

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

**WRIT PETITION NO. 7687 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:

Dr. Md. Shahidul Islam and others  
... Petitioners

-VS-

The Secretary, Ministry of Education,  
Government of the People's Republic  
of Bangladesh and others.

.....Respondents

Mr. A.B.M. Altaf Hossain, Senior  
Advocate, with

Mr. Md. Abul Kasem,

Mr. A.H.M. Anamul Haque, and

Mr. Md. Arif Chowdhury, Advocates

.....For the Petitioners

Mr. A.M. Amin Uddin, Senior Advocate,  
with

Mr. Yousuf Khan Rajib,

Mr. Ahmed Ishtiaque

Mr. Izmet Nashra Khan, Advocates

... For the respondent Nos. 4, 5 and 9

**Present:**

**Mr. Justice Zafar Ahmed**

**And**

**Mr. Justice Khandaker Diliruzzaman**

Heard on : 18.10.2023, 01.11.2023  
and 16.11.2023.

Judgment on : 13.12.2023.

**Zafar Ahmed, J.**

In the instant writ petition, the petitioners have challenged the Memo being নং-বিএসএমএমইউ/২০০৯/৯০১৩ dated 07.10.2009 (Annexure-G) issued under the signature of the respondent No. 9 communicating the decision of the Syndicate of the Bangabandhu Shiekh Mujib Medical University (BSMMU) taken in its 33<sup>rd</sup> Syndicate meeting held on 14.09.2009 cancelling the decisions taken by the Syndicate in its 5<sup>th</sup> meeting dated 24.06.1999, 10<sup>th</sup> meeting dated 31.08.2000, 23<sup>rd</sup> meeting dated 27.06.2006, 25<sup>th</sup> meeting dated 27.05.2007 and 28<sup>th</sup> meeting dated 26.06.2008 and thus, excluding the criteria of posting (পদায়ন) to the post of Assistant Professor/Consultant with self-salary (স্ববেতন) and thereby curtailing the substantial vested right of the petitioners in respect of posting to the post of Assistant Professor, so far as it relates to the petitioners. They have further prayed for a direction upon the respondents to post the petitioners to the post of Assistant Professor in compliance with the decision taken in the 28<sup>th</sup> Syndicate meeting (decision in respect of agenda No. 5) dated 26.06.2008 of the BSMMU (Annexure-F).

This Court, on 30.06.2022, issued a Rule Nisi.

Thereafter, on an application of the petitioners, this Court, on 02.02.2023, issued an additional Rule Nisi and passed an interim order as follows:

“Let an additional Rule Nisi be issued calling upon the respondents to show cause as to why the recruitment Circular, vide স্মারক নং-বিএসএমএমইউ/২০২৩/৭৪৮ dated 18.01.2023 (Annexure-M) issued under the signature of the respondent No. 9 published in the Daily Observer on 19.01.2023 inviting applications for the post of Professors, Associate Professors and Assistant Professor so far as it relates to the post of Assistant Professor mentioned in Serial No. ৩(খ), ৩(ঙ), ৩(চ), ৩(জ), ৩(ঝ), ৩(ঞ), ৩(ধ) ও ৩(ন) of the impugned recruitment circular should not be declared to have been passed without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.”

Pending hearing of the Rule, the respondents are restrained by an order of injunction from recruiting any person to the post of Assistant Professor for a period of 6(six) months from date.

Meanwhile, let the operation of the recruitment Circular vide স্মারক নং-বিএসএমএমইউ/২০২৩/৭৪৮ তারিখঃ ১৮/০১/২০২৩ইং (Annexure-M) issued under the signature of the respondent No. 9 so far as it relates to the Serial No. ৩(খ), ৩(ঙ), ৩(চ), ৩(জ), ৩(ঝ), ৩(ঞ), ৩(ধ) ও ৩(ন) (total 13 posts) of the impugned recruitment circular dated 18.01.2023 be stayed for a period of 6(six) months from date.”

Challenging the interim order, the respondent BSMMU filed Civil Petition for Leave to Appeal No. 965 of 2023. The Apex Court, vide order dated 11.06.2023 disposed of the civil petition directing this Bench to dispose of the Rule. The Apex Court stayed the interim order till disposal of the Rule.

The respondent Nos. 4, 5 and 9 (BSMMU, its Vice-Chancellor and Registrar) contested the Rule jointly and filed an affidavit-in-opposition.

It is stated in the writ petition that the petitioners are Medical Officers of the BSMMU except petitioner No. 16 who is a Research Assistant and petitioner Nos. 12, 17, 31, 32 and 35 who are Consultants. The petitioners have good service records and have gathered enough experience as well as developed sufficient skills and ability in the field concerned. They have been regularly conducting classes of medical students of the BSMMU.

