

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

Present:

Ms. Justice Fahmida Quader

And

Ms. Justice Mubina Asaf

Writ Petition No. 1501 of 2012

In the matter of:

An Application under Article 102 of the
Constitution of the People's Republic of
Bangladesh.

And

In the matter of:

Shami Foyshal

.....Petitioner

-Versus-

The Dhaka Daskhin City Corporation, represented
by its Administrator, Nagar Bhaban, Fulbaria,
Dhaka and others

.....Respondents

Mr. Md. Ruhul Quddus, Senior Advocate with

Mr. Md. Mosaddek Billah with

Mr. Md. Akter Rasul with

Mr. Md. Syful Islam with

Mr. Md. Anowar Hossain, Advocate

.....For the petitioner

Mr. Mohammad Ismail Hossain, Advocate

.....For the respondent No. 1

Mr. Mahfuz Bin Yousuf, DAG with

Mr. Mohammed Shafiqur Rahman, DAG with

Mr. Md. Esa, AAG with

.....For the respondents.

Heard on: 31.10.2024 and 12.12.2024

Judgment on: 17.12.2024

Fahmida Quader, J.

In this application, filed under Article 102 of the Constitution of the
People's Republic of Bangladesh, Rule Nisi was issued in the following
terms:-

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned Office Order under Memo No. 46.207.000.03.01.038.2012/121/1 dated 02.02.2012 issued under the signature of respondent No. 2, canceling the petitioner’s order of appointment as Taxation Officer vide Memo No. 09/4/Pro:Bi:/(Song-1) Ni dated 18.10.2006 (Annexure-I) should not be declared to have been issued without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.”

The facts leading to disposal of the Rule, in a nutshell, is that, the Dhaka City Corporation (DCC) published two circulars inviting applications for various posts in the then unitary Dhaka City Corporation, Dhaka. One advertisement appeared in the Daily Ittefaq on 23 December, 2003, and the other was published in the Daily Inquilab on 11 January, 2004 (Annexure-A and A-1).

In response to the said advertisement, the petitioner applied for four different positions, including the post of Taxation Officer, as specified in the advertisement published in the Daily Inquilab on 13 January, 2004. The petitioner was subsequently issued an admit card through memo No. 269/Pro: Bi: (Sang-1) dated September 24, 2006, which indicated his roll number as 268 in response to his application dated January 24, 2004 for the post of Taxation Officer. (Annexure-B and B-1).

The admit card, dated September 25, 2006, further reveals that the petitioner was invited to attend a written examination scheduled for 13.10.2006 at Dhaka Mohanagar Mohila College, Laxmi Bazar, Dhaka. The

admit card was duly signed by the Secretary of Dhaka City Corporation, Respondent No. 4 on September 24, 2006. The result of the written examination was published in the afternoon of October 13, 2006. The petitioner's Viva Voce was concluded on 18.10.2006 and he was subsequently selected. Upon the conclusion of both the written examination and Viva Voce, the petitioner, along with four others was finally selected for the position of Taxation Officers.

The petitioner was appointed as a Taxation Officer on a probationary basis through memo No. 09/4/Pro:Bi/(Song-1) Ni: dated 18.10.2006 issued by the respondent No. 1. The letter of appointment was signed by the respondent No. 4 (Annexure-C).

In compliance with the appointment order, the petitioner joined the Dhaka City Corporation as Taxation Officer on 18.10.2006, under the office of the respondent No. 4. His joining report was duly accepted by the respondent No. 4 (Annexure-D).

After assuming the position of Taxation Officer, the petitioner was subsequently assigned to the Office of Chief Revenue Officer through order No. 973, dated November 27, 2006. This order was also signed by the respondent No. 4, Secretary, Dhaka City Corporation, Dhaka. (Annexure-E).

As per Annexure-C, the petitioner was entitled to receive his salary and other benefits from the date of his joining i.e. 18.10.2006. Since his appointment, the petitioner has been drawing salary and other emoluments as a Taxation Officer with the Dhaka City Corporation.

The petitioner later came to know that one Abdul Alim Khan and 8 others Deputy Taxation Officers of the then Dhaka City Corporation had filed a writ petition being Writ petition No. 10366 of 2006 challenged the petitioner's written examination held on 13.10.2006, and viva voce conducted on 18.10.2006. A Rule was issued, and the appointment to the posts of Taxation Officers was stayed by an order of this Court dated 19.10.2006. The stay was initially for a period of 03 (three) months but was subsequently extended from time to time, ultimately lasting until the disposal of the Rule on 29.07.2010. Since the petitioner had been appointed on 18.10.2006, the interim order passed in writ petition No. 10366 of 2006 did not affect his employment and he continued to perform his duties accordingly. The petitioner was later added as a respondent in the Writ petition No. 10366 of 2006 on 24.04.2007, which is currently awaiting a hearing (Annexure-F).

