

6 SCOB [2016] HCD 34

**HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

WRIT PETITION NO. 9944 of 2012

Dr. Moazzem Hossain
..... Petitioner

Versus

**Bangladesh represented by the
Secretary, Ministry of Education,
Bangladesh Secretariat, Ramna, Dhaka
and others**
.....Respondents

Mr. Mohammed Faridul Islam with
Ms. Shamsun-nahar (Laizu) Advocates
.....For the petitioner.

Mr. Kamal-Ul Alam with
Ms. Shahanaj Akther, Advocates
....For the respondent nos. 3 & 4.

Heard on 07.04.2015, 22.04.2015,
17.05.2015, 20.05.2015 & 30.06.2015.

Judgment on 08.07.2015.

Present:

**Mr. Justice Moyeenul Islam Chowdhury
And
Mr. Justice Md. Ashraful Kamal**

Writ Court is also a Court of equity:

Will the petitioner continue to suffer loss of his seniority through no fault of his own? Is the Writ Court powerless in this regard? In this connection, it may be pointed out that the Writ Court is also a Court of equity. The principles of natural justice, equity and good conscience demand that the seniority of the petitioner be restored at least from the date of promotion of his colleague Dr. Md. Jubair Bin Alam to the post of Personal Professor on 06.11.2004 who admittedly made his application therefor on 28.12.2003 which was subsequent to the date of making of the application by the petitioner on 21.12.2003. In this way, the injustice done to the petitioner, according to us, can be remedied.
...(Para 25)

Judgment

MOYEENUL ISLAM CHOWDHURY, J:

1. On an application under Article 102 of the Constitution of the People's Republic of Bangladesh filed by the petitioner, a Rule Nisi was issued calling upon the respondents to show cause as to why the Memo No. pwwqj/3H-168/91-7940 dated 11.06.2012 should not be declared to be without lawful authority and of no legal effect and why the respondents should not be directed to grant the petitioner's seniority both in the Bangladesh University of Engineering and Technology (BUET) and the Department of Civil Engineering of BUET by considering him as a Personal Professor with effect from 21.12.2003, the date of his filing application for the said post and to provide the petitioner with the balance monthly salaries

and allowances as a Personal Professor from the said date (21.12.2003) and/or such other or further order or orders passed as to this Court may seem fit and proper.

