

LEX/BDAD/0176/2023

Equivalent/Neutral Citation: 76 DLR(AD) (2024) 121, 15LM(AD) 2023 228

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION)

Civil Appeal No. 482 of 2019 and Civil Review Petition No. 190 of 2019

Decided On: 11.05.2023

The Secretary, Ministry of Law, Justice and Parliamentary Affairs, Government of the People's Republic of Bangladesh and Ors. **Vs.** Md. Touhidul Islam and Ors.

Hon'ble Judges/Coram:

Hasan Foez Siddique, C.J., Obaidul Hassan, Borhanuddin, M. Enayetur Rahim, Md. Ashfaqu Islam, Md. Abu Zafor Siddique and Jahangir Hossain, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: A.M. Amin Uddin, Attorney General, Amit Das Gupta, Deputy Attorney General instructed by Haridas Paul and Mahmuda Begum, Advocates-on-Record

For Respondents/Defendant: Zulhas Uddin Ahmed, Advocate instructed by Zainul Abedin, Advocate-on-Record

JUDGMENT

Md. Abu Zafor Siddique, J.

1. Delay of 500 days in filing the Civil Review Petition No. 190 of 2019 is hereby condoned.
2. The above mentioned civil appeal and civil review petition have been heard analogously since the facts and the questions of law involved in the appeal and the review petition are identical.
3. This civil appeal, by leave, is directed against the judgment and order dated 20.11.2016 passed by the High Court Division in Writ Petition No. 6896 of 2010 making the Rule absolute.
4. This civil review petition is directed against the order dated 14.12.2017 passed by this Division in Civil Petition for Leave to Appeal No. 2527 of 2017 dismissing the petition as time barred.
5. These civil appeal and civil review petition are heard together, and they are dealt with by this single judgment.
6. The facts for disposal of the appeal in brief, are that, the writ-petitioners (respondents herein) filed the writ petition stating, inter alia, that they are Editors of various sections of the High Court Division, Supreme Court of Bangladesh. They were appointed as Lower Division Assistants and joined in the said post. They had been discharging their duties with the satisfaction of the authority. Therefore, they were promoted several times to the next higher scales. Eventually, they were promoted to the post of Editor and joined in the said post. Since their promotion to the post of Editor, they have been discharging their duties with the utmost satisfaction of the authority

concern. The functions of Editors are very responsible as they prepare all paper books, both civil and criminal cases and supervise their subordinate staffs, such as, Upper Division Assistant, Lower Division Assistant, Typist and other staffs. In the year 1985, the scales of pay for the Superintendent and the Editor of paper books were made equal with effect from 22.02.1983 although the Editor used to enjoy higher scales of pay previously and their position was above Superintendent from 1947 up to 16 August, 1957. Therefore, the Editors have been suffering in both ways i.e. losing the status and scales of pay. The posts of Assistant Bench Officer, P.A-Cum-Stenographer, Steno Typist, Upper Division Assistant and Translator were below the post of Editor but unfortunately the Assistant Bench Officer, P.A-Cum-Stenographer and Upper Division Assistant were declared as Class-I gazetted posts. Thus, the post of Editor deserves to be upgraded to Class-I gazetted posts. Considering the said facts as well as the responsibility of the Editors, they applied for upgradation of the post of Editor to Class-I gazetted post but it was not considered by the authority. In the said circumstances the Editors filed the writ petition for upgradation of the post of Editor to Class-I gazetted post and obtained a rule.

7. The writ-respondents (Appellants herein), Government of Bangladesh represented by the Secretary, Ministry of Law, justice and Parliamentary Affairs contested the rule by filing an affidavit-in-opposition controverting the statements made in the writ petition and contending, inter alia, that both the posts of Superintendent and Editor were Class-III category of posts in 1985. The Upper Division Assistant is a Class-H gazetted post with higher pay scale. Therefore, upgradation of the post of Editor from class-III to class-I gazetted post has no legal basis. Moreover, it would create administrative problems. The writ petition in the form of mandamus is not also maintainable and, as such, the Rule is liable to be discharged.

8. After hearing the parties, perusing the relevant documents and connected papers on record by the impugned judgment and order, the High Court Division made the Rule absolute and directed the writ-respondents (appellants herein) "to upgrade the status of the petitioners to Class-II gazette post and grant them the commensurable pay scale with effect from the date of their entitlement. The respondents are further directed to pay all arrear and other financial benefits to the petitioners according to their entitlement within 2(two) months from the date of receipt of a copy of this judgment and order."

