

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

WRIT PETITION NO. 8102 of 2009

IN THE MATTER OF:

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

IN THE MATTER OF:

Sanjida Khondaker and another

..... Petitioners.

-Versus-

The Public Service Commission and others

..... Respondents.

Mr. B.M. Elias, Senior Advocate with

Mr. Md. Mahabubur Rahman Kishore,
Advocate with

Mr. Khandaker Sultan Ahmed, Advocate

..... For the petitioners.

Mr. Mohammad Mohsin Kabir, DAG with

Mr. A.K.M. Rezaul Karim Khandaker, D.A.G

Ms. Shahin Sultana, AAG with

Mr. Md. Manowarul Islam, A.A.G and

Mr. Md. Mokhlesur Rahman Babu, A.A.G

..... For the respondents.

Judgment on: 15.12.2025.

Present:

Mr. Justice Sheikh Abdul Awal

And

Mr. Justice S.M. Iftekhar Uddin Mahamud

S.M. Iftekhar Uddin Mahamud, J.

In this application under Article 102 of the Constitution of the People's Republic of Bangladesh, the Rule was issued on 25.11.2009 in the following terms:

“Let a rule Nisi be issued calling upon the respondents to show cause as to why the impugned result dated 23.09.2008 of 27th BCS Examination (Annexure-B) and the office order dated 20.10.2008 (Annexure-H) should not be declared to have been made without lawful authority and is of no legal effect and why they should not be directed to consider the appointments of the petitioners pursuant to the final nomination and result dated 21.01.2007 and/or such other or further order or orders as to this court may seem fit and proper.”

Facts, stated in the writ petition and in the application filed by the co-petitioner Nos. 1-69, in short, are that some 1,18,105 candidates including the petitioners, having the requisite educational qualifications, applied for taking part in the 27th BCS examination. Upon completion of the primary selection process, they appeared in the preliminary test held on 18.11.2005 and having qualified in the same, they took part in the written examination, which was held between 18.03.2006 and 09.04.2006. Thereafter, on being successful, 16,418 candidates including the petitioners were asked to appear in the viva voce examination, which was held between 10.09.2006 and 20.12.2006. The petitioners successfully passed the said viva voce examination and the final result published on 21.01.2007 under Press Release No. Bashokosh/BCS27(2005)/Result (Confidential)-1/2007 including the names of petitioners. The Public Service Commission recommended

3567 successful candidates vide Memo dated 18.02.2007 including the names of the petitioners for being appointed in different cadres.

Meanwhile, some reports were published in different news papers raising certain allegations with regard to the 27th BCS examination. Thereafter, the Medical Examination of the successful candidates including the petitioners were commenced on 07.04.2007, but on 18.04.2007 the same was unexpectedly postponed without assigning any reason. Thereafter, in an unprecedented move, the then Caretaker Government decided to cancel the final result of the 27th BCS which had already been published by PSC. Accordingly, by Memo dated 12.06.2007, the Ministry of Establishment requested PSC to retake the viva-voce examination of all the successful candidates of the 27th BCS upon cancelling the result of the previous viva voce examination.

That the second viva voce examination was conducted from 29.07.2007 to 18.05.2008 and the result was published on 23.09.2008, recommending 3239 candidates for being appointed in different cadres under the 27th BCS, excluding, however, 1137 candidates including the petitioners who had previously qualified in the first viva voce examination result published on 21.01.2007 under Press Release No. Bashokosh/BCS27(2005)/Result (Confidential)-1/2007. Accordingly, a notification was published in the Bangladesh Gazette on 10.11.2008.

It is also stated that in the application for addition of party filed by co-petitioner Nos. 1-69 that some other candidates who had earlier qualified in the first viva voce examination, filed Writ Petition Nos. 8307 of 2008, 8320 of 2008, 9151 of 2008, 4979 of 2009, 8076 of 2009,

8177 of 2009, 7838 of 2009 and 8254 of 2009 challenging the result published by PSC on 23.09.2008 as well as the office order dated 20.10.2008. Upon hearing the parties, the High Court Division disposed of the Rules by the judgments and orders dated 11.11.2009 and 26.01.2010, directing the concerned respondents to appoint the writ petitioners who had been successful in the first viva voce examination, in their respective cadres. Challenging the said judgments and orders dated 11.11.2009 and 26.01.2010, the Government preferred Civil Petition for Leave to Appeal Nos. 512, 513 and 514 of 2010 before the Hon'ble Appellate Division. The Hon'ble Appellate Division by the judgment and order dated 11.07.2010 disposed of the leave petitions upon setting aside the Judgments and orders of the High Court Division dated 11.11.2009 and 26.01.2010. Subsequently, the writ petitioners as petitioners preferred Civil Review Petition Nos. 197-199 of 2024 and leave was granted by the Hon'ble Appellate Division by order dated 07.11.2024 and accordingly, Civil Appeal Nos. 84 of 2024, 85 of 2024 & 86 of 2024 have been filed by the writ petitioner-appellants. Upon hearing on 20.02.2025 the Hon'ble Appellate Division was pleased to allow all the appeals and set aside the judgment and order dated 11.07.2010 passed in Civil Petition Nos. 512, 513 and 514 of 2010 and affirmed the judgment and orders of the High Court Division dated 11.11.2009 passed in Writ Petition Nos. 8307 of 2008, 8320 of 2008, 9151 of 2008, 4979 of 2009 and the judgment and order dated 26.01.2010 passed in writ petition Nos. 8076 of 2009, 8177 of 2009, 7838 of 2009 and 8254 of 2009. That after getting judgment and order

