

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

WRIT PETITION NO. 8130 OF 2013

IN THE MATTER OF:

Md. Enamul Haque Kandu and others
.....**Petitioners**

-VERSUS-

Government of Bangladesh and others
..... **Respondents**

Mr. ABM Siddiqur Rahman Khan, Advocate
with Mr. Mainul Islam, Advocate

... for the Petitioners

Mr. Samarendra Nath Biswas, AAG

----for the Respondents

Heard on: 8.5.2014, 12.5.2014, 20.5.2014

Judgment on: 28.5.2014

Present:

Mr. Justice M. Moazzam Husain.

And

Mr. Justice Md. Badruzzaman.

Md. Badruzzaman, J:

This *Rule Nisi* was issued calling upon the respondents to show cause as to why they shall not be directed to transfer/absorb the petitioners in the revenue set-up immediately with effect from 1.7.2013.

The petitioners (90 in number) filed the instant writ petition stating, *inter alia*, that the Ministry of Primary and Mass Education (respondent No.1) started a development project in 1993 namely “Food for Education Programme” to ensure schooling for the poverty stricken children on yearly basis which was continued till 2002. Initially the Project covered only 460 unions of 460 Upazillas of the country. Upon success of the Project, the Government from time to time expanded it to cover more areas of the country. Petitioners No. 56, 79 and 89 joined in 1994, petitioners No. 59 and 69 joined in 1996, petitioners No. 80 & 81 joined in 1997, petitioners No. 60, 64 & 82 joined in 1998, petitioners Nos. 70, 74 & 86 joined in 1999, petitioners No.3-7, 67 & 71 joined in 2000, petitioners Nos. 8-11, 23, 27-33 and 50 joined in 2001 in the said Food for Education Programme.

Respondent No.1, Government at the same time in 2000 started another new project namely “Primary Education Stipend Project” to bring the rest of the

Country under the above programme to ensure education for all. Being successful in the competitive examination the petitioners No. 57, 61-63, 66, 68, 72, 73, 77, 78 joined in 2000 and petitioners No. 01, 12, 24-26, 87, 90 joined in 2001 in that project. In July, 2002 those two projects i.e Food for Education Programme and Primary Education Stipend Project were merged with their manpower and other properties into one project in the name of “Primary Education Stipend Project” (shortly “PESP”) which continued till June, 2007. The period of ‘PESP’ was extended for another one year which ended in June, 2008. The petitioners No. 02, 34-41 joined in 2003, petitioners No. 42-49, 58, 65, 83-85, 88 joined in 2005 and the petitioners No. 51-55 joined in 2006 in PESP.

As PESP achieved a tremendous success in eradicating illiteracy, preventing drop out and ensuring primary education for all, the Government decided to run the project by its own resources for a further period of five years and accordingly approved second phase of PESP namely “Primary Education Stipend Project-Phase II” (“the Project Phase -II”) with effect from 01.07.2008 to 30.06.2013 with the existing manpower of PESP and the Development Project Proposal (shortly “DPP”) to that effect was approved by the Executive Committee of the National Economic Council (shortly “ECNEC”) on 31.08. 2008. DPP was the main guide line to determine the terms and conditions of the service of the manpower of the Project Phase-II. In the DPP, amongst others, there was a mandatory provision that ‘after completion of the project the manpower will be transferred to the revenue set-up of the Government’. After completion of PESP the Government asked the existing 88 manpower i.e the petitioners No.1-88 to continue with their work from 01.07.2008. The petitioners having aware of the clause of absorption in the revenue set-up decided to join the Project Phase-II with an expectation that their jobs would be transferred into revenue budget after completion of the project in July 2013 and the Government, accordingly reappointed them in project phase-II in different times.

After joining the project the petitioners were working in their previous work stations with a hope that before expiry of the project period on 30.6.2013, the concerned Ministry of Education would take steps for transferring them in the revenue set-up as per DPP but when they found that the Ministry of Primary and Mass Education (shortly “Ministry”) did not take any initiative to that effect they on 17.04.2012 made an application to the Hon’ble State Minister of the

