

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

WRIT PETITION NO. 9409 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:

Abdul Kader

.....Petitioner

-VERSUS-

The Government of the People's Republic of
Bangladesh, represented by the Secretary of Water
Resource Ministry and others

..... Respondents

Mr. Dewan Md. Abu Obyed Hossain, Advocate

..... For the Petitioner

Mr. Mohammad Waliul Islam Oli, D.A.G. with

Mr. Md. Ershadul Bari Khandakar, D.A.G.

Ms. Nilufar Yesmin, A.A.G.

Mr. Md. Moshir Rahman (Rahat), A.A.G.

Mr. Md. Motasin Billah Parvez, A.A.G. and

Mr. Md. Faridul Islam, A.A.G.

.....For the Respondents

Mr. Sk. Shaifuzzaman, Advocate

.....For the Respondent No. 2.

Present:

Mr. Justice Sashanka Shekhar Sarkar

And

Justice Urmee Rahman

Heard and Judgment on 14.01.2026.

Urmee Rahman, J:

In the instant matter a Rule Nisi was issued on an application under Article 102 of the Constitution of the People's Republic of Bangladesh in the following terms:

“This Court doth order and do issue a Rule Nisi calling upon you the aforesaid respondents to show cause on or before the 13th day of September, 2022 as to why the refusal of the respondents vide Memo No. 42.01.0000.030.11.007. 19-800 dated 30.06.2022 under the signature of the respondent No. 5 (Annexure-G-2) for publishing the result of viva-voce examination dated 13.12.2017 of the petitioner bearing Roll No. 21006 in the vacant post of Accounts Officer/Assistant Director (Accounts) of Bangladesh Water Development Board (BWDB) should not be declared to have been made without lawful authority and is of no legal effect and as to why the respondents should not be directed to publish the aforesaid result of the viva-voce dated 13.12.2017 in respect of the vacant posts of the Accounts Officer/Assistant Director (Accounts) of Bangladesh Water Development Board (BWDB) and/or such other or further order or orders passed as to this Court may seem fit and proper.”

Relevant facts necessary for disposal of the instant Rule, in short, are that, Bangladesh Water Development Board (BWDB) published an appointment circular on 31.10.2016 for direct recruitment in some vacant posts of Accounts Officer/ Assistant Director (Accounts) and Audit Officer. Accordingly the petitioner applied for the post on 15.11.2016 having requisite qualifications as per the circular. Admit Card was issued in his name bearing Roll no. 21006 for appearing in the written examination; the written test was held on 05.08.2017 and he being qualified was called for viva-voce on 13.12.2017. Accordingly, he appeared before the viva board on that day. In the meantime one K.M. Tariqul Alam, Accounts Officer (current charge), Directorate of

Accounts, Bogra Regional Accounts Centre, Bangladesh Water Development Board, Bogra and eight others of the same office filed Writ Petition No. 13783 of 2017 before the High Court Division challenging the aforesaid direct recruitment circular dated 31.10.2016 with a prayer for direction to reserve 50% posts of existing 17 vacant posts for recruitment through promotion and obtained a Rule. The present petitioner got himself added in that writ petition as respondent no. 10 by filing an application for addition of party. At the time of hearing the Rule, the writ petitioners prayed for non-prosecution of the Rule on 25.08.2020 and the Rule was discharged for non-prosecution. Thereafter the present petitioner communicated that order of the Court to the respondents informing that since no case is pending in this regard, they can proceed with the earlier direct recruitment procedure. He also filed an application on 16.06.2021 to the respondent no. 2 i.e. the Director General of BWDB, who is the main authority for conducting the direct recruitment process, however with no result. Being aggrieved the petitioner filed writ petition no. 6170 of 2021 and obtained a direction on 19.07.2021 upon the respondents to dispose of the aforesaid application. The respondent no. 5 has disposed of the said application by its impugned memo dated 30.06.2022 refusing the petitioner's claim; hence the writ petition.

Learned Advocate Mr. Dewan Md. Abu Obyed Hossain appeared on behalf of the petitioner. Learned Advocate submitted that since there was no order of stay of the direct recruitment process in the earlier writ petition no. 13783 of 2017, the respondents were under a legal duty to

publish the result of the viva voce taken on 13.12.2017. By referring to the impugned letter dated 30.06.2022 (Annexure G-2) issued by Md. Sajjad Hossain, the Superintendent Engineer, Human Resource Development Department, BWDB, Dhaka, the learned advocate submitted that, in that letter it was stated that, “মহামান্য হাইকোর্ট বিভাগে দায়েরকৃত রীট পিটিশন নং ১৩৭৮৩/২০১৭ এর উপর মহামান্য আদালত কর্তৃক ৩১/১০/২০১৬ খ্রিঃ তারিখের নিয়োগ বিজ্ঞপ্তিতে উল্লেখিত ১৭টি পদের ৫০% অর্থাৎ ৯টি পদ পদোন্নতির মাধ্যমে পূরণের নির্দেশনা থাকায় তদানুযায়ী ব্যবস্থা নেয়া হয়েছে”। Learned advocate argued that this explanation was not proper since there was no such direction by the High Court Division because ultimately the Rule was non-prosecuted. As such the wrong interpretation having been given, the impugned decision is liable to be declared without any lawful authority and of no legal effect.