2. The case of the petitioner, as set out in the Writ Petition, in short, is as follows:

Currently the petitioner is a Professor of the Department of Civil Engineering in Bangladesh University of Engineering and Technology (BUET), Dhaka. As a teacher, he has a bright academic carrier to his credit. By dint of his merit and efficiency as a teacher, he was promoted to the post of Associate Professor in due course. Anyway, on 21.12.2003, he made an application to the Registrar, BUET for the position of Personal Professorship during the tenure of the erstwhile Vice-Chancellor Professor Dr. Alee Murtaza. But Dr. Alee Murtaza, out of malafides or bad faith, passed an order that the petitioner's application should not be processed as he was staying abroad. Being a victim of the then Vice-Chancellor's personal grudge and animosity, the petitioner was deprived of his much deserved promotion and plunged in the abyss of despair when his colleagues obtained Professorship on time. However, after a long lapse of time, the application of the petitioner for the post of Personal Professor was placed before the Deans' Committee of BUET and all the Members of the Deans' Committee decided on 08.01.2007 in favour of processing the application and issued a note to the effect that "though there is no bar in the rules, applications from candidates on leave serving as teachers abroad were not processed from the Registrar's office during the last four years". By implication, the Deans' Committee admitted that the petitioner fell a victim to the whim, caprice and arbitrariness of the then Vice-Chancellor and lagged behind in respect of seniority. When another Vice-Chancellor of BUET assumed office, the University Syndicate considered the petitioner's application as a result of which he was granted Personal Professorship by an office-order vide no. *pw0qj/f*/Hp-1/648 (60)* dated 07.08.2007. But in the meantime, the petitioner lost his deserved seniority both in the BUET as well as in the Department of Civil Engineering. Thereafter on 14.01.2008, he submitted an application to the Vice-Chancellor and Chairman of the Syndicate, BUET praying for restoration of his seniority, but in vain. However, the petitioner's request for restoration of his seniority jolted the BUET Authority out of their slumber and they realized that like the petitioner, many teachers were being victimized by the whim and caprice by the authority. Consequently on 29.06.2009, the Syndicate, with a view to protecting the teachers from the arbitrariness and discrimination of the authority, made a regulation to the effect that a teacher applying for the post of Associate Professor or Professor should be deemed to be serving in the said post since the date of his filing application therefor if he is in active service of the BUET from the date of his filing application to the date of approval by the Selection Board (SB) and the Syndicate. The regulation was notified through an office-order being no. *pw0qj/p-57/127* dated 12.07.2009. As the regulation took effect from the date of its framing on 29.06.2009, the petitioner did not get any redress for the injustice done to him. On 13.12.2010, he submitted another application to the Vice-Chancellor of BUET, ex-officio Chairman of the University Syndicate, seeking restoration of his lost seniority. However, one Dr. Md. Jubair Bin Alam, the then Associate Professor, Department of Civil Engineering filed an application on 28th December, 2003 for the post of Personal Professor. As his application was processed on time, he became a Personal Professor by an office-order bearing no. *pw0qj/f*/Hp-1/2042 (60)* dated 06.11.2004. But regrettably, though the petitioner submitted his application before Dr. Md. Jubair Bin Alam, his application was not processed on time due to the malafide intention of the then Vice-Chancellor. In consequence, the petitioner became much junior to his contemporaries including Dr. Md. Jubair Bin Alam. Despite the admission of the Deans' Committee that the petitioner was a victim of arbitrariness and caprice of the then Vice-Chancellor, the Syndicate expressed its reluctance to redress the wrong done to the petitioner stating that there was no scope whatsoever for

getting retrospective seniority as the decision of the Syndicate took effect from 29.06.2009. This decision of Syndicate was communicated to the petitioner by the impugned Memo No. পৃষ্ঠা/3H-168/৯-7940 dated 11.06.2012. Finding no other alternative, the petitioner filed the Writ Petition and obtained the instant Rule.

3. In the Supplementary Affidavit dated 19.04.2015 filed by the petitioner, it has been stated that in the backdrop of a large number of qualified and experienced teachers and lesser number of posts at higher levels and consequential blockade of posts at those levels, posts of Personal Associate Professor and Personal Professor were created by the BUET Authority.

4. In the Supplementary Affidavit dated 24.05.2015 filed by the petitioner, it has been averred that the Syndicate of the BUET by its Memo Nos. পৃষ্ঠা/ফা/বই(ঢাঢা)/Hp-1/15471/৯-5649 dated 12.05.2015 and পৃষ্ঠা/ফা/বই(ঢাঢা)/Hp-1/15922/৯-5650 dated 12.05.2015 gave effect to the appointment of Mrs. Fahima Khanum and Dr. Md. Farhad Mina to the post of Personal Professor with effect from 26.01.2014 and 23.08.2014 respectively which were the dates of their filing applications therefor pursuant to the decision of the Syndicate dated 29.06.2009.