The petitioner, having been appointed by the respondent No. 1 in accordance with the service rules and upon completing all necessary induction and training, was attached to the office of the Chief Revenue Officer, Dhaka City Corporation and subsequently posted in different revenue divisions. Since his appointment as a Taxation Officer, the petitioner has been discharging his duties and responsibilities with honesty and diligence, under the authorities' instructions. He has been receiving his salary and emoluments accordingly.

As outlined in the appointment letter issued by the respondent No. 1 the petitioner's probationary period was governed by Rule 6(1) and 6(2) of the Employment Regulations of the Dhaka City Corporation Employees Service

Rules, 1989. The probationary period was set for 06 (six) months, with the possibility of an extension for an additional period, maximum of 06 (six) months, as determined by the authority. Rule 6 of the Service Rules stated as follows:

“৬। শিক্ষানবিসি। (১) সরাসরিভাবে নিয়োগপ্রাপ্ত ব্যক্তিগন ০৬ (ছয়) মাসের জন্য শিক্ষানবিসি থাকিবেনঃ

তবে শর্ত থাকে যে, নিয়োগকারী কর্তৃপক্ষ, কারণ লিপিবদ্ধ করিয়া যে কোন ব্যক্তির ক্ষেত্রে উক্ত মেয়াদ অনূর্ধ্ব ছয় মাসের জন্য বৃদ্ধি করিতে পারিবে।

(২) কোন ব্যক্তিকে কোন পদে স্থায়ী করা হইবে না, যদি না তিনি সন্তোষজনকভাবে শিক্ষানবিসি মেয়াদ সমাপ্ত করিয়া থাকেন এবং করপোরেশন কর্তৃক সময় সময় নির্ধারিত বিভাগীয় পরীক্ষায় (যদি থাকে) পাশ করেন এবং নির্ধারিত প্রশিক্ষণ (যদি থাকে) গ্রহণ করিয়া থাকেন।”

The probationary period of 06 (six) months was not extended by the respondents. As such, the petitioner’s probationary period of 06 (six) months expired on 17.04.2007.

Having completed his 06 (six) months probationary period, the petitioner reasonably expected confirmation in the position he had been appointed to. However, the respondents failed to address the petitioner’s legitimate expectations. Consequently, the petitioner applied to the authority for confirmation of his appointment effective from April, 17, 2007.

One Md. Iqbal Ahmed, Deputy Taxation Officer of Dhaka City Corporation, along with 48 others, filed Writ Petition No. 2664 of 2009 implicating the petitioner as respondent No. 13 in the case. A Division Bench

of this Court issued a Rule on 27.04.2009 without granting of any ad-interim order. Both the Dhaka City Corporation and the petitioner have entered their appearance in the writ petition by filing powers and the case is currently pending before this Court for disposal (Annexure-G).

The petitioner met the respondent Nos. 2-4 personally but was not provided with any reasonable explanation for the delay in confirming his employment. The petitioner subsequently discovered that legal opinions were sought from two learned Advocates, both of whom recommended confirming his appointment on a permanent basis. However, these opinions were disregarded. As a result, the petitioner was compelled to approach this Court to seek redress for his grievance.

The petitioner, along with three other Taxation Officers who were appointed on the same day. (i.e. 18.10.2006) challenged the actions of the respondent Nos. 1-4 and 8 in failing to confirm their appointments as permanent employees of the Dhaka City Corporation after successful completion of their probationary period of 06 (six) months, as per Section 6(1) of the Dhaka City Corporation Employees Employment Service Rules 1989. They also sought a directive requiring the respondents to treat them as permanent employees from April 17, 2007 of the Dhaka City Corporation and to pay all arrears and emoluments as, permanent employees effective from the date. This was filed under Writ Petition No. 7311 of 2009. A Rule was issued on 02.11.2009 in response to the petition, and the case is currently pending before this Court for disposal (Annexure-H).

The petitioner's employment in the Dhaka City Corporation is governed by the Dhaka Poura Corporation Service Rules, 1989, which were framed under Section 157 of the Dhaka City Corporation Ordinance, 1983 (XL of 1983). Additionally, the Government's circulars regarding the terms and conditions of service for the employees of Dhaka City Corporation are also applicable.

All Ordinances and Acts of Parliament promulgated for various city corporations across the country were consolidated under a unified law known as the Local Government (City Corporation) Act, 2009. According to Section 126 of the Act 60 of 2009, the Dhaka City Corporation Ordinance, 1983 along with two other Ordinances and three Acts of Parliament related to the Chittagong, Khulna, Rajshahi, Sylhet and Barishal City Corporation have been repealed. However, sub Section 2 of Section 126 of the Act 60 of 2009 includes a saving clause stating that all six corporations, including the Dhaka City Corporation shall be deemed to have been constituted under the said Act. Additionally, sub-Section 3 of Section 126 of the said Act ensures that all Rules, Regulations and by laws (বিধি, প্রবিধান ও উপ আইন) framed under the repealed laws are to be regarded as valid rules, regulations and by law under the Act 60 of 2009.

