

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. 2463 of 2022**

**In the matter of:**

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

-And-

**In the matter of:**

Suvojit Roy and others

..... Petitioners

Vs.

Bangladesh represented by the  
Secretary, Ministry of Local  
Government, Rural Development & Co-  
operatives, Bangladesh Secretariate,  
Secretariat Bhaban, Ramna, Dhaka and  
others

..... Respondents

Mr. Mohammad Siddique Ullah Miah, Adv

.....for the petitioners

Mr. Kazi Ershadul Alam, Advocate

.... for the respondent No. 3

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

with Ms. Syeda Sabina Ahmed Moli, A.A.G

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

..... for the respondents

**Heard on: 09.02.2023, 14.02.2023,**

**15.02.2023, 01.03.2023, 15.03.2023 and**

**Judgment on: 13.03.2023.**

**Kashefa Hussain, J:**

Supplementary affidavit do form part of the main petition.

Rule nisi was issued calling upon the respondents to show cause as to why the inaction of the respondents to publish viva voce result of the petitioners in the different posts under department of co-operative who had appeared in the viva voce examination on 25.10.2015, 26.10.2015, 27.10.2015 and 28.10.2015 respectively should not be declared to have been done without any lawful authority and is of no legal effect and why the respondents should not be directed to publish viva voce result of the petitioners in the different posts under Department of Co-operative who had appeared in the viva voce examination on 25.10.2015, 26.10.2015, 27.10.2015 and 28.10.2015 respectively and complete the recruitment process as per advertisement (Annexure-A) and/or such other or further order or orders passed as to this Court may seem fit and proper.

The petitioner No. 1 is Suvojit Roy, Son of- Ranadhir Roby and Shikha Roy, of Village-Khansamar Chak, Post Office- Ghoramara, Upazila- Boyalmari, District-Rajshahi, Roll No. Naogaon-178, post-inspector, petitioner No. 2 is Umme Afia, Daughter of- Md. Talebur Rahman and Nur Jahan, of village- Paschim Munshi, Hariya, Post office- Kukutia, Upazila Sreenagar, District- Munshiganj, Roll No. MUnshiganj-11, Post office Assistant-Cum-Computer Operator, petitioner No. 3 is Mst. Bristi Akter, Daughter of- Md. Shohimuddin and Most. Anju Begum, of village- Dhorampur, post office- Dhorampur, Upazila- Godagari, District- Rajshahi, Roll No. Rajshahi-19, post office Assistant, petitioner No. 4 is Md. Atikur Rahman, Son

of Md. Mohammad Ali and Most. Anowara Begum, of village- Modonpur, post office- amtoli, Upazila-Birganj, District- Dinajpur, Roll No. Dinajpur-148, post- Assistant Inspector, petitioner No. 5 Md. Rakib Hassan Khan, Son of Md. Toiyebur Rahman Khan and Most. Rowshanara Khatun, of village- Shitolpur, post office- Kaliganj, Upazila- Kaliganj, District- Satkhira, Roll No. Satkhira-10, post on – The Spot Investigator, petitioner No. 6 is Md. Al Imran (Rana), Son of Md. A. Rahman and Most. Rehena Khatun, of House No. 253, Road No. 2 Section-12, Block-Ta, Post office- Mirpur-1216, Pallabi, Dhaka City corporation, Dhaka, Roll No. Dhaka 223, post- Assistant Inspector petitioner No. 7 is Md. Bipul Mia, Son of A Rashid and Nurjahan Begum, of village- Char Para, Swalpa Dugia, post office- Charpara, Upazila-Netrokona Sadar, District- Netrokona, roll No. NHetrokona-31, psot- Assistant Inspector, petitioner No. 8 is Mohammad Ashfak Hossain, Son of Md. A. Baten and Nurjahan Begu, of House No. 253, Road-2, Section 12, Block-Ta, post office Mirpur-1216, Pallabi, Dhaka North City Corporation, Dhaka Roll No. Dhaka 257, post- Inspector, petitioner No. 9 is Sree Debashish Shaha, Son of Sree Gopal Shaha and Sreemoti Adori Rani, of village – Ghasigram, Post office- Gocha, Upazila- Mohanpur, District- Rajshahi, Roll No. Rajshahi-02 Post- Assistant Inspector, petitioner No. 10 is Md. Mominur Rahman, Son of Md. Kholilur Rahman and Most. Momena Begum, of village- Babur Hat, Post office – Dimla, Upazila-Dimla, District- Nilphamari, Roll No. Nilphamari-10, post- Office Assistant-Cum-Computer Operator, petitioner No. 11 is Md. Tutul Hossain, Son

