

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

**WRIT PETITION NO. 718 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. Arifuzzaman Sarker***

***... Petitioner***

-vs-

***Government of People's Republic of  
Bangladesh, represented by Secretary Ministry  
of Education, Bangladesh Secretariat, Ramna,  
Dhaka and others.***

***... Respondents.***

And

Mr. Muhammad Ashraf Ali, Advocate with  
Mr. Md. Shahdat Alam, Advocate

.... For the Petitioner.

Ms. Salina Akter, Advocate

.... For the respondent No.2

Mr. Sabbir Hamza Chowdhury, Advocate

... For the respondent Nos.4-9.

Mr. Samarendra Nath Biswas, D.A.G. with

Mr. Md. Abul Kalam Khan (Daud), A.A.G. with

Mr. Md. Modersher Ali Khan (Dipu), A.A.G. and

Mr. Md. Taufiq Sajawar (Partho), A.A.G.

....For the Respondents-government.

***Heard on:19.01.2023, 03.05.2023***

***And Judgment on:25.05.2023***

**Present:**

*Mrs. Justice Farah Mahbub.*

*And*

*Mr. Justice Muhammad Mahbub Ul Islam*

**Farah Mahbub, J:**

In this Rule Nisi, issued under Article 102 of the Constitution of the  
People's Republic of Bangladesh, the respondents have been called upon

to show cause as to why the impugned office order dated 15.01.2020 issued under the signature of the respondent No.2 vide Memo No.2005/Establishment promoting the respondent Nos.4-9 in 1<sup>st</sup> Class posts and upgrading their pay scale at 5<sup>th</sup> grade of National Pay Scale, 2015 at Tk.43,000-69,850/- in violation of Rule 2 of the Service Rules, 1965 of the Board of Intermediate and Secondary Education, Rajshahi (Annexure-J), should not be declared to have been issued without lawful authority and hence, of no legal effect.

Facts, in brief, are that the petitioner and the respondent No.9 were appointed as Certificate Writer in the Board of Intermediate and Secondary Education, Rajshahi (in short, the Board) vide office order dated 21.01.1993 at Tk.1200-7x60-1620-EB-11x65-2335 of the National Pay Scale, 1991. Respondent Nos.6-8 were appointed as Lower Division Assistant in the said Board vide office order dated 21.01.1993 at Tk.1200-7x60-1620-EB-11x65-2335 of the National Pay Scale, 1991. Respondent Nos.4-5 were appointed as Typist in the said Board at Tk.1200-7x60-1620-EB-11x65-2335 of the National Pay Scale, 1991. They accordingly joined in their respective posts. In other words, the petitioner and the respondents concerned were appointed on the same date with same pay scale, but in different posts.

Having rendered satisfactory performance the authority concerned vide its office order dated 25.06.1997 promoted the petitioner and respondent Nos. 4-9 in the 3<sup>rd</sup> Class posts. After completing 15 (fifteen) years service period, the authority concerned further promoted the petitioner and the said respondents to the post of Administrative Officer, a 2<sup>nd</sup> Class post, vide office letter dated 07.02.2010 (Annexure-C).

However, vide office order dated 27.10.2015 the petitioner was posted as Assistant Audit Officer (Pension) (in charge). Lastly, on 27.12.2015 the authority concerned fixed the pay scale of the petitioner and the respondent Nos. 4-9 at 7<sup>th</sup> Grade of National Pay Scale, 2015 at Tk.29,000-63410 (Annexures-E series).

On 10.12.2006, a meeting was held in the Ministry of Education chaired by the Additional Secretary along with other members along with the Chairman of Secondary and Higher Secondary Education Board, Dinajpur whereupon a list of posts of the Board of Intermediate and Secondary Education, Rajshahi was prepared with the following decisions:

“গণপ্রজাতন্ত্রী বাংলাদেশ সরকার  
শিক্ষা মন্ত্রণালয়  
সভার কার্যবিবরণী

মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড, দিনাজপুর -এর সার্বিক নিরাপত্তায় নিয়োজিত ০৪ (চার) জন আনসার সদস্যের বেতন ভাতাদি প্রদান এবং উক্ত বোর্ডের অন্যান্য বিষয়াদি আলোচনার জন্য ১০/১২/২০০৬ খ্রিঃ তারিখে শিক্ষা মন্ত্রণালয়ের অতিরিক্ত সচিব জন্য মোঃ আবদুল মতিন চৌধুরী -এর সভাপতিত্বে মন্ত্রণালয়ের সভাকক্ষে এক সভা অনুষ্ঠিত হয়। উক্ত সভায় নিম্নবর্ণিত কর্মকর্তাগণ উপস্থিত ছিলেন (স্মারকের ক্রমানুসারে):

