

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

Writ Petition No. 2283 of 2020

With

Writ Petition No. 15115 of 2017

IN THE MATTER OF:

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

-And-

IN THE MATTER OF:

Md. Kowsar and othersPetitioners
(In Writ petition No. 2283 of 2020)

Md. Mahtab Uddin and otherPetitioners
(In Writ Petition No. 15115 of 2017)

-V E R S U S-

The Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Rural Development and Co-operatives, Local Government Division, Bangladesh Secretariat, Dhaka and others

.....Respondents

Mr. Mohammad Ahasan, Advocate
.....For the Petitioners
(In both Writ Petitions)

Mr. Md. Abdur Rahman Howlader, Advocate
.....For the respondent Nos. 4 and 6
(In Writ petition No. 2283 of 2020)

Mr. Bakir Uddin Bhuiyan, Advocate
.....For the respondent No.2
(In Writ petition No.2283 of 2020)

Mr. Sk. Shaifuzzaman, DAG
.....For the respondents

Present :

Mr. Justice K.M. Kamrul Kader

&

Mr. Justice Mohammad Showkat Ali Chowdhury

Heard on: 25.05.2023, 01.06.2023 & 08.06.2023

And

Judgment On: 01.11.2023.

K. M. Kamrul Kader, J :

On applications under Article 102 of the Constitution of the Peoples Republic of Bangladesh, these 2 (two) Rule Nisi were issued and these are

involved similar question of fact and law and as such, these Rules are disposed of by a single judgment.

In Writ Petition No. 2283 of 2020 the Rule Nisi was issued on 02.03.2020, in following terms:-

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the office order under Memo No. এবাএখা/প্রশা/পরিপত্র/১১১/২০১০/২৪২২ dated 20.10.2013 changing the designation of the post from field Organizer to field Supervisor and also upgrading the salary scale form grade 14th to 12th grade of the National Pay Scale of 2009 upon discriminating the petitioners by not upgrading their salary scale accordingly should not be declared without any lawful authority and is of no legal effect and /or pass such other or further order or orders as to this court may seem fit and proper.

In Writ Petition No. 15115 of 2017 the Rule Nisi was issued on 05.12.2017, in following terms:-

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the inaction and failure of the respondents in upgrading the post of the petitioners from grade 13 to grade 11 should not be declared illegal and without lawful authority and why the respondent should not be directed to upgrade the post of the petitioner form grade 13 to grade 11 in accordance with law and /or pass such other or further order or orders as to this court may seem fit and proper.

In Writ Petition No. 15115 of 2017, a supplementary Rule Nisi was issued on 13.12.2022, in following terms:-

Let a supplementary Rule be issued calling upon the Respondents to show cause as to why the promulgation of the Palli Sanchay Bank Staff Service Regulations, 2022 published in Bangladesh

Gazette as S.R.O. No. 293-Ain/2022 dated 30.11.2022 so far it relates to the Serial No. 19 to the Schedule of the said regulations determining eligibility of the petitioners for promotion to the post of Officer (General) as 7 (seven) years of service instead of 3 (three) years of service, as has been settled in Palli Sanchay Bank (Officer Staff) Service Regulations, 2016 should not be declared to have been passed without lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

Facts relevant for disposal of the Rule in Writ Petition No.2283 of 2020, are that, the petitioners are graduate having computer operating skills and after maintaining all formalities, they have been duly appointed in the post of Computer Operator-Cum-Account Assistant in the Project namely “একটি বাড়ি একটি খামার” (hereinafter referred to as “the Project”) has been initiated by the Rural Development and Co-operative Division of the Ministry of Local Government Rural Development and Co-operatives (hereinafter referred to as “the Ministry of LGRD”) at Grade 13th of the National Pay Scale of 2005, pursuant to recruitment circular under Memo No. এবাএখা/প্রশা/পরিপত্র/১১১/২০১০/২৪২২ dated 20.05.2010. It is stated that in the said circular the post of Field Organizer (মাঠ সংগঠক) was at 14th Grade of the National Pay Scale of 2005 and required educational qualification for the post was only graduation. It is stated that the petitioners have been performing their functions with utmost sincerity and honesty and the approved management set up as evident from Memo No. এবাএখা/অর্থ ও হিসাব/অর্থ ছাড়/০১/২০১১/১৮৮৬ dated 01.11.2011 (Annexure-C to the writ petition) shows that the Computer Operator-Cum-Accounts Assistants are at serial No.18 and the Filed Organizers are at serial No.19 having National Pay Scale of grade

