

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

Writ Petition No. 15241 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. Sha Alom Palas Khan

..... **Petitioner.**

-Versus-

Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Industries of 91, Motijheel C/A, Dhaka and others,

... **Respondents.**

Mr. Mahbub Shafique, advocate,

...For the **petitioner.**

Mr. Bepul Bagmar, D.A.G

For the respondents.

Mr. Md. Sanwar Hossain, Advocate,

.. **For Respondent Nos.1 & 2.**

Mr. Mohammad Rashedul Hassan, Advocate

..... **For respondent No.9.**

Judgment on: 20.03.2024

Present:

Mr. Justice Md. Khasruzzaman

and

Mr. Justice K M Zahid Sarwar

Md. Khasruzzaman, J:

In the application under article 102 of the Constitution, on 11.12.2022 the *Rule Nisi* under adjudication was issued calling upon the respondents to show cause as to why the impugned condition for upgradation of the salary scale of the post of Inspector (Metrology) of Bangladesh Standards and Testing Institute (hereinafter referred to as the BSTI) from Grade-11 to Grade-9 as

contained in Memo No. 07.00.0000.164.36.022.11-47 dated 04.08.2020 issued by the respondent No.6 so far as it relates to the petitioner (Annexure-F) should not be declared to have been issued without lawful authority and is of no legal effect and further as to why the impugned Memo No. 05.00.0000.171.12.008.22.199 dated 21.11.2022 issued by the respondent No.5 refusing to give promotion to the petitioner to the post of Senior Examiner (Metrology) (Annexure-O) should not be declared to have been issued 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.

Facts necessary for disposal of the *Rule Nisi*, in short, are that on 16.06.2013 the respondent No.10 Deputy Director (Administration), Bangladesh Standards and Testing Institute published a notice for appointment to the post of Inspector (Metrology) including other posts (Annexure-B). Since the petitioner had all the required qualifications asked for in the said notice for appointment, he applied for getting appointment in the post of Inspector (Metrology). Thereafter, he was appointment in the post of Inspector (Metrology) by the BSTI vide its letter dated 12.03.2015 (Annexure-B-1). As per the appointment letter, the petitioner joined in the said post. At present he is serving as an Inspector (Metrology) of the BSTI in the District Office, Cox's Bazar. The petitioner has been serving in the said post for last 07(seven) years with utmost sincerity and to the satisfaction of the concerned authority. It was specifically mentioned in the notice for

appointment that the post of Inspector (Metrology) would be upgraded to a 1st Class Post. Accordingly, the Ministry of Industries sent a proposal to the Ministry of Public Administration to upgrade the status and salary scale of the post of Inspector (Metrology) from 2nd Class to 1st Class where the Ministry of Public Administration vide its letter No. 05.160.015.00.00.003.2010-54 dated 15.04.2013 approved the proposal by upgrading the status and salary scale of the post of Inspector (Metrology) (Annexure-D). Thereafter, the Ministry of Industry vide its letter dated 11.08.2016 requested the Ministry of Finance to give final approval for upgrading the status and salary scale of the post of Inspector (Metrology) of the BSTI from 2nd Class to 1st Class i.e. from Grade 11 to Grade 9 as per the National Pay Scale of 2015 (Annexure-E). Subsequently, the Ministry of Finance vide Memo dated 04.08.2020 finally approved the proposal of upgrading the status and salary scale of the post of Inspector (Metrology) from Grade 11 to Grade-9 (Annexure-F). But in the approval being Memo dated 04.08.2020 the Ministry of Finance most illegally attached a condition that 3rd Class/ Division or equivalent CGPA/Grade at any level of academic qualification shall not be accepted for appointment to the post of Inspector (Metrology) even though there is no such requirement in the BSTI Service Rules, 1989 (amended in 2005) under which the petitioner was appointed and joined in the service. It was mentioned in the said Memo dated 04.08.2020 that the Service Rules need to be approved by amending and inserting the qualifications for appointment in column 5 of the previous page of the pattern. But

the Ministry of Industry vide Memo dated 11.10.2020 without amending the Service Rules granted approval for upgradation of the salary scale of the post of Inspector (Metrology) from Grade-11 to Grade-09. Accordingly, the BSTI vide its Office Order dated 30.12.2020 upgraded the pay scale of 32 (thirty two) Inspectors (Metrology) from Grade-11 to Grade-9. But the status and salary scale of the petitioner was not upgraded based on the Memo dated 04.08.2020 on the ground that he had a third class in Honours (Applied Mathematics) (Annexures-G and G-1).