As per Section 66 of the Act 60 of 2009, the government has the authority to frame Rules for appointing the necessary number of officers, employees and consultants in the corporations. However, it has been stated that the government has not framed any rules under Section 66 of the Act 60 of 2009 untill the time of swearing the affidavit. Consequently, the Service

Rules, namely the Dhaka Poura Corporation Service Rules, 1989, framed under Section 157 of the Dhaka City Corporation Ordinance, 1983, remain applicable to the employees of the Dhaka City Corporation.

Mr. Md. Ruhul Quddus, the learned Senior Advocate representing the petitioner, submits that the impugned order dated 02.02.2012 mentions certain reasons for cancelling the petitioner's appointment as a Taxation Officer. It is noteworthy that this impugned order was issued nearly six years after the petitioner had entered office, raising further questions about its validity. The impugned order is nothing but a colourable exercise of authority which should be declared to have been issued without lawful authority and is of no legal effect.

He further submits that the petitioner was not served with any show cause notice before the issuance of the impugned order, thereby being deprived of the opportunity to explain or respond to the allegations mentioned in the impugned order dated 02.02.2012. As such, the petitioner has been denied his constitutional right to be heard, which infringes upon the principles of natural justice. Consequently, the impugned order is liable to be declared as having been issued without lawful authority and is of no legal effect.

He lastly submits that the petitioner was lawfully appointed as the Taxation Officer after completing all necessary formalities. Furthermore, there is no provision in the Service Rule of Dhaka City Corporation that permits the cancellation of an appointment issued nearly six years earlier. The petitioner has continued to discharge his duties lawfully, and therefore, the impugned order is liable to be declared void and without lawful effect.

The Rule being contested by the respondent No. 1 who has filed an Affidavit-in-Opposition. In this affidavit, it is stated that the statement made in the supplementary affidavit of the writ petition, particularly those concerning the judgment and order dated 10.09.2014 passed by this Court in writ petition No. 1500 of 2012, making the Rule absolute, are admitted. The Court had directed the respondent No. 1, Dhaka South City Corporation, to re-instate the petitioner as a Taxation Officer with all arrears of salary and benefits from the date of his termination. This decision was upheld by the Hon'ble Appellate Division via an order dated 06.03.2017 passed in Civil Petition for Leave to Appeal No. 3675 of 2015. It is further admitted that the petitioner of the instant writ petitions stands on the same grounds. The petitioner stands on equal footing with the petitioner of writ petition No. 1500 of 2012, as both were appointed as Taxation Officer by the respondent No. 1 on the same date, under identical terms and conditions and were terminated on the same date for similar allegations.

Heard the learned Advocates, perused the Writ Petition, Supplementary Affidavits, Affidavits-in-Opposition and the Annexures.

After hearing the learned Advocates and perusing the writ petition, supplementary affidavit, affidavit in opposition and the annexed documents, it appears that the petitioner was appointment as a Taxation Officer through an appointment letter dated 18.10.2006 (Annexure-C) and joined the same position on the same day (Annexure-D). However, the respondent No. 2 issuing an office order dated 02.02.2012 canceling the petitioner's appointment without conducting any inquiry or issuing a prior show cause notice. This cancellation occurred after 06 (six) years of service which this

Court considered to be an absolutely arbitrary and colourable exercise of power, devoid of legal justification and mala fide.

It is a well established principle that no person should be condemned unheard. In this case, the petitioner's appointment was cancelled without granting him an opportunity to be heard, despite having served for more than 06 (six) years. Such actions are clearly unjust.

It is pertinent to mention that writ petition No. 1500 of 2012 was filed by an individual in a similar position to that of the petitioner in the present writ petition. A Division Bench of this Court made the Rule absolute in that case and directed respondent No. 1, Dhaka South City Corporation, to reinstate the petitioner as a Taxation Officer. The Court also ordered that the petitioner be paid all arrears of salary and benefits from the date of his termination.

This decision of the High Court Division was subsequently upheld by the Appellate Division through an order dated March, 6, 2017, passed in the Civil Petition for Leave to Appeal No. 3675 of 2017. The ruling reinforces the principle of reinstatement and the restoration of benefits for similarly situated individuals whose appointments were arbitrarily terminated.

In the light of above decision and discussion, we find merit in this Rule.

In the result, the Rule is made absolute.

The impugned Office Order under Memo No. 46.207.000.03.01.038.2012/121/1 dated 02.02.2012 issued under the

signature of respondent No. 2, canceling the petitioner's order of appointment as Taxation Officer vide Memo No. 09/4/Pro:Bi:/(Song-1) Ni dated 18.10.2006 (Annexure-I) is hereby declared to have been passed without lawful authority and is of no legal effect.

It directs the respondents to reinstate the petitioner to his job and grant entitlement to all benefits of service from 02.02.2012. The petitioner is also to be treated as a permanent employee of the Dhaka City Corporation, effective from the date of his original appointment on 18.10.2006.

No order as to costs.

Mubina Asaf, J.

I agree.