13th and 14th respectively. It is also stated that these posts were created and preserved for “একটি বাড়ি একটি খামার” (Annexed)” Project vide Memo No.47.034.014.00.00.009.2010 (Part-1)-382, dated 08.12.2011 and Memo No.47.034.014.00.00.009.2010 (Part-1)-212, dated 12.07.2012 respectively. It is further stated that in absence of Upazila Coordinators, the Computer Operator-Cum-Account Assistants used to performing their functions also, in addition to their usual duties, with this regard, a letter under Memo No. এবাএখা/প্রশা/গোপালগঞ্জ/১৯২/ ২০১০/২০০০, dated 09.10.2012 was issued by the Project Director of “the said Project”. In the meantime, the Palli Shanchay Bank (hereinafter referred to as “the Bank”) was established vide Act No.7 of 2014 namely, Palli Shanchay Bank Ain, 2014, which promulgated on 08.06.2014. However, Gazette notification for the establishment of the said bank was published on 02.09.2014 vide SRO No. 221-Ain/2014. The Bank was established to give a permanent structure of “the Project” with this regard a letter under Memo No. এবাএখা/অঃ হিঃ/পসব্য/০৪/২০১৩-২০৮১, dated 09.09.2014 was issued by the Ministry of LGRD under the signature of the Additional Secretary and Project Director of the said Project. Thereafter, the post of the project “একটি বাড়ি একটি খামার প্রকল্প (২য় সংশোধিত)” was created from 01.07.2013 to 30.06.2016 and preserved for 01.07.2013 to 31.05.2014 vide office order under Memo No. 47.034.014.00.00.025.2013-330, dated 02.10.2013 (Annexure-F to the writ petition) created and preserved posts for “একটি বাড়ি একটি খামার” (2nd Amendment)” Project, wherein the post of Field Supervisor was inserted over the Computer Operator Cum-Account Assistant. Accordingly, the Rural Development and Co-operative Division of the Ministry of LGRD (hereinafter referred to as “the Division”) circulated an

office order under Memo No. এবাএখা/প্রশা/পরিপত্র/ ১১১/২০১০/২৪২২, dated 20.10.2013 changing the designation of the post from Field Organizer to Field Supervisor and also upgraded the salary scale from grade 14th to 12th grade of the National Pay Scale of 2009, whereas the salary scale of the petitioners were not upgraded to grade-11th from grade-13th of the National Pay Scale of 2009, which has created anomaly in the service of the petitioners and administration of offices as well. The petitioners made representations on 20.09.2016 to the Ministry of LGRD and the Hon'ble Minister of the Ministry of LGRD, regarding discrimination and correction of the salary scale, but no step was taken to cure the said discrimination.

It is also stated that the Hon'ble Prime Minister inaugurated 100 branches of the said Bank on 22.06.2016 and to operate the same, the Bank issued letter under Memo No. পসব্য/প্রকা/প্রশা-১/২০১৫-১৬/১৪৮ dated 28.06.2016 wherein the concerned Upazila Coordinators were assigned the charge of Branch Manager and the Computer Operators were assigned to perform as Account Assistant in Addition to their usual duties, from 01.07.2016 i.e. as soon as, expiry of the Project on 03.06.2016. The process of opening 385 branches of the Bank was ongoing, thus, till opening of those branches “the Project” was decided to continue as an ongoing program of the Bank, vide letter under Memo No. পসব্য/প্রকা/প্রশা-১/২০১৫-১৬/১৪৯, dated 28.06.2016. It is also stated that the Ministry of LGRD issued a letter under Memo No. 47.037.014.00.00.119.2013-351 dated 30.06.2016 giving guideline for continuing the activities of the Bank and the Project, wherein it has been stated that the process of extending the tenure of project till 2020 is ongoing. The Bank issued a letter under Memo No. পসব্য/প্রকা/প্রশা/পরি-৯/২০১৬-১৭/৫২৪,

dated 31.05.2017 (Annexure-L to the writ petition) relating to handing over all up to date assets and liabilities of “the Project” namely “একটি বাড়ি একটি খামার” to the Bank. With this regard, the Bank transferred the service of 360 Computer Operator-Cum-Accounts Assistant of the project namely “একটি বাড়ি একটি খামার” to the Bank as Computer Operator at 13th Grade of National Pay Scale, 2015, vides office order under Memo No. পসব্য/প্রকা/প্রশা- ৩২/২০১৮-১৯/২৫৭১ dated 31.07.2018 (Annexure-M to the writ petition). The Organogram of the Bank was approved and become operative pursuant to letter under Memo No. 53.00.0000.322.28.003.15-83, dated 29.07.2015 and as per section 39 (1) of the Palli Sanchay Bank Ain, 2014, the Project was running as an ongoing function of the said Bank until completion of the tenure of the said project. The project will be merged into the Bank with all its assets and liabilities and all the officers and staffs with salary and other benefits, as earlier. Accordingly, the petitioners were absorbed in the Bank as Computer Operator-Cum-Account Assistants at 13th grade of National Pay Scale, 2015, but the discrimination still persisted and the discrimination was done despite having the post of Field Assistant at 14th grade on National Pay Scale, 2005, in the Organogram of the Bank, yet, the Field Organizers were designated as Filed Supervisors and were placed at the 12th grade of the National Pay Scale, 2015, i.e., at the upper position than that of the petitioners, though their appointment was made in the lower grade than that of the petitioners.

