

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

Writ Petition No. 7661 of 2022

with

Writ Petition No. 9616 of 2022

Writ Petition No 9617 of 2022

Writ Petition No 9618 of 2022

Writ Petition No 9619 of 2022

Writ Petition No 9620 of 2022

Writ Petition No 9621 of 2022

Writ Petition No 9622 of 2022

Writ Petition No 9625 of 2022

Writ Petition No 9615 of 2022

Writ Petition No 9460 of 2022

Writ Petition No 9471 of 2022

Writ Petition No 9467 of 2022

Writ Petition No 9491 of 2022

Writ Petition No 9495 of 2022

Writ Petition No 9469 of 2022

Writ Petition No 9463 of 2022

Writ Petition No 9493 of 2022

Writ Petition No 9462 of 2022

Writ Petition No 9468 of 2022

Writ Petition No 9696 of 2022

Writ Petition No 9693 of 2022

Writ Petition No 9470 of 2022

Writ Petition No 9466 of 2022

Writ Petition No 9694 of 2022

Writ Petition No 9465 of 2022

Writ Petition No 12054 of 2022

Writ Petition No 12055 of 2022

Writ Petition No 12056 of 2022

Writ Petition No 12057 of 2022

Writ Petition No 12058 of 2022

Writ Petition No 12059 of 2022

Writ Petition No 12060 of 2022

Writ Petition No 12061 of 2022

Writ Petition No 12062 of 2022

Writ Petition No 12063 of 2022

Writ Petition No 12064 of 2022

Writ Petition No 12065 of 2022

Writ Petition No 12066 of 2022

Writ Petition No 12067 of 2022

Writ Petition No 12068 of 2022

Writ Petition No 12069 of 2022

Writ Petition No. 8845 of 2022

Writ Petition No. 8846 of 2022

Writ Petition No 8847 of 2022
Writ Petition No 8848 of 2022
Writ Petition No. 8851 of 2022
Writ Petition No 8867 of 2022
Writ Petition No 8868 of 2022
Writ Petition No 8869 of 2022
Writ Petition No 8870 of 2022
Writ Petition No 8871 of 2022
Writ Petition No 8880 of 2022
Writ Petition No 8881 of 2022
Writ Petition No 8882 of 2022
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Writ Petition No 9455 of 2022
Writ Petition No 9456 of 2022
Writ Petition No 9458 of 2022
Writ Petition No 9459 of 2022
Writ Petition No 9454 of 2022
Writ Petition No 9624 of 2022
Writ Petition No 9492 of 2022
Writ Petition No 9692 of 2022
Writ Petition No 9464 of 2022
Writ Petition No 9461 of 2022
Writ Petition No 9623 of 2022
Writ Petition No 8850 of 2022
and
Writ Petition No 8849 of 2022

Present:
Mr. Justice Mahmudul Hoque
&
Mr. Justice Md. Mahmud Hassan
Talukder

In the matter of:

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

AND

In the matter of:

Robi Axiata Limited

.....Petitioner (In all writ
Petitions)

-Versus-

Chairman, First Labour Court-4, Srama Bhaban,
Dhaka and others

.....Respondents (In all writ
Petitions)

Mr. Tanjib-ul Alam, Advocate with
Mr. Kazi Ershadul Alam, Advocate

For the petitioner (In all the cases)

Mr. AKM. Fakhru Islam, Advocate with
Ms. Saida Yesmin, Advocate

For respondent No. 2 (In all cases except W.P. No. 8869 of 2022, W.P. No. 8885 of 2022, W.P. No. 9495 of 2022, W.P. No. 9461 of 2022, W.P. No. 8850 of 2022, W.P. No. 9696 of 2022 and W.P. No. 9624 of 2022)

Judgment on: 29.08.2023.

Md. Mahmud Hassan Talukder, J.

Since all these Rules *nisi* involve common question of law and the parties being same and similar, the same are taken up together for hearing and disposal and as such, are being disposed of by this single judgment.

In all these applications the Rules *Nisi* under adjudication were issued in the following terms;

“Let a Rule nisi be issued calling upon the respondents to show cause as to why the impugned order No.7 dated 07.04.2022 passed by the respondent No.1 in BLA(Payment and Wages) Case No. 158 of 2021 rejecting the application under section 216 of the Bangladesh Labour Act, 2006 read with section 151 of the Code of Civil Procedure, 1908 filed by the writ petitioner for rejection of BLA (Payment and Wages) Case No. 158 of 2021 as being not maintainable should not be declared to have been passed without any 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.”

