

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(Special Original Jurisdiction)**

**WRIT PETITION NO. 825 OF 2010**

**With**

**WRIT PETITION NO. 1313 OF 2009**

**In the matter of:**

An Application under article 102 of the  
Constitution of the People's Republic of  
Bangladesh.

And

**In the matter of:**

Tahamina Khatun

... Petitioner in Writ Petition No. 825 of 2010

-Versus-

Government of the Peoples Republic of  
Bangladesh and others

.. Respondents in Writ Petition No. 825 of 2010

And

**In the matter of:**

Shamima Irin @ Moyna

... Petitioner in Writ Petition No. 1313 of 2009

-Versus-

Government of the Peoples Republic of  
Bangladesh and others

.. Respondents in Writ Petition No. 1313 of 2009

Ms. Syeda Jaheda Sultana, Advocate

..For the petitioner in Writ Petition No. 825 of 2010

No one appears

..For the petitioner in Writ Petition No. 1313 of 2009

Mr. Md. Abdul Aziz Miah(Minto) Advocate

..For the respondent no. 2 in Writ Petition  
Nos. 825 of 2010 and 1313 of 2009

**Heard on 23.07.2025, 24.07.2025  
and Judgment on 24.07.2025**

**Present:**

Mr. Justice Md. Mozibur Rahman Miah  
 And  
 Mr. Justice Md. Bashir Ullah

**Md. Mozibur Rahman Miah, J.**

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

*“Let a Rule Nisi be issued calling upon the aforesaid respondents to show cause as to why the appointment letter issued by the respondent No. 4 vide Memo No. পপ/ঢাকা-বি/নি-সাগ শেরপুর /২০০৮/৬১১ dated 01.12.2008 (Annexure-E) appointing the respondent No. 10 as Family Welfare Assistant (female) of 3/ka Unit Kahgsha Union Jhinaigati, District Sherpur should not be declared to have been passed without lawful authority and is of no legal effect and/or pass such other or further order or orders passed as to this Court may seem fit and proper.”*

Mentionable, this rule is set to hear analogously with the rule issued earlier in writ petition no. 1313 of 2009 as per rule using order dated 26.04.2010. For that obvious reason, we take up both the writ petitions for hearing.

The short facts leading to issuance of the instant rule (stemmed from writ petition no. 825 of 2010) are:

The office of District Family Planning under the authority of Director General, Directorate of Family Planning (respondent no. 2) published an “appointment notice” (নিয়োগ বিজ্ঞপ্তি) in the Daily, Jonakantha on 30.07.2008 inviting application from the qualified person for giving appointment in different positions including the position of Family Welfare Assistant (female). In response to that advertisement, the petitioner applied for the said position for Kangsha - 3 ka unit, District: Sherpur by complying all the terms and condition so outlined in the appointment notice. The authority then issued admit card to the petitioner to sit for written examination which was held on 17.10.2008. Ultimately, the petitioner successfully passed the written examination and accordingly she was called to appear in the viva voce examination on 30.11.2008. Eventually on 01.12.2008 the respondent no. 4, Director, Family Planning, Dhaka issued appointment letter selecting respondent no. 10, named, Shamima Irin@ Moyna for the post of Family Planning Assistant (female) for which the petitioner and others applied. Though before issuance of the said appointment letter the petitioner and other candidates raised objection claiming that the respondent 10 is not the resident of Kangsha village but without paying any heed to the objection they raised, the said respondent no. 10 was given appointment. Subsequently, the petitioner vide her letter dated 17.12.2008 addressed to respondent no. 4 (Annexure'D1) requested for cancellation of the appointment of respondent no. 10 with the same

allegation she made earlier on 09.11.2008. However, finding no other alternative the petitioner on 25.10.2009 served a notice upon the respondents demanding justice and then filed the writ petition (being writ petition no. 825 of 2010) before this court challenging appointment of the respondent no. 10 to the post of Family Welfare Assistant (female) vide appointment letter dated 01.12.2008 Annexure 'E' to the (writ petition) and rule was issued as has been stated above .