5. The respondent nos. 3 and 4 have opposed the Rule by filing an Affidavit-in-Opposition. Their case, as set out in the Affidavit-in-Opposition, in short, runs as follows:

The petitioner has an alternative and equally efficacious remedy available to him against the impugned Memo dated 11.06.2012 before the Chancellor of the BUET under Article 17(1) of the Second Statute of the University made under the Bangladesh Engineering and Technological University Ordinance, 1961. Besides, he has a right to prefer a revision against the impugned Memo dated 11.06.2012 under Article 23 (a) of the said Second Statute of the University. Since the petitioner has not availed himself of either of the fora, the Writ Petition is not maintainable. As against the allegation of malafides or bad faith of the erstwhile Vice-Chancellor of the BUET, namely, Dr. Alee Murtaza, the petitioner did never make any grievance or seek any remedy thereabout before any appropriate authority prior to filing of the Writ Petition. As the principal executive of the University, the Vice-Chancellor took the decision that “Process করা ঠিক হবে না। দেশে ফেরত এসে join করলে process করা হবে” as mentioned in Annexure-‘B’ to the Writ Petition. Until 30.06.2009, there was no specific rule or procedure or time-frame fixed for processing the application of an applicant for filling up the post of Personal Professor. As such, time varied from applicant to applicant of different departments for processing their such applications for various reasons and requirements. The petitioner’s application for Personal Professorship was duly processed in the ordinary course of things. He was granted Personal Professorship by the Syndicate on 07.08.2007 and he duly joined his promoted post on the self-same date (07.08.2007). However, the Syndicate in its meeting dated 29.06.2009 approved the Deans’ Committee’s recommendation that if a teacher who has applied for the post of Professor is in active service of the University from the date of his application to the date of placing the same before the Selection Board (SB) and the Syndicate for its approval, his appointment will be effective from the date of his application and the said rule framed by the Syndicate was notified through an office-order dated 12.07.2009 to be effective with effect from 30.06.2009. The petitioner was appointed as a Personal Professor on 07.08.2007, that is to say, long before coming into force of the said rule framed by the Syndicate on 30.06.2009. So the above rule has no manner of application to the petitioner who filed his application for Personal Professorship on 21.12.2003 and was appointed as a Personal Professor by the Syndicate vide its office-order no. পৃষ্ঠা/ফা/Hp-1/৯-648 (60) dated 07.08.2007. The petitioner’s application dated 13.12.2010 seeking restoration of his seniority was duly considered by the Deans’ Committee. By its decision dated 06.07.2011, the Deans’ Committee recommended that in view of the decision of the Syndicate dated 29.06.2009,

there was no scope for restoration of the petitioner's seniority from the date of his application dated 21.12.2003. The Syndicate of the BUET in its meeting held on 31.03.2012 considered the proposal for restoration of the petitioner's seniority and decided that his seniority could not be restored and the decision of the Syndicate in this regard was duly communicated to the petitioner by the Memo No. pu0qj/3H-168/9-7940 dated 11.06.2012. As such, the Rule is liable to be discharged.

6. At the outset, Mr. Mohammed Faridul Islam, learned Advocate appearing on behalf of the petitioner, submits that indisputably the petitioner made an application for Personal Professorship on 21.12.2003 in the Department of Civil Engineering of the BUET, Dhaka and it is further admitted that as the petitioner was staying in Malaysia at the relevant point of time, the then Vice-Chancellor did not process the application of the petitioner for his promotion to the post of Personal Professor as a result of which a long period of time elapsed causing grave prejudice to the petitioner and ultimately after change of stewardship of the University, the application of the petitioner was processed and he was promoted to the post of Personal Professor by the Memo dated 07.08.2007 as evidenced by Annexure-'D' to the Writ Petition; but meanwhile the petitioner lost his deserved seniority and became junior to his colleagues due to the malafides or bad faith, whim and caprice of the then Vice-Chancellor.

7. Mr. Mohammed Faridul Islam further submits that on being promoted to the post of Personal Professor by the Memo dated 07.08.2007, the petitioner made an application for restoration of his seniority by Annexure-'E' dated 14.01.2008 at the earliest opportunity, but the University Authority did not respond thereto and for that reason, the petitioner made another application for restoration of his seniority on 13.12.2010 which was rejected by the University Authority by the impugned order dated 11.06.2012 as evidenced by Annexure-'J-1' to the Writ Petition.

8. Mr. Mohammed Faridul Islam also submits that it is on record that one Dr. Md. Jubair Bin Alam was promoted to the post of Personal Professor in the Department of Civil Engineering of the BUET by an office-order dated 06.11.2004 (Annexure-'H-1' to the writ petition), though he filed his application therefor on 28.12.2003 and had the University Authority processed the application of the petitioner on time, he would have become a Personal Professor before Dr. Md. Jubair Bin Alam; but due to personal grudge, animosity and bad faith of the then Vice-Chancellor, the application of the petitioner was not processed in consequence of which he was victimized and lost his seniority as Professor, notwithstanding the fact that he was promoted to the post of Personal Professor at a belated stage on 07.08.2007.

9. Mr. Mohammed Faridul Islam next submits that although the Syndicate decided that candidates making applications for the posts of Personal Associate Professors and Personal Professors would be promoted from the dates of their applications as per the decision dated 29.06.2009, yet the fact remains that both the petitioner and Dr. Md. Jubair Bin Alam were similarly situated and in that view of the matter, it was morally and legally incumbent on the part of the University Authority to promote the petitioner to the post of Personal Professor of the Department of Civil Engineering at least with effect from 06.11.2004, that is to say, the date on which Dr. Md. Jubair Bin Alam was promoted to the post of Personal Professor and this having not been done by the University Authority, the petitioner did not have a square deal.

10. Mr. Mohammed Faridul Islam also submits that the Writ Petition is very much maintainable under Article 102 of the Constitution inasmuch as there is no other equally efficacious remedy for restoration of his seniority and the fora of appeal and revision are not applicable in the case of the petitioner in that those two fora are meant for the persons who have been found guilty and meted out punishment under the Bangladesh Engineering and Technological University Employees (Efficiency and Discipline) Statute (The Second Statute of the University) and this is why the petitioner was constrained to file the Writ Petition in the High Court Division for redress of his genuine grievances.

11. Mr. Mohammed Faridul Islam further submits that admittedly the application of the petitioner was not processed on time on the score of his staying abroad; but stunningly enough, the same was processed at a subsequent stage when he was also abroad and this self-contradictory stance of the University Authority is responsible for loss of seniority of the petitioner as a Professor of the Department of Civil Engineering and the University Authority did not consider this scenario before issuance of the impugned order dated 11.06.2012 rejecting the application of the petitioner for restoration of his seniority.

12. Per contra, Mr. Kamal-ul-Alam, learned Advocate appearing on behalf of the respondent nos. 3 and 4, submits that as per Article 17(1) of the Second Statute of the University, the petitioner ought to have preferred an appeal to the Chancellor of the University against the impugned order dated 11.06.2012 and the appellate forum is, no doubt, an equally efficacious remedy for redress of the grievances of the petitioner, but he failed to avail himself of the appellate forum at his own peril and that being so, the Writ Petition is incompetent.

13. Mr. Kamal-ul-Alam further submits that as per Article 23 (a) of the Second Statute of the University, the petitioner could have filed an application for revision of the impugned order dated 11.06.2012 to the Chancellor of the University; but admittedly he did not prefer any revision in accordance therewith and in this perspective, the petitioner also failed to avail himself of this equally efficacious remedy disentitling him to the invocation of the writ jurisdiction of the High Court Division under Article 102 of the Constitution.

14. In this respect, Mr. Kamal-ul-Alam adverts to the decision in the case of the Controller of Examinations, University of Dhaka and others...Vs...Mahinuddin and others reported in 44 DLR (AD) 305.

15. Mr. Kamal-ul-Alam further submits that it is true that as per the order of the then Vice-Chancellor of the University, the application for Personal Professorship of the petitioner was not processed at the relevant point of time and the Vice-Chancellor was authorized to pass such an order as he deemed fit; but it cannot be said by any stretch of imagination that he acted out of malafides or bad faith in not passing any order for processing the application of the petitioner for the post of Personal Professorship on time.

16. Mr. Kamal-ul-Alam next submits that the University Authority legally and validly issued the impugned order dated 11.06.2012 rejecting the application for restoration of seniority of the petitioner in view of the decision of the Syndicate dated 29.06.2009 and this is why no exception can be taken thereto.

17. In a last-ditch attempt, Mr. Kamal-ul-Alam submits that it is an admitted fact that the petitioner made the application for Personal Professorship on 21.12.2003 and he was

promoted to the post of Personal Professor by the Memo dated 07.08.2007; but in the meantime, 32 (thirty-two) teachers were appointed as Personal Professors in various Departments of the University and if the petitioner is given seniority in the post of Personal Professor from the date of his application, that is to say, on 21.12.2003, then there will be serious anomalies in the seniority list of the said 32 (thirty-two) Professors who have been working as Personal Professors since their appointment between the period commencing from 22.02.2004 till the date of the petitioner's appointment as Personal Professor on 07.08.2007.

18. We have heard the submissions of the learned Advocate Mr. Mohammed Faridul Islam and the counter-submissions of the learned Advocate Mr. Kamal-ul-Alam and perused the Writ Petition, Supplementary Affidavits, Affidavit-in-Opposition and relevant Annexures annexed thereto.

19. To begin with, we would like to address the question of maintainability or otherwise of the Writ Petition under Article 102 of the Constitution. According to the submission of Mr. Kamal-ul-Alam, the petitioner could have preferred an appeal under Article 17(1) or a revision under Article 23(a) of the Second Statute of the University; but admittedly he did not avail himself of either of the fora and since the appellate forum, or for that matter, the revisional forum provides an equally efficacious remedy for the petitioner, the Writ Petition is necessarily incompetent.

20. It transpires that the Second Statute of the University deals with the efficiency and disciplinary matters of every person employed in the University. It is an indubitable fact that the petitioner was not found guilty and meted out any punishment pursuant to the Bangladesh Engineering and Technological University Employees (Efficiency and Discipline) Statute on the basis of any departmental proceeding. So the question of invocation of the appellate forum as contemplated by Article 17(1) or the revisional forum as contemplated by Article 23(a) of the Second Statute of the University is out of the question. We have gone through the decision reported in 44 DLR (AD) 305 relied on by Mr. Kamal-ul-Alam. The facts and circumstances of that case are ex-facie distinguishable from those of the instant case. Therefore the reliance of Mr. Kamal-ul-Alam on the decision reported in 44 DLR (AD) 305 is of no avail. This being the position, we are led to hold that the submission of Mr. Kamal-ul-Alam that the Writ Petition is not maintainable under Article 102 of the Constitution is bereft of any substance. Against this backdrop, it necessarily follows that the Writ Petition is very much maintainable under Article 102 of the Constitution.

21. It has been alleged on the side of the petitioner that due to personal grudge, animosity and bad faith or malafides of the then Vice-Chancellor of the BUET, namely, Dr. Alee Murtaza, the application of the petitioner for the post of Personal Professorship was not processed immediately after 21.12.2003, the date on which the petitioner made his application. It is true that Dr. Md. Jubair Bin Alam, a colleague of the petitioner of the self-same Department of Civil Engineering made his application for the post of Personal Professorship on 28.12.2003 and his application was duly processed and considered on time and he was promoted to the post of Personal Professor on 06.11.2004 as evidenced by Annexure-'H-1' to the Writ Petition. The specific reason for not processing the application of the petitioner on time was stated to be his absence in Bangladesh. The record shows that the petitioner was granted leave without pay from 16.02.2004 to 15.02.2007 for service in Malaysia and that was the only reason for not processing the application of the petitioner as per the order of the then Vice-Chancellor as evidenced by Annexure-'B-1' to the Writ

Petition. It is admitted that when the application of the petitioner was processed for promotion to the post of Personal Professor, he was also abroad. In this context, we feel tempted to refer to Annexure-‘C’ dated 08.01.2007. It appears from Annexure-‘C’ dated 08.01.2007 that though there is no bar in the rules, applications from candidates on leave serving as teachers abroad were not processed from the Registrar’s office during the last four years. On the one hand, the application of the petitioner was not processed on time because he was staying abroad. But on the other hand, after the change of stewardship of the University, his application was processed when he was also abroad. So the stance of the University Authority in this regard seems to be self-contradictory, self-defeating, antithetical and paradoxical. The University Authority could have processed the application of the petitioner for the post of Personal Professorship soon after he made his application on 21.12.2003 in the absence of any embargo on his stay abroad. The cause assigned for not processing the application of the petitioner on time, as we see it, is not sustainable in law.

22. Now a pertinent question arises: was the former Vice-Chancellor of the BUET actuated by any malice or bad faith in not processing the application of the petitioner immediately after he made the same on 21.12.2003? There is nothing on record to indicate that the petitioner was singled out for victimization or harassment on the ground of his stay abroad during the tenure of the erstwhile Vice-Chancellor of the University Dr. Alee Murtaza. Rather Annexure-‘C’ dated 08.01.2007, as referred to above, clinches the whole issue. Mr. Mohammed Faridul Islam has failed to point out the case of a single teacher of the BUET whose application was processed for promotion either to the post of Personal Associate Professor or to the post of Personal Professor during his or her absence abroad. In such a posture of things, we are unable to come to a finding that the petitioner fell a victim to the alleged whim, caprice and malafides or bad faith of the former Vice-Chancellor of the University. But by the same token, we reiterate that in all fairness and in the absence of any embargo or prohibition in the relevant rules, it was incumbent upon the University Authority to process the application of the petitioner for promotion to the post of Personal Professor with utmost diligence and promptitude as soon as he made it on 21.12.2003. Be that as it may, in view of the aforesaid discussions, we are of the opinion that no malice or bad faith can be attributed to the then Vice-Chancellor of the BUET Dr. Alee Murtaza for not processing the application of the petitioner for the post of Personal Professor at the relevant point of time.

23. We find that by Annexure-‘E’ dated 14.01.2008, the petitioner sought for restoration of his seniority at the earliest opportunity after his promotion as Personal Professor on 07.08.2007. So it appears that the petitioner was vigilant and diligent in the matter of restoration of his seniority as a Professor of the Department of Civil Engineering of the BUET, though that Annexure-‘E’ dated 14.01.2008 went unheeded. Anyway, the petitioner made another application for restoration of his seniority to the University Authority on 13.12.2010 which was eventually turned down by the impugned order dated 11.06.2012 as evidenced by Annexure-‘J-1’ to the Writ Petition. This being the panorama, we opine that had the application of the petitioner been processed for promotion to the post of Personal Professor in the Department of Civil Engineering of the BUET immediately after he made the same on 21.12.2003, he might have been appointed to that post on promotion at least on 06.11.2004, the date on which his colleague Dr. Md. Jubair Bin Alam was promoted to the post of Personal Professor.

24. There is no gainsaying the fact that the petitioner lost his seniority through no fault of his own. He was not at fault and this is virtually admitted by the contesting respondent nos. 3

and 4. Regard being had to the decision of the Syndicate dated 29.06.2009, the University Authority could not restore his seniority from the date of his application on 21.12.2003. That decision of the Syndicate dated 29.06.2009 is, no doubt, a stumbling-block in the way of restoration of his seniority.

25. Will the petitioner continue to suffer loss of his seniority through no fault of his own? Is the Writ Court powerless in this regard? In this connection, it may be pointed out that the Writ Court is also a Court of equity. The principles of natural justice, equity and good conscience demand that the seniority of the petitioner be restored at least from the date of promotion of his colleague Dr. Md. Jubair Bin Alam to the post of Personal Professor on 06.11.2004 who admittedly made his application therefor on 28.12.2003 which was subsequent to the date of making of the application by the petitioner on 21.12.2003. In this way, the injustice done to the petitioner, according to us, can be remedied.

