

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

WRIT PETITION NO. 12665 OF 2024

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. Raihul Karim and others

.....Petitioners

-VERSUS-

Government of the People's Republic of Bangladesh,
represented by the Secretary, Ministry of Primary
and Mass Education, Bangladesh Secretariat and
others

..... Respondents

Mr. Md. Golam Rahman, Advocate with

Mr. Md. Mizanur Rahman, Advocate

..... For the Petitioners

Mr. Muntasir Uddin Ahmed, Advocate with

Mr. Ajit Sil, Advocate

.....For the Respondent No. 3

Mr. Nasir Uddin Ahmed Ashim, Advocate

....For the added Respondent Nos. 5-9

Present:

Mr. Justice Sashanka Shekhar Sarkar

And

Justice Urmee Rahman

Heard on 13.01.2026, 10.03.2026, 20.04.2026 and 04.05.2026

Judgment on 14.05.2026

Urmee Rahman, J:

In the instant matter a Rule Nisi was issued on an application under Article 102 read with Article 44 of the Constitution of the People's Republic of Bangladesh in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the Provisions of Rules as contained in the serial No. 6. column No. (4) of the Schedule of the 'প্রাথমিক শিক্ষা অধিদপ্তর (কর্মচারী), নিয়োগ বিধিমালা, ২০২৩' (Annexure-D) so far making provisions for promotion to the post of Deputy Director at the rate of proportionate numbers of the feeder posts and thereby making detrimental/disadvantageous provisions for the petitioners to their rights already accrued by the appointing Service Rules should not be declared to be ultra vires to the Constitution of the People's Republic of Bangladesh and as to why the Memo No. ৩৮.০০.০০০০.০০১.১২.০৩৭.১৯.৩১৯ dated 06.05.2024 issued under signature of respondent No. 2 and thereby preparing the draft gradation list of the posts of Assistant Director and PTI Superintendent of Directorate of Primary Education and Assistant Director and District Primary Education Officer (Annexure-E) should not be declared to be without any lawful authority and is of no legal effect and also as to why the respondents should not be directed to amend the provisions as contained in the serial No. 6. column No. (4) of the schedule of the "প্রাথমিক শিক্ষা অধিদপ্তর (কর্মচারী) নিয়োগ বিধিমালা, ২০২৩" keeping provisions of seniority with combined gradation for the promotion to the post of Deputy Director as it was in the appointing Service Rules and/or such other or further order or orders passed as to this Court may seem fit and proper.

Pending disposal of the Rule, the parties are directed to maintain status quo in respect of promotion for the post of

Deputy Director for a period of 06 (six) months from date.”

Necessary facts for disposal of the instant Rule, as narrated in the writ petition, in short, are that, the petitioner Nos. 1, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 have been appointed as Superintendent PTI (Primary Training Institute) on 19.10.2006 and they have joined their respective posts on 22.10.2006. Petitioner Nos. 3, 4, 5, 6, 7, 8, 9, 10, 12, and 13 have been appointed as Assistant PTI Superintendent on 19.10.2006 and on getting promotion they have joined in the post of PTI Superintendent on respective dates during the period between 2011 to 2016. Petitioner Nos. 2, 23 and 24 have been promoted to the post of the PTI Superintendent on 17.08.2011. Since joining the petitioners have been discharging their duties and performing their responsibilities with utmost sincerity and to the satisfaction of all concerned.

Initially the post of the petitioner i.e. PTI Superintendent used to receive their salary in 7th grade under National Pay Scale. Subsequently by the Memo dated 28.11.2010 the salary scale was upgraded to 6th grade under National Pay Scale similar to that of Assistant Director and till date the posts of the PTI Superintendent are receiving salary in 6th grade under National Pay Scale which is the same grade as the Assistant Director.

The recruitment, service, promotions and other benefits of the petitioners used to be governed by the Bangladesh Civil Service Recruitment Rules, 1981, which was lastly amended on 21.09.1989 and was published in the Gazette, on 23.09.1989. According to the serial No.

24z, column (4) of the said Rules, the eligibility criteria for the post of Deputy Director was "By promotion amongst the Assistant Directors of the Directorate of Primary Education and Specialists and Deputy Directors of the National Academy for Primary Education; or By transfer of officers of the Service serving in an equivalent post". The promotion to the post of Deputy Director from the post of Assistant Directors and other equivalent posts used to be governed and determined on the basis of the seniority of service and a combined gradation list used to be prepared maintaining seniority in the feeder posts amongst the eligible equivalent posts.

