

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

**WRIT PETITION NO. 3332 OF 2010.**

**IN THE MATTER OF:**

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

**-And-**

**IN THE MATTER OF :**

Md. Rahmat Ali

*...Petitioner.*

**-Versus-**

Bangladesh, represented by the Secretary, Ministry of Health and Family Welfare, Bangladesh Secretariat, Dhaka and others.

*.....Respondents*

Mrs. Nahid Yesmin, Advocate

*...For the petitioner*

Mr. Md. Nurul Islam, Senior Advocate with

Mr. Md. Mahfuj Ul Alam, Advocate

*.....For the respondent No.7.*

Mr. Mr. Sk. Shaifuzzaman, DAG

*.....For the respondents*

**Present:**

**Mr. Justice K. M. Kamrul Kader**

**And**

**Mr. Justice Khizir Hayat**

**Heard On: 01.02.2024.**

**And**

**Judgment On: 12.02.2024.**

**K. M. Kamrul Kader, J:**

On an application made by the petitioner under article 102 of the Constitution of the People's Republic of Bangladesh, this Rule Nisi was issued on 26.04.2010, in following terms:-

*“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the Memo No.CS/Tank/Prosha//Niog/10/795 dated 15.04.2010 issued by the respondent No.5, so far as it relates to*

*serial No.14, Roll No.100631 (Annexure-H) should not be declared to have been passed without lawful authority and is of no legal effect and as to why the respondents should not be directed to consider the petitioner's claim for appointment (Roll No.100640), as the Health Assistant for Ward No.2 (Old), No.4, Lehemba Union, Upazilla-Ranisankail, District-Thakurgaon."*

Facts, relevant for disposal of this Rule, are that the petitioner is a permanent citizen of Bangladesh and his permanent address is at Ward No.2 (Old), No.4 Lehemba Union, Upazilla- Ranisankail, District Thakurgaon. It is stated that the government decided to appoint in the post of Health Assistants in some districts in Bangladesh. As per the decision of the Government the respondent No.3 invited applications from the permanent citizens of Bangladesh. The circular of the government was published in various newspapers. As per circular of the government the Health Assistants would be appointed ward/union wise from the competent candidates of the respective ward/union. As per term No.11 of the circular dated 21.06.2009, the Civil Surgeon of Thakurgaon made a list of vacant posts in the Ward/Union of the District. According to the said list, there is a vacant post of Health Assistant in Ward No.2 (old), No.4 Lehemba Union, Upazilla- Ranisankail, and District-Thakurgaon. The petitioner came to know about the said circular submitted an application addressing the respondent No.5 to be appointed as the Health Assistant. The respondent No.5 on receipt the application of the petitioner after scrutiny found the application to be in accordance with the circular dated 21.06.2009. The respondent No.5 issued an admit card addressing the petitioner and the roll number of the petitioner is 100640. According to the

admit card date of examination was 01.01.2010 and the examination was held on the scheduled date. The petitioner participated in the written test. The brother of the petitioner on 21.01.2010 filed an application addressing the respondent No.5 stating that one Nowrose Kawsar Jambi appeared at the written examination to be appointed as the Health Assistant for the Ward No.2 (old), number-4 Lehemba Union, but he is a permanent citizen of Ward No.5 of Ranisankail Pourosova. His voter I.D No. 940874770406 and serial No. 6 (male). The brother of the petitioner on 21.01.2010 filed another application addressing the respondent No.5 stating that one Md. Solaiman Ali appeared at the written examination to be appointed as the health assistant for the Ward No. 2 (old), number-4 Lehemba Union, but he is a permanent citizen of Ward No.1 (old), at present Ward No.2, of No.4 Lehemba Union. His voter I.D No.940768697247 and Serial No. 190 (male). It may be noted here that earlier in every union there were 03 Wards. In 2008, the Government by the notification declared that there would be 09 Wards in every union and as per the notification ward No.1 (old) of the said number-4 Lehemba Union has been changed to ward Nos. 1, 2 and 3. The brother of the petitioner filing the said applications dated 21.01.2010 made prays to inquire into the allegations. But, the respondent No. 5 has not inquired into the allegations as yet. The result of the written examination was published and the petitioner along with two others primarily passed the written examination. In the result sheet wrongly Ward No.2 (old) has been shown to be Ward No.3 (old). It is also stated that the respondent No.1 by the memo dated 15.04.2010 appointed some persons as the Health Assistant in various unions/wards of District- Thakurgaon. One Nowroz Kawsar Jambi has been appointed as the Health Assistant for Ward No. 2(old),

