

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. 10003 of 2020

with

Writ Petition No. 10427 of 2020

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 Latif Helaly son of Mojammas
Kalu Mia, Chief Engineer(Current
Charge), Rajdhani Unnayan
Kattripokko, RAJUK Bhaban, Dhaka.
..... Petitioner.

Vs.

Government of Bangladesh and
others.

.....Respondents.

Mr. Md. Salahuddin Dolon, Senior Advocate

with Mr. Muhammad Mizanur Rahman, Advocate

with S.M. Mahidul Islam Sajib, Advocate

with Ms. Shamsun Nahar Nely, Advocate

with Mr. Md. Tofayal Ahmad, Advocate

with Ms. Umme Aiman Jarib, Advocate

.....for the petitioner

Mr. Imam Hasan , Advocate

.... for the respondent No. 2

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

with Ms. Sayeda Sabina Ahmed Moli A.A.G

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

... for the respondent No. 1

Mr. Md. Lutfur Rahman, Advocate

with Mr. M. Nazrul Islam Khandaker, Advocate
with Mr. Mohammad Anwarul Islam, Advocate
... respondent No. 4

**Heard on: 27.11.2022, 28.11.2022, 08.01.2023,
09.01.2023 and judgment on: 11.01.2023.**

Kashefa Hussain, J:

These two Rules are taken up together since they involve similar questions of law and fact and therefore are now being disposed of by a single judgment.

Rule was issued in Writ Petition No. 10003 of 2020 in following terms:-

“Rule nisi was issued calling upon the respondents to show cause as to why the Memo No. 25.39.0000.009.12.147G (3).14.3099 dated 10.12.2020 issued by the respondent No. 3 (Annexure-F) should not be declared to have been made without lawful authority and is of no legal effect and/or pass such other and further order or orders passed as to this Court may seem fit and proper.”

Rule was issued in Writ Petition No. 10427 of 2020 in following terms:-

“Rule nisi was issued calling upon the respondents to show cause as to why they should not be directed to consider the promotion of the petitioner to the post of Chief Engineer, RAJUK with retrospective effect from the date of his eligibility as he has fulfilled the requisite qualifications prescribed in the Rajdhani Unnayan Kattripokko (Officers and Employees) Service Rules, 2013, should not be passed and/or pass such other and further order or orders passed as to this Court may seem fit and proper.”

For purpose of disposal of these two writ petitions for sake of convenience we are inclined to draw upon Writ Petition No. 10427 of 2021.

The petitioner Abdul Latif Helaly son of Mohammad Kalu Mia, Chief Engineer (Current Charge), Rajdhani Unnayan Kattripokko, RAJUK Bhaban, Dhaka is a citizen of Bangladesh.

The respondent No. 1 is the Secretary, Ministry of Housing and Public Works, Bangladesh Secretariat, Dhaka-1000, the respondent No. 2 is the Chairman, Rajdhani Unnayan Kattripokko, RAJUK Bhaban, Dhaka, the respondent No. 3 is the Director (Admin), Rajdhani Unnayan Kattripokko, RAJUK Bhaban, Dhaka and the respondent No. 4 is Ujjal Mollick, Superintending Engineer, Purtho Circle-3, Rajdhani Unnayan Kattripokko, RAJUK Bhaban, Dhaka.

The petitioner's case inter alia is that the petitioner joined the Rajdhani Unnayan Kattripokko (RAJUK) (Hereinafter referred to as "the Department") as Assistant Engineer on 19.10.2000 and since then he has been discharging his duties with the highest satisfaction of the department till date with legal as well as legitimate expectation to be promoted to the highest post of the department. That due to satisfactory / extraordinary performance and for his unblemished service records the petitioner was promoted to the post of Executive Engineer vide an order dated 06.07.2006 and Superintendent Engineer on 12.11.2013 and accordingly he had joined in the said post on the same date and since then he had been discharging his duties with the highest satisfaction of the authority. That to govern and prescribe the terms and conditions of the services of the petitioner the Government

