

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Md. Ashfaul Islam

Mr. Justice S. M. Emdadul Hoque

Mr. Justice A. K. M. Asaduzzaman

CIVIL APPEAL NO. 37 OF 2024

(Arising out of Civil Petition No. 1680 of 2023)

Md. Zakir Hossain and others : Appellants

-Versus-

Md. Abul Hasan Miah and others : Respondents

For the Appellants : Mr. Tabarak Hossain, Senior Advocate
instructed by Mr. Mohammad Ali Azam,
Advocate-On-Record

For Respondent Nos. : Mr. Probir Neogi, Senior Advocate
1-7 with Mr. Salahuddin Dolon, Senior
Advocate instructed by Mr. Md.
Taufique Hossain, Advocate-on-
record

For Respondent Nos. : Mr. Probir Neogi, Senior Advocate
8-40 with Mr. Salahuddin Dolon, Senior
Advocate instructed by Mrs.
Madhumalati Chowdhury Barua,
Advocate-on-record

For Respondent Nos. : Mr. Probir Neogi, Senior Advocate
41-57 instructed by Mr. Zainul Abedin,
Advocate-on-record

Date of hearing and : **21.05.2025**
judgment

JUDGMENT

Md. Ashfaul Islam, J: This Civil Appeal, by leave, is
directed against the order dated 15.09.2021 passed by the
High Court Division in Contempt Petition No. 287 of 2019
directing the Ministry of Finance to implement the

judgment and order passed by the High Court Division as well as the Appellate Division within 15 (fifteen) days.

The Respondent Nos. 8-40 filed the aforesaid Contempt Petition against the present appellants and others, alleging non-compliance with and violation of the judgment and order dated 03.12.2014 passed by the High Court Division in Writ Petition No. 6936 of 2013, which was heard analogously with Writ Petition No. 8015 of 2013. The said judgment was subsequently affirmed by this Division by judgment and order dated 15.02.2017 in Civil Appeals Nos. 250-251 of 2015, and thereafter in Civil Review Petitions No.438-439 of 2017 vide judgment and order dated 09.11.2017.

The facts, in brief, are that a group of Bench Readers of the Appellate Division and Bench Officers of the High Court Division filed Writ Petition Nos. 6936 and 8015 of 2013 before the High Court Division, challenging Article 7(7) of the চাকরি (বেতন ও ভাতাদি) আদেশ, ২০০৯ so far as it disentitles them from being granted a selection grade of two tiers of the National Pay Scale, 2009 after completion of 4(four) years in service as Bench Readers

and Bench Officers, wherein Rule and subsequently a supplementary Rule was issued.

Both the writ petitions were heard analogously and after hearing, the Rules were made absolute by the High Court Division vide judgment and order dated 03.12.2014.

Being aggrieved by the judgment and order dated 03.12.2014, the Government preferred two separate Civil Petitions for Leave to Appeal, being Nos. 1024 and 1025 of 2015, before this Division. Upon hearing, leave was granted, giving rise to Civil Appeal Nos. 250 and 251 of 2015. The appeals were heard together and were dismissed by this Division by judgment and order dated 15.02.2017, thereby affirming the judgment of the High Court Division. Thereafter, the Government filed Civil Review Petitions Nos. 438 and 439 of 2017, which were dismissed as being barred by limitation by order dated 09.11.2017.

Subsequently, Abul Hussain and 32 others (respondent Nos. 8-40 herein), claiming to be similarly situated as the original writ petitioners and asserting that they stood on the same footing, filed Contempt Petition No. 287 of 2019 before the High Court Division, alleging non-compliance with the judgment and order dated 03.12.2014.

Upon hearing, the High Court Division issued a Rule Nisi on 19.05.2019. After further hearing, the High Court Division, by order dated 15.09.2021, directed the present appellants to implement the judgment and order passed in Writ Petition Nos. 6936 and 8015 of 2013 in favour of respondent Nos. 8-40 and to grant them selection grade and other consequential benefits accordingly. In compliance, Respondent Nos. 8-40 were granted selection grade as directed by the said order.

Thereafter, the Respondent Nos. 1-7 and 41-57, claiming to be similarly situated and standing on the same footing as the original writ-petitioners, filed an application to be added as parties in the contempt petition. The High Court Division allowed their prayer and again directed the appellants to implement the judgment and order dated 03.12.2014 in their favour. But, at this time instead of complying with the said direction, the appellants, surprisingly, filed Civil Petitions for Leave to Appeal against the order dated 15.09.2021. Leave was granted, giving rise to the instant appeal.

Mr. Tabarak Hossain, the learned Senior Counsel appearing for the appellants, submits that the respondent Nos. 1-7 and 41-57 were appointed as Bench Officers and Bench Readers after the implementation of the National Pay Scale, 2015, under which the provision for selection grade had been abolished. He contends that since they were neither parties to Writ Petition Nos. 6936 and 8015 of 2013 nor had completed four years of service prior to the 2015 pay scale, they do not stand on the same footing as the original writ petitioners.