It is again stated that the project "একটি বাড়ি একটি খামার (৩য় সংশোধিত)" was renamed as "আমার বাড়ি আমার খামার (৩য় সংশোধিত)", vide administrative order under Memo No. 47.037.014. 00. 00.190.2016-42, dated 25.03.2019 issued by the Ministry of LGRD under the signature of the respondent No.7 (Annexure-

O to the writ petition). The Field Supervisors were later on designated as Junior Officer (Field) and the Data Entry Operators of the same project were upgraded from 16th grade to 12th grade of the National Pay Scale, 2015. However, the recruitment advertisement dated 27.11.2011 for appointment of Data Entry Operators was at 16th grade of National Pay Scale, 2009. As per Rule 2(8) of the Palli Sanchay Bank (Karmakarta-Karmachari-Chakuri) Probidhanmala, 2016 a schedule has been incorporated wherein at serial Nos.19 and 20 there are two post namely Officer (General) and Officer (Cash), 50% of which are to be fulfilled by promotion from computer operators serving for 03(three) years. The petitioners have already accrued the required qualification, but the respondents neither have taken any step for promotion to that post, nor they have considered the petitioners for the post; rather, the respondents are again trying to deprive the petitioners and the petitioners are in verge of discrimination and victimization of whimsical, capricious and *malafide* activities of the respondents concerned.

Facts relevant for disposal of the Rule and supplementary Rule in **Writ Petition No.15115 of 2017**, are that, the concerned authority has published an advertisement for appointment of some employee in the project namely “একটি বাড়ি একটি খামার” (hereinafter referred to as “the project”), under the Ministry of LGRD and the petitioners applied for the post of "Computer Operator-Cum-Account Assistant" at 13 Grade of Approved Management Set-up (Project Organogram) and after maintaining all formalities, they have been duly appointed and joined in their service as Computer Operator-Cum-Account Assistant. It is stated that the petitioners have been continuing their service with utmost sincerely, honestly and diligently till date. It is further stated that in absence of Upazila Coordinators, the petitioners, Computer Operator-

Cum-Account Assistants used to performing their functions as in charge/additional charge of the Upazila Coordinator, in addition to their usual duties, which is a 10 Grade post as per the Approved Management Set-up (Project Organogram) of the said project. It is also stated that while the petitioners have been serving in the said project, an office order was issued by the respondents No.2 and the authority changes the grade of the Field Organizer from Grade-14 to 12 and renamed the post as "Field Supervisor" vide office letter under Memo No. এবাএখা/ প্রশা/পরিপত্র/১১১/ ২০১০/২৪২২, তারিখ: ২০/১০/২০১৩ (Annexure-C to the writ petition) whereas the salary scale of the petitioners were not upgraded as per the National Pay Scale of 2009, which has created anomaly in the service of the petitioners and violated the constitutional rights of the petitioners. After such discriminations done by the respondents, the petitioners made several representations to the Ministry of LGRD with this regard and for correction of the petitioner's salary scale, but no step was taken to cure the said discrimination till date, which violated the fundamental rights of the petitioners as guaranteed in the Constitution of Bangladesh. It is again stated that the government enact a law namely "Palli Shanchoy Bank Ain", 2014 (Act VII of 2014) and according to that Act, a "Palli Shanchoy Bank" (hereinafter referred to as "the Bank") has been established by a Gazette Notification dated 02.09.2014 and all the personnel shall be absorbed in the said bank according to the grade hold earlier in the project, but the petitioners were deprived from their expected grade, which violated legitimate expectation of the petitioners as promised by the authority and that infringed their fundamental rights and the same should be removed, but till date no steps has been taken to do the justice to the petitioners.

Being aggrieved by and dissatisfied with the inaction and failure of the respondents, the petitioners having no other alternative efficacious remedy have preferred these instant writ petitions before this Court and obtained the instant Rules.

Mr. Mohammad Ahasan, learned Advocate appearing on behalf of the petitioners in both the writ petitions submits that the petitioners after maintaining all formalities, have been appointed in the post of Computer Operator-Cum-Account Assistant in the Project namely “একটি বাড়ি একটি খামার” which has been initiated by the Rural Development and Co-operative Division of the Ministry of LGRD, at Grade 13th of the National Pay Scale of 2005, pursuant to recruitment circulars. He also submits that the post of Field Organizer (মাঠ সংগঠক) was at 14th Grade of the National Pay Scale of 2005 and educational requirement for the post was only graduation. In the meantime, the Palli Sanchay Bank Ain, 2014 was promulgated on 8th July, 2014 with immediate effect. He further submits that it was the intention of the legislator, in promulgating the Palli Shanchay Bank Ain, 2014 to provide a permanent structure of the said project and the function of the Bank is centered with the said project as its members as evident in Section Nos. 2, 6 and 21 of the said Act. The petitioners have been performing their functions in the said project with utmost sincerity and honesty and the approved management set up as evident in Memo No. এবাএখা/অর্থ ও হিসাব/অর্থ ছাড়/০১/২০১১/১৮৮৬ dated 01.11.2011, which shows that the Computer Operator-Cum-Accounts Assistants are at serial No.18 and the Field Organizers are at serial No.19 having National Pay Scale of grade 13th and 14th respectively. The posts were created and preserved for “একটি বাড়ি একটি খামার” (Annexed)” Project vide Memo

