

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

Writ Petition No. 6868 of 2011

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. Serazul Islam, Son of late Minnat Ali,
of Village: Patchgaon, Police Station:
Tangibari, District: Munshigonj, at Present
M.L.S.S (Peon) Karim Jute Mills Ltd.
Demra, Dhaka

.....Petitioner

-Versus-

Government of the People's Republic of
Bangladesh, represented by the Secretary,
Ministry of Jute, Bangladesh Secretariat,
Ramna, Dhaka and others.

..... Respondents

Mr. Mantu Chandra Ghosh, Advocate

...For the petitioner

Mr. Tufailur Rahman, Senior Advocate.

..... Respondent No.5

Mr. SK.Shaifuzzaman (Zaman), DAG with

Mr. Md.Shafiquzzaman (Rana) .A.A.G.

..... For the respondents

Heard on: 10.11.2022,27.07.2023,24.08.2023.

Judgment on: 02.11.2023

Present:

Mr. Justice K. M. Kamrul Kader

And

Mr. Justice Mohammad Showkat Ali Chowdhury

Mohammad Showkat Ali Chowdhury, J: On an application
at the instance of the petitioner under Article 102 of the Constitution of
the People's Republic of Bangladesh a Rule Nisi was issued on
08.07.2011 in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the office order dated 22.05.2011 under reference No. Karim/ Proshason/ 10-11 /1329 (Annexure-A) issued by the respondent No.5 retiring the petitioner from his service with effect from 25.05.2011 on the ground of attaining 57 years of age should not be declared to have been passed without lawful authority and is of no legal effect and/or such other or further order or orders pass as to this court may seem fit and proper.”

2. Facts necessary for disposal of Rule Nisi in short are as follows:

The writ petitioner is the M.L.S.S (Peon) (Jute Division) of Karim Jute Mills Ltd. and was appointed in the said Jute Mills on 26.05.1972 as a permanent peon. He has been working under the respondents for long period with his efficiency and productive morality. He is enough healthy and strong and continue his duty in the said Jute Mills. He was born on 26.05.1954 and has already about to reach at the age of 57 years. The new provision to retirement of a worker of an enterprise has been inserted in the section 14A in the Public Corporations (Management Co-ordination) Ordinance,1986 by section 3 of the Public Corporation (Management Co-ordination) (Amendment) Act, 1994 and the age of retirement of worker of an enterprise is determined on completion of the sixty years of his age. But it is a matter of great regret that the Respondent No.5 has issued the office order on 22.05.2011 in Memo No. **করিম/**

প্রশাসন/১০-১১/১৩২৯ notifying the petitioner to go on retirement 25.05.2011 on completion of 57(fifty-seven) years of his age. As per new section 28 of the Bangladesh Labour Act, 2006, the retirement of workers in the Nationalized Mills is on completion of 60(sixty) years of his age. The respondents without following the said provision of law have issued the letter on 22.05.2011 directing the petitioner to be retired at the age of 57 years of his age. Moreover, the respondent has counted the date of birth of the petitioner wrongly. The petitioner sent an application to the respondents by his learned Advocate to recall the impugned office order dated 22.05.2011 but they did not withdraw the same.

3. Being aggrieved by and dissatisfied with the decision of the respondents, the petitioner finding no other efficacious and alternative remedy filed this instant Writ Petition before this Court under Article 102 Of the Constitution of the People's Republic of Bangladesh and obtained the present Rule.

4. The Rule is being contested by the Respondent No. 5 by filing affidavit in opposition and stated inter alia that the petitioner has alternative and efficacious remedy available in the Bangladesh Labour Act, 2006 which is proper forum for redressing the grievances of the petitioner. The petitioner since being employed in a Unit of Public Corporation and he is liable to be retired at the age of 57 years of his age. Moreover, the date of birth of the petitioner is in

dispute which cannot be decided in writ jurisdiction. The writ petition is misconceived and prayed for discharging the Rule.