He further argues that the benefits of selection grade was available under the 2009 pay scale upon completion of four years of service, which is not applicable to respondent Nos. 1-7. Therefore, the direction of the High Court Division to extend such benefit to them, despite these material differences, is erroneous in law and liable to be set aside.

On the other hand, Mr. Probir Neogi, the learned Senior Advocate, appearing with Mr. Salahuddin Dolon, learned Senior Advocate, on behalf of the respondents, submits that the appellants filed Civil Petition for Leave to Appeal No. 1680 of 2023 in an attempt to

challenge the Order dated 15.09.2021 passed in Contempt Petition No. 287 of 2019, which had already been settled and duly acted upon. He contends that the leave petition was filed with the ulterior motive to mislead the Court and obstruct respondent Nos. 1-7 and 41-57 from enjoying their rightful entitlements under the judgment and order dated 03.12.2014.

He further submits that Respondent Nos. 8-40 were granted selection grade benefits pursuant to the said judgment, despite many of them having been promoted after the implementation of the National Pay Scale, 2015, and without completing four years of service. Thus, the argument that respondent Nos. 1-7 are ineligible on similar grounds is untenable, as they stand on the same footing.

Lastly, he refers to the observations made by the Appellate Division in Civil Appeals Nos. 250-251 of 2015, where it was noted that Bench Officers perform strenuous duties far beyond normal hours, even during holidays and vacations. As such, respondent Nos. 1-7 and 41-57, being similarly placed, are equally entitled to the benefits granted under the original judgment. Therefore, the

instant appeal, being misconceived and intended to deprive similarly situated officers, is liable to be dismissed for the ends of justice.

We have heard the learned Advocates appearing for the parties and perused all the judgments and orders of both the Divisions and others materials on record connected thereto.

It appears from the record that the issue regarding benefits of selection grade for Bench Readers and Bench Officers was conclusively settled by the judgment of the High Court Division dated 03.12.2014 in Writ Petition Nos. 6936 and 8015 of 2013, which was subsequently affirmed by this Division in Civil Appeals Nos. 250-251 of 2015 and also in Civil Review Petitions Nos. 438 and 439 of 2017. The decision was rendered upon careful consideration of the peculiar nature and demanding circumstances of the service performed by these officers. It is relevant to note the observation made in the Civil Appeals:

"It is to be noted that the working hours of these officers is from 9:00 am to 5:00pm but they used to work till 8/9 pm every day. In respect of Bench Readers and

Bench Officers, the very nature of their job is painstaking. They work almost 12/14 hours a day and even on holidays because they are attached to the Judges. During the vacation as well, they cannot enjoy the holidays as they remain busy with the finalization of judgments. The High Court Division has rightly exercised its jurisdiction and we find no infirmity to interfere with the judgment."

These findings by the Appellate Division carry binding force under Article 111 of the Constitution and reaffirm the entitlement of Bench Readers and Bench Officers to selection grade benefits based on the nature, intensity, and continuity of their work. Therefore, any attempt to treat subsequent appointees in the same posts differently, in absence of a reasonable classification, is discriminatory and contrary to the rule of law.

Upon overall gleaning it is of paramount importance to underscore that the issue at hand stems directly from a contempt proceeding. In this regard, it must be unequivocally stated that the core matter has already been conclusively adjudicated and attained its finality

by this Division through the dismissal of both the Civil Appeals and the subsequent review petitions.

Accordingly, the determination made by this Division in the context of the contempt proceeding must be construed in a strictly limited and confined scope. No further examination, interpretation, or deliberation is warranted with respect to a matter that has already been authoritatively and unambiguously settled by this Division, as outlined above. Upholding such finality not only reinforces the sanctity of judicial decisions but also ensures certainty and consistency in the administration of justice.

Repeated attempts to delay, dilute, or defy compliance with judgments that have attained finality strike at the heart of judicial authority and gravely undermine the rule of law. Such conduct not only erodes institutional credibility but also constitutes a direct affront to the constitutional command embedded in Article 111 of the Constitution.

It is the solemn obligation of all public functionaries to honour and execute binding decisions of this Division. Any deliberate disregard or circumvention

of such authority amounts to insubordination and shall not be tolerated under any circumstances.

For that reason, it is our considered view that any further deviation shall amount to defiance of Court's order and shall invoke contempt jurisdiction.

Therefore, we do not find any substance in the appeal. Accordingly, the appeal is dismissed without any order as to costs.

The appellants are directed to grant the benefits of selection grade to all Bench Readers and Bench Officers who have completed 4 (four) years of service, in accordance with the decisions of the High Court Division as well as this Division, within 15 (fifteen) days on receipt of this judgment and order.

J.

J.

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