promulgated the RajdhaniUnnayan Kattripokko (Officers and Employees) Service Rules, 2013 vide SRO No. 294-Ain/2013 which was also notified in the official gazette dated 04.09.2013. It is further stated that in the Rules of 2013 it has been prescribed that the post of Chief Engineer would be filled up by way of promotion from amongst the Superintendent Engineer having 05(five) years experience or by way of deputation or by direct recruitment. That for making regular promotion of the officers and employees of RAJUK a gradation list was approved of by the concerned authority on 31.07.2019. It is inescapably evident from Serial-4 of the aforesaid gradation list dated 31.07.2019 that the petitioner stands in Serial 3 of the gradation list and on the other hand the Respondent No. 4 stands in Serial-5. That after fulfilling the requisite qualifications under the Rule of 2013 the petitioner and another made application to the Ministry of Housing and Public Works for making promotion to the post of Chief Engineer and accordingly the concerned Ministry vide memo dated 18.03.2019 directed the RAJUK to promote the petitioner to the post of Chief Engineer on current charge. It is further stated that in pursuance of the aforesaid memo, the petitioner was given current charge of Chief Engineer on 21.03.2019 and he had joined on 25.03.2019. That while the petitioner have been discharging the functions of Chief Engineer on current charge with the highest satisfaction of the concerned ministry, all on a sudden the Respondent No. 4 vide memo No. 25.39.0000.009.12.147 G (3). 14.3099 dated 10.12.2020 released the petitioner from the post of Chief Engineer and in his place the respondent No. 4 i.e. Mr. Ujjal Mollick was given current charge

without assigning any reason and without approval of the Administrative Ministry. That the instant memo No. 10.12.202025.39.0000.009.12.147G (3).14.3099 dated 10.12.2020 is illegal, arbitrary, malafide and without jurisdiction inasmuch as the respondent No. 3 have no legal authority to act beyond the direction of the respondent No. 4. Because it is clearly evident from the memo dated 18.03.2019 that the Administrative Ministry directed the RAJUK to give current charge of Chief Engineer to the petitioner who is senior to the respondent No. 4 in the gradation list therefore, it cannot pass an order overriding the decision of the higher authority and replace a senior officer by a junior officer. Therefore from the aforesaid order it clear that the respondents would never promote the petitioner if they are not mandated by an order of the court. That the petitioner has all the requisite qualifications to be promoted to the post of Chief Engineer which post he has been holding on current charge for almost two years. As such he is entitled to be considered for promotion to the post of Chief Engineer in accordance with law. That the petitioner is the senior most Superintendent Engineer and he was given current charge on 21.03.2019 taking into consideration his seniority, unblemished service records and overall contribution. Therefore, it is his legal vested and indefeasible right to be regularized/promoted in the same post by way of promotion ahead of anyone but which right has been denied to him in an arbitrary and malafide manner. The respondents has been running the department on current charge without granting promotion to the eligible and senior persons. Thus the respondents may be directed to consider the

promotion of the petitioner at once. That the action and denial of the respondents is illegal and without lawful authority inasmuch as violative of Memo No. somo(bidhi-1)/s-11/92-30(150) dated 05.02.1992 of the Ministry of public Administration. Because when eligible candidates are not found for promotion then due to exigencies of the situation order of current charge can be made, but in the instant case a junior most officer has been given current charge though the petitioner was available for promotion with all requisite qualifications. That no question has ever been raised from the authority about the performance of the petitioner while he was holding the post for almost 21 (twenty one) months and it has also not been said that the petitioner was disqualified to be promoted. Therefore replacing him from the post by a junior engineer is not only illegal but also disgraceful as well tantamounting to some sort of punishment without commission of any offence. Thus the respondents may be directed to fill up the post of the Chief Engineer on the basis of regular promotion instead of current charge. That promotion is not bounty of the employer but it is valuable service right of the employee which allows him an advancement in career and an employee joins in his service seeing promotional opportunities in his entire career. Therefore, where his promotional post is illegally filled up by a junior officer on current charge it destroys his urge to work and professionalism. It is further stated that ultimately the frustration created in the minds of the incumbents affect the whole department and ultimately the country. Therefore, to protect the petitioner and the employees of RAJUK from injustice and insecurity the respondents may be directed to fill up the

