

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)
Writ Petition No.7022 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:

Muhammad Kamruzzaman Talukder and others
.....Petitioners

-Versus-

The Government of Bangladesh, represented by the Secretary, Ministry of Agriculture and others.

.....Respondents

Mr. S.R.M. Lutfor Rahman Akhand, Advocate

.....For the petitioners

Mr. Kabir Iqbal Hossain, Advocate

.....For the Respondent No. 3

Mr. Mahfuz Bin Yousuf, DAG with

Mr. Akhtar Hossain Md. Abdul Wahab, DAG with

Mr. Md. Golam Rajib, AAG with

Ms. Tamanna Sultana, AAG with

Mr. Kamrul Hasan Regan, AAG and

Mr. Md. Fuad Hasan, AAG

..... For the respondents

Present

Justice Khizir Ahmed Choudhury

And

Justice A.F.M. Saiful Karim

Heard on 11.08. 2026.

Judgment on 19.08.2026.

A.F.M. Saiful Karim , J :

In this application under Article 102 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued on 21.10.2021 in the following terms:-

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the Bangladesh Agriculture Research Institute (BARI) Employee Service Regulation, 2021 relating to the provisions for promotion of the petitioners holding the post of Sub-Assistant Engineer (Civil) to the post of Assistant Engineer (Civil) published in Bangladesh Gazette Extra Ordinary dated 9th March, 2021 (Annexure-J) should not be declared illegal, 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 necessary for disposal of the Rule, in brief, are that:

The petitioner No.1 was appointed to the post of Sub-Assistant Engineer (Civil) in Bangladesh Agricultural Research Institute (BARI), Joydebpur, Gazipur vide Office memorandum being আরক নং-নি-২/ ২০০৪/ প্রশাসন/ ৫০৩১ dated 08.11.2004. Accordingly, he joined at Wheat Research Center, Noshipur, Dinajpur to the said post on 25.11.2004. His joining letter was accepted by the authority concern. After completion of satisfactory service his service was made permanent from the date of joining vide office order under আরক নং-২৮৭-১২৬/২০০৪/প্রঃ/৩৫৪১ dated 11.10.2006. Since then, the petitioner No.1 has been performing the functions with sincerely, honestly and

to full satisfaction of the higher authority of BARI. Thereafter, the BARI authority of vide office order contained in স্মারক নং-১২.২১.০০০০.০০৫.১৯.০০৯.১৯.৪২২৬ dated 20.12.2020 gave him current charge of the post of Assistant Engineer (Civil), Irrigation and Water Management Division and accordingly, he joined on 05.01.2021.

The petitioner No. 2 was appointed to the post of Sub-Assistant Engineer (Civil) in Bangladesh Agricultural Research Institute (BARI), vide Office Memorandum contained in স্মারক নং-নি-২/২০০৬/প্রশাসন/৭৮৫ dated 26.07.2006 and accordingly, he joined on 04.08.2006 at Regional Agricultural Research Center, Akbarpur Moulvibazar. Thereafter, the authority of BARI made his service permanent vide office order contained in স্মারক নং- ২৮১-১৪১/২০০৬/প্রঃ dated 26.02.2007, with effect from the date of joining in service. Since then, he has been performing the functions as Sub-Assistant Engineer (Civil) to the full satisfaction of the higher authority of BARI.

The petitioner No.3 was appointed to the post of Sub-Assistant Engineer (Civil) in Bangladesh Agricultural Research Institute (BARI), vide Office Memorandum contained in স্মারক নং-নি-২/২০০৮/প্রশাসন/৯১৩৬ dated 17.02.2010. Accordingly, he joined on 01.03.2010 at Regional Agricultural Research Center, Hathazari, Chattogram. His joining letter was accepted by the authority concern.

After satisfactory completion of service of probation period the BARI authority made his service permanent vide office order contained in স্মারক নং-২ব্য/গ-১৭২/২০১০/প্রশাসন/৫১৩২ dated 08.12.2010 with effect from the date of joining in service.

The petitioner No.4 was appointed to the post of Sub-Assistant Engineer (Civil) in Bangladesh Agricultural Research Institute (BARI), vide appointment letter contained in স্মারক নং-নি-২/২০১৪/প্রশাসন/১২৯৪৪ dated on 20.05.2015 accordingly he joined 10.06.2015 to the said post at Buildings and Ground Section of Bangladesh Agricultural Research Institute, BARI, Joydebpur, Gazipur and after completion of satisfactory service of probation period the BARI authority vide office order contained in স্মারক নং-২-ব্য/গ-১৭০/প্রশাসন/৪২৮৮ dated 08.11.2010 made his service permanent with effect from the date of joining in service. Since then he has been performing the functions as Sub-Assistant Engineer (Civil) at Buildings and Ground Section of to the full satisfaction of the BARI higher authority of BARI.