of Md. Arshed Molla and Most. Romena Khatun, of village- Kalaichara, Post office- Santhi, Upazila- Santhia, District- Pabna, Roll No. Pabna-01, Post- Assistant Inspector, petitioner No. 12 is Md. Shamim Mia, Son of Md. Shanu Bepari and Konok Akter, of House No. 6/Ka/2/3, Senpara Rehabilitation Area, Paschim Senpara Parboti, Post Office- Mirpur-1216, Mirpur, Dhaka North City Corporation, Dhaka, Roll No. Patuakhali-252, Post-Assistant Inspector, petitioner No. 13 is Pulin Chandra Das, Son of Narayan Chandra Das and Chaya Rani Dasm, Hosue No. 053, Master Para Sarak, Post Office- Lalmohan, Upazila- Lalmohan, District- Bhola, Roll No. Bhola-141, Post- Assistant Inspector, Petitioner No. 14 is Md. Abdul Hakim, Son of Md. Haider Ali and Hasna Begu, of village- Bagunta, Post Office Rajafair, Upazila- Ghatail, District- Tangail, Roll No. Sunamganj- 75, Post- Assistant Inspector and petitioner No. 15 is Most Rasheda Khatun, Daughter of Md. Solaiman Ali and Most Fazilatun Nesa, village- Joypur (Master Para) P/O- Supahar-6560, Upazila- Supahar, Naogaon, Roll No. Nayagaon-83, Post- Inspector.

The respondent No. 1 is Bangladesh, represented by the Secretary, Ministry of Local Government, Rural Development & Cooperatives, Bangladesh Secretariat, Secretariat Bhaban, Ramna, Dhaka, respondent No. 2 is Registrar & Director General, Department of Cooperatives (DOC), Samabye Bhaban, F-10, Agargaon Civic Sector, Sher-E-Bangla nagar, Dhaka-1207, respondent No. 3 is Additional Registrar (Administration, HRM & Finance) & Addl. Charge (EPP), Department of Cooperatives (DOC), Samabye Bhaban,

F-10, Agargaon Civic Sector, Sher-E-Bangla Nagar, Dhaka-1207, respondent No. 4 is Deputy Registrar (Admin), Department of Cooperatives (DOC), Samabye Bhaban, F-10, Agargaon Civic Sector, Sher-E-Bangla Nagar, Dhaka-1207.

The petitioner's case inter alia is that the respondent No. 4 invited application for the 03 (three) post of different posts under Department of Cooperative vide notification No. 47.061.0000.004.011.08/14-ji-2152-A/o dated 24.12.2014 published in the Daily Samokal dated 27.12.2004. Terms and conditions settling the qualification of the applicants were stated in the advertisement.

That the petitioners being qualified candidates and also being permanent resident of different districts responding to the advertisement applied for the post online. Accordingly admit cards were issued in the name of the petitioner.

That the petitioners took part in the written test and being successful in the written examination for the different posts under department of cooperative written result was published in the internet evaluating written result with the Roll Nos.

That the petitioners were called for viva voce and issued viva voce admit card for the post of different posts under department of cooperative mentioning their roll nos in the said admit cards.

That the petitioners appeared for viva voce exam in the different posts under Department of Cooperative, exam was held on 25.10.2015, 26.10.2015, 27.10.2015 and 28.10.2015 but the viva voce result has not been published yet.

That neither the viva voce result nor any order has been published nor issued by the respondents yet and the same has not been cancelled by the respondents as yet.

That while the viva voce result is pending, the respondent No. 3, the Deputy Registrar (Admin), Department of Cooperatives (DOC) published vides Memo No. 47.061.0000.004.011.019.2016-ji-300-A/O dated 16.02.2017 inviting application in the different posts under Department of Co-operative published Daily Janokantha dated 18.02.2017, in a discriminating and arbitrary manner and thereby violating the petitioner's fundamental right to equal opportunity guaranteed under the constitution.

That the recruitment procedure under vides Memo No. 47.061.0000.004.011.019.2016-ji-300-A/O dated 16.02.2017 has not been completed. That the petitioner contacted the respondents on various occasions and also requested the respondents to take necessary measures to publish viva voce result of the petitioners who appeared for different posts under Department of Cooperative and thereby consider them to be appointed in the posts if they are qualified as per appointment circular (নিয়োগ বিজ্ঞপ্তি) vide notification No. 47.061.0000.004.011.08/14-ji-2152-A/O dated 24.12.2014 published in the daily Samokial dated 27.12.2014 before any other recruitment. But the respondents did not take any appropriate measures and on 10.11.2021 filed an application to the respondent No. 2 to take necessary measures to publish viva voce result of the petitioners who

appeared in the different posts under Department of Cooperative but no response.