In such circumstances, the petitioner made representation dated 03.01.2021 to the Director, BSTI, Divisional Office, Rajshahi requesting to upgrade his salary scale from Grade-11 to Grade-9 which was duly forwarded to the respondent No.4 Director General, BSTI (Annexures-H and H-1). But the said representation has not been responded by the respondent. Thereafter, the petitioner sent legal notice on 03.02.2021 requesting the respondents to upgrade his pay scale from Grade 11 to Grade 9. But they did not pay any heed to the same. (Annexure-I).

It is also stated that the petitioner is eligible to get promotion to the next higher post of Senior Examiner (Metrology)/ Assistant Director (Metrology). But he was not promoted to the next higher post on the ground that his pay scale could not be upgraded from Grade 11 to Grade 9 due to the condition attached in the Memo dated 04.08.2020. Under such circumstances, the respondent No.4 vide its Memo dated 25.07.2022 requested the Ministry of Industry to seek opinion from the Ministry of Public Administration with

regard to promotion of the petitioner to the next higher post (Annexure-J), whereupon the Ministry of Industry vide its letter dated 27.09.2022 sought opinion from the Ministry of Public Administration with regard to the promotion of the petitioner (Annexure-M). In the meantime the BSTI published a gradation list of Officers of Metrology Wing vide Memo dated 16.01.2020 including the petitioner wherein his serial number is 50. One Sumon Saha, Inspector (Metrology) described in serial No.49 was given promotion to the post of Senior Examiner (Metrology) vide office order dated 04.07.2022. Now the petitioner is senior most Inspector (Metrology) and is entitled to get promotion. While the petitioner was eagerly waiting for a positive decision from the concerned Ministries regarding his promotion, all of a sudden, the Ministry of Public Administration vide Memo dated 21.11.2022 informed the Ministry of Industry that there is no scope to give promotion to the petitioner in the next higher post of Senior Examiner (Metrology) since he does not qualify as per the condition attached in the Memo dated 04.08.2020 issued by the Ministry of Finance (Annexure-O).

Under such circumstances, the petitioner has challenged the *condition for upgradation of the salary scale of the post of Inspector (Metrology) of Bangladesh Standards and Testing Institute from Grade-11 to Grade-9 as contained in Memo No. 07.00.0000.164.36.022.11-47 dated 04.08.2020 (Annexure-F) and also the Memo No. 05.00.0000.171.12.008.22.199 dated 21.11.2022 issued under the signature of the respondent No.5 refusing to give*

promotion to the petitioner to the post of Senior Examiner (Metrology) (Annexure-O) and obtained *Rule Nisi* by order dated 11.12.2022. The petitioner also obtained an order of direction upon the respondents to keep 01(one) post of Senior Examiner (Metrology)/Assistant Director (Metrology) vacant for the petitioner.

On the contrary, respondent Nos. 1 and 2 filed *affidavit-in-opposition* denying all material allegations made in the writ petition stating *inter-alia* that the petitioner obtained 3rd Class in his graduation degree. In Memo No. 07.00.0000.164.36.022.11-47 dated 04.08.2020 the Ministry of Finance has clearly mentioned that no 3rd Division/3rd Class will be accepted for upgrading the pay scale of the post of Inspector (Metrology) from Grade 11 to Grade 9. As such, the petitioner was not provided with pay scale in the 9th grade. Moreover, the Ministry of Industry obtained written opinion wherein the Ministry of Public Administration vide Memo dated 21.11.2022 clearly stated that there is no scope to consider the petitioner for promotion from Inspector (Metrology) to the post of Senior Examiner (Metrology). As such the *Rule Nisi* is liable to be discharged.

Respondent No.9 also filed an *affidavit-in-opposition* denying the material allegations made in the writ petition stating *inter-alia* that the condition for upgradation imposed by the Ministry of Finance mentioned that third division is not admissible at any stage of educational career to get promotion from Grade 11 to Grade 9. Therefore, the upgradation entitles only subject to the fulfillment of the said condition imposed by the Ministry of Finance

and as such this respondent has no authority to upgrade Inspector (Metrology) to 9th Grade i.e. to the post of Senior Examiner (Metrology)/Assistant Director (Metrology). It is also stated that promotion cannot be claimed as a matter of right by the employee and administrative prerogative cannot be insisted upon by the employee though they are eligible for promotion as upgradation of scale of any post is a policy decision of the Government and the same cannot be subject matter of writ petition under article 102 of the Constitution. Accordingly, the *Rule Nisi* is liable to be discharged.