On the other hand, the respondent no. 10 to the instant writ petition as petitioner in writ petition no. 1313 of 2009 had earlier filed a writ petition stating that in view of the advertisement as has been stated herein above, amongst others, she applied for the post of Family Welfare Assistant (female) and after due consideration of all the papers submitted, the authority has rightly issued appointment letter in her favour on 01.11.2008 on evaluating her written, viva voce examination and accordingly she joined the post on 04.12.2008 by submitting joining letter. But all of a sudden her such appointment was canceled vide letter dated 15.01.2009 without giving any prior notice to her. It has further been stated that though an inquiry was held to ascertain her residence status but she has not been provided any report which found that she is not a resident of Kahgsha village. However, she finally challenged the cancellation of her appointment made vide letter dated 15.01.2009 (Annexure 'D' to the writ petition) when Rule was issued and a direction was made not to appoint anybody else in the said post vide order dated 23.02.2009.

Ms. Syeda Jaheda Sultana, the learned counsel appearing for the petitioner upon taking us to the writ petition (being no. 825 of 2010) and by reading out the grounds so couched in the writ petition at the very outset submits that by not giving appointment to her in place of respondent no. 10, her fundamental right has been curtailed for which the petitioner is entitled to get appointment for the post of Family Welfare Assistant.

The learned counsel further contends that, since the said post still remains vacant, so the petition is entitled to get appointment to the said post in place of respondent no. 10 since the appointment of the respondent no. 10 has been cancelled on 15.01.2009.

The learned counsel also contends that, since the petitioner has long been waiting (for the last 15 years) to get appointment in the post as of legitimate candidate and on inquiry it has been found that the respondent no. 10 had provided fabricated information in regard to her residence so basing on that fact, this Hon'ble court can exert the authority to give appointment to the petitioner. When we pose a question to the learned counsel for the petitioner that since the appointment of the respondent no. 10 has ultimately been cancelled against which she (respondent-10) filed a writ petition no. 1313 of 2009 so how the instant rule can be sustained. In response to that the learned counsel contends that, since the appointment of the respondent no. 10 has been cancelled which alternatively has given opportunity to the petitioner to be appointed to the said post and finally prays for making the rule absolute.

On the contrary, Mr. Md. Abdul Aziz Miah (Minto), the learned counsel appearing for the respondent no. 2 by filing 2(two) sets of affidavit-in-opposition in both the writ petitions vehemently opposes the contention taken by the learned counsel for the petitioner and contends that, as per the rule issuing order, rule itself has become infructuous. To supplement the said submission, the learned counsel then contends that, since appointment of the respondent no. 10 has ultimately been cancelled for which writ petition has been filed so the rule has ceased to exist as this moment and on that sole submission, the learned counsel finally prays for discharging the rule as being infructuous.

Insofar as regards to the writ petition No. 1313 of 2009, the learned counsel for the petitioner did not turn up to press the rule though the matter has been appearing at the top of the list for hearing. In spite of that, we have gone through the writ petition as read out by the learned counsel for the respondent no. 2. In the said writ petition it has been mainly argued that since the petitioner of the writ petition has been given appointment letter on 01.12.2008 and accordingly she joined the post on 04.12.2008 by submitting joining letter, so a vested rights has been accrued in her favour and therefore under no circumstances can the said appointment be cancelled. It has further been argued that though an inquiry was held to determine the correctness of the residence of the petitioner, but she was not given any opportunity to defend her position in the inquiry and therefore the

cancelation of the appointment vide letter dated 15.01.2009 as has been annexed as Annexure-‘D’ to the writ petition cannot be sustained.

On the other hand Mr. Md. Abdul Aziz Miah (Minto), appearing for the respondent no. 2 by taking us to the submission so asserted in the affidavit-in-opposition mainly contends that, since there has been a clear condition being condition no. 16 in the appointment notice (নিয়োগ বিজ্ঞপ্তি) that a candidate will be eligible to apply for the post of Family Welfare Assistant (female) if she is the resident of the respective village /unit and since the petitioner of the writ petition was ultimately found not to any resident of the respective area so the authority has rightly cancelled the appointment vide letter dated 15.01.2009 which was earlier given to the petitioner vide appointment letter dated 01.12.2008.

