

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

WRIT PETITION NO. 964 of 2023

IN THE MATTER OF:

An application under Article 102 read with Article 44 of the Constitution of the People's Republic of Bangladesh.

And

IN THE MATTER OF:

Md. Nurul Hoque and others

..... Petitioners

versus

Government of Bangladesh and others

.....Respondents.

And

Mr. Md. Moniruzzaman Asad, Advocate

..... for the Petitioners.

Mr. Nawroz M.R. Chowdhury, D.A.G. with

Mrs. Afroza Nazneen Akther, A.A.G. with

Mrs. Anna Khanom (Koli), A.A.G.

..... For the respondents-government

Heard on: 07.12.2023, 02.01.2020 and 03.01.20204

Judgment on 08th January, 2024.

Present:

Mr. Justice Md. Jahangir Hossain

and

Mr. Justice S.M. Masud Hossain Dolon

Md. Jahangir Hossain , J:

On an application under article 102 of the Constitution, the Rule Nisi has been issued in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the inaction of the respondents in regularizing/absorbing the service of the petitioners (from the date of their appointment as Muster Roll/Work-Charged employee) in their respective posts under the regular revenue budget under the Directorate of Public Works (PWD) in the Ministry of Housing and Public Works should not be declared as illegal and

without lawful authority and as to why they should not be directed to regularize/absorb the service of the petitioners (from the date of their appointment as Muster Roll/Work-Charged employee) in their respective posts under the regular revenue budget under the Public Works Department (PWD) in the Ministry of Housing and Public Works and /or pass such other or further order or orders as to this court may seem fit and proper.”

Facts relevant for disposal of the Rule are that the petitioners were appointed to the different posts as 3rd & 4th Class Muster Roll employee under different Public Works Department (in short, PWD) in the Ministry of Housing and Public Works. After 13(thirteen) years worked as a Muster Roll employees under the directorate of Public Works, subsequently they have appointed as “ Work-Charged” employees in the year 2000 under the PWD and since then the petitioners have been discharging their duties as “Work Charged” employees with utmost honesty and sincerity.

Since their appointment as “Work Charged” employees in the PWD, full of hope and aspiration for their service to be regularized in their respective posts under the regular revenue budget. But it is very unfortunate that within this long time the service of the petitioners have not been regularized by the PWD. Thereafter, the Deputy Secretary, Ministry of Housing and Public Works vide letter being Memo No. SHA-2/2M-29/97/404 dated 23.06.2010 requested the Secretary, Ministry of Public Administration erstwhile Establishment to take steps

for regularizing the service of the petitioners in the PWD under the Ministry of Housing and Public Works.

In replying to the letter dated 23.06.2010, one Assignment Officer, Ministry of Public Administration erstwhile Establishment vide letter bearing Memo No. 05.150.022.00.00.008.2010-186 dated 19.07.2010 informed the Secretary, Ministry of Housing and Public Works that according to the letter bearing Memo No. SAMO(BIDHI-3)-Contin-3/2006-32 dated 31.10.2006 issued by the Ministry of Public Administration erstwhile Establishment there was no scope to regularize the service of the petitioners as Work charged after 23.01.1986.

On 31.10.2006 the Ministry of Public Administration erstwhile Establishment issued the said letter bearing Memo No. SAMO(BIDHI-3)-Contin-3/2006-32 shaping some specific criteria regarding the regularization of the contingent/work-charged employees those who were working under the different Ministries.

The petitioners have been working in the PWD as “Work Charged” employees to the different posts for a period of 23 (twenty three) years and they had also been worked as Muster Roll employees for 13(thirteen) years altogether the present petitioners are working more than 36 (thirty six) years, but they are not being regularized/absorbed in the revenue budget. Consequently, the Chief Engineer, Directorate of Public Works, Dhaka vide letter bearing Memo

No. 25.36.0000.211.11.413.14-510 dated 20.08.2015 again requested the Secretary, Ministry of Housing and Public Works to bring the service of the petitioners into regular establishment under the PWD in the Ministry of Housing and Public Works.

Thereafter on 19.10.2015 the Senior Assistant Secretary, Ministry of Housing and Public Works requested the Senior Secretary, Ministry of Public Administration to take needful steps in order to regularize the service of the petitioners.

The Chief Engineer PWD stated in his certificate dated 28.10.2015 that the petitioners have appointed as Work Charged employees from the Muster Roll in accordance with law and the appointment has done appropriately.

Thereafter the Senior Assistant Secretary, Ministry of Public Administration vide letter bearing Memo No. 05.00.0000.150.15.002.2015-273 dated 24.12.2015 requested the Secretary, Ministry of Housing and Public Works to send the list of the "Work Charged" employees but mentioning malafidely in the letter "those who were appointed before 23.01.1986.

