

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Md. Ashfaul Islam
Mr. Justice Md. Rezaul Haque
Mr. Justice S.M. Emdadul Hoque
Mr. Justice A.K.M. Asaduzzaman
Mrs. Justice Farah Mahbub

CIVIL APPEAL NOS.23-24 AND 55-56 OF 2020

WITH

CIVIL PETITION FOR LEAVE TO APPEAL NOS.3204 OF 2018, 574 OF 2019, 586 OF 2019, 1394 OF 2019, 1513 OF 2019, 1620 OF 2019 and 1997 of 2019.

AND

CIVIL PETITION FOR LEAVE TO APPEAL No.1723 OF 2023

(From the judgments and orders dated 04.01.2017, 04.12.2017, 30.07.2018, 31.10.2017 and 02.07.2018 respectively passed by the High Court Division in Writ Petition Nos.13300 of 2016, 10912 of 2017, 4216 of 2018, 15346, 15347, 15345, 15343, 15344 all of 2016, 14745 of 2019 and 13726 of 2016 respectively.)

Bangladesh, represented by the
Secretary, Ministry of Finance,
Bangladesh Secretariat, Dhaka- : . . . **Appellants.**
1000 and others. (In C. A. Nos.23-24 of 2020)

Secretary, Bangladesh Small and
Cottage Industries Corporation
(BSCIC), by its Chairman, 137-
138, Motijheel Commercial Area, : . . . **Appellants.**
Dhaka-1000. : (In C. A. No.55 of 2020)

Bangladesh Small and Cottage
Industries Corporation (BSCIC),
represented by its Chairman, 137-
138, Motijheel Commercial Area, : . . . **Appellant.**
Dhaka-1000. : (In C. A. No.56 of 2020)

Bangladesh, represented by the
Secretary, Ministry of Finance
Division, Bangladesh Secretariat, : . . . **Petitioners.**
Dhaka-1000 and others. : (In C. P. No.3204 of 2018)

Government of the People's Republic
of Bangladesh, represented by the
Secretary, Finance Division, Ministry : . . . **Petitioners.**
of Finance, Bangladesh Secretariat, (In C. P. Nos.574, 586, 1394, 1513,
Ramna, Dhaka and others. : 1620, 1997 of 2019 and 1723 of 2023)

-Versus-

Ibrahim Alam Bhuiyan and others.	:	. . . Respondents. (In C. A. Nos.23-24 of 2020)
Md. Abu Sadeque and others.	:	. . . Respondents. (In C. A. Nos.55-56 of 2020)
Shahjahan Anisur Rahman, and others.	:	. . . Respondents. (In C. P. No.3204 of 2018)
Dr. Md. Jaynal Haque and others.	:	. . . Respondents. (In C. P. No.574 of 2019)
Abdul Latif Mollah and others.	:	. . . Respondents. (In C. P. No.586 of 2019)
Dr. Shetendu Sekhor Das and others.	:	. . . Respondents. (In C. P. No.1394 of 2019)
Sati Rany Dey and others	:	. . . Respondents. (In C. P. No.1513 of 2019)
Dr. Mohammad Sharif and others	:	. . . Respondents. (In C. P. No.1620 of 2019)
Md. Ashraful Alam and others	:	. . . Respondents. (In C. P. No.1997 of 2019)
Md. Shah Alam and others,	:	. . . Respondents. (In C. P. No.1723 of 2023)
For the Appellants (In all the cases)	:	Mr. Aneek R. Haque, Additional Attorney-General with Mr. Md. Zahirul Islam Sumon, Deputy Attorney-General and Ms. Fatima Akhter, Assistant Attorney-General instructed by Mr. Haridas Paul, Advocate-on-Record, Ms. Taslima Chowdhury, Advocate-on-Record, Mr. Md. Ziaur Rahman, Advocate-on-Record, Ms. Nadira Akhter, Advocate-on-Record and Mrs. Sufia Khatun, Advocate-on-Record.
For Respondent Nos.1-3 (In C. A. Nos.23-24 of 2020)	:	Mr. Mohammad Ibrahim Khalil, Advocate instructed by Mr. Satya Ronjon Mondall, Advocate-on-Record and Mr. Md. Zahirul Islam, Advocate-on-Record.
For Added Respondent Nos.6-8 (In C. A. No.23 of 2020)	:	Mr. ASM Khalequzzaman, Advocate instructed by Mr. Zainul Abedin, Advocate-on-Record.
For Respondent Nos.4-5 (In C. A. Nos.23-24 of 2020)	:	Not represented.