Mr. Mahbub Shafique, the learned Advocate appearing on behalf of the petitioner submits that the petitioner was appointed under the BSTI Service Rules, 1989 (amended in 2005) wherein there is no stipulation that no 3rd Class/Division at any level of academic career shall be accepted. Referring to notice for appointment letter dated 16.06.2013 he further submits that there is no such condition in the column of educational qualification that 3rd Class/Division at any level of academic career shall not be accepted. Accordingly, Mr. Mahbub Shafique, learned Advocate submits that neither in the notice for appointment nor in the concerned Service Rules under which he was appointed, there was no such condition as attached in the impugned Memo dated 04.08.2020 and as such, the petitioner is entitled to be upgraded from Grade 11 to Grade 9 as well as to be promoted to the next higher post of Senior Examiner (Metrology). He also submits that the appointing authority enjoys the power and authority to frame

new rules or impose new condition to regulate the service of its employees, but in no way, it can take away the accrued/vested rights of its employees here the writ petitioner. An employee shall definitely be entitled to avail the new service benefit if given or created by the new rules. But no rules can be framed for their disadvantage, detriment or the denial of their accrued/vested right as in the instant case sought to be taken away. As such he contends that the impugned condition attached in the Memo dated 04.08.2020 shall be effective and applicable to the employees who will be appointed after the coming into effect or force of the same. Mr. Mahbub Shafique, the learned Advocate contends that there are long lines of the judicial decisions of the Apex Court that service Rules cannot be changed/alterd to the detriment or disadvantage of the employees who were appointed under the previous/earlier rules. As such, the impugned condition being detriment to the attached rights and benefits of the petitioner is liable to be without lawful authority and violative of the fundamental rights of the petitioner as guaranteed under articles 26, 27 and 31 of the Constitution and as such, the impugned condition as well as refusal to give promotion to the next higher post is illegal and without lawful authority and hence he has prayed for making the *Rule Nisi* absolute.

In support of the submissions, the learned Advocate for the petitioner has relied on the decisions in the case of **Giasuddin Bhuiyan(Md) and others Vs. Secretary, Security Services Division, Ministry of Home Affairs, Bangladesh Secretariat,**

Dhaka and others, 74 DLR(AD)231; Bakrabad Gas System Limited Vs. Al Masud-ar-Noor and others, 66 DLR(AD)187; Bangladesh Bank Vs. Sukamal Sinha, 21 BLC(AD)212 and Paschimanchol Gas Company Limited Vs. Md. Nuruzzaman and others, 24 BLT(AD)171. He also relied on an unreported judgment passed by this Bench dated 29.03.2023 in Writ Petition No.14893 of 2019.

Mr. Md. Sanwar Hossain, the learned Advocate appearing on behalf of the respondent Nos. 1 and 2 submits that the Government has every right to make new rules or impose condition to regulate the service of its employee. By referring to the Memo No. 07.00.0000.164.36.022.11-47 dated 04.08.2020 of the Ministry of Finance, he further submits that since the petitioner has 3rd Class in his graduation degree, he is not entitled to get his pay scale upgraded from Grade 11 to Grade 9 in view of the said Memo dated 04.08.2020. With regard to the promotion of the petitioner, he refers to the opinion of the Ministry of Public Administration vide Memo dated 21.11.2022 and also submits that there is no scope to consider the promotion of the petitioner from Inspector (Metrology) to the post of Senior Examiner (Metrology) and as such, the instant *Rule Nisi* is liable to be discharged.

Mr. Mohammad Rashadul Hassan, the learned Advocate appearing on behalf of the respondent No.9 has adopted the submissions advanced by the learned Advocate for the respondent Nos. 1 and 2 as above. In addition he submits that upgradation of scale of any post is a policy decision of the Government and the

issue cannot be decided under article 102 of the Constitution and as such, the *Rule Nisi* is liable to be discharged.