26. We find no justification in the contention of Mr. Kamal-ul-Alam that if the seniority of the petitioner is restored, then the seniority of 32(thirty-two) Professors who have been working as Personal Professors since their appointment between the period commencing from 22.02.2004 till the date of the petitioner's appointment as Personal Professor on 07.08.2007 will be adversely affected and there will be serious anomalies in the University Administration. This is because the case of the petitioner is a singularly exceptional case and those 32 (thirty-two) Professors do not stand comparison with the petitioner in any view of the matter.

27. By the impugned order dated 11.06.2012 as evidenced by Annexure-'J-1' to the Writ Petition, we find that a differential treatment has been meted out to the petitioner in relation to his colleague Dr. Md. Jubair Bin Alam who was admittedly made a Personal Professor on 06.11.2004, though his application was subsequent in point of time. What we are driving at boils down to this: the equality clause as contemplated by Article 27 of the Constitution has been hit in the case of the petitioner vis-à-vis the case of Dr. Md. Jubair Bin Alam.

28. Article 27 of our Constitution provides that all citizens are equal before law and are entitled to equal protection of law. Sir Ivor Jennings in his "The Law and the Constitution" stated:

"Equality before the law means that among equals, the law should be equal and should be equally administered, that like should be treated alike".

29. In the case of Southern Rly Co. V. Greane, 216 U. S. 400, Day-J observed:

"Equal protection of the law means subjection to equal laws, applying alike to all in the same situation."

30. Chandrachud-J, in the case of Smt. Indira Gandhi V. Raj Narayan, AIR 1975 SC 2279 described his idea of equality in the following words:

"All who are equal are equal in the eye of law, meaning thereby that it will not accord any favoured treatment to persons within the same class."

31. In the case of the Director-General, NSI... Vs...Md. Sultan Ahmed reported in 1 BLC (AD) 71, our Appellate Division has deprecated double-standard on the part of the executive Government giving a benefit to a particular person and denying the same to another, although they are otherwise equal.

32. Reverting to the case in hand, there is not an iota of doubt that both the petitioner and his colleague Dr. Md. Jubair Bin Alam are similarly situated. So both of them should have been treated alike by the University Authority. Precisely speaking, the University Authority meted out double-standard by way of giving promotion to Dr. Md. Jubair Bin Alam on time and refusing to process the application of the petitioner for promotion on time, though they are otherwise equal. So we highly deprecate this double-standard on the part of the University Authority.

33. From the foregoing discussions and in the facts and circumstances of the case, we have no hesitation in holding that the case of the petitioner ought to have been bracketed with that of Dr. Md. Jubair Bin Alam and the petitioner should have been promoted to the post of Personal Professor at least with effect from 06.11.2004, the date on which Dr. Md. Jubair Bin Alam was promoted to the post of Personal Professor of the self-same Department of Civil Engineering of the BUET. So we are inclined to make the Rule absolute in modified form.

34. Accordingly, the Rule is made absolute in modified form. The impugned Memo No. ৩৮৩/৩৮-১৬৮/৯-৭৭৪০ dated 11.06.2012 (Annexure-‘J-1’ to the writ petition) is hereby declared to be without lawful authority and of no legal effect. The BUET Authority is directed to restore the seniority of the petitioner and promote him to the post of Personal Professor with effect from 06.11.2004, the date on which his colleague Dr. Md. Jubair Bin Alam was promoted thereto. The BUET Authority is also directed to pay all arrear salaries, allowances and other benefits to the petitioner within 90(ninety) days from the date of receipt of a copy of this judgment counting his seniority as a Personal Professor with effect from 06.11.2004.

35. Communicate a copy of this judgment to the respondent nos. 3 and 4 each for information and necessary action.