

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

Writ Petition No. 15517 of 2018

IN THE MATTER OF:

An application under Article 102 of the
Constitution of the People's Republic of
Bangladesh.

-AND-

IN THE MATTER OF:

Subhash Chandra Sikder

.....Petitioner

-Versus-

Present:
Mr. Justice Sashanka Shekhar Sarkar
And
Justice Urmeem Rahman

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

..... Respondents

Mr. K. B. Shahriar Ahmad, Advocate

...For the petitioner

Mr. Mohammad Waliul Islam Oli, D.A.G with
Mr. Md. Ershadul Bari Khandakar, D.A.G,
Ms. Nilufar Yesmin, A.A.G,
Mr. Md. Moshir Rahman (Rahat), A.A.G,
Mr. Md. Motasim Billah Parvez, A.A.G and
Mr. Md. Faridul Islam, A.A.G

.... For the respondents

Heard on 06.01.2026, 07.01.2026, 15.01.2026,

21.01.2026 and Judgment on 28.01.2026

Urmeem Rahman, J:

In the instant writ petition Rule was issued in the following
terms:

*“Let a Rule nisi be issued calling upon the
Respondents show cause as to why the decision dated
11.04.2018 (Annexure-I) taken by the Ministry of
Education, Secondary and Higher Secondary Division*

(Government Secondary-1) under the signature of the respondent Nos. 5-9 for re-fixing the seniority of the Assistant Teachers of the Government High Schools who got appointment before 07.02.1991 discriminatory and violative to the fundamental rights guaranteed by the Constitution of the People's Republic of Bangladesh in derogation of the seniority list dated 25.03.2015 (Annexure-F) should not be passed without lawful authority and is of no legal effect and as to why the respondents should not be directed to give the petitioner financial benefit of the post of Assistant Headmaster/Assistant District Education officer as has been serving as 'Current charge'/' চলতি দায়িত্ব' of the same from 04.12.2016 and to remove all kinds of discrimination including payment as evident from Annexure-H being memo dated 17.09.2018 implementing and continuing the seniority list dated 25.03.2015 (annexure-F) and/or such other or further order or orders be passed as to this Court may seem fit and proper."

Relevant facts for disposal of the matter in brief are that, at present the petitioner is serving the post of Assistant Headmaster ('Current Charge'/চলতি দায়িত্ব) being Assistant Teacher at Sitakundo Government Ideal High School, Chattogram. Earlier he joined as an Assistant Teacher on 16.10.1989 in the Royangchori High School, Royangchori, Bandarban, Chittagong Hill Tracts. Soon after that the school was nationalized on 04.11.1989. The petitioner was temporarily absorbed in the same post on 25.03.1992 and he completed his B.Ed. degree on 25.10.1994 i.e. within 3 years as required by first proviso to sub rule 2 of Rule 4 of **Teacher and**

Non-teaching Staff of Nationalized High School (Directorate of Secondary and Higher Education) Absorption Rules, 1983. He was regularised on 03.02.1996 giving effect from the date of regularization.

Until 1991 there was no recruitment rules for teachers. In this field the applicable law was Bangladesh Civil Service Recruitment Rules 1981. However; in that Rules there was no prescribed rule for promotion. By the S.R.O. No. 17-Ain/2010/05/030.0174.01.00.006. 2010 dated 18.01.2010, the Rule was amended by including the qualification for promotion as ‘Diploma in Education or B.Ed. or B.P.Ed. degree with 7 years’ experience in the feeder post.

In 1991 for the first time a service rule came into force for the teachers and staffs of schools: কর্মকর্তা ও কর্মচারী (মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা অধিদপ্তর) নিয়োগ বিধিমালা, 1991. Rule 2 (uma) of this Rules denotes about the ‘required qualification’ referring to the qualification as stated in the Schedule which is under the heading of ‘জেলা শিক্ষা অফিস ও সরকারী স্কুল’ being serial no. 1 that, the recruitment of Assistant teacher would be carried out directly subject to obtaining 2nd class Education Degree/Diploma within 5 years from the appointment. However, there was no rule on seniority and promotion for direct recruited teachers. As such on 03.05.2011 a Rule was made as ‘নন-ক্যাডার কর্মকর্তা ও কর্মচারী জ্যেষ্ঠতা ও পদোন্নতি) বিধিমালা, ২০১১’ where Rule 4 (2) provides that ‘বিভিন্ন পদের সমন্বিত জ্যেষ্ঠতা নির্ধারণের ক্ষেত্রে সংশ্লিষ্ট শ্রেণীর প্রারম্ভিক পদে নিয়মিত যোগদানের তারিখের ভিত্তিতে সমন্বিত জ্যেষ্ঠতা নির্ধারিত হইবে।’

Accordingly, on the basis of Absorption Rules of 1983, Bangladesh Civil Service Recruitment Rules, 1981 (As amended in 2010) and Rules of 2011 the seniority of the petitioner and others were fixed from their respective date of joining in the service and in 2015 a seniority list was prepared where the petitioner was placed in serial no. 309. Several promotions have been made on the basis of this seniority list.