Some of the "Work Charged" employees of PWD filed writ petitions for absorbing them in the revenue set up, whereupon the High Court Division issued Rules Nisi and after hearing the Rules were made absolute. The petitioners have filed this writ petition for their

absorbing in the revenue set up as they are in the same footing and obtained the Rule.

Mr. Md. Moniruzzaman Asad, the learned Advocate appearing for the petitioners submits that the petitioners had been serving more than 13 (thirteen) years as muster roll employees and discharging their duties sincerely, honestly and with full satisfaction of the authority. As such, they are subsequently established in work-charged basis. The learned Advocate further submits that some of the employees of this Department have filed writ petitions for their absorption whereupon the High Court Division directing the respondents to absorb them in the revenue budget which were affirmed by the Appellate Division of the Supreme Court of Bangladesh.

The learned Advocate further submits that the petitioners are on the same footing and as such the respondents should be directed to absorb them in the revenue set up. In support of his submission the learned Advocate cited decisions of Hon'ble Appellate Division of the Supreme Court of Bangladesh in the Government of Bangladesh represented by the Senior Secretary, Ministry of Public Administration and others, Executive Engineer (Administration) Directorate of Public Works, Dhaka Versus Md. Saiful Islam and others, Md. Anwar Hossain and others, Md. Sohidullah and others, Md. Khokon and others and Md. Nur Hosen and others in Civil Review Petition No.404 of 2019, 07 of 2020, 30 of 2020, 42 of 2020 and 62 of 2020.

Mr. Nawroz M R Chowdhury, the learned Deputy Attorney General opposes the Rule.

We have perused the writ petition and all other relevant papers submitted by the parties in connection with the contents of this writ petition. It appears that all the petitioners initially started work as muster roll employees under PWD and thereafter, they were appointed as work charged employees and have been getting salaries in the national pay scale.

The work-charged, daily wage and contingent paid employees are generally hired for a short time to execute a specific work. But quite a large number of such employees have been working for indefinite time spans stretching over years. Since the petitioners have been working for a long time, it shows that the posts they are occupying are permanent in nature and not casual or temporary. It further indicates that the services of the petitioners are not only required but also beneficial to the department. The persons employed as work-charged employees have been performing identical functions and discharging their duties.

Work charged employees have not only been deprived of their due emoluments during the period they served on less salary but have also been deprived from the pensionary benefits though the Government has been benefitted by the services rendered by them. The concept of work charged employment has been misused by offering the employment on exploitative terms for the work which is

regular and perennial in nature. The concept of equality as envisaged in the constitution is a positive concept which cannot be enforced in a negative manner. Therefore, the service rendered by work charged employees for a considerable period, like 20 years or more, need to be considered as permanent post and they also need be qualified for grant of pensionary benefit, inasmuch as, pension is not a charity, rather, it is the deferred portion of compensation for past service.

The Hon'ble Appellate Division also opined that "In a welfare State a Government by the people and for the people should not return the work charged employees at the end of the day with empty hand. A political society which has a goal of setting up of a welfare State, should introduce welfare measure wherein benefit is grounded on "considerations of State obligation to its citizens who having rendered service during the useful span of life must not be left to penury in their old age. It is the obligation of the State to take steps so that their lives do not fall in total ruination. For that reason, separate Rules are required to be framed for the persons who have been working as work charged employees, if necessary, for protecting their future interest so that they do not fall in total deserter at the end of their work.

It reveals from the referred judgment of the Appellate Division of the Supreme Court of Bangladesh in Civil Review No. 42 of 2020, 404 of 2019, 30 of 2020, 07 of 2020 and 62 of 2020 opined that upon notification of the Ministry of Cabinet Affairs Establishment Division,

Regulation wing-1 communicated under Memo NO. SGA/RI/IS-33/69/71(350), Date: Dacca, 28 March 1969. In that notification it was stated : "Sub: -Conversion of temporary posts into permanent ones and contingent and work-charged staff into regular establishment.

In suppression of all previous orders on the subject noted above, Government have been pleased to decide in consultation with the Finance Department as follows:-

1. All temporary class III and class IV posts of permanent nature, which have been in existence for five years or more, may be converted into permanent ones in consultation with the Finance Department.
2. All posts in class III and class IV, which are paid from contingency and for ten years for more may be brought into regular establishment in consultation with Finance Department.
3. Fifty percent of the non-gazetted posts in the work-charged establishment existing for ten years or more may be brought into regular establishment in consultant with Finance Department.