number-4, Lehemba Union, Upazilla-Ranisankail, District Thakurgaon. The Chairman of Number-4, Lehemba Union on 22.04.2010 issued a certificate stating that Nowroz Kawsar Jumbi is a permanent citizen of Bangladesh having his permanent address at Ward-5, Ranisankail Pourosova and his voter I.D No. 940874770406 and serial No.6 (male). It is again stated that the permanent address of Nowroz Kawsar Jumbi is at Ward No.5 of Ranisankail Pourosova by suppressing the fact; he filed an application for appointment showing that he is a permanent resident of Ward No.2 (old), under number-4, Lehemba Union, Upazilla- Ranisankail. He is not a son of a freedom fighter i.e he has not been appointed from the quota of the sons/daughters of the Freedom fighters.

Being aggrieved by and dissatisfied with the Memo No. CS/Tank/Prosha//Niog/10/795, dated 15.04.2010 issued by the respondent No.5, finding no other alternative equally efficacious remedy the petitioner filed the instant writ petition and obtained the present Rule.

Mrs. Nahid Yesmin, learned Advocate appeared on behalf of the petitioner and submits that the petitioner is only competent among the three candidates, who passed the written examination to be appointed as Health Assistant for ward No.2(old), No.4 Lehemba Union, Upazilla-Ranishankail, District-Thakurgaon, in view of the memo dated 21.06.2009 and the respondents are under legal obligation to implement the terms of the memo dated 21.06.2009 in appointing the Health Assistants, but in the instant case the respondent No.5 by issuing the impugned memo dated 15.04.2010 having violated the terms of the said memo dated 21.06.2009, thus the respondents acted without jurisdiction and *malafide* and as such the impugned memo is liable to be declared to have been issued without lawful authority. She further

submits that the respondents in issuing the impugned memo inasmuch as Nowroz Kawsar Jumbi has been appointed as Health Assistant for Ward No.2 (old), No.4 Lehemba Union, Upazilla Ranisankail, District-Thakurgaon, but his permanent address is at Ward No.5, Ranisankail Pourosova, District-Thakurgaon thus he is not qualified for the aforesaid post in view of the memo dated 21.06.2009 and as such, the impugned order is liable to be declared to have been passed without lawful authority and is of no legal effect. Learned Advocate lastly submits that the impugned order having been passed in violation of the fundamental rights of the petitioner as guaranteed in articles 27, 31 and 40 of the Constitution of the People's Republic of Bangladesh and as such, the respondents should be directed to appoint the petitioner the health assistant for Ward No.2 (old), number-4 Lehemba Union, Upazilla-Ranisankail, District- Thakurgaon.

Mr. Md. Nurul Islam learned Senior Advocate with Mr. Md. Mahfuj Ul Alam learned Advocate appeared on behalf of the respondent No.7 opposes the Rule by filing supplementary affidavit and submits that the applicant Nowroz Kawsar Jumbi passed the written and viva-voce examination in the post of Health Assistant for Lehemba Union, Ranisankoil and became eligible to be appointed as Health Assistant for Lehemba Union under Police Station Ranishankoil, Thakurgaon and accordingly, he joined in service as Health Assistant on 17.04.2010. On the other hand, another candidate Md. Rahmot Ali claiming his grievance to the said post Health Assistant filed the instant Writ Petition challenging the appointment letter of the applicant issued by the respondents. He further submits that the applicant after complying of all formalities with due process joined in service as Health Assistant on

