

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

WRIT PETITION NO. 345 of 2022

Present

Mr. Justice K.M. Hafizul Alam

-And-

Mr. Justice Abdur Rahman

IN THE MATTER OF:

An application under Article 102 of the
Constitution of the People's Republic of
Bangladesh

-And-

IN THE MATTER OF:

Sajjad Al Rana

.... Petitioner

-versus-

Member, Labour Appellate Tribunal,
Kakrail, Dhaka, and others

.... Respondents

Mr. Md. Abdullah Al Masud, Advocate

....for the petitioner

None appears

...for the respondents

Date of Hearing: 11.03.2026 and 22.04.2026

Date of Judgment: 05.05.2026 A.D.

Tuesday, 22 Boishak 1433 B.S.

Abdur Rahman, J:

This Rule Nisi, at the instance of the petitioner, was issued on an application under Article 102 of the Constitution, challenging the judgment and order dated 31.10.2021 passed by the learned Member, Labour Appellate Tribunal, Dhaka in Appeal No.238 of 2019 arising out of I.R (Labour) Case No.18 of 2017 partially allowing the appeal and thereby decreasing the benefits of the petitioner by modifying the judgment and order dated 19.09.2019 passed by the Labour Court, Chittagong in I.R (Labour) Case No.18 of 2017 (as contained in Annexure-'D' to the writ petition), to declare as illegal, without jurisdiction, 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 facts leading to the issuance of this Rule Nisi in brief are that: the petitioner was joined in the Respondent 1 institution in 1997 to the post of Tapper and satisfactorily worked there without any interval, and as per the existing labour law, he was supposed to be a permanent worker after 3 months from the date of his joining in his respective post. But the authority was always reluctant to make him permanent in his post. For this reason, he applied to the concerned authority on 18.10.2007, requesting that he would be made permanent in the post of Tapper and granted all the benefits and facilities as

per the provisions of law. But the authority did not respond to his application, and hence he filed an application before the Labour Court, Chittagong, with a prayer to make a direction to the concerned authority to make him permanent employee in service from the date of completion of the 3-month probationary period and give him all the benefits and other facilities as per the prevailing rules and regulations.

Thereafter, the learned Labour Court, after completing trial, pursuing the application of the petitioner and the written statement of the respondents and other materials on record vide a judgment and order dated 19.09.2019 allow the application of the petitioner and made a direction to the respondents to make the petitioner permanent worker from date of completion of his 3 months probationary period and also allow the petitioner all the arrear benefits and other facilities.

Being aggrieved by and dissatisfied with the judgment and order of the learned Labour Court, Chittagong, the Respondent 3 appealed to the Labour Appellate Tribunal, Dhaka.

Thereafter, the learned Appellate Tribunal after hearing, perusing judgment and order dated 19.09.2019 of the Labour Court and other materials on record partly allowed the appeal vide a judgment and order dated 31.10.2021 and made a

direction to the respondents to provide all the service benefits of the petitioner from 20.07.2017 to 19.09.2019 as a permanent employee within 60 days from the date.

Being aggrieved by and dissatisfied with the judgment and order dated 31.10.2021 passed by the learned Member, Labour Appellate Tribunal, Dhaka, in Appeal No. 238 of 2019, partially allowing the appeal and decreasing the benefits of the writ petitioner, and thereafter, finding no other alternative, he invoked this forum.

Mr. Md. Abdullah Al Masud, learned Counsel for the petitioner, submitted that the writ-petitioner, having served continuously for more than 3 months from the date of appointment as Tapper, attained permanent status by operation of law. But the respondents failed to treat him as a permanent employee and deprived him of the scale of pay and fringed benefits lawfully due to him.

He further contended that although the learned Labour Appellate Tribunal recognized the petitioner as permanent employee upon completion of the probationary period, it erroneously reduced his benefits due to a misconception of facts and law. Accordingly, the impugned Judgment and Order dated 31.10.2021, insofar as it reduced the petitioner's benefits, is illegal, without lawful authority, and of no legal effect.

Learned Counsel further submitted that the impugned judgment and order dated 31.10.2021, so far it relates to partially allowing the appeal, decreased the benefits that have been passed arbitrarily, without exercising the judicial mind, which is an illegal and colorable exercise of power, and as such the same is liable to be declared illegal and without jurisdiction and is of no legal effect.

No one appears on behalf of the respondents.