For Respondent Nos.1, 31, 45, 66, 70, 79 and 83 (In C. A. No.55 of 2020)	Mr. Mohammad Ibrahim Khalil, Advocate with Mr. Sk. Shafique Mahmud, Advocate : instructed by Mr. Md. Zahirul Islam, Advocate-on-Record.
For Respondent Nos.2-30, 32-44, 46-65, 67-69, 71-78, 80-82 and 84-99 (In C. A. No.55 of 2020)	: Not represented.
For Respondent Nos.1, 45, 70 and 79: (In C. A. No.56 of 2020)	Mr. Mohammad Ibrahim Khalil, Advocate with Mr. Sk. Shafique Mahmud, Advocate : instructed by Mr. Md. Zahirul Islam, Advocate-on-Record.
For Respondent Nos.2-44, 46-69, 71-78 and 84-99 (In C. A. No.56 of 2020)	Not represented.
For Respondent Nos.1-32 (In C. P. No.3204 of 2018)	Mr. Mohammad Ibrahim Khalil, Advocate instructed by Mr. Md. Zahirul Islam, Advocate-on-Record and Mr. M. Ashraf-uz-Zaman Khan, Advocate-on-Record.
For Added Respondent Nos.33-47 : (In C. P. No.3204 of 2018)	Mr. Muhammed Mustafizur Rahman Khan, Senior Advocate with Mr. Md. Harunur Rashid, Advocate instructed by Ms. Nahid Sultana, Advocate-on-Record and Mr. M. Ashraf-uz-Zaman Khan, Advocate-on-Record.
For Respondent No.1 (In C. P. No.574 of 2019)	Mr. Mohammad Ibrahim Khalil, Advocate : instructed by Ms. Hasina Akhter, Advocate-on-Record.
For Respondent Nos.2-132: (In C. P. No.574 of 2019)	: Not represented.
For Respondent No.1 (In C. P. Nos.586 & 1394, 1513 of 2019)	Mr. Mohammad Ibrahim Khalil, Advocate instructed by Mr. M. Ashrafuzzaman Khan, Advocate-on-Record.
For Respondent Nos.2-91 (In C. P. No.586 of 2019)	: Not represented.
For Respondent Nos.2-101 (In C. P. No.1394 of 2019)	: Not represented.
For Respondent Nos.2-108 (In C. P. No.1513 of 2019)	: Not represented.
For Respondent No.1 (In C. P. No.1620 of 2019)	Mr. Mohammad Ibrahim Khalil, Advocate : instructed by Ms. Hasina Akhter, Advocate-on-Record.
For Respondent Nos.2-100 (In C. P. No.1620 of 2019)	: Not represented.
For Respondent No.1 (In C. P. No.1997 of 2019)	Mr. Md. Ruhul Quddus, Senior Advocate instructed by Ms. Shirin Afroz, Advocate-on-Record.

For Respondent Nos.2-100

(In C. P. No.1997 of 2019) : Not represented.

For the Respondents

Mr. Salahuddin Dolon, Senior Advocate
(In C. P. No.1723 of 2023) : instructed by Ms. Shahanara Begum,
Advocate-on-Record and Mr. Huyayun Kabir
Sikder, Advocate-on-Record.

Date of Hearing : The 29th April, 2025.

Date of Judgment : The 30th April, 2025.

J U D G M E N T

Farah Mahbub, J:

Delay in filing Civil Petition for Leave to Appeal
Nos. 1394, 1513, 1620 and 1997 all of 2019 is condoned.

Civil Appeal bearing Nos.23 and 24 both of 2020 arose
out of the leave granting order dated 04.02.2020 passed
by this Division in Civil Petition for Leave to Appeal
Nos.3227 and 4412 both of 2017 tagged with Civil Petition
Nos. 1394, 586, 574, 1513, 1620 and 1997 all of 2019 and
1723 of 2023 respectively.