- (১) জনাব মোঃ শফি উল্লাহ, যুগ্ম-সচিব (কলেজ), শিক্ষা মন্ত্রণালয়, ঢাকা
- (২) জনাব মোঃ নজরুল ইসলাম খান, যুগ্ম-সচিব (মাধ্যমিক), শিক্ষা মন্ত্রণালয়, ঢাকা
- (৩) জনাব মোঃ শফিকুল আলম, চেয়ারম্যান, মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড, দিনাজপুর
- (৪) জনাব এ. জেড.এম. শফিকুল আলম, যুগ্ম-সচিব (মাদরাসা ও কারিগরি), শিক্ষা মন্ত্রণালয়, ঢাকা
- (৫) হাসনুন নাহার, উপ-সচিব (মাধ্যমিক), শিক্ষা মন্ত্রণালয়, ঢাকা
- (৬) জনাব মোঃ রূপম আনোয়ার, সিনিয়র সহকারী সচিব, শিক্ষা মন্ত্রণালয়, ঢাকা

০২। সভার শুরুতে সভাপতি উপস্থিত কর্মকর্তাগণকে স্বাগত জানান এবং নির্ধারিত আলোচনা উপস্থাপনার জন্য সিনিয়র সহকারী সচিব, শাখা-১০ (স্কুল-১) -কে অনুরোধ করেন। সিনিয়র সহকারী সচিব জানান গত ২২/১০/২০০৬ খ্রিঃ তারিখে এক প্রজ্ঞাপনমূলে মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড, দিনাজপুর স্থাপন করা হয়। মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড, দিনাজপুর -এর কার্যক্রম শুরুর করার জন্য জনবল কাঠামো সৃষ্টির লক্ষ্যে সংস্থাপন মন্ত্রণালয়কে অনুরোধ করা হলে, কতিপয় শর্ত সাপেক্ষে ১৬২টি পদ সৃষ্টিতে সম্মতি প্রদান করে। উক্ত পদ সৃষ্টির সম্মতি অর্থ মন্ত্রণালয়ে প্রেরণ করা হলে অর্থ বিভাগ ১১টি পদ অস্থায়ীভাবে সৃষ্টি এবং ১৩৯টি পদ মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড, রাজশাহী হতে স্থানান্তরের শর্তে পদ সৃষ্টিতে সম্মতি জ্ঞাপন করে। নতুনভাবে সৃষ্টিত পদ ও মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড, রাজশাহী হতে স্থানান্তরিত পদের তালিকা নিম্নরূপ:

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(গ) .....

(ঘ) .....

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৪।.....

(ক) .....

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(ঙ) .....

(চ) জি.ও জারির সাথে সাথে মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড, রাজশাহী-এর ১৩৯টি পদ মাধ্যমিক ও উচ্চমাধ্যমিক শিক্ষা বোর্ড, দিনাজপুরে স্থানান্তরিত হবে বিধায় মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড, রাজশাহী-এর ১৩৯টি পদ বিলুপ্ত ঘোষিত হবে। রাজশাহী শিক্ষা বোর্ডে কর্মরত সকল কর্মকর্তা/কর্মচারীর নাম, স্থায়ী ঠিকানা চাকুরীতে যোগদানের তারিখ, এলপিআর -এ গমনের তারিখসহ একটি স্বয়ং সম্পূর্ণ তালিকা সংশ্লিষ্ট বোর্ড মন্ত্রণালয়ে প্রেরণ করবে। একই সাথে রাজশাহী শিক্ষা বোর্ড হতে যে ১৩৯টি পদ মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড দিনাজপুর-এ স্থানান্তরিত হবে সে সকল পদে দিনাজপুরে যেসব কর্মকর্তা/কর্মচারীকে স্থানান্তরিত করা হবে তাদের নামের তালিকা এবং তাদের প্রত্যেককে (মোট ১৩৯ জন) কবে নাগাদ অবমুক্ত করা হবে সে তারিখ উল্লেখ করে একটি প্রতিবেদন আগামী ৩১/১২/২০০৬ খ্রিঃ তারিখের মধ্যে মন্ত্রণালয়ে প্রেরণ করতে হবে।”

The minutes of the said meeting was published under the signature of Additional Secretary, Ministry of Education on 13.12.2006 (Annexure-F).

