

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Syed Refaat Ahmed
Chief Justice
Mr. Justice Md. Ashfaqul Islam
Mr. Justice Zubayer Rahman Chowdhury
Mr. Justice Md. Rezaul Haque
Mr. Justice S.M. Emdadul Hoque
Mr. Justice A.K.M. Asaduzzaman
Mrs. Justice Farah Mahbub

CIVIL APPEAL NO.32 OF 2025

WITH

CIVIL REVIEW PETITION NO.233 OF 2024.

AND

CIVIL REVIEW PETITION NOS.61-62 OF 2025.

(From the judgment and order dated 19.05.2016 passed by the Appellate Division in Civil Petition for Leave to Appeal Nos.1611 of 2012 with 1483 of 2012, 1432 of 2012 & 1472 of 2012)

The National University, : Appellants/Petitioners.
represented by the Vice (In C.A.No.32/2025 &
Chancellor, National University C.R.P.No.233/2024)
and another.

Nazim Uddin Ahmed, Senior : Petitioners
Programmer and others. (In C.R.P.No.61/2025)

Md. Rabiul Islam and others. : Petitioners
(In C.R.P.No.62/2025)

=Versus=

Mohammad Abu Hanif Khandakar : Respondents.
and others. (In C.A.No.32/2025)

Md. Nurul Amin and others. : Respondents.
(In C.R.P.No.233/24)

Fazle Rabbi Miah and others. : Respondents.
(In C.R.P.Nos.61-62/25)

For the Appellants/ : Mr. Md. Salah Uddin Dolon, Senior
Petitioners. Advocate with Mr. Md.
(In all the cases) Asaduzzaman, Senior Advocate, Mr.
Md.Ruhul Quddus, Senior Advocate
and Mr.Siddique Ullah Miah,
Advocate instructed by Mr. Md.
Zahirul Islam, Advocate-on-Record,
and Mrs. Madhumalati Chowdhury
Barua, Advocate-on-Record.

For the Respondents : Mr. Khair Ezaz Maswood, Senior
No. 1 & 3. Advocate, instructed by Mr. Zainul
 (In C.A.No.32/25) Abedin, Advocate-on-Record.

For the Respondent : Not represented
Nos.2, 4-225.
 (In C.A.No.32/2025)

For the Respondents : Not represented
(In C.R.P.No.233/2024)

For the Respondents. : Not represented
(In C.R.P.Nos.61-62/2025)

Date of hearing : 14-05-2025

Date of Judgment : 27-05-2025

J U D G M E N T

Zubayer Rahman Chowdhury, J: The instant Civil Appeal arises from Civil Review Petition No.618 of 2016 and Civil Review Petition No.649 of 2016, both of which were directed against the judgment and order dated 19.05.2016, passed by this Division in Civil Petition for Leave to Appeal Nos.1611 of 2012, 1483 of 2012, 1432 of 2012 and 1472 of 2012, disposed of the same and thereby affirming the judgment and order dated 20.02.2012, passed by the High Court Division in Writ Petition No.5125 of 2004.

A brief narration of the facts relevant for disposal of the instant Civil Appeal and the Civil Review Petitions are as follows:

One Md. Fazle Rabbi Miah, the then Member of Parliament, (who subsequently became the Deputy Speaker of Parliament) filed Writ Petition No.5125 of 2004 before the High Court Division seeking cancellation of the appointments made between November 2003 and August 2004 in different posts of National University, Gazipur, ranging from Deputy Registrar to MLSS. Upon hearing the parties, the Rule was discharged by judgment and order dated 22.08.2006, holding that the appointments, which were under challenge, had been made in accordance with law. Thereafter, neither the writ petitioner nor the National University preferred any appeal against the said judgment.

However, in 2010, another Member of Parliament from the ruling Awami League, one A.K.M. Mojammel Haque, being a third party, filed Review Petition No.67 of 2010 challenging the judgment dated 22.08.2006 passed in Writ Petition No.5125 of 2004. By judgment dated 23.08.2011, a Division Bench of the High Court Division allowed

the Review petition and set aside the judgment dated 22.08.2006, directing the National University to cancel all the appointments made during the said period from November 2003 upto August, 2004. Being aggrieved thereby, the present appellants/petitioners filed Civil Petitions for Leave to Appeal nos.1738 of 2011, 1744 of 2011 and 1947 of 2011, which were disposed by this Division by order dated 04.12.2011, setting aside the judgment and order dated 23.08.2011 passed by the High Court Division in Review Petition No.67 of 2010 as well as the judgment and order dated 22.08.2006 passed in Writ Petition No.5125 of 2004 and sent the matter back to the High Court Division for rehearing.

