

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

Present:

Ms. Justice Naima Haider
And
Ms. Justice Kazi Zinat Hoque

Writ Petition No. 6692 of 2022

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. Fazla Nazmul

..... Petitioner

-VERSUS-

The Government of the People's Republic of
Bangladesh, represented by its Secretary, Ministry of
Food, Secretariat Bhaban, Ramna, Dhaka and others.

.....Respondents

Mr. Md. Yousub Ali, Advocate

..... For the Petitioner

Mr. Amit Das Gupta, Deputy Attorney General

.... For the respondents

Date of Hearing : 08.02.2024 and 29.02.2024.

Date of Judgment: 04.03.2024

Kazi Zinat Hoque, J :

In this application under Article 102 of the Constitution a
Rule Nisi has been issued calling upon the respondents to show
cause as to why the purported office order being Memo No.
ডিসিএ/রাজ/পনশন/৭৩ তারিখঃ ০৬/০৪/২০২২ খ্রিঃ issued by the
respondent No.11 denying to pay the family pension and other
benefits to the petitioner (Annexure-L) should not be declared

to have been done 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 relevant facts for disposal of the instant writ petition are that the petitioner's father was a government employee who retired from service on 30.05.2003 while serving as Deputy Director, Section of Account and Artha, Directorate of Food, Dhaka. Throughout his service, his father had no bad remarks or stigma. The petitioner's father and mother passed away on 08.06.2020 and 18.01.2017 respectively leaving behind three sons and one daughter as their legal heirs. The petitioner was born on 08.05.1977. Rajshahi City Corporation issued an identity card and a disability certificate in favour of the petitioner, indicating his disability (as evident from Annexure-C series). After his father's death, the petitioner submitted an application for family pension to the concerned authority on 24.02.2021. On 21.03.2021, the Directorate of Food issued a Memo (Annexure-E) to form a Medical Board to assess the petitioner's disability. On 27.09.2021, the Medical Board at Government Employees Hospital issued a physical disability certificate in favour of the petitioner (Annexure-F). On 01.06.2021, the Ministry of Establishment issued a notice regarding disability certificate in favour of the petitioner. On

14.06.2021, the Ministry sent an inquiry report of disability and the petitioner's identity card to the Directorate, Somajseba Adhidoptor, Dhaka (Annexure-H). On 27.09.2021, the Senior Secretary (Administration), Ministry of Establishment, issued a Memo for taking necessary steps regarding the petitioner's disability papers. On 09.11.2021, the Deputy Director of Food issued a Memo to advance the family pension application in favour of the petitioner (Annexure-J). On 14.12.2021, respondent No.5, Senior Secretary (Administration), Ministry of Food, and on 23.01.2022, respondent No.4, Joint Secretary (Administration), Ministry of Food, approved the family pension in favour of the petitioner as per Sarkari Karmochari Pension Sahajikaron Order, 2020, clause 3.03(Ka). However, on 06.04.2022, respondent No.9, Audit and Accounts Officer, Divisional Controller of Accounts Office, Rajshahi Division, Rajshahi, refused to pay the family pension to the petitioner as per clause 3.03(Ka)(2) of Sarkari Karmochari Pension Sahajikaron Order, 2020, prompting the petitioner to file this writ petition challenging the office order denying the family pension and other benefits.

Mr. Md. Yousub Ali, learned Advocate representing the petitioner, argued that although Rule 3.03(Ka) of the Sarkari Karmochari Pension Sahajikaron Order, 2020, entitles the

petitioner, being the disabled son of a deceased retired government employee, to receive family pension and other benefits, respondent No.11 arbitrarily refused to grant family pension to the petitioner, which is illegal and without lawful authority.

Mr. Amit Das Gupta, learned Deputy Attorney General representing the respondents, argued that the petitioner's father never disclosed that his son i.e. the petitioner is disabled. Therefore, the petitioner is not entitled to family pension benefits.