He also submitted that meanwhile the government service entry age of the petitioner has already been over and if the result of the viva voce, in which the petitioner successfully appeared, is not published by the respondents, he shall suffer irreparable loss and injury. Therefore, he prayed that, as the petitioner has not been treated in accordance with law in violation of his fundamental right, the Rule issued in the instant writ petition may be made absolute upon directing the respondents to publish the viva voce result in accordance with law.

Learned Advocate Mr. Sk. Shaifuzzaman, appeared on behalf of the Respondent no. 2 i.e. the Director General of the Bangladesh Water Development Board. He strongly opposed the Rule by filing an affidavit in opposition.

Upon placing the affidavit in opposition, learned advocate submitted that, the allegations brought by the petitioner involve serious disputed question of facts which cannot be resolved in summary jurisdiction as such the writ petition is not maintainable as per the decision in the case of *Superintendent Engineer, RHDS and others Vs. Md. Eunus and Brothers (private) Limited and others reported in 31 BLD (AD) 1*. Learned Advocate then argued that, after issuance of the Rule in Writ Petition no. 13783 of 2017, 50% posts were reserved as per the order of the Court and subsequently filled up by promotion and the rest 50% posts were also filled up by direct recruitment from the candidates who succeeded in both written and viva voce examination by the office order dated 24.07.2018 and 18.03.2019. The petitioner made the application on 16.06.2021 requesting publishing the result and the said application was disposed of through Board meeting dated 10.05.2022 and the decision was communicated to the petitioner on 12.10.2021 and 30.06.2022. Learned Advocate submitted that due process of appointment has been complied with by the BWDB and the process is completed regarding the circular dated 31.10.2016 by appointing 12 eligible candidates by the office order dated 24.07.2018 and 18.03.2019. Therefore he prayed that in the given circumstances the instant Rule is liable to be discharged.

Heard the learned Advocates for the petitioner as well as for the Respondent no. 2 and perused the writ petition, the supplementary

affidavits, the affidavit in opposition and all the documents annexed therewith.

It appears from the record that after issuance of the Rule on 16.08.2022, the petitioner filed another application on 29.12.2022 praying for stay operation of the recruitment circular dated 23.12.2022 published by the respondents in the post of Account Officer/ Assistant Director (Accounts, Finance and Audit). By the order dated 10.01.2023 the application was allowed and respondent no. 5 was directed to keep vacant 01 post for the petitioner in the posts of Accounts Officers/Assistant Director (Accounts, Finance and Audit), Bangladesh Water Development Board. Challenging the order, the BWDB authority filed Civil Petition for Leave to Appeal No. 1224 of 2023 and obtained an order of stay from the Hon'ble Judge in Chamber on 26.04.2023. This C.P. was disposed of the by the Appellate Division on 02.06.2024 with a direction to dispose of the Rule on merit by the High Court Division expeditiously; however the order of stay granted earlier by the Hon'ble Judge in Chamber shall continue till disposal of the Rule. Thereafter the matter has been fixed before this Bench for hearing.

It appears from the record that earlier Writ Petition no. 13783 of 2017 was filed challenging the recruitment circular dated 30.06.2016, in which the present petitioner participated, with a prayer for reserving 50% posts for recruitment through promotion. Rule was issued on 08.10.2017 with a direction that, "Pending hearing of the Rule the Respondents are

directed to reserve ½ (50%) posts of Accounts Officers of Bangladesh Water Development Board for promotion (Annexure-E)”.

It appears from Annexure ‘M’ to the supplementary affidavit filed by the petitioner that, by the memo dated 12.10.2021 the Joint Secretary, Additional Director General (Administration) BWDB informed the Senior Secretary of Ministry of Water Resource to the effect that, after issuance of the Rule in Writ Petition No. 13783 of 2017 with a direction to reserve 50% posts for recruitment by promotion, the BWDB authority in compliance with the said order reserved 9 posts out of 17 posts for promotees and completed the recruitment procedure for the rest 8 posts from the eligible candidates, who appeared in the viva voce. The recruitment process was completed by the office orders dated 24.07.2018 (preliminary) and 18.03.2019 (final) (Annexure-P to the supplementary affidavit). Subsequently the Rule issued in Writ Petition no. 13783 of 2017 was discharged for non-prosecution by the order dated 25.08.2020. Accordingly the reserved 9 posts became open for direct recruitment again.

The recruitment process started in 2016, when the government quota system was applicable and in the preliminary recruitment list dated 24.07.2018 the government quota system was followed. Later in 04.10.2018, Ministry of Administration issued another circular abolishing the quota system in case of direct recruitment of first and second class officers under 9th grade and decided to make appointment on the basis of merit only. The post of Accountants/ Assistant Director (Accounting) is a

first class post under 9th grade. By the memo dated 12.10.2021 (Annexure-M) the Deputy Secretary sought for opinion from the Ministry of Law as to whether they should follow the quota system or not in recruiting these 9 vacant posts, which have become open for direct recruitment by virtue of the order of the High Court.