On 17.09.2018 the respondents gave promotion to some teachers, who are junior to the petitioner in terms of date of joining as well as in terms of receiving the B.Ed. degree.

On query the petitioner came to learn that in the meeting dated 11.04.2018 the Ministry of Education took a decision in preparing a new seniority list in the light of judgment passed in W.P. no. 5667 of 2015 and the corresponding C.P. No. 2037 of 2016. In that meeting the decision No. 4.3 was taken by giving reference to two recommendations of Ministry of Education dated 16.08.1984 and of Bangladesh Public Service Commission dated 06.02.2003 where it was said to have decided that the seniority of the teachers, who joined before the Rules 1991 came into force, will be counted from the date of acquiring the required degree.

The seniority of the petitioner having been breached as a consequence of the said decision, he has filed the instant writ petition as an aggrieved person and obtained the Rule.

Mr. K. B. Shahriar Ahmad, learned Advocate appearing on behalf of the petitioner at the very outset submitted that seniority

means the length of service similarly situated with others in the same feeder post and is the primary criteria to be considered in promotion though not the only criteria but the impugned decision of the respondents has made the primary criteria questionable resulting in discrimination among the teachers' in the same feeder posts and as such the impugned decision is discriminatory, mala fide, without lawful authority and therefore is liable to be declared to have taken in violation of the petitioner's fundamental rights as guaranteed by Articles 27, 29, 31 and 32 of the Constitution.

It has been further submitted by the learned Advocate that the petitioner has acquired vested and indefeasible right of seniority in the post of Assistant Headmaster as per the gradation list prepared in 2015 which cannot be taken away capriciously at the sweet will of the respondents and hence the impugned decision debarring the petitioner from promotion is liable to be set aside.

Mr. Ahmad argued that as per the judgment of the Supreme Court, as mentioned in the impugned decision, the petitioner is entitled to get promotion from the date of his joining in the service, not from the date of obtaining B.Ed. degree as Bangladesh Civil Service Recruitment Rules 1981 provides no such condition and as such the pre-1991 appointed teachers, like the petitioner, are entitled to get promotion preferably as per seniority and hence the impugned decision debarring the petitioner from promotion is liable to be declared to have been adopted without lawful authority.

He next contended that the impugned decision of the Public Service Commission does not have any overriding effect over the existing law namely Teachers and Non-Teaching Staffs of Nationalized High School Absorption Rules, 1983, Bangladesh, Civil Service Recruitment Rules, 1981 (as amended in 2010) and 'নন-ক্যাডার কর্মকর্তা ও কর্মচারী জ্যেষ্ঠতা ও প-দান্নতি বিধিমালা, ২০১১' and thus the impugned decision is mala fide, discriminatory, arbitrary and therefore liable to be set aside.

He finally submitted that the impugned decision amounts to downgrading the rank of the petitioner which is discriminatory and therefore, the same is liable to be declared without any lawful authority and is no legal effect.

No one appears to contest the Rule.

We have heard the learned Advocate for the petitioner and perused the writ petition and as well as all the documents annexed therewith.

As we have already seen from the case of the petitioner as has been discussed hereinabove that, the petitioner joined the school on 16.10.1989. However, the school was nationalized thereafter on 04.11.1989 and as per the Absorption Rules of 1983 the petitioner was temporarily absorbed in the same post on 25.03.1992 with the condition to complete the required B.Ed. degree within 3 years. Accordingly, he obtained the required degree within the stipulated time and obtained the result on 25.10.1994. Subsequently, he was regularized in his service by the memo dated

03.02.1996 giving effect from the date of regularization of the school i.e. from 04.11.1989, as evident from Annexure A series at page 43 in serial no. 67. The relevant portion of the memo dated 03.02.1996, by which the petitioner along with other teachers were regularized, is quoted below:

“আত্মীকরণ বিধি ১৯৮৩ইং অনুযায়ী এবং সংস্থাপন মন্ত্রণালয়-র ৫/০৯/৮৯ইং তারি-খর নং সম/আর-১/৩৩/৮৯-২২৪(৪৫০) স্মার-ক গঠিত বিভাগীয় বাছাই/নির্বাচন কমিটির ২৭/১/৯৬ইং তারি-খর সভার সুপারিশক্রমে শিক্ষাগত যোগ্যতা, পুলিশ ভেরিফিকেশন ও ডাক্তারী পরীক্ষা ইত্যাদি সংক্রান্ত সনদাদি পরীক্ষা-স্ত সাময়িকভা-ব আত্মীকৃত নিম্নলিখিত শিক্ষক/শিক্ষিকা ও কর্মচারী-দর-ক সংশ্লিষ্ট বিদ্যালয় জাতীয়কর-নর তারিখ/সংশ্লিষ্ট শিক্ষক/শিক্ষিকা ও কর্মচারীর সাময়িক আত্মীকরণ-নর তারিখ হইতে তাঁহাদের নামের পার্শ্বে বর্ণিত বেতনক্রমে চূড়ান্ত আত্মীকরণ ও নিয়মিত নি-য়াগ প্রদান করা হইল।”

