

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

WRIT PETITION NO. 14502 of 2019

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Humayan Kabir Rabby and others

.... Petitioners.

-versus-

***The Government of People 's Republic of
Bangladesh and others.***

...Respondents.

And

Mr. Bivash Chandra Biswas with
Mr. Utpal Biswas, Advocates

..... for the Petitioners.

Mr. Md. Aktaruzzaman, Advocate

..... for the Respondent Nos.3 and 5.

Mr. Nawroz M.R. Chowdhury, D.A.G. with
Mrs. Afroza Nazneen Akther, A.A.G. with
Mrs. Anna Khanom (Koli), A.A.G.

..... For the Respondents-Government

Heard on 30.11.2023, 07.12.2023, 12.12.2023 and 13.12.2023

Judgment on 14.12.2023

Present:

Mr. Justice Md. Jahangir Hossain

and

Mr. Justice S M Masud Hossain Dolon

Md. Jahangir Hossain , J:

This Writ Petition No. 14502 of 2019 has been filed under Article
102 of the Constitution of the People's Republic of Bangladesh. Rule was
issued on 15.12.2019 in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the result sheet published for appointment for the vacant 863 posts of Khalashi under Bangladesh Railway published maintaining quotas of the children of the Railway employees and without classified specification of the recruited person in various quotas (vide Annexure-D) should not be declared to have been made without lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.”

Short facts relevant for disposal of the Rule are that, the respondents are the Government officers of Bangladesh Railway. The respondent No. 5 issued a circular for the purpose of appointing Khalasee against 865 vacant posts vide Memo No. বাঃ রেঃ (পূর্ব) /১-১৩ (এল) তারিখ ১১/০৫/২০১৫ published in the daily “ বাংলাদেশ প্রতিদিন” on 13.05.2015. The concerned authorities invited applications from all the qualified interested candidates and the body of the circular categorically disclosed the Rules relating to the recruitment basis in regard to the quota system and in regard to the above said circular, these petitioners applied in compliance with the procedure adopted by the respondents for the same with view to recruit for the post of Khalashi as children of the employment of the Railway department dependant quota. As per the Rules of the said recruitment circular these petitioners duly submitted the certificates as they applied in the particulars to the said dependant quota. After scrutinized the applications by the department the applicants petitioners obtained admit card and they were appeared in the viva voce examination and were awaiting for the final result. Thereafter the

result was published in respect of the 863 posts and the petitioners collected result sheet through the webpage of Bangladesh Railway i.e. www.railway.gov.bd. Wherein there was no date, signature and designation of the respondents. The result sheet does not express the actual recruited number of posts in quotas, though the recruitment circular disclose the Rules applicable in relation to recruit in quotas. The result sheet is completely kept silence in classified specification of the recruited person in the various quotas which denotes the malice of the concerned authority to widen irregularities in the recruitment process. The Rules 4(b) of the Bangladesh Railway Non-Gazetted Service Recruitment Rules 1985 has been violated. At the earlier on the Bangladesh Railway published a result for the recruitment in the MLSS post. In that occasions the concerned authority published the classified result sheet which reflects the actual number of the recruitment for the particular quotas which made more transparency in the recruitment process. On 24.10.2010 the concerned authority of Bangladesh Railway published a classified result stating the actual number of recruited person from every district in the said post. Which clearly shows the detailed information of recruitment vide Memo No. নিয়োগ বিজ্ঞপ্তি নং-বাঃ রেঃ (পূর্ব)-১/২০১০ dated 24.10.2010. In relation to this appointment of Khalashi there were various allegations of corruptions and unfair means against the respondents in respect of the declaration of the results reports were published in national dailies i.e. Daily Purbodesh on 14.05.2019, Daily Amader Samay, Dainik Janota on 19.05.2019 in the daily Manab Jamin, daily Inquilab, Dainik Janata, daily Sokaler Shomoy all dated 18.06.2019 regarding the corruptions and unfair means of the recruitment process for the post of Khalashi. In the impugned result sheet

the district quota also has not been maintained and therefore the petitioners classified the impugned result sheet. The petitioners through their advocate served a legal notice dated 29.08.2021 upon the respondents requesting them to publish the result sheet including the name of the petitioners recalling the result sheet as published earlier. In the similar facts and circumstances a Rule has been issued by this Hon'ble Court in Writ Petition No. 14502 of 2019. The result sheets did not hold the number of persons recruited under quota which is not proper in the eye of law. The Bangladesh Railway as the pertinent authority earlier published several results for the various posts, whereas specifically stated the actual number of recruited persons from various district and quotas, which shows transparency in the recruitment process. The petitioners have applied in some specific quotas and the concerned authority after proper scrutiny issued admit card in favour of the petitioners. The question of allegation or any shortcomings of the petitioners has never been raised. The petitioners have the right to know the actual recruited person in the said posts under quotas. The respondents are under obligation to disclose all information to make the recruitment transparent before all the corner of the society. According to the Bangladesh railway Non-Gazetted service Recruitment Rules, 1985 the allotted post for quota would remain vacant, if the quotas for the children of the employee are not filled up. The impugned result sheet does contain whether the said quotas has been maintained or not. Hence the matter and case.