dated 20.02.2025 from the Hon'ble Appellate Division passed in Civil Appeal Nos. 84 of 2024, 85 of 2024 & 86 of 2024, the Ministry of Public Administration forwarded a letter to the Ministry of Law, Justice and Parliamentary Affairs, Law and Justice Division, for proving its valuable opinion regarding the appointment of the petitioners and others and accordingly, the Ministry of Law, Justice and Parliamentary Affairs, Law and Justice Division, opined that the petitioners may be appointed in different cadres under the 27th BCS as per final result published on 21.01.2007 under Press Release No. Bashokosh/BCS27(2005)/Result (Confidential)-1/2007 vide Nothi No. 10.00.0000.129.04.137.2025.

On 17.09.2025 the Respondent No. 07 forwarded a letter to the Ministry of Public Administration for taking action as per recommendation made by the Bangladesh Public Service Commission (BPSC) vide Memo No. 80.00.0000.202.64.034.25-99. Thereafter, on 24.09.2025 the Respondent No. 07 issued a press release for submission of various documents in-between 25.09.2025 to 09.10.2025 by the recommended candidates under the 27th BCS vide Memo No. 80.00.0000.202.64.034.25-100.

Thereafter, On 25.09.2025 the Respondent No. 07 forwarded a letter to the Director General, Health Department, Mohakhali, Dhaka for completing medical check up of the recommended candidates under the 27th BCS and sent the original copy of the report to the Respondent No. 07 vide Memo No. 80.00.0000.202.65.039.25-102/1. Accordingly, on 07.10.2025 the Director (Hospital & Clinic), Health Department, Mohakhali, Dhaka fixed various dates for conducting medical check-up

of the recommended candidates under the 27th BCS vide Memo No. স্বঃঅধিঃ/হাসঃ/মেঃবোর্ড/২৭তম বিসিএস/২০২৫/১৫২০.

The medical check up of the petitioners have been completed and the report of the same has been sent to the BPSC and the BPSC forwarded the same to the Ministry of Public Administration but no action has been taken by the Ministry of Public Administration till today in appointing the petitioners according to the first viva voce result.

Being aggrieved by the aforesaid result dated 23.09.2008 and the impugned order dated 20.10.2008 and seeking direction upon the respondents to consider the appointments of the petitioners in pursuant to the final nomination and result dated 21.01.2007 and finding no other alternative and efficacious remedy, the petitioners filed this writ petition before the Court and obtained the present Rule.

Mr. B.M. Elias, the learned Senior Advocate, appearing for the petitioners submits that the petitioners earlier sat for a a competitive written and viva voce examination taken by the Bangladesh Public Service Commission in accordance with law and that after being passed the examination this is the "Legitimate Expectation" of the petitioners to be appointed in their respective cadre posts inasmuch as their exclusion by result dated 23.09.2008 is violative of their legal, vested and accrued rights and against all norms of fairness and justice.

He also submits that after finally selecting the petitioners in both written and viva voce examinations and recommending them to the government for appointing them in their respective cadre posts, the Bangladesh Public Service Commission had become functions officio as

per Article 140 of constitution of Bangladesh and taking of 2nd term viva voce examination after cancellation of the result of 1st viva voce examination at the instance of government is absolutely without any lawful authority and is of no legal effect and therefore, the present petitioners being the eligible candidates, are seriously aggrieved by the result dated 23.09.2008 and the office order dated 20.10.2008.

He finally submits that the petitioners are on the same footing of the petitioners of the Writ Petition Nos. 8307 of 2008, 8320 of 2008, 9151 of 2008, 4979 of 2009, 8076 of 2009, 8177 of 2009, 7838 of 2009 and 8254 of 2009 in which the Rules were made absolute by the aforesaid judgments and orders dated 11.11.2009 and 26.01.2010 and as such, the petitioners prayed for making the Rule absolute.

Mr. Md. Asad Ullah, the learned Advocate earlier filed an affidavit-in-opposition on behalf of the respondent Nos.1, 2 and 7.

Mr. Mohammad Mohsin Kabir, the learned Deputy Attorney General appearing on behalf of the respondents submits during the hearing that the matter before us has already been settled by this Court and the same has been affirmed by the Hon'ble Appellate Division in Civil Appeal Nos. 84 of 2024, 85 of 2024 & 86 of 2024.

We have heard the submissions of the learned Advocate for the petitioners and the learned Deputy Attorney General and perused the application and the annexures annexed thereto.

It is evident from the record that an application for addition of party as Co-petitioner Nos. 1-69 has been filed earlier and the same was allowed by this Court by an order dated 25.11.2025 and that now total

number of petitioners in this writ petition including the Co-petitioner Nos. 1-69, stand as 71.