post of Chief Engineer on the basis of regular promotion instead of current charge. That the petitioner has obtained all the requisite qualifications to be promoted as Chief Engineer long time back. But the respondents in a malafide and arbitrary manner have been filling up the post of Chief Engineer on current charge repeatedly and been depriving the aspirants for the post of Chief Engineer by promotion who have been waiting for a long time. Therefore the respondents are however inspite of the eligibility of the petitioner to be promoted to the post of chief engineer rather brought him back to his previous position from current charge and caused grave injustice. Furthermore upon giving a junior officer current charge, hence being aggrieved by such arbitrary conduct of the respondents the petitioner filed the instant writ petition.

Learned Senior Advocate Mr. Salauddin Dolon along with learned Advocate Mr. Muhammad Mizanur Rahman, Learned Advocate Ms. Shamsun Nahar Nely, learned Advocate Mr. S.M. Mahidul Islam Sajib, Learned Advocate Mr. Md. Tofayal Ahmed, Learned Advocate Ms. Umme Aiman Jarib appeared for the petitioner.

While learned Advocate Mr. Imam Hasan appeared for the respondent No. 2. Learned D.A.G Mr. Noor Us Sadik Chowdhury, Ms. Syeda Sabina Ahmed Moli, A.A.G along with Ms. Farida Parvin Flora, A.A.G appeared for the respondent No.1. Learned Advocate Mr. Lutfur Rahman along with learned Advocate Mr. M. Nazrul Islam Khandaker, Learned Advocate Mr. Mohammad Anwarul Islam appeared for the respondent No. 4.

Learned Senior Advocate Mr. Salahuddin Dolon for the petitioner submits that the respondent No. 2 RAJUK upon withdrawing the petitioner from his current charge and putting him back to his original post caused grave injustice to the petitioner. He submits that therefore such conduct of the respondents is not sustainable and needs interference from this court. He submits that as per the relevant laws and rules the petitioner is lawfully eligible to be promoted to the post of chief engineer while he was in current charge, but the respondents instead of promoting him most arbitrarily rather practically demoted him. He continues that more over the respondents committed gross injustice by appointing another person in current charge who is junior to the petitioner. He submits that the fact that the other person is junior to him is evident from the records. He submits that the conduct of the respondents clearly enough shows the respondent No. 2's malafide intention to accommodate a junior officer in current charge in the petitioner's place. He contends that such blatant and malafide conduct in withdrawing the petitioner from the current charge is unlawful and arbitrary .

In support of his claim of the petitioner's eligibility to be promoted to the post of chief engineer while he was continuing in current charge, he takes us to the relevant rules pertaining to পদোন্নতি which is annexure-C of writ petition No. 10427 of 2020. He takes us to the তফসিল [বিধি ২(৭) দ্রষ্টব্য] wherefrom he points out to serial No. 1 which lays down the criteria to be promoted to the post of chief engineer. He shows us the criteria of promotion which has been categorically laid for post of chief engineer wherefrom he persistently