Mr. Bivash Chandra Biswas, learned Advocate for the petitioners submits that the petitioners are eligible under the quota of children as their parents are employee of Railway Department and the petitioners are

accordingly submitted the certificate of their parents as per the Rules and regulations of the recruitment circular quota as well as Rules 1985. The authority to commit irregularities in the recruitment process and the concern authority is under obligation to publish the detail result sheets in relation to widen up transparency in the recruitment process and as such the impugned result sheet has been made without any lawful authority. The petitioners have the right to know the actual recruited persons in the said posts under quotas and respondents are under obligation to disclose all information to make the recruitment transparent. In relation to the recruitment process for the post of Khalashi and it is apparent that the post reserve for the quota were not followed which the respondents should have followed and they were under legal obligation to follow the Bangladesh Railway Non-Gazetted service Recruitment Rule, 1985.

Lastly he submits that it is clear violation to laws and Rules which has been occurred by the respondents. Upon publishing the said result sheets without jurisdiction and of no legal effect. Upon such prayed for make the Rule absolute.

Mr. Md. Aktaruzzaman, learned Advocate for the respondents submits that respondents denied all the allegation brought against them and filed an affidavit in opposition in this case to where it reverse that the recruitment committee was formed by high officials of Bangladesh Railway for selection and appointment of the eligible persons in the post of “Khalashi” in Bangladesh Railway and the recruitment committee by performing all formalities activities of the recruitment process. The recruitment committee recommended on 11.05.2019 to appoint as many as 863 persons out of 865 persons in the post of “Khalashi” following the

provision of 'Depended Quota' as per the Bangladesh Railway Recruitment Rules, 1985 now Bangladesh Recruitment Rules, 2020 (came into force in September, 2020) thereafter being recommended by the recruitment committee and as per the approval of the General Manager/East those 863 persons had been appointed in the post of Khalashi who are now serving the Bangladesh Railways as per the direction of the superior authority. The petitioners did not pass the examination getting 50% marks of total 50 marks so the recruitment committee did not recommend for the petitioner for their appointment, so it was not possible for the respondents to appoint the petitioners. The result have been published as per recommendation of the recruitment committee and approval of the General Manager.

At the time of hearing Mr. Md. Aktaruzzaman, learned Advocate for the respondents further submits that the Bangladesh Railway Recruitment Rules, 1985 now Bangladesh Railway Recruitment Rules, 2020 (came into force in September, 2020) and the terms and conditions of the appointment advertisement being Circular No. East/1-13 dated 04.07.2013 total 863 persons have been appointed out of 865 persons as per the recommendation of the recruitment committee and 2 post are kept vacant and nothing has been done beyond the law. And lastly he prayed for discharge the Rule.

In our quarry learned Counsel for the respondents submits that the result have been published upon plain sheet, i.e. they did not mentioned the number of quotas of different classes পোষ্য, মুক্তিযোদ্ধা এবং প্রতিবন্ধী in the result sheet. He also admitted the previously published result sheet in the recruitment Rules of Bangladesh Railway in the 4th Class employee they clearly shows the different quotas which are reserved as per the Service Rule's and recruitment Rules.

At the time of hearing learned Advocate for the petitioner took us to one circular published by the Bangladesh Railway being Memorandum No. GE/RC-3/79-335 dated 07.07.1980 where it is define “(b) Recruitment of class IV staff shall be made by the concerned officers of Railway administration. However, the Bureau may be kept informed of all recruitments made to class IV posts so that it may keep a watch on the position and ensure compliance of all rules and regulations including observance of district and others quota.”

We have gone through the Rule 4(b) of the Bangladesh Railway Non-Gazatted Service Recruitment Rules, 1985, where it is stated

“(1) Short title-The rules may be called the Bangladesh Railway Non-gazetted Service Recruitment Rules, 1985”.

“(4) Appointment by direct recruitment- (a) No appointment to a specified post by direct recruitment in the initial recruitment category except lower grade (Class-IV) shall be made except upon the recommendation of the Bangladesh Railway Recruitment Bureau. General Manager will constitute committee for appointment of Class-IV categories.

(b) All recruitments will be made by open competition and on all Bangladesh basis. 40 percent of all vacancies will be reserved for sons/daughters and dependent brothers/sisters of permanent railway employees of not less than 15 years service and of retired railway employees dead or alive.”

We have gone through the Annexure-D1 from where it is reveals that respondent are in obligation and bounds to follow the Laws and Rules of Service recruitment. It does not appear and shows from the result sheet that the authority concerned maintain the quota as per Recruitment Rules, 1985.