9. Being aggrieved the writ-respondents filed Civil Petition for Leave to Appeal No. 1263 of 2018 before this Division and leave was granted giving rise to the instant appeal.

10. Mr. A.M. Amin Uddin, learned Attorney General in both the case on behalf of the appellants and petitioners submitted that the High Court Division erred in law in making the rule absolute and giving direction to upgrade the status of the respondents-writ-petitioners to class-II gazetted post and grant them the commensurable pay scale and further directing to pay them all arrears and benefit without considering the provisions laid down in the High Court Division (Employees) Appointment Rules, 1987 which has not even been challenged by the writ-petitioners and, as such, the impugned judgment and order is liable to be set aside and the appeal may kindly be allowed. He further submitted that since there are conflicting judgments of the High Court Division in respect of promotion, up-gradation of pay scales of the Supreme Court Employees and, as such, the impugned judgment and order is liable to be set aside and the appeal may kindly be allowed.

11. Mr. Zulhas Uddin Ahmed, learned Advocate appearing on behalf of respondent Nos. 1-3 and 6-7, Mr. Zainul Abedin, learned Advocate-on-record appearing on behalf of respondent No. 4, Mr. Sharif Uddin Chaklader, learned Advocate appearing on behalf of respondent No. 5, in Civil Appeal No. 482 of 2019 and Mr. Probir Neogi, learned Senior Advocate appearing on behalf of respondent No. 1, in Civil Review Petition No. 190 of 2019 made submissions in support of the impugned judgment and order of the High Court Division.

12. On perusal of the impugned judgment it appears that the High Court Division took notice of the organogram of Service Rules 1987. According to Bangladesh Supreme Court High Court Division (Employee) Appointment Rules, 1987 the post of Editor was in serial No. 18 and they were holding Class-III non-gazetted status and the post of Bench Officer although was placed in the upper serial No. 9 but they were also the same class-III non-gazetted status. But since the status of the B.O. was upgraded to class-I gazetted status but the status of the respondents were not upgraded. The High Court also found that the position of the UDA who were placed below the Editor in the said organogram was upgraded to class-II gazetted position and as such the respondents being similarly situated with the other employees as well as the UDA which is clear and positive discrimination against the present respondents. Considering the above facts and circumstances the High Court Division held that the writ-petitioners had legitimate expectation that they ought to be placed at least to such a position that they do not become sub-ordinate to those who were once below them in the gradation list.

13. It appears that the post of the U.D.A. of the High Court Division which was below in the serial of the respondents, were upgraded in the judgment and order dated 18.08.2004 passed in Writ Petition No. 7478 of 2003. Our Constitution has given a mandate that all citizens are equal before law and entitled to equal protection of law. It is evident that those who were below in serial than the post of the respondents were upgraded but the post of the respondents was not upgraded and as such this is glaring instance of discrimination with them and as such we do not find any substance in the submission of the learned Attorney General for which the appeal is liable to be dismissed.

14. Moreover, at the time of granting leave for which the instant appeal has arisen an application for addition of party was filed by Md. Abul Kalam Azad, son of late Omar Ali, Paper Book Editor, Appellate Division, Supreme Court of Bangladesh with a prayer for adding him as respondent No. 4 in the instant appeal. However, in that leave granting order this Division ordered that the application is to be kept with the record for consideration at the time of hearing of the appeal.

15. Later, while the appeal was pending before this Division Md. Belal Hossain son of Md. Abdus Salam, posted as Committee Clerk in the High Court Division through an application before the learned Judge-in-Chamber applied to be added as respondent No. 5 in this civil appeal. After that, Md. Golam Rabbani Molla and Rajib Chandra Datta after getting promotion from translator to Editor of the High Court Division also applied to be added as respondent Nos. 6 and 7 before the learned Judge-in-Chamber and after hearing their payer it was allowed by the learned Judge-in-Chamber.

16. The learned Advocate for the applicant Md. Abul Kalam Azad submits that since on similar footing the writ-petitioners, that is, the Paper Book Editors of the High Court Division were upgraded and granted class-II gazetted status along with other benefits commensurate to the post of the present applicant being Paper Book Editor of the Appellate Division and similarly place him with that of the writ-petitioners otherwise he

will suffer irreparable loss and injury for the glaring discrimination to the prejudice of the applicant.

17. Having heard the learned Advocate and on perusal of the application along with the papers annexed to it and the impugned judgment of the High Court Division, we find substance in the application for addition of party as well as force in the submission of the learned Advocate for the applicant.

18. Accordingly we are of the view that the applicant Md. Abul Kalam Azad, Paper Book Editor, Appellate Division, Supreme Court of Bangladesh is entitled to get the same benefit as respondent No. 4 which is granted to respondent Nos. 1, 2 and 3 and for the same reasons as well added respondent Nos. 6 and 7 are also entitled to get the same benefit granted to the respondents in writ petition No. 6896 of 2010 since they hold the same post in the same office and it will be a instance of glaring discrimination if they hold different status in the same office and are paid differently for the same job.

19. But in case of added respondent No. 5, Md. Belal Hossain who is a Committee Clerk, his footing is not the same because he belongs to a different post and the pay scale of Committee Clerk and the Editors are not the same as well. So, he cannot claim the benefit that is granted to the writ-petitioners in writ petition No. 6896 of 2010 on the same ground for which the other added respondents are entitled to get it.

20. Now, in respect of Civil Review Petition No. 190 of 2019 it appears that review respondent Nos. 1-50 filed writ petition No. 9364 of 2016 in the form of mandamus seeking direction upon the writ-respondents with the scale of grade-8 on the ground that on similar footings earlier the High Court Division in writ petition No. 6895 of 2010 filed by one Md. Abu Sayed, Superintendent of the Supreme Court of Bangladesh, High Court Division, made the Rule absolute directing the respondents to upgrade the post of the petitioner of that writ petition to class-I gazetted post and granting the pay scale of 12,000-21,600/- as per National Pay Scale, 2009 with effect from the date of judgment. It appears that the petitioner of writ petition No. 9364 of 2016 and the petitioner of writ petition No. 6895 of 2010 are the Superintendents of Bangladesh Supreme Court, which they are on the similar footing. The High Court Division after hearing the parties and on perusal of the materials on record including the judgment and order dated 22.10.2014 passed in writ petition No. 6895 of 2010 made the rule absolute in writ petition No. 9364 of 2016 with similar direction granting them Pay Scale of Tk. 12,000-21,600/- as per National Pay Scale of 2009 by the judgment and order dated 31.08.2016. Being aggrieved by that judgment and order dated 31.08.2016 passed in writ petition No. 9364 of 2016 the writ-respondent i.e. the Government moved to this Division in Civil Petition for Leave to Appeal No. 2527 of 2017. This Division upon hearing the learned Advocate for both the parties dismissed the civil petition as barred by limitation on 14.12.2017. Hence, the leave petitioner filed this Civil Review Petition No. 190 of 2019 for reviewing the order dated 14.12.2017 passed by this Division dismissing the civil petition for leave to appeal as barred by limitation.

21. It appears from the order dated 14.12.2017 passed by this Division in Civil Petition for Leave to Appeal No. 2527 of 2017 that this Division found the leave petition was out of time for 24 days but the explanation offered seeking condonation of delay was not at all satisfactory. Accordingly, the civil petition for leave to appeal was dismissed as barred by limitation.

22. Having gone through the application for condonation of delay filed by the Government along with that civil petition it appears that the application does not

contain any specific explanation as required under section 5 of the Limitation Act which prescribes that every days delay has to be explained properly up to the satisfaction of the Court concerned. In that circumstances the order dated 14.12.2017 has been passed dismissing the civil petition for leave to appeal and we do not find any error apparent on the face of it discovered by the review petition which is liable to be dismissed.

23. In the circumstances, there being no grounds according to the provision in order XLVII Rule 1 of the Code of Civil Procedure, the review petition is dismissed.

24. Accordingly, there being no merit in the civil appeal it is also liable to be dismissed.

In the result, the civil appeal and the civil review petition are hereby dismissed.

The added respondents, except respondent No. 5, Md. Belal Hossain who is a Committee Clerk, being Editors of the Bangladesh Supreme Court are entitled to get the same benefit derived from Writ Petition No. 6896 of 2010.

© Manupatra Information Solutions Pvt. Ltd.