Civil Appeal bearing Nos.55 and 56 both of 2020 arose
out of the leave granting order dated 04.02.2020 passed
by this Division in Civil Petition for Leave to Appeal
Nos.824 of 2018 and 384 of 2019 respectively tagged with
Civil Petition for Leave to Appeal No.3204 of 2018.

Common facts relevant for disposal of Civil Appeal Nos.23-24 both of 2020 are that the respondent Nos.1-3 as writ-petitioners filed Writ Petition No.13300 of 2016 before the High Court Division challenging the Circular bearing No.07.00.0000.161.00.002.16(Part-1)-232 dated 21.09.2016 issued by the writ-respondent No.3 in both cases, in supersession of the Services (Pay and Allowance) Order, 2015, which was issued by the order of the President of the People's Republic of Bangladesh in exercise of power as provided under Section 5 of the Services (Reorganization and Conditions) Act, 1975 (Act No. XXXII of 1975) vide S.R.O. No.369-Ain/2015, published in the official gazette dated 15.12.2015.

Their categorical assertions are that they entered into service as Assistant Bench Officers on different dates. Based on their satisfactory service record subsequently, they were promoted to the post of Bench Officers. However, vide gazette notification dated 04.09.2008 the post of Bench Officers of the High Court Division was upgraded as the First Class Gazetted Officers with effect from 01.12.2003. Pursuant thereto the writ-petitioners were upgraded as the First Class

Gazetted Officers and at the same time, they were allowed to draw their salaries in Grade-8 of the National Pay Scale.

The respondent Nos.1-95 of Civil Appeal Nos.55-56 both of 2020 also, filed writ-petition No.10912 of 2017 stating, *inter-alia*, that they entered into the service of Bangladesh Small and Cottage Industries Corporation (BSCIC) in different posts and were posted in different places throughout the country. They also completed more than 16 years with unblemished record of service, but without any promotion whatsoever.

Common claim of both the writ petitions are that vide Notification No. MF/FD (Imp)-III-R(F)-12/83/79 dated 21.05.1984 issued under the Services (Re-organization and Conditions) Act, 1975 (in short, the Act,1975), respective employees both in the service of the Republic as well as in public bodies holding scale of pay between Tk.225-315/- and Tk.470-1135/- were allowed to move to the next higher scale of pay, after completion of 8, 12 and 15 years of service respectively in their respective posts with satisfactory service record. Subsequently, by another Notification bearing No.MF/FD/(Imp)-III-R(G)-

12/83/10 dated 23.01.1985 time scale was made applicable and available to the person holding the scale of Tk.625-1315.

The provision of time scale, however, was formally incorporated in the modified National Pay Scales from 01.06.1985. According to the provision as mandated in the National Pay Scales, 1985, 1991, 1997, 2005 and 2009 respectively the employees between 20th to 10th grade were entitled to the time scales on completion of 8, 12 and 15 years of the respective service period. This pecuniary benefit of up-gradation of pay scale was a huge incentive so was given in order to bring efficiency in public service and to reduce dissatisfaction among the employees concerned for not having promotion for lack of posts and at the same time working in the same post for a long time.

Later, pursuant to the decision of the writ-respondent-government to omit the existing provision of time scale the Service (Pay and Allowances) Order, 2015 (in short, the Service Order, 2015) was framed by the government by the order of the President of the Republic, in exercise of power as provided under Section 5 of the

Act, 1975 prescribing new pay scales and other financial benefits to the officers and employees of the Republic, public bodies, corporations and nationalized enterprises respectively. In the said Service Order, 2015 though some provisions of up-gradation of scales of pay had been provided in clause 7 but the provision of time scale was not kept intact.

The writ-petitioners of Writ Petition No.13300 of 2016 who were all qualified to get time scale having completed respective service period in the upper grade as provided under clause 7(1) of the Service Order, 2015 made representations to the authority concerned for getting their pay at Grade-V, but with no response.

Similarly, the writ-petitioners of Writ Petition No. 10912 of 2017 also attained the eligibility to move to the next higher grade as per the provision of “উচ্চতর গ্রেডের প্রাপ্যতা” under Clause 7(1) of the Service Order, 2015. Even, the respondent No.4, Bangladesh Small and Cottage Industries Corporation (BSCIC) in compliance with the provision of the said order, issued an office order bearing Memo No. 36.02.012.00.02.002.2014/1872(250) dated

07.09.2016 allowing them the benefits of the respective provision of the Service Order, 2015. However, said office order was rendered ineffective in view of issuance of the impugned Circular bearing No.07.00.0000.161.00.002.16 (Part-1)-232 dated 21.09.2016 by the writ-respondent No.3.