Common facts necessary for disposal of the Rules *nisi*, in short, are that, the respondent No.2 in all the writ petitions were employed in the petitioner company and later, in 2019 the petitioner offered Voluntary Separation Scheme for the

employees who would like to take an early leave from the employment of the company. Accordingly, the respondent-employees had participated in the said scheme on the basis of which voluntary retirement/severance and release agreement was executed on 31.12.2019 which was duly signed by the respondent employees. It is stated that the petitioner company purchased the stamp paper on 13.01.2020 and the agreement was given effect from 31.12.2019 and the same was signed by the employees on 27.01.2020. So, the respondent employees voluntarily left the service from the writ petitioner company on 31.12.2019 and subsequently, on different dates the respondent employees received all their benefits in accordance with the VRR agreement and as such, relationship between them become ceased with effect from 31.12.2019. It is stated that as per VRR agreement the petitioner paid all the dues to the respondent employees and in addition to that, also paid a further amount as WPPF for the year 2019.

After receiving all the dues as per VRR agreement the respondent employees filed the cases in the First Labour Court, Dhaka under section 132(1)(2) of the Labour Act, 2006. In the said cases, the writ petitioner being the 2nd party filed applications under section 216 of the Labour Act, 2006 read with section 151 of the Code of Civil Procedure for rejection of the plaint being not maintainable. The learned Chairman, 2nd Labour Court, Dhaka by the respective impugned orders rejected the said application of the writ petitioner company. In the circumstances, the petitioner company challenged the impugned order rejecting the application for rejection of the plaint in the writ petitions and obtained the Rules nisi.

Mr. Tanjib-ul Alam, learned Advocate for the petitioner submits that since as per VRR agreements the petitioner company paid all the dues to the respondent

employees, the cases filed by the respondent employees before the Labour Court under section 132(1)(2) of the Labour Act is not maintainable. Referring to the impugned order he submits that the Labour Court without going through the merit of the case rejected the application only observing that the stamp paper is tainted one which is not in accordance with law. He also submits that the respondent employees with ill motive and without any basis filed the cases one after another which requires scrutiny by the Court in accordance with law. Referring to the decision of the Appellate Division reported in 21 BLC(AD) 218 he submits that the Labour Court has been empowered to look into the merit of the case while deciding the application for rejection of the plaint and as such, prays for appropriate judgment from this Court.

Mr. AKM Fakhru Islam, learned Advocate for the respondent employees in all the writ petitions submits that the Labour Court did not commit any illegality in passing the impugned order. He next submits that the employees have other lawful dues on different heads lying with the petitioner company and the VRR agreement has been executed with a view to deprive the poor employees from their legitimate claims and as such, the Rules nisi are liable to be discharged.

Heard the learned Advocates of both the parties and perused the writ petition, supplementary affidavit, affidavit in opposition, supplementary affidavit in opposition and papers annexed thereto.

It appears that the respondent No.2 in all the writ petitions, as first party, filed their respective BLA (Payment and Wages) Cases under section 132 (1) (2) of the Bangladesh Labour Act, 2006 before the learned First Labour Court, Dhaka

claiming the remaining benefits and workers profit participation dues and other applicable benefits in accordance with law.

In all the cases of payment and wages, the 2nd party Nos.1 and 2 including the writ petitioner filed applications under section 216 of the Bangladesh Labour Act, 2006 read with section 151 of the Code of Civil Procedure for rejecting the cases filed by the first party respondent No.2 herein being not maintainable. But, the First Labour Court, Dhaka by the respective impugned orders rejected the application for rejection of the plaint filed by the 2nd parties, challenging which the Robi Axiata Limited filed all the writ petitions and obtained the Rules nisi under adjudication.

From a reading of the application under section 216 of the Bangladesh Labour Act read with section 151 of the Code of Civil Procedure it appears that the second parties categorically stated that since the first party has entered into a voluntary retirement/severance and release agreement (VRR Agreement) with the second party No.1 by receiving their all wages and retirement benefits admitted in the plaint itself the filing of the cases is barred by law for want of cause of action and as such, the cases being not maintainable are liable to be rejected.

The first party did not file any written objection to the same. But they submitted that they were the permanent workers of the company and on good faith they have signed the said agreement with a hope that they will be paid the whole benefits of service.

