

In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)

Present

Madam Justice Kashefa Hussain

And

Madam Justice Kazi Zinat Hoque

Writ Petition No. 13334 of 2021

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. Earul Islam and others
..... Petitioners.

Vs.

Government of the People's
Republic of Bangladesh and
others.

.....Respondents.

Mr. Md. Kamal Hossain, Advocate

.....for the petitioners

Mr. Noor Us Sadik Chowdhury, D.A.G

with Mr. Prahlad Debnath A.A.G

with Mr. Md. Hafizur Rahman A.A.G

with Ms. Farida Parvin Flora, A.A.G

... for the respondents Nos. 1-5

Heard on: 23.10.2022 and judgment on:

24.10.2022.

Kashefa Hussain, J:

Rule nisi was issued calling upon the respondents to show cause as to why the inaction of the respondents for non issuing appointment letter in favour of the petitioners to the post of Sub-Assistant Agriculture Officers violating the selection result published vide Memo No. 12.01.0000.38.11.004.2017.183 dated 17.01.2020 under the signature of the respondent Nos. 3 and 5 (Annexure-D)

should not be declared without lawful authority and is of no legal effect and as to why the respondents should not be directed to issue appointment letter in favour of the petitioners to the post of Sub-Assistant Agriculture Officer without any further delay with all service benefit including seniority and/or such other or further order or orders passed as to this Court may seem fit and proper.

The petitioner No. 1 along with 7 others petitioners are all citizens of Bangladesh having permanent addresses shown in the cause title of the Writ petition. The respondent No. 1 is the Secretary, Ministry of Agriculture, Bangladesh Secretariat, Shahbag, Dhaka-1000, the respondent No. 2 is the Director General, Department of Agricultural Extension (DAE), Khamarbari, Farmgate, Dhaka-1215, the respondent No. 3 is the Director (Administration and Finance), Administration and Finance Wing, Department of Agricultural Extension (DAE), Khamarbari, Farmgate, Dhaka-1215, the respondent No. 4 is the Additional Director, Department of Agricultural Extension (DAE), Dhaka Zone, Khamarbari, Farmgate, Dhaka-1215, the respondent No. 5 is the Deputy Director (Personnel) and Member Secretary, Departmental Khamarbari, Selection Committee, Farmgate, Dhaka, 1215, the respondent No. 6 is the Additional Superintendent of Police, DSB, Office of the Police Super, Dhaka and the respondent No. 7 is the Additional Superintendent of Police, Special Branch(SB), Narayangonj.

The petitioners' case inter alia is that the petitioners are all qualified candidates for the post of Sub-Assistant Agricultural Officer and duly passed the preliminary, written examination and finally viva

voce and also passed the medical test. Although 1650 candidates selected including the 8(eight) petitioners, but however the petitioners did not appoint the petitioners while others who were selected along with petitioners are appointed. The petitioners thereafter filed an application to the respondent No. 2, Director General, Department of Agricultural Extension (DAE), Khamarbari, Farmgate, Dhaka-1215 but however pursuant to the application no action was taken. Finding no other alternative the instant petitioners filed the writ petition.

Learned Advocate Mr. Md. Kamal Hossain appeared for the petitioners while learned D.A.G Mr. Noor Us Sadik Chowdhury along with Mr. Prahlad Debnath A.A.G along with Mr. Md. Hafizur Rahman, A.A.G along with Ms. Farida Parvin Flora, A.A.G appeared for the respondent Nos. 1-5.

Learned Advocate for the petitioners submits that the respondent's inaction in not appointing the 8(eight) petitioners to the post of Sub-Assistant Agriculture Officer is absolutely unlawful and is violative of the fundamental right of the petitioners. He contended that all the 8(eight) petitioners are lawfully entitled to be appointed in the respective posts pursuant to their passing all the examinations including the medical test but however the respondents most arbitrarily refrained from appointing the petitioners in the post. He continues that the respondents also violated Article-29 of the Constitution of Bangladesh given that the respondents appointed others who were also selected along with the petitioners and are on equal footing. He submits that therefore the respondents have showed discrimination in their action which utterly violated Article-29 and 31

of the Constitution. Upon a query from this bench arising out of the respondents' contention that the addresses submitted by the petitioner initially in their online application is inconsistent with the addresses appearing in the police verification report, he agitates that a change in address of residence is not uncommon and can happen to any person. He submits that it is most absurd to presume that a person will be living in the same address at all times. He submits that therefore the excuse taken by the respondents relying on the police verification is a lame excuse not to appoint the petitioners and consequently the petitioners are being deprived of their fundamental right to be appointed in the respective posts. In support of his submissions he cites two decisions passed by other benches of this division one in Writ Petition No. 165 of 2017 and another in Writ Petition No. 3542 of 2017. He takes us to the decisions and submits that in these writ petitions also similar circumstances prevailed regarding the addresses of the petitioners not being consistent with the addresses shown initially by them. He submits that however Rule in both these writ petitions were made absolute with direction to the respondents to ensure the appointment of the petitioners in their respective posts. He concludes his submission upon assertion that the Rule bears merit ought to be made absolute for ends of justice.