No.47.034.014.00.00.009.2010 (Part-1)-382, dated 08.12.2011 and Memo No.47.034.014.00.00.009.2010 (Part-1)-212, dated 12.07.2012 respectively, wherein the post of Field Supervisor was inserted over the Computer Operator Cum-Account Assistant. Accordingly, the said Division circulated an office order under Memo No. এবাএখা/প্রশা/পরিপত্র/ ১১১/২০১০/২৪২২, dated 20.10.2013 changing the designation of the post from Field Organizer to Field Supervisor and also upgraded the salary scale from grade 14th to 12th grade of the National Pay Scale of 2009, whereas the salary scale of the petitioners were not upgraded to grade-11th from grade-13th of the National Pay Scale of 2009, which has created anomaly in the service of the petitioners and administration of office as well. Learned Advocate further submits that pursuant to advertisement, the petitioners have joined in the post of Computer Operator-Cum-Account Assistants of the Project the Ministry of LGRD at 13th Grade of National Pay Scale, 2005 and as per said advertisement the Field Organizers (মাঠ সংগঠক) were appointed in the same project at 14th Grade of the National Pay Scale, 2005. The Organogram of the project ensures petitioners position over the Field Organizers (মাঠ সংগঠক). The Rural Development and Co-operative Division in their letters, creating and preserving posts also ensured the petitioners superior position in the said Project. He further submits that the post of Data Entry Operator and Field Assistant were at 16th Grade. The aforesaid Division vide letter dated 02.10.2013 created a new post of Field Supervisor at 12th Grade of the National Pay Scale, which is to be filled up by direct recruitment. In spite of direct recruitment, the Field Organizers (মাঠ সংগঠক) were posted as Field Supervisor upon upgrading their salary scale vide letter dated 20.10.2013 with effect from 01.07.2013 though; the post of Field

Supervisor was created on 02.10.2013. However, the salary scale of Data Entry operator was upgraded to 12th Grade from 16th Grade and the salary scales of Field Assistants were also upgraded to 14th from 16th grade, whereas, the petitioners were at 13th Grade as usual and therefore, the petitioners were discriminated. Learned Advocate for the petitioners again submits that the petitioners have legitimate expectation and right to equality and equal protection of law, however, they have been discriminated during the existence of the project, which was subsequently continued as a project of Palli Sanchay Bank as per provision of section 39(1)(Ka) of Palli Sanchay Bank Ain, 2014. The petitioners raised objection and sent several representations to the concerned authorities before their services were transferred to the said Bank and before it was made permanent. The fact of discrimination done to the petitioners is also acknowledged by the Bank, thus pursuant to a meeting of the Board of Directors a proposal was sent to the concerned Ministry for up gradation of the Computer Operation-Cum-Accounts Assistant's salary Scale to Grade-13th to Grade-12th. He next submits that as per serial Nos.19 and 20 of the Schedule of Palli Sanchay Bank (Karmakarta-Karmachari-Chakuri) Probidhanmala, 2016, the petitioners are eligible to fill up 50% post of Officer (General) and Officer (Cash) by promotion, but the respondents are not considering them for promotion to those posts; rather, the respondents are trying to deprive the petitioners by giving promotion to the Field Supervisors, who were absorbed in the Bank as Junior Officer (Field), with the plea that they are holding upper grade than that of the petitioners; thus the petitioners are in verge of discrimination and victimization of whimsical, capricious and *malafide* activities of the respondents.

Learned Advocate for the petitioners again submits that the petitioners have required qualification to get promotion to the post of Officer (General) and Officer (Cash) and they have already exceeded 03(three) years service as Computer Operator-Cum-Accounts Assistants, so they have a legitimate expectation to be considered for promotion to the said posts. For that right to equal protection of law and to be treated in accordance with law and further the legitimate expectation of the Computer Operators-Cum-Accounts Assistants are not inconsistent with the harmony of the service rules. The Government functionaries cannot act arbitrarily, whimsically and in detriment to the vested right of the petitioners. The seniority and grade are precious elements of service rules, which cannot be altered to the detriment of the petitioners and their juniors, holding inferior posts, cannot be placed over the petitioners in violation of the service rules and regulations existed at the time of joining to the posts. In this juncture, the learned Advocate again submits that the petitioners were duly absorbed in the Bank with effect from 01.07.2016 as Computer Operators since the post existed at serial No.23 of the *Palli Sanchay Bank* (Officer-Staff) Service Regulations, 2016, whereas, the Field Supervisors were absorbed in the Bank as Junior Officer (Field) vide letter dated 29.11.2020 with effect from 01.07.2016, though the said post was not available in the schedule of the aforesaid Regulations, 2016. He further submits that the post of Junior Officer (Field) appears at serial No. 22 of the *Palli Sanchay Bank* Staff Service Regulations, 2022, which was promulgated on 18.09.2022 and published in Bangladesh Gazette on 30.11.2022, i.e., during pendency of the present Rules (Annexure-K to the application for supplementary Rule) He further submits that the post of Junior Officer (Field) in the Organogram of the Bank was admittedly approved at serial No.