In view of Rule 2 of the Service Rules of the Board of Intermediate and Secondary Education, Rajshahi (in short, the Service Rules) all appointments and promotion except the appointment of the Chairman has to be made by the Board subject to obtaining the recommendation of the Selection Committee. Moreover, by the said provision 50% permanent vacancy shall be filled up by promotion from the grade next below in which the vacancy occurs. Moreover, respective candidates have to appear before the Selection Committee and promotion shall be made considering good service records combined with efficiency and seniority in service. However, requisite qualifications for the respective post(s) may be relaxed on the recommendation of the Chairman for exceptionally meritorious candidate with outstanding ability and experience, but subject to the approval of the Board. Further, the Chairman is empowered to fill up temporary and casual vacancy for a period of 1(one) month or more but not exceeding 6(six) months by local arrangements, but subject to the approval of the Board.

In this regard, it has been stated that in compliance of Rule 2 of the said Service Rules the Selection Committee vide its office letter dated

16.08.2011 published a procedure with recommendation for promotion in the 1<sup>st</sup> Class posts (Annexure-G and G-1 respectively).

Further it has been stated that earlier, respondent No.8 of the instant writ petition and another filed Writ Petition No.11742 of 2012 before the High Court Division of the Supreme Court of Bangladesh challenging Memo No.411(20)/1<sup>st</sup>/103/Establishment dated 30.06.2012 giving current charge to the respective respondent Nos. 4-14 in the Class-1 vacant posts of the Board of Intermediate and Secondary Education, Rajshahi. After hearing the respective contending parties this Court vide judgment and order dated 11.02.2014 discharged the Rule. The operation of the said judgment and order was subsequently stayed by the Appellate Division in CMP No.145 of 2014 vide order dated 20.02.2014. Ultimately, the matter has been disposed of with “*No order*”.

Considering the judgment and order passed in Writ Petition No.11742 of 2012, respective order dated 20.02.2014 passed in CMP No.145 of 2014 by the Appellate Division, the decisions of the 232<sup>nd</sup>, 234<sup>th</sup> and 241<sup>st</sup> Board meeting and also, in view of the recommendation of the Selection Committee-1 dated 21.04.2017, 9(nine) officers were promoted in the 1<sup>st</sup> Class posts vide office order dated 09.07.2017 (Annexure-I-4) issued at the instance of the Chairman of the Board.

The cause of arose when the Chairman of the Board, respondent No.2 vide the impugned order dated 15.01.2020 promoted the respondent Nos. 4-9 in 1<sup>st</sup> Class posts by upgrading their pay scale at 5<sup>th</sup> grade of the National Pay Scale, 2015 at Tk.43000-69850 allegedly in flagrant violation of Rule 2 of the Service Rules, 1965 of the Board of Intermediate and Secondary Education, Rajshahi.

On the contention that said promotion was given to the respondents concerned to the post of 5<sup>th</sup> grade from the post of 7<sup>th</sup> grade without the recommendation of the Selection Committee in violation of Rule 2 of the Service Rules, the petitioner being aggrieved filed the instant writ petition and obtained the present Rule Nisi.

Mr. Muhammad Ashraf Ali, the learned Advocate appearing for the petitioner submits that it apparently appears from the pay fixation sheet dated 27.12.2015 (Annexures-E series) that the petitioner and the respondent Nos. 4-9 were receiving the pay at 7<sup>th</sup> grade of National Pay Scale, 2015. In this regard, he goes to argue that as per Rule 2 of the Service Rules of the Board, 50% of the permanent vacancies shall be filled up by promotion from the grade next below. But vide the impugned Memo dated 15.01.2020 the respondent No.2 has given promotion to the respondents concerned to the posts of pay scale at 5<sup>th</sup> grade in violation of the said Rules.

He further submits that in view of the said Rule 2 of the Service Rules of the Board prior to filling up permanent vacancies either by promotion or by direct recruitment the candidate(s) is/are required to appear before the Selection Committee for interview and that the Board shall make such appointment after obtaining recommendation from the Selection Committee. In the instant case, he submits, from the impugned office order dated 15.01.2020 (Annexure-J) it appears that no Selection Committee was formed for the purpose of giving the impugned promotion. In other words, he submits that vide the said impugned Memo the respondent No.2 has promoted the respondent Nos. 4-9 in the 1<sup>st</sup> Class posts without the recommendations of the Selection Committee, which is

further corroborated from Annexure-N to the affidavit in opposition filed by the respondent No.2. Accordingly, he contends that the petitioner who stands on similar footing with that of the respondent Nos. 4-9, did not get a chance to appear before the Selection Committee. Resultantly, he was deprived of his right to be considered for promotion;

Moreso, he goes to argue that from the impugned office order dated 15.01.2020 (Annexure-J) it appears that said order of promotion has taken place with immediate effect with the joining of the respondent Nos. 4-9 in their respective promoted post, who were working in the said post until the Board in its 247<sup>th</sup> meeting dated 28.07.2021 took decision to stay operation of the said order. Hence, this writ petition cannot fail as being premature.

