

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

Writ Petition No. 9094 of 2021

In the matter of :

An application under Article 102(2) of the Constitution of the People's Republic of Bangladesh.

-And-

In the matter of :

Mrs. Salina Akndo and others

..... Petitioners

-Versus-

Government of the People's Republic of Bangladesh, represented by the Controller of Accounts, Dhaka and others.

..... Respondents

Mr. Md. Omar Farouq, Advocate

.... For the Petitioners

Mr. ABM Abdullah Al Mahmud, DAG with

Mr. Mohammad Abul Hossain, AAC,

Mr. A.K.M. Alamgir Parvez Bhuiyan, AAG and

Ms. Raswan Ara Rahman, AAG

..... For Respondent Nos. 1 & 2

Present:

Mr. Justice Zubayer Rahman Chowdhury

And

Mr. Justice Kazi Ebadoth Hossain

Date of Hearing : 23.07.2023, 01.08.2023 &
07.08.2023

Date of Judgment : 21.08.2023

Zubayer Rahman Chowdhury, J :

By this application under Article 102(2) of the Constitution, the petitioners have challenged the legality of two Memos – the first being the

Memo dated 08.06.2021 and the second being the Memo dated 29.06.2021, as evidenced by Annexures C and C-1 respectively. At the same time, the petitioners have also prayed for issuance of a direction upon the concerned respondents to grant service benefits to them.

At the time of issuance of the Rule, the operation of both the Memos dated 08.06.2021 and 29.06.2021 was stayed for a period of 6 (six) months, which was subsequently extended for a further period of 6 (six) months by order dated 08.06.2022. Thereafter, the matter was fixed before this Court and it was eventually taken up for hearing on 01.08.2023.

Briefly stated, facts relevant for disposal of the Rule are that Writ Petition No. 7155 of 2012 was filed by the present petitioners along with four others seeking regularization of their job under the revenue budget. By judgment dated 02.05.2013, Writ Petition No. 7155 of 2012 along with two other Writ Petitions, being Writ Petition No. 6070 of 2012 and Writ Petition No. 7156 of 2012, was disposed of with the observation that the Government may consider the petitioners' case for absorption and regularization under the revenue budget, if they have the requisite qualifications, subject to availability of vacancy. Although the Government had preferred Civil Petition for Leave to Appeal Nos. 890-892 of 2015 against the aforesaid judgment, the appeal was dismissed as being barred by limitation by order dated 12.04.2015.

Eventually, by office order dated 01.01.2019, issued by respondent no. 3, the petitioners were finally appointed in different posts as fourth class employees under the Customs, Excise and VAT Commissionarate,

Jessore stipulating that the petitioner's seniority, increment, pension and other benefits would be calculated from the date of their first joining in service. While the petitioners were discharging their duties in their respective posts, respondent no. 2 (District Accounts and Finance Officer, Jessore) issued a Memo dated 08.06.2021 addressed to the Commissioner, Customs, Excise and VAT Commissionerate, Jessore re-fixing their salary and date of joining. Thereafter, respondent no. 2 issued a list containing the names of ten persons including the petitioners directing them to refund the sum of money, as mentioned against their respective names, to the Authority. Subsequent thereto, respondent no. 2 issued another Memo dated 29.06.2021 addressed to the Commissioner, Customs and VAT Commissionerate, Jessore on the self-same subject, however, amending the earlier list by deleting two names from the said list and asking the petitioners to refund the money as mentioned against their respective names. It is the issuance of the two Memos dated 08.06.2021 and 29.06.2021 that has been challenged by the petitioners by filing the instant writ petition.

Mr. Md. Omar Farouq, the learned Advocate appearing in support of the Rule submits that the impugned orders dated 08.06.2021 and 29.06.2021 are both without any lawful authority. He submits that the petitioners were appointed as fourth class employees under the Customs, Excise and VAT Commissionerate, Jessore pursuant to a directive passed by this Court in Writ Petition No. 7155 of 2012 along with two other Writ Petitions, namely number Writ Petition No. 6070 of 2012 and Writ Petition No. 7156 of 2012, which were subsequently upheld by the

Appellate Division. He submits that at the time of their appointment in service, it was mentioned in the office order that the petitioners' seniority, increment, pension and other benefits shall be calculated from the date of their joining in service. He submits that although the petitioners' service was included under the revenue budget much later in 2015, all the petitioners had joined in their respective posts on various dates between 1992 and 2006.