Upon hearing the matter, the High Court Division, vide judgment and order dated 20.02.2012, disposed of Writ Petition No.5125 of 2004 along with nine directions, cancelling all the appointments made by National University pursuant to the advertisement published in the

national dailies on 05.01.2004, 15.09.2004 and 11.09.2004. Accordingly, at its meeting held on 15.04.2012, the Syndicate of National University terminated the services of 988 Officers and employees. Being aggrieved, the petitioners moved this Division by filing Civil Petitions for Leave to Appeal Nos. 1611 of 2012, 1483 of 2012, 1432 of 2012 and 1472 of 2012, which were disposed of by judgment and order dated 19.05.2016, affirming the judgment and order dated 20.02.2012 passed in Writ Petition No.5125 of 2004.

The present appellants, namely the National University and another, being aggrieved and dissatisfied with the judgment and order 19.05.2016, filed Civil Review Petition No.232 of 2024, and, consequent upon leave being granted, the instant Civil Appeal was filed.

Mr. Md. Salah Uddin Dolon, the learned Senior Counsel appearing along with Mr. Md. Asaduzzaman and Mr. Md. Ruhul Quddus, learned Senior Advocates and Mr. Siddique Ullah Miah, Advocate on

behalf of the appellants/petitioners, having placed the judgments and orders passed by the High Court Division as well as this Division, submits forcefully that after four years of pronouncement of the judgment in Writ Petition No.5125 of 2004, one A.K.M Mojammel Haque, a Member of Parliament, being a third party, filed a Review Petition before the High Court Division, which was allowed by order dated 23.08.2011. The learned Senior Counsel contends that although it was mandatory to file the certified copy of the impugned judgment/order along with the application for review, as required under Rule 3 of the Supreme Court Rules, 1973, the applicant did not comply with the mandatory provision of law. He submits that unfortunately, both the High Court Division and the Appellate Division failed to take note of this gross violation and consequently, on account of such an erroneous and invalid order, nearly one thousand officers and employees of the National University were terminated from service.

In this regard, the learned Senior Counsel emphatically contends that the action of the University was also in derogation of the well settled principles of natural justice as the concerned persons, who had been in employment under the National University since 2003-2004, were terminated from service in 2012 without issuance of any show cause notice, thereby adversely affecting both their service career and their livelihood. However, the learned Senior Counsel submits that following the fall of the autocratic regime in August, 2024, the Syndicate of National University decided to reappoint the said officers and employees who had been terminated from service.

Mr. Khair Ezaz Maswood, the learned Senior Counsel appearing on behalf of respondent nos.1 and 3, submits that the writ petition itself was not maintainable as the writ petitioner was not an aggrieved person in the eye of law and, therefore, he had no locus standi to file the writ petition

in question. He submits that earlier, the High Court Division had discharged the Rule by judgment and order dated 22.08.2006 with the specific finding that the impugned appointments had been made as per the Rules, but neither the writ petitioner nor any other respondent had challenged the said judgment. He contends that after the change of Government in 2001, the writ petition was filed in 2004 on political consideration to victimize the officers and employees who had been appointed during the regime of the previous Government. The learned Senior Counsel further submits that this Division committed a serious error in allowing the appeal remaining oblivious of the applicant's failure to comply with the mandatory provision of Rule 3 and also upon ignoring the vital issue of limitation as well as that of locus standi.

We have perused the judgment and order dated 19.05.2016 passed by this Division as well as the judgment and order dated 20.02.2012 passed by the

High Court Division. We have also the considered the submissions advanced by the learned Senior Counsels of the contending sides.

Admittedly, by the judgment and order dated 22.08.2006, a Division Bench of the High Court Division had discharged the Rule issued in Writ Petition No.5125 of 2004. It is also an admitted position that neither the petitioner nor the National University had challenged the said judgment before this Division. However, after long four years, a third party filed Review Petition No.67 of 2010 before the High Court Division, which was allowed by judgment and order dated 23.08.2011, directing National University to cancel the appointments made in different posts by the University between November, 2003 and August 2004. However, on appeal, this Division, by order dated 04.12.2011, disposed of Civil Petitions for Leave to Appeal nos.1738 of 2011, 1744 of 2011 and 1947 of 2011 by setting aside the judgment and order dated 22.08.2006 passed by the High Court

Division in Writ Petition No.5125 of 2004 along with judgment and order dated 23.08.2011 passed in Review Petition No.67 of 2010 and sent back Writ Petition No.5125 of 2004 to the High Court Division for rehearing.