17.04.2010 pursuant to the appointment letter dated 15.09.2010 and he was waiting for monthly salary and subsequently another applicant Md. Rahmot Ali filed the instant writ petition and obtained Rule. In the meantime, the writ petitioner Md. Rahmot Ali joined in another service as Tahsilder under Ministry of Land. As a result Rule pending has become redundant. Learned Advocate lastly submits that the instant writ petitioner Md. Rahmot Ali become qualified to the post of Sub-Assistant Land Officer and appointment letter dated 20.11.2011 for the post of Sub-Assistant Land Officer was issued to the writ petitioner, who later joined as Sub-Assistant Land Officer by submitting joining letter on 01.12.2011 and since then he has been serving as Sub-Assistant Land Officer and regularly withdrawing his salary. On the other hand the respondent applicant Nowroz Kaiser Jambi joined in service as Health Assistant, Lehemba Union, Ranisangkoil on 17.04.2010 as per appointment letter dated 15.04.2010. After joining in service one Md. Rahmot Ali as writ petitioner challenging the appointment letter of the applicant and filed the instant Writ Petition on malafide intention and obtained Rule on 26.04.2010. He further submits that the respondent No.7 is a resident of ward No.2 (old) of No. 4, Lehemba Union under Ranishonkoil Upazila of District- Thakurgaon and is a resident of respondent No.7 purchased land in the said ward by registered Dalil and the Chairman issued a certificate on 14.07.2009 about the petitioner's resident as evident Annexures- N and N-1 to the supplementary affidavit. He also submits that respondent father as resident of Lehemba Union took lease dated 03.05.1997 of Jalkar Mahal (pond) situated at Lehemba Union from the respondent No.7, Thana Nirbahi Officer as evident Annexure-O to the writ petition

He lastly submits the writ petitioner Md. Rahmot Ali has already joined in another service on 01.12.2011 in the post of Sub-Assistant Land Officer, Ranisangkoil under the Ministry of Land and since then he has been withdrawing monthly salary from the government and by doing service in the said post, the petitioner does not have any interest to join in the said post of "Health Assistant" and these are disputed question of facts which cannot be resolved under writ jurisdiction and as such, the Rule issued in the instant writ petition is liable to be discharged.

Heard the learned Advocate for both the sides, perused the writ petition, supplementary affidavit and all other relevant documents annexed herewith and the submission of the learned Advocates.

Learned Advocate appeared on behalf of the petitioner argued that the respondent Nos. 7, Nowroz Kawsar Jumbi was appointed as Health Assistant for Ward No.2 (old), No.4 Lehemba Union, Upazilla Ranisankail, District- Thakurgaon, but his permanent address is at Ward No.5, Ranisankail Pourosova, District- Thakurgaon thus he is not qualified for the aforesaid post in view of the memo dated 21.06.2009.

On the contrary, Mr. Md. Nurul Islam learned Senior Advocate for the respondent No.7 argued that Nowroz Kawsar Jumbi, the respondent No.7 is a resident of ward No.2 (old) of No. 4, Lehemba Union under Ranishonkoil Upazila of District- Thakurgaon and is a resident of respondent No.7 purchased land in the said ward by registered Dalil and the Chairman issued a certificate on 14.07.2009 about the petitioner's resident as evident Annexures- N and N-1 to the supplementary affidavit. He also submits that respondent father as resident of Lehemba Union took lease dated 03.05.1997 of Jalkar Mahal (pond)

situated at Lehemba Union from the respondent No.7, Thana Nirbahi Officer as evident Annexure-O to the writ petition. On perusal of the writ petition it appears that the writ petitioner has joined in service as Sub-Assistant Land Officer in Union Land Office, Ranisangkcoil, Thakurgaon and regularly withdrawing salary.

Under such facts and circumstances, we find that these are serious disputed question of facts, which cannot be resolved in this Jurisdiction under Article 102 of the Constitution. The proceeding under Article 102 of the Constitution is a summary one and it is decided on the basis of statements made by the concern parties and the documents annexed with the petition and the affidavit-in-opposition. However, it is difficult for us to find out the truth of this matter, without justifying actual documents and evidence which preserved by the respondent Nos. 2 and 4, who are the proper authority to find out the real truth and take necessary steps against the real perpetrators/culprits, in accordance with law.

Accordingly, the Rule is discharged with the above observation.

There is no order as to cost.

Communicate the order at once.

**Khizir Hayat, J:**

I agree.