

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

Present:

**Mrs. Justice Fatema Najib
and
Mr. Justice Md. Hamidur Rahman**

Writ Petition No. 12729 of 2022

In the matter of:

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

In the matter of:

Md. Abul Bashar and others

---Petitioners.

-Versus-

Bangladesh, represented by the
Secretary, Finance Division, Ministry
of Finance, Bangladesh Secretariat,
Ramna, Dhaka-1000 and others.

---Respondents.

Mr. Mohammad Ibrahim Khalil,
Advocate.

----For the petitioners.

Mrs. Tania Sultana, Advocate

---For the respondent No. 3.

Mr. Akhtar Hossain Md. Abdul Wahab,
DAG with

Mr. S.M Emamul Musfiqur, AAG with

Ms. Tamanna Sultana, AAG with

Ms. Khandaker Asma Hamid, AAG with

Mr. Imrul Kayes Rana, AAG

....For the respondents.

Heard on:26.06.2025, 03.07.2025

And

Judgment on: 08.07.2025

Md. Hamidur Rahman, J:

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh Rule was issued in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the provision of para 6 of the Services (Pay and Allowance) Order, 2015 so far as it relates to creating an embargo upon the entitlement of time scale and selection grade of the petitioners under the provision of para 7(2) and 7(9) of the Services (Pay and Allowance) Order, 2009 should not be declared to have been made without lawful authority and is of no legal effect and as to why the respondents should not be directed to allow the petitioners time scale and selection grade under the provision of para 7(2) and 7(9) of the Services (Pay and Allowance) Order, 2009 effective from the date of their entitlement and/or such other or further order or orders passed as to this Court may seem fit and proper”.

Facts necessary for disposal of the Rule, in short are that the writ petitioners were appointed vide office order dated i.e. 18/09/2014, 13/01/2015 and 20/10/2015 respectively to the various posts of Bangladesh Railway. The petitioners were appointed in Grade- X of the National Pay Scale and they were admitted in the Scale of Tk.8000-450×7-11150 ইবি- 490x11-16540 with all other admissible financial benefit attached with National Pay Scale, 2009.

As per paragraphs 7(2) and 7(9) of the Services (Pay and Allowances) Order, 2009 that all Class-I and Class-II Officers are entitled to get Time Scale and Selection Grade on completion of 04 (four) years of service from the date of joining. In the meantime, the petitioners have satisfactorily completed four years of service and as such, they are entitled to get Time Scale and Selection Grade under the provision of paragraphs 7(2) and 7(9) of the Services (Pay and Allowances) Order, 2009. But they were not allowed to get Time Scale and Selection Grade on the ground of operation of paragraph 6 of the Services (Pay and Allowances) Order, 2015 by which the benefit of time scale and selection grade under Services (Pay and Allowances) Order, 2009 was abolished. But the petitioners were appointed during the existing of Services (Pay and Allowances) Order, 2009 and as such, they have a right to get Time Scale and Selection Grade under paragraphs 7(2) and 7(9) of the Services (Pay and Allowances) Order 2009 and this right cannot be taken away by the subsequent enactment of the Services (Pay and Allowances) Order, 2015. On similar point of view Writ Petition Nos. 3545 of 2018, 3848 of 2018 and 3925 of 2018 were filed by the employees/officers of different departments. After hearing, the Rules issued in those writ petitions were disposed of with a direction to consider the time scale and selection grade to the petitioners of those writ petitions under paragraphs 7(2) and 7(9) of the Services (Pay and Allowances)

Order, 2009. Some officers of the High Court Division who were appointed in 2014 were granted Time Scale and Selection Grade as per paragraphs 7(2) and 7(9) of the Services (Pay and Allowances) Order, 2009 vide Notification No.606-G dated 13.11.2018. As such, the petitioners are also entitled to get the same benefits in accordance with law. But due to the embargo created by the impugned provision of the Services (Pay and Allowances) Order, 2015 they were not given the selection grade. Accordingly, the petitioners issued notice demanding justice on 14.09.2022 requesting the respondents to provide the petitioners with the selection grade. But they did not make any response to the same. Hence, the petitioners filed the instant writ petition and obtained the Rule.

Mr. Mohammad Ibrahim Khalil, the learned Advocate appearing on behalf of the petitioners submits that as per paragraphs 7(2) and 7(9) of the Services (Pay and Allowances) Order, 2009 all first class officers irrespective of cadre and non cadre under Grade-IX and the second class officers will be entitled to get selection grade on satisfactory completion of four years of service and the petitioners were appointed during existing of the said provision of Services (Pay and Allowances) Order, 2009 and hence, they are entitled to get the Time Scale and Selection Grade as per paragraphs 7(2) and 7(9) of the Services (Pay and Allowances) Order, 2009. So, the exclusion of the said provision

by Paragraph 6 of the Services (Pay and Allowances) Order, 2015 cannot operate as a bar for the petitioners to get Time Scale and Selection Grade under paragraphs 7(2) and 7(9) of the Services (Pay and Allowances) Order, 2009. He further submits that the petitioners were appointed before the promulgation of the Services (Pay and Allowances) Order, 2015, so the petitioners' right cannot be taken by the subsequent enactment of the Services (Pay and Allowances) order, 2015.