That the inaction and failure of the respondents to publish viva voce result of the petitioners who appeared in the different posts under Department of Cooperative, exam held on 25.10.2015, 26.10.2015, 27.10.2015 and 28.10.2015 respectively pursuant to the appointment circular (নিয়োগ বিজ্ঞপ্তি) vide notification No. 47.061.0000.004.011.08/14-ji-2152-A/O dated 24.12.2014 published in the daily Samokal dated 27.12.2014 in a discriminating and arbitrary manner and thereby violating the petitioner's fundamental right to equal opportunity guaranteed under the constitution.

That the petitioner took part in the written test and being successful in the written examination for the different posts under Department of Cooperative and written result was published in internet evaluating written result with the Roll Nos. but the viva voce result has not been published which is illegal and without lawful authority.

That the petitioner passed the written examination and they appeared for viva voce exam, exam held on 25.10.2015, 26.10.2015, 27.10.2015 and 28.10.2.015 but the result has not been published yet which is illegal, with malafide intention and without lawful authority. Being aggrieved by the malafide and arbitrary conduct of the respondents all these writ petitioners filed the instant writ petition.

Learned Advocate Mr. Mohammad Siddique Ullah Miah appeared on behalf of the petitioners. While learned advocate Mr.

Kazi Ershadul Alam appeared for the respondent No. 3, Learned Deputy Attorney General Mr. Noor Us Sadik Chowdhury with Ms. Syeda Sabina Ahmed Moly, A.A.G, Ms. Farida Parvin Flora, A.A.G. appeared for the Respondents.

Learned Advocate for the petitioners submits that the conduct of the respondents have been repeatedly illegal and without lawful authority which needs interference. He submits that it is admitted by documents by way of annexures that the petitioners successfully passed the written examination prior to viva voce examination. He contends that however the respondents most arbitrarily refrained from publishing the result of the viva voce examination. He agitated that it is a basic fundamental right of the petitioners to be apprised of the result of viva voce examination. He submits that however the petitioners never obtained the result of the viva voce examination till date. He submits that the petitioner's right to be apprised of the result of viva voce falls within the doctrine of legitimate expectation also. He continues that it is needless to state that any examinee or candidate must be apprised of his result knowing which is also his fundamental right.

He next submits that the respondents committed further illegality by cancelling the নিয়োগ বিজ্ঞপ্তি dated 24.12.2014 by cancellation order dated 26.06.2016. He points out to annexure-A and submits that annexure-A dated 24.12.2014 the নিয়োগ বিজ্ঞপ্তি pursuantly all these petitioners including others made application for the posts. He submits that such unlawful cancellation of the নিয়োগ বিজ্ঞপ্তি which



the respondents themselves issued, cancelling the same without citing substantive reason is totally without lawful authority. He submits that however the petitioners themselves cancelled the cancellation order on 22.08.2019 which is Annexure-L. From annexure-L of the supplementary affidavit he points out that the respondents themselves cancelled the earlier cancellation order. He submits that therefore the original নিয়োগ বিজ্ঞপ্তি was again restored by the respondents by order dated 22.08.2019 by way of annexure-L and therefore it is the respondents' duty to publish the viva voce examination and continue pursuant to the restoration order of the original নিয়োগ বিজ্ঞপ্তি dated 24.12.2014. He takes us to annexure-G1 of the writ petition wherefrom he shows us that the petitioners have made applications by way of reminders to the respondents to consider their case but however the respondents have been showing totally whimsical and arbitrary inaction till date. He reiterates that such arbitrary conduct of the respondents by not publishing the viva voce result followed by the subsequent conduct of the respondents also show totally whimsical attitude, not acceptable and is violative of the fundamental rights of the petitioner guaranteed under the Constitution. He concludes his submissions upon assertion that the Rule bears merit and ought to be made absolute for ends of justice.

On the other hand learned Advocate Mr. Kazi Ershadul Alam upon filing an affidavit in opposition appears for the respondent No. 3 and opposes the Rule. Upon a query from this bench regarding the restoration of the original নিয়োগ বিজ্ঞপ্তি dated 24.12.2014 he takes us to

annexure-4. From annexure-4 he points out that although the cancellation order was eventually restored by annexure-L of the supplementary affidavit dated 22.08.2019 but however the respondents again on 17.05.2021 cancelled the restoration order dated 22.08.2019. He submits that therefore the restoration order of the original নিয়োগ বিজ্ঞপ্তি dated 24.12.2014 is not in effect anymore.