It is further stated that the petitioners were appointed by the concerned authority of the BSMMU through the recruitment circulars between the periods from 08.02.2002 to 14.06.2006 (Annexures A to A-124 and M to M-74). The authority, as per its Rules, appointed them as Medical Officers and Research Assistants. They were made permanent in their respective posts

and now, they have been discharging their duties with utmost sincerity.

It is further stated that the BSMMU is a Public Medical University of the country. It bears the heritage to the Institute of Postgraduate Medical Research (IPGMR) which was established in December 1965. In the year 1998, the Government converted the IPGMR into a Medical University for expanding the facilities for higher medical education and research in the country. It has an enviable reputation for providing high quality postgraduate education in different specialties. The BSMMU is only medical specialized University of Bangladesh and a statutory body which is established under section 4 of the “বঙ্গবন্ধু শেখ মুজিব মেডিক্যাল বিশ্ববিদ্যালয় আইন, ১৯৯৮” (in short, the ‘Act, 1998’). There are also several Rules and Ordinances made by the BSMMU authority being authorized by section 42 of the said Act.

It is further stated that after converting the IPGMR to the BSMMU, the Registrar of the BSMMU issued a circular dated 19.07.1999 (Annexure-B) containing the decision No. 3 of the 5<sup>th</sup> meeting of the Syndicate of the BSMMU held on 24.06.1999. The relevant portions of the said Memo run as follows:

“প্রজ্ঞাপন

তারিখ: ১৯/০৭/১৯৯৯

২৪/৬/৯৯ ইং তারিখে অনুষ্ঠিত ৫ম সিডিকেট সভার ৩নং সিদ্ধান্তনুযায়ী এই বিশ্ববিদ্যালয়ে ৩০/৪/৯৮ ইং তারিখে আত্মীকৃত সহকারী সার্জন/মেডিকেল অফিসারদের সুযোগ-সুবিধা সংক্রান্ত নিম্নরূপ প্রজ্ঞাপন জারী করা হলঃ-

১।.....

২।.....

৩।.....

৪। এমডি, এমএস, এমফিল, এফসিপিএস পাশ করা চিকিৎসকদেরকে ডিসিপ্লিনে স্ববেতনে সহকারী অধ্যাপক হিসেবে নিয়োগদান ও নতুন পদ সৃষ্টি করে তাদেরকে নিয়মিত করা হবে।

৫।.....”

Before establishment of the BSMMU, the post of Medical Officer existed in the then IPGMR. The holders of the said post were absorbed into the BSMMU by the above-mentioned decision of the Syndicate and they were also promised to be appointed to the post of Assistant Professor with certain terms and conditions.

It is further stated that the petitioners were appointed as Medical Officers with the same facilities given under the circular dated 19.07.1999 (Annexure-B). Thereafter, the Syndicate in its 10<sup>th</sup> meeting dated 31.08.2000 decided to appoint Medical Officer with the conditions that after obtaining

the required degree they would be posted as Assistant Professor with the same salary received as Medical Officer.

Thereafter, the respondent No. 9 issued an office order dated 31.11.2006 (Annexure-C) stating: “বিশ্ববিদ্যালয়ে কর্মরত মেডিক্যাল অফিসারগণের মধ্যে ডিপ্লোমা/এমসিপিএস/এফসিপিএস/এমডি/এমএস/এমডিএস/এমফিল ও সমমানের ডিগ্রী পাস করেছেন এবং করবেন তাদেরকে স্ব-বেতনে কনসালট্যান্ট/সহকারী অধ্যাপক করার ব্যপারে একটি নীতিমাল প্রণয়নের জন্য ইতোমধ্যেই একটি কমিটি গঠন করা হয়েছে। উক্ত কমিটি রিপোর্ট না দেওয়া পর্যন্ত স্ব-বেতনে কনসালট্যান্ট/সহকারী অধ্যাপক করার বিষয়টি স্থগিত থাকিবে।”

It is stated that the University authority constituted a committee for recommendation in respect of posting (পদায়ন) of the Medical Officers. The Syndicate in its 25<sup>th</sup> meeting held on 27.05.2007 (Annexure-D) decided as follows:

- “১। অন্যান্য যোগ্যতা যাচাই করে ডিগ্রী প্রাপ্তির ২(দুই) বৎসর পর নিয়মিত করা হবে।
- ২। শুধু আন্তীকৃত স্ব-বেতনে সহকারী অধ্যাপক হিসাবে যারা বর্তমানে কর্মরত আছেন তাদের ক্ষেত্রেই এই সিদ্ধান্ত প্রযোজ্য হবে।
- ৩। ভূতাপেক্ষভাবে কোন আর্থিক সুবিধা দেয়া হবে না।
- ৪। কোষাধ্যক্ষ মহোদয়ের সভাপতিত্বে পূর্বে গঠিত কমিটির মাধ্যমে যাচাই করে প্রয়োজনীয় সংখ্যক পদ সৃষ্টির মাধ্যমে এই প্রক্রিয়া সম্পন্ন করার ক্ষমতা মাননীয় ভাইস-চ্যান্সেলরের উপর ন্যস্ত করা হ'ল।”

It is stated that on 26.06.2008 the Syndicate of the BSMMU in its 28<sup>th</sup> meeting (Annexure-F) again took the

decision, “স্নাতকোত্তর ডিগ্রী অর্জনকারী চিকিৎসকদেরকে স্ববেতনে সহকারী অধ্যাপক/স্ববেতনে কনসালট্যান্ট ও পরবর্তীতে সহকারী অধ্যাপক/কনসালট্যান্ট হিসাবে নিয়মিতকরণের বিষয়ে সিডিকেট সভার পূর্বে গৃহীত সিদ্ধান্ত সমূহ এবং সংশ্লিষ্ট বিষয়ে গঠিত কমিটির সুপারিশের প্রেক্ষিতে নিম্নোক্ত সিদ্ধান্ত সমূহ গৃহীত হয়ঃ

- (১) স্নাতকোত্তর ডিগ্রি/ডিপ্লোমা সম্পন্ন ১ (এক) বছর পর স্ববেতনে সহকারী অধ্যাপক/স্ববেতনে কনসালট্যান্ট করা হবে।
- (২) স্নাতকোত্তর ডিগ্রি/ডিপ্লোমা সম্পন্ন ২ (দুই) বছর পর সহকারী অধ্যাপক/কনসালট্যান্ট পদে নিয়মিত করা হবে (প্রকাশনার শর্ত পূরণ করতে হবে)।
- (৩) বিশ্ববিদ্যালয়ে বর্তমানে কর্মরত চিকিৎসকদের ক্ষেত্রে এই বিধি কার্যকর হবে এবং নতুন নিয়োগপ্রাপ্ত চিকিৎসকদের ক্ষেত্রে এই বিধি প্রযোজ্য হবে না।”

On 14.09.2009, the Syndicate of the BSMMU in its 33<sup>rd</sup> meeting decided to cancel all the previous decisions in respect of “পদায়ন” (posting) of the Medical Officers to the Post of Assistant Professor/Consultant with the same Salary received as Medical Officer which was published under the signature of the respondent No. 9, vide the impugned Memo dated 07.10.2009 (Annexure- G).

It is further stated that most of the petitioners individually applied to the University authority for posting to the post of Assistant Professor by cancelling the office order dated 07.10.2009, but the University authority did not pay any heed to the matter. Later on, the University authority assured the



petitioners that they would reconsider the decision contained in the office order dated 07.10.2009. Subsequently, on 08.09.2016, the University authority posted 45 Medical Officers to the post of Consultant (Annexure-I4) as per the decision of the 25<sup>th</sup> Syndicate meeting dated 26.06.2008, though the said decision was cancelled as evident from the office order dated 07.10.2009, but the University authority kept silent in respect of the case of the petitioners.

Thereafter, on 01.12.2019 and 14.01.2020, the petitioners made separate representations to the University authority reiterating their demand for posting them to the post of Assistant Professor. On receipt of the said representation, the Syndicate in its 76<sup>th</sup> meeting formed a 5-member committee and the same was communicated, vide office order dated 04.02.2020, but no steps have been taken by the said committee as yet. Thereafter, there being no other alternative way, the petitioners filed the instant writ petition.

It is stated in the writ petition that at present the petitioners receive their salaries in Grade 6 which is equivalent to the post of Assistant Professor. Moreover, they are holding the post of Medical Officer, but they perform their duties of Assistant Professor. They conduct classes of medical students

in various disciplines of the BSMMU. It is categorically stated in the writ petition that if the petitioners are posted (পদায়ন) as Assistant Professor, they would not disturb any person promoted or posted earlier in the same post and they would not claim any extra salary as Assistant Professor, rather they would perform their functions as usual.