Conversely, Ms. Salina Akter, the learned Advocate appearing for the respondent No.2 by filing affidavit-in-opposition submits that in order to promote in the vacant 1st Class post of the Secondary and Higher Secondary Education Board, Rajshahi, a meeting was held on 21.04.2017 in the office of the respondent no.2 in the presence of respective members of the Selection Committee -1. Accordingly, a merit list was prepared on the said date as per the Service Rules, 1965 (Annexure- "N" to the affidavit-in-opposition). She further submits that as per the said merit list the authority concerned on 09.07.2017 promoted 9 (nine) officers in the 1st Class posts. Subsequently, vide the impugned order dated 15.01.2020 the authority concerned promoted 6 (six) officers in the 1<sup>st</sup> Class posts. However, said order was a conditional one and no final decision has yet been taken. In other words, she submits, the impugned order has not been acted upon.

She also submits that the resolution of the 232<sup>nd</sup>, 234<sup>th</sup> and 241<sup>st</sup> Board meeting of Rajshahi Education Board (Annexures- I-(1), 1-(2) and 1-(3) respectively to the writ petition) clearly shows that a formal Selection Committee was formed and promotion was given to the respondent Nos. 4 to 9 in compliance with the promotion Rules dated 16.05.2012.

Furthermore, she submits that the impugned Memo dated 15.01.2020 has been issued in exercise of the executive power of the respondent No. 2 who has the authority under Rule 2 of the Service Rules to fill up 50% of the permanent vacant posts by giving promotion from the grade next below in which vacancy occurs. She also submits that at the relevant time 11 (eleven) officers were due for promotion and respondent No. 2 could only fill up 50% vacant posts using his executive power based on the service record, efficiency, seniority and outstanding ability with experience of the respective candidates. As such, she goes to contend that no illegality has been committed by the respondent No.2 while issuing the order dated 15.01.2020 giving promotion to the concerned respondents subject to approved of the Board, and that the Board is yet to give approval on the said order. Accordingly, she submits that prior thereto challenging the impugned order of promotion dated 15.01.2020 is premature; hence, this Rule is liable to be discharged as being premature.

Mr. Sabbir Hamza Chowdhury, the learned Advocate appearing for the respondent Nos.4-9 by filing affidavit-in-opposition and supplementary affidavit to the affidavit-in-opposition adopts the submissions so have been forwarded on behalf of the respondent No.2 and



submits that the contentions of the petitioner being based with no substance instant Rule is liable to be discharged.

Admittedly, the petitioner and the respondent Nos.4-9 were all appointed in their respective posts in the Board of Intermediate and Secondary Education, Rajshahi on the same date with same pay scale (Annexures-A and B respectively). They were all subsequently promoted by the authority concerned in the post of Administrative Officer vide office order dated 07.02.2010 (Annexure-C) having fulfilled required qualifications. Also, vide order dated 27.12.2015 (Annexures-E series) the authority concerned had fixed their pay scale at 7<sup>th</sup> grade of National Pay Scale, 2015 at Tk.29,000-63,410/-.

The terms and conditions of their respective services are being governed by the Service Rules of the Board of Intermediate and Secondary Education, Rajshahi (Annexure-G-1). Rule 2 of the Service Rules of the Board, however, regulates the procedures of filling up the respective posts by direct recruitment and also, by promotion, which are quoted below:

*“Ordinarily appointments of all Officers other than the Chairman shall be advertised and appointments made by Board Lafter obtaining the recommendation of the Selection Committee.*

*50% percent of the permanent vacancies shall be filled up by promotion from the grade next below that in which the vacancies occur When such a permanent vacancy is to be filled up by direct recruitment, it shall be properly advertised in the local news papers.*

*In either case candidates shall have to appear before the Selection Committee for interview. In case of promotion It shall be made on the basis of good record combined with efficiency and seniority in service. The requisite qualifications for the post may be relaxed on the recommendations of the Chairman in favour of the exceptionally meritorious candidate with outstanding ability and experience. But the*

*said relaxation must be approved by the Board. Temporary and casual vacancies in office of the secretary the Controller of Examinations and the Inspector of Colleges for a period of less than one month shall not be filled up; and the work will be carried on by other Officers or Officer as determined by the Chairman. Assistant Secretaries or Assistant Controllers, if asked to undertake the higher responsibilities of one or more of the above Officers will be entitled to an extra remuneration of 20% percent of their substantive pay subject to the approval of the Board.*