Upon rehearing, the High Court Division, by judgment and order dated 20.02.2012, disposed of the matter with some directions and observations, in compliance whereof the National University terminated the service of 988 Officers and employees of the said University.

Being aggrieved, the petitioners filed Civil Petitions for Leave Appeal Nos.1611 of 2012, 1483 of 2012, 1432 of 2012 and 1472 of 2012, which were, however, disposed of by judgment and order dated 19.05.2016.

However, after the change of the autocratic regime in August 2024, the National University, along with some aggrieved persons, who had been terminated from service, filed Civil Review Petition No.232 of 2024, and consequent upon leave being granted by this Division, the instant Civil Appeal was filed, which was heard along with Civil

Review Petition No.233 of 2024 and Civil Review Petition Nos.61-62 of 2025.

As the core issue that this Division is now called upon to decide owes its origin to Review Petition No.67 of 2010, it is relevant and, indeed necessary, to refer to the said Review Petition and the relevant legal provisions in some details together with the issues of locus standi and limitation.

To begin with, the Rules relating to review of a judgment passed by the High Court Division is embodied in Chapter X of the Supreme Court of Bangladesh (High Court Division) Rules, 1973. However, I shall advert only to the provisions which are relevant to the issue in hand.

Rule 3 of the Supreme Court of Bangladesh (High Court Division) Rules, 1973 stipulates:

"every application for review shall be accompanied by a certified copy of the judgment or order complained of".

On a careful scrutiny of the record of Review Petition No.67 of 2010, it appears that there was a gross failure on the part of the applicant to comply with the mandatory provision of Rule 3 in

that the certified copy of the judgment and order dated 22.08.2006 passed by the High Court Division, that was sought to be reviewed, had not been annexed with the application for review. Rather, after 11(eleven) months of the issuance of the Rule, the petitioner, through a supplementary affidavit affirmed on 23.08.2011, filed a photocopy of the said judgment, attested by the learned Advocate, before the High Court Division. Therefore, in reality, there was serious omission/failure on the part of the applicant to comply with the mandatory provision of law relating to the filing of the certified of the judgment and order complained of, which obviously strikes at the very root of the case and, on this single count, the application for review was liable to be rejected in limine by the High Court Division as being incomplete and, therefore, invalid. Despite the factual and legal position as aforesaid, the High Court Division had not only entertained an invalid review application, but

ultimately made the Rule absolute by the judgment and order dated 23.08.2011. Regrettably, on appeal, this Division also failed to notice the violation of the mandatory requirement of law and consequently, the judgment dated 19.05.2016 passed by this Division in Civil Petition for Leave to Appeal No.1611 of 2012 along with Civil Petitions for Leave to Appeal Nos. 1483 of 2012, 1432 of 2012 and 1472 of 2012 warrants interference. As observed by the Supreme Court of India in the case of Jaga Dhish Bhargava vs Jawahar Lal Bhargava and others, reported in AIR 1961 SC 832:

“Therefore, there is no doubt that the requirement that the decree should be filed along with the Memorandum of Appeal is mandatory, and in the absence of the decree the filing of the appeal would be incomplete, defective and incompetent.

(per Gajendragadkar, J, as the learned Chief Justice then was)

Let us now take up the issue of locus standi relating to the competency of a third party to file a review application. It is now well settled that a third party is entitled to file an application seeking review of a judgment, provided that such person is “aggrieved” by the said

judgment and order under review. The quintessence is that the person should be aggrieved by the judgment and order passed by this Court in some respect (Union of India vs. N. Badrikumar Jagad, (2018)14 SCR 239).

It was, therefore, incumbent upon the applicant of the application for review to state the manner in which he was aggrieved along with an explanation for the inordinate delay of four years. However, neither any such statement was made nor was any explanation provided for such inordinate delay in the application for review.

We now proceed to examine the issue of limitation, with reference to the relevant legal provisions in our own jurisdiction as well as that of some other jurisdictions.

