

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Syed Mahmud Hossain
Chief Justice

Mr. Justice Muhammad Imman Ali

Mr. Justice Hasan Foez Siddique

Mr. Justice Mirza Hussain Haider

Ms. Justice Zinat Ara

Mr. Justice Abu Bakar Siddiquee

Mr. Justice Md. Nuruzzaman

CIVIL PETITION FOR LEAVE TO APPEAL NO.1187 OF 2018.

(From the judgment and order dated 28.11.2017 passed by the High Court Division in Writ Petition No.12526 of 2017.)

Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Law, Justice and Parliamentary Affairs, Bangladesh Secretariat, Ramna, Dhaka and others:

=Versus=

Shah Jamal Mollah and another : Respondents.

For the Petitioners : Mr. Mamtajuddin Fakir, Additional Attorney General, instructed by Mr. Haridas Paul, Advocate-on-Record.

For the Respondents : Mr. Ruhul Quddus, Advocate, instructed by Mrs. Sufia Khatun, Advocate-on-Record.

Date of hearing and judgment : 18-11-2018

J U D G M E N T

Hasan Foez Siddique, J:

This civil petition for leave to appeal is directed against the judgment and order dated 28.11.2017 passed by the High Court Division in Writ Petition No.12526 of 2017 making the Rule absolute.

The relevant facts, for the disposal of this petition, are that the writ petitioners were the employees of the People's Republic of Bangladesh during the War of Liberation (hereinafter referred to as Mujib Nagar employees). The writ petitioner No.1 was appointed as "informer" on 11.07.1971 by the Deputy Director Youth Camp (HQ) Zone-1, vide Memo No.83 dated 11.07.1971 and the writ petitioner No.2 was appointed as "EE Collector" on 04.08.1971 in the office of in Youth Reception Camp No.9, Sector Thuba Husnabad, India. After the war of Liberation, the writ petitioners were absorbed as Sub- Registrars. Lastly, the petitioner No.1 was posted as Sub-Registrar of Valuka, Mymensingh and the writ petitioner No.2 was posted as Sub- Registrar of Raipura, Narsingdi. On 20.02.2012, the Legislature amended section 4 of The Public Servant Retirement Act, 1974 (Act No.XII of 1974) providing the retirement age of the Public Servants till completion of 59th year of age from 57th year and, on 26.02.2013, the retirement age of the public servants, who were Freedom Fighters, till completion of the 60th year age from 59th year inasmuch as the Freedom Fighters' retirement age was earlier enhanced

for a period of 02(two) years. The Ministry of Public Administration issued circular on 23.03.2010 stating that “মুজিব নগর কর্মচারী হিসাবে প্রাপ্ত সুবিধার কারণে মুক্তিযোদ্ধা হিসাবে প্রাপ্য দুই বছর বয়স বৃদ্ধির সুবিধা হতে বঞ্চিত হবে না। অর্থাৎ মুক্তিযোদ্ধা হিসাবে বয়স বৃদ্ধির সুবিধা প্রাপ্য হবে”. That is, in view of the said circular, the Mujib Nagar Employees/Freedom Fighters, who are public servants, are entitled to get two years more service tenure than those of the other public servants. In such circumstances, the writ petitioners filed instant writ petition for a direction upon the writ respondents to increase the retiring age of the writ petitioners till completion of the 61st year age from 60th year and obtained Rule.

The High Court Division, by the impugned judgment and order, made the said Rule absolute directing to enhance the retiring age of the writ petitioners from 60th to 61st year and also to pay the salaries and other service benefits to the writ petitioners for the period to be enhanced.

Against the said judgment and order, the Government has filed this petition for leave to appeal.

Mr. Mamtajuddin Fakir, learned Additional Attorney General appearing for the petitioners, submits that the High Court Division exceeded its jurisdiction in directing to enhance the retirement age of the Freedom Fighters, who have been serving in the service of the Republic, inasmuch as the Court is not legally authorised to enhance the retiring age of the public servants. The same can only be done by amendment of the relevant law and that the High Court Division could not direct the legislature to amend the law for giving benefit of the public servants.

Mr. Ruhul Quddus, learned Counsel appearing on behalf of the writ petitioner-respondents, submits that the High Court Division, upon proper appreciation of the materials on record and law related thereto, observed that the Freedom Fighters are entitled to remain in service till completion of the 61st year of their age.

In this case, only question is whether the Freedom Fighters, who have been serving as the servants of the Republic, are entitled to remain in their service till completion of the 61st year of their age or not and that the High Court Division is legally authorised to direct

the authority concerned to enhance the age limits.

Earlier, the retirement age of the public servants of the Republic was till completion of their service upto 57th year of their age. Thereafter, by amending the law, the retirement age of Freedom Fighters, who have been serving in the service of the Republic, was provided upto attaining 59th year of their age. When the age limit of all the public servants was enhanced upto 59 years upon amending the relevant law, the retiring of the freedom fighters, who have been serving in the Republic, was provided upto attaining the age of 60th year. The Legislature did not provide the age limit of the Freedom Fighters to serve in the service of the Republic upto 61 years. Here, in this case, it appears from the operative portion of the impugned judgment that the High Court Division directed the writ respondents to enhance the retiring age of the writ petitioners till completion of their service till 61st year of their age. Such enhancement can only be done by the Legislature by amending the relevant law. That is, in fact, the High Court Division, indirectly, directed the Legislature to amend the relevant law.

Inspite of the extensive nature and scope of the writ, mandamus has its own limitations. The High Court Division cannot assume the authority, by which , it can increase the retiring age of public servants. Similarly, in exercising the jurisdiction under article 102 of the Constitution the High Court Division cannot direct the Legislature to enact or amend particular law. The Legislature is supreme in its own sphere under the Constitution and it is solely for the Legislature to consider as to when and in respect of what subject matter, the laws are to be enacted. The High Court Division exceeded its jurisdiction assuming the power of Legislature, thereby, extending the retiring age limit of the Freedom Fighters, who have been serving in the service of the Republic. The High Court Division cannot usurp the functions assigned to the legislature or executive to exercise their constitutional power in any manner.

In view of the facts, circumstances and legal position, the judgment and order of the High Court Division is liable to be set aside.

Since both the parties are present in the Court and it would unnecessarily delay disposal of the matter if leave is granted in

the matter, we have decided to dispose of the matter finally.

Accordingly, civil petition for leave to appeal is disposed of. The judgment and order of the High Court Division is hereby set aside.

C.J

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The 18th November, 2018

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