INTHE SUPREME COURT OF BANGLADESH
(APPELLATE DIVISION)

PRESENT:

Mr. Justice Md. Abdul Wahhab Miah
Ms. Justice Nazmun Ara Sultana
Mr. Justice Muhammad Imman Ali
Mr. Justice Md. Nizamul Huq

CIVIL APPEAL NO.146 OF 2008

(From the judgment and order dated the 15th day of January, 2005 passed by the High Court Division in Writ Petition No.1681 of 2001)

Sohrab Ali Miah and others : . . . Appellants

-Versus-

Bangladesh Sugar and Food Industries Corporation and another : . . . Respondents

For the Appellants : Mr. Abdus Sohban, Advocate with Mr. Qumrul Haque Siddique, Advocate instructed by Mr. Nurul Islam Bhuiyan, Advocate-on-Record.

For the Respondents : Mr. Mahbubey Alam, Senior Advocate with Mr. Masud Hossain Chowdhury, Advocate instructed by Mr. Md. Zahirul Islam, Advocate-on-Record

Date of Hearing : **13.07.2016 and 20.07.2016**

Date of Judgment : **The 10th day of August, 2016**

JUDGMENT

Md. Abdul Wahhab Miah. J: This appeal, by leave, is from the judgment and order dated the 15th day of January, 2005 passed by a Division Bench of the High Court Division in Writ Petition No.1681 of 2001 discharging the Rule *Nisi*.

Facts necessary to dispose this appeal are that the appellants 26 in number as the petitioners (hereinafter referred to as the writ-petitioners) filed the above mentioned writ petition before the High Court Division for issuing a Rule Nisi calling upon the writ-respondents to show cause as to why their action in refusing to grant time scale to the writ-petitioners on their

placement in the appropriate grade and scale of pay as evident by annexure-'E' series in violation of their fundamental rights shall not be struck down and as to why they shall not be directed to revise the fixation of pay and emoluments of the writ-petitioners on the basis of the agreement dated 28.11.1984 allowing them time scale as required under the law and to pay them accordingly all arrears and the Rule *Nisi* was issued accordingly.

The case of the writ-petitioners as made out in the writ petition, in short, was that they all were in the clerical jobs serving in Carew and Company (Bangladesh) Limited, respondent No.2(hereinafter referred to as the company). Pursuant to a charter of demand submitted on 26.091984 by the Bangladesh Chinikal Sramik Federation, an agreement was entered into by and between Bangladesh Sugar and Food Industries Corporation, in short, the Corporation and others in one hand and the trade union leaders, on the other hand, numbering 33 on 28.11.1984. There were number of demands in the said agreement, but in the writ petition denial to give the pay scale to the Office Assistants/Accounts Assistants and Commercial Assistants at the rate of taka 470-1135/= with effect from 01.01.1984 instead of taka 400-825/= and the time scale was under challenge.

The management while implementing the said agreement in the case of 44 incumbents who held the concerned posts at the relevant time, refused to implement the very same term of the very same agreement in the case of the employees who were promoted to the post of office Assistant and/or equivalent posts at a subsequent stage, whereupon the new entrants by promotion in the said posts, numbering 21, subsequent to the agreement dated 28.11.1984 filed as many as 21 I.R.O. cases, 126-146 of 1990 in the Labour Court, Khulna under section 34 of the Industrial Relations Ordinance, 1969 (the Ordinance) for getting the same scale of pay, as admissible to the

44 employees including the writ-petitioner. All those cases were contested by the management. The Labour Court by a common decision dated 16.08.1993 allowed all the cases. Against the decision of the Labour Court, the management moved the High Court Division vide Writ Petition No.1649 of 1993 and the Rule *Nisi* issued in writ petition was discharged by a Division Bench by the judgment and order dated 11.06.1998 and thereby the decision of the Labour Court was affirmed. Against the judgment and order passed in the said writ petition, the management filed Civil Petition for Leave to Appeal (CP) No.903 of 1998 in this Division and the petition was dismissed on 09.08.1993. After the disposal of CP No.903 of 1998, 21employees who filed the cases in the Labour Court (except one who died in the meantime) were duly allowed placement and the time scale on the basis of the agreement dated 28.11.1984 fixing their pay as pay scales in force from time to time ever since 1985 till 01.09.2000 on preparation of their fixation sheets as approved by writ-respondent No.1 and sent down the same to the Company under Memo dated 12.10.2000.

The writ-petitioners time and again requested the writ-respondents for fixing their scale of pay in accordance with the agreement dated 28.11.1984 and give them the time scale as due on 28.11.1984, but without any response from the Company, as such, they through their learned Advocate served notice demanding justice on 19.01.2001, but the Company by its letter dated 13.02.2001 refused to consider their prayer, as such, the writ-petitioners filed the writ petition and obtained the Rule *Nisi* in the terms as stated hereinbefore.

The Rule *Nisi* was opposed by writ-respondent No.1, the Corporation by filing affidavit-in-opposition and supplementary affidavits-in-opposition denying all the material statements made in the writ petition contending,

inter alia, that the scale given as per agreement dated 28.11.1984 was not approved by the Government, rather the Government prescribed the pay scale of taka 425-1035/= for the said category of employees including 44 employees as stated in paragraph 7 of the petition. Accordingly, another agreement dated 28.12.1990 was signed between the same parties on the same subject where it was categorically mentioned that as the Government did not allow the scale of taka 470-1135/= for the office assistants and the equivalents, the Government would be approached again to allow the same scale. In terms of the agreement correspondences were made by the Corporation, but the Government did not allow the above scale of pay. Thereafter, the pay scale of the said 44 employees were reverted to the scale of taka 425-1035/= with effect from 11.02.1999. Further 21 employees as referred to in paragraph 7 of the writ petition not being entitled to the scale of pay of taka 470-1135/= were not given the said scale of pay rather they were given the scale of taka 425-1035/= after they were promoted. These 21 employees filed 21 IRO cases in the Khulna Labour Court for implementation of agreement dated 28.11.1984. As per section 3 of the Services (Re-organization and Conditions) Act, 1975 (Act-XXXII of 1975), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or any rule, regulation, by-law, agreement, award, settlement or terms of conditions of service and as per section 5(2) of the said Act, no person whose grade or scale of pay is prescribed under sub-section (1) thereof shall receive and no person shall allow such person any benefit of a grade or a scale of pay which is higher than the grade or scale of pay prescribed for him. The aforesaid provisions of the Act were not taken into consideration while deciding the aforesaid 21 IRO cases. Therefore, the decision given in the aforesaid cases was not

applicable in the instant case inasmuch as had the provisions of the aforesaid Act been taken into consideration, the decision of the aforesaid cases would have been otherwise. The provisions of Act XXXII of 1975 were not agitated before the High Court Division and this Court and therefore, the judgments delivered by this Court in the aforesaid cases were not applicable in the present case. The scale of pay of taka 470-1135/= of NNS ·77 was given as per agreement dated 28.11.1984 with effect from 01.01.1984 by respondent No.1, but the Government did not allow the said pay scale and in the meantime, MNS ·85 came into force and the incumbents were allowed the corresponding scale of taka 1000-2280/=; provisionally subject to receipt of undertaking from them that if the Government decides to revert them into NNS grade of taka 400-425/=, they would be reverted to the corresponding MNS of taka 850-1700/= and the payment made in excess shall be refunded/realized vide Memo No.ADM/SF/15/84(1)/2708 dated 09.09.1985 of the Corporation. The writ-petitioners were not entitled to the scale of pay as claimed by them inasmuch as they were not entitled to the pay scale of taka 470-1135/=. The writ-petitioners were rightly reverted back to the scale of pay of taka 425-1035/=, as it was allowed by the Government for them as per the provisions of Act XXXII of 1975. The benefits which were given to the writ-petitioners were given in violation of the provisions of sections 3 and 5 of Act XXXII of 1975 and therefore, the benefits given and received illegally did not create any vested right in favour of the writ-petitioners. The service benefits in terms of the pay scale and the time scale given to the 21 employees as per the judgment of this Court in which case the provisions of Act XXXII of 1975 were not placed before any of the Division of this Court. The decision of the said cases was not applicable in the instant case and as such, refusal to give the same benefit to the writ-petitioners which was

allowed to 21 employees as stated in the writ petition was not wrong and therefore, the action was not violative of the fundamental rights of the writ-petitioners as alleged.

The respondent also filed two supplementary affidavits stating, inter alia, that the agreement dated 28.11.1984 was cancelled by the Company by giving notice on 11.01.1999 to the Collective Bargaining Agents who were the signatories to the said agreement in pursuance of section 40(2) of the Ordinance, 1969; as a result, the aforesaid agreement dated 28.11.1984, no longer existed after two months of expiry of such cancellation through notice dated 11.01.1999; hence the agreement /settlement dated 28.11.1984 being not binding upon the parties was not applicable in this case since the instant writ petition was filed in 2001, i.e. after a lapse of more than three months. The writ-petitioners being workers within the meaning of section 2(xxviii) of the Ordinance, 1969, could not invoke the writ jurisdiction of the High Court Division without exhausting the remedies available in the Labour Court as provided in section 34 of the Ordinance, 1969. The Government with a view to bringing uniformity in the pay scales and other benefits in the services of the employees of the nationalized enterprises and the other organization enacted Act XXXII of 1975 and in exercise of the powers conferred by section 5 of thereof, the Government issued an order being No.-MF(ID)1-5/78/1186 dated 30th October, 1978 published in Bangladesh Gazette dated January, 15, 1979 prescribing new scales of pay with effect from 01.07.1977 replacing national grades and scales of pay of 1973. In the said notification at paragraph 3 new scales of pay were prescribed and the scales of taka 470-1135/=, taka 425-1035/= and taka 400-825/= were shown at seriatim clearly. In the annexure portion of the same notification at page 166 new scale of taka 400-825/= was prescribed for the office Assistants and