Referring to the impugned orders, as evidenced by Annexure C and C-1, the learned Advocate submits forcefully that the impugned orders were issued by respondent no. 2 without any legal basis as there was hardly any scope or authority for respondent no. 2 to re-fix the date of joining and demand refund from the petitioners. Referring to the two documents annexed as Annexure C and C-1, Mr. Farouq submits that at the initial stage, 12 persons were asked to make the refund, but subsequently the said list was revised to 10 persons and finally to 8 persons, being the petitioners herein. He submits that the conduct of respondent no. 2 is not only arbitrary and malafide, it is also discriminatory in nature. In support of his contention, Mr. Farouq has referred to the decision reported in 16 BLD (AD) (1996) 76. He has also referred to an unreported decision of the apex Court passed in CPLA No. 308 of 2013.

Relying on the aforesaid two decisions, Mr. Farouq, submits that for the purpose of determining the issue of seniority and calculation of pension and other benefits, the date of first joining in service is the relevant date and not the subsequent date when the persons are

regularized in service. That being the settled position of law, according to Mr. Farouq, the impugned order cannot be sustained.

The Rule is being opposed by respondent no. 2 by filing an affidavit-in-opposition.

Mr. ABM Abdullah Al Mahmud, the learned Deputy Attorney General appearing on behalf of contesting respondent submits that the writ petition is not maintainable as the petitioners have prayed for a remedy which relates to the terms and conditions of service and therefore, they would have to approach the Administrative Tribunal. He further submits that as the petitioners were appointed initially on a “no work no pay basis”, they will not be entitled to receive any salary or benefits from the date of their regularization in service.

We have perused the application and considered the submissions of the learned Advocates of the contending sides. We have carefully perused Annexures C and C-1 issued by respondent no. 2.

It appears that the petitioners were appointed in service by office order dated 01.01.2019 issued by the Commissioner (Current Charge), Customs, Excise and VAT Commissionerate, Jessore. Clause 2Ka of the said office order stipulated as under :

“২। (ক) সংশ্লিষ্ট কর্মচারীগণের চাকুরীর জ্যেষ্ঠতা, বার্ষিক বেতন প্রবৃদ্ধি, পেনশন ও আনুতোষিক তাঁদের চাকুরীতে প্রথম যোগদানের তারিখ হতে গণনা করা হবে।”

The office order dated 01.01.2019 was issued by the Authority stating categorically that the petitioners’ seniority, pension and other benefits shall be calculated from the date of their first joining in service. As noted above,

the date of their first joining in service has also been clearly stated in the very same office order.

However, respondent no. 2 issued the impugned letters in the following terms :

“কাস্টমস এক্সাইজ ও ভ্যাট কমিশনারেট যশোর এর স্মারক নং-২য়/২২/(৬৩) ২টি/পৃষ্ঠাংকন/যঃ/১৪ অংশ-১/১৭/০৫ (১-৩৫) তাং- ০১/০১/২০১৯ এর মাধ্যমে ১২ জন চতুর্থ শ্রেণীর কর্মচারীকে নিয়মিত সংস্থাপনে অন্তর্ভুক্তির তারিখের পরিবর্তে চাকুরীতে প্রথম যোগদানের তারিখ হতে চাকুরী জৈষ্ঠতা, বার্ষিক বেতন প্রবৃদ্ধি, গণনা করার আদেশ দেয়া হয়। আদেশ অনুযায়ী তাদের বেতন চাকুরীতে যোগদানের তারিখ হতে নির্ধারণ করা হয়। উক্ত বেতন নির্ধারনী সঠিক না হওয়ায় তাদের বেতন নিয়মিত সংস্থাপনে অন্তর্ভুক্তির তারিখ হতে পুনঃনির্ধারন করা হলো।”

Quite clearly, the issuance of the impugned orders by respondent no. 2 re-fixing the seniority and making a demand of refund from the respective petitioners is palpably without any legal basis.

Having regard to the submission of the learned Advocates of the contending sides and last but not least, in due deference to the decisions referred to by the learned Advocate for the petitioners, we are inclined to hold that both the impugned orders dated 08.06.2021 and 29.06.2021, as evidenced by Annexure C and Annexure C-1, were issued without any lawful authority and consequently the same cannot be sustained in law.

In the result, the Rule is made absolute.

The impugned orders dated 08.06.2021 and 29.06.2021, as evidenced by Annexure C and C-1, are hereby declared to have been issued without lawful authority and to be of no legal effect.

The learned Advocate submits that in pursuance of the office orders dated 08.06.2021 and 29.06.202, as evidenced by Annexure C and C-1,

the authority has already deducted money from the respective petitioners' accounts.

Respondent nos. 2 and 3 are hereby directed to take steps to refund the money that has been deducted from the respective petitioners within a period of 60 (sixty) days from the date of receipt of the judgment passed today.

There will be no order as to cost.

Kazi Ebadoth Hossain, J :

I agree.