We have considered the submissions advanced by the learned Advocates for both the parties, perused the writ petition, all other connected papers annexed thereto, the Service Rules of 1989 and the impugned condition attached with the memo dated 04.08.2020 as well as the impugned refusal to give promotion to the petitioner and the decisions cited above and relied upon by the learned Advocate for the writ petitioner.

Admittedly, the petitioner was appointed in the post of Inspector (Metrology), BSTI under the BSTI Service Rules, 1989 (amended in 2005) wherein the qualification/requirement for appointment in the post of Inspector (Metrology) described in Serial No.33 has been provided as under:

“ সরাসরি নিয়োগের ক্ষেত্রে:

ফিজিক্স/এ্যাপ্লাইড ফিজিক্স এন্ড ইলেকট্রনিক্স এন্ড কম্পিউটার/ ম্যাথমেটিক্স/ এ্যাপ্লাইড ম্যাথমেটিক্স-এ স্নাতকোত্তর ডিগ্রী অথবা মেকানিক্যাল/ইলেকট্রিক্যাল এন্ড ইলেকট্রনিক্স ইঞ্জিনিয়ারিং-এ স্নাতক ডিগ্রী ।”

In the notice for appointment the appointing authority asked for the required qualification which read as under:

“ ফিজিক্স/এ্যাপ্লাইড ফিজিক্স এন্ড ইলেকট্রনিক্স এন্ড কম্পিউটার/ ম্যাথমেটিক্স/ এ্যাপ্লাইড ম্যাথমেটিক্স-এ স্নাতকোত্তর ডিগ্রী অথবা মেকানিক্যাল/ইলেকট্রিক্যাল এন্ড ইলেকট্রনিক্স ইঞ্জিনিয়ারিং-এ স্নাতক ডিগ্রী ।”

On perusal of the above it appears that to apply in the said post of Inspector (Metrology) candidate must have Masters Degree on Physics/Applied Physics and Electronics and Computer/Mathematics/Applied Mathematics or BSC Engineers on

Mechanical/ Electrical and Electronics Engineering. It has also been mentioned in the said notice for appointment that পদটি প্রথম শ্রেণীর অর্থাৎ টাকা: ১১০০০-২০৩৭০ স্কেলে উন্নতিকরনের বিষয় প্রক্রিয়াশীল।

The petitioner having required qualification was appointed in the said post. He has been serving to the satisfaction of the authority concerned. Now after 05(five) years of his service, the authority upgraded the status and pay scale of the post of Inspector (Metrology) from Grade 11 to Grade 9. But the authority imposed/attached condition stating that শিক্ষা জীবনের কোন স্তরে ৩য় শ্রেণী/বিভাগ/সমরূপ সিজিপিএ/গ্রেড গ্রহণযোগ্য নয়। Basing on this condition, the status and pay scale of the petitioner was not upgraded as well as he was not promoted to the next higher post stating that the petitioner has had 3rd Division/Class in his graduation degree and as such he is not entitled to get his status and pay scale upgraded from Grade 11 to Grade 9 and consequently, the Ministry of Public Administration gave opinion that there is no scope to consider the petitioner for promotion in the next higher post.

Under such circumstances, the petitioner invoked the writ jurisdiction and obtained *Rule Nisi*. The issue involved in this writ petition is whether the aforesaid condition attached/imposed by the impugned Memo dated 04.08.2020 is applicable in case of the writ petitioner or not?

It is true that the appointing authority enjoys the power and authority to frame new rules or impose new condition to regulate the service of its employees, but side by side in making or framing

new rules or imposing new condition, the appointing authority can not take away the accrued/vested rights of its employees here the writ petitioner. An employee shall definitely be entitled to avail the new service benefit if given or created by the new rules. But no Rules can be framed or condition can be imposed/attached for their disadvantage, detriment or the denial of their accrued/vested right as in the instant case sought to be taken away. The impugned condition attached in the Memo dated 04.08.2020 shall be effective and applicable to the employees who will be appointed after the coming into effect or force of the same.

There are long lines of the judicial decisions of the Apex Court that service Rules cannot be changed/alterd to the detriment and disadvantage of the employees who were appointed under the previous/earlier Rules. As such, the impugned condition being detriment to the attached rights and benefits of the writ petitioner is not applicable on him.