equivalents to which the writ-petitioners of Writ Petition No.1681 of 2001 belong and taka 470-1135/= was prescribed for Junior Officers like Assistant Accounts Officer, Assistant Labour Welfare Officer etc. In pursuance to the above notification, the scale of taka 400-825/= was implemented with effect from 01.07.1977 in case of the office Assistant including the writ-petitioners which was revised thereafter by the Government to the scale of taka 425-1035/= allowing the corresponding MNS scale of taka 900-2075/= with effect from 11.02.1990 vide Order No.অম-অবি(বা)-৩-ইউ(এ)৪-৮৭(অংশ)/২১ dated 11.02.1990 which was implemented in due course including the writ-petitioners. Therefore, there was no scope to give higher scale of taka 470-1135/= than that allowed by the Government as per law at this point of time on the strength of an agreement dated 28.11.1984 which was not enforceable as per section 3 of the Act XXXII of 1975 especially when the very agreement was cancelled before filing the case.

A Division Bench of the High Court Division having heard the writ petition by the impugned judgment and order discharged the Rule *Nisi*.

Being aggrieved by and dissatisfied with the impugned judgment and order, the writ-petitioners filed CP No.745 of 2006 before this Court and leave was granted on 11.06.2008 to consider the following submissions:

> "Mr. M. A. Sobhan, learned Advocate, appearing for the petitioner submitted that the agreement dated 28.11.1984 is not enforceable in view of the Services (Re-organization and Condition) Act, 1975 (Act No.XXXII of 1975) without considering the fact that the Carew and Company (Bangladesh) Limited and other companies were nationalized though vested in the Corporation under P.O.No.27 of 1972, retaining their corporate character and the said Carew and Company (Bangladesh) Limited is not a State-owned Manufacturing Industries Limited pursuant to the definition given in Section 2(b) of Act No.10 of 1974 and in such view of the proposition of law the agreement which was signed by the parties on 28.11.1984 is a settlement within the meaning of sub-section XXIV of Section 2 of the Industrial Relations Ordinance, 1969 and by virtue of the said agreement the petitioners are entitled to have their scales of pay, time scale as well as others service

> benefits as allowance by the relevant statue; that pursuant to the judgment and order of Civil Petition for Leave Appeal No.903 of 1998, 21 employees who are all junior to the petitioners have allowed placement and time scales on the basis of the agreement dated 28.11.1984 on fixation of their pay as per pay scales in force from time to time ever since 1985 till 01.09.2000 and the petitioners are also entitled to the same nature of benefits regarding scales of pay and time scales by dint of the said agreement dated 28.11.1984 and the High Court Division committed an error of law to arrive such findings that the judgment and order of Civil Petition of Leave Appeal No.903 of 1998 cannot be made applicable to validate the said agreement for enjoying such rights in view of the provisions of Services (Re-organization and Condition) Act, 1975. The learned Advocate further submitted that Services (Re-organization and Condition) Act, 1975 cannot override the Article 27 and 29 of the Constitution. Therefore, the petitioners cannot be deprived of an equal committed an error of law in not holding that the said Act of 1975 cannot override the equality clause of the Constitution; that the decision of the Appellate Division in Civil Petition for Leave to Appeal No.903 of 1998 is also applicable to the case of the present petitioners who are similarly situated with the employees who were given the pay scale as well as time scale, pursuant to the agreement dated 28.11.1984 and therefore, the petitioners are entitled to have the same benefits on the basis of the decision of the Appellate Division and it cannot be discriminated by the respondents and the same will infringe the fundamental rights of the petitioners guaranteed in Article 27 and 29 of the Constitution."

Mr. Abdus Sohban, learned Advocate, for the appellants has reiterated the submissions on which leave was granted.

Mr. Mahbubey Alam, learned Counsel, for the respondents, on the other hand, has supported the reasoning and the findings of the High Court Division in discharging the Rule *Nisi*.

From the impugned judgment and order, it appears that the High Court Division discharged the Rule on the findings, *inter alia*, that though Carew and Company and other Companies were nationalized and vested in the Corporation under President's Order No.27 of 1972, the Industrial Units retained their corporate character and this was also held in the case of new Dhaka Industries Limited-Vs-Quamrul Huda, 31DLR(AD)234, as such, the workers whether they were workers in an establishment or in an industry their rights given under the labour laws would continue including their rights

to enter into agreement with the management of the company or the corporation subject to however, the provisions of the State Owned Manufacturing Industries Workers (Terms and Conditions of Service) Act, 1974 (the Act X of 1974) and the Act XXXII of 1975; the Act X 1974 deals with the implementation of the recommendation of the industrial workers' Wages Commission while the Act XXXII of 1975 provides for the reorganization of services of the Republic and of Public Bodies and Nationalized Enterprise and for prescribing unified grades and scale of pay and other terms and conditions for persons employed in such services; that in view of the provisions of sections 2, 3 and 5 of the Act XXXII of 1975, the writ-petitioners being variously employed in the Company, an Industrial Unit of the respondent corporation, they also came within the definition of 'worker' and could validly enter into agreement with the management of their employer, but the Company came within the definition of Nationalized Enterprise and as such, the grades and scale of pay and other terms and conditions of services of all the employees of the said respondent including those of the workers shall be governed by the provisions of the Act XXXII of 1975 notwithstanding anything contained in the provisions of Employment of Labour (standing orders) Act, 1965 and the Ordinance, 1969 or any other law for the time being in force; that it was true that the agreement dated 28.11.1984 was found to be legal and valid by the Appellate Division in CP No.903 of 1998, but as admitted by Mr. Amirul Islam (Mr. Amirul Islam also appeared before the High Court Division for the writ-petitioners), the provisions of either of the Act X of 1974 and the Act XXXII of 1975 were not considered by the Apex Court.

The High Court Division concluded that the agreement dated 28.11.1984 among others was in respect of the scale and grades of pay of the

employees of the Company, but such an agreement was subject to the provisions of the Act X of 1974 and the Act XXXII of 1975. Since the scale of pay as stated in demand Nos.6/17 was violative of the grades and scale of pay framed by the Government in pursuance of its powers under the provisions of the aforesaid Acts, it was invalid in the eye of law and not enforceable; under such circumstances, the respondents were not bound by demand Nos.6/17 of the agreement dated 20.11.1984, but the grades and scale of pay of all the employees of the respondents including those of the petitioners shall be governed by the grades and scale of pay as fixed by the Government.

In view of the findings of the High Court Division and the leave granting order as quoted above, the only question which is to be decided in the appeal is whether the agreement entered into by the trade unions and the corporation on behalf of the nationalized enterprises, namely, Carew and Company on 20.11.1984 fixing the scales of pay and grades and other emoluments in violation of the laws could be said to be valid and implemented and whether the said agreement created any vested right to the writ-petitioners and the same could be enforced by invoking the writ jurisdiction of the High Court Division under article 102 of the Constitution.

We have considered the provisions of the Act X of 1974 and sections 2, 3 and 5 of the Act XXXII of 1975. We find no reason to take a view different from the view taken by the High Court Division as to the applicability of the provisions of the said two Acts in respect of fixation of scales of grades and scales of pay in respect of the writ-petitioners and the validity and enforceability of the agreement dated 20.11.1984. And we add that no nationalized company, here Carew and Company or industrial unit could enter into any agreement with its workers/employees through the

bargaining agents to enhance the scales of pay and grades in violation of the provisions of the two Acts, namely, the Act X of 1974 and the Act XXXII of 1975. If any nationalized enterprise or industrial unit is allowed to upgrade the scales of pay and grades by agreement between its workers, employees, the enterprise or the industrial unit through its bargaining agent as happened in the instant case, then everybody would resort to this kind of deal with the employer and enhance the pay, scale and grades as per their own sweet will and this shall create a serious anomaly in the scales of pay and grades of the employees of different enterprise or the industrial unit and in the process, the enactment of the Parliament shall be rendered nugatory.

Mr. Abdus Sobhan failed to show any provision from the concerned laws prevalent at the relevant time, namely, The Labour (Standing Orders) Act, 1965 and the Ordinance, 1969 that the trade unions of a nationalized enterprise or an industrial unit could enter into such kind of agreement in contravention of the provisions of the Act X of 1974 and the Act XXXII of 1975. In the context, we want to make it clear that a trade union can definitely enter into agreement with the management for improvement of the service and conditions of its members, but not in derogation of the laws prevalent at the relevant time.

For the reasons stated hereinbefore, we find no merit in this appeal and accordingly the same is dismissed.

There will be no order as to costs.

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