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

WRIT PETITION NO. 2351 OF 2025

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Mohammad Jakir Hossain and others

..... Petitioners

-VERSUS-

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

..... Respondents

Mr. Jyotirmoy Barua, Senior Advocate

...... For the Petitioners

Mr. Muntasir Uddin Ahmed, Advocate with
Mr. Ajit Sil, Advocate

........For the Respondent No. 3

Mr. Amit Das Gupta, Advocate with
Ms. Sabera Shipra, Advocate

......For the Respondent No. 5

Mr. K. B. Rumy, Advocate

......For the Respondent Nos. 6-84

Present:

Mr. Justice Sashanka Shekhar Sarkar
And
Justice Urmee Rahman

Heard on 22.04.2026, 26.04.2026, 27.04.2026 and 19.05.2026
Judgment on 11.06.2026

Urmee Rahman, J:

In the instant matter a Rule Nisi was issued on an application under Article 102 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 impugned Circular contained in Memo No. 38.00.0000.001.18.005.23.118 dated 03.02.2025 (Annexure-D) issued under signature of the Respondent No. 4 revising the earlier Circular dated 21.01.2024 regarding the date of regularization of the petitioners in the revenue set up in violation of the Articles 27 & 29 of the Constitution should not be declared to have been illegal, without any lawful authority and is of no legal effect and why a direction shall not be given upon the respondents to count the date of joining of the petitioners in the development project as the date of regularization in the revenue set up as per the judgment and order of the Hon'ble Appellate Division dated 04.12.2016 passed in Civil Petition for Leave to Appeal No. 1677 of 2016 and as to why the respondents should not directed to refix the pay scales of the petitioners in their entitled scales by way of pay protection and to give them all the benefits of selection grade, time scales with all arrears, under Rule 48(F) of the Bangladesh Service Rule, Part-1 containing their service they have rendered under development project and/or pass such other or further orders or order as to this Court may seem fit and proper".*

Subsequently by an order dated 05.05.2026 a modified Rule Nisi was issued, upon an application filed by the petitioners, in the following terms:

> *"Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned circular containing in Memo No. 38.00.0000.001.18.005.23.118 dated 03.02.2025 (Annexure-'D') issued under the signature of the respondent No. 4 revising the earlier circular dated 21.01.2024 regarding the date of regularization of the petitioners in the revenue set-up without giving an opportunity to the petitioners of being heard and in violation of Articles 27 & 29 of the Constitution should not be declared to have been done without any lawful authority and is of no legal effect and why a direction should not be given to the respondents to regularize the petitioners' service from the date of the transfer to the revenue set-up and/or pass such other or further order or orders as to this Court may seem fit and proper".*

Necessary facts for disposal of the instant Rule, as has been narrated in the writ petition, in short, are that, as many as 14 (fourteen) petitioners joined the service as Instructors under the IDEAL Project and NORAD Project under Ministry of Primary and Mass Education between the year of 1998 and 2004. Thereafter, in 2005 the Government created 691 permanent posts to be transferred from the NORAD Project and 1264 permanent posts to be transferred from the IDEAL Project. Under S.R.O. No.184-Ain/2005/Sama/Bidhi-1/S-9/2000 dated 20.06.2005, the aforesaid Instructors from two projects along with four other projects were transferred to the revenue set up, and the Respondent No. 1 granted them temporary appointment in the said posts of Instructor on 24.11.2005. Accordingly, the petitioners joined the service in the revenue set up as

Instructors in 9th grade of pay scale and have been working since then in the same post without any promotion.

Thereafter, the Respondent No. 1 through 8 (eight) different circulars issued on different dates between 2012 and 2015 regularized the petitioners as Instructors in the Upazilla Resource Center without mentioning the date as to when the order of regularization will be effective from. The petitioners were also made permanent in their posts on different dates in 2005 vide a circular dated 12.02.2013 issued by the Respondent No. 4.

Subsequently, Respondent No. 1 revised the date of regularization of the petitioners in the revenue set-up giving retrospective effect from 24.11.2005 (date of absorption in the revenue set up) vide circular dated 21.01.2024. This date of regularization was confirmed by the Respondent No. 1 by publishing it in the official Gazette on 16.05.2024.