The learned Chairman, First Labour Court, Dhaka after hearing without touching and going through the merit of the application for rejection of the plaint

passed the impugned orders in all the cases questioning and disbelieving the agreement which reads as follows:

“On going through the original copy of agreement titled “Voluntary Retirement/Severance and Release Agreement” it is seen that the date of entering into the agreement is 31.12.2019 but in its back page the date is given as 13.01.2020 which has created a smoke puff in case of deciding whether the plaint is liable to be rejected on point of such voluntary retirement of the first party petitioner. So, I find substance in the submission of the ld. Advocate appearing for the first party petitioner. This being the position I am of the view that it would be quite unsafe to believe the legality of the voluntary retirement agreement without examining any witness from both the parties to case on contest. Accordingly, it would also be unsafe to believe that the first party petitioner has got all of his wages from the second party establishment by virtue of the said tainted voluntary retirement agreement dated 31.12.2019.”

The impugned order was not passed on merit. The learned Chairman, First Labour Court, Dhaka came to a finding that the date of entering into the agreement is 31.12.2019 and on the back page of the stamp the date is given as 13.01.2020 which has created a smoke puff in deciding the case.

By filing affidavit in opposition, respondent No.2 admits that they signed the VRR agreement on 27.01.2020 under duress. Whereas, while hearing the application under section 216 of the Act of 2006 read with section 151 of the Code of Civil Procedure the first party employees admitted that on good faith they signed

the agreement. On going through the plaint of the case it is also found that the first party admitted that they have signed the agreement on good faith. So, admittedly they have signed the agreement and there is no scope to raise any question about signing the agreement. Now, question is whether the agreement is valid or not.

In this respect, there is a Voluntary Separation Scheme for the employees of Robi Axiata Limited basing which the voluntary retirement agreement was entered into by the parties and payment has been made. Since the voluntary retirement agreement has been executed and payment has been received by the first party, the 2nd party company filed the application for rejection of the plaint of all the cases. On perusal of the voluntary retirement and release agreement it appears that the stamp was purchased on 13.01.2020 and the agreement has been written giving its date of effect from 31.12.2019. The first party categorically admits that they have signed the agreement on good faith on 27.01.2020. It is common and usual practice that on a mutual agreement the parties fix the effective date which can be either prospective or retrospective and there is no illegality in this regard.

In deciding the application under section 216 of Bangladesh Labour Act, 2006 read with section 151 of the Code the Labour Court shall have the power as civil Court. Order VII Rule 11 of the Code is not applicable where the disputes involve mixed question of fact and law. However, the Court can reject a plaint in exercise of its inherent powers under section 151 of the Code of Civil Procedure if it is found that on the admitted facts the plaint is otherwise barred by law. In appropriate cases it can exercise its power to resolve a claim in order to prevent the abuse of the process of the court or to fill up the lacuna left by legislature or where the legislature is unable to foresee any circumstances which may arise in a

particular case. The inherent powers of the Court are very wide and residuary in nature and not controlled by any other provisions of the Code. In deciding the application for rejection of the plaint filed by the 2nd party company, the Labour Court has power under section 151 of the Code to go through the claim and counter claim of the parties to the case and ascertain as to whether the case is fruitless litigation and settle the same on merit also as the claim of the 1st parties based on no documents. This view finds support in the case of Robi Axiata Limited Vs. First Labour Court and others reported in 21 BLC(AD) 218.

In view of the above facts and circumstances, we hold that the learned Chairman, First Labour Court, Dhaka committed illegality in not deciding the application filed by the petitioner under section 216 of the Bangladesh Labour Act, 2006 read with section 151 of the Code of Civil Procedure on merit rather it rejected the same on a technical point and different aspect observing that the voluntary retirement agreement is a tainted one since the date of purchase is on 13.01.2020 mentioned on the back page of the stamp has created a smoke puff, in deciding the case despite the fact that in the hearing as well as in the plaint the first party admitted that they have signed the agreement. Mentioning the date in the earlier and later point of time is not a matter if there is a mutual agreement. In the instant case, since the first party respondent No.2 has admitted that they have signed the agreement there is no scope to raise any doubt over the stamp, but the court should give decision whether in the event of proceedings with the cases there is any chance of success of the 1st parties, on what account, where they unequivocally declared that they have no further claim to the petitioner.

In this situation, the learned First Labour Court, Dhaka is directed to dispose of the applications filed by Robi Axiata Limited under section 216 of the Bangladesh Labour Act, 2006 read with section 151 of the Code of Civil Procedure on merit within 03 (three) months in accordance with law. The Court will be at liberty to dispose of the claim and counter claim of both the parties to the case as raised in the main case on compromise if they come forward for avoiding their unnecessary expenses and future multiplicity of the cases.

In view of the above observations and directions, all the Rules nisi are made absolute.

The impugned judgment and orders in all the BLA cases are set aside and declared to have been passed without legal basis and of no legal effect.

The order of stay granted at the time of issuance of the Rule Nisi stands vacated.

There will be no order as to costs.

Mahmudul Hoque, J.

I agree.