমাণ তালিকা হতে সুপারিশের মাধ্যমে নিয়োগের লক্ষ্যে প্রয়োজনীয় সিদ্ধান্ত গ্রহণের জন্য চেয়ারম্যান মহোদয় বিষয়টি কমিশন সভায় উপস্থাপনের নির্দেশনা প্রদান করেন”।

It is therefore evident that the grievance of the petitioners had arisen as a result of the internal mismanagement/miscommunication of the authority for which the petitioners did not have any role to play. However, the authority now has come up with the decision to reconcile the dispute but the technical problem remains that the validity of one year period of the waiting list has expired by now. As such the PSC is unable to implement the decision due to the stipulation made in the circular.

The extract of resolution is quoted below:

“স্বাস্থ্য শিক্ষা ও পরিবার কল্যাণ বিভাগের অধীন পরিকল্পনা অধিদপ্তরের “সহকারী পরিবার পরিকল্পনা কর্মকর্তা” (১০ম গ্রেড) পদের চূড়ান্ত ফলাফল প্রকাশের মেয়াদকাল ০১ বছরের বেশি সময় অতিক্রান্ত হওয়ায় প্যানেল/অপেক্ষমাণ তালিকা হতে সুপারিশের বিধিগত কোন সুযোগ নেই। তবে রিট পিটিশন নম্বর ১০৯৮/২০২৫ রায়ের প্রেক্ষিতে পরবর্তী কার্যক্রম গ্রহণ করার বিষয়ে সিদ্ধান্ত গৃহীত হয়”।

It is, therefore, apparent that the impediment in implementing the resolution dated 23.05.2026 does not arise from any finding by the PSC that the candidates are ineligible or that the vacant posts cannot be filled from the said panel/waiting list. Rather, the only impediment identified by the Respondent No. 2 is the expiry of the stipulated one year validity period. The subsequent resolution of the PSC, coupled with the candid admission made before this Court, therefore, demonstrates that the issue has ultimately narrowed down to the legal effect of the expiry of the validity period of the panel/waiting list and whether, in the facts and circumstances of the present case, the same constitutes as a bar to giving effect to the resolution already adopted by the PSC.

In view of the facts and circumstances we think that ends of justice would be met if the expiry of the said period is condoned for the limited purpose of implementing the aforesaid resolution.

Accordingly, the expiry of the said validity period is hereby condoned/waived for the aforesaid purpose, and the Respondent No. 2, Bangladesh Public Service Commission, is directed to take necessary steps to give effect to its resolution dated 23.05.2026 by giving recommendations against the 45 vacant posts of Assistant Family

Planning Officer (10th Grade) from amongst the candidates included in the panel/waiting list prepared pursuant to the circular dated 27.04.2022 within 30 days of receipt of a copy of this judgment and order. The Respondent No. 2 shall consider recommending the petitioners of this writ petition if they are found to be in the said waiting list.

With the aforesaid direction the Rule is disposed of.

However, there will be no order as to costs.

Let a copy of this judgment and order be communicated to the concerned authorities at once.

Justice Sashanka Shekhar Sarkar, J:

Farida B.o

I agree