5. Mr. Mantu Chandra Ghosh, the learned Advocate appearing on behalf of the petitioner submits that petitioner has been working under the respondents which are a government Corporation, with efficiency and being obedient and he petitioner is a healthy and work oriented person and he is entitled to work under the respondents till completion the age of 60 years of his age. He next vigorously contends that the respondents notified the petitioner to retire at the age of 57 years of his age which is most illegal and without lawful authority. He also contends that section 14A of the Public Corporation (Management Co-ordination) (Amendment) Act, 1994 as well as section 28 of Bangladesh Labour Act, 2006 mandates that the retirement of workers in the Nationalized Mills shall be on completion of 60 (sixty) years of his age. He submits that the respondents issued the impugned order showing him to retire on 25.05.2011 on completion of 57(fifty-seven) of his age without having any reason where legally the petitioner is entitled to work up to the 60(sixty) years of his age.

6. He further submits that the petitioner is a poor worker and yet his children are only way to be grown up and he is to work further period but the respondent No.5 snatched away the right of the petitioner and as such the same is liable to be declared illegal and without lawful authority and is of no legal effect.

7. The learned advocate for the petitioner filed supplementary affidavits in this court which is replica of the original writ petition and submits that the petitioner as a worker under the nationalized Jute Mills is admissible to work up to the age of 60 years of his age under the new provision of 14A of the Ordinance, 1986 as well as under section 28 of the Bangladesh Labour Act, 2006. He finally submits that the petitioner has no other alternative and efficacious remedy, accordingly for the infringement of fundamental rights of the petitioner, he can lawfully invoke the writ jurisdiction under Article 102 of our Constitution for redressing his grievances and he has prayed for making the Rule absolute. In support of his contention he has referred decisions of our Hon'ble Apex Court in **CIVIL PETITION FOR LEAVE TO APPEAL NO.3304 OF 2016, case of the Sadharan Bima Corporation Vs. Md. Akbar Hossain and other, Reported in (9 ALR (2017) (1) 144 (Para 40) and the case of Bangladesh Gas Fields Co. Ltd. Vs. Md. Fariduddin Ahmed and others reported in 5 ADC (2008) 324.**

8. Per contra, Mr. Tufailur Rahman, the learned senior Advocate appearing on behalf of the Respondent No.5 submits in line with the affidavit in opposition that there being alternative, adequate and efficacious remedy available to the petitioner in the Labour Court, which is the proper forum for agitating the grievance of a worker and the claim of the petitioner as worker of nationalized Mills retire on completion of 60 (sixty) years of his age is disputed

and hence denied, the Writ petition is not maintainable and the rule is liable to be discharged.

9. He also submits that since the petitioner being employed in a Unit of Public Corporation he is liable to be retired at the age of 57 years of his age and the impugned order is not illegal. There is disputed claim regarding the date of birth of the petitioner and hence it cannot be decided by the Hon'ble Court under its writ jurisdiction.

10. He wraps up his submission by contending that the impugned order of the respondent No.5 did not violate the fundamental right of the petitioner and the said writ petition is totally misconceived and without any substance and hence the writ petition is not maintainable and the Rule is liable to be discharged.

11. Mr. SK. Shaifuzzaman, the learned Deputy Attorney General submits that the writ petition may be disposed of as per law and precedents of our Hon'ble Apex Court.

12. We have heard the learned Counsels of both sides, perused the application under Article 102 of our Constitution and annexures appended thereof along with citations of new insertion of section 14A in the Public Corporation (Management Co-ordination) Ordinance 1986 (Amendment) Act, 1994 and amended section 28 of the Bangladesh Labour, Act 2006 which has been amended on 13.10.2010.

13. From the submission and counter submission of the contending parties, it appears to us that in this writ petition, three

questions faces by this Division for adjudication, such as, **the age of retirement of a worker of government corporation, the date of birth of the petitioner and maintainability of writ jurisdiction.**

14. It is not disputed that the petitioner is a worker of Government Corporation. Since the dispute centered round the retirement given to the petitioner on completion of 57(fifty seven) years of his age by the respondents, we feel that for proper adjudication of the dispute between parties relating to the age of retirement of a worker of government corporation, it would be profitable to quote the relevant provisions of laws relating to retirement of a worker of any nationalized industry. We find the relevant provision on the disputed matter in section 14A of the Public Corporations (Management Co-ordination) Ordinance, 1986 (Amendment) Act, 1994 which runs as under;

“14A. Retirement of a worker, etc.:- (1) A Worker of an enterprise shall, notwithstanding anything contained in the terms and conditions of his employment in any contract, rule, regulation, bye-law or other instrument, retire from employment on the completion of the sixtieth years of his age:

Provided that a worker who has completed the sixtieth year of his age on or before the date of commencement of the public corporations (Management Coordination) (Amendment) Act, ১৯৯৪ স-
নর ১৭ নং আইন) shall cease to be in the employment of the enterprise on such commencement.”

