

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Special Original Jurisdiction)

WRIT PETITION NO. 7730 OF 2019

Md. Iqbal Hossain and 52(fifty-two) others
...Petitioners

-Versus-

The Government of the People's Republic
of Bangladesh represented by the Secretary,
Local Government Division, Ministry of
Local Government Rural Development
and Cooperative, Bangladesh Secretariat,
Dhaka and 5(five) others

...Respondents

Mr Mahbub Shafique, Advocate

...For the petitioners

None appears

...For the respondents

Present:

Mr Justice Gobinda Chandra Tagore

and

Mr Justice Mohammad Ullah

Heard on 13.08.2020, 17.08.2020

Judgment on 18.08.2020.

Mohammad Ullah, J:

On an application under Article 102 of the
Constitution of the People's Republic of Bangladesh, this
Court on 15.07.2019 issued the *Rule Nisi* in the following
terms:

“Let a Rule Nisi issue calling upon the
respondents to show cause why inaction of the

respondents in granting the Selection Grade Scale to the petitioners from the date when they completed 5(five) years of service in violation of the office Memorandum No. MF (ID)-IV/U(G)-4/82(Part-I)/12 dated 18.01.1983 issued by the erstwhile Ministry of Finance (Annexure-H) and Planning and Memo No. -পৌর-১/এমও/৯৩/৯০ dated 12.02.1994 issued by the Ministry of Local Government, Rural Development and Cooperatives (Annexure-I) should not be declared to have been made without lawful authority and of no legal effect and why the Respondents should not be directed to grant the Selection Grade to the petitioners in commensurate with those of the employees of Dhaka South City Corporation with effect from the date when they completed 05(five) years of service and/or pass such other or further order or orders as to this Court may seem fit and proper.”

Shortly stated the relevant facts necessary for the disposal of the *Rule* are as follows:

The petitioner Nos. 1-12 and 14-53 were appointed to the post of Lower Division Assistant-Cum-Typist under the erstwhile undivided Dhaka City Corporation on different dates from 25.08.1983 to 15.12.1990. Accordingly, they joined their respective services in between 25.08.1983 to 20.12.1990. The petitioner No. 13 was appointed to the post of Lower Division Assistant-Cum-Typist under the Khulna City Corporation on 13.02.1995 who joined his service on the same date and subsequently on 17.02.2002 he was transferred to erstwhile undivided Dhaka City Corporation. Similarly, by office order dated 03.03.1996 the petitioner Nos. 14-25 were appointed to the similar post of Lower Division Assistant-Cum-Typist at undivided Dhaka City Corporation. Accordingly, they joined their service on different dates from 04.03.1996 to 18.04.1996. The petitioner No. 26 was appointed to the post of Lower Division Assistant-Cum-Typist under Dhaka City Corporation on 25.05.2005 who joined his service on the next day on 26.05.2005. In the same way, by office order dated 12.06.2006 the petitioner Nos. 27-51 were appointed to the post of Lower Division Assistant-Cum-Typist at undivided Dhaka City Corporation and accordingly, they

joined their service on 18.06.2006. The petitioner Nos. 52 and 53 were appointed to the post of Lower Division Assistant-Cum-Typist under the undivided Dhaka City Corporation on 05.01.2009. Accordingly, they joined their service on 06.01.2009 and 25.01.2009 respectively. The petitioners have been serving in their respective posts with utmost satisfaction of the authority concerned since their joining. Meanwhile, petitioner No. 5 retired from his service on 31.12.2014. The erstwhile Ministry of Finance and Planning vide Office Memorandum No. MF(ID)-IV/U(G)-4/82(Part-I)/12 dated 18.01.1983 decided to grant selection grade to the Stenographer, Typist, Section Assistant (UDA), Budget Examiner and Record Keeper (LDA) subject to completion of minimum 5 (five) years' service in their respective post. The selection grade would be allowed to one out of three or less than three of the employees. The Ministry of Local Government, Rural Development and Cooperative vide Memo dated 12.02.1994 directed the Chief Executive Officer, Dhaka City Corporation to take necessary steps for the implementation of the said office Memo dated 18.01.1983 issued for providing selection grade to the concerned employees of erstwhile Dhaka City

Corporation. As per the aforesaid office Memos dated 18.01.1983 and 12.02.1994, the petitioners were entitled to get selection grade on which they completed five years' service in their respective posts but unfortunately, the petitioners were not given the selection grade to date. In compliance with the aforesaid two office Memorandums dated 18.01.1993 and 12.02.1994, the erstwhile Dhaka City Corporation vide Memo No. 924 dated 23.12.2003 granted selection grade to 58 (fifty-eight) employees but most unfortunately, the petitioners were not given the selection grade as yet. In 2012 the Dhaka City Corporation was divided into Dhaka South City Corporation and Dhaka North City Corporation and the service of the petitioners were placed under Dhaka North City Corporation. The Dhaka South City Corporation vide office Memo No. 46.207.000.03.01.1375.2012/11 dated 06.01.2015 granted selection grade to its 57(fifty-seven) employees with effect from the date of completion of five years' service in their respective posts. Following the said two office Memorandums dated 18.01.1993 and 12.02.1994, unfortunately, the petitioners were not granted selection grade who are currently serving under the Dhaka North

