

IN THE SUPREME COURT OF BANGLADESH

APPELLATE DIVISION

Present:

Mr. Justice Hasan Foez Siddique, *Chief Justice*

Mr. Justice Obaidul Hassan

Mr. Justice M. Enayetur Rahim

CIVIL APPEALS NO.175-177 of 2018 WITH CIVIL PETITIONS FOR LEAVE TO APPEAL NO.363, 364 & 654 OF 2019

(From the judgment and order dated 13.04.2017 passed by the High Court Division in Writ Petition No.10458 of 2015; the judgment and order dated 10.07.2017 passed by the High Court Division in Writ Petitions No.5697 and 5804 of 2017; and the judgment and order dated 18.02.2018 passed by the High Court Division in Writ Petitions No.11996, 9264 of 2017)

Director General of Ansar and VDP,
Head Quarter, Dhaka

..... **Appellant/Petitioner**
(In C.A.No.175-176 of 2018 and C.P.
No.363-364 of 2019)

Director (Administration) of Ansar
and VDP, Head Quarter, Dhaka

..... **Appellant**
(In C.A.No.177 of 2018)

Bangladesh, represented by the
Secretary, Public Security Division,
Dhaka and others

..... **Petitioners**
(In C.P. No.654 of 2019)

-Versus-

Md. Ruhul Amin and others (In C.A.No.175 of
2018); Abdul Malek and others (In C.A. No.176 of
2018); Md. Abu Bakar and others (In C.A. No.177
of 2018); Md. Rabiul Islam and others (In C.P.
No.363 of 2019); Abdur Rob Hawlader and others
(In C.P. No.364 of 2019) & Md. Rabiul Islam and
others (In C.P. No.654 of 2019)

..... **Respondents**

For the appellant/ petitioner

(In C.A. No.175-177 of 2018
& C.P.No.363-364 of 2019)

Mr. Kamal-ul Alam, senior Advocate with
Mr. A.M. Amin Uddin, senior Advocate, Mr.
Qamrul Haque Siddique, Advocate & Mr.
Abdur Rouf Sheikh, Advocate, instructed by
Ms. Madhumalati Chy. Barua, Advocate-on-
Record.

For the petitioners

(In C.P.No.654 of 2019)

Mr. A.M. Amin Uddin, Attorney General with
Ms. Abanti Nurul, Assistant Attorney
General, instructed by Ms. Sufia Khatun,
Advocate-on-Record.

For the respondents

No.1-2 & 9

(In C.A. No.175 of 2018)

Mr. Salahuddin Dolon, senior Advocate,
instructed by Ms. Nahid Sultana, Advocate-
on-Record.

For the respondents

No.3-8 & 10-81,83-84, 86-132, 134-289

(In C.A. No.175 of 2018)

Mr. Salahuddin Dolon, senior Advocate,
instructed by Mr. Zainul Abedin, Advocate-
on-Record.

For the respondents

No.33,82,85 & 133

(In C.A. No.175 of 2018)

Mr. Salahuddin Dolon, senior Advocate,
instructed by Mr. Nurul Islam, Advocate-on-
Record.

For the respondents

No.290-291

(In C.A.No.175 of 2018)

Not represented.

- For the respondents** : Mr. Momtazuddin Fakir, senior Advocate
(In C.A. No.176 of 2018) with Mr. Salahuddin Dolon, senior Advocate, Mr. Anik R. Hoque, Advocate, Mr. Golam Abbas, Advocate & Mr. Munsir Moniruzzaman, Advocate, instructed by Mr. Helal Amin, Advocate-on-Record.
- For the respondents** : Mr. Momtazuddin Fakir, senior Advocate
No.1,545 & 768
(In C.A. No.177 of 2018) with Mr. Salahuddin Dolon, senior Advocate, Mr. Anik R. Hoque, Advocate, Mr. Golam Abbas, Advocate, instructed by Mr. Syed Mahbubar Rahman, Advocate-on-Record.
- For the respondents** : Mr. Momtazuddin Fakir, senior Advocate
No.2-544,546-767,769-1373
(In C.A. No.177 of 2018) with Mr. Salahuddin Dolon, senior Advocate, Mr. Anik R. Hoque, Advocate, Mr. Golam Abbas, Advocate, instructed by Mr. Zainul Abedin, Advocate-on-Record.
- For the respondents** : Mr. Salahuddin Dolon, senior Advocate, Mr.
No.5,26,39,140 & 350
(In C.P. No.363 of 2019) Anik R. Hoque, Advocate, Mr. Golam Abbas, Advocate, instructed by Mr. Md. Abdul Hye, Advocate-on-Record.
- For the respondents** : Mr. Salahuddin Dolon, senior Advocate, Mr.
No.1 & 185
(In C.P. No.363 of 2019) Anik R. Hoque, Advocate, Mr. Golam Abbas, Advocate, instructed by Mr. M. Ashraf-uz-Zaman Khan, Advocate-on-Record.
- For the respondents** : Not represented.
No.2-4,6-25, 27-38,40-139, 141-184, 186-349, 351-612
(In C.P. No.363 of 2019)
- For the respondents** : Not represented.
(In C.P.No.364 of 2019)
- For the respondents** : Mr. Momtazuddin Fakir, senior Advocate
(In C.P.No.654 of 2019) with Mr. Salahuddin Dolon, senior Advocate, Mr. Anik R. Hoque, Advocate, instructed by Mr. M. Ashraf-uz-Zaman Khan, Advocate-on-Record.
- Dates of hearing : The 8th & 16th day of June 2022.
- Date of judgment : The 2nd day of August, 2022.

JUDGMENT

Obaidul Hassan, J. All these Civil Appeals along with Civil Petitions for Leave to Appeal are being disposed of by this common judgment as all of those involve common questions of law and facts.

These Civil Appeals by leave granting order dated 30.07.2018 passed by this Division in Civil Petition for Leave to Appeals No.3784, 4442, 4450 of 2017 filed against the judgment and order dated 13.04.2017 passed by the High Court Division in Writ Petition No.10458 of 2015, the judgment and order dated 10.07.2017 passed by the High Court Division in Writ Petition No.5697 & 5804 of 2017 making all the Rules absolute.

The Civil Petitions for Leave to Appeal No.363-364 of 2017 and 654 of 2019 filed against the judgment and order dated 18.02.2018 passed by the High Court Division in Writ Petitions No.11996 & 9264 of 2017 making all the Rules absolute.

The respondents as petitioners filed the said writ petitions challenging illegal removal of the writ petitioners from their respective posts by the writ respondent No.2-appellant and to declare the said action as has been done without lawful authority and is of no legal effect, arbitrary, violative of their fundamental rights guaranteed by Articles 27, 29, 31 and 40 of the Constitution of the People's Republic of Bangladesh and to direct the writ respondents to reinstate the writ petitioners in their respective posts with back wages and allowances.

The respondents filed number of writ petitions on different dates stating *inter alia* that they were recruited in the Bangladesh Ansar Battalions on different dates before 1994 and had been discharging various duties and performing functions including assisting police

forces in maintaining law and order situation of the country and preserving internal security for many years. However, in 1994 the members of the then Ansar Battalions made some demands to the concerned authorities which included their legitimate salary and other facilities, promulgation of Ansars Act and for making their posts permanent in the service etc. Although the concerned authorities assured and promised them that their demands would be fulfilled, ultimately the issues remained unresolved. Consequently, some members of Ansars at different camps in Bangladesh lost confidence in the concerned authorities which gave rise to chaos and disturbance among the Ansar members in those camps. In such situation, about 2496 Ansar members including some of the writ petitioners were arrested on 04.12.1994 from different parts of the country such as Shafipur Ansar Academy, Gazipur; Khilgaon Ansar and VDP Headquarter; Sharda Police Station, Jessore; Cox's Bazar 35 and 36 Battalion under Ukhia Police Station; Doublemooring Police Station, Chattogram and Rupsha Police Station, Khulna and some of them absconded. Accordingly, the said arrested Ansar members were implicated in criminal cases alleging under Sections 147/148/149/283/325/332/353/243/427/435/380/109 and 121(A) of the Penal Code.

After investigation into those cases the police submitted charge sheets wherein most of the writ petitioners were not sent up for trial while only 274 members were sent up for trial. The writ petitioners,

who were not sent up for trial were subsequently released from jail in 1995 and those who were sent up for trial faced the trial and upon trial they were acquitted by the competent Courts and as such they should be treated as innocent. Therefore, the orders removing or disembodimenting them from Ansars Battalion should be regarded as illegal orders, as according to them, no internal inquiry of the Ansars Battallion had found them to have been involved in any sort of unruly behaviour or mutiny. Therefore, they should be reinstated in their respective services. The writ-respondent No.2 (DG, Ansar), vide notification dated 06.03.1995, asked the absconding Ansar members at the relevant time to join their services at their respective camps on or before 25.03.1995. Thereupon, some of writ petitioners joined on 25.03.1995 and they were posted at Khagrachari District until they were verbally informed that they were disembodied or dismissed from their job. One of them was not even arrested, but he was forcibly ousted from office after the arrest of other Ansar members.

After such release or acquittal from criminal cases, when they tried to join their services, they were not allowed to join and as such their personal belongings could not be collected from their camps as those were seized by the authorities and never returned to them. They made several representations to the Prime Minister and Minister of Home Affairs. They tried to meet the Director General of Ansars, but failed. Pursuant to such repeated prayers and representations, the Ministry of Home Affairs by its letter dated 22.08.2001 asked the

Director General (the writ respondent No.2)-appellant to furnish a report as regards the number of Ansar members against whom criminal cases were filed as well as to furnish particulars of the acquitted and absconding Ansar members. Thereupon, the writ-respondent No.2 submitted report on 19.11.2001 stating that 2496 Ansar members were implicated in various criminal cases in 1994 pursuant to a mutiny occurred in different camps of Ansars and all of them were finally acquitted from criminal cases filed in Dhaka and Gazipur District. The said report further stated that out of such acquitted Ansar members, 20 persons had been reinstated in the service in 1995. Some of the writ petitioners met the Director General of Ansar on 15.12.2002, who assured them to take necessary steps for their reinstatement in the service. On 18.09.2002 the Office of the Prime Minister asked the Ministry of Home Affairs to reinstate the acquitted Ansars, but it was not complied with.

The writ petitioners having been dismissed or disembodied without any due process of law even after their successful service for a long term as well as promotions to different posts, they had been subjected to pick and choose policy as well as deprived of equal protection of law guaranteed as fundamental rights under Articles 27 and 31 of the Constitution. In such a situation, the writ petitioners moved in the High Court Division and obtained the Rules.

The Rules were opposed by the Government and the Director General of Ansar and VDP by filing Affidavit-in-opposition contending inter alia that the writ petitioners were the members of a voluntary force named Ansar created under the provisions of the then Ansar Act, 1948, thus they were raised on voluntary basis. Pursuant to the provisions of the said Act of 1948, the Ministry of Home Affairs vide notification No.335/SPL(IV) dated 30.09.1976 took decision to embody 18 battalions of Ansars comprising of 7200 members and in such process of embodiment the writ petitioners along with other members of Ansars were embodied on voluntary basis on different dates. On 01.12.1994, the members of Ansars Battalion posted at Ansar Academy, Shafipur, Gazipur broke the chain of command and resorted to revolt in order to fulfill their various demands, thereby, created anarchy and national crisis. Pursuant to such anarchy a mutiny spread all around the country in different Ansar camps and on 03.12.1994 the situation went beyond control.

Thereupon on 04.12.1994, the government deployed Army, the then Bangladesh Rifles and Police to control the situation. They arrested some of the writ petitioners and other members of Ansars and sent them to jail. Thereafter, the Ministry of Home Affairs, vide memo dated 03.01.1995, directed the DG of Ansar to disembody the members of Ansar on emergency basis, who were involved in the mutiny. Pursuant to such direction, the Ansar Headquarter carried out investigation and identified responsible Ansars, who were involved in

the said mutiny between 01.12.1994 and 04.12.1994. Through such enquiry, 2,496 members of Ansars including the writ petitioners were identified as being involved in such Mutiny and accordingly they were disembodied. The DG of Ansar disembodied the writ petitioners and others on the basis of enquiry reports submitted by different divisions and branches vide memo No.অপা:/৩৩/আনস dated 18.01.1995, অপা:/৪৭/আনস dated 22.01.1995, অপা:/৯২/আনস dated 02.02.1995 and অপা:/১৯৩/আনস dated 01.3.1995 and accordingly cancelled their training certificates. After the mutiny the Parliament enacted আনসার বাহিনী আইন, ১৯৯৫ and ব্যাটালিয়ান আনসার আইন, ১৯৯৫ and reorganized the Ansar in Bangladesh by creating different forces under which the members of the erstwhile Ansars Battalion became embodied in the new Ansars Battalion. Immediately after such mutiny, the DG of Ansar issued notification dated 06.03.1995 directing the absconding Ansars to report to their concerned camps and pursuant to such notification, 129 Ansars reported and after scrutiny through the screening board constituted by the DG Ansar, some of the writ petitioners joined the service. A high powered committee headed by Director(Training) of Ansar conducted enquiry to ascertain the reason of such mutiny and the committee, vide its report dated 15.04.1995 and fixed up liabilities on some officers of Ansars in such mutiny and identified some individuals. Pursuant to the report of the screening board, the authority vide memos dated 21.09.1995 and 17.10.1995, disembodied 109 battalion Ansars including some of the writ petitioners. The

authority also, vide memo dated 15.10.1995, confirmed the disembodiment of 20 battalion Ansars.

Earlier on different occasions some of the writ petitioners on similar footing filed several writ petitions in which the Rules had been discharged. One Md. Nazrul Islam and others filed the Writ Petition No.1725 of 1996 and a Division Bench of the High Court Division discharged the Rule for default on 07.01.2010. One Md. Fazlu Mia and others filed Writ Petition No.789 of 1996 and one Md. Kamruzzaman and others filed Writ Petition No.1727 of 1996 on similar footing and a Division Bench of the High Court Division discharged the Rules by judgments and orders dated 24.05.2016 and 01.06.2016 holding that the government servants are required to approach Administrative Tribunal for redressing their service related grievance. One Sher Ali filed Title Suit No.529 of 2009 before the Assistant Judge Court, Dhaka on the similar footing and the plaint of the said suit was rejected on 13.07.2010 on the ground of maintainability.

Upon hearing the writ petitions the High Court Division made all the Rules absolute with the following directions:

- (1) The writ respondents, in particular the respondent No.2, were directed to reinstate those writ petitioners against whom no allegations of mutiny or unruly behaviour were found/established in any proper enquiry conducted by the authority after the said alleged mutiny and against whom no

competent Court has so far found allegations proved in any criminal case initiated in respect of the same;

- (2) since the writ petitioners were admittedly volunteers at the relevant time and worked on temporary basis, they would not be entitled to claim any previous salary after such reinstatement for the period they were out of service and that the salaries or pay would be paid to the writ petitioners only after their reinstatement in accordance with the above direction No.(1). However, they would be entitled to get other service benefits including seniority in accordance with law.
- (3) Before such reinstatement, the writ respondents will conduct screening of their physical fitness and will check whether they have already crossed the retirement age limit for reinstatement in the Ansar battalion, in which case the unfit or retired Ansar members would be entitled to their retirement and other benefits for the period they worked in Ansar until their disembodiment after the alleged mutiny.

Against the judgments and orders dated 13.04.2017 and 10.7.2017 passed by the High Court Division in Writ Petitions No.10458 of 2015, 5697 and 5804 of 2017, the writ respondents have filed the Civil Petitions for Leave to Appeal No.3784, 4442, 4450 of 2017 and after hearing the parties this Division granted leave by an order dated 30.07.2018 to consider the following grounds:

- I. Because the writ petitioners had been performing functions in connection with the affairs of the Republic of Bangladesh and, therefore, the writ petitioners in respect of the terms and conditions of service of the Republic were not maintainable, the

High Court Division erred in law in not discharging the Rule Nisi;

- II. Because earlier a Division Bench of the High Court Division by judgment and order dated 24.05.2016 passed in Writ Petition No.789 of 1996 and judgment and order dated 01.06.2016 passed in Writ Petition No.1727 of 1996 discharged the Rules obtained by persons standing on the same footing holding that they being government servants writ petitions concerning their service matter were not maintainable, the High Court Division erred in law in making the Rules absolute by the impugned judgment taking a different view;
- III. Because Rule 1 of Chapter VII of the Supreme Court of Bangladesh (High Court Division) Rules, 1973 (as amended in 2012) has specifically provided that, if a Division Bench differs from the decision given by another Division Bench on a point of law, the case shall be referred to the chief Justice for decision by the Full Bench and, thus the impugned judgment and order dated 13.04.2017 is liable to be set aside;
- IV. Because the High Court Division erred in law in not appreciating that the embodied Ansars like the writ petitioners work as auxiliary police force and they are trained and authorized to hold weapons, therefore, any breach of duty breaking of chain of command or disobedience to orders of their higher authority in other words 'mutiny' is the highest offence for any disciplinary action and in a situation of 'mutiny' the procedure for enquiry not being strictly laid down must be construed to be a process of identification of the person involved and that the

persons involved in 'mutiny' identified by their controlling officers and then they were handed over to the police, the High Court Division erred in law in making the Rule absolute.

Mr. Kamal-ul Alam, the learned senior Advocate along with Mr. A.M. Amin Uddin, the learned senior Advocate (As Attorney General in C.P.No.654 of 2019) along with Mr. Qumrul Haque Siddique, the learned Advocate appearing for the appellant as well as for petitioners in Civil Petitions for Leave to Appeal contend that the writ petitioners had been performing functions in connection with the affairs of the Republic of Bangladesh and therefore, the writ petitions in respect of the terms and conditions of service of the Republic were not maintainable, but the High Court Division erred in law in making all the Rules absolute. They contend next that the respondents had been disembodied, but not removed from service for which there is no question of violation of legal rights. The learned Counsels next argue that earlier a Division Bench of the High Court Division by judgment and order dated 24.05.2016 passed in Writ Petition No.789 of 1996 and judgment and order dated 01.06.2016 passed in Writ Petition No.1727 of 1996 discharged the Rules obtained by persons standing on the same footing holding that they being government servants writ petitions concerning their service matter were not maintainable. The High Court Division erred in law in not discharging the Rules by the impugned judgments and orders taking a different view. The learned senior Counsels for the appellant submit further that Rule 1 of Chapter

VII of the Supreme Court of Bangladesh (High Court Division) Rules, 1973 has specifically provided that, if a Division Bench differs from the decision given by another Division Bench on a point of law, the case shall be referred to the Chief Justice for decision by the Full Bench, thus, the impugned judgments and orders are liable to be set aside. The learned senior Counsels lastly contend that the High Court Division erred in law in not appreciating that the embodied Ansars like the writ petitioners work as auxiliary police force and they are trained and authorized to hold weapons, therefore, any breach of duty breaking the chain of command or disobedience to orders of their higher authority in other words mutiny is the highest offence and in a situation of any mutiny the procedure for enquiry being not strictly laid down must be construed to be process of identification of the person involved and that the persons involved in mutiny were identified by their controlling officers and later on they were arrested and handed over to the police, the High Court Division erred in law in making the Rules absolute.

On the opposition, Mr. Momtazuddin Fakir, the learned senior Advocate appearing along with Mr. Salahuddin Dolon, the learned senior Advocate vehemently contend that the respondents had been disembodied illegally without following the due process of law as contemplated in Rule 17 of the Ansar Rules, 1948. The learned senior Counsels for the respondents next argue that the subsequent to the occurrence of mutiny the absconding Ansars were requested by the

DG of Ansar and VDP to report at different camps within a stipulated time, but it was not possible for the respondents since most of them were under arrest in connection with criminal cases. Later on, though some of the respondents reported to the concerned camps pursuant to such notification, they had not been embodied any more by the authority. The learned senior Counsels further contend that earlier Rules in the Writ Petitions No.789 and 1727 of 1996 were discharged without examining the merits of the case, but thereafter the respondents filed the above numbered writ petitions on other grounds for the enforcement of fundamental rights under Articles 27, 31 of the Constitution. The learned senior Counsels lastly contend that in case of enforcement of fundamental rights the High Court Division has the jurisdiction to entertain writ petitions. Due to the said reason the respondents did not go to the Administrative Tribunal against the orders of their disembodiment and the High Court Division legally made all the Rules absolute.

We have considered the submissions of the learned Counsels for the parties, perused the impugned judgments and orders dated 13.04.2017, 10.07.2017 and 18.02.2018 passed by the High Court Division in Writ Petitions No.10458 of 2015, 5697, 5804, 11996, 9264 of 2017 and the materials on record.

At the outset let us know how Ansar battalions were raised. According to Section 3(1) of the Ansars Act, 1948 the Ansars were raised on a voluntary basis. Section 4 of the Ansars Act, 1948 lays

down the provision of their embodiment, which is stated in the following:

“4.(1) The Provincial Government, by notification in the official Gazette, order the embodiment into the Provincial Police Force of the Ansars in their entirety or such portion thereof as it may determine, for a specified period which may be extended from time to time.

(2) When so embodied, they shall be subject to the Indian Police Act, 1861, as adapted to Pakistan.”

It is undisputed that on 30.09.1976 the government took decision to embody 18 Battalion of Ansars comprising 7200 Ansars by a Notification, pursuant to which the writ petitioners-respondents along with others were embodied as Ansars for a period of six months which were extended from time to time. Admittedly the writ petitioners-respondents were working as Ansars until their disembodiment in the year 1995.

Section 5 of the Ansars Act, 1948 authorises the government to make Rules for all or any of the following matters, namely:

- a) Recruitment, training and discharge of members of the Ansars.
- b) Organization and discipline.
- c) The terms and conditions of their service.
- d) Rates of pay and other conditions in the event of embodiment for full time service.
- e) Any other matter necessary for the maintenance of the Ansars organization.

Accordingly, Ansar Rules, 1948 were framed. Rule 17 of the Ansar Rules, 1948 is as follows:

“17. a member at anytime may resign on formal intimation to his Platoon Commander and with the approval of the local Adjutant or Assistant Adjutant. The Adjutant or Assistant Adjutant or Officer-in-charge of a police station may at anytime suspend a member for absence from parades, incompetence or other misbehavior and a formal order of dismissal shall be issued by the Adjutant after proper inquiry and consultation with the Officer-in-charge of the police station. In cases of dismissal, certificates of membership shall be recovered and destroyed.”

What appears from the above is that the writ petitioners being Ansars were regulated under the Police Act, 1861. Thus, it is squarely clear that they may be dismissed as well as their training certificates are liable to be cancelled due to indiscipline, misbehavior and insubordination to the legitimate orders of the higher authority etc. Literally, the disembodiment of Ansars does not necessarily mean dismissal. Nowhere in the Ansars Act, 1948 as well as the Ansars Rules, 1948 it was mentioned how and when Ansars will be disembodied and what protection will be given to the Ansars in case of disembodiment. Therefore, in absence of clear provision as to the disembodiment of Ansars it is palpably clear that there appears no question of violation of legal rights *vis-a-vis* fundamental rights while disembodimenting them.

In the writ petitions the respondents claimed that in 1994 the members of the then Ansar Battalion placed some demands before the concerned authority claiming inter alia, the legitimate salary and other facilities, promulgation of Ansars Act and making their service permanent etc. As their demands having not been fulfilled they revolted in different camps of the country breaking the chain of command. A number of criminal cases for mutiny were filed against them. The authority disembodied and cancelled the certificates of the accused Ansars including the writ petitioners. Being aggrieved with the orders of disembodiment the writ petitions had been filed before the High Court Division.

From the record it appears that Rules were issued calling upon the writ respondents to show cause as to why illegal removal of the writ petitioners from their respective posts by the writ respondent No.2, should not be declared to have been done without lawful authority and is of no legal effect and is arbitrary and violative of fundamental rights guaranteed by Articles 27,29 31 and 40 of the Constitution and as to why the writ respondents should not be directed to reinstate the writ petitioners to their respective posts with back wages and allowances. Yet the writ petitioners-respondents have not challenged the order of disembodiment and the order of cancellation of their training certificates. On the other hand, the alleged removal order was not declared illegal and was issued without

lawful authority by the High Court Division, nevertheless, the High Court Division made the Rules absolute in the writ petitions.

The learned Counsel for the appellant argues that the alleged disembodiment being related to the terms and conditions in the government service the respondents should approach to the Administrative Tribunal against the order of disembodiment. It is seen that the High Court Division while making the Rules absolute by the impugned judgments and orders held that the writ petitions filed by the respondents are maintainable only on the ground of *ultra vires* of law and for the enforcement of fundamental rights. The High Court Division relied on the decision of *Government of Bangladesh Vs. Sontosh Kumar Saha and Others* reported in 13 ADC(2016) 853. The relevant portion of the impugned judgments and orders of the High Court Division is extracted below:

“In the said case, the Appellate Division even overruled the earlier decisions of the same division wherein it was held that the writ petitions were maintainable when *mala fide* or *corum non iudice* was alleged. Therefore, the scope of maintaining a writ petition has become limited to only two aspects, namely challenging the *vires* of law and enforcement of fundamental rights with specific pleadings of violations of such fundamental rights in the writ petition.”

The writ petitions filed by the respondents apparently seems to be maintainable because they filed those petitions against an action of the government that is the Director General of Ansars. Although the

writ petitions appears to be maintainable in the cases in hand, but they (writ petitioners-respondents) did not have any enforceable fundamental or legal right inasmuch as they had already been disembodied and their training certificates were cancelled. The High Court division while passing the impugned judgments and orders gave some directions to the writ respondents which seem to be innocent. In the given facts and circumstances, the writ petitions should have been disposed of instead of making the Rules absolute.

It has been put on the record that in the wake of alleged mutiny the Ministry of Home Affairs, vide memo No.স্ব:ম(আ-১)-৬৯/৯৪-০৯, dated 03.01.1995 requested the Director General of Bangladesh Ansar and VDP to disembody the Ansars involved in the mutiny. Pursuant to the said request the Director General of Bangladesh Ansar and VDP asked the concerned officials vide memo No.১২২৮/প্রশাসন(এ)/আনস dated 17.12.1994 to take legal action as well as send report against the Ansars involved in the mutiny took place between 01.12.1994 to 04.12.1994. Thereafter as many as four enquiry reports vide memo Nos.২০/আনস dated 7.01.1994, প্রশা/১৪ dated 10.01.1995, ৪৯/আনস dated 14.01.1995, ২৫/ব্যটাঃ/আনস dated 21.01.1995 were submitted from the office of different Ansar Battalions. On the basis of those enquiry reports the Director General of Bangladesh Ansar and VDP vide memo Nos.অপাঃ/৩৩/আনস dated 18.01.1995, অপাঃ/৪৭/আনস dated 22.01.1995, অপাঃ/৯২/আনস dated 02.02.1995 and অপাঃ/১৯৩/আনস dated 01.3.1995 disembodied 2496 members of Ansars,s who were found guilty of

mutiny and their training certificates had been cancelled. Thus the said orders of disembodiment and cancellation of certificates are legal. But the High Court Division without appreciating the matter in its true perspective wrongly observed that the fundamental rights of the respondents have been violated due to their disembodiment.

In making the Rules absolute the High Court Division laid emphasis on the facts that there was no enquiry at all nor any substance was there against the respondents as to the involvement in the mutiny. The High Court Division also observed that out of the disembodied Ansars some had been reinstated in the service, but the respondents had not been embodied even at the belated stage, for which the respondents had been discriminated resulting into violation of fundamental rights. The said observations given by the High Court Division are not supported by the materials on record. Yet the High Court Division went into complicated question of facts which as per law cannot be determined in writ jurisdiction.

The learned Counsels on behalf of the respondents claims that soon after the mutiny several criminal cases were filed against some of them, but ultimately all of them had been acquitted from which it can be deduced that they were not involved in the mutiny and being innocent the orders of their disembodiment are not legal. In this regard our considered view is that the criminal offences are tried under the existing criminal laws of our country whereas the disciplinary action through enquiry as to the involvement in the

mutiny by the concerned officers of Ansar Battalion is conducted in accordance with their own rules by which the liabilities of Ansars are fixed up and finally it was possible to come to the conclusion regarding the violation of discipline in the service. Thus, the acquittal of Ansars from the criminal cases will not necessarily absolve them from the allegation of involvement in the mutiny. The enquiry reports made by the authorised officers of Ansar Battalion are sui generis of criminal cases filed in the criminal courts. But the High Court Division without applying judicial mind wrongly made the Rules absolute.

The writ-petitioners-respondents lastly submitted that since their departure from the Ansar Battalion, they had been stigmatised as mutineers. They are unable to find work, and are suffering from several other problems. All of them who simply been disembodied from the Ansar Battalion do not deserve to be met with suspicion or harsh looks. The learned Advocate from the respondents further submitted that they are being disrespected in the village they live in.

In our view, these individuals do not deserve to be treated as suspects or as persons of interest. They deserve to live with dignity. Their departure from the Ansar should not be a reason for discrimination used to deny them employment-especially in private organisations.

It has been argued on behalf of the appellants that earlier on different occasion some of the respondents on similar footing of the

cases in hand filed several writ petitions in which the Rules had been discharged. From the record it appears that one Md. Nazrul Islam and others on similar footing filed the Writ Petition No.1725 of 1996 and a Division Bench of the High Court Division discharged the Rule for default on 07.01.2010. It also appears that one Md. Fazlu Mia and others filed Writ Petition No.789 of 1996 and a Division Bench of the High Court Division discharged the Rule by judgment and order dated 24.05.2016 holding that the government servants are required to approach Administrative Tribunal for redressing their service related grievance. Similarly, one Md. Kamruzzaman and others on similar footing of the cases in hand filed Writ Petition No.1727 of 1996 and a Division Bench of the High Court Division discharged the Rule by judgment and order dated 01.06.2016 holding that the writ petition was not maintainable for the reason that it was within the jurisdiction of Administrative Tribunal. Though the decision regarding competence of the writ petitioners to file application before the Administrative Tribunal were not correct as the writ petitioners were not recruited in a regular government service rather they were recruited as volunteers to provide voluntary service as Ansar, but never the less it poses a question whether the High Court Division wrongly made the Rules absolute in the cases in hand without taking into consideration of the judgments and orders dated 24.05.2016 and 01.06.2016 passed in Writ Petitions No.789 and 1727 of 1996 filed earlier on similar footing where Rules were discharged.

Rule 1 of Chapter-VII of Supreme Court of Bangladesh (High Court Division) Rules, 1973 provides in the following:

“1. Reference to Chief Justice for Full Bench Decision-
Whenever a Division Bench differs from any other Division Bench on a point of law, the case shall be referred to the Chief Justice for decision by a Full Bench.”

In the cases in hand, the High Court Division by impugned judgments and orders gave decision in favour of maintainability of writ petitions while earlier a Division Bench of the High Court Division in Writ Petitions No.789 of 1996 and 1727 of 1996 discharged the Rules observing that the writ petitions by government servant relating to terms and conditions of service were not maintainable. In the aforesaid circumstances two Division Benches of the High Court Division arrived at contradictory decisions on point of law regarding the maintainability of writ petition. Thus, we find that the High Court Division committed illegality in not referring the cases in hand to the Chief Justice for decision by a Full Bench as per Rule 1 of Chapter-VII of Supreme Court of Bangladesh (High Court Division) Rules, 1973.

Be that as it may, embodied Ansars i.e. the respondents work as auxiliary police force and they are trained and entitled to wield weapons. Disobedience to the orders of the higher authority breaking the chain of commands is termed as ‘Mutiny’ which is the highest offence for an auxiliary police force for which stern punitive action has been taken. Following the alleged ‘Mutiny’ in 1994 there was exigency to control the situation and persons involved in the ‘Mutiny’ had been

identified by their controlling officers on the spot and were arrested from the spot and FIR was lodged.

However in a chaotic situation some innocent Ansars might have been implicated in the offence of 'Mutiny' against their will, which could be possible to find out through proper scrutiny. Thus, it would be wise that after a long lapse of 25 years the disembodied Ansars should not be reinstated in Bangladesh Ansar Battalion on wholesale basis without scrutiny. In the said backdrop, the government may consider to take initiative to take back the innocent persons in the Battalion Ansars after proper scrutiny, if found not guilty of revolt or 'Mutiny'.

From the foregoing discussion it is manifested that neither did the writ petitioners-respondents have any enforceable fundamental right nor any legal right after the disembodiment and as such they are not entitled to be reinstated in Ansar Battalion. The High Court Division was not correct in making the Rules absolute.

In view of the discussion and the observations made above, we find merit in the submissions of the learned Counsels for the appellant/petitioners and therefore the impugned judgments and orders dated 13.04.2017, 10.07.2017 and 18.02.2018 passed by the High Court Division in Writ Petitions No.10458 of 2015, 5697 of 2017, 5804 of 2017, 11996 of 2017 and 9264 of 2017 are liable to be set aside.

Accordingly, the judgments and orders passed by the High Court Division in the above numbered writ petitions are hereby set aside.

All the Civil Appeals and Civil Petitions for Leave to Appeal are **disposed of** in the light of the observations made above.

However, the government may take measure to take back the innocent writ petitioners in Battalion Ansars after proper scrutiny, if they are found not guilty of revolt or 'Mutiny'.

C.J.

J.

J.