Ministry for taking necessary steps to transfer the petitioners in the revenue set-up as per DPP. Pursuant to that application, the Hon'ble State Minister on the same day asked the Project Director (shortly 'PD') of the project to take necessary steps in that regard. Accordingly on 22.05.2012 the PD forwarded a proposal to the Director General (shortly 'DG'), Directorate of Primary Education. The DG on 09.09.2012 forwarded the proposal for absorption of the existing manpower including the petitioners to the Secretary of the Ministry (respondent no.1) with a recommendation that the manpower should be absorbed in the revenue set up. The Ministry in its meeting dated 28.11.2012 considered the proposal and decided to transfer the existing manpower of the Project Phase-II into revenue set-up and directed the DG, Directorate of Primary Education ("DPE") to send proposal in the prescribed form to transfer the manpower of the Project Phase-II against the vacant posts in DPE. Accordingly, on 25.02.2013 the DG sent the proposal in the prescribed form to respondent no.1. In view of the above development the petitioners were waiting for their absorption in the revenue set-up of the Government. But to the utter surprise of the petitioners the respondent No.1 without initiating any process for absorption suddenly issued a letter on 04.04.2013 under the signature of the Deputy Secretary directing the respondent no.4, DG, to prepare a new proposal to create posts under the Primary Education Development Program-3 (shortly "PEDP-3") with a view to transferring the existing manpower of the Project Phase-II therein and accordingly on 17.04.2013 the DG under signature of Additional DG sent a request to take steps to hand over all the manpower of Project Phase-II to PEDP-3 within 31st May, 2013.

On 12.05.2013 an inter Ministerial Meeting was held and decided inter alia (1) that the existing manpower would be working in the PEDP-3 and they would not get any salary or remuneration until they have been transferred to the revenue budget, (2) The Ministry of Education would send a proposal to the Ministry of Public Administration to transfer the existing manpower of Project Phase-II to the Revenue set-up and for this purpose DPE would immediately send a proposal in the prescribed form to create posts in the revenue set-up.

On 06.06.2013 the Ministry wrote to DG asking him to send proposal to the Ministry to extend the Project Phase-II for a further period of 2 years. Accordingly the DG on 13.06.2013 sent RDPP to the Secretary of the Ministry.

Pursuant thereto the respondent no.1 on 23.06.2013 sent the proposal to the Planning Ministry for approval.

On the other hand, the respondent no.5 on 27.06.2013 sent a list of the existing manpower of the Project Phase-II to respondent no.1 for his direction about what to do with the existing manpower since the Project Phase-II was ending on 30.06.2013. The Ministry on 30.06.2013 informed the DG that the existing manpower of the Project Phase-II could continue their jobs upon giving an undertaking that they could not claim any salary and other benefits after 30.06.2013 and their jobs would not be counted as continuing after that date if the Revised DPP (3rd amended) was not approved by the Government.

On 30.06.2013 the petitioners were asked to give an undertaking that they could continue their jobs with a condition that they would not get any salary. In that circumstances, the petitioners without giving undertaking served a Notice Demanding Justice dated 16.07.2013 upon the respondents requesting them to take steps to absorb the petitioners in the revenue set-up as per the provision of DPP but without any result.

Finding no other alternative and efficacious remedy the petitioners filed this writ petition and obtained the instant rule.

By filing supplementary affidavit it has also asserted that though the project period ended on 30.06.2013 but the petitioners were asked by the respondents to continue with their work and hence they have been working in their previous jobs since 01.07.2013 without any salary with an expectation that their jobs would be transferred into revenue set up.

The petitioners on 03.10.2013 came to know from a letter sent by the Planning Division to the Ministry that ECNEC on 19.09.2013 extended the Project Phase-II for another period of two years till June, 2015 giving retrospective effect from 01.07.2013. The Revised DPP has excluded the absorption clause of previous DPP with an ulterior motive not to absorb the petitioners into revenue set up with a view to depriving the petitioners of their rights which is *mala fide* and illegal.

The extension of the project was made on 19.09.2013 during pendency of the instant rule. Further the respondents did not pay the salary of the petitioners since July, 2013 to September, 2013 but the same was paid together after the extension had been approved.

The respondent No. 5, the Project Director, Primary Education Stipend Project (Second Phase) contested the Rule and filed affidavit –in-opposition stating, inter alia, that all the appointments of the petitioners were completely temporary basis and their appointments would automatically be cancelled after the completion of the project period as per condition mentioned in their respective appointment letters and as such they have no right to claim their absorption in the revenue set up. Though in clause 17(3) of the Development Project Proposal (DPP) there was a proposal of transferring the manpower in the revenue set up after completion of project in June, 2013 but since project period has been extended up to 30th June, 2015 in the name and style RDPP in its 3rd revision and it has been decided to delete Clause 9.3 relating to absorption of project manpower in revenue set-up and the 3rd RDPP was amended and approved by ECNEC on 19.9.2013 as such, the petitioners cannot claim their absorption as of their right.

