

In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)

Present

**Madam Justice Kashefa Hussain
And
Justice S.M. Maniruzzaman**

Writ Petition No. 9684 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:

Md. Shoyebur Rahman and others

..... Petitioners

Vs.

The Ministry of Public Administration,
Bangladesh Secretariat, Dhaka and
others

..... Respondents

Mr. Md. Abdullah Al Mamun, Advocate

.....for the petitioners

Mr. Md. Raju Mia, Advocate

.... for the respondent No. 1

Ms. Mahfuza Begum, D.A.G with

Ms. Sayeda Sabina Ahmed Molly, A.A.G with

Mr. Ali Akbor Khan, A.A.G

... for the respondents

Heard on: 21.04.2024, 22.04.2024,

23.04.2024 and

judgment on: 24.04.2024.

Kashefa Hussain, J:

Rule nisi was issued calling upon the respondents to show
cause as to why Memo No. 05.00.0000.112.12.018.17.86 dated
28.02.2021 issued by the respondent No. 3 (Annexure-G) the letter

under Memo No. 05.47.5200.006.17.110 dated 29.03.2021 issued by the respondent No. 7 (Annexure-G1) for returning the additional payment in respect of two advance increment on the purported exclusionary interpretation of Rule 14 (3) of the National Pay Scale, 2015 should not be declared illegal without lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

The petitioner No. 1 is Md. Shoyebur Rahman officer Assistant Cum Computer Typist (now in Deputy Administrative Officer) son of Dr. Abdul Jalil, mothers of late Sahera Khatun, of Village – Kismot Harati, Post- Saptibari, P.S.- Lalmonirhat Sadar, District- Lalmonirhat, Petitioner No. 2 is Md. Shahjahan Ali, Administrative Officer, UNO Officer Kaliganj, Lalmonirhat, son of Md. Menaj Uddin, Mothers of Sohijon Bibi, Village- Tista, Post- Tista, P.S.- Lalmonirhat Sadar, District- Lalmonirhat, petitioner No. 3 is Md. Ayub Ali, Sub Assistant Administrative Officer, LG Section, DC Office, Lalmonirhat, son of Aser Mahmud, Mothers of Alifun Nesa, Village- Khatapara, Post- Saptibari, P.S.- Aditmari, District- Lalmonirhat, Petitioner No. 4 is Md. Abdullah Mia, Office Assistant Cum Computer Typist, AC Land Office, Patgram, Lalmonirhat (Now in Retired & PRL), son of Mohir Uddin Mia, Mothers of Most. Nur Gole, Village- Barghoria, Post- Mohiskhocha, P.S.- Aditmari, District- Lalmonirhat, Petitioner No. 5 is Md. Mahatab Uddin Mridha, Administrative Officer, UNO Office Hatibandha, Lalmonirhat, son of Abdul Gafur, Mothers of Atobjan, Village- Taluk Khutamara, Post- Lalmonirhat, P.S.- Lalmonirhat, District- Lalmonirhat, Petitioner No.

6 is Md. Mozibor Rahman, Administrative Officer, UNO Office Aditmari, Lalmonirhat, son of Soi Muddin, Mothers of Mofijan Nesa, Village- Taluk Khutamara, Post- Lalmonirhat, P.S.- Lalmonirhat, Sadar District- Lalmonirhat, Petitioner No. 7 is Md. Mojibar Rahman, Office Assistant Cum Computer Typist, RM Section DC Office, Lalmonirhat, son of Md. Wahab Ali, mothers of Julekha Begum, village- Sebokdas Nithok, Post- Ghongagach, P.S. – Kaliganj, Dist- Lalmonirhat, Petitioner No. 8 is Anil Kumar Roy, Office Assistant Cum Computer Typist, UNO Office Aditmari, Lalmonirhat (Now in retired), son of Podmo Ram Barmon, mothers of Giri Bala, Village- Siyal Khaoa, Post- Gorol, P.S.- Kaliganj, Dist- Lalmonirhat, Petitioner No. 9 is Shailendra Nath Roy, Deputy Administrative Officer, UNO Office Patgram, Lalmonirhat, son of late Sudhir Chandra Roy, mothers of late Santi Bala, village- Aditmari, Post- Aditmari, Police Station- Aditmari, Dist- Lalmonirhat, Petitioner No. 10 is Md. Motiar Rahman Sarker, Deputy Administrative Officer, LG Station, DC Office Lalmonirhat, son of Md. Anowar Hossain Sarker, mothers of Most. Sufia Khatun, Village- Taluk Khutamara, Post- Lalmonirhat, P.S.- Lalmonirhat Sadar, District- Lalmonirhat, petitioner No. 11 is Md. Adbur Rashid, Deputy Administrative Officer, UNO Office Aditmari, Lalmonirhat, son of Anayat Ullah, mother of Mojida Khatun, Vill- Aditmari, Post- Aditmari, P.S.- Aditmari, Dist- Lalmonirhat, petitioner No. 12 is Md. Rafiqul Islam, Sub Assistant Administrative Officer, JM Section, DC Office, Lalmonirhat, son of A.K.M Kefayet Ullah, mothers of Most. Reziya Khatun, village- Taluk Khutamara, post- Lalmonirhat, P.S.- Lalmonirhat Sadar, Dist-