23 by the Ministry of Finance on 05.09.2021. Since the authorities were willing to implement the Service Regulations of 2022, in contravention of the petitioners' vested right, that they have accrued as per Regulations of 2016. Therefore, the petitioners have challenged the applicability of the said Regulations of 2022. He then submits that it is the settled position of law, the appointing authority enjoys the power to regulate the service of its employees, but that in no way, can take away the vested right of its employees; however, advantage can be given, but it cannot be disadvantageous to a particular or group of employees. Thus, he again submits that the Regulations of 2022 would have no applicability to the petitioners in getting promotion to the post of Officer General and introducing a condition of 07(Seven) years of service for promotion in the said post in contrast with 03(three) years of service cannot be made applicable against the vested right of the petitioners. As per the Regulations of 2022, the Junior Officer (Field) would be considered for promotion in the post of Officer General on completion of 05(five) years of service, which would again discriminate the petitioners. The inaction of the respondents in eliminating discrimination in the service of the Project and the Bank is arbitrary and *malafide*, therefore, the same cannot sustain in law or equality. As such, he prays for making both the Rules and Supplementary Rule absolute. To substantiate his submission the learned Advocates for the petitioners placed reliance in the decisions of the Hon'ble Appellate Division of the Supreme Court of Bangladesh in the case of *Gaisuddin Bhuiyan –vs- Security Services Division* reported in 74, DLR (AD) 231, *Bakhrabad Gas System Ltd.-vs- Al Masud* reported in 66, DLR (AD)187, and 9, MLR (AD)120.

Mr. Bakir Uddin Bhuiyan, learned Advocate appeared on behalf of the respondent Nos. 2 and 4 in both the Writ Petitions opposes the Rules by filing 2 (two) affidavit-in-oppositions and submits that the services of the petitioners are guided by the provision of Palli Sanchoy Bank Ain, 2014, Polli Sanchoy Bank (Karmakarta Karmachari) Chakri Probidhanmala, 2016, Polli Sanchoy Bank Karmachari Probidhanmala, 2022 and সরকারি প্রতিষ্ঠানের কম্পিউটার পার্সোনাল নিয়োগ বিধিমালা, ২০১৯. He further submits that Rural Development and Co-operative Division of the Ministry of LGRD issued order under Memo No. ৪৭.০৩৪.০১৪.০০.০০.০০৯.২০১০ (খন্ড-১)-৩৮২, dated 08.12.2011 for creating posts of the manpower of একটি বাড়ি একটি খামার (সংশোধিত) প্রকল্প. Thereafter, the respondent No.1 vide Memo No. ৪৭.০৩৪.০১৪.০০.০০.০০৯.২০১০ (খন্ড-১)-২১২, dated 12.07.2012 gave sanction for the 3966 posts of the aforesaid project and vide Memo No. ৪৭.০৩৪.০১৪. ০০. ০০.০২৫.২০১৩-৩৩০, dated 02.10.2013 issued another order for creating post for the period from 01.07.2013 to 30.06.2016 and preserving posts for the period from 01.06.2013 to 31.05.2014. Thereafter, the respondent No.1 vides Memo No. ৪৭. ০৩৪.০১৪.০০.০২৫.২০১৩-২৪৪ dated 31.07.2019 issued order for preserving posts for the Financial Year- 2019-2020 of the manpower employed in the project "আমার বাড়ি আমার খামার (তৃতীয় সংশোধনী) প্রকল্প" and in all the aforesaid orders the post of কম্পিউটার অপারেটর কাম হিসাব সহকারি has been mentioned as pay-scale Grade-13. He further argued that the Finance Division of the Ministry of Finance vide Memo No. ০৭.০০.০০০০.১৬৫.৫৩.০০৪.২০২০-১০১, dated 24.11.2020 fixed the pay scale of the persons employed in the Bank as per Organogram, wherein in Serial No. 25, the post of Computer Operator has been mentioned in the pay-scale Grade-

13th and those posts are to be filled up following the provision of the সরকারি প্রতিষ্ঠানের কম্পিউটার পার্সোনাল নিয়োগ বিধিমালা, ২০১৯.

Learned Advocate further submits that the Financial Institution Division of the Ministry of Finance vide Memo No. ৫৩.০০.০০০০.৩২২.২৮.০০১.২০-১৬২ dated 05.09.2021 approved the amended Organogram of Polli Sanchoy Bank and thereby issued Government Order (G.O.) for 12,243 posts against their position and pay-scale wherein the post of Computer Operator is mentioned in Serial No.24 showing the pay-scale at Grade-13. The provisions for promotion of employee of the Bank is stipulated in Probidhan- 13 of পল্লী সঞ্চয় কর্মচারী চাকরী প্রবিধানমালা, ২০২২ and as per aforesaid provision, if any employee fulfill the criteria, he/she will be promoted to the next higher post and under such situations, if the petitioners are eligible and fulfills the criteria stipulated in Probidhan-13, he/she will be considered to be promoted to the next higher post subject to occur vacancy and as such, the petitioners will not be prejudiced in any way and therefore the Rule has no merit and as such, the same is liable to be discharged. He then submits that these Rules in the present forum are not maintainable since the petitioners did not challenge the relevant provisions of law and as such, instant Rules are liable to be discharged. He lastly submits that the Office Order as contained in Memo dated 20.10.2013 (Annexure G to the Writ Petition) is an administrative and policy decision of the Government and no policy decision of the Government can be challenged by invoking the forum of judicial review and as the said office order is not related to the post and benefit of the petitioners, the petitioners are not entitled to challenge the legality of the said office order and as such, instant Rules are liable to be discharged.