The specific case of the respondent BSMMU is that the Syndicate being the highest decision making body has the authority to cancel its previous decision. The further case of the BSMMU is that the petitioners already took part in the appointment process initiated and completed on the basis of impugned decision of the Syndicate and being unsuccessful, they have filed the instant writ petition which is barred by the principles of *estoppel* as well as '*quod approbo non reprobo*'.

Mr. A.M. Amin Uddin, the learned Senior Advocate appearing for the respondent BSMMU, at the outset, submits that the impugned circular (Annexure-G) was issued on 07.10.2009 but the petitioners filed the instant writ petition in 2022 that is after a long delay of almost 13 years and no satisfactory explanation has been given for such inordinate delay in filing the writ petition. The learned Advocate submits that on this point the Rule is liable to discharged.

In reply, Mr. A.B.M. Altaf Hossain, the learned Senior Advocate appearing for the petitioners, submits that the factual matrix which caused the delay in filing the writ petition has been explained in the writ petition and the same has not been controverted in the affidavit-in-opposition. He further submits that it is settled principle of law that there is no period of limitation in judicial review. In support of the contention, the learned Advocate refers to the case of *Siddique Ahmed Vs. Government of Bangladesh and others*, 65 DLR (AD) 8 (para 177), wherein the Appellate Division held:

“...The plea of waiver or acquiescence is not available in respect of violation of any law. If it is violated, the Court is bound to say so, no matter when it is raised. There is no period of limitation, no waiver, no acquiescence in this respect.”

*M/s. Dehri Rohtas Light Railway Company Ltd. vs. District Board, Bhojpur and others*, AIR 1993 SC 802, the Indian Supreme Court held:

“The rule which says that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its own facts. It will all depend on what the breach of the fundamental right and the remedy claimed are and

how the delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable explanation of the delay. The real test to determine delay in such cases is that the petitioner should come to the writ Court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not to physical running of time. Where the circumstance justifying the conduct exists, the illegality which is manifest cannot be sustained on the sole ground laches. ... That being the case, the claim of the appellant cannot be turned down on the sole ground of delay. We are of the opinion that the High Court was wrong in dismissing the writ petition in limine and refusing to grant the relief sought for.”

In the instant case, we are of the view that the delay of 13 years in filing the writ petition is well explained and the cause of delay cannot be attributed to the petitioners. Therefore, the delay should not stand in the way of assessing the merit of the case.

Mr. A.M. Amin Uddin next submits that since the petitioners had already participated in the appointment process initiated and completed on the basis of the impugned decision

of the Syndicate and they became unsuccessful and as such, the writ petition is hit by the principles of *estoppel*, waiver, acquiescence as well as *quod approbo non reprobo* meaning one cannot approbate and reprobate at the same breadth. In reply, Mr. Altaf Hossain submits that admittedly the petitioners participated in the recruitment process which was initiated based on independent circular for appointing to the post of Assistant Professor. The petitioners have filed this writ petition praying for *inter-alia* posting to the post of Assistant Professor. He further submits that the recruitment circulars and posting are totally different issues and there is no nexus between them. Therefore, the submission advanced by the respondent-BSMMU in respect of waiver/*estoppel*/acquiescence and *quod approbo non reprobo* has no leg to stand. Considering the facts and circumstances of the case, we find force in the submissions of Mr. Altaf Hossain appearing for the petitioners.

So far as the merit of the writ petition is concerned, the learned Senior Advocate appearing for the petitioners submits that in spite of cancellation of the decisions dated 24.06.1999, 27.05.2007 and 26.06.2008 respectively taken by the Syndicate in its 5<sup>th</sup>, 25<sup>th</sup> and 28<sup>th</sup> meeting regarding posting of Medical Officers and other officers holding equivalent post to the post

of Assistant Professor, the BSMMU, vide office order dated 08.09.2016 (Annexure-I4) posted 45 Medical Officers to the post of Consultant. However, the petitioners were left out of consideration which is discriminatory under Article 27 of the Constitution. The learned Advocate prays for passing an order directing the respondents to treat the petitioners equally and to post them to the post of Assistant Professor in light of the office order dated 08.09.2016 (Annexure-I4). The learned Advocate points out that the case of the petitioners stands on the same footing as that of 45 Medical Officers who are beneficiaries of the office order in question.