Lalmonirhat, petitioner No. 13 is Md. Abdul Jolil, Office Assistant Cum Computer Typiest, LG Section, DC Office, Lalmonirhat, son of Adul Hossain, mothers of Most- Reziya Khatun, Village- Mohiskhosa, Post- Mohiskhosa, Police Station- Aditmari, Dist- Lalmonirhat, petitioner No. 14 is Sub Assistant Administrative Officer, SA Section, DC Office, Lalmonirhat, son of Md. Abul Hossain, mothers of Most. Tahera Begum, Village- Bivhor, Post Kumrirhat, Police Station Lalmonirhat Aditmari, District- Bivhor, Post- Kumarirhat, P.S.- Aditmari, Dist- Lalmonirhat, petitioner No. 15 is Md. Solayman Ali, Office Assistant. Cum Computer Typist, General Section, DC Office, Lalmonirhat, son of late Osman Ali, mothers of Most. Salma Khatun, Village- Khatapara, Post- Saptibari, Police Station- Aditmari, District- Lalmonirhat, petitioner No. 16 is Nirmolandu Barmon, Sub Assistant Administrative Officer, Record Room Section, DC Office. Lalmonirhat, son of Anonto Kumar Barmon, mothers of Bindu Rani. Village Khord Saptana, Post- Lalmonirhat, Lalmonirhat Police Sadar, Station- District- Lalmonirhat, petitioner No. 17 is Hiralal Roy, Deputy Administrative Officer, UNO Office Hatibandha, Lalmonirhat, son of late Nagandra Nath Roy, mothers of Santi Bala Roy, Village- Khord Saptana, Post- Lalmonirhat, Police Station- Lalmonirhat Sadar, District- Lalmonirhat, petitioner No. 18 is Subas Chandra Barmon, Head Assistant Cum Accountant, AC Land Office. Hatibandha, Lalmonirhat, son of Surandra Nath Barmon, mothers of Suvaddra Roy. Village Khord Saptana, Post- Lalmonirhat, Lalmonirhat Lalmonirhat. Police Sadar, Station- District- Lalmonirhat, petitioner

No. 19 is Bimal Chandra Barman, Head Assistant Cum Accountant, AC Land Office, Patgram, Lalmonirhat, son of Vorot Chandra Barman, mothers of Shilo Bala Roy, Village- Tetuliya, Post Duhuli, Police Station- Lalmonirhat. Kaliganj, District- Lalmonirhat, petitioner No. 20 is Md. Mamotaj Uddin, Office Assistant Cum Computer Typist, UNO Office, Aditmari, Lalmonirhat (Now Retired & PRL), son of late Mokbul Hossain Sarker, mothers of late Amena Khatun, Village- Khamar Gobindoram, Post- Mohendra Nagar, Police Station- Lalmonirhat Lalmonirhat. Sadar, District- Lalmonirhat, petitioner No. 21 is Md. Nur Bakt Mia, Office Assistant Cum Computer Typist, RM Section, DC Office, Lalmonirhat, son of Md. Efas Uddin, mothers of Most. Asia Khatun, Village Ramdas, Post- Borobari, Police Station Lalmonirhat Sadar, District-Lalmonirhat, petitioner No. 22 is Md. Shahidul Islam, Office Assistant Cum Computer Typist, AC Land Office, Sadar, Lalmonirhat, son of late Somir Uddin, mothers of late Sokhila Beoya, Village-Purbo Saptana Vatri, Post- Lalmonirhat, Police Station- Lalmonirhat Lalmonirhat. Sadar. District- Lalmonirhat, petitioner No. 23 is Md. Badiar Rahman, Office Assistant Cum Computer Typist, Library Section, DC Office Lalmonirhat. (Now Retired & PRL), son of late Poser Ali, mothers of Most. Basiron Beoya, Village- Uttor Gobda, Post- Durgapur, Police Station- Aditmari, District- Lalmonirhat and petitioner No. 24 is Saidur Rahman, Office Assistant Cum Computer Typist, SA Section, DC Office Lalmonirhat. (Attached Divisional Commissioner Office, Rangpur), son of Abdus Sobahan, mothers of

Most. Jhorimai, Village- Soidpur, Post- Madrasa Police Station- Pirgacha, District- Rangpur.