In Bangladesh, the period of limitation is 20(twenty) days for the review of judgment by the High Court Division in the exercise of its original jurisdiction, as provided in the

Schedule of the Limitation Act, 1908 (at serial number 162).

In Pakistan, an application for review is required to be filed within 30(thirty) days of the pronouncement of judgment, as provided in Part IV, Order XLVII, Rule 2 of the Supreme Court Rules, 2025.

In India, the said period is 30(thirty) days from the date of the judgment and order sought to be reviewed, as provided in Part-IV, Order XLVII, Rule 2 of the Supreme Court Rules, 2013.

In USA, Rule 44 of the Supreme Court Rule stipulates that any petition for the rehearing of any judgment or decision of the Court on the merits shall be filed within 25(twenty five) days after entry of the judgment or decision.

In the instant case, the application for review was filed 4(four) years after the pronouncement of judgment by the High Court Division, and that too, without filing any application seeking condonation of delay or even

without providing any explanation whatsoever regarding the delay of four years. Once again, both the High Court Division and this Division failed to notice this aspect of the case and remained completely silent on the issue.

The law of Limitation is designed to protect any right, benefit or privilege that may have accrued to any party over a certain period of time. The party which is responsible for causing the delay on account of its own laches, negligence and/or inaction, must face the consequence and cannot be allowed to interfere with any right or privilege that may have accrued to or was being enjoyed by the other party during the intervening period.

Another pertinent issue which needs to be addressed relates to any order being passed without hearing the parties concerned. In the instant case, the present petitioners were not impleaded as parties in the review application and, therefore, no notice regarding filing of the review application before the High

Court Division was served upon them. For all practical purposes, they were condemned unheard.

In the case of Muhammad Shoaib and others vs. Government of NWFP, reported in 2005 SCMR 85, where the facts were similar to the present case before us, the Supreme Court of Pakistan held:

"It is reiterated once again that a Government, as such, is a perpetual entity. The heads might change but the Government does not. The action once taken by one administration is to be followed by the changed administration, more particularly, when it involves the employment of the people. It is sad to observe that thousands of people are rendered jobless and tens of thousands of families are rendered destitute simply because some subsequent administration did not endorse the action of the previous administration."

(per Sardar Muhammad Raza Khan, J.)

I am well reminded of the pronouncement made by the Supreme Court of India in the case of Northern India Caterers (India) vs. Lt. Governor of Delhi, reported AIR 1980(SC)674, where it was held:

"It is well settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case."

Regrettably, that is precisely what has been done in the instant case. As neither the petitioner nor the National University had preferred any appeal against the judgment dated 22.08.2006 passed by the High Court Division in Writ Petition No.5125 of 2004, the matter ought to have ended there. Unfortunately, it did not. Four years after the pronouncement of judgment by the High Court Division, on the basis of a review petition filed by a third party, the matter was reopened again, and resultantly, the petitioners were made to face an uncertain future vis-a-vis their career and, of course, their livelihood along with their family members, putting them in dire straits, both financially and socially, for well over a decade. We have noted, albeit with some degree of anxiety and sorrow, as submitted by the learned Senior Counsel Mr. Md. Salah Uddin Dolon that some of the petitioners had passed away during the pendency of the instant appeal. The manner in which the case was dealt with, first by

the High Court Division and subsequently by this Division, adversely affecting not only the career, but also the livelihood of nearly one thousand Officers and employees of National University was, in my view, an act of "judicial tyranny".

Having regard to the somewhat unfortunate circumstances of the case and having regard to the relevant legal provisions, we have no doubt in holding that the judgment and order dated 19.05.2016 passed by this Division warrants interference.

In the result, the appeal is allowed.

Consequently, the judgment and order dated 19.05.2016 passed by this Division in Civil Petition for Leave to Appeal No.1611 of 2012 with Civil Petitions for Leave to Appeal Nos.1483 of 2012, 1432 of 2012 and 1472 of 2012 are, hereby, set aside.

The National University, Gazipur is directed to take necessary steps to reinstate the petitioners in the respective posts in which they

had been serving prior to their termination from service, in accordance with the decision taken by the Syndicate of the National University.

The period during which the petitioners were out of service shall be treated as extraordinary leave, without prejudice, however, to their respective seniority.

In light of the above, Civil Review Petition No.233 of 2024 and Civil Review Petition Nos.61-62 of 2025 necessarily stand disposed of.

C.J.

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