All departments and Directorates are requested to take up the question of converting the temporary posts into permanent ones and bringing the posts paid from contingency and 50% of the posts in the

work-charged establishment into regular establishment on the principle enunciated in item 1, 2 and 3 respectively in consultation with the Finance Department. In the notification communicated under Memo No Esib/RIS-46/72/55 dated 21 April 1972 it was stated.

“ Sub: Conversion of temporary posts into permanent ones and contingent and work-charged staff into regular Establishment.

1. The Government under Memo No SGA/R1/1S-33/69/71(350), dated 28.03.1969 (copy enclosed) issued orders for conversion of certain temporary posts into permanent ones and contingent and work-charged staff into regular establishment. It appears that these decisions have not been fully implemented as a result of which the employees concerned have not yet got the benefit of the said decisions. It has, therefore, been decided that the decisions referred to above should be implemented immediately. It has further been decided that the conversion as decided earlier, of the posts which have been in existence for 5/10 years more, should be done with effect from the date the posts were created and the employees should be absorbed against the posts with effect from the date of their appointment. In absorbing the employees the persons who have the longest period of service and are retiring or are on the verge of retirement should be given preference so that they get

retirement benefit on retirement under the President's Order No. 14 of 1972.

We also carefully examined the Memos which was issued by the Cabinet Division for the interest and to resolve those problems by the Cabinet Division. It reveals after those direction and Memos more than 15 years has been elapsed. But the authority concern of the offices and Ministries till did not resolve the matter. Rather they are taking unnecessary long time by showing the reasons of Finance Division. Earlier we have discussed about the direction given by our Apex Court the authorities did not take proper step yet. The Government officials and respective higher authorities and Secretaries of respective department did not pay any heed on the observation of the Supreme Court which is clear violation of law and Constitution. But in the sweet interest and own benefit all the related higher Officers and authorities are never show slowness careless time and activities on their own benefit when earn from the government.

We shall appreciate those authorities of the republic if they feel pay heed of those petitioners rights and life and made modern rule compare with the other countries.

Upon such observation we light to refer the decision and reference cited by our Appellate Division where they cited the judgment of the Supreme Court of India in Robert D'Souza vs. The

Executive Engineer, Southern Railway and another, AIR 1982 SC 854 has observed:

“We would be guilty of turning a blind eye to a situation apart from being highly unethical, wholly contrary to constitutional philosophy of socio-economic justice if we fail to point out that Rule 2501 which permits a man serving for 10, 20, 30 years at a stretch without break being treated as daily-rated servant, is thoroughly opposed to the notions of socio-economic justice and it is high time that the Railway Administration brings this part of the provision of the Manual, antiquarian and antediluvian, in conformity with the Directive Principles of state Policy as enunciated in Part IV of the Constitution.

...the appellant, a daily-rated workman, continued to render continuous service for 20 years which would imply that there was work for a daily-rated workman everyday for 20 years at a stretch without break and yet his status did not improve and continued to be treated as daily-rated casual labour whose service can be terminated at whim and fancy of the local satraps. It is high time that these utterly unfair provisions wholly denying socio-economic justice are properly modified and brought in conformity with the modern concept of justice and fair play to the lowest and the lowliest in Railway Administration.”

The Andhra Pradesh Integrated Medical Attendance Rules, 1972 have included persons employed in the work-charged establishment to be eligible for receiving facilities under these rules. The Orissa Civil

Services (Compassionate Grant) Rules, 1964 have been made applicable to all State Government servants including the work charged, job-contract and contingency paid employees other than daily-rated employees. Under these rules the family of a Government servant shall be eligible to "Compassionate Grant" in the event of death of the Government servant while in service.

On the above observation we are fully agree and show respect on the decision and observation of our Apex Court. It reveals that several judgment and direction and observation given by the Supreme Court for framing rules but those are in the dark room till now.

We have meticulously observed those judgments of our Courts and Apex Courts. We are also in the decision that this is high time to resolve the prayer of those said staffs or workers and denying socio-economic justice are properly modified and brought in conformity with the modern concept of justice and fair play with them which is their Constitutional right under Article 102 of our Constitution. But there should be separate Rules. The State cannot shut down eyes upon obligation of the State. Upon observation and direction of our Apex Court we are also in view that separate rules are required to be frame for the persons who have been working as work charged employees like the petitioners for protecting their future interest. Rules should be frame with perusal and meticulously examination of the references Rules of neighbor countries which is also referred by our Apex Court.

The Rule should be framed within 12 months after receiving of the judgment.

Upon such observation and direction made above the Rule is disposed of.

However, there would be no order as to costs.

S.M. Masud Hossain Dolon, J:

I agree.