Mr. Md. Abdur Rahman Howlader, learned Advocate appearing on behalf of the respondents No.4 and 6 in Writ Petition No.2283 of 2020 opposes the Rule by filing an affidavit-in-opposition and submits that this writ petition is not maintainable, because the creation or up gradation of post is a matter for the employer and the same is based on policy decision and not a matter of judicial review. The creation and sanction of post or up-gradation of post is prerogative of the executive or legislative authority and the court cannot arrogate to itself, this is purely executive or legislative function. The petitioners were appointed in the post of Computer Operator-cum-Account Assistant in the project namely “একটি বাড়ি একটি খামার” for very temporary period on contractual basis. The service of the petitioners was on contractual basis and if any employee on contractual service is aggrieved, he can file civil suit, not writ petition and as such, this writ petition is not maintainable. He further submits that this writ petition is not maintainable, because after changing the position of service and after changing the employer or appointing authority, the petitioners filed this writ petition challenging the creation or up-gradation of the post of Field Supervisor in the project. At the time of creation or up-gradation of the post of Field Supervisor, the employer of the petitioners was “একটি বাড়ি একটি খামার” project. At the time of creation or up-gradation of the post of Field Supervisor, the petitioners were under the project and after absorption in Pally Sanchoy Bank (PSB), the position of the petitioners were changed and they cannot file writ petition challenging the creation or up-gradation of the post of Field Supervisor in the project.

Learned Advocate also submits that this writ petition is not maintainable; as there is no explanation why the writ petitioners did not challenge the creation of post of Field Supervisor in the project within 07

years. The post of Field Supervisor was created vide memo dated 20.10.2013 and this post was effective from 01.07.2013. On the other hand, most of the petitioners were appointed on 24.02.2015, 04.08.2013, 17.04.2018, 24.02.2015, 24.04.2019. The writ petitioners filed this writ petition on 17.02.2020 and thereafter, the petitioners were absorbed in the Pally Sanchoy Bank (PSB) on 29.11.2020 (Annexure-S-1 to the supplementary affidavit) and as such, the Rules of these writ petitions have become *infructuous* and liable to be discharged.

He also submits that there is no scope of application on the ground of legitimate expectation, because the petitioners were appointed in a project “একটি বাড়ি একটি খামার” for very temporary period on contractual basis. In the appointment letter, it is stated that, "পদটি সম্পূর্ণ অস্থায়ী এবং প্রকল্পভিত্তিক। প্রকল্পের মেয়াদ শেষ হওয়ার সাথে সাথে চুক্তির মেয়াদও শেষ হয়ে যাবে এবং চুক্তিপত্রের এই অনুচ্ছেদটি ছাটাই নোটিশ হিসাবে/অব্যাহতি পত্র হিসাবে গণ্য হবে। এজন্য আলাদা কোন নোটিশ কিংবা অব্যাহতি পত্র প্রদান করা হবে না।"

Learned Advocate for the respondents argued that there is no discrimination between posts of Computer Operators-cum-Account Assistants and Field Supervisor, because creation and sanction of post or up-gradation of post of Field Supervisor does not come within the definition of 'discrimination'. If there is application of pick and choose policy within some persons in the same post, it can be defined as 'discrimination'. The service of none within the post of Computer Operator-cum-Account Assistant was up-graded and as such, the petitioners cannot take the plea of 'discrimination'.

He lastly submits that after conclusion of the project, on 30.06.2021 all employees of the project were absorbed in the Bank and after posting of all employees gradation list will be prepared for every post and after preparing

gradation list, all employees will be considered for promotion as per promotion rules of the Bank and as such, the writ petitions are not maintainable and the Rules are liable to be discharged. To substantiate his submission the learned Advocate for the Respondents placed reliance in the decisions of the Hon'ble Appellate Division of the Supreme Court of Bangladesh in the case of *Bangladesh –vs- Abdul Razzak reported in 71 DLR AD 395*.

Heard the learned Advocates of both the parties, perused the writ petitions, affidavit-in-oppositions, supplementary affidavits and all other material documents annexed thereto.

First question raised by the learned Advocates for the respondents that these writ petitions are not maintainable, because the creation or up gradation of post is a matter for the employer and the same is based on policy decision and not a matter of judicial review. The creation and sanction of post or up-gradation of post is prerogative of the executive or legislative authority and the court cannot arrogate to itself, this is clearly a policy decision of the Respondents, this cannot be challenged under the jurisdiction of Article 102 of the Constitution of the People's Republic of Bangladesh.