It has also stated that Primary Education Stipend Project was started in July 2002 and ended in July 2008. After that when another new project namely 'Primary Education Development Program-3 was approved by ECNEC (Executive Committee For National Economic Council) in its meeting held on 19.9.2013, then to run the new project properly the existing manpower of the earlier Primary Education Stipend Project was freshly recruited. So the petitioners were not paid on transitional basis rather, they were being paid for working in temporary posts in the new project which is scheduled to be abolished after the completion of the project [Primary Education Stipend Project (Phase-II) in June, 2015. Since the on-going project has not yet been concluded and the writ petitioners have joined the new revised project phase III they can claim themselves to be absorbed in the revenue budget with completion of the earlier project.

Mr. Siddiquir Rahman Khan learned Advocate for the petitioners essentially raised the following contentions:

- a. The respondents arbitrarily, unreasonably and against public interest stopped the process of absorption of the petitioners in the revenue set up for collateral purpose.
- b. The petitioners have been working in the project for a long period in that some of them for about 15-20 years and thus they have

- accrued infeasible and vested right to be absorbed and regularized in the revenue budget which cannot be curtailed or abridged in any manner whatsoever.
- c. The petitioners having served the golden years of their lives in this development project of the government have lost their service age for a fresh Government job or other job and at this stage if the petitioners lose their jobs at the whims and caprice of the respondents, they must be thrown into the street with their families which offends against the policy and practice of a welfare state and hence the govt. is bound to absorb the petitioners in the revenue budget.
 - d. The Ministry of Primary and Mass Education on 28.11.2012 decided to transfer the existing manpower of Project Phase-II into revenue set up and directed DG, Directorate of Primary Education to submit the proposal in the prescribed form and accordingly DG on 25.02.2013 sent proposal to the Ministry. This action of the respondents also shows that the respondents have acknowledged the vested rights of the petitioners to be absorbed in the revenue budget. But for reasons best known to them, the respondents suddenly stopped the process in the mid way and after few months the project period was extended which amounts to denial of the vested right of the petitioners.
 - e. After having served a long period in a development project with a promise of the authority to be absorbed in the revenue budget it is the legitimate expectation of the petitioners that they should be transferred/ absorbed in the revenue budget and the government, after completion of the said project, is also barred by promissory estoppel to take any contrary decision.
 - f. The Revised DPP has excluded the absorption clause of previous DPP with an ulterior motive not to absorb the petitioners into revenue set-up with a view to depriving the petitioners of their rights which is *mala fide*, illegal and colourable exercise of power of the respondents .

Mr. Samarendra Nath Biswas learned Assistant Attorney General appearing for the respondent No.5 on the other hand submits that the writ petitioners were in the know about their fate on completion of the project and their service being contractual in nature, continuation of their service in the project did not create any right in their favour so as to entitle them to be absorbed in the revenue budget of the Government.

The learned Counsels have cited a number of decisions of this Division and Appellate Division in support of their respective cases.

Heard the learned Counsels and perused the records. It appears that pursuant to the representation of the of the petitioners dated 17.4.2012 for their absorption in the revenue set up which was recommended by the State Minister of the Ministry of Primary and Mass Education, the respondent No. 5, Project Director sent a proposal to that effect on 22.5.2012 to the respondent No.4, Director General, Directorate of Primary Education, who forwarded the same on 9.9.2012 to the Secretary of the same Ministry with his positive recommendation that the manpower of the project should be absorbed into revenue set up. The Ministry of Primary and Mass Education in its meeting dated 28.11.2012 amongst others decided to transfer the existing manpower of the Project Phase-II to revenue set-up and directed the DG, Directorate of Primary Education ("DPE") to send proposal in the prescribed form to that effect. Accordingly, DG on 25.02.2013 sent the proposal in the prescribed form to respondent no.1 to transferring the manpower of Project Phase-II in the revenue set up. But the respondent No.1 issued a letter on 04.04.2013 directing the respondent no.4, DG, to prepare a new proposal to create posts under the Primary Education Development Program-3 with a view to transferring the existing manpower of the Project Phase-II therein and accordingly the DG on 17.04.2013 sent a letter to the Ministry to take steps to hand over all the manpower of Project Phase-II to PEDP-3 within 31st May, 2013.

It also appears that in an inter Ministerial Meeting held on 12.05.2013 decided, inter alia, that the Ministry of Education would send a proposal to the Ministry of Public Administration to transfer the existing manpower of Project Phase-II to the Revenue set-up and after completion of ministerial formalities for that purpose DPE would immediately send a proposal in the prescribed form to create posts in the revenue set-up. But the Ministry of Education for reasons

best known to them having taken departure from the decision of inter-ministerial meeting decided to extend the project period for further two years up to 30th June 2015 with the existing manpower i.e the petitioners and also omitted the absorption clause from the revised Project profile and became successful in getting approval to that effect from the ECNEC on 19.9.2013.

On perusal of Annexure CC to CC-6 it appears that the Government earlier has absorbed the employees of various projects in the revenue set up. Admittedly the appointments of the petitioners were made under the provision of "Development Project Proposal (DPP) for Primary Education Stipend Project Phase II for a period from 1st July 2008 to 30th June 2013" as evidenced by Annexure-D to the writ petition which is the compulsory guideline for implementation of the project in which there was a specific condition that after completion of the project period the manpower of the project would be transferred in the Revenue set-up of the Government and thus the Government is bound by its promise on the one hand and the employees working with the absorption clause in mind develop a legitimate expectation to be absorbed in the revenue set-up on the other hand.

It has been decided by this Court in a number of cases that if tenure bound development project of the Government contains an absorption clause to the effect that the project personnel would be absorbed in the revenue set up on the expiry of the project period, the project personnel accrues a right of legitimate expectation to be absorbed in the revenue budget and the Government is bound to transfer the project personnel to the revenue set up. And once the employees are allowed to work with the expectation of being absorbed created by the absorption clause the same cannot be subsequently omitted, modified, curtailed or altered to the disadvantage of the project-staffs.

Having considered different annexure to the writ petition, it appears that the petitioners were given assurance from time to time by the Ministry of Education that their services would be absorbed in the revenue budget. Even in the inter Ministerial meeting a positive decision was taken on 12.5.2013 to the effect that the existing manpower (which includes the petitioners also) of the Project Phase II would be transferred into the revenue set up. In the backdrop of facts the petitioners with the passage of time have also developed in their mind a legitimate and reasonable expectation that they would be absorbed in the

revenue budget of the Government. But when the matter came about to a finality, the Ministry of Primary Education without sending the proposal of absorption of the petitioners to the Ministry of Public Administration not only chose to extend the period of the PESP (Phase II) but also omitted the absorption clause from its revised DPP (3rd Amendment).

It is absolutely unclear to us what prompted the Ministry of Primary and Mass Education Education to extend the project period, with an omission of the absorption clause from the Project profile, instead of sending absorption proposal of the petitioners to the Ministry of Administration as they were required to do. The act of the Ministry of Education appears to us to be a grotesque display of sheer arbitrariness in stark disregard to the legitimate expectations of the petitioners to be transferred to revenue budget. Where there is law and practices of transferring project-staff to the revenue set-up we see no good reason to deprive the petitioners who spent prime of their time in an outstandingly successful project and now landed in an age and situation when there is no new prospect left for them in the Government or in any private bodies. The non-absorption of the petitioners besides being arbitrary and *mala fide* is contrary to public policy and clearly stands in contrast with the concept of welfare State.

Strange though as it may seem except the Ministry of Primary Education the other decision making authority of the Government never denied the claim of the petitioners. Even they chose not to contest the Rule by filing affidavit-in-opposition instead of serving notice upon them. The learned Assistant Attorney General also could not make any plausible submission to refute the contentions raised by the learned Advocate for the petitioners. Nevertheless he has contended that the petitioners knew *a priori* their fate and they must accept it. We are unable to accept the fate theory sought to be canvassed by the learned Assistant Attorney General specially when the claim of the petitioners is legitimate and on expectations developed legitimately over long years.

At the end of the day it appears that Government has not denied to absorb the petitioners in the revenue budget rather the opinion of the connected authorities overwhelmingly weighs in favour of the absorption save as an isolated blackout cast on the possibility. Since the matter is still under consideration of the Government we are of the view that ends of justice would



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be better served if we dispose of this Rule with necessary direction to the respondents to absorb the petitioners in revenue budget with completion of Primary Education Stipend Project- Phase II (PESP-II) i.e with effect from 1.7.2015.

Accordingly, this Rule is disposed of, however, without any order as to costs. The respondents are directed to absorb the petitioners in the revenue budget of the Government with completion of Primary Education Stipend Project Phase-II (on 30.06.2015) in accordance with law.

Mr. Justice M. Moazzam Husain.

I agree