Thereafter, a new law came into force, namely, প্রাথমিক শিক্ষা অধিদপ্তর (কর্মচারী) নিয়োগ বিধিমালা, ২০২৩, which has been published in Bangladesh Gazette, on 13.09.2023 repealing the previous Rules of 1989. In the new Rules in Serial No. 6, Column No. (4) of the Schedule a new eligibility criteria has been set out for promotion to the post of Deputy Director stating that পদোন্নতির মাধ্যমে (ফিডার পদ সংখ্যার আনুপাতিকহারে). This provision is detrimental and disadvantageous for the petitioners to their rights which they have already accrued by their appointment under Service Rules of 1989.

On the basis of this new Rules of 2023 a new separate gradation list has been prepared among the PTI Superintendent of Directorate of Primary Education and of District Primary Education Officer on 06.05.2024. Subsequently, by the Memo dated 16.10.2024 current charge of the post of Deputy Director has been handed over on the basis of the

said gradation list violating the long-standing custom, which impacted negatively upon the overall administration of the functioning of offices.

Being aggrieved thereby and there having no other alternative and efficacious remedy available, the petitioners (as many as 24) have filed the instant writ petition and obtained the present Rule. At the time of issuance of the Rule status quo was granted in respect of promotion to the post of Deputy Director for a period of 6 (six) months, which has been extended from time to time.

Learned Advocate Md. Golam Ahmed, with Md. Mizanur Rahman, Advocate appears on behalf of the petitioners and submits that the latest derogatory provisions for promotion to the post of Deputy Director in serial No. 6, column No. (4) of the Schedule of the প্রাথমিক শিক্ষা অধিদপ্তর (কর্মচারী) নিয়োগ বিধিমালা, ২০২৩ is an act of discrimination and the relevant provision is incoherent, which itself paved the way for discrimination and unequal treatment, as such the relevant provision of the নিয়োগ বিধিমালা, ২০২৩ is violative of the Constitution of the People's Republic of Bangladesh.

Learned Advocate further submits that it is a settled position of law that the appointing authority has every right to amend/alter the service rules to suit the need of time but not to the detriment or disadvantage to the rights or privileges that existed at the relevant time when an employee of such appointing authority entered into his service. Therefore the new provision being wholly incoherent and creating discrimination among the employees is liable to be declared as ultra vires to the Constitution.

He next submits that, by setting new eligibility criteria for promotion to the post of Deputy Director, the petitioners have been discriminated and their fundamental rights to be treated in accordance with law as guaranteed under Article 28 and 31 of the Constitution of the People's Republic of Bangladesh have been violated and therefore, the impugned memo and the gradation list dated 06.05.2024 is liable to be declared to be without lawful authority.

Learned Advocate for the petitioners finally submits that the petitioners have been subjected to sheer discrimination when the respondents made Service Rules of 2023 and issued the impugned memo dated 06.05.2024 on the basis thereof and therefore, the same is liable to be declared to have been made without lawful authority and is of no legal effect and the respondents may kindly be directed to amend the provisions as contained in the serial No. 6, column No. (4) of the Schedule to the Rules of 2023 upon making the Rule absolute.

On the other hand, learned Advocate Mr. Muntasir Uddin Ahmed, with learned Advocate Mr. Ajit Sil, appeared on behalf of the respondent no. 3, i.e. Director General, Directorate of Primary Education and contested the Rule by filing an affidavit in opposition.

The main submission of the learned Advocate for the Respondent No. 3 is that, the new rule enacted in the year 2023 is not detrimental to the petitioners rather it is accommodative in nature there being a saving clause in the new rules and therefore there is no reason for the petitioners to be aggrieved by the enactment of the new provision.

He next submits that the petitioners are holding the posts of Superintendent as per the old rules, yet they have been given the status of Assistant Directors as per the new rules. Therefore there is no scope for them to claim to be promoted to the post of Deputy Directors as they have not met the eligibility as yet. In that view of the matter this Rule is premature and therefore is not maintainable and is liable to be discharged for ends of justice.

His further submission is that, as per the organogram under the Rules of 1989 there were only 3(three) posts of Deputy Director and 9 (nine) posts of Assistant Directors. In the latest Rules of 2023, the organogram as well as the numbers of the posts have been amended by increasing the post of Deputy Director from 3 to 25 and the post of Assistant Directors from 9 to 45. Furthermore the posts of PTI Superintendents and District Primary Education Officers have been given the equivalent status as that of the Assistant Directors and thereby the petitioners have been provided with a better opportunity to be promoted in the higher post of Deputy Director.