The petitioner No.5 was appointed by the BARI higher authority to the post of Sub-Assistant Engineer (Civil) vide Office Memorandum contained in স্মারক নং-নি-২/২০০৮/প্রশাসন/৯১৩৭ dated 17.02.2010 and accordingly, she joined in the said post on 01.03.2010 at Regional Agricultural Research Center, Ishordi, Pabna

and her joining report was accepted by the Chief Scientific Officer of the said Center. Thereafter the service of the petitioner No.5 was made permanent by the higher authority of BARI vide office order contained in স্মারক নং- ২৮৮-২০৮/২০১৫/প্রশাসন/১৬৯৫১ dated 26.06.2016. Thereafter the BARI authority transferred her from Regional Agricultural Research Center, Ishordi, Pabna to Onfarm Research Division, Gopalganj and since then date of joining she has been performing the functions as Sub-Assistant Engineer (Civil) to the full satisfaction of the higher authority of BARI.

The petitioner No.6 was appointed to the post of Sub-Assistant Engineer (Civil) by the BARI higher authority vide appointment letter contained in স্মারক নং-নি-২/২০১৪/প্রশাসন/১২৯৬৪ dated 20.05.2015 and accordingly, he joined on 10.06.2015 at Regional Agricultural Research Center, Hathazari, Chattogram and his joining report was accepted by the authority concern. After completion of satisfactory service of probation period the higher authority of BARI made his service permanent with effect from the date of joining in service vide স্মারক নং- ২৮৮-২১০/ ২০১৫/প্রশাসন/১৩৯ dated 12.07.2016 and since his appointment, he has been performing the functions as Sub-Assistant Engineer (Civil) with sincerely, honestly and to the full satisfaction of the higher authority of BARI.

The added petitioner No. 7 was appointed to the post of Sub-Assistant Engineer (Civil) in Bangladesh Agricultural Research Institute, Joydebpur, Gazipur vide appointment letter under Memo No. VI-2006/Administration/784 dated 26.07.2006 and accordingly, he joined on 06.08.2006 at Regional Agriculture Research Centre, Jessore and on the same day his joining report was accepted by concerned authority and the authority concern by Memorandum No. ২৮৮-১৪০/২০০৬/প্রঃ/১১২৩৯ dated 03.05.2007 made his service permanent from the date of joining in service i.e. 06.08.2006 and since then, he has been performing the functions with sincerity and honestly and with full satisfaction of the higher authority of BARI.

Under the facts and circumstances, the petitioners through their lawyer sent a Notice of Demand for Justice dated 12.07.2021 upon the respondents to give promotion to the employee holding the post of Sub-Assistant Engineer (Civil) to the post of Assistant Engineer (Civil) under the provisions of previous BARI Service Regulation, 2011 but the respondents did not pay any heed to the Notice of Demand for justice.

The respondent No. 3 contested the Rule by filing an Affidavit-in-Opposition.

It is contended that petitioner Nos. 1, 2, 3 and 5 joined BARI under the Service Regulations, 1990, under which the post of

Assistant Engineer (Civil/Electrical) was to be filled up by 67% direct recruitment and 33% promotion from Sub-Assistant Engineers having the prescribed length of service.

The BARI Employee Service Regulations, 2011 subsequently repealed the 1990 Regulations, and the Regulations of 2021 in turn repealed the 2011 Regulations and after promulgation of the 2021 Regulations, the 2011 Regulations ceased to exist and, therefore, the petitioners cannot claim promotion under a repealed regulation.

The respondent's further state that there are three posts of Assistant Engineer (Civil), whereas there is only one post each of Electrical Engineer and Mechanical Engineer. Two of the three (Civil) were created subsequently in 2017. It is therefore contended that the recruitment policy for the Civil Engineering post could lawfully be different from that applicable to the Electrical and Mechanical Engineering posts and for ensuring better service the provision for filling up 67% post of Assistant Engineer by direct recruitment from B.Sc Engineer has been introduced.

Their further case is that consideration for promotion depends not merely upon length of service but also upon performance and job satisfaction.

It is also contended that the giving of current charge to an employee does not create a legal right to promotion.

Mr. S.R.M. Lutfor Rahman Akhand, the learned Advocate appearing for the petitioners submits that according to the BARI Service Regulation, 2011 the petitioners become eligible for promotion to the post of Assistant Engineer (Civil) before coming into operation of new Service Regulations, 2021 published on 09.03.2021 and the terms and conditions of service could not however be altered to the disadvantage of the petitioners by subsequent amendment of Service Regulation, 2021.