However, on perusal of Annexure-C, we find that earlier the respondents-appellants as defendants contested the case by filing a written statement denying the material allegation of the plaint made in I.R case no. 18 of 2017, stating *inter alia*- (i) that the case is not maintainable in the present form and manner. The case is also barred by limitation, principles of estoppels and waiver, etc., and the case is not maintainable as per the provisions of the Bangladesh Labour Act, 2006; (ii) the case is not maintainable as per the provisions of the Forest Industries Development Corporation; (iii) the 1st party/respondent was appointed as tapper in the Garden on a contractual basis. As per the definition of labour under section 4(1) of the Bangladesh Labour Act, 2006, the 1st party would not be treated as labour. The service of the employee, i.e., the 1st party/respondent, is governed by the Public Management Co-ordination Ordinance

1985; (iv) the 2nd party trained the 1st party for tapping the rubber tree. After getting training, 1st party/respondent executed an agreement with 2nd parties with some terms and conditions. As per agreement clause 8, the 1st party/respondent has no right to claim himself as a regular worker of Bangladesh Forest Industries Development Corporation, and the 2nd party has not issued any appointment letter to the 1st party/respondent without selection of a training letter as a tapper. Accordingly, these types of tappers are serving on a contractual basis throughout the country since their joining of the work, and hence their claim to be a permanent worker is not tenable in law; (v) the 1st party/respondent was appointed as a tapper in the Garden on a contractual basis as per the agreement between 1st parties and 2nd parties. As per clause 7 of the said contract agreement, the 1st party could not claim to be a permanent worker, and hence his claim to be a permanent worker is not tenable in law. Moreover, as per clause 3 of the said agreement, the 1st party failed to fulfil its target of production, and (vi) the 1st party/respondent is contractual tapper and he is not the worker as per the Bangladesh Labour Act, 2006, so 1st party/respondent has no *locus standi* to file the case and as such the case is liable to be summarily rejected as not tenable in law.

We have heard the learned Counsel for the petitioner paying careful attention. We also perused the writ petition as well as the documents appended thereto. It is found that the petitioner joined the service in 1997 to the post of Tapper on temporary basis. Thereafter he completed his training period, and on 18.10.2007 he applied to the pertinent authority for making his job permanent. On perusal of the deposition of the P.W.1 it is found that he deposed before the Labour Court supporting his claim and the dependents on the other hand did not barren any of his claim through the cross-examination. Conversely, the dependent No.1 produced one witness, Md. Robiur Rahman as D.W.1, who deposed as under:

“প্রার্থী পক্ষ প্রতিপক্ষের নিয়োজিত শ্রমিক। প্রতিপক্ষ প্রার্থীকে নিয়োগদানের সময় কোন নিয়োগপত্র দেননি। ২০০৬ সনের বাংলাদেশ শ্রম আইনের ৪ ধারা মতে প্রার্থী পক্ষ শ্রমিক বলে গন্য নন ঐধায় এ আদালতে মামলা করার অধিকারী নন। প্রার্থী পক্ষের মামলা তামাদিতে ঐরিত। প্রতিপক্ষ কতক শর্তমতে প্রার্থীকে চুক্তিভিত্তিক ট্যাপার পদে নিয়োগ দিয়েছেন। প্রার্থীর কার্যকলাপ প্রতিপক্ষের সন্তোষজনক ছিল না। প্রার্থীর মামলা কারণহীন। প্রার্থী পক্ষ এ মামলায় প্রার্থীত মতে কোন প্রতিকার প্রাপক নন ঐধায় এ মামলাটি খারিজের আদেশ প্রার্থনা করেন। প্রার্থীর চাকুরী স্থায়ীকরনের জন্য প্রতিপক্ষের ঐরাঐরে কোন আঐদন করেননি ঐঐং স্থায়ী হওয়ার দাঐী করেননি।”

On the other hand, during cross-examination he stated that:

“প্রার্থী পক্ষের জেরায় D.W(1) মো: রওউর রহমান বলেন যে, তিনি এ মামলার বিষয়সম্পর্কে অগত্যা আছেন। প্রার্থী এ মামলায় প্রতিপক্ষের বিরুদ্ধে কি কি প্রতিকার প্রার্থনা করেছেন তা তার জানা নেই। প্রার্থী প্রতিপক্ষের প্রতিষ্ঠানে এখনো কর্মরত আছেন। প্রার্থী ১৯৯৭ ইং সন হতে কর্মরত আছেন। প্রতিপক্ষ প্রার্থীর চাকুরী স্থায়ী করেননি। প্রার্থীর চাকুরী চুক্তিভিত্তিক ঠিকায় তার চাকুরী স্থায়ী করা হয়নি। প্রতিপক্ষের প্রতিষ্ঠানে শ্রম আইনমতে শ্রমিকদের চাকুরীর কার্যক্রম পরিচালিত হয়। প্রতিপক্ষ শ্রম আইনের ঠিকান অনুসরণ না করেই প্রার্থীর চাকুরী স্থায়ী না করা সত্য নয়। প্রার্থীর চাকুরী নিয়মিতকরনের জন্য প্রার্থীর ১৮/১০/২০০৭ ইং তারিখের আবেদনপত্র প্রতিপক্ষ গ্রহণ করেছেন কিনা তা তার জানা নেই।”