He finally submits that in view of Bangladesh Civil Service Recruitment Rules, 1981 (Amended in 1989), the Writ Petitioners have no locus standi to file this Writ Petition as they have not promoted to the post of Assistant Director and did not serve in the said post for a period of 3(three) years in order to become eligible for promotion to the post of Deputy Director in view of repealed Rules of 1981 as well as present

Rules of 2023. Thus, the Rule issued in the instant Writ Petition is liable to be discharged.

Referring to Annexure -2 - 2(c) to the affidavit-in-opposition learned Advocate submits that, some of the petitioners i.e. petitioner Nos. 14, 15, 19, 20, 21, and 22 have been given the current charge of Deputy Director. Therefore, so far as these petitioners are concerned, the Rule has become infructuous.

In support of his submission learned Advocate placed reliance on the case of *Bangladesh Bank and another Vs. Sukamal Sinha* reported in *21BLC (AD)(2016), 216* in which it has been held by the Apex Court that:

“The principle laid down in 66 DLR case clearly shows that the authority has every right to amend/alter the service Rules to suit the need of the time and, as such, there is no illegality in preparing the impugned circular with new terms and conditions but such new terms and conditions prepared by the authority shall not be applicable to the detriment or disadvantage to the privilege that existed at the relevant time when an employee of such appointing authority entered into its service.”

In the present case as well the new provision has not been made to the detriment of the petitioners and therefore the Rule is devoid of any substance.

Learned Advocate Mr. Nasir Uddin Ahmed Ashim, appeared on behalf of added respondent Nos. 5-9. The application for addition of party to be added as respondent Nos. 5-9 was earlier allowed by the order dated 27.01.2026. Learned Advocate contested the Rule, however, without filling any affidavit-in-opposition. Supporting the submissions made by the learned Advocate for the respondent no. 3 he submitted that, the latest provision in the service rule is in no way detrimental to the petitioners. The added respondents are being deprived of their due promotional entitlements because of the pendency of this writ petition and therefore, he prayed that the Rule may be discharged at once.

We have heard the learned advocates for the respective parties and perused the writ petition, supplementary affidavits thereto, the affidavit in opposition and all the documents annexed therewith.

It is admitted that all the petitioners are currently holding the post of Superintendent PTI (Primary Training Institute), some of them were directly appointed and some were promoted. From column 24 and 25 of the schedule to Bangladesh Civil Service Recruitment Rules, 1981, amended in 1989 (Annexure-C) it appears that, there were 2(two) branches from which promotion to the post of Assistant Directors used to be made, which are, (1)- District Primary Education officers and (2) Superintendents of Primary Training Institute. 3 (three) years' experience in this post was required to get the promotion. For promotion to the next higher post of Deputy Director total 10 (ten) years' experience in the

service including 3 (three) years in the feeder post (Assistant Director on equivalent) was required under this rule.

From the supplementary affidavit filed by the petitioners sworn in on 14.01.2026 it appears that under the previous law a combined gradation list used to be published among the District Primary Education Officers and Superintendents of PTI and from this combined gradation list promotion used to be given to the post of Assistant Directors and the next higher post of Deputy Directors.

From Annexure-B to the writ petition we find that in 2010 by the Memo dated 28.11.2010 the salary scale of the District Primary Education Officers and PTI Superintendents was increased to the salary scale of the Assistant Directors and it is admitted that till date the PTI Superintendents and District Primary Education Officers are receiving the similar salary scale as that of the Assistant Directors. However, this upgradation of salary scale only applies to the payment of the salary and it has no relevance with promotion or seniority in service.

Annexure-D is the "সরকারী প্রাথমিক শিক্ষা অধিদপ্তর (কর্মচারী) নিয়োগ বিধিমালা, ২০২৩", which has come into force on 13.09.2023 by repealing the earlier Rules of 1981. It is to be noted that after long 24 years a new law has come into force taking into consideration different demands of the concerned and crisis that were existing in this sector during this period. From the organogram of the new service rule we have been shown that the post of PTI Superintendent and District Primary Education Officers have been made equivalent to the post of Assistant Director, who will be eligible to

be promoted to the post of Deputy Director. It is therefore, evident that a drastic change in the organogram has been made by upgrading the subordinate post of PTI Superintendent and District Primary Education officers to the higher post of Assistant Director.

Moreover, the number of the posts have also been significantly increased. Earlier only 3 (three) posts were available for the post of Deputy Directors and 9 (nine) posts were available for the post of Assistant Directors. After enactment of the new service rule in 2023, the post of Assistant Directors has been increased to 45 and post of Deputy Director have been increased to 25 by giving ample opportunity to both the PTI Superintendents and the Deputy Primary Education officers to get the benefit of getting promoted to the post of Deputy Director.