It is admitted that the petitioner's father was a government employee who retired on 30.05.2003 as Deputy Director, Section of Accounts and Money, Directorate of Food, Dhaka. It is evident from Annexure-A that he received pension. The father and the mother of the petitioner died on 08.06.2020 and 18.01.2017 respectively. On careful perusal of Warishan Sanad i.e. Heirs Certificate (Annexure-B) it is evident that the petitioner is one of the sons of his father. From Annexure-C-1, it is evident that the Councilor of Ward No.14, Rajshahi City Corporation, issued a certificate in favour of the petitioner stating that he is a disabled person. On careful perusal of Annexure-C-2, it is evident that the Directorate of Social Service, Ministry of Social Welfare, issued an identity

card in favour of the petitioner, mentioning that he is a person with disability. After his father's death, the petitioner filed an application for family pension to the Director of Administration, Directorate of Food (Annexure-D). Thereafter, the Deputy Director (PPT), Directorate of Food, requested the Government Employees Hospital, Fulbaria, Dhaka, to form a Medical Board to examine the petitioner and determine his disability. On 06.06.2020, the Ministry of Public Administration formed a Medical Board and requested the petitioner to attend a meeting on 07.06.2021 at 12:15 p.m. at Government Employees Hospital, Fulbaria, Dhaka. Accordingly, the Medical Board issued a certificate in favour of the petitioner, stating his disability. On 14.06.2021, the Additional Secretary and Director of the Government Employees Hospital, Dhaka, requested the Directorate of Food to verify the petitioner's citizenship certificate (Annexure-H). On 27th September 2021, vide Memo No.1955 (Annexure-I), the Assistant Secretary (Administration) forwarded the original disability certificate (21/2021) of the petitioner to the Directorate of Food for necessary steps. On 09.11.2021, the Director General, Directorate of Food, forwarded the petitioner's application along with the opinion that since the petitioner is physically disabled and incapable of earning, he

should be granted family pension. Thereafter, the Ministry of Food granted family pension to the petitioner as per clause 3.03(Ka) of Sarkari Karmochari Pension Sahajikaron Order 2020 under certain conditions. However, vide Memo dated 06.04.2022 (Annexure-L), Divisional Controller of Accounts Office, Rajshahi Division, Rajshahi, denied payment of the family pension granted to the petitioner, stating that his father never informed the competent authority in writing that his son, i.e., the petitioner, is a disabled person.

Rules 3.03(Ka) of the Sarkari Karmochari Pension Sahajikaron Order, 2020 provides that a disabled child of a deceased government employee is entitled to family pension after the death of his parent if (1) he is registered with the Directorate of Social Service as a disabled person and has an identity card; (2) the government employee must inform his appointing authority during tenure of his service that he has a disabled child; (3) the Medical Board must issue a certificate of disability. The decision of the appointing authority regarding the granting of pension to the disabled child shall be deemed to be final.

Since the Medical Board found that the petitioner is a disabled person and issued a certificate, and the petitioner's father's appointing authority, i.e., the Directorate of Food,

opined that the petitioner, being the disabled son of a deceased government employee, is entitled to family pension, respondent No.11's denial of the petitioner's right to family pension is illegal, arbitrary, and in violation of rules 3.03(Ka) of the Sarkari Karmochari Pension Sahajikaron Order, 2020. Once a pension benefit is granted to the petitioner it cannot subsequently be taken away on the flimsy ground that the petitioner's father never disclosed that his son (i.e. the petitioner) is a disabled person. The respondents issued the impugned memo without issuing any show cause notice to the petitioner in violation of the principles of natural justice.

In light of the above facts and circumstances, we find merit in the Rule.

In the result, the Rule is made absolute. The purported office order being Memo No. ডিসিএ/রাজ/প্রশন/৭৩ তারিখঃ ০৬/০৪/২০২২ খ্রিঃ issued by the respondent No.11 denying to pay the family pension and other benefits to the petitioner (Annexure-L) is declared to have been done without lawful authority and is of no legal effect. The respondents are directed to pay the family pension and other benefits to the petitioner from the date of his entitlement forthwith.

There is no order as to cost.

Transmit a copy of this judgment to the concerned respondents at once.

(Kazi Zinat Hoque, J):

I agree

(Naima Haider, J):