On the other hand learned D.A.G by way of filing affidavit in opposition opposes the Rule. In support of his contention that the petitioners made misleading statement regarding their addresses, he draws our attention to the Annexure-2 series of the affidavit in opposition. Drawing attention to the several forwarding letters in

Annexure-2 series and other documents he agitated that it is manifest from Annexure-2 series from the documents including the forwarding letter that all these 8(eight) petitioners gave wrong address and thereby did not give correct information as to their place of residence. He submits that the petitioners deliberately did not reveal actual address therefore due to their deliberate suppression of facts, they are not entitled to be appointed in the posts. Upon a query from this bench the learned D.A.G further submits that the reason of suppression of fact may be that since there are designated quota different districts there is every probability that the petitioners in order to secure the respective posts may be from another district although they have applied for job in a district which is not their permanent residence. He submits that therefore the petitioners with malafide intention tried to secure the job upon giving misleading statements as to the addresses and therefore they are not entitled to be appointed in the posts. He agitates that although they might have been successful in all the previous examination including the medical test but they are disqualified due to their intransparent conduct regarding their address. He concludes his submission upon assertion that the Rule bears no merits ought to be discharged for ends of justice.

We have heard the learned counsels for both sides, perused the application and materials on records. We have examined all the documents before us. It is admitted by the respondents that apart from the addresses of the petitioners in the police verification report not being consistent, the petitioners do not have suffer from any drawbacks or other latches to be disqualified.

The only contention of the respondent appears to be that the addresses in the police verification report and the addresses of the petitioners are not consistent and are different from each other. We have also perused the documents in Annexure 2 of the affidavit in opposition which are the forwarding letter and other documents annexed hereto given by the concerned law enforcing agencies.

Our considered view is that only an inconsistency between the addresses in the application and the addresses revealed in the police verification report cannot be a ground for depriving a person from being appointed in any position. To presume that a person will be residing in the same address always is absurd and such presumption is not sustainable. There may always be a change of address of a person. Particularly a young person while the application is pending might change his addresses due to circumstances he might be facing at anytime. We have perused the documents which is annexed as annexure 2 series of the affidavit in opposition. From Annexure-2 it is revealed that in the report given by the police most of the petitioners are found living in rental houses and not in the addresses which they gave in their online application. Our considered opinion is that to live in rented house or to live in a relative's house is not uncommon at all. Given the financial circumstances and others circumstances of any person therefore there is every chance that the addresses inter alia permanent addresses which might be given in the online application may not be the same as the present address of any applicant or other person who may be residing there. To hold or presume that the applicant or any other person will be living in the addresses or the

addresses will given in the online application continuously without break is an absurd proposition.

Moreover we have also perused the জন্ম ও মৃত্যু নিবন্ধন বিধিমালা, ২০১৮. We have particularly examined Rule 2(21) of the জন্ম ও মৃত্যু নিবন্ধন বিধিমালা, ২০১৮. Rule 2(21) of the জন্ম ও মৃত্যু নিবন্ধন বিধিমালা, ২০১৮ reproduced hereunder:

“২(২১) স্থায়ী বসবাসের স্থান অর্থ- কোন ব্যক্তির স্থায়ী ঠিকানা বা কোন ব্যক্তি যে স্থানে ন্যূনতম ৩ (তিন) বৎসর যাবৎ বসবাস করিতেছেন অথবা নদী ভাঙ্গনে বা অন্য কোন কারণে স্থায়ী ঠিকানা বিলুপ্ত হওয়ায় নূতন কোন স্থানে যে কোন সময়ের জন্য বসবাস করিতেছেন বা নূতন কোন স্থানে কোন স্থাবর সম্পত্তি ক্রয় করিয়া যে কোন সময়ের জন্য উক্ত স্থানে বসবাস করিতেছেন।”

Upon perusal of Rule 2(21) of the জন্ম ও মৃত্যু নিবন্ধন বিধিমালা, ২০১৮ it appears that this Rule contemplates the address of a person which may be held as permanent address. Although Rule 2(21) of the জন্ম ও মৃত্যু নিবন্ধন বিধিমালা, ২০১৮ is not so much relevant for our purpose, but however from this Rule in substance implies the places which may be regarded as স্থায়ীভাবে বসবাস address of permanent residence of the person. This Rule also contemplates that place of residence of a person may be changed due to different circumstances under which he/she may be, depending on the circumstances. Therefore we are of the considered view that mere change in a person's address of residence cannot deprive him from his source of employment by way of a statutory public position whatsoever.

Since there is no other discrepancy revealed it may be reiterated that in the instant case the respondents could not show any

discrepancy whatsoever for which the petitioners may be disqualified. Moreover although the respondents imply that the petitioners deliberately suppressed their addresses with malafide intention, but however the respondents could not at any stage show us anything to indicate that the petitioners deliberately attempted to suppress their actual address. In the absence of any other allegation against them we do not find any reason as to why the petitioners would deliberately suppress their actual addresses. We have also perused the two decisions placed before us by the learned Advocate, one in writ petition No. 165 of 2017 and another writ petition No. 3542 of 2017. These two writ petitions arose out of similar situation and the petitioners challenged the action or inaction of the respondents on similar ground. In these two writ petition other benches of this division found merit in these two rules and these rules were made absolute and gave direction to the respondents. Upon drawing upon these decisions which bear supportive value and relying on our foregoing discussions made above and our considered opinion, we find merits in this rule.

In the result, the Rule is made absolute and the respondents non issuing of appointment letter in favour of the petitioners to the post of Sub-Assistant Agriculture Officers violating the selection result published vide Memo No. 12.01.0000.38.11.004.2017.183 dated 17.01.2020 under the signature of the respondent Nos. 3 and 5 (Annexure-D) is hereby declared to be without lawful authority and is of no legal effect. The respondents are hereby directed to ensure the

appointment of the petitioners within 30(thirty) days from the date of receiving of a copy of this judgment.

Communicate this judgment at once.

I agree.

Kazi Zinat Hoque, J:

Arif(B.O)