The impugned Circular bearing No.07.00.0000.161.00.002.16 (Part-1)-232 dated 21.09.2016, issued by the writ-respondents-government in particular incorporating clause (ga), being relevant for disposal of the instant appeals, runs as under:

“(গ) উচ্চতর গ্রেডের প্রাপ্যতাঃ-

- (১) একই পদে কর্মরত কোন কর্মচারী দুই বা ততোধিক উচ্চতর স্কেল (টাইম-স্কেল)/সিলেকশন গ্রেড (যে নামেই অভিহিত হউক) পাইয়া থাকিলে তিনি এই অনুচ্ছেদের অধীন উচ্চতর গ্রেড প্রাপ্য হইবেন না।
- (২) একই পদে কর্মরত কোন কর্মচারী একটিমাত্র উচ্চতর স্কেল (টাইমস্কেল)/সিলেকশন গ্রেড (যে নামেই অভিহিত হউক) পাইয়া থাকিলে উচ্চতর স্কেল (টাইমস্কেল)/সিলেকশন গ্রেড পাইবার তারিখ হইতে পরবর্তী ৬ (ছয়) বছর পূর্তির পর ৭ম বছরে পরবর্তী উচ্চতর গ্রেড প্রাপ্য হইবেন।
- (৩) একই পদে কর্মরত কর্মচারী কোন প্রকার উচ্চতর স্কেল (টাইমস্কেল)/সিলেকশন গ্রেড (যে নামেই অভিহিত হউক) না পাইয়া থাকিলে সন্তোষজনক চাকরির শর্তে তিনি ১০ (দশ) বৎসর চাকরি পূর্তিতে ১১তম বছরে পরবর্তী উচ্চতর গ্রেড এবং পরবর্তী ৬ বছরে পদোন্নতি না পাইলে ৭ম বছরে পরবর্তী উচ্চতর গ্রেড প্রাপ্য হইবেন।
- (৪) জাতীয় বেতনস্কেল, ২০১৫ এর ৭(১) ও ৭(২) এ প্রদত্ত সুবিধা কোন ক্রমেই ১৫/১২/২০১৫ তারিখের পূর্বে প্রদান করা যাইবে না।”

The writ-petitioners filed the respective writ petitions on the contentions, *inter-alia*, that clause (ga) of the impugned circular dated 21.09.2016 has the

effect of overriding clause 7(1) and (2) of the Service Order, 2015. Resultantly, they are being deprived of getting higher grade under the said provision of the Order, 2015.

Their further assertion is that clause 7 of the said Service Order, 2015 is rooted in law with publication in gazette on 15.12.2015. Conversely, the impugned circular neither has any source of law nor it was published in gazette. Moreso, numerous officers both of the Republic as well as public bodies have already been allowed the benefit as provided under clause 7(1) and (2) of said Service Order, 2015. In other words, clause 7(1) and (2) of the Order, 2015 have already been acted upon. As such, the impugned circular is liable to be knocked down for having been issued without lawful authority and hence, of no legal effect.

Clause 7(1) and (2) of the Service Order, 2015 are accordingly quoted below for ready reference:

“৭। উচ্চতর গ্রেডের প্রাপ্যতা –

(১) কোন স্থায়ী কর্মচারী পদোন্নতি ব্যতিরেকে একই পদে ১০ (দশ) বৎসর পূর্তিতে এবং চাকরি সন্তোষজনক হওয়া সাপেক্ষে, স্বয়ংক্রিয়ভাবে ১১তম বৎসরে পরবর্তী উচ্চতর গ্রেডে বেতন প্রাপ্য হইবেন।

(২) কোন স্থায়ী কর্মচারী তাহার চাকরির ১০ (দশ) বৎসর পূর্তিতে উচ্চতর গ্রেডে বেতন প্রাপ্তির পর পরবর্তী ৬ (ছয়) বৎসরে পদোন্নতি প্রাপ্ত না হইলে ৭ম বৎসরে চাকরি সন্তোষজনক হওয়া সাপেক্ষে, স্বয়ংক্রিয়ভাবে পরবর্তী উচ্চতর গ্রেডে বেতন প্রাপ্য হইবেন।