points out that the petitioner has fulfilled all the criterias and requisites for eligibility to be promoted as chief engineer. He submits that in case of পদোন্নতি (promotion) the petitioner for purpose of promotion to post of chief engineer fulfills the requisite qualifications serving as superintendent engineer for a period of 5 years. He assails that the petitioner has clearly fulfilled all the qualifications including his service of 5 years as superintendent engineer. In support of his contention he takes us to Annexure-D of the writ petition wherefrom he particularly draws our attention to the column তত্ত্বাবধায়ক প্রকৌশলী (সিভিল) . From the list of the superintendent engineers he shows us that the petitioner জনাব আব্দুল লতিফ হেলালী in serial No. 3 was appointed as superintendent engineer (civil) on 12.11.2013. He submits that therefore on 12.11.2018 the petitioner completed the period and acquired the requisite qualification to be promoted as chief engineer. He contends that on the face of the factual position, the whimsical conduct of the respondents sending the petitioner from the current charge back to his original post as superintendent engineer is completely unlawful and violative of the fundamental rights of the petitioner. He reassails that the petitioner has all the requisite qualifications to be promoted to the post of chief engineer. He continues that therefore the petitioner's case falls within the doctrine of legitimate acceptance including relying upon the relevant service rules of 2013 (Annexure-C).

Next he submits on the issue of the respondents designating the respondent No. 4 in the current charge upon withdrawing the petitioner from the current charge back to his original post as

superintendent engineer. He again draws upon Annexure-D and points out that the respondent No. 4 was appointed as superintendant engineer on 21.04.2016 that is after three years of the petitioner being appointed as superintendent Engineer. He submits that therefore the respondents by their act of withdrawing the petitioner from current charge while posting Respondent No.4 in current charge violated the provisions of Article 29 of the Constitution by designating a junior officer in current charge upon withdrawing a senior officer from the same. He submits that the principle of equality has been grossly violated by the respondents only to accommodate a junior officer. He agitates that therefore such action of the respondent is without lawful authority and the impugned order in writ petition No. 10003 of 2020 passed by the respondents is not sustainable and must be declared to without lawful authority.

Upon summing up his submissions he contends that therefore the petitioner ought to be considered for promotion to the post of chief engineer and his right falls within the doctrine of legitimate expectation read with the Rajdhani Unnayan Katripokko (Officers and Employees) Service Rules, 2013 (Annexure-C). He agitates that moreover the appointment of the respondent No. 4 in current charge ought to be cancelled since it is blatantly discriminative and flouts the equality principle of the constitution. He concludes his submissions upon assertion that the Rule bears no merit ought to be made absolute for ends of justice.

On the other hand learned Advocate Mr. Md. Imam Hasan for the respondent No. 2 by way of filling affidavit in opposition opposes

the rule. He argues that no legitimate expectation of the petitioner arises to be promoted to the post of chief engineer since promotion is not a vested right in itself rather depends on several other factual issues. Upon controverting the contention of the petitioner he takes us to Annexure-D of writ petition No. 10427 of 2020. From Annexure-D of writ petition No. 10427 of 2020 he persuades out that it appears from Annexure-D column 6 that the petitioner and the others including the respondent No. 4 were initially appointed and joined in the post of Assistant Engineer (work charge) on the same day that is on 09.07.2001. He argues that therefore since the petitioner and the respondent No. 4 including others joined on the same date that is on 9.7.2001 consequently they are on the same footing and the petitioner is not senior to the respondent No. 4. He argues that therefore there has been no violation of Article 29 in withdrawing the petitioner from his current charge and further there has been no illegality in posting the respondent No. 4 in his current charge.

He now takes us to some factual allegations which has been reflected in the affidavit in opposition filed by the respondent No. 4. He draws upon the affidavit in opposition filed by the respondent No. 4 wherefrom he attempts to show that there are some factual allegations against the petitioner. Relying on these factual allegations he contends on the unsatisfactory service record of the petitioner and argues that consequently no legitimate expectation nor statutory right arises to be considered for promotion. In support of his submissions he draws upon Annexure – X4 and X6 of the affidavit in opposition filed by the respondent No. 4. From Annexure-X4 and X6 it appears

that two show cause notices were issued upon the petitioner on 25.06.2020 and 10.12.2020 respectively. He points out that it appears from the show cause notices that there are allegations of negligence and misconduct of the petitioner in course of his service. He next takes us to Annexure-X11 which is an enquiry report. He submits that it also appears that the enquiry was conducted against the petitioner to investigate into allegations of his repeated misconduct in his service. He submits that therefore the petitioner on the face of materials particularly of Annexures-X4, X6 and X11 that it is revealed the petitioner does not have any legitimate expectation to be granted promotion.