Annexure-E the published recruitment does not pictures of the Rule 4(b) where it is clearly define the quota has to be maintained.

Learned Counsel for the respondents at the time of hearing frankly submits that the respondents fail to submit the relevant papers and another result sheet before this Court. Or they have maintained the quota as per Recruitment Rules, 1985.

It transpires from this record the petitioner submits some previous result published by the same department i.e. the Railway which are Annexure-E and E1 where it is clearly shows that the Railway authority clearly mentioned the name of the candidates those who are required under reserve quota. But in the instance case it appears the respondent authority fails to show about the maintaining this quota under the Rule 4(b) as per Recruitment Rules, 1985.

We have allowed sufficient time the respondents for filing the result sheets and other relevant papers regarding the maintaining of quota for the post of Khalashi but the respondents fail to submit such paper before this Court.

Upon such we are of the view that the respondents authority does not maintain the reserve quota for the petitioners. Furthermore in support of the submissions of the learned Advocate for the petitioner he refers the similar Writ Petition No.8200 of 2015 and Writ Petition No.6891 of 2015 of our High Court and above mention Writ Petitions were finally heard and disposed of. He further submits on that Writ Petitions Hon'ble Court gave decisions in favour of the petitioners.

We have gone through the said judgment where it is held “ For ready reference specification of the quota published in the said result dated 04.04.2015 is quoted under:

“৫) কোটা ভিত্তিক প্রার্থী বন্টন পর্যালোচনাঃ সর্বমোট ৭৮ টি এম, এল, এস, এস পদর মধ্য এতিম ও প্রতিবন্ধী কোটায় সংরক্ষিত ৮টি পদ এবং বিভাগীয় কোটায় ২৮টি পোষ্যসহ সংরক্ষিত কোটার বিপরীত ৩৬টি পদ বাদ দিয় অবশিষ্ট ৪২টি পদক ১০০% ধর মুক্তিযোদ্ধা-৩০%, আনসার/ভিডিপি-১০%, মহিলা -১৫%, উপজাতী-৫% এবং সাধারণ-৪০% কাটার হিসব প্রার্থী বন্টন করা হয়ছ। কোন কোটায় সকল জেলার কমপক্ষে একজন প্রার্থী বন্টনর সম্ভাব্যতা না থাকায় বিভাগ ভিত্তিক প্রার্থী তালিকা প্রণয়ন করা হয়ছ। ”

During the course of hearing the learned Advocate brought to the notice of this Court that if the quota would have maintained properly the petitioner could have selected thought the respondents were under obligation to publish classified result sheets which would have disclosed the number of persons recruited for the post of Khalashi under “Children of Freedom fighters” “Physically Challenged” and “Dependents” quota. Faced with the facts and circumstances as discussed hereinbefore, we are of the view the Rule deserves merit.

He further refers 19 BLC (AD), page-166 wherein it is held that “In this case as the documents shows (sic), this policy has not been followed”, the leave petitioners (the writ-respondents) were under legal obligation to produce documents/papers to show that in appointing the Food Inspector, the Sub-Inspector of Food and the Assistant Sub-Inspector of Food, 30% quota of the children of the Freedom Fight was followed, but they have not produced any such papers. Admittedly, when no affidavit-in-opposition was filed before the High Court Division denying or contravening the case

of the writ-petitioners that 30% quota for the children of the Freedom Fighters was not followed, the High Court Division had no option but to accept the case of the writ-petitioners, therefore, we find no substance in the submissions of the learned Deputy Attorney-General.”

In this Writ Petition the respondents already filed affidavit in opposition but did not file any single paper of the recruitment result that the viva examination or failure of the candidate in the viva examination or maintaining the quota as per Rule 4(b) of Recruitment Rules, 1985. Where the petitioners clearly text ground the authority respondents violated the Rules and failed to maintained the laws. The respondents ought to have filed the papers of the recruitments and reserve the result as per the Rule. The concern authority is under obligation to publish the detail result sheets in relation to widen up transparency in the recruitment process. The result sheet does not project the number of persons recruited under the said quota which denotes the malafide intention of the concerned authority to accommodate other persons who are not entitled to be recruited under such quota. It is apparent that the post reserve for the quota were not followed which the respondents should have followed and they were under legal obligation to follow the Bangladesh Railway Non-Gazetted Service Recruitment Rules, 1985.

Upon such fact and circumstances and the observation made above we are of the view that the Rule deserves merit.

Accordingly, the Rule is disposed of.

The respondents are directed to issues the appointment letters after maintaining the quota in favour of the eligible petitioners on being satisfied that they are not otherwise disqualified.

Furthermore, if there is any ambiguity regarding the vacant post the respondents are directed to give appointment letters in favour of the petitioners in future vacant post if they are not disqualified otherwise.

No order as to cost.

Communicate the judgment and order at once.

S M Masud Hossain Dolon, J:

I agree.

Md.Majibur Rahman.

Bench Officer.