On the contrary, learned Advocate for the petitioner argued that the petitioners have challenged discrimination done by respondents, in not upgrading their salary scale, which has already been admitted by the respondents Pally Sanchay Bank. Moreover, the supplementary Rule was obtained by the petitioners challenging certain provisions of Palli Sanchay Bank Staff Service Regulations, 2022. Therefore, these writ petitions are very much maintainable, since it has been filed against discrimination and challenging certain provisions of law. Furthermore, the Pally Sanchay Bank is

not in the schedule of the Administrative Tribunal. Therefore, the petitioners cannot be placed before the civil court or Administrative Tribunal with any plea whatsoever.

In the instant writ petitions, we find that the petitioners are appointed in the post of Computer Operator-Cum-Account Assistant in the Project namely “একটি বাড়ি একটি খামার” which has been initiated by the Rural Development and Co-operative Division of the Ministry of LGRD at Grade 13 of the National Pay Scale of 2005, pursuant to recruitment circular under Memo No. এবাএখা/প্রশা/পরিপত্র/১১১/২০১০/২৪২২ dated 20.05.2010 as evident Annexure- "A" to the writ petition. After maintaining all formalities the petitioners were appointed in their respective post in different district of the country. The petitioners have been performing their functions with utmost sincerity, honesty and full satisfaction of the authority. We also noticed that in the said circular the post of Field Organizer (মাঠ সংগঠক) was at 14th Grade of the National Pay Scale of 2005 and required educational qualification for the post was only graduation. According to the approved management set up as evident from Memo No. এবাএখা/অর্থ ও হিসাব/অর্থ ছাড়/০১/২০১১/১৮৮৬ dated 01.11.2011 shows that the Computer Operator-Cum-Accounts Assistants are at serial No.18 and the Filed Organizers (মাঠ সংগঠক) are at serial No.19 having National Pay Scale of Grade 13th and 14th respectively. The posts were created and preserved for the Project vide memo No. 47.034.014.00.00.009. 2010 (Part-1)-382, dated 08.12.2011 and Memo No.47.034.014.00.00.009.2010 (Part-1)-212, dated 12.07.2012. In absence of Upazilla Coordinators, the Computer Operator-Cum-Account Assistants used to perform their functions, in addition to their usual duties, with this regard, a letter under Memo No.

এবাএখা/প্রশা/গোপালগঞ্জ/১৯২/ ২০১০/২০০০, dated 09.10.2012 was issued by the Project Director of the sad Project. In the meantime, the Palli Shanchay Bank was established vide Act No.7 of 2014 namely, Palli Shanchay Bank Ain, 2014, which promulgated on 08.06.2014. However, Gazette notification for the establishment of the said bank was published on 02.09.2014 being SRO No. 221-Ain/2014. The Bank was established to give a permanent structure of the Project, with this regard, a letter under Memo No. এবাএখা/অঃ হিঃ/পসব্য/০৪/২০১৩-২০৮১, dated 09.09.2014 was issued by the Ministry of LGRD under the signature of the Additional Secretary and Project Director of the said Project. The organogram of the Project ensures petitioners' position over the Field Organizers (মাঠ সংগঠক). The Rural Development and Co-Operative Division, in their letters of creating and preserving posts also ensured the petitioners' superior position.

Thereafter, the post of the project “একটি বাড়ি একটি খামার প্রকল্প (২য় সংশোধিত)” was created from 01.07.2013 to 30.06.2016 and preserved for 01.07.2013 to 31.05.2014 vides office order under Memo No. 47.034.014.00.00.025. 2013-330, dated 02.10.2013 created and preserved posts for “একটি বাড়ি একটি খামার” (2nd Amendment) Project wherein the post of Field Supervisor was inserted over the Computer Operator Cum-Account Assistant, which would be filled up by direct recruitment. Subsequently, the said Division circulated an office order under Memo No. এবাএখা/প্রশা/পরিপত্র/১১১/২০১০/২৪২২, dated 20.10.2013 changing the designation of the post from Field Organizer to Field Supervisor and also upgraded the salary scale from grade 14th to 12th grade of the National Pay Scale of 2009, whereas the salary scale of the petitioners were not upgraded to grade-11th from grade-13th of the

National Pay Scale of 2009, which has created anomaly in the service of the petitioners and administration of the project as well as the Bank.

We also noticed that in spite of the aforesaid provision for direct recruitment, the Field Organizers (মাঠ সংগঠক) were posted as Field Supervisors upon upgrading their salary scale vide letter dated 20.10.2013 with effect from 01.07.2013 as evident Annexure-C to the writ petition; though, the posts of Field Supervisor were created on 02.10.2013. At the time of giving *ipso facto* promotion to the Field Organizers (মাঠ সংগঠক) by posting them as Field Supervisors on 20.10.2013, there was no existence of the post of Field Organizer, in the Organogram of post created and preserved for the project, which is evident from the memo of preservation and creation of posts dated 02.10.2013, creating and preserving the posts from 01.06.2013 to 31.05.2014. The petitioners made several representations, lastly on 20.09.2016 to the Ministry of LGRD and the Bank with regard to the discrimination and correction of the salary scale of the petitioner, but no step was taken to cure the said discrimination.