Mr. Akhand next submits that new Service Regulation, 2021 will not operate to deprive the right to be considered for promotion of the petitioners because they have already earned eligibility in the post under the previous regulating of 2011.

He also submits that Sub-Assistant Engineer (Civil) (Electrical) and (Mechanical) are in same scale and same grade and in new Service Regulations, 2021 for provisions of promotion Sub-Assistant Engineer (Electrical) and (Mechanical) remain unchanged but the petitioners' right of promotion has taken away by new Service Regulations, 2021 which is discriminatory.

He also submits that it is settled that though the appointing authority has right to amend/alter the service Rules to suit the need of time but not to the detriment to the rights or privileges that existed at

the relevant time when an employees of such appointing authority entered into it's service.

In support of the submissions, the learned Advocate for the petitioners has relied on the decisions of the case of Giasuddin Bhuiyan (Md) and others Vs. Secretary, Security Services Division, Ministry of Home Affairs, Bangladesh Secretariat, Dhaka and others, 74 DLR(AD)231; Bakrabad Gas Systerr Limited Vs. Al Masud-ar-Noor and others, 66 DLR(AD)187; Bangladesh Bank Vs. Sukamal Sinha, 2 BLC(AD)212, and Paschimanchol Gas Company Limited Vs. Md. Nuruzzaman and others, 24 BLT(AD)171.

The principal grievance of the petitioners is that, under the BARI Employee Service Regulations, 2011, they had already acquired eligibility for promotion to the post of Assistant Engineer (Civil), whereas the subsequent Service Regulation of 2021 altered the respective provision for promotion to their disadvantage by providing that the post of Assistant Engineer (Civil) would be filled up 67% by direct recruitment and 33% by promotion. According to the petitioners, such subsequent regulation cannot retrospectively deprive them of an accrued or vested right to be considered for promotion.

On the other hand, the learned Advocate for the respondents, Mr. Kabir Iqbal Hossain submits that the authority possesses the

power to frame and amend service regulations and that the petitioners have no vested right to promotion merely because they have completed the requisite period of service.

He also submits that the number of sanctioned posts in the Civil, Electrical and Mechanical Engineering is different and, therefore, the promotional arrangements need not necessarily be identical rather for getting better service from the more qualified engineers provision for direct recruitment of Assistant Engineer (Civil) has been introduced again in the Service Rules, 2021.

Finally, he submits that after promulgation of the 2021 Regulations, the 2011 Regulations ceased to exist and, therefore, the petitioners cannot claim promotion under a repealed regulation.

We have heard the learned Advocates for both the parties, perused the writ petition, all other connected papers annexed thereto, the Service Regulations of 2011 and the amendments made in the Service Regulation in 2021 and the decisions cited by the petitioners.

Upon consideration of the submissions, the following questions arise for determination:

Whether the petitioners had acquired an accrued or vested right to be considered for promotion to the post of Assistant Engineer (Civil) under the BARI Employee Service Regulations, 2011 before promulgation of the 2021 Regulations;

Whether the BARI Employee Service Regulation, 2021 can be applied so as to adversely affect the petitioners' eligibility to be considered for promotion which had already accrued under the previous Regulations;

The record shows that under the BARI Employee Service Regulations, 2011, the post of Assistant Engineer (Civil) was prescribed to be filled up by promotion from the post of Sub-Assistant Engineer (Civil), subject to completion of the prescribed five years' service in the feeder post.

The petitioners were appointed in the feeder post at different times between 2004 and 2015. They had completed the prescribed period of service before the promulgation of the 2021 Regulations. It is also stated that three posts of Assistant Engineer (Civil) had fallen vacant in 2020.

The petitioner No. 1 was given the current charge of Assistant Engineer (Civil) by office order dated 20 December 2020. Although current charge by itself does not create a substantive right to promotion, the said fact is relevant in considering the factual background and the existence of vacancies.

In the subsequent 2021 Regulations, under Serial No. 32, the post of Assistant Engineer (Civil) was to be filled up 33% by promotion and 67% by direct recruitment, whereas the petitioners'

case under the 2011 Regulations is that only promotion was the prescribed method for filling up the post of Assistant Engineer (Civil).

The question, therefore, is not whether BARI possesses the authority to frame new service regulations. Plainly, the authority may amend or replace service rules in accordance with law. The moot question is whether such subsequent regulation may be applied retrospectively to deprive employees of a right which had already accrued under the earlier regulation.

Under such circumstances we have considered the decisions referred by the counsel of the petitioner.