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Having found substance thereto the High Court Division upon hearing the respective contending parties made the Rule absolute vide the impugned judgment and order dated 04.01.2017 in Writ Petition No.13300 of 2016 declaring the impugned Circular bearing No.07.00.0000.161.00.002.16(Part-1)-232 dated 21.09.2016 issued by the writ-respondent No.3 to have been issued without lawful authority and hence, of no legal effect as being *ultra-vires* the Constitution.

In the light of the said judgment and order dated 04.01.2017, another Bench of the High Court Division made the Rule absolute in Writ Petition No. 10912 of 2017 vide judgment and order dated 04.12.2017.

Having similar grievances the respondent Nos.1-132 of Civil Petition for Leave to Appeal No.574 of 2019, being medical doctors holding the posts of Assistant Director, Research Officer, Medical Officer, Junior Consultant and Lecturer(Medical) under the Family Planning Directorate, Dhaka, posted in different districts throughout Bangladesh,

filed writ Petition No.15346 of 2016 before the High Court Division.

The respondent Nos.1-101 of Civil Petition for Leave to Appeal No.1394 of 2019, being medical doctors holding the posts of Assistant Surgeon, Female Assistant Surgeon, Medical Officer and Emergency Medical Officer, under the Family Planning Directorate, Dhaka, posted in different districts throughout Bangladesh, filed Writ Petition No. 15345 of 2016 before the High Court Division.

The respondent Nos. 1-100 of Civil Petition for Leave to Appeal No.1620 of 2019, being medical doctors holding the posts of Director, Deputy Director(CS), Assistant Director, Line Director (CCSDP), Medical Officer and Junior Consultant under the Family Planning Directorate, Dhaka, posted in different districts throughout Bangladesh, filed Writ Petition No.15344 of 2016 before the High Court Division.

The respondent Nos. 1-91 of Civil Petition for Leave to Appeal No.586 of 2019 and respondent Nos.1-108 of Civil Petition for Leave to Appeal No.1513 of 2019, serving as Family Planning Officer/Upazilla Officer under the Family Planning Directorate, Dhaka, posted in different

districts throughout Bangladesh, filed Writ Petition Nos.15343 and 15347 both of 2016, before the High Court Division.

The respondent Nos.1-352 of Civil Petition for Leave to Appeal No.1723 of 2023 and respondent Nos.1-311 of Civil Petition for Leave to Appeal No.1997 of 2019 serving as the Agriculture Officers of the government holding the post of Assistant and Sub-Assistant Agriculture Officer under different upazillas in different districts of the country, filed Writ Petition Nos.13726 of 2018 and 14745 of 2016 respectively.

Their categorical contentions are that after joining they duly served in their respective posts completing the respective service period as provided under clause 7(1) and (2) of the Service Order, 2015 respectively with unblemished record of service. But, they were deprived of their due entitlement of higher grade under the said Service Order, 2015 because of the predicament being created vide clause (ga) of the impugned Circular dated 21.09.2016.

Upon hearing the respective contending parties concerned the High Court Division disposed of all the

Rules in Writ Petition Nos.15343, 15344, 15345, 15346 and 15347 all of 2016 in view of the judgment and order dated 04.01.2017 passed in Writ Petition No.13300 of 2017, vide judgment and order dated 30.07.2018, in Writ Petition No.14745 of 2016 vide judgment and order dated 31.10.2017 and in Writ Petition No.13726 of 2016 vide judgment and order dated 02.07.2018 respectively.

Being aggrieved, the Government of Bangladesh and others as leave petitioners filed Civil Petition for Leave to Appeal Nos.3227 and 4412 both of 2017 along with Civil Petition for Leave to Appeal Nos.3204 of 2018, 574, 586, 1394, 1513, 1620, 1997 all of 2019 and 1723 of 2023 respectively. The Chairman and the Secretary of Bangladesh Small and Cottage Industries Corporation (BSCIC) as leave petitioners filed Civil Petition for Leave to Appeal Nos.824 of 2018 and 384 of 2019 respectively.