*Temporary and casual vacancies in the office of the officers other than the Chairman for a period of one month or more but not exceeding six months shall be filled up by the Chairman by local arrangement subject to the approval of the Board.*

*The term and casual vacancies in the office of officers other than the Chairman for a period exceeding six months shall be filled up by the Board.”*

From a plain reading of the above provision of law, it is apparent that-

- (i) of the total vacant substantive posts 50% percent are to be filled up by direct recruitment and 50% by promotion;*
- (ii) appointment made by Boards are subject to the recommendation of the Selection Committee;*
- (iii) 50% permanent vacancies shall be filled up by promotion from the grade next below;*
- (iv) either in the case of direct requirement or promotion candidates are required to appear before the Selection Committee;*
- (v) good service record coupled with efficiency and seniority shall be the prime consideration for promotion;*
- (vi) requisite qualifications for the respective post(s) may be relaxed on the recommendations of the Chairman for appointment of exceptionally meritorious candidate with outstanding ability and experience; and*
- (vii) in order to fill up temporary and casual vacancies for a period of one month or more by not exceeding 6(six) months*

*shall be filled up the Chairman by local arrangement subject to the approval of the Board.*

In view of Rule 2 of the respective Service Rules, the respondent No.2, the Chairman of the Board vide the impugned office order dated 15.01.2020 (Annexure-J) (wrongly quoted as Annexure-I in the Rule issuing order) gave promotion to 06(six) officers to the respective posts at 5<sup>th</sup> grade at the Pay Scale of Tk.43,000-69,850/- from the respective post(s) of 7<sup>th</sup> grade .

The impugned order dated 15.01.2020 (Annexure-J) is quoted below for ready reference:

### “মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড রাজশাহী

[www.rajshahieducationboard.gov.bd](http://www.rajshahieducationboard.gov.bd)

রাজশাহীশিক্ষাবোর্ড, বাংলা

#### অফিস আদেশ

নম্বর ২০০৫/ সংস্থাপন

তারিখ: ১৫/০১/২০২০

মহামান্য হাইকোর্টের রীট পিটিশন নং-১১৭৪২/২০১২ ও মহামান্য সুপ্রীম কোর্টের আপিলেট ডিভিশনে সিভিল মিসসেলেনিয়াস পিটিশন নং- ১৪৫/২০১৪ এর নির্দেশনা এবং ২৩২, ২৩৪ এবং ২৪১তম বোর্ড সভার সিদ্ধান্ত মোতাবেক গত ২১/০৪/২০১৭ইং তারিখের সিলেকশন কমিটি-১ কর্তৃক প্রস্তুতকৃত মেধা তালিকা হতে মেধার ক্রমানুসারে মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড, রাজশাহীর নিম্নবর্ণিত কর্মকর্তাগণকে তাদের নামের পার্শ্বে উল্লিখিত পদে পরবর্তী বোর্ড সভার অনুমোদন সাপেক্ষে ৪৩,০০০-৬৯,৮৫০/- টাকা বেতন স্কেলে পদোন্নতি প্রদান পূর্বক অস্থায়ীভাবে নিয়োগ প্রদান করা হলো।

এ নিয়োগ আদেশ যোগদানের তারিখ থেকে কার্যকর হবে।

ক্রমিক নম্বর	নাম ও পদবী	পদোন্নতি প্রাপ্ত পদ	প্রদত্ত দায়িত্ব
১.	জনাব মোঃ ফরিদ হাসান উপ-সচিব (চ:দা:)(উপকরনাদি শাখা) (ভাভার)	উপ-পরীক্ষা নিয়ন্ত্রক (জে.এস.সি)	উপকরনাদি
২.	জনাব রুবী উপ-পরীক্ষা নিয়ন্ত্রক (স্ট্রীপ্ট) (চ:দা:)	উপ-পরীক্ষা নিয়ন্ত্রক (স্ট্রীপ্ট)	উপ-পরীক্ষা নিয়ন্ত্রক (স্ট্রীপ্ট)
৩.	জনাব মোহাঃ দুরুল হোদা উপ-সচিব (ভাভার) (চ:দা:)	উপ-সচিব (ভাভার)	উপ-সচিব (ভাভার)
৪.	জনাব মোঃ খোরশেদ আলম সহকারী সচিব (প্রশাসন)	উপ-সচিব (প্রটোকল)	উপ-সচিব (প্রটোকল) ও আইন কর্মকর্তার দায়িত্ব
৫.	জনাব মোঃ নুরজ্জামান সহকারী ক্রীড়া অফিসার	উপ-বিদ্যালয় পরিদর্শক (রেজি:)	উপ-বিদ্যালয় পরিদর্শক (রেজি:)
৬.	জনাব সুলতানা শামীমা আক্তার গণসংযোগ অফিসার	লাইব্রেরি এন্ড ইনফরমেশন ডকুমেন্টেশন অফিসার	লাইব্রেরি এন্ড ইনফরমেশন ডকুমেন্টেশন অফিসার