The respondent No. 1 is The Secretary, Ministry of Public Administration, Government of People's Republic of Bangladesh, Bangladesh Secretariat Dhaka, respondent No. 2 is The Secretary, Ministry of Finance, Government of People's Republic of Bangladesh, Bangladesh Secretariat Dhaka-1000, respondent No. 3 is Deputy Secretary, Ministry of Public Administration, (Admin-3) Government of People's Republic of Bangladesh, Bangladesh Secretariat Dhaka, respondent No. 4 is Deputy Secretary, Ministry of Finance, Finance Division, Government of People's Republic of Bangladesh, Bangladesh Secretariat Dhaka, Dhaka, respondent No. 5 is Deputy Secretary, Internal Resource Division. Ministry of Finance, Government of People's Republic of Bangladesh. Bangladesh Secretariat Dhaka, respondent No. 6 is Secretary of Divisional Commissioner, Rangpur, respondent No. 7 is Deputy Commissioner, Lalmonirhat, and respondent No. 8 is Administrative officer, Establishment Branch, Deputy Commissioner Office, Lalmonirhat.

The petitioner's case as stated in the writ petition inter alia is that the petitioner Nos. 1 to 24 are Steno typists/Typist/LDA Cum-Typist in different type of administrative offices of Government in Bangladesh.

That as part of regular admin's exercise, the Additional Commissioner, Rangpur Division, Rangpur for the purpose of preparing of entitlement of advance increment held examination on

01-03-17 and the candidates successfully passed and recommended them in respect of entitlement of advance increment.

That on the basis of letter dated 20.06.17 Additional District Magistrate and Convener of advance increment committee held a meeting and took interview of the candidates to determine eligibility for advance increment of employee. Accordingly, the petitioners were recommended for advance increment vide letter dated 20.06.2017.

That the Deputy Commissioner, Lalmonirhat issued a letter dated. 06.07.17 and 17.01.19 for allowing 2 (two) advance increment in favor of the petitioners.

That Deputy Secretary, Internal Resource Division, Finance Ministry, Dhaka issued a letter dated 15.07.18 confirming entitlement of the petitioners of 2 (two) advance increment as Assistant Cum-Computer in view of memo No. MF-FD(IMP)-3- R(G)-16.83(pL1)/161 dated 14. 09.1986. Relying upon the said letter, the petitioners have been paid their salary on the basis of the increment.

That all on a sudden, the respondent No.4 Deputy Secretary, Finance Department of the Finance Ministry, Dhaka issued a letter seeking opinion from the respondent No. 1 as to whether the concerned authority granting increment legally furnished its opinion stating that the petitioners do not validly qualify for the advance increment vide memo No.07.00.0000.162.05.027.12-46 dated-15.02.2021.

That the Deputy Secretary, the Ministry of Public Administrative, Admin-3, Dhaka, issued letter bearing memo No.05.00.0000.112.12.018.17.86 dated 28.02.2021 stating that"

জাতীয় বেতনস্কেল, ২০১৫ এ অধ বিভাগ কর্তৃক জারিকৃত ১২/১১/১৯৮৬ খ্রিঃ তারিখের ১৬০ নং স্মারক এবং ১৪.০৯.১৯৮৬ খ্রিঃ তারিখের ১৬১ নং স্মারক সংরক্ষিত হয়নি বিধায় জাতীয় বেতনস্কেল, ২০১৫ এর ১৪(৩) অনুচ্ছেদ অনুযায়ী এ সুবিধা বহাল নেই। বণিতাব স্তায়, উপরের উল্লেখিত স্মারকদ্বয় অনুযায়ী টাইপিং দক্ষতার জন্য ২ টি অগ্রীম ইনকুমেন্ট প্রদানের সুযোগ নেই।

That in view of the aforesaid letter dated 29.03.2021 the respondent No. 3 demanded return of the salary that were paid on the basis of advance increment. Being aggrieved by the letter dated 29.03.2021 issued by the respondent No. 3 demanding return of the salary paid on the basis of advance increment of the petitioner's filed the writ petition.

Learned Advocate Mr. Md. Abdullah Al Mamun appeared on behalf of the petitioner while learned Mr. Md. Raju Mia appeared for the respondent No. 1 and Deputy Attorney General Ms. Mahfuza Begum with Ms. Sayeda Sabina Ahmed Molly, Assistant Attorney General with Mr. Ali Akbor Khan represented the respondents.