He reiterates that withdrawing the petitioner from the current charge of chief engineer is within the ambits of law since 'current charge' by its very nature contemplates a temporary post and does not imply any permanent position. Relying on his arguments and the affidavit in opposition filed by the respondent No. 2 and also relying on the materials filed by the respondent No. 4, he concludes his submissions upon assertion that no statutory right of the petitioner has been violated nor any fundamental right under Article 29 of the Constitution has been violated and the Rule bears no merit ought to be discharged for ends of justice.

Learned Advocate for the opposite party No. 4 also opposes the Rule by way of affidavit in opposition and substantively supports the arguments of the learned Advocate for the respondent No. 2. He also asserts that the respondents did not commit any illegally by appointing the respondent No. 4 in the current charge given that the very nature

of a posting in “current charge” is of temporary nature and does not contemplate a permanent position. He submits that writ shall not lie while challenging withdrawal or appointment of or from the current charge of chief engineer whatsoever since it is by its very nature a temporary arrangement only and does not create any vested right.

He further also draws upon the Annexures X4, X6 and X11 and points out that it appears from these materials that the petitioner’s service record is not unblemished and argues that therefore no vested right nor fundamental right of the petitioner has been infringed. He concludes his submissions upon assertion that the Rule bears no merit ought to be discharged for ends of justice.

We have heard the learned Counsels perused the application and materials before us. In writ petition No. 10427 of 2020 the petitioner has substantively challenged the action of the respondents withdrawing the petitioner from his current charge and placing him back to his earlier post of superintendent engineer. The petitioner has further challenged the respondent’s inaction in not considering the promotion of the petitioner in post of Chief Engineer. In support of his arguments he draws upon some documents which has been annexed thereto.

To assess the merits of the case we have examined the materials before us. We initially draw our attention to Annexure-C of the Writ petition No. 10427 of 2020. We particularly draw our attention to the schedule which lays down the criteria and requisite qualifications necessary to be considered for promotion to the post of Chief Engineer. The schedule is reproduced below:

ক্রমিক নম্বর	পদের নাম	সরাসরি নিয়োগের জন্য সর্বোচ্চ বয়সসীমা	নিয়োগ পদ্ধতি	প্রয়োজনীয় যোগ্যতা
১	২	৩	৪	৫
১	প্রধান প্রকৌশলী	৪৫ বৎসর	পদোন্নতির মাধ্যমে, তবে পদোন্নতিযোগ্য প্রার্থী পাওয়া না গেলে প্রেষণে বদলীর মাধ্যমে; পদোন্নতিযোগ্য ও প্রেষণে বদলীর মাধ্যমে নিয়োগযোগ্য প্রার্থী পাওয়া না গেলে সরাসরি নিয়োগের মাধ্যমে	<u>পদোন্নতির ক্ষেত্রে:</u> তত্ত্বাবধায়ক প্রকৌশলী পদে অন্য ৫(পাঁচ) বৎসরের চাকুরি। <u>প্রেষণের ক্ষেত্রে:</u> সরকারি কোন বিভাগ বা সংস্থায় অতিরিক্ত প্রধান প্রকৌশলী অথবা সিভিল ইঞ্জিনিয়ারিং এ স্নাতক ডিগ্রীসহ সমপদমর্যার কর্মকর্তা। <u>সরাসরি নিয়োগের ক্ষেত্রে:</u> সিভিল ইঞ্জিনিয়ারিং বিষয়ে দ্বিতীয় শ্রেণীর স্নাতক ডিগ্রীসহ প্রকৌশলী হিসাবে সরকারি, আধা-সরকারি অথবা স্বায়ত্তশাসিত প্রতিষ্ঠানে ১৫ (পনের) বৎসরের চাকুরির অভিজ্ঞতা।