Thereafter, the Respondent No. 4 issued another circular on 03.02.2025 cancelling the earlier circular dated 21.01.2024. Being aggrieved thereby the petitioners on 04.02.2025 served a Demand Justice Notice upon the respondents requesting them to withdraw the memo dated 03.02.2025. That not being done by the respondents, the petitioners have been constrained to file the instant writ petition and obtained the present Rule along with an order of stay of the impugned memo dated 03.02.2025 (Annexure-D) issued under the signature of the Respondent No. 4 for a period of 3(three) months from date and also a direction upon the Respondent Nos. 1 and 4 not to hamper seniority of the petitioners in any manner till the period as aforesaid. The order of stay and direction passed by this Division has been extended from time to time.

Despite the order of stay, the Respondent No. 4 issued a circular dated 31.07.2025 giving promotion of as many as 82 (eighty two) PTI Instructors to the post of Assistant Superintendent PTI and directed them to join their posts on 04.08.2025 before noon. Being aggrieved, the petitioners moved an application for stay of the circular issued by the Respondent No. 4 and on hearing the application this Division by the order dated 03.08.2025 was pleased to stay operation of the circular giving promotion to those 82 PTI Instructors. Being aggrieved thereby and dissatisfied with both the orders of stay and direction dated 10.02.2025 and 04.08.2025 passed by this Division, the Respondent No. 3 and another third party as petitioners preferred two separate Civil Petitions for Leave to Appeal Nos. 3084 of 2025 and 3207 of 2025 before the Appellate Division. Upon hearing the parties the Hon'ble Judge-in-Chamber by the order dated 02.09.2025 directed the parties to maintain status quo so far it relates to the circular dated 31.07.2025 till disposal of the Rule, and also directed to get the matter heard by an appropriate Bench of the High Court Division as expeditiously as possible. Now the matter has been fixed before this Bench for hearing.

Those employees, who have been given promotion by the aforesaid memo dated 31.07.2025, have subsequently been added as respondent nos. 5-84 on the basis of their application for addition of party.

Learned Senior Advocate Mr. Jyotirmoy Barua, appears on behalf of the petitioners and submits that, the petitioners were absorbed from the development project to the revenue budget in the year of 2005 by the order dated 24.11.2005. They were given temporary appointment in their respective posts. Thereafter, by issuing 8(eight) different circulars during the period of 2012-2015 the services of the petitioners and others were regularized by the respondents. The service of 351 Instructors were made permanent by the order dated 12.02.2013 giving retrospective effect from 2005.

Referring to Annexure-C i.e. the memo dated 21.01.2024 learned Advocate next submits that, by issuing this memo the date of regularization of the service of the petitioners was revised to be effective from the date of absorption that is from 24.11.2005 and accordingly a Gazette was published on 16.05.2024. After almost 1 (one) year of issuance, this memo dated 21.01.2024 was cancelled by subsequent memo dated 03.02.2025, which is impugned in this writ petition. Before cancelling the previous memo no notice was issued upon the petitioners and therefore it was done in an unlawful manner.

Learned Advocate next submits that, it is against the established principle of law that once a privilege is given to a person on condition of doing an act and if such condition is fulfilled and continued to be fulfilled, such privilege or right cannot be taken away or cancelled without giving him any opportunity to explain. In the instant case, the respondents should have counted the date of regularization of the petitioners from the date of their transfer to the revenue set-up. Therefore, the impugned circular dated 03.02.2025 cancelling the previous circular is liable to be declared to have been done without any lawful authority.

Mr. Barua further submits that, the equal protection of law is an unqualified fundamental right that cannot be subjected to any condition. The right implies that people on the same footing cannot be treated otherwise, but in the instant case the petitioners had been treated unfairly and unjustly. The impugned memo being violative of the Article 27 of the Constitution is therefore liable to be set aside.

He further submits that earlier the respondents at the time of regularization between the period of 2012-2015, did not mention the date of regularization to be effective from and subsequently vide office order dated 21.01.2024 clarified the date of regularization to be 24.11.2005, which has been confirmed by publishing gazette notification on 16.05.2024. There are other employees under this S.R.O. No. 184 dated 20.06.2005, who had been regularized from the date of transfer to the revenue set up. Respondent No. 4 has already issued office orders on different dates regarding some other employees confirming their date of transferring in the revenue set-up as the date of regularization, who were transferred from development projects in the same Ministry. The Respondents should have maintained the same in case of the petitioners but instead, the Respondents, by arbitrary exercise of the administrative power, cancelled the earlier order vide the impugned circular dated 03.02.2025, which is not tenable in the eye of the law.