প্রফেসর ড. মোহা. মোকবুল হোসেন

চেয়ারম্যান

From the above, it is apparent that said order has been issued by the respondent No.2 with reference to the judgment and order dated 11.02.2014 passed by the High Court Division in Writ Petition No. 11742 of 2012, order passed by the Appellate Division in CMP No.145 of 2014 and as per the decisions of the Board taken in its 232<sup>nd</sup>, 234<sup>th</sup> and 241<sup>st</sup> Board meeting on the basis of the merit list prepared by the Selection Committee -1 on 21.04.2017.

The judgment and order dated 11.02.2014 passed in Writ Petition No.11742 of 2012, however, is centering around Memo No.8১১(২০)/১৩/১০৩/ সংস্থাপন dated 30.06.2012 issued by the respondent No.3 giving current charge to the respondent Nos.4-14 in the Class-1 vacant posts of the Secondary and Higher Secondary Education Board, Rajshahi. However, said writ petition was filed at the instance of the respondent No.8 of the instant writ petition and another. After hearing the parties concerned this Court while discharging the Rule categorically found, *inter alia*:

*“Current charge is not a promotion rather some efficient officials are entrusted with functions of vacant posts temporarily and since both the writ petitioners were charged for corruption and misconduct several times in their service tenure, the authority did not consider proper to place them in charge of responsible post.*

*We note that in 226th meeting dated 26.05.2012, the Board of Secondary and Higher Secondary Education, Rajshahi authorized the Chairman of the Board to place persons in current charge of vacant posts and subsequently by order of the Chairman dated 30.06.2012.11 (eleven) persons were placed in current charge of vacant responsible posts on condition that the placement will not be considered as promotion. On 16.05.2012, the Board took a decision about procedure to*

*fill up vacant posts for promotion wherein numbers were fixed for the annual confidential report, educational qualification and examination and viva-voce also. It is vital to note that due to allegations of corruption and misconduct, the authority did not consider the petitioners to be eligible for the posts.*

*In view of the above discussions made hereinbefore, we do not find any merit in this Rule ”*

In the said judgment this Court has also made an adverse remark against the respondent No.8, the petitioner in Writ Petition No.11742 of 2012, who being aggrieved moved the Appellate Division by filing CMP No.145 of 2014 (Annexure-I), which was ultimately disposed of vide order dated 20.02.2014 with “No order”. In other words, the Appellate Division did not interfere with the findings of the High Court Division. Consequently, the findings of the High Court Division that placement in current change was not considered as promotion and that respondent No.8 of the present writ petition was not considered eligible for the post on charge of corruption, remained in operation.

Secondly, in the 232<sup>nd</sup> Board meeting dated 24.04.2014 (Annexure-I-1) following decisions were taken by the Board:

“সিদ্ধান্ত ১৬ : (ক) বিগত ৩০/০৬/২০১২ তারিখ ২১৮/সংস্থাপন স্মারক পত্রের অফিস আদেশটি অত্র সভায় পর্যালোচনা করা হয়। উক্ত অফিস আদেশে মাননীয় চেয়ারম্যান মহোদয় কর্তৃক অত্র বোর্ডের ১১ (এগার) জন দ্বিতীয় শ্রেণির কর্মকর্তাকে তাদের যোগ্যতা ও বোর্ডের সার্বিক স্বার্থ বিবেচনায় ০১/০৭/২০১২ তারিখ থেকে প্রথম শ্রেণির কর্মকর্তা পদে চলতি, দায়িত্ব প্রদান করা হয়। প্রথম শ্রেণির কর্মকর্তা পদে চলতি দায়িত্বপ্রাপ্ত তালিকায় বর্ণিত ১১ জন কর্মকর্তার বিরুদ্ধে শিক্ষা বোর্ডের ২ জন প্রশাসনিক কর্মকর্তা হাইকোর্টে মামলা দায়ের করেন যে মামলা নং- ১১৭৪২, ২০১২। এই মামলায় বাদীগণ উক্ত ১১ জনের প্রথম শ্রেণির পদে চলতি দায়িত্ব প্রদানের মাননীয় চেয়ারম্যানের অফিস আদেশ এবং উক্ত ১১ জনের এ-সম্পর্কিত যোগ্যতা চ্যালেঞ্জ করেন।

আদালত একাধিক শুনানী শেষে গত ১১/০২/২০১৪ তারিখ রীট পিটিশনটি খারিজ করে দেন। এরপর বাদীগণ সুপ্রিম কোর্টের এ্যাপিলেট ডিভিশনে হাই কোর্টের আদেশের উপর নিষেধাজ্ঞা চাইলে আপিলেট ডিভিশন এ ব্যাপারে No Order দেন। অর্থাৎ সুপ্রিম কোর্টের No Order থাকায় এতদ বিষয়ে আদালতে কোন মামলা নাই। আদালতের উক্তরূপ রায় বিবেচনা করলে ধারণা করা যায় যে, প্রথম শ্রেণির পদে চলতি দায়িত্বপ্রাপ্ত উক্ত ১১ জনের ঐ পদে কাজ করার ন্যূনতম যোগ্যতা রয়েছে।

(খ) এই সভা সার্বিক দিক বিবেচনা করে সিদ্ধান্ত গ্রহণ করে যে, বিধিগত জটিলতার কারণে পদোন্নতির লক্ষ্যে সিলেকশন কমিটির সভা দ্রুত আহ্বান করে উক্ত ১১ জনের পদোন্নতি সংক্রান্ত জটিলতা নিরসনের সিদ্ধান্ত সর্বসম্মতিক্রমে গৃহীত হয়।

(গ) এই সময়ের মধ্যে শিক্ষা বোর্ডের চেয়ারম্যান তাদের কাজকর্ম, আচার-আচরণ পর্যবেক্ষণ করবেন।

- (ঘ) অত্র সভায় প্রথম শ্রেণির পদে ১৬/০৫/২০১২ তারিখে প্রণীত পদোন্নতি নীতিমালা অনুমোদন দেয়া হ'ল।
- (ঙ) আরও সিদ্ধান্ত গৃহীত হয় যে, উক্ত ১১টি প্রথম শ্রেণির পদ ছাড়া অত্র শিক্ষা বোর্ডে প্রধান মূল্যায়ন অফিসারসহ অন্য যে কয়টি প্রথম শ্রেণির শূন্য পদ আছে ও থাকবে সে ক্ষেত্রে যোগ্যতাসম্পন্ন প্রার্থীদের মধ্যে থেকে সিলেকশন কমিটির মাধ্যমে দ্রুত বিধিমোতাবেক পদোন্নতি বিষয়ে সিদ্ধান্ত গ্রহণ করা হবে।”

In the 234<sup>th</sup> Board meeting dated 01.11.2014 (Annexure-I-2)

following decision was taken by the Board:

“বিবিধ সিদ্ধান্ত : রাজশাহী শিক্ষা বোর্ডের প্রথম শ্রেণির বিভিন্ন শূন্য পদে চলতি দায়িত্বপ্রাপ্ত কর্মকর্তাসহ অন্যান্য যে সমস্ত প্রথম শ্রেণির শূন্য পদ আছে সে সকল শূন্য পদ পূরণের জন্য সিলেকশন কমিটি-১ পূরণায় আহ্বান করে উক্ত প্রথম শ্রেণির শূন্য পদসমূহ পূরণের সিদ্ধান্ত গৃহীত হয়।”

And, in the 241<sup>st</sup> Board meeting dated 18.03.2017 (Annexure-I-3)

following decision was taken by the Board:

“আলোচ্য বিষয় ২৪: ১ম শ্রেণির শূন্য পদসমূহে পদোন্নতি বিষয়ে আলোচনা ও সিদ্ধান্ত গ্রহণ।

সিদ্ধান্ত : রাজশাহী শিক্ষা বোর্ডের ১ম শ্রেণির পদসমূহ দীর্ঘদিন যাবৎ শূন্য রয়েছে। শূন্য পদসমূহে সিলেকশন কমিটি-১ এর মাধ্যমে বিধি মোতাবেক পদোন্নতি প্রদানের জন্য বোর্ড সভার সদস্যবৃন্দ একমত পোষণ করেন।”

At this juncture, the learned Advocate appearing for the petitioner drawing attention to Annexure-I-4, office order dated 09.07.2017 issued by the Secretary of the Board on behalf of respondent No.2 goes to contend that following the decisions of 232<sup>nd</sup>, 234<sup>th</sup> and 241<sup>st</sup> Board meeting Selection Committee-1 gave recommendation for promotion to the respective candidates on 21.04.2017, which was approved by the Board in its 242<sup>nd</sup> Board meeting dated 10.06.2017 and that said order has been duly acted upon by giving promotion to the respective selected recommended candidates. But prior to issuance of the impugned order dated 15.01.2020 (Annexure-J) neither there was any recommendation of the Selection Committee for giving promotion to the respondent Nos. 4-9 nor there was any approval of the Board to that effect in compliance of Rule 2 of the Service Rules, which is further corroborated from Annexure-N to the affidavit-in-opposition filed by respondent No.2.