From the above facts and circumstances it is manifested that the petitioner worked in the institution of the respondent 1 since 1997 and the defendant 1 admitted that “প্রার্থী প্রতিপক্ষের প্রতিষ্ঠানে এখনও কর্মরত আছেন।”, and it is also reveal from the record that the petitioner has submitted application on 18.10.2007 for making his post permanent but the learned Appellate Tribunal observed that: “প্রাপ্ত দ্বিতীয় শ্রম আদালতের চেয়ারম্যান প্রথমপক্ষকে স্থায়ী শ্রমিক হিসেবে যে সিদ্ধান্ত প্রদান করেছেন তা আংশিক সঠিক ও আইনসম্মত মর্মে গণ্য হলেও সে শ্রম আদালতে ২০.০৭.২০১৭ইং তারিখের পূর্বে কোন প্রতিকার প্রার্থনা করেননি। কাজেই

প্রার্থী স্থায়ী শ্রমিক গণ্য হলেও ২০.০৭.২০১৭ইং তারিখ হতে রায় প্রচারের তারিখ ১৯.০৯.২০১৯ইং পর্যন্ত সময়ে তাকে স্থায়ী শ্রমিক হিসেবে তার প্রাপ্য ঋণ ও ভাতাদি পেতে হকদার।", which indicates that the learned Appellate Tribunal admitted the petitioner as permanent employee but caused misreading on point of the submission of application of the petitioner before his authority on 20.07.2017 instead of 18.10.2007. However, the learned Labour Appellate Tribunal rightly referred to a decision of our Apex Court i.e 65 DLR (AD) 116 which as follows:

Employment of Labour (Standing Order) Act, 1965, Section 4 (2)-

"Though the petitioners were appointed as casual workers on a 'no work no pay' basis against the permanent posts initially for 90 days, because of their continuous services therein for 7/8 years without any gap, and thus, they having completed the period of probation of three months acquired a right to be permanent in their respective posts."

Considering the above facts and circumstances, as well as proposition of law, we believe that the petitioner admittedly joined the service in the year 1997 and continued therein for more than 3 months as a temporary employee. However, despite completion of the statutory probationary period, the concerned authority did not take any effective step to regularize or confirm

him in the post of Tapper. It further transpires from the materials on record that the provision of section 4(7) of the Bangladesh Labour Act, 2006, clearly postulates that upon completion of the prescribed probationary period, an employee acquires the status of a permanent worker by operation of law, unless otherwise terminated in accordance with law. Therefore, the continued failure of the authority to accord the petitioner permanent status and consequential service benefits appears to be contrary to the spirit and mandate of the aforesaid statutory provision.

Considering the above facts and circumstances as well as the proposition of law, we are constrained to hold that the learned Labour Court, Chattogram has not committed any illegality. But the learned Appellate Court, by its Judgment and Order dated 31.10.2021, passed by the learned Member, Labour Appellate Tribunal, Dhaka, in Labour Appeal No. 238 of 2019 arising out of I. R (Labour) Case No. 18 of 2017, modifying the Judgment and Order dated 19.09.2029 passed by the Labour Court, Chattogram, committed illegality misreading of evidence on the face of the record, and without controverting the reasons given by the learned Labour Court, Chattogram, and as such said judgment and order is considered as having no legal effect

in the eyes of law. Thereby, we find merit in the Rule; accordingly, the Rule is made Absolute.

There is no order as to costs.

However, the respondents are hereby directed to provide all the service benefits and connecting facilities of service of the petitioner as per the judgment and order dated 19.09.2019, passed by the learned Labour Court, Chittagong, in I.R (Labour) Case No.18 of 2017, within 60 (sixty) days from the date of receipt of the copy of this judgment, failing which the law will come into effect.

The office is directed to communicate this judgment to the learned Labour Court Chattogram forthwith.

Send down the subordinate Court's Record (SCR), if any.

(Abdur Rahman, J)

K.M. Hafizul Alam, J:

I agree.

(K.M. Hafizul Alam, J)