It appears from the schedule that the requisite qualifications to be considered to the promotion পদোন্নতি of the Chief Engineer is to be in service as superintendent engineer of a period of not less than 5(five) years in cases of promotion. There are some other categories of appointment to the post of chief engineer which include those in deputation (প্রেষণে) and direct appointment (সরাসরি নিয়োগ). Needless to state that the second two criterias are not relevant for us in this case. It clearly appears that to be considered for promotion to the post of chief engineer, the candidate must serve a minimum of 5(five) years as superintendent engineer.

Next we have than examined annexure-D of the writ petition No. 10427 of 2020 and particularly drew our attention to column No. 4. The petitioner's name appears in serial No. 3. From serial No. 3 it appears that the petitioner was appointed on 12.11.2013 as superintendent engineer. Therefore his 5(five) years experience to be considered for promotion was obviously complete on 11.11.2018. It is seen from the documents that on 10.12.2020 (Annexure-F in writ petition No. 10427 of 2020) that the petitioner was withdrawn from his position in his current charge and restored back to his position as superintendent engineer.

It is our considered view particularly relying upon some decisions of our Apex court including in the case of Bangladesh Bank Vs. Sukamal Sinha reported in 21BLC(AD)(2016) 212 and also relying upon some judgments passed inter alia in writ Petition No. 8251 of 2019 in which one of us is a party that promotion is not an inherent vested right. But however to be considered for promotion may be a vested right depending on the requisition qualifications. Moreover in pursuance of the doctrine legitimate expectation, since apparently the petitioner seems to have the requisite qualifications to be considered for promotion to the post, therefore the respondents in the instant case owe a legal duty to the petitioner inter alia to consider him for promotion relying on the relevant laws and Rules.

Regarding the issue of factual allegations the respondents alleged that the petitioner is guilty arising out of allegations of negligence and consequently misconduct in his service. In support the respondents took us to a few documents by way of Annexure-X-4, X-

6 and X-11 of the affidavit in opposition filed by the respondent No.4. Annexure-X-4 is the show cause notice issued upon the petitioner dated 25.06.2020 by the respondent No. 2. Annexure-X-6 is the second show cause notice dated 10.12.2020 issued again by the respondent No. 2 upon the petitioner as to why certain steps shall not be taken against him for negligence in service amounting to misconduct. The relevant portion of annexure-x-4 is “আচরণ দায়িত্ব পালনে অবহেলা ও অসদাচরণের শামিল।”. The respondents also relied upon Annexure-X-11 which is apparently an enquiry report.

The overall contention of the respondent is that since there are allegations of negligence amounting to misconduct therefore the service record of the petitioner is not unblemished. Relying on those allegations the Respondents argue that consequently no fundamental right whatsoever of the petitioner has been infringed in not considering him for promotion.

For proper assessment of these factual issues we have drawn upon Annexure-X5 and Annexure-X12 of the affidavit in opposition filed by the respondent No. 4 . From annexure-X5 dated 15.09.2020 and annexure-X12 dated 29.10.2021 it appears that whatever may have been the allegations against the petitioner but however in both the documents annexures X5 and X-12 it appears that he was granted অব্যাহতি exoneration therefrom. Therefore it is clear that whatever may have been the allegations against him nevertheless there are no pending allegations against him anymore. Moreover we have also drawn upon the enquiry report which is annexure-X-11 of the affidavit in opposition filed by the respondent No. 4 which is the তদন্ত প্রতিবেদন

dated 15.12.2021. We have particularly drawn ourselves to the overall conclusion pursuant to the enquiry. It appears from the report that the respondents themselves upon investigation found that the petitioner was not guilty of the allegations against him. The relevant portion of the enquiry report is reproduced hereunder:

“পর্যালোচনা:

উপর্যুক্ত বক্তব্য, হাজিরা শীট ও অন্যান্য স্বাক্ষীগণের বক্তব্য পর্যালোচনায় প্রতীয়মান হয় যে গত ০৬/১২/২০২১ খ্রি: তারিখ বিকাল ৪.৫৬ মিনিটে চেয়ারম্যান মহোদয়ের ফোন কলের সময় জনাব আব্দুল লতিফ হেলালী, তত্ত্বাবধায়ক প্রকৌশলী (সিভিল) প্রকৃত পক্ষেই আরবান রেজিলেন্স প্রজেক্টের ইলেকট্রনিক কন্সট্রাকশন পারমিটিং সিস্টেম (ECPS) মিটিংয়ে ছিলেন। তার বক্তব্য অনুযায়ী মোবাইল ফোনটি সাইলেন্ট মুডে থাকায় ফোন রিসিভ করতে পারেননি। পরবর্তীতে চেয়ারম্যান মহোদয়কে কল ব্যাক করে বিষয়টি অবহিত করেন। তবে দায়িত্ব পালনের ক্ষেত্রে জনাব আব্দুল লতিফ হেলালী, তত্ত্বাবধায়ক প্রকৌশলী (সিভিল), রাজউক কে আরো সচেতন হওয়া উচিত ছিল।

From the পর্যালোচনা it also appears to us that whatever allegations were alleged against him however we do not find any prima-facie negligence in official conduct.

Such being the position we are of the considered view that the factual allegations against the petitioner were not proved to be correct. Particularly pursuant to the অব্যাহতি (exoneration) which was granted by the respondents themselves and also pursuant to the observation in the enquiry report Annexure-X11.

Therefore by annexure-C which is the relevant Service Rules of 2013 and upon comparison of Annexure-C (Service Rules) and Annexure-D which is the gradation list, it appears that the petitioner

has all the requisite qualifications necessary to have acquired a legitimate expectation to be considered for promotion.

The learned Advocate for the respondents argued at one stage that no fundamental rights under Article 29 of the Constitution has been violated since the petitioner and the respondent No. 4 were initially appointed in their post on the same day in the year 2001. On this issue our considered view is that whatever the date of initial appointment of the petitioner may be, but so far as the question of promotion is concerned we must rely on Annexure-C which lays down the criteria of minimum 5(five) years experience in the post of superintendent engineer for promotion as Chief Engineer. It is clear from Annexure-C that the requisite qualification to be considered for promotion for post of Chief Engineer is a minimum service of 5 years as superintendent engineer and which the instant petitioner has completed in the said post.

We are however of the considered view that 'current charge' is a temporary position and in the service Rules of 2013 there is no specific criteria for appointment in current charge. The term 'current charge' contemplate the temporary nature of the position. Such being the position our opinion is that we ought not to interfere with the appointment of the respondent No. 4 in current charge.

We are inclined to distinguish writ petition No. 10003 of 2020 from writ petition No. 10427j of 2020. In Writ Petition No. 10427 of 2020 the petitioner challenged the conduct of the respondents in not considering him for his promotion. We are of the considered view that so far as the petitioner's eligibility is concerned, the petitioner is

eligible to be considered for promotion to the post of the chief engineer since he has acquired the requisite qualifications of minimum 5 years service in the post of superintendent engineer and which is admitted and evident from the materials.

Such being the position we are inclined to dispose of both the rules with the observations made above and with directions to the respondent No. 2.

In the result, these two Rules are disposed of.

The respondent No. 2 is hereby directed to follow the relevant rules and procedure and other procedures whatsoever and shall consider the petitioner for promotion to the post of Chief Engineer in accordance with the relevant laws and Rules within a period of 60(sixty) days of receiving this judgment.

Communicate this judgment at once.

Kazi Zinat Hoque, J:

I agree.

Arif(B.O)