This Division having found substance to the submissions so had been advanced by the learned Additional Attorney General and the learned Senior Advocate appearing for the leave petitioners in both cases granted leave on 4 (four) counts vide order dated 04.02.2020 in Civil Petition for Leave to Appeal Nos.3227

and 4412 both of 2017 and on 2 (two) counts vide order dated 04.02.2020 in Civil Petition for Leave to Appeal Nos. 824 of 2018 and 384 of 2019 respectively.

However, vide order dated 04.02.2020 passed by this Division the other civil petitions for leave to appeal were tagged with Civil Appeal Nos.23 and 24 both of 2020 and Civil Appeal Nos.55 and 56 both of 2020 respectively.

Subsequently, by dint of the applications dated 10.03.2019 and 17.11.2022 respectively filed in Civil Appeal No.23 of 2020 and dated 04.03.2024 and 22.04.2024 respectively in Civil Petition for Leave to Appeal No.3204 of 2018, the applicants prayed for adding them as party in the said Civil Appeals.

From the identifications mentioned in the cause title and the statements so made in the respective applications it appears that the applicants and the respondents-writ petitioners of the two respective appeals stand on similar footing in relation to the impugned circular. Hence, the respective applications for addition of party are allowed.

At this juncture, when the matter has been taken up for hearing of the respective appeals Mr. Aneek R. Hoque, the learned Additional Attorney General appearing for the appellant-writ-respondents in all the cases submits that the High Court Division while passing the impugned judgment and order had declared the impugned circular dated 21.09.2016 as a whole, to have been issued without lawful authority as being *ultra-vires* the Constitution. In this regard, he goes to submit that clause (ga) of the said circular squarely concerns with the respondents-writ-petitioners so far it relates to "উচ্চতর ছেডের প্রাপ্যতা". But for declaring the impugned circular unlawful in it's entirety has given rise to an anomalous situation amongst the other employees of the Government in respect of their other benefits so accrued under the said Service Order, 2015.

In that view of the matter, a joint prayer has been made by the respective contending parties to dispose of the instant Civil Appeals upon modifying the impugned judgments and orders passed by the High Court Division in Writ Petition No.13300 of 2016 and Writ Petition No.10912 of 2017 upon declaring clause (ga) only of the circular

No.07.00.0000.161.00.002.16 (Part-1)-232 dated 21.09.2016 issued by the writ-respondent No.3, to have been issued without lawful authority and hence, of no legal effect.

Considering the submissions so have been advanced by both the respective contending parties the prayer for modification of the impugned judgments and orders dated 04.01.2017 and 04.12.2017 respectively passed by the High Court Division in Writ Petition No.13300 of 2016 and Writ Petition No.10912 of 2017 are allowed.

In the operating part of the impugned judgments and orders dated 04.01.2017 and 04.12.2017 respectively passed by the High Court Division in Writ Petition Nos.13300 of 2016 and 10912 of 2017 the words "in part" be added after the word "absolute", and also, to include the words, "Clause (ga) as contained in" before the words "the impugned paripatra.

Accordingly, the operating part of the impugned judgments and orders dated 04.01.2017 and 04.12.2017 respectively passed by the High Court Division in Writ Petition Nos.13300 of 2016 and 10912 of 2017 so modified thus stand as under:

"In the result, the Rule is made absolute in part without any order as to costs.

Clause (ga) as contained in the impugned Paripatra being Circular No.07.00.0000.161.00.002.16(Part-1)-232 dated 21.09.2016 issued by the respondent No.3 (Annexure-c) is hereby declared to have been issued without lawful authority and is, of no legal effect as being ultra vires the Constitution."

All the civil appeals bearing Nos.23-24 and 55-56 all of 2020 are accordingly, disposed of making the above amendment in the impugned judgments and orders.

Civil Petition for Leave to Appeal Nos.3204 of 2018, 574 and 586 both of 2019 and 1723 of 2023 along with Civil Petition for Leave to Appeal Nos. 1394, 1513, 1620 and 1997 all of 2019 are disposed of in the light of the judgment and order being delivered in Civil Appeal Nos.23-24 and 55-56 all of 2020.

There will be no order as to costs.

J.

J.

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J.

J.