In this regard, we have examined the list of recommendation dated 21.04.2017 of the Selection Committee-1 (Annexure-N of the affidavit-in-opposition), which has been relied upon by the respondent No.2 for giving promotion to the respondent Nos.4-9 in the 1st Class posts.

On careful examination of the same it appears that out of 36(thirty six) departmental candidates including respondent Nos.4-9, the name of 9 (nine) candidates were recommended in the list of Selection Committee dated 21.04.2017 for promotion. Ultimately, they were given promotion in the respective posts vide order dated 09.02.2017 (Annexure-I-4). Interesting to observe that in the said list the name of the respondent Nos.4-9 were also enlisted, but they were not recommended for promotion.

Question, thus, remains, when the recommendation of the Selection Committee-1 dated 21.04.2017 has been acted upon by giving promotion to the respective candidates with the approval of the Board as such, basing on the said list dated 21.04.2017 where the names of the respondents concerned were not recommended, can the respondent No.2 give promotion to those respondents on the plea that it is subject to approval of the Board? The simple answer is "No".

Admittedly, subsequent to the list dated 21.04.2017 prepared by the Selection Committee-1, no further list of the Selection Committee has been produced before this Court by the respondent No.2.

Secondly, the earlier list dated 21.04.2017 has already been acted upon by giving promotion to the recommended candidates with the approval of the Board vide order dated 09.02.2019 (Annexure-I-4). Hence, basing the said list giving promotion to the respondent Nos.4-9 by

the respondent No.2 without having recommendation of the Selection Committee is a flagrant violation of Rule 2 of the respective Service Rules.

Thirdly, the respondents concerned who were holding the post of 7th grade, were given promotion to 5th grade, which is a further violation of the said Rule, for, promotion shall be given from the grade next below, as provided under Rule 2. It is further pertinent to observe in this regard that vide said Rule 2, the Chairman of the Board has power to fill up temporary and casual vacancies by local arrangement with the approval of the Board. In other words, permanent vacant posts cannot be filled up by promotion without the recommendation of the Selection Committee and approval of the Board.

Since the impugned order dated 15.01.2020 has been issued without the recommendation of the Selection Committee hence, we have no manner of doubt to find that it has no mandate of law. Rather, said order is a glaring instance of abuse of the administrative power of the respondent No.2. Moreover, because of issuance of the said questionable impugned order the petitioner has been deprived of his right to be considered for promotion.

In view of the above findings that the impugned order of promotion has been issued by the respondent No.2 unlawfully hence, taking the plea that said order having not been acted upon with the approval of the Board and as such, is premature, is nothing but a device being resorted to by the said respondent to cover up the said questionable order which is under challenge in the instant Rule. Accordingly, the submissions so made by the respondents concerned to that effect, falls through.



Last but not the least, this Court while disposing of Writ Petition No.11742 of 2012 made some adverse remarks on respondent No.8 of the present writ petition. In the presence of those remarks giving promotion to the said respondent further taints the impugned order of promotion.

Considering the facts and circumstances and the observations and findings so made above, we find substance in the instant Rule.

In the result, the Rule is made absolute.

The impugned office order vide Memo No.2005/Establishment dated 15.01.2020 issued under the signature of the respondent No.2 promoting the respondent Nos.4 to 9 in 1<sup>st</sup> Class posts and upgrading their pay scale at 5<sup>th</sup> grade of National Pay Scale, 2015 at Tk.43,000-69,850/- in violation of Rule 2 of the Service Rules, 1965 of the Board of Intermediate and Secondary Education, Rajshahi (Annexure-J), is hereby declared to have been passed without lawful authority and hence, of no legal effect.

The Board of Intermediate and Secondary Education, Rajshahi represented by its Chairman is hereby directed to follow the respective Service Rules in strict compliance of law in case of promotion in future to fill up the respective permanent vacant posts of the said Board.

There will be no order as to costs.

Communicate the judgment and order to the respondents concerned at once.

**Muhammad Mahbub Ul Islam, J:**

I agree.