There are long lines of the decisions of our apex Court that without declaring the aforesaid condition attached in the Memo dated 04.08.2020 to be without lawful authority /*ultra vires* the Constitution, this Court has power to give the substantive relief as prayed for, the Appellate Division in the case of **Dr. Nurul Islam Vs. Bangladesh, 33 DLR (AD) 201** has held that where the substantive relief claimed in the writ petition can be granted without striking down any legal provision, that course is to be followed. In the said case, the then Hon'ble Chief Justice Mr. Justice Kemaluddin Hossain observed as follows:

“I like to adhere to the well established self-set rule which says, the Court will not declare a law unconstitutional, if the case in which the question is raised can be properly disposed of in some other way.”

So, it is clear that the Court has ample power to give the substantive relief as claimed in the writ petition without declaring the rules/condition challenged in the writ petition to be without lawful authority or *ultra vires* the Constitution.

In the case of **Government of Bangladesh and another Vs. Md. Ruhul Amin Munshi and another, 21 BLC (AD) 85** wherein it has been held in paragraph-19 as under:

“..... there is no power to make a rule under the proviso to Article 133 of the Constitution which affects the vested rights of a person or contravenes independent constitutional provisions or violates fundamental rights as enshrined in Articles 26, 27 and 29 of the Constitution. Moreover, retrospectivity will be arbitrary and unconstitutional if the date from which retrospective effect is given has no reasonable nexus with the provisions contained in the amending rules. In other words, rights or benefits (e.g. as to pay, seniority or right to be considered for promotion) which have been already accrued or earned under the existing Rules cannot be taken away by changing the Rules with retrospective effect or by making new Rules with retrospective effect.”

In the case of **Giasuddin Bhuiyan (Md) and others Vs. Secretary, Security Services Division, Ministry of Home Affairs,**

Bangladesh Secretariat, Dhaka and others, 74 DLR(AD)231, it has been held as under:

“It is settled that though the appointing authority has right to amend/alter the Service Rules to suit the need of time but not to the detriment to the rights or privileges that existed at the relevant time when an employee of such appointing authority entered into its service.”

In the case of **Bakrabad Gas System Limited Vs. Al Masud-ar-Noor and others, 66 DLR(AD)187**, it has been held as under:

“The appointing authority enjoys the power and the authority to frame new rules to regulate the service of its employees, but in no way, can take away the accrued/vested rights of its employees.”

In the case of **Bangladesh Bank Vs. Sukamal Sinha, 21 BLC(AD)212** it has been held as under:

“The authority has every right to amend/alter the service Rules to suit the need of the time and, as such, there is no illegality in preparing the circular with new terms and conditions but such new terms and conditions prepared by the authority shall not be applicable to the detriment or disadvantage to the privilege that existed at the relevant time when an employee of such appointing authority entered into its service.”

In the case of **Paschimanchol Gas Company Limited Vs. Md. Nuruzzaman and others, 24 BLT(AD)171** it has been held as under:

“There is no dispute that the petitioner got appointment in 1997, that is, long before the promulgation of the Service Rules of 2005. So he is entitled to get benefit of the Service Rules under which he got his appointment, that is, he is entitled to get the benefits as provided in Service Rules of 1988 and his service would be regulated under the said provision of law. The High Court Division rightly held that the provision of Service Rules of 2005 are to be effective in respect of the appointment of the employees who have been appointed on 21.01.2005 or onward.”

This being the legal position as settled by the Appellate Division in the aforesaid cases, we are of the view that the aforesaid impugned condition imposed by the Memo dated 04.08.2020 of the Ministry of Finance is not applicable in case of the writ petitioner who was appointed under the Service Rules of 1989 wherein there was no such condition in case of appointment as well as for promotion to the next higher post. Consequently, the impugned refusal by the Ministry of Public Administration vide its Memo dated 21.11.2022 to give promotion in the next higher post of Senior Examiner (Metrology) based on the condition attached in Memo dated 04.08.2020 is illegal and without lawful authority. It is true that promotion depends upon various factual aspects also. It

entails requisite qualifications, service records, past record etc. to assess entitlement for being granted promotion.

Now, we are to address the submission of the learned Advocate for the respondents to the extent that upgradation of scale to any post is a policy decision and as such the same cannot be the issue under article 102 of the Constitution. In this respect, the learned Advocate for the respondents relied upon an unreported judgment dated 29.08.2022 passed by the Appellate Division in CPLA No.4357 of 2018.