It also transpires from the record that the present petitioners including the Co-petitioners stand exactly on the same footing as the petitioners of the Writ Petition Nos. 8307 of 2008, 8320 of 2008, 9151 of 2008, 4979 of 2009, 8076 of 2009, 8177 of 2009, 7838 of 2009 and 8254 of 2009 in which the Rules were made absolute by the judgments and orders dated 11.11.2009 and 26.01.2010. Earlier challenging the said decisions, the Government preferred Civil Petition for Leave to Appeal Nos. 512, 513 and 514 of 2010. By judgment and order dated 11.07.2010, the Hon'ble Appellate Division disposed of the leave petitions upon setting aside the judgment and order of the High Court Division dated 11.11.2009. Being aggrieved thereby, the petitioners preferred Civil Review Petition Nos. 197-199 of 2024 and leave was granted by the Hon'ble Appellate Division by order dated 07.11.2024. Accordingly, Civil Appeal Nos. 84 of 2024, 85 of 2024 and 86 of 2024 have been filed by the appellants. Upon hearing on 20.02.2025 the Hon'ble Appellate Division was pleased to allow all the appeals affirming the judgments and orders of this Court dated 11.11.2009 and 26.01.2010 in the aforesaid writ petitions.

That the same question in regard of the 27th BCS examination has already been decided by the judgments and orders dated 11.11.2009 and 26.01.2010 passed analogously in Writ Petition Nos. 8307 of 2008, 8320 of 2008, 9151 of 2008, 4979 of 2009, 8076 of 2009, 8177 of 2009, 7838 of 2009 and 8254 of 2009. In the said judgments and orders, the

impugned result dated 23.09.2008 of the 27th BCS examination and the office order dated 20.10.2008 issued by the PSC were declared illegal.

In the said Writ Petition Nos. 8307 of 2008, 8320 of 2008, 9151 of 2008, 7838 of 2009, 8076 of 2009, 8177 of 2009, 4979 of 2009 and 8254 of 2009, the Rules were made absolute and directions were given in the following language:

“(1) The petitioners who were selected and recommended for appointment after the first Viva Voce examination as per the result published vide the Press Release No. Bashokosh/BCS27 (2005)/Result (Confidential)-1/2007 issued by the Bangladesh Public Service Commission should be appointed in the service of the Republic in order of merit in their respective cadres.

(2) The persons who have already been appointed in the service after the second Viva-Voce examination will also remain in their service and the seniority of the petitioners will be determined in accordance with law.

(3) The Government is hereby directed to appoint the petitioners within 03 (three) months from the date of receipt of the copy of this judgment.”

Subsequently, on 20.02.2025 the Hon’ble Appellate Division in Civil Appeal Nos. 84 of 2024, 85 of 2024 and 86 of 2024 was pleased to allow the appeal and affirmed that Judgments and Orders of the High Court Division dated 11.11.2009 and 26.01.2010 in Writ Petition Nos. 8307 of 2008, 8320 of 2008, 9151 of 2008, 4979 of 2009, 8076 of 2009,

8177 of 2009, 7838 of 2009 and 8254 of 2009, in the following language:

“Be that as it may, having regard to the foregoing discussion, by a unanimous decision of this Court, all the appeals are allowed.

Consequently, the judgment and order of this Court dated 11.07.2010 passed in Civil Petition for Leave to Appeal Nos.512, 513 and 514 of 2010 are hereby set aside.

Resultantly, the judgment and order of the High Court Division dated 11.11.2009 passed in Writ Petition Nos. 8307 of 2008, 8320 of 2008, 9151 of 2008, 4979 of 2009 and the judgment and order dated 26.01.2010 passed in Writ Petition Nos. 8076 of 2009, 8177 of 2009, 7838 of 2009 and 8254 of 2009 stand revived and duly affirmed.

The application for addition of party stands allowed.

The concerned respondents are directed to comply with directive passed by the High Court Division in the judgments and orders dated 11.11.2009 and 26.01.2010 forthwith.”

Therefore, in the above backdrop, we have no other option but to make the Rule absolute by adopting the judgment of the Hon’ble Appellate Division dated 20.02.2025 in the said Civil Appeal Nos. 84, 85, 86 of 2024 where the Hon’ble Court affirmed the Judgments and orders dated 11.11.2009 and 26.01.2010 of the High Court Division.

That during hearing, we noticed that the admit card (Annexure-“X-64”) of petitioner No. 65 did not contain the other details except the registration number being No. 017460 but it was duly authenticated by the petitioners’ lawyer. However, petitioner No.65, Mohammed Riaz Uddin (being registration No. 017460) can also exhaust the process left for appointment along with

remaining 70 petitioners of this writ petition to the satisfaction of the respondents concern, so far as it relates to the details of admit card of petitioner No.65.

In the result, the Rule is made absolute with the same directions given in the aforestated Judgments and Orders dated 11.11.2009 and 26.01.2010 of the High Court Division, as quoted here and with the observations stated above.

Communicate this judgment to the respondents concern at once.

However, there is no order as to costs.

Sheikh Abdul Awal, J:

I agree.