The learned counsel further contends that, since the impugned cancelation of the appointment is based on fact so the writ itself is not maintainable to examine the disputed question of fact that she (petitioner) is a resident of Kangsha village. The learned counsel then by referring to condition nos. 16 and 17 to the advertisement for appointment also contends that, since exclusive authority has been given to the respondent no. 2 to cancel any appointment, so under no circumstances can the said cancelation be challenged in writ petition though fact remains on enquiry it has been proved that the petitioner has violated the condition and finally prays for discharging the rule as well.

Be that as it may, we have considered the said submission so placed by the learned counsel for the petitioner in writ petition no. 825 of 2010 and that of the learned counsel for the respondent no. 2 and perused the writ petition and all the documents annexed as of annexure vis-à-vis the affidavits-in-opposition filed by the respondent no. 2 in both writ petitions. At the first instance, we would like to look into the advertisement annexed as of Annexure 'A' to the writ petition. On going through the same, we amongst others, find in condition no. 16 that, a candidate applied for the position of Family Welfare Assistant (female) must be a resident of the particular village/ unit for the post specified in the serial no. 3. It is the assertion of the learned counsel for the respondent no. 2 that since the respondent no. 10 has been found not to be any resident of Kangsha village/ unit which is the prerequisite to become qualified for the post so the respondent no. 2 has thus rightly cancelled the appointment earlier given to the respondent no. 10 vide Annexure 'D' to the writ petition no. 1313 of 2009. The learned counsel by referring to paragraph no. 17 to writ petition no. 825 of 2010 submits that in that paragraph, the petitioner has clearly admitted that the appointment for the post of Family Welfare Assistant (female) has been cancelled on 15.01.2009 so there has been no existence of any cause of action at the time of filing of writ petition 825 of 2010 let alone issuance of the rule. So prayer 'A' to the said writ petition had never existed while challenging appointment of the respondent no. 10 in the said writ petition. So, we find no earthly reason to challenge the appointment of respondent no. 10 as illegal in terms of prayer 'A' to



the writ petition. Since it is admitted position as has been asserted in paragraph no. 17 to the writ petition no. 825 of 2010 that the appointment of the respondent no. 10 has been cancelled so the rule issued in writ petition no. 825 of 2010 was infructuous from its very inception. On top of that, there has been no condition set out in the appointment notice (annexure 'A' to the writ petition) asserting that if any candidate whose appointment was subsequently cancelled the candidate who got second highest position in the examination will be given preference for appointment. So, in absence of any such condition, this court exercising authority under Article 102 of the Constitution can not give any direction to that effect.

Insofar as regards to the merit of writ petition no. 1313 of 2009 we find that, authority has been given to the respondents to cancel any appointment (নি-য়োগ আ-দেশ) to any candidate even after giving appointment, if any irregularity is found proved afterwards as enshrined in condition no. 16. That said, we find, an inquiry was held to detect the allegation that, the petitioner of the writ petition no. 1313 of 2009 was not a resident of the particular area when she applied for the position of Family Welfare Assistant, even though condition no. 16 and 17 do not speak to hold any inquiry. In spite of that, an enquiry was held who found that the petitioner of the writ petition was not any resident of Kangsha village at the time of applying for the post. On top of that such disputed question of fact cannot be adjudicated in a writ petition.

Regard being had to the above facts, circumstances and observation we find no illegality or impropriety in cancellation of the appointment dated 15.01.2009 of the petitioner.

In totality, we don't find any cause of action in filing writ petition no. 825 of 2010 (that is, Annexure 'E' to the writ petition no. 825 of 2010) to have existed at the time of filing of the said writ petition let alone issuance of the rule vis-à-vis no illegality is there in the letter which has been annexed as Annexure 'D' to writ petition no. 1313 of 2009 as well.

Accordingly, the rules of both the Writ Petitions being Nos. 825 of 2010 and 1313 of 2009 are discharged however without any order as to costs.

The direction so have been made at the time of issuance of the rule in Writ Petition No. 1313 of 2009 is hereby vacated.

Let a copy of this judgment be communicated to the respondents forthwith.

**Md. Bashir Ullah, J.**

I agree.

Kawsar/A.B.O