The Ministry of Law by the memo date 13.04.2022, as evident from Annexure-O to the supplementary affidavit, opined that, given the fact that this recruitment circular was issued before the abolition of the quota system, any recruitment under this circular should follow the system which was prevailing at that relevant time; furthermore in case of the 8 direct recruited officers, who were selected on 24.07.2018, the quota system as prevailing at that time was followed. Therefore the Ministry of Law confirmed that there is no legal bar in following the quota system in recruiting the rest 9 posts in terms of the circular dated 31.10.2016.

Thus it is admitted position that, till 13.04.2022 no appointment order has been issued by the authority for direct recruitment in those 09 posts. After receiving the opinion from the Ministry of Law, the respondent no. 2 ought to have finalized the recruitment procedure in the said 09 posts.

From Annexure-5 to the Affidavit in Opposition, which is a minutes of the selection committee dated 10.05.2022, it transpires that a meeting was held to dispose of the application dated 16.06.2021 submitted by the petitioner as per the direction made in Writ Petition No. 6170 of 2021. It appears that in that meeting it was decided that since

recruitment in those earlier reserved 09 posts have already been made, there is no scope to consider the petitioner's application for direct recruitment. In decision no. 4 it was stated that, “ ঙ। স্মারক নং ৪২.০০.০০০০.০৩১.১১.০৫৮.১৬.৯৪: তারিখঃ ১৫/০৫/২০২১ খ্রিঃ মোতাবেক মন্ত্রণালয়ের অনুমোদন প্রাপ্ত সরাসরি নিয়োগ কোটায় নিয়োগযোগ্য পদ সমূহ যথাশীঘ্র পূরণের ব্যবস্থা গ্রহণ করা যেতে পারে।”

Accordingly on the basis of this decision the impugned memo dated 30.06.2022 (Annexure G-2) was issued to the petitioner finally disposing of his representation dated 16.06.2021 in the following terms:

“মহামান্য হাইকোর্ট বিভাগে দায়েরকৃত রীট পিটিশন নং ১৩৭৮৩/২০১৭ এর উপর মহামান্য আদালত কর্তৃক ৩১/১০/২০১৬ খ্রিঃ তারিখের নিয়োগ বিজ্ঞপ্তিতে উল্লেখিত ১৭টি পদের ৫০% অর্থাৎ ৯টি পদ পদোন্নতির মাধ্যমে পূরণের নির্দেশনা থাকায় তদানুযায়ী ব্যবস্থা নেয়া হয়েছে। ”

If the minutes of the selection committee dated 10.05.2022 and the impugned memo dated 30.06.2022 are read together, it transpires that these two statements are not consistent with each other. In the minutes it has been stated that, “সংরক্ষিত ৯ টি পদ ইতোমধ্যে পূরণ করা হয়েছে।ফলে জনাব আবদুল কাদের এর সরাসরি নিয়োগের জন্য আবেদন বিবেচনার সুযোগ নেই।” On the contrary, it has been stated in the impugned memo that, “...৯টি পদ পদোন্নতির মাধ্যমে পূরণের নির্দেশনা থাকায় তদানুযায়ী ব্যবস্থা নেয়া হয়েছে। ” We have already found from the discussion hereinabove that these 9 posts are to be fulfilled by direct recruitment in pursuant to the High Court's Order, which has been further clarified by the Ministry of Law in its memo dated 13.04.2022

(Annexure-O). There is no scope to make recruitment in those 09 (nine) posts by way of promotion. Before direct recruitment in these 09 (nine) posts, the respondents would have to publish a preliminary result followed by a final result; however no such results have been produced before us by the respondents. In the affidavit in opposition some appointment orders have been annexed (Annexure 7-10) wherein some accounting officers have been appointed by way of promotion; however all those orders are prior to 2022 (except one of annexure-10), which makes it obvious that these appointments are not connected with the appointments in the said 09 posts.

Learned Advocate for the petitioner submitted that there are still some vacant posts available for recruitment.

In the given circumstances and in view of the facts and discussions made hereinabove we have arrived at the finding that the impugned memo dated 30.06.2022 (Annexure G-2) has been issued on the basis of a wrong interpretation and is misconceived and therefore is set aside for being without any lawful authority. The respondent no. 2 is under a legal obligation to publish the result for direct recruitment in those 09 posts in terms of circular dated 31.10.2016.

Considering the fact that the recruitment process started on 31.10.2016 i.e. long nine years ago, we are of the view that justice would be better served if the Rule is disposed of with direction to publish the full result for direct recruitment in the 09 remaining posts within 30 days of receiving this order and, in doing so, to take into consideration the

qualification of the present petitioner that he had when the recruitment process started.

Accordingly, the Rule is disposed of with direction.

However, there is no order as to costs.

Let a copy of this judgment and order be communicated to the concerned authorities concerned at once.

Justice Sashanka Shekhar Sarkar, J:

I agree.