Upon further query from this bench he submits that although some নিয়োগ বিজ্ঞপ্তি were issued pursuantly after cancellation of the original নিয়োগ বিজ্ঞপ্তি annexure-A however such নিয়োগ বিজ্ঞপ্তি also remains suspended for the time being. He further argues that the Rule is infructuous since the original নিয়োগ বিজ্ঞপ্তি itself has been cancelled. He concludes his submissions upon assertion that the Rule bears no merit and ought to be discharged for ends of justice.

We have heard the learned counsels from both sides, perused the materials. It is admitted that the petitioners passed the written examination following the নিয়োগ বিজ্ঞপ্তি dated 24.12.2014. It is also admitted that all these petitioners appeared in the viva voce examination. Evidently the result of the viva voce has not been published till date. It also appears that the নিয়োগ বিজ্ঞপ্তি dated 24.12.2014 annexure-A was cancelled by the respondents by way of annexure-1 of the affidavit in opposition dated 26.06.2016. However such cancellation order was again cancelled by annexure-L of the supplementary affidavit. Eventually this order was also cancelled and the original নিয়োগ বিজ্ঞপ্তি was again cancelled by annexure-4 of the affidavit in opposition.

Upon overall assessment of the facts of this writ petition it appears that the respondents' conduct in this matter has been continuously inconsistent. They have been cancelling and restoring their own orders repeatedly and upon their own whims. We do not find anything from the materials which can indicate that the respondents cited any adequate nor any satisfactory reason for such inconsistent conduct.

Although it is true that generally the policy of the executive ought not to be interfered with but however there may be exceptions to the general Rule. Our considered view is that this case falls within such exception. It has been brought to our notice here that the authorities have been behaving totally arbitrarily and whimsically.

It is our considered view that the respondents by their conduct cancelling and restoring orders have been showing total high handedness and condescending attitude which is not acceptable nor desirable. Furthermore it is also our considered view that in pursuance of any examination that any person may have appeared in it is his/her fundamental right and legitimate expectation to be apprised of his/her result. However the respondents till date have been refraining from publishing the viva voce result.

The respondents controvert such argument by citing annexure-A which is the নিয়োগ বিজ্ঞপ্তি। The learned advocate for the respondents took us to serial No. 13 of the শর্তাদি in annexure-A. He submits that the শর্তাদি mentioned in annexure-A contemplates that it is within the

respondents' authority to cancel or suspend any appointment procedure if they find it necessary.

Serial No. 13 of the নিয়োগ বিজ্ঞপ্তি annexure-A is reproduced below: “বিজ্ঞপ্তিতে উল্লিখিত পদসংখ্যা হ্রাস বা বৃদ্ধি করা এবং যে কোন কারণে নিয়োগ প্রক্রিয়া স্থগিত/ বাতিল করার অধিকার কর্তৃপক্ষ সংরক্ষন করেন।”

Our anxiety arises from the condition remarked as “যে কোন কারণে নিয়োগ প্রক্রিয়া স্থগিত/ বাতিল করার অধিকার কর্তৃপক্ষ সংরক্ষন করেন।” We are of the considered view that such condition is not consistent with the provisions of fundamental rights of any person as guaranteed under the Constitution. The respondents cannot without assigning satisfactory reason cancel any procedure and such conduct is in violation of the fundamental rights of the candidates.

It is reiterated that to be apprised of the result of the viva voce examination or any other examination is the petitioner's and any other persons' fundamental rights guaranteed by the constitution. Whether the petitioners are successful or whether the petitioners are unsuccessful in the examination whatsoever, it is their fundamental right to be apprised of their result in the viva voce examination or any other examination.

The learned advocate for the respondents upon a query from this bench replied that although other নিয়োগ বিজ্ঞপ্তি was issued but however those are also suspended.

Upon overall assessment of the matter, we are of the considered view that ends of justice would be best served if a direction is issued

upon the respondents to publish the viva voce result and also issue a fresh নিয়োগ বিজ্ঞপ্তি again within the shortest possible time.

Under the facts and circumstances we are inclined to dispose of the Rule with observations and directions.

In the result, the Rule is disposed of with directions and observations. The respondents are hereby directed to publish the result of the viva voce examination dated 25.10.2015 within a period of 60 days without further delay. The respondents are also directed to restore the নিয়োগ বিজ্ঞপ্তি annexure-A dated 24.12.2014 and appoint eligible candidates to the post in accordance with the relevant laws and Rules.

Communicate this judgment at once.

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**(Kashefa Hussain, J)**

I agree.

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**(Kazi Zinat Hoque, j)**

Shokat (B.O)