City Corporation (hereinafter referred to as “the DNCC”). It appears from the Memo dated 06.01.2015, twenty-four employees serving under Dhaka South City Corporation who were appointed by the same appointment letter as that of the present petitioner Nos. 14-25 to the post of Lower Division Assistant-Cum-Typist were granted the selection grade with the retrospective effect but most unfortunately, the petitioners have not been granted the selection grade to date. So, it is apparent that the petitioners have been seriously discriminated and deprived of getting the selection grade. The petitioners served representation requesting the respondents to grant selection grade following the office Memos dated 18.01.1983 and 12.02.1994 but the respondents did not pay any heed thereto. Lastly, the petitioners on 15.04.2019 through their learned Advocate served notice demanding justice for the same purpose but the respondents did not take any steps to grant eligible selection grade to the petitioners and kept silent inexplicably.

Mr. Mahbub Shafique, learned Advocate for the petitioners at the outset submits that all the petitioners completed five years’ service long before and they are

eligible to get selection grade following the Government decisions dated 18.01.1983 and 12.02.1994 but the respondents did not take any steps to grant selection grade to the petitioners and as such, the inaction of the respondents in granting selection grade is liable to be declared to be without lawful authority and is of no legal effect.

The learned Advocate submits further that erstwhile Dhaka City Corporation vide office Memo dated 23.12.2003 granted selection grade to some other employees following the Government decisions dated 18.01.1983 and 12.02.1994 but the respondents did not grant selection grade to the petitioners to date and as such, a direction should be given upon the respondents to grant eligible selection grade to the petitioners.

The learned Advocate next submits that following the said Memos dated 18.01.1993 and 12.02.1994, the Dhaka South City Corporation vide office Memo dated 06.01.2015 granted selection grade to certain employees with retrospective effect who were appointed with the petitioners by the same appointment letter but the respondents most arbitrarily did not grant selection grade to

the petitioners and as such the silence of the respondents in this regard should be declared to be without lawful authority and is of no legal effect.

The learned Advocate submits further that the inaction of the respondents in not granting selection grade to the petitioners is highly prejudicial as well as discriminatory and as such, the respondents should be directed to grant eligible selection grade to all the petitioners forthwith.

The learned Advocate lastly submits that under Articles 27, 29 and 31 of the Constitution of the Republic of Bangladesh, the petitioners have fundamental rights to be treated equally and to get equal protection of law but in the instant case, the respondents deprived the petitioners of their lawful right of selection grade defying the decisions of the Government and as such, the inaction of the respondents should be declared to be without lawful authority and is of no legal effect.

None appears to oppose the *Rule*.

We have perused the materials on records and considered the submissions of the learned Advocate for the petitioners.

It appears that all the petitioners appointed to the then Dhaka City Corporation to the post of Lower Division Assistant-Cum-Typist in between 25.08.1983 to 15.01.2009. At present all the petitioners have been serving to DNCC except the petitioner No. 5 who retired from his service on 31.12.2014. It further appears that the then Ministry of the Finance and Planning vide Memo dated 18.01.1983 decided to grant selection grade to the Stenographer, Typist, Section Assistant, Budget Examiner and Record Keeper subject to completion of minimum 5 (five) years' service in their respective post. The selection grade would be given to one of the employees out of three or less sequentially according to their seniority. Following the decision of the Government dated 18.01.1983 and 12.02.1994, the Ministry of Local Government, Rural Development and Cooperative directed the Chief Executive Officer of Dhaka City Corporation to grant selection grade to the eligible employees of the Corporation. Following the Government decision, the erstwhile Dhaka City Corporation vide office Memo No. 924 dated 23.12.2003 granted selection grade to its 15(fifteen) employees who at the relevant time were serving as Section Assistant, Upper Division Assistant-

Cum-Accountant, Lower Division Assistant-Cum-Typist. From the materials on record, it appears that all the petitioners have been entitled to grant selection grade after completion of five years' service in their respective post but the respondents despite repeated request and representations did not grant the selection grade to the petitioners which they were required by law to do. It further appears that the Dhaka South City Corporation granted selection grade to its employees but the petitioners have been deprived of getting their selection grade though they have been eligible to get the same after completion of five years service long ago. So, the petitioners are deprived of getting their legal right of selection grade and their fundamental rights also infringed and they are not equally treated following the law. In such facts and circumstances, we find it necessary to issue a direction upon the respondents to grant eligible selection grade to the petitioners as per law.

Having gone through the entire gamut, we find merit in the *Rule*.

As a result, the *Rule* is made absolute.

The respondents are hereby directed to grant eligible selection grade to the petitioners within 30(thirty) days from the date of receipt of a copy of this judgment.

Gobinda Chandra Tagore, J:

I agree.

Ohid/B.O