We also agree that upgradation of scale to any post is a policy decision of the Government. But whether the facts and circumstances of that case in hand do attract the submission of the learned Advocate of the respondent as well as the judgment relied upon as mentioned above. Having gone through the judgment and order of the Appellate Division, it appears that both the facts and circumstances of that case and the present case are quite different. It appears from the judgment of the Appellate Division that the writ petitioners were serving in the post of Assessor but they could not be promoted to the post of Chief Assessor since in the Organogram of A, B and C category Pourashavas there was no post of Chief Assessor and consequently, the writ petitioners seeking direction upon the writ respondents to upgrade pay scale of the post of Assessor in Grade X and also for direction to amend the Organogram of A, B and C category of Pourashavas creating the post of Chief Assessor in the light of Local Government (Pourashava) Ain, 2009, the Pourashava Ordinance, 1977 and the

Pourashava Employees Service Rules, 1992 and also to make provision that 25% of the post of Chief Assessor to be filled up by direct recruitment and rest 75% by promotion from the Assessors who served for a period of 5(five) years. The High Court Division while disposing of the *Rule Nisi* directed the respondents of that writ petition to amend the Organogram as prayed for and also to upgrade the scale of Assessor so that they may be promoted as they were qualified Assessors to the post of Chief Assessor. The Appellate Division has modified the judgment and order of the High Court Division to the extent that the direction to upgrade the scale of Assessor so that they may be promoted as they were qualified Assessors to the post of Chief Assessor was expunged on the ground that the same is a policy decision of the Government. But the facts of that case and those of the instant case are not similar.

In the present case, the appointing authority has already upgraded scale of the post of Inspector (Metrology) and others on similar footing were already upgraded from Grade 11 to Grade 9. But in upgrading scale of the post of Inspector (Metrology) vide Memo dated 04.08.2020 (Annexure-F), the Ministry of Finance imposed a new condition that no 3rd division/class at any stage of academic career shall be admissible for getting appointment and promotion in the post of Inspector (Metrology). This was the issue based on which the petitioner was not upgraded from Grade 11 to Grade 9. So, the judgment and order of the Appellate Division as relied upon by the respondents referred above has no manner of application in the facts and circumstances of the present case.

In view of the above, we hold that the impugned condition attached in Memo No. 07.00.0000.164.36.022.11-47 dated 04.08.2020 issued under the signature of the respondent No.6 is not applicable in case of the petitioner and it has no legal effect so far it relates to the petitioner. Therefore, the writ petitioner is entitled to get his pay scale upgraded from Grade 11 to Grade 9. Consequently, the impugned Memo No. 05.00.0000.171.12.008.22.199 dated 21.11.2022 issued under the signature of the respondent No. 5 refusing to give promotion to the petitioner to the post of Senior Examiner (Metrology) is illegal to be declared to have been issued without lawful authority and is of no legal effect.

In view of the discussions made hereinabove and the decisions as referred to above, we find merit in the *Rule Nisi* which is liable to be made absolute.

In the Result, the *Rule Nisi* is made absolute. The impugned condition contained in Memo No. 07.00.0000.164.36.022.11-47 dated 04.08.2020 (Annexure-F) is hereby declared to have been issued without lawful authority and is of no legal effect so far as it relates to the petitioner and thereby the impugned Memo dated 21.11.2022 by refusing the promotion of the petitioner to the next higher post (Annexure-O) is also declared to have been issued illegal and without lawful authority.

The learned Advocate for the petitioner prayed for direction upon the respondents to give promotion to the petitioner in the post of Senior Examiner (Metrology)/Assistant Director (Metrology).

It appears from the Rule issuing order that the respondents were directed to keep 1(one) post of Senior Examiner (Metrology)/Assistant Director (Metrology) vacant meaning thereby is liable to be dealt with in accordance with law on the result of the *Rule Nisi* at the time of passing of the judgment of the same.

It is true that promotion is not a matter of right but a consideration of the appointing authority. Side by side, promotion is a matter rests upon the appointing authority based on requisite qualification and satisfactory service record of the candidates. Since there was a direction to keep the aforesaid post vacant for the petitioner we are of the view that the case of promotion of the petitioner may be dealt with in accordance with law.

Accordingly, the respondents may consider the case of the petitioner for promotion in the next higher post in accordance with law if he otherwise complies with all other required qualifications.

There will be no order as to costs.

Communicate the order.

K M Zahid Sarwar, J.

I agree.