By the circular dated 21.01.2024 date of regularization of the petitioners' has already been acted upon and the petitioners have been enjoying the benefits of the said decision. Therefore, the said privilege cannot be cancelled without giving the petitioners an opportunity of being heard.

Learned Advocate submits that, the Ministry of Environment, Forest and Climate Change earlier sought the opinion from the Ministry of Law, Justice and Parliamentary Affairs regarding the promotion of the Forester post of the Directorate of Forest. The Ministry of Law on 18.08.2025 opined that promotion may be given counting their service from the date of transfer to the revenue set up. The petitioners being government employee cannot be discriminated in respect of counting their service from the date of transfer to the revenue setup.

Learned Advocate also submits that, the respondents are duty-bound to treat the petitioners fairly and equally, but in the instant case, it is evident that they have utterly failed to do so. Out of six projects, the Government regularized the service of the employees in the revenue set up either from the date of their joining in the development projects or from the date of transfer to the revenue set up. But unfortunately for an unknown reason, the respondents have acted mala fide and arbitrarily and discriminated against the petitioners who came from the IDEAL and NORAD projects. The respondents should not be allowed to discriminate against employees under the same ministry on the same footing.

Hence, he prays that the Rule may be made absolute and the respondents may be directed to count the date of transfer of the petitioners in the revenue set-up as the date of regularization.

In support of his submission learned Advocate placed reliance upon the case of *Director General of NSI Versus Md. Sultan Ahmed* reported in **1 BLC (AD), 71** in which it was held that, "A double standard meted out to different employees by the executing government is deprecated." He also relied on the case of *AFB Jahan Mia vs. National Board of Revenue* reported in **49 DLR (AD), 122** wherein it was held that, "Persons performing identical or substantially similar duties cannot be discriminated against in the matter of pay, seniority or other service benefits." He also referred to the case of *Bangladesh and others Vs. Md. Abul Hossain* reported in **23 BLD (AD), 129** where it has been held that, *"Once privilege is given to a person on condition of doing any act and if such condition is fulfilled and continues to be fulfilled, such privilege or right cannot be taken away or cancelled without giving him a chance of being heard."*

Conversely, as many as four set of respondents entered appearance in order to contest the Rule.

Learned Advocate Mr. Ajit Sil, appeared on behalf of the Respondent No. 3, i.e. Director General, Directorate of Primary Education.

Learned Advocate Mr. Muntasir Uddin Ahmed, appeared on behalf of the Respondent No. 4 i.e. the Deputy Secretary, Ministry of Primary and Mass Education.

Learned Advocate Mr. Amit Das Gupta with Ms. Sabera Shipra, appeared on behalf of the added Respondent No. 5.

Learned Advocate Mr. Kh. Bahar Rumy (K.B. Rumy), appeared on behalf of the added Respondent Nos. 6-84.

All the respondents mentioned hereinabove strongly contested the Rule by filing separate affidavit in opposition on their behalf.

We have gone through the contents of all the affidavits in opposition and a careful scrutiny of those reveals that the legal submissions made therein are substantially identical. Hence, for the sake of convenience and to avoid repetition, their contentions and submissions are considered and discussed conjointly.

The main contention of the learned advocates for the contesting respondents are that, Rule 6(1) of “"প্রাথমিক ও গনশিক্ষা মন্ত্রনালয়ের উন্নয়ন প্রকল্পে নিয়োগপ্রাপ্ত কর্মকর্তা ও কর্মমচারীদের রাজস্ব বাজেটের পদে নিয়মিতকরণ ও জ্যেষ্ঠতা নির্ধারণ বিধিমালা, ২০০৫" provides that the seniority of the regularized employees will be counted from the date of their regularization, that in the present case, the petitioners’ services were regularized between 2012 to 2015 but the circular dated 21.01.2024 was wrongly issued giving effect of regularization from 24.11.2005 i.e. the date of their absorption. This administrative error was subsequently rectified upon obtaining an opinion from the Ministry of Public Administration by cancelling the earlier circular and issuing the impugned circular dated 03.02.2025. No illegality has been committed in issuing this circular because it was done in conformity with rule 6(1) of the Rules of 2005. Hence the Rule is liable to be discharged.

The next submission of the learned Advocates for the respondents is that, in the instant matter the petitioners have only challenged the impugned circular dated 03.02.2025; they have not challenged the constitutionality of the Rules of 2005. Since the impugned order was issued relying upon the provision of Rules, 2005, without challenging the law and the original circular dated 24.11.2005, the petitioners do not retain any legal standing to challenge the circular dated 03.02.2025.

It has also been submitted that, the regularization of the petitioners' service is relating to the terms and conditions of service of the government servants, therefore, no judicial review of the action of authority will be available to them, except in a case where the vires of the law is challenged. Since the petitioners have not challenged the vires of the law in the writ petition, the same is not maintainable and as such the Rule is liable to be discharged at once.

Learned Advocates for the respondents also submitted that, no representation was made by the petitioners to the authority before seeking relief in the form of mandamus and therefore the Rule is not maintainable in its present form.

Finally, it is submitted by the learned Advocates for the respondents that the memo dated 21.01.2024 having not been passed in consistence with the provision of Rules 2005, the same has been rightly cancelled by the impugned memo and thereby no lawful rights of the petitioners have been affected. Hence, the Rule having no merit is liable to be discharged.

It has been submitted by the learned Advocates for the added respondents that they are directly recruited, employees and have been given promotion as per the provision of law. The writ petitioners are not similarly situated with them, since their appointment process was different, and in the development project they were given a consolidated salary as against the pay scale granted to them. Therefore, treating different types of service, i.e. in revenue budget and in development project, as equal for the purpose of seniority as claimed by the petitioners would result in grave injustice to them.

Learned Advocates for the respondents placed reliance on the latest decision of the Appellate Division on the issue of absorption/regularization in the case of *Bangladesh and others Vs. Saiful Islam and others* reported in **76 DLR (AD), 275** wherein it is held that;

> *"So it is now well settled that court cannot pass an order to regularize/absorb the temporary, contractual or casual employees under the revenue budget unless there is any statutory provision and thus the respondents' claim of absorption in the permanent post under the revenue budget*

on the principle or theory of legitimate expectation has got no legal basis."

They also referred to the case of *Bangladesh Atomic Energy Commission Vs. Md. Al Amin Sarker and others* reported in **8 ADC (2011) 288,** where a similar order rectifying a earlier wrong was corrected by the authority, and argument forwarded by the learned Advocate for the petitioners that, the same was a bona fide mistake that could be rectified, was accepted by the Hon'ble Appellate Division in granting leave in the Leave Petition.

Referring to the case of ***Shahidul Islam Vs. Md. Selim Reza*** *and others* reported in **73 DLR (AD), 160** learned advocate for the respondents submitted that, it has been already clearly held by the Appellate Division that:

> *"Therefore, it is very difficult to approve the views taken by the High Court Division that the seniority of the writ petitioners can be given retrospective effect. On perusal of the writ petitions and the judgments we have noticed that there was delay in the process of regularization in Writ Petition no. 4804 of 2010. The writ petitioners are claiming their seniority since 1985. In Writ Petition No. 1378 of 2011, the writ petitioners are claiming their seniority since 1997. So, the writ-petitioners claim their seniority with retrospective effect from the day of their joining in the development projects. There was no law conferring any right of regularization who were appointed in development projects when they were appointed. If they have acquired no right on the day of their appointment, how can they claim*

> *seniority from that date as of right? Unless they have acquired a right, they cannot challenge the vires of the law only because they were appointed earlier. The writ petitioners have accrued no right and therefore, the writ petitions are not legally maintainable". [per Surendra Kumar Sinha, CJ]*

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

Since the learned Advocate for respondents at the very outset agitated the point of maintainability of this writ petition, we thus feel it expedient to address the very point of maintainability first. Learned Advocate for the respondents contends that, regularization of the petitioners' service is relating to the terms and conditions of service of the government servants, therefore no judicial review of the action of the authority will be available to them. On this point we are of the view that, although the dispute arises in the backdrop of the petitioners' service, the real grievance is not the enforcement of any condition of service but the legality of the impugned memo whereby the respondents revised the earlier decision without issuing any prior notice upon them. The petitioners have alleged that such action is without lawful authority having been done in violation of principle of natural justice. This challenge goes to the legality of the exercise of executive power and therefore, we are of the view that, the dispute false within the ambit of judicial review.

After modification of the original Rule Nisi, the issues for determination in this Rule remain as follows:

(1) Whether the impugned notice dated 03.02.2025 was issued in accordance with law; and

(2) Whether direction should be given to the respondents to regularize the petitioners' service from the date of transfer to the revenue set up.

In order to consider these two aspects of the Rule we are inclined to discuss the provisions contained in "প্রাথমিক ও গনশিক্ষা মন্ত্রনালয়ের উন্নয়ন প্রকল্পে নিয়োগপ্রাপ্ত কর্মকর্তা ও কর্মচারীদের রাজস্ব বাজেটের পদে নিয়মিতকরণ ও জ্যেষ্ঠতা নির্ধারণ বিধিমালা, ২০০৫". The Rules of 2005 has been promulgated on 20.06.2005 with a view to 'regularize the service and to determine the seniority of the employees and officers', who have been absorbed in the revenue budget from the development projects mentioned in Rule 2(Ka) of the Rules. The present petitioners before us were in the following two projects mentioned in Rule 2 (ka):

(ড) নিবিড় জেলা পদ্ধতির মাধ্যমে প্রাথমিক শিক্ষা উন্নয়ন প্রকল্প (আইডিয়াল); এবং
(ঢ) নরওয়ে সাহায্য পুষ্ট প্রাথমিক শিক্ষা উন্নয়ন প্রকল্প।

The word 'regularization' has been defined in Rule 2(cha) as follows:

(চ) "নিয়মিতকরণ" অর্থ রাজস্ব বাজেটের পদে সাময়িকভাবে পদস্থ কোন কর্মকর্তা বা কর্মচারীকে নিয়োগকারী কর্তৃপক্ষ কর্তৃক নিয়মিতকরণ;

Though there is no definition of the term 'absorption', in Rule 2(ja) a definition of 'temporarily posted' is given, by which an employee from a development project enters into the revenue set up. Rule 2 (ja) provides that;

> "(জ) "সাময়িকভাবে পদস্থ" অর্থ উন্নয়ন প্রকল্পের কর্মকর্তা ও কর্মচারীকে রাজস্ব বাজেটে কোন অস্থায়ীভাবে পদায়ন বা নিয়োগ।"

Rule 4 provides that; "রাজস্ব বাজেটের পদে নিয়মিতকরণের উদ্দেশ্যে অস্থায়ীভাবে পদায়ন- (১) কোন উন্নয়ন প্রকল্পের পদ রাজস্ব বাজেটে স্থানান্তরিত হইলে বা উক্ত প্রকল্পের বিপরীতে কোন পদ নতুনভাবে-সৃজিত হইলে প্রাথমিক ও গণশিক্ষা মন্ত্রণালয় সংশ্লিষ্ট প্রকল্পের পদধারী ব্যক্তিকে, নিয়মিতকরণের উদ্দেশ্যে, তাৎক্ষণিকভাবে রাজস্ব বাজেটের উক্ত পদে অস্থায়ীভাবে পদায়ন করিয়া আদেশ জারী করিবে।"

It is thus obvious from these provisions that, the very purpose of promulgating this Rule is to regularize the employees, who have been transferred from the development project and temporarily given appointment in the revenue budget with a view to regularize them. Therefore the basic principle of Rules, 2005 remains that, absorption in the revenue setup does not automatically amount to regularization.

The procedure of regularization has been enumerated in Rule 5 of the Rules, which is as follows:

> *"(১) উন্নয়ন প্রকল্পের কোন কর্মকর্তা ও কর্মচারীকে নিম্নবর্ণিত শর্তে নিয়মিতকরণ করা যাইবে, যথাঃ-*
>
> *(ক) রাজস্ব বাজেটের কোন পদে সাময়িকভাবে পদস্থ কোন কর্মকর্তা বা কর্মচারীর সংশ্লিষ্ট প্রকল্পে নিয়োগ সরকারের প্রচলিত নিয়োগ বিধি বা নিয়োগ পদ্ধতি বা সংশ্লিষ্ট প্রকল্পের জন্য সরকার কর্তৃক অনুমোদিত নিয়োগ বিধি অনুসরণে হইতে হইবে; এবং*

(খ) উক্ত কর্মকর্তা বা কর্মচারীর রাজস্ব বাজেটের পদে নিয়মিতকরণের পূর্বের চাকুরী সন্তোষজনক হইতে হইবে।"

From the content of this section we find that, two requirements are to be fulfilled before an employee can be made regular in the service, which are:

(1) the original appointment in the project was done in accordance with law; and

(2) from the date of temporary appointment till regularization the service is found to be satisfactory to the employers.

The law in this regard is therefore crystal clear. Regularization cannot be claimed as a matter of right and also cannot be claimed from the date of entering into the revenue budget. It is not guaranteed that all the employees, who have been brought into the revenue budget from the development project, will be mandatorily regularized subsequently. It is rather subject to fulfilment of preconditions provided in Rule 5(1).

Regarding 'regularization with retrospective effect' it has been provided in Rule 5 (2) that;

"(২) *রাজস্ব বাজেটের পদে সাময়িকভাবে পদস্থ কোন কর্মকর্তা বা কর্মচারী অবসর প্রস্তুতকালীন ছুটি ভোগরত থাকিলে অথবা অবসর গ্রহণের বয়স উত্তীর্ণ হইলে অথবা মৃত্যুবরণ করিলে তাহাকে ভূতাপেক্ষভাবে ক্ষেত্রমত, অবসর প্রস্তুতিকালীন ছুটি বা বয়স উত্তীর্ণ বা মৃত্যুবরণের তারিখের পূর্ব তারিখে কার্যকরতা প্রদান করিয়া নিয়মিত করা যাইবে:*"

This rule specifically provides that regularization with 'retrospective effect' can be given only to those employees, who are on their post-retirement leave or have completed their tenure of service or have died. Provision of giving retrospective effect is thus limited only to these particular classes of employees as mentioned in Rule 5 (2).

By the notification dated 21.01.2024 the Ministry of Primary and Mass Education revised their earlier order of regularization, which was given with retrospective effect from 24.11.2005 i.e. from the date of absorption nineteen years ago. We have already found hereinabove that the Rules of 2005 does not contain any provision of giving retrospective effect generally. Unless the Rules expressly provide retrospective regularization, the same cannot be lawfully given to any employee. No one can ordinarily claim retrospective benefits as a matter of right merely because the authority delayed taking a decision. The Rules clearly states that an employee shall first be appointed temporarily and thereafter will be regularized upon fulfilment of the conditions, the natural reading is that regularization is a future event. Retrospective regularization from the very first day of absorption is contrary to the scheme of the Rule.

Furthermore, a regularization with retrospective effect would disturb seniority, promotion or vested rights of others and would create a disorder among the employees. In exceptional circumstances where retrospective effect is given, no third-party rights are adversely affected. Rule 6 of the Rules, 2005 determines seniority of the employees on the basis of the date of regularization. Hence, regularization with a retrospective effect after long 19 (nineteen) years, would definitely affect the substantive right of many other employees and create massive disorder. The allegation of the added respondent nos. 5-84 is that, they have been duly given promotion but due to the pendency of the present Rule, their appointments as well as the seniority are being questioned. Therefore, we find the circular dated 21.01.2024 regularizing the petitioners giving effect from 24.11.2005 is misconceived and without any lawful basis.

‘Absorption’ and ‘regularization’ are completely two separate phenomenon and are not equivocal on identical. In Black’s Law Dictionary the word ‘Absorb’ has been defined as, “to incorporate, merge or take into a larger entity”. Whereas the word ‘Regularization’ has been defined as, “To make regular, to bring into compliance with applicable rules or requirements”. In the context of service law jurisprudence ‘Absorption’ is a process by which an employee becomes part of the receiving service or cadre and ‘Regularization’ means, conferment of regular status upon an employee with the applicable statutory provisions, whose appointment or service was initially temporary, ad hoc or otherwise irregular in nature. Therefore, the concept of regularization from the date of absorption generally does not have any legal sanctions.

Upon examining the provisions of Rules of 2005 we find that, the only deficiency of the Rules is that, though it provides the conditions for regularization, it does not provide any time period within which such regularization shall have to be made. Since the Rules expressly contemplate regularization and set out some conditions for that purpose, the administration cannot indefinitely keep employees in irregular status. The Rules themselves create an expectation that temporary appointment is only a transitional stage leading to regularization. Once an employee fulfils the stated conditions, he may legitimately expect consideration for regularization within a reasonable period.

We have seen from the documents annexed with the writ petition that in different government departments different time period has been considered in regularizing the employees. In the present case the petitioners were brought under the revenue budget in the year 2005. As many as 404 (four hundred and four) employees including the petitioners were temporarily given appointment in the revenue budget on 24.11.2005 and in the memo it was stated in clause ‘Ga’ that, “অস্থায়ীভাবে পদায়নকৃত কর্মকর্তাগণের চাকুরী নিয়মিতকরণের ক্ষেত্রে এস, আর, ও নং ১৮৪-আইন/২০০৫/সম/বিধি-৯/২০০০ তারিখ ৬ আষাঢ় ১৪১২/২০ জুন ২০০৫ এর পঞ্চম অনুচ্ছেদে বর্ণিত শর্তাবলী প্রযোজ্য হবে।”

Until 2012 their services were not regularized. Subsequently, by issuing 8 (eight) different circulars during the period of 2012 to 2015 (Annexure-B to B7) their services were regularized. Petitioners allege that, this memo does not specify any date as to when the regularization shall take effect. On this point we find that, since no other specific date is mentioned, these circulars will be considered to be effective from the date of issuance of the same. So, the fact remains that, after being temporarily appointed in revenue set up in 2005, the petitioners were finally regularized in their service in the year between 2012 to 2015 i. e. after 7 to 10 years. By issuing the notification dated 12.02.2013 services of as many as 351 Instructors were made permanent.

On 21.01.2024 the aforesaid order of regularisation was revised by giving regularisation with effect from 24.11.2005, which is the date of absorption into the revenue set up. Subsequently, this circular was cancelled by another circular dated 03.02.2025 (Annexure-D), which is impugned herein and the respondents' contention is that, it has been cancelled on the basis of an opinion given by the Ministry of Public Administration dated 12.01.2025. The relevant part of the opinion is reproduced below:

> *"প্রাথমিক ও গণশিক্ষা মন্ত্রণালয়ের উপজেলা রিসোর্স সেন্টারের ইন্সট্রাক্টরগণের চাকরি নিয়মিতকরণ রাজস্বখাতে পদায়নের পরিবর্তে, প্রাথমিক ও গণশিক্ষা মন্ত্রণালয়ের ১৬/০১/২০১২ তারিখের ৫১ নং প্রজ্ঞাপন, ১৬/০১/২০১২ তারিখের ৫২ নং প্রজ্ঞাপন, ৩১/০১/২০১২ তারিখের ১০৬ নং প্রজ্ঞাপন, ২৬/০২/২০১২ তারিখের ১৭৯ নং প্রজ্ঞাপন, ২৪/০৪/২০১২ তারিখের ৩৫৮ নং প্রজ্ঞাপন, ১০/১০/২০১৩ তারিখের ১০০৬ নং প্রজ্ঞাপন, ২৮/০১/২০১৫ তারিখের ৩০৮৯ নং প্রজ্ঞাপন এবং ২৫/০৩/২০১৫ তারিখের ২৮০ নং প্রজ্ঞাপনমূলে নিয়মিতকরণ করা হয় বিধায় উল্লিখিত আদেশ জারির তারিখই উপজেলা রিসোর্স সেন্টারের ইন্সট্রাক্টরগণের চাকরি নিয়মিতকরণের তারিখ হিসেবে গন্য হইবে। ফলে প্রাথমিক ও গণশিক্ষা মন্ত্রণালয়ের ২১/০১/২০২৪ তারিখের ৩৮.০০.০০০০.০০১.১৫.০০৩.২৪.৪৫ নং প্রজ্ঞাপনটি যথাযথ নয়;"*

We find that no illegality has been committed by the Ministry of Public Administration in giving the abovementioned opinion as well as by the Ministry of Primary and Mass Education in cancelling the earlier notification dated 21.01.2024 on the basis of that opinion. No legal right has been created in favour of the petitioners by virtue of that unlawful circular dated 21.01.2024, hence no prior notice upon the petitioners was required for cancelling the same in compliance with the principle of natural justice.

It is the contention of the learned Advocate for the petitioners' that employees of other departments of government are enjoying their regularization from the date of entering into the revenue budget. On this point our view is that, the present petitioners have been brought under the revenue budget by a specific legal framework by promulgating "প্রাথমিক ও গনশিক্ষা মন্ত্রনালয়ের উন্নয়ন প্রকল্পে নিয়োগপ্রাপ্ত কর্মকর্তা ও কর্মমচারীদের রাজস্ব বাজেটের পদে নিয়মিতকরণ ও জ্যেষ্ঠতা নির্ধারণ বিধিমালা, ২০০৫". Therefore, they shall be governed by the very provisions of this Rules irrespective of different provision of others. Since the petitioners have not challenged the Rules of 2005, they cannot deny the fact that they are bound by the same.