It is recalled that the present petitioners were appointed as Medical Officers and Consultants in the BSMMU between the periods from 2002 to 2006. The BSMMU issued a notification dated 19.07.1999 (Annexure-B) under the caption, “২৪/৬/৯৯ ইং তারিখে অনুষ্ঠিত সিডিকেট সভার ৩নং সিদ্ধান্ত অনুযায়ী এই বিশ্ববিদ্যালয়ের ৩০/৪/৯৮ ইং তারিখে জারীকৃত সহকারী সার্জন/মেডিকেল অফিসারদের সুযোগ সুবিধা সহকারে নিম্নরূপ প্রজ্ঞাপন জারী করা হ'ল”. It is mentioned at paragraph No. 4 of the said notification, “এমডি, এমএস, এমফিল, এফসিপিএস পাশ করা চিকিৎসকদেরকে ডিসিপ্লিনে স্ববেতনে সহকারী অধ্যাপক হিসেবে নিয়োগদান ও নতুন পদ সৃষ্টি করে তাদেরকে নিয়মিত করা হবে”. A committee was formed to make recommendations regarding

posting the holders of Medical Officer/equivalent post to the post of Assistant Professor. The recommendations were discussed in the Syndicate's 28<sup>th</sup> meeting held on 26.06.2008, wherein it was decided as follows:

১. স্নাতকোত্তর ডিগ্রি/ডিপ্লোমা সম্পন্নের ১ (এক) বছর পর স্ববেতনে সহকারী অধ্যাপক/স্ববেতনে কনসালট্যান্ট করা হবে।
২. স্নাতকোত্তর ডিগ্রি/ডিপ্লোমা সম্পন্নের ২ (দুই) বছর পর সহকারী অধ্যাপক/কনসালট্যান্ট পদে নিয়মিত করা হবে (প্রকাশনার শর্ত পূরণ করতে হবে)।
৩. বিশ্ববিদ্যালয়ে বর্তমানে কর্মরত চিকিৎসকদের ক্ষেত্রে এই বিধি কার্যকর হবে এবং নতুন নিয়োগপ্রাপ্ত চিকিৎসকদের ক্ষেত্রে এই বিধি প্রযোজ্য হবে না।

We further recall that the Syndicate in its 33<sup>rd</sup> meeting held on 14.09.2019 cancelled the earlier decisions taken in its 5<sup>th</sup>, 10<sup>th</sup>, 23<sup>rd</sup>, 25<sup>th</sup> and 28<sup>th</sup> meetings so far as they relate to “স্ববেতনে সহকারী অধ্যাপক/স্ববেতনে কনসালট্যান্ট পদে পদায়ন”. In spite of the said decision taken in 33<sup>rd</sup> meeting of the Syndicate, the BSMMU, vide office order dated 08.09.2016 (Annexure-I4) posted 45 Medical Officers to the post of Consultant subject to the following terms and conditions:

- “১। স্ব-বেতনে পদায়ন কোন পদোন্নতি নহে।
- ২। পূর্ব পদের সকল দায়িত্ব বহাল থাকবে।
- ৩। রোস্টার ডিউটি পালন করতে হবে।
- ৪। মূল পদের নিয়োগের সকল শর্তাবলী পূর্ববৎ থাকবে।”

It appears from the above that the BSMMU authority did not follow the 33<sup>rd</sup> Syndicate's decision and posted other Medical Officers to the next higher post but the petitioners were left out of consideration without assigning any reason whatsoever. It further appears that the case of the petitioners stands on the same footing as that of Medical Officers who are beneficiaries of the decision taken by the BSMMU authority. We have no hesitation to hold that the petitioners have been discriminated which offends Article 27 of the Constitution. The learned Senior Advocate appearing for the BSMMU could not lay his hands in the matter of discrimination done to the petitioners.

In view of the foregoing discussions, the respondent BSMMU is hereby directed to consider the case of the petitioners for posting (পদায়ন) them to the post of Assistant Professor in accordance with the terms and conditions contained in paragraph No. 4 of the notification dated 19.07.1999 (Annexure-B) and office order dated 08.09.2016 (Annexure-I4) i.e.

- ১। স্ব-বেতনে পদায়ন কোন পদোন্নতি নহে।
- ২। পূর্ব পদের সকল দায়িত্ব বহাল থাকবে।
- ৩। রোস্টার ডিউটি পালন করতে হবে।



৪। মূল পদের নিয়োগের সকল শর্তাবলী পূর্ববৎ থাকবে।”

The respondents must not sit idle over the matter and take the decision as early as possible within a reasonable period of time preferably within 4 (four) months from the date of receipt of the judgment and order.

The application for addition of party dated 05.11.2023 filed by Mr. Kazi Muhammad Kamrul Islam, Research Assistant, Department of Hematology, BSMMU as petitioner No. 45 is allowed. Office is directed to allow the applicant as petitioner No. 45 and amend the cause title of the writ petition accordingly.

With the above observations and directions, the Rule is disposed of.

**Khandaker Diliruzzaman, J.**

I agree.