In *Government of Bangladesh and another Vs. Md. Ruhul Amin Munshi and another*, 21 BLC (AD) 85 wherein it has been held in paragraph No. 19 as under:

“.....there is no power to make a rule under the proviso to Article 133 of the Constitution which affects the vested rights of a person or contravenes independent constitutional provisions or violates fundamental rights as enshrined in Articles 26, 27 and 29 of the Constitution. Moreover, retrospectivity will be arbitrary and unconstitutional if the date from which retrospective effect is given has no reasonable nexus with the provisions contained in the amending rules. In other

words, rights or benefits (e.g. as to pay, seniority or right to be considered for promotion) which have been already accrued or earned under the existing Rules cannot be taken away by changing the Rules with retrospective effect or by making new Rules with retrospective effect."

In the case of Giasuddin Bhuiyan(Md) and others Vs. Secretary, Security Services Division, Ministry of Home Affairs, Bangladesh Secretariat, Dhaka and others, 74 DLR(AD)231, it has been held as under:

"It is settled that though the appointing authority has right to amend/alter the Service Rules to suit the need of time but not to the detriment to the rights or privileges that existed at the relevant time when an employee of such appointing authority entered into it's service."

In the case of Bakrabad Gas System Limited Vs. Al Masud-ar-Noor and others, 66 DLR(AD)187, it has been held as under:

"The appointing authority enjoys the power and the authority to frame new rules to regulate the service of its employees, but in no way, can take away the accrued/vested rights of its employees."

In the case of Bangladesh Bank Vs. Sukamal Sinha, 21 BLC (AD)212 it has been held as under:

"The authority has every right to amend/alter the service Rules to suit the need of the time and, as such, there is no illegality in preparing the circular with new terms and conditions but such new terms and conditions prepared by the authority shall not be applicable to the detriment or disadvantage to the privilege that existed at the relevant time when an employee of such appointing authority entered into its service."

In the case of Paschimanchol Gas Company Limited Vs. Md. Nuruzzaman and others, 24 BLT(AD)171 it has been held as under:

"There is no dispute that the petitioner got appointment in 1997, that is, long before the promulgation of the Service Rules of 2005. So he is entitled to get benefit of the Service Rules under which he got his appointment, that is, he is entitled to get the benefits as provided in Service Rules of 1988 and his service would be regulated under the said provision of law. The High Court Division rightly held that the provisions of Service Rules of 2005 are to be effective in respect of the appointment of the employees who have been appointed on 21.01.2005 or onward."

Further there is long lines of the decision of our apex Court that without declaring any provision of the law to be ultra vires the Constitution, this Court has power to give the substantive relief as prayed for, the Appellate Division in the case of Dr. Nurul Islam Vs. Bangladesh, 33 DLR (AD) 201 has held that where the substantive relief claimed in the writ petition can be granted without striking down any legal provision, that course is to be followed. In the said case, the then Hon'ble Chief Justice Mr. Justice Kemaluddin Hossain observed as follows:

"I like to adhere to the well established self-set rule which says, the Court will not declare a law unconstitutional, if the case in which the question is raised can be properly disposed of in some other way."

So, it is clear that the Court has ample power to give the substantive relief as claimed in the writ petition without striking down the legal provision challenged in the writ petition to be ultra vires the Constitution.

Applying the above principles to the facts before us, we find that the petitioners had fulfilled the qualifying service to be considered for promotion prescribed by the 2011 Regulations before the 2021 Regulations came into force. Their eligibility for

consideration for promotion had, therefore, accrued under the previous regulation.

The mere repeal of the 2011 Regulations does not, by itself, authorize the respondents to retrospectively extinguish such accrued eligibility.

Accordingly, we hold that the newly framed promotion regulation, 2021 cannot be applied retrospectively to the petitioners who had already become eligible for promotion prior to the amendment. The petitioners possess vested rights that accrued under the previous regulation of 2011 and these rights cannot be taken away by subsequent changes in regulation. Accordingly, the petitioners who had fulfilled the required service criteria, qualifications and other conditions before the enforcement of the amended regulation, 2021 shall be considered for promotion strictly in accordance with the old regulation, 2011. Any new condition introduced later shall not adversely affect their accrued eligibility.

For the reasons stated above, we find substance in the Rule.

Accordingly, the Rule Nisi is disposed of with the following directions:

The respondents are directed to consider the petitioners, insofar as they had already fulfilled the prescribed eligibility requirements before 2021, for promotion to the post of Assistant Engineer (Civil)

under the relevant provisions of the BARI Employee Service Regulations, 2011 subject to the existence of vacancies and all other lawful requirements relating to suitability and promotion within a period of 01 (one) month in accordance with law.

The ad-interim order of direction stands disposed of in accordance with this judgment.

Resultantly, the Rule Nisi is disposed of with above direction.

No order as to costs.

Communicate the Judgment and Order at once.

A.F.M. Saiful Karim, J:

Khizir Ahmed Choudhury, J:

I agree.

Khizir Ahmed Choudhury, J: