

In the Supreme Court of Bangladesh
 High Court Division
 (Special Original Jurisdiction)
Present
Justice Md. Habibul Gani
And
Justice Sk. Tahsin Ali

Writ Petition No. 8128 of 2023

In the matter of:

An application under Article 102(2)(a)(ii) of the Constitution of the People's Republic of Bangladesh.

-And-

In the matter of:

Jamuna Fertilizer company Limited
 Represented by the Managing Director
 Petitioner

Vs.

Govt. of Bangladesh represented by the Secretary, Ministry of Labour and employment, Bangladesh Secretariat, Ramna, Dhaka.

.....Respondents

Mr. Sayed Quamrul Hossain, Advocate

.....petitioner

Mr. Md. Mohaddesh-Ul-Islam, DAG with

Mr. Kamrul Islam, AAG

Mr. Kamrunnahar Tamanna, AAG and

Mr. Ahmad Musanna Chowdhury, AAG

..... For the respondents.

Mr. Md. Hamidur Rahman, Advocate

..... for the respondent Nos. 4-6, 8-18,
 20-23

Heard and Judgment on: 29.10.2025

Sk. Tahsin Ali, J:

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh filed by the petitioner, a Rule Nisi was issued calling upon the respondents to show cause as to why the impugned judgment and order dated 14.05.2023 passed by the Labour Appellate Tribunal, Dhaka in BLA appeal No. 03 of 2023 dismissing the

appeal and thereby affirming the judgment and order dated 27.10.2022 passed by the Chirman,, 1st Labour Court, Dhaka in BLA (I.R.) Case No. 73 of 2010 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.

At the time of the issuance of the Rule, operation of the impugned judgment and order dated 14.05.2023 passed by the Labour Appellate Tribunal, Dhaka in BLA Appeal No. 03 of 2023 was stayed for a period of 6(six) months.

Facts relevant for disposal of the said Rule in short, are that the respondents filed BLA (IR) Case No. 73 of 2010 before the learned 1st Labour Court, Dhaka under Section 213 of the Bangladesh Labour Act, 2006 and obtained Judgment and order on 27.10.2022. The learned Chairman, 1st Labour Court, Dhaka (District & Session Judge) was pleased to dismissed the said BLA (IR) Case No. 73 of 2010 vide dated 09.06.2011. The respondents being as appellants preferred an appeal before the Labour Appellate Tribunal, Dhaka being BLA (Appeal) No. 548 of 2011. The appeal was allowed by sending the case back on remand with observations to the Learned Chairman, 1st Labour Court, Dhaka, being guided such observations on 23.12.2012 the BLA (IR) Case No. 73 of 2010 was disposed of. That an appeal being No. BLA (Appeal) No.17 of 2013 was also preferred by the appellants before the Labour Appellate Tribunal, Dhaka, which was dismissed on contest and

thereafter a Writ Petition being No. 5539 of 2013 was filed by the appellants wherein the Rule was discharged.

Being aggrieved with such disposal of the said writ Petition, the appellants preferred a Civil Petition for Leave to Appeal bearing No. 1014 of 2014 before the Hon'ble Appellate Division of Supreme Court. The Hon'ble Appellate Division, upon hearing, disposed of the said petition by setting aside the judgments and orders passed by the 1st Labour Court, Dhaka, the Labour Appellate Tribunal, Dhaka, as well as the Hon'ble High Court Division, and remanded the case to the 1st Labour Court, Dhaka for disposal afresh in accordance with law, upon consideration of the Memo dated 19.06.1988 vide Reference No. BCIC/LSA/NGFF/3/1421, issued by the Bangladesh Chemical Industries Corporation.

Upon considering of the Memo dated 19.06.1988 vide reference No. BCIC/LSA/ NGFF/3/1421 issued by the Bangladesh Chemical Industries Corporation, the learned Chairman was pleased to pass the judgment on 27.10.2022.

The respondents' case, in short, is that the respondents joined in the petitioner's establishment as apprentice in Grade-2 in between 04.12.1984 to 16.09.1998 and also in between 17.06.1987 to 20.02.2011 respectively and they got promotion as H.S.O/ST/HST and Technicians/Master then Master operators. That in pursuance of a circular of Bangladesh Chemical Industries Corporation (BCIC) dated 09.06.1988 some employees of other factories of the BCIC named Mahtab Uddin, Md. Bahadur and others have been replaced as Sub-

Assistant Chemist but unfortunately though the respondents are Bachelor of Science (B.Sc) i.e. with same qualification but none of them has been replaced as Sub-Assistant Chemist in spite of their repeated prayers which is clear discrimination among the respondents and other employees of other Factories of the BCIC. That several applications on behalf of the respondents for replacing them in the post of Sub-Assistant Chemist have been submitted to the BCIC on different dates and Memos but in vain. Hence this case was arisen.

Learned advocate Mr. Sayed Quamrul Hossain appeared on behalf of the petitioner while learned Deputy Attorney General Mr. Md. Mohddesh-Ul-Islam with Mr. Kamrul Islam, Assistant Attorney General with Mr. Kamrunnahar Tamanna, Assistant Attorney General with Mr. Ahmad Musanna Chowdhury, Assistant Attorney General appeared for the state/ respondents and the learned advocate Mr. Md. Hamidur Rahman appeared for the respondent Nos. 4-6, 8-18, 20-23.

Learned advocate Mr. Sayed Quamrul Hossain for the petitioner submits that the Hon'ble Appellate Division disposed of the Civil Petition and the matter is sent back on remand to the 1st Labour Court, Dhaka for a decision afresh considering the Memo dated 19.06.1988 vide reference No. BCIC/LSA/NGFF/31421 issued by the Bangladesh Chemical Industries Corporation (BCIC) but the learned 1st Labour Court, Dhaka passed the judgment and order in the light of the circular vide dated 09.06.1988 and vide circular dated 19.06.1988 which was based on erroneous findings. He further submits that the finding of the I.R.O Case No. 830 of 1983 admittedly the first parties were appointed

as HSO/HST/(Highly Skilled Operator/ Highly Skilled Technician) through an advertisement under the Industrial Wages Workers Productivity Commission's pay scale. He further submits that the respondents did not fulfill all the requisite qualification for promotion. He also submits that the appointment, promotion and posting is the discretionary power of the BCIC decided by the Hon'ble Appellate Division in difference cases. 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. Md. Hamidur Rahman on behalf of the respondents submits that the respondent-employees filed BLA (IRO) Case No. 73 of 2010 before the learned 1st Labour Court, Dhaka under Section 213 of the Bangladesh Labour Act, 2006 praying for replacement in the post of Sub-Assistant Chemist from the date of their promotion in the post of Highly Skilled Operator (HSO)/ Highly Skilled Technician (HST) in the light of memo under reference No. BCIC/LSA/1/52/1387 dated 09.06.1988 and the learned Labour Court correctly allowed the case on 27.10.2022 against which the present petitioner as appellant filed BLA Appeal No. 03 of 2023 before the Labour Appellate Tribunal, Dhaka and the learned Appellate Tribunal legally and correctly disallowed.

He further submits that the respondent Nos. 4-23 joined in the service as apprentice in Grade-II in between 04.12.1984 to 16.09.1998 and 17.06.1987-20.02.2011 and they got promotion in the post of Highly Skilled Operator (HSO)/ Highly Skilled Technician (HST) and thereafter

they got promotion in the post of Master Technician (MT)/ Master Operator (MO). In pursuance of circular dated 09.06.1988 issued by Bangladesh Chemical Industries Corporation (BCIC), some employees of other factories under BCIC had been replaced as Sub-Assistant Chemists, but the present respondents have not been replaced in the said post though they have the degree of Bachelor of Science (B.Sc.) and in that view of the matter the learned First Labour Court, Dhaka allowed the BLA (IRO) Case No. 73 of 2010 and ordered that the present respondent Nos. 4-23 will be replaced with retrospective effect in the post of Production Assistant/Technical Assistant from the date of their respective joining in the post of High Skilled Operator /High Skilled Technician and after gathering 3 (three) years experience from such replacement, they will get promotion in the post of Sub-Assistant Chemist/Sub-Assistant Engineer and the learned Labour Appellate Tribunal rightly disallowed the appeal.

He also submits that the respondent-employees filed BLA (IRO) Case No. 73 of 2010 before the learned 1st Labour Court, Dhaka which was dismissed on 09.06.2011 and respondent-employees filed BLA Appeal 548 of 2011 before the learned Labour Appellate Tribunal, Dhaka and the appellate tribunal allowed the said appeal and sent the original case to the 1st Labour Court, Dhaka for retrial. On 23.12.2012 the BLA (IRO) Case No. 73 of 2010 was allowed by the learned Labour Court against which Bangladesh Chemical Industries Corporation (BCIC) filed BLA Appeal No. 17 of 2013 before the learned Labour Appellate Tribunal, Dhaka and the said appeal was dismissed on

18.04.2013 against which BCIC moved the High Court Division with the Writ Petition No. 5539 of 2013 and obtained Rule and ultimately the Rule was discharged on 26.02.2014. Thereafter, BCIC filed Civil Petition for Leave to Appeal No. 1014 of 2014 before the Appellate Division of the Hon'ble Supreme Court of Bangladesh and contended that Memo dated 19.06.1988 vide reference No. BCIC/LSA/NGFF/3/1421 issued by BCIC has not been considered by the trial Court and upon hearing, by the judgment and order dated 19.05.2014, the Hon'ble Appellate Division disposed of the said Civil Petition and sent back the original case to the 1st Labour Court, Dhaka for taking decision afresh considering the said Memo dated 19.06.1988 vide reference No. BCIC/LSA/NGFF/3/1421 issued by the BCI. He lastly submits that the present petitioner contended that the circular dated 09.06.1988 has lost its effectiveness and as per the mandate of circular dated 19.06.1988 the respondent-employees have no scope to be replaced in the post as prayed for, but both the Courts below concurrently found that the circular dated 09.06.1988 has not been cancelled and the Rule bears no merit and ought to be discharged for ends of justice.

We have heard the learned counsels for both sides and have perused the application and examined the materials on record. It appears from the judgments of the Labour Court, the Labour Appellate Tribunal and the High Court Division that, in deciding the merit of the claim of the first parties, only the Memo dated 09.06.1988 issued by BCIC was taken into consideration. It further appears that another Memo dated

19.06.1988 also issued by BCIC, was not produced before the Labour Court and the Labour Appellate Tribunal. As such, the said Memo was not considered by the courts below. Consequently, it appears that reliance was placed solely on the Memo dated 09.06.1988. At the hearing, the learned counsel for the petitioner in the writ petition submits that four employees, similarly situated, were earlier considered and granted all service benefits in connection with the Memo dated 09.06.1988.

The Hon'ble Appellate Division disposed of the Leave to Appeal being No. 1014 of 2014 by setting aside the judgments of the courts below and remanding the matter to the 1st Labour Court, Dhaka for fresh decision, with a direction to consider the Memo dated 19.06.1988 vide reference No. BCIC/LSA/NGFF/3/1421 issued by Bangladesh Chemical Industries Corporation (BCIC).

During trial before the Labour Appellate Tribunal, the respondent BCIC authority contended that the Diploma Certificate and the B.SC. Certificates of the petitioner were not kept in their personal file and as such, the authority did not consider granting the relevant benefits. However, the petitioner of the first party adduced evidence before the tribunal and beyond reasonable doubt, successfully proved that the requisite certificates were duly kept in their personal file.

Considering the above facts and circumstances of the case, in particular submissions advanced on behalf of the petitioner drawing our kind attention to the Memo dated 19.06.1988. We find no substance in the Rule.

Accordingly, the Rule is discharged. The judgments and orders passed by the 1st Labour Court, Dhaka and the Labour Appellate Tribunal, Dhaka in BLA (IR) Case No. 73 of 2010 and BLA Appeal No. 03 of 2023 are hereby affirmed. The respondents are directed to arrange and pay all benefits and wages to the petitioners in accordance with Memo dated 19.06.1988.

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

Communicate this judgment at once.

Md. Habibul Gani, J

I agree.