Admittedly, the creation and sanction of post or up-gradation of post/salary is prerogative of the executive or legislative authority and a matter for the employer is clearly a policy decision of the authority, this cannot be challenged under the jurisdiction of Article 102 of the Constitution of the People's Republic of Bangladesh. We do not disagree with the proposition that the choice of the policy is for the decision maker and not for the Court. The decision maker has the choice in balancing the pros and cons relevant to the change in policy. The Government/ authorities are at liberty to change the eligible criteria of any recruitment process, creation and sanction of post or

up-gradation of post. Infact, it is desirable. We are only concerned with the propriety of the decision, the manner of implementation of the decision and its process of such changes. We are not convinced that the respondents are at liberty to change the eligibility criteria, creation and sanction of post or up-gradation of grade and post at any time, which is detrimental to other employees. In this circumstance, we do not think it was proper for the respondents to change the eligibility criteria, creation and sanction of post or up-gradation of post/grade at this point. A change in the eligibility criteria, creation and sanction of post or up-gradation of posts of the certain employees at this stage, which disqualifies or deprived the petitioners, who were otherwise qualified and eligible for up-gradation of post/salary in accordance with the respondent's standard, cannot be sustainable in law.

Thus, we differ with regard to the argument that a policy decision to change eligibility criteria, creation and sanction of post or up-gradation of post/grade/salary is a policy decision and we cannot interfere. This Division in exercise of the powers under Article 102 of the Constitution can interfere with policy decisions in appropriate circumstances. We cannot allow a policy decision to be based on wrong legal premises or violate the fundamental rights guaranteed by our Constitution. In these writ petitions, we are not questioning the propriety of the policy decision. We are expressing our reservation on the propriety of the decision, the manner of implementation of the policy decision and its process. There may be situations where the aforesaid decisions are acceptable legally but the manner of implementation and its process is unacceptable, unreasonable or lack of transparency. Thus, it is desirable, the respondents must act fairly, rationally and transparently as

well as for the public interest and in accordance with the provision of law. The issues raised in these writ petitions are that the petitioners had a chance, hope, reasonable expectation and that was detrimentally affected by implementation of the change eligibility criteria, creation and sanction of post or up-gradation of post/grade/salary of the other employees not to the petitioner and as such, the manner of implementation seems to us is manifestly arbitrary and unreasonable.

Under such circumstances, we are of the view that the respondents acted arbitrarily and unreasonable in *Wednesbury* unreasonableness relating to the changing the eligibility criteria, creation and sanction of post or up-gradation of post/grade/salary of the other employees not for the petitioners. We find support of this contention, in the case of *Council of Civil Service Unions vs. Minister for the Civil Services ("GCHQ ")* 3 All ER 935, Lord Diplock preferred to use threefold classification of the grounds of judicial review, these are illegality, irrationality and procedural impropriety, this proposition was adopted by the Judiciary in most of the common wealth countries. Lord Diplock in the *GCHQ* case used the term of irrationality with *Wednesbury unreasonableness*. *Wednesbury* unreasonableness is evolved in the English case of *Associated Provincial Picture Houses v. Wednesbury Corporation (1947)*. In that case, Lord Greene, the Master of the Rolls, described two forms of unreasonableness. First, unreasonableness can be a general description of a public authority doing things that must not be done, such as not directing itself properly in law by considering matters which it is not bound to consider and taking into consideration irrelevant matters. Another type of unreasonableness occurs when a public authority does

something that is "so absurd that no sensible person could ever dream that it lay within the powers of the authority", as illustrated by the dismissal of a teacher because of her red hair. The latter has now come to be termed as *Wednesbury* unreasonableness. In our jurisdiction the principle has been adored in the decision of *Soya-Protein Ltd. vs Secretary Ministry of Disaster Management and Relief* 22, BLD, (2002) HC 378, wherein it is held that:-

"There is no doubt that the Government can always change its policy and the Courts will not interfere with such change, if made for a better one or for public interest or for some overwhelming reason for which a change of policy had become unavoidable, provided of course, the Government acts fairly and reasonably. In this case, in discontinuing the School Feeding Program, the Government had failed to implement its own policy decision thwarting the legitimate expectation of the petitioner that Government would continue their said program which was solemnly accepted in their policy decision.

*Still the action of the Government in discontinuing the School Feeding Program cannot be struck down by judicial review unless it can also be shown that such discontinuance was also irrational and unreasonable on the facts and circumstances of the case. This principle of unreasonableness test was propounded in the case of *Associated Provincial Picture House Ltd. v. Wednesbury Corporation* (1947) 1 KB 223/ (1947) 2, All ER,680"*

Second question raised by the learned Advocates for the respondents that the petitioners were appointed in the post of Computer Operator cum Account Assistant in the project *Aktee Bari Aktee Khamar* for very temporary period on contractual basis. The service of the petitioners was on contractual

basis and if any employee on contractual service is aggrieved, he can file Civil Suit, not writ petition and as such, this