15. From plain reading of **section 14A of the Public Corporations (Management Co-ordination) Ordinance, 1986 (Amendment) Act, 1994**, it is crystal clear that as per section 14A of the above mentioned Ordinance, a worker of an enterprise shall, notwithstanding anything contained in the terms and conditions of his employment in any contract, rule, regulation, bye-law or other instrument, retire from employment on the completion of the sixty years of his age. It is pertinent to mention here that section 14A was inserted by section 3 of the Public Corporations (Management Co-ordination) Ordinance, 1986(Amendment) Act, 1994 (Act No. XVII of 1994).

16. In section 14A of the Public Corporations (Management Co-ordination) Ordinance, 1986, the two terms, such, “enterprise” and “worker” are used for which a worker of enterprise can be understood to determine from which law will be applied for a worker of an enterprise. For proper appreciation of the dispute between the parties, these two terms must be looked into as per definition of the said Ordinance. **Section 2 (b) of the Ordinance, 1986, the term enterprise is defined which runs as:**

(b) “enterprise” means an industrial or commercial enterprise, a company or a firm vested in, or owned by,, or the majority shares in which belong to, the Government and which is placed under a public corporation by or under any law for the time being in

force or an industrial or commercial enterprise, a company or a firm owned, managed or maintained by a public corporation.

In section 2(e) of the Ordinance, 1986 the term, “worker” is defined which runs as:

(e) “worker” means any person, skilled or unskilled, who works for hire or rewards, but does not include a person who is employed in any managerial, administrative, supervisory or solely clerical capacity.

17. It appears from the material on record that the petitioner is a Security Guard of the Jute Mills of commercial enterprise and the petitioner was not employed in any managerial, administrative, supervisory or solely clerical capacity and the nature of the work of the petitioner is not managerial, administrative, supervisory or solely clerical which has not been denied by the writ respondent in its affidavits in opposition the writ petitioner is a worker within the meaning of section 2(e) of the Ordinance, 1986.

18. In **CIVIL PETITION FOR LEAVE TO APPEAL NO.3304 OF 2016**, it has been held by our Hon’ble Apex Court, “In a series of decisions it has been held that LDA-Cum-Typist, Telephone Operator, M.L.S.S., Peon, Computer Operator, C.C.T.V. Operator, A.C. Mechanic, Photocopy Operator, Electrician, **Security Guard**, Malee, Plumber and Sweeper are workers as held by this Division in the **case of the Sadharan Bima Corporation Vs. Md.**

Akbar Hossain and other, Reported in (9 ALR (2017) (1) 144 (Para 40). Thus the writ petitioner (present respondent No. 1) under no circumstances is employed in the capacity of managerial, administrative, supervisory or solely clerical and as such he is simply worker within the ambit of section 2(e) of the Ordinance 1986. Since the writ petitioner respondent is working in the Mills of the corporation as defined in section 2(d) of the ordinance, 1986 he falls within the definition of worker as defined in section 2(e) of the said Ordinance of 1986 and his retirement age is nothing less than on the completion of 60th year of his age as contemplated in section 14A of the Ordinance, 1986. Thus he being an employee of the Mills under the corporation enlisted in the schedule his service shall be governed by the Ordinance of the 1986 itself pursuant to over-riding clause as provided in the section 3 of the Ordinance 1986 and no other laws can be applied in this case.”