Learned Advocate Mr. Md. Abdullah Al Mamun for the petitioner submits that the Annexure-G1 issued by the respondent No. 3 where the petitioners were serving in their post and received two advance increment. He continues that meanwhile during duration of their service on 29.03.2021 the respondent No. 3 by way of a general order (Annexure-G1) instructed all who have received advance increment under the National Pay Scale, 2015 to return the arrear of such advance increments. He submits that by such an unlawful and

arbitrary general order the petitioners have been directly affected since all these petitioners here already received two advance increments thereof. He argues that it is evident that the petitioners were granted the two advance increments only after approval of the proper authority. He submits that therefore the benefit which was granted to the petitioners including any other persons who might have availed advance increment such benefit once granted cannot be taken away. He contends that seizing a person of any material benefits whatsoever which he has once received is violative of his fundamental rights guaranteed under the constitution. He argues that it is well settled by several decisions of this division and also our Apex Court that a benefit once granted cannot be taken away except on the ground of any fault of the person to whom such was benefits granted. He continues that there is no fault or lacuna of the petitioners during any period of time in service and therefore such on arbitrary instruction issued by a general order to the petitioners is an infringement of their fundamental rights and consequently Annexure-G1 the letter dated 29.03.2021 issued by the respondent No. 3 is unlawful and void ab-initio. 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 for the respondent No. 1 opposes the rote. At onset of his submissions he argues on the point of maintainability of the writ petition. He submits that since these petitioners being government servants if aggrieved by any administrative order may resort to the administrative tribunal therefore since the petitioners also falls within the purview of the jurisdiction of

the administrative tribunal consequently writ is not maintainable. He submits that therefore the administrative tribunal is the proper forum to vent their grievances and not a writ petition under Article 102 of the Constitution. He next submits that Section 14 the Pay Scale 2015 contemplate that such claims are not vested right of any employee and the Rule bears no merit and ought to be discharged for ends of justice.

We have heard the learned Advocates from both sides, perusal the application and the materials. The primary issue to be decided in this matter is whether the instruction by a general order to return benefits already received by way of a payment of advance increment the petitioners is unconstitutional or not. Evidently the petitioners have been serving in their respective posts for continues period of several years. At one stage in course of their employment they made an application for two advance increments. It is also evident that such two advance increments was granted to them by the authority. It is also clear that the petitioners meanwhile pursuant to the decision of the authority to grant the two increments obtained and availed and the benefits thereof. It must be reminded that it is a well settled principle settled by several decisions of our Apex Court including this division that a benefit once granted by the authority cannot be taken away except on the ground of any fault of the person to whom the benefits has been granted. This bench in writ petition No. 10852 of 2007 also held the consistent view that a benefit once granted cannot be taken away. In writ petition No. 10852 of 2007 this bench relied on the principle of our Apex Court cases inter alia held:

“Such order to pay the balance amount of arrears is absolutely violative of the fundamental right of the petitioners. Moreover the principle of legitimate expectation is also attracted here. It is a settled principle of legitimate expectation as held by various decisions of our Apex court that once a benefit is given to any person by way of pay, salary or other benefits whatsoever such benefit cannot be taken away unless and until any fault of the beneficiary can be shown.

Therefore the order to return the balance amount of the arrears of advance increment is totally unlawful and void *ab-initio*.

We have examined some decisions on the principle of legitimate expectation. It is a well settled principle that administrative authority cannot deprive any person of some benefits or advantage which he either had in the past been permitted by the authority to enjoy and which he can legitimately expect to continue until he is intimated of some rational grounds for withdrawing it

Such principle has been upheld in the decision of Karnataka V. Unadevi, AIR 2006 SC 1806 and which was relied upon in the case of Sirajul Islam V. Bangladesh reported in (2007) 12 MLR 344. We are also of the considered view that the same principle ought to follow regarding the respondent No. 2 reducing the pay scale.”

Learned advocate for the respondent No. 3 argued on the issue of the maintainability. The learned advocate for the respondents further argued that the writ petition is not maintainable since they may resort to the administrative tribunal being an equally efficacious remedy. It is necessary to remind the learned advocate for the respondent No. 3 that it is a well settled principle settled by our Apex

Court in inter alia in santosh's case that where direct violation of basic fundamental right is revealed in that event writ petition is maintainable even if there is recourse to another forum. We are of the considered view that the case before us also reveals a direct violation of fundamental rights of the petitioner given that the respondents arbitrarily instructed the petitioners to return back the arrears of advance increment and which amounts to seizing them of a benefit which was once granted to them. It is reiterated that such act of the respondents is totally violative of the fundamental rights and therefore writ is not maintainable.

Under the facts and circumstances and foregoing discussions made above we find merits in the Rule.

In the result, the Rule is made absolute so far as to relates to the 24 petitioners here in the instant writ petition. Annexure-G1 dated 29.03.2021 is hereby declared unlawful and void ab-initio and without lawful authority so far as the instant 24 petitioners are concerned.

The order of stay granted earlier by this court is hereby recalled and vacated.

Communicate this judgment at once.

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(Kashefa Hussain, J)

I agree.

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(S.M. Maniruzzaman, j)