It appears from the record that there was no recruitment Rules for teachers until 1991 and the only law applicable in this field was Bangladesh Civil Service Recruitment Rules, 1981. In 1991 for the first time a service rule came into force mainly: কর্মকর্তা ও কর্মচারী নি-য়াগ বিধিমালা, ১৯৯১. However, this rule also did not contain any provision regarding seniority or promotion of the teachers. As such on 03.05.2011 another Rule was made, namely, নন-ক্যাডার কর্মকর্তা ও কর্মচারী জ্যেষ্ঠতা ও প-দান্নতি বিধিমালা, ২০১১ wherein Rule 4(2) provided that “বিভিন্ন পদের সমন্বিত জ্যেষ্ঠতা নির্ধারণের ক্ষেত্রে সংশ্লিষ্ট শ্রেণীর প্রারম্ভিক পদে নিয়মিত যোগদানের তারিখের ভিত্তিতে সমন্বিত জ্যেষ্ঠতা নির্ধারিত হইবে।”

As we have already found in our previous discussion that the petitioner’s service was regularized from the date 04.11.1989 and accordingly on 25.03.2015 a gradation list was prepared from

where it can be seen that the date of appointment of the petitioner was also considered to be from 04.11.1989 (Annexure-F) wherein the petitioner's name was posted in serial No. 309.

By the impugned decision as annexed in (Annexure-I), the Ministry of Education took a decision, which has been placed in serial No. 4.3, wherein a reference has been made to a recommendation made by the Ministry of Education dated 16.08.1984 and also another recommendation made by the Bangladesh Public Service Commission dated 06.02.2003 and on the basis of these recommendations it was decided that the seniority of the teachers who joined before the Rules, 1991, will be counted from the date of acquiring the required degree.

We have seen that in the gradation list prepared in 2015 there is no reference of the said recommendation made by the Bangladesh Public Service Commission dated 06.02.2003 and the gradation list has already been acted upon because promotions have been given in several occasions on the basis of that gradation list. Therefore, the subsequent decision taken by the respondents by the impugned memo does not have any applicability in case of the petitioner.

The gradation list was prepared in 2015 and a vested right has already been created in favour of the petitioner. Earlier it has decided in many cases by this Honb'le Court that a substantive right once accrued are not to be retrospectively taken away except by legal mandate. It has also been decided in many cases that a

substantive policy decision cannot operate to the detriment of a person who was appointed earlier under the different set of rules since the earlier rules had already conferred a right or benefit upon him.

No retrospective effect can be given to any administrative decision, circulars or policies, this type of decision has always been presumed to be prospective in nature. As the petitioner had already fulfilled all the eligibility conditions for promotion under the previous rules, he is lawfully entitled to be guided by that rule as a matter of right.

In this context a decision of the Appellate Division reported in *66 DLR (AD) 187* in the case of *Bakhrabad Gas System Limited Vs. Al Masur-ar-noor and Ors.* is quoted below:

“To be more explicit, the appointing authority enjoys the power and the authority to frame new rules to regulate the service of its employees, but that in no way, can take away the accrued/vested rights of its employees, here the writ petitioners. We also make it very clear that an employee shall definitely be entitled to the new service benefits if given or created by the new rules, but no rules can be framed to his disadvantage or detriment or to the denial of his accrued/vested right as in the instant case sought to be taken away. The new rules adding new terms and conditions including the one as to the promotion to the next higher posts shall be effective and applicable to the employees,

who will be appointed after the coming into effect or force of the same.” (per Md. Abdul Wahhab Miah, J.)

On the basis of the principle laid down by the Appellate Division we hold that, since the petitioner accrued the right on 04.11.1989, which has also been acted upon by the respondents on 25.03.2015, the same right cannot be taken away by the subsequent decision, which has been taken by the impugned memo dated 11.04.2018.

With the findings and discussion made hereinabove, we are of the opinion that there is substance in the Rule issued in the instant matter.

In the result, the Rule is made absolute.

There is no order as to cost.

The impugned memo dated 11.04.2018 so far it relates to the decision No. 4.3 affecting the petitioner is hereby declared unlawful and without any lawful authority and hereby set aside.

Communicate the judgment and order at once.

Sashanka Shekhar Sarkar, J:

I agree.