He also submits that Civil Petition for Leave to Appeal Nos.1030-1032 of 2020 arising from Writ Petition Nos. 3545 of 2018, 3848 of 2018 and 3925 of 2018 were dismissed by the Appellate Division vide order dated 04.05.2025, so, all the issues involved in the instant writ petition has been settled by the Hon'ble Appellate Division.

Though the Respondent No.3 filed Vokatnama but no affidavit-in-opposition had been filed. The learned Advocate did not even oppose the Rule.

We have heard the submissions of the learned Advocate of both the parties, perused the writ petition and other papers annexed thereto as well as the decisions referred above.

The issue raised in this writ petition is whether the petitioners are entitled to get Time Scale and Selection Grade scale as per paragraphs 7(2) and 7(9) of the Services (Pay and Allowances)

Order, 2009 by enactment Services (Pay and Allowances) Order, 2015.

The point involved in this writ petition has elaborately been dealt earlier with by this Division in Writ Petition Nos. 3545 of 2018, 3848 of 2018 and 3925 of 2018 by judgment and order dated 02.05.2019 as stated below:

"Since the petitioners have successfully completed their service, they were entitled to be Time Scale and Selection Grade according to existing Rules/Laws when they were working as per the Services (Pay & Allowances) Order, 2009. True, an appointing authority enjoys the power and the authority to frame new rules to regulate the service of its employees, but that in no way, can take away the accrued/vested rights of its employees, who were entitled to at the time of entering into their services. The respondents do not have any unguided, unfettered and arbitrary power to make Rules which would adversely affect the existing employees of any department/institution who have accrued legal rights from the existing Rules by which their service had been governed for long years. We have taken into account that there is long line of judicial decisions of our apex Court that rights accrued under the provisions of the previous Recruitment Rules cannot be changed or alter to the disadvantage of the existing employees by subsequent amendment. Thus, it is a well settled principle of law that vested rights created under previous Recruitment Rules cannot be taken away by any subsequent amendment or change through new Recruitment Rules. Reverting back

to the case in hand, we are of the view that in order to do substantial justice, there is a fair scope to give proper relief to the petitioners' in exercise of our jurisdiction under Article 102 of the Constitution without touching the vires of law in question. We therefore refrain from declaring the provision of the para 6 of the Services (Pay and Allowances) Order, 2015 as ultra vires to the Constitution."

In the said judgment it has further been held

"Right of every employee to achieve/get the time scale and selection grade would be governed by the Rules under which they have acquired their rights. But the impugned Rules have devastatingly affected the petitioner's right to avail Time Scale and Selection Grade. That being the situation, we are of the view that since the petitioners were appointed before come into play of the Services(Pay and Allowances) Order, 2015 and the terms and conditions of service of the petitioners are regulated and controlled under the Services (Pay and Allowance) Order, 2009 and, the omission and exclusion of Time Scale and Selection Grade in the Services (Pay and Allowances) Order, -2015 is disadvantageous to the petitioners and, therefore, the petitioners case in respect of Time Scale and Selection Grade should be considered according to the provision of the para 7(2) and 7(9) of the Nanonal Pay Scale, 2009 in the light of 66 DLR (AD) 187 and 21 BLC (AD)212 cases."

In view of the decisions referred above and the facts and circumstances of the case in hand, we are inclined to subscribe the same views as taken by another Bench of this Division and which

is also affirmed by the Appellate Division of the Supreme Court of Bangladesh.

Since similar issues is decided earlier in Civil Petition For Leave To Appeal Nos. 1030-1032 of 2020, so, we do not find any interference in the Writ Petition.

Accordingly, the Rule Nisi issued in the instant Writ Petition No. 12729 of 2022 is hereby disposed of without any order of cost with the following directions.

The respondents are directed to consider the petitioners Time Scale and Selection Grade under the provision of paragraphs 7(2) and 7(9) of the Services (Pay and Allowances) Order, 2009 within 03(three) months from the date of receipt of a copy of this judgment and order provided they are not found otherwise disqualified in accordance with law.

Let a copy of the judgment and order be communicated at once.

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(Md. Hamidur Rahman, J)

Fatema Najib, J:

I agree.

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(Fatema Najib, J)