From Rule 9 (2) to the latest Rule of 2023 it appears that there is a saving clause, which is quoted below:

“ (ক) পূর্বের ধারাবাহিকতায় উক্ত বিধির আওতায় প্রাপ্ত প্রশিক্ষণ, শিক্ষানবিশিসহ চাকরিতে স্থায়ীকরণ, পদোন্নতি ও অর্জিত অধিকারসমূহ এইরূপে চলমান থাকিবে যেন উহা এই বিধিমালার অধীন প্রাপ্ত ও অর্জিত হইয়াছে; অথবা

(খ) চাকরিতে স্থায়ীকরণ, পদোন্নতি ও প্রাপ্য অধিকারসমূহ প্রাথমিক শিক্ষা অধিদপ্তর (কর্মচারী) নিয়োগ বিধিমালা, ২০২৩ অনুযায়ী নির্ধারিত হইবে। ”

While sub Rule 9(2) (Ka) applies in cases of the rights which have been already vested upon them employees (প্রাপ্ত), অধিকার, Rule 9(2) (Kha) applies regarding prospective rights (প্রাপ্য অধিকার), which are yet to be enjoyed by an employee. The employees who have been employed prior to coming of this new rule, the rights which have already been availed

shall be considered to be as per the new law but at the same time the prospective rights which are yet to be achieved i.e. right to promotion, right to be permanent etc. will be governed by this new rule.

The petitioners' main contention is that the privilege that has been given to them under the previous law has been taken away by this subsequent law to their detriment and disadvantage. We have already noted that under the previous law the petitioners have been appointed as Superintendent but in the impugned gradation list they have been considered as Assistant Directors, thereby giving the benefit of the new provision of law. Had it been made as per the earlier rule, the petitioners would have been in the post of Superintendent to be promoted to the post of Assistant Directors.

It is evident that the petitioners have accepted the privilege that has been given by the latest rules and at the same time they are claiming to get the privilege under the previous rule. This standing of the petitioners attracts the doctrine of approbation and reprobation, which means, one cannot selectively accept only the beneficial parts of the new legal regime while insisting on retaining advantageous features of the old regime. When a new law comes into force an employee may protect a vested right already earned but not a mere chance or expectation of future promotion. It is a settled principle of service jurisprudence that promotion is not matter of right and that cannot be claimed as guaranteed. There are certain requirements which are to be fulfilled to get promotion. The present petitioners having accepted the benefits conferred under the new statutory regime cannot simultaneously insist upon continuation of the

promotional advantages available under the repealed rules. A mere expectation of promotion under the earlier law does not constitute as a vested right capable of enforcement.

Petitioners have alleged that some employees have been given the current charge of Deputy Directors as evident from Annexure-F and F-1 by violating the long standing custom of maintaining combined gradation list. On perusing those annexures we find that, it has been clearly stated in those memos that:

“উক্ত চলতি দায়িত্ব প্রদানকে বদলি বা পদোন্নতি বা নবনিয়োগ হিসেবে গণ্য করা যাবে না। দায়িত্ব প্রাপ্ত কর্মকর্তাগণ চলতি দায়িত্বের কারণে এরূপ কোন সুবিধা দাবি করতে পারবেন না।”

Therefore, by giving the current charge no promotion to the post of Deputy Directors have been made and therefore, there is no reason for the petitioners to be aggrieved.

The crux of the grievance of the petitioners is that, as per the earlier service rule there was a combined gradation list of the PTI Superintendent and District Primary Education Officers but in the new rule two separate branches have been created and separate gradation list for these two branches have been prepared. As a result, some junior officials are getting seniority over some of the petitioners.

We find that amending the service rule is purely a policy decision of the government by which two separate branches of this category has been created for sake of convenience and for practical purpose. Therefore, this court sitting in writ jurisdiction cannot interfere with such policy decision

made by the government in this regard. We also have considered that with the increased number of the posts a better opportunity has been created in favour of the petitioners, which they did not have earlier under the previous rule. Therefore, this policy decision in no manner has caused detriment or disadvantage to the petitioners.

With the discussion and findings, we find that the instant Rule is devoid of any substance.

In the result the Rule is discharged.

The order of status-quo granted at the time of issuance of the Rule is hereby re-called and vacated.

However, there will be no order as to costs.

Let a copy of this judgment and order be communicated to the concerned authorities concerned at once.

Justice Sashanka Shekhar Sarkar, J:

I agree.