It is also the contention of the learned advocate for the petitioners that by the Rules of 2005 other employees of other 4(four) projects also been given appointment and their services have been regularized by the authority giving retrospective effect. On this issue, it is our view that, if their service is regularized giving retrospective effect in violation of the provision of the Rules, that cannot be considered as an example by the present petitioners. They cannot claim any right of 'negative discrimination' which means that, a person cannot claim an illegal or unauthorized benefit merely because another person has been wrongly granted that benefit. As a result, there is no scope to direct the respondents to regularize the petitioners from the date of their absorption in the revenue set up. In this regard, the case of Md. *Abdur Rahman Vs. Govt. of Bangladesh,* reported in **25 BLD (AD), 250** has been referred on behalf of the respondents, wherein it has been held that;

> *"We are in complete agreement with the aforesaid decision and we are of the view that the appellant having been appointed on work-charge basis in a project and the post not having made a regular one so as to entitle him to receive pension benefit, could not claim reliance on the equality basis being a person similarly situated under certain mistaken decision arrived at or misconstruction of certain circular having no force of law and the referred decision has rightly observed that one wrong in favour of one of the employees cannot be multiplied by applying the selfsame wrong in favour of the appellant."*

In the present case, admittedly the petitioners have been brought under the revenue budget with a view to regularize them upon fulfilling certain conditions. Therefore, the petitioners cannot lawfully claim to be regularized on the same date as of their appointment in the revenue budget. Moreover, after their temporary appointment in 2005 their services were regularized during the year 2012-2015 and those circulars not being challenged by the petitioners, those remain in force. As such, the fact remains that the petitioners are all regularized in their service with effect from 16.01.2012, 31.01.2012, 26.02.2012, 24.04.2012, 10.10.2013, 08.01.2015 and 25.03.2015 respectively (Annexure-B to B-7).

In view of the facts and circumstances of the case and considering the provisions of the law we are of the considered view that, all the anomalies have been created only because of the void in the Rules, 2005 regarding the time frame within which an employee would be regularized, who have come from the development projects. This lacuna has given the authority to use it in an arbitrary and discriminatory manner by applying pick and choose policy.

This particular issue in absorption matter was raised in the case of ***Sultana Zahid Parvin and others Vs. S.M. Fazlul Karim and others*** reported in **XIX ADC (2022)*, 481,*** in which it has been observed by the Apex Court that:

> *" From Clause 3 of Rule 4 and Clause 1 of Rule 5 of the Rules of 2005 it is evident that the seniority of the employees absorbed in the revenue set up from development project is to be counted from the date of regularization of their service in the revenue set up and this regularization depends on the recommendation of Public Service Commission or departmental promotion or selection committee, as the case may be. This recommendation of Public Service Commission, undisputedly, is not given within any timeframe. In many cases, it takes a long time, sometimes several years, to give its recommendation/opinion for regularization of the employees absorbed in the revenue set up from development project and the delay affects seniority of the employees who were absorbed in the revenue set up from development project to the employees who were directly appointed in the Government service long after absorption in the revenue set up."[per Borhanuddin, J]*

This concern raised by the Hon'ble Appellate Division has not been taken into consideration by the respondents till date by incorporating a timeframe for regularization of the services of the employees absorbed from the development projects.

Before parting, we consider it necessary to record our concern regarding the lacuna in the Rules of 2005, where no specific timeframe is mentioned for regularizing an employee, which has created practical difficulties and uncertainty, resulting in prolonged delay and inconsistent treatment of similarly situated employees giving rise to the number of litigations by the government employees, which is neither desirable nor proper.

In the light of the observations made hereinabove the concerned respondents particularly respondent No. 1, is expected to take effective measures by providing a time frame for regularising the employees temporarily posted in the revenue set up in order to eliminate discrepancies and disputes, which are regularly arising in the given situation.

In view of the facts and circumstances and with the discussion made hereinabove, 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 at once.

Justice Sashanka Shekhar Sarkar, J:

I agree.

Farida Bench Officer