19. In the case of **Bangladesh Gas Fields Co. Ltd. Vs. Md. Fariduddin Ahmed and others reported in 5 ADC (2008) 324** as well as in several decisions of the High Court Division unreported judgments in Writ Petition No. 2765 of 2010. 2766 of 2010 and Writ Petition No.3232 of 2010 wherein it has been held that the service of workers who are working in any Public Enterprise or Corporation are regulated by the provisions of section 14A along other section of the Public Corporations (Management Co-ordination) Ordinance, 1986 and thus the petitioners are entitled to be in service till completion of

60 years of age of his age. This view also finds support in the **case of M.A. Hai and others Vs. Trading Corporation of Bangladesh,** reported in 40 DLR (AD) 207. In the case of **BADC Vs. Md. Shamsul Hoque Mazumder,** reported in 60 DLR (AD) 152, **Bangladesh Petroleum Exploration and Production Company Limited (BAPEX) and another Vs. Md. Hasan Ali and others** reported in 11ADC 300 and many other unreported decisions of both the Divisions came to the conclusion that the writ petitioner is a worker working in the public organization and he is to retire after completion of his 60 years of age.

20. It is claimed by the learned counsel of the respondent No.5 that since the petitioner being employed in a Unit of Public Corporation, he is liable to be retired at the age of 57 years. But the submission of the learned counsel of the respondent No.5 appears to be misconceived and not in line with the laws of the land. Because on perusal of section 28 of the Bangladesh Labour Act, 2006, it appears to us that the said section was amended by section 2 of “বাংলাদেশ শ্রম (সংশোধন) আইন, ২০১০ (২০১০ সনর ৩২ নং আইন)” and the age of retirement of worker from his employment is determined on completion of 60(sixty) years. We find from “annexure-A” that the petitioner was notified by office order dated 22.05.2011 to go on retirement on 25.05.2011 on completion of 57 (fifty seven) years of his age. In annexure-A in verbatim, “প্রচলিত নিয়ম মোতাবেক বিজেএমসি ও ইহার অধীনস্থ কর্মকর্তা/কর্মচারীগণ ৫৭(সাতান্ন) বৎসর বয়সের বেশী চাকুরী করিতে পারে না”.

21. In the instant case, We find that section 28 of “বাংলাদেশ শ্রম আইন-২০০৬” was amended on 13.05.2010 determining the age of retirement of Labour/Worker from his employment on completion of 60(sixty) years of his age but the office order of the Respondent No.5 was issued on 22.05.2011 upon the petitioner directing him to go on retirement on 25.05.2011 on completion his age of 57 years of his age. We find that section 28 of the Bangladesh Labour Act, 2006 was amended on 13.05.2010 but impugned office order of the Respondent No.5 was issued on 22.05.2011 directing the petitioner to go on retirement on completion of 57 years of his age. From the above, it is patently clear that the respondent No. 5 arbitrarily violated section 14A of Public Corporations (Management Co-ordination) Ordinance, 1986 as well as section 28 of the Bangladesh Labour Act, 2006. The ground mentioned in impugned order appears to be baseless and perverse. It is the fundamental right of the petitioner to go on retirement from his employment on completion of 60 (sixty) years of his age but the respondent No.5 by giving the petitioner on completion of 57 (fifty-seven years) of his age which is nothing and Thus he being an employee of the Mills under the corporation enlisted in the schedule his service shall be governed by the Ordinance of the 1986 itself pursuant to over-riding clause as provided in the section 3 of the Ordinance 1986 and no other laws can be applied in this case.

22. The second question is raised by the respondent No. 5 in this writ petition that the date of birth of the petitioner is in dispute and hence it cannot be decided by the Hon'ble High Court Division under its writ jurisdiction. But the respondent No. 5 did not submit any single document about the date of birth of the petitioner. To our mind, this argument can outright be rejected on the ground that respondent No.5 gave retirement to the petitioner on completion of 57 (fifty seven) years of his age counting the date of birth of the petitioner on 26.05.1954. So, the date of birth of the petitioner is not disputed question of fact and this argument of the learned senior Counsel of the respondent No. 5 fall through.

23. From the submission of the learned Counsel of the respondent No.5 another question raises before this Division to address the maintainability of the Writ Petition i.e. whether the petitioner has alternative and efficacious remedy to redress his grievances? The learned senior Counsel of the respondent No.5 tried to assail on the score that the petitioner has efficacious and alternative remedy in the Labour Court which is the proper forum for agitating the grievance of a worker of public corporation. So the invoking writ jurisdiction by the petitioner is not tenable in the eye of law. Let us now see how far the above argument of the learned Counsel of the Respondent No.5 stands.

24. As per decisions of our Hon'ble Apex Court in a catena of cases settled that if the petitioner can show that his fundamental right

has been infringed, in that case, he can invoke writ jurisdiction. Facts of the instant case suggest that the petitioner of the writ petition has no alternative and efficacious remedy to redress his grievances. In **CIVIL PETITION FOR LEAVE TO APPEAL NO. 3304 OF 2016**, the Hon'ble Appellate Division held, "Apart from the above circumstances, this Division in Civil Petition for Leave to Appeal No. 3158 of 2016 disposed of along with two other Civil Petitions which arose out of the same judgment of the High Court Division wherein same point was raised, took the view that the writ petition filed by a worker of a corporation included in the schedule of the ordinance of 1986 is very much maintainable for violation of any provision of the Ordinance specially in respect of retirement of a worker in violation of section 14A. "

25. In view of the above mentioned precedent, we find that the petitioner will not get equally efficacious remedy in the Labour Court and praying remedy for grievances in the Labour Court cannot be said to be equally efficacious in true sense. It is remarkable to mention here that the violation of the rights of the petitioner is not the violation of ordinary law; it is the violation of fundamental rights of the petitioner as enshrined in Article 27 of our Constitution because the petitioner did not get equal protection of law. Like the civil court claimant in the Labour Court for redress of the grievances, needs to wait long time to get relief due to cumbersome and costly process of executing decree. In this regard,

the case of Bangladesh Beverage industries Ltd. Vs Rowshan Akhter, 62 DLR, 483 69 DLR (AD) 196 is a glaring example of lengthy legal battle which lasted 25 years from trial court to the Hon'ble Appellate Division. Another case is Begum Shamsun Nahar Vs. British American Tobacco Bangladesh, 66 DLR (AD) 80, in which said Shamsun Nahar being claimant filed a case in 2004 against her employer and the same is under trial in civil court in spite of passing long years which by no stretch of imagination be said that the claimant got equally efficacious remedy.

26. In the case of Government of Bangladesh and others Vs Nurul Amin and others (2015) 67 DLR (AD) 352 our Hon'ble Appellate Division in disposing the above writ petition held, “the power of the High Court Division under Article 102 is very wide and is not fettered by any legal constraints in the enforcement of the fundamental rights in as much as the High Court Division powers to issue such directions and orders as may be appropriate for the enforcement of fundamental rights conferred by Part III of the Constitution.” The Hon'ble Apex court further observed, “it is the constitutional obligation of the High Division to give directions, orders as may be appropriate for the enforcement of fundamental right.” By the plenary power of the High Court Division under Article 102 of our Constitution, the High Court Division has wide power to pass any order for enforcement of the fundamental right of any petitioner who claims that his fundamental has been infringed.

All underlines are supplied for emphasis.

27. We have already been observed that the respondents violated fundamental rights of the petitioner since as per law he will have to retire on completion of sixty years of age but he was most illegally given retirement on completion of 57(fifty-seven) years of age and for illegal early retirement of the petitioner by the respondent No.5 must be remedied and the petitioner is entitled to have retirement benefits and other benefits as per law from date of his so-called retirement up to the completion of 60(sixty) years of his age.

28. Having regards to the facts and circumstances, provision of section 14A of the Public Corporations (Management Co-ordination) Ordinance, 1986 (Amendment) Act, 1994, section 28 of Labour Act, 2006 and decisions cited above, we find merit in this Rule.

29. In the result, the Rule is made absolute, however, without any order as to costs. The impugned order of the respondent No.5 is hereby declared to have been passed without lawful authority. The petitioner is entitled to have all service benefits from the concerned Jute Mills as per law from the date of his so-called retirement up to the completion of 60(sixty) years of his age. The Respondents are directed to make necessary arrangements for payment of his all service benefits treating the petitioner 60 (sixty) years as his

retirement age from his employment within 60(sixty) days from the date of the receipt of this judgment and order of this court.

30. Office is directed to communicate the judgment and order of this court to the concerned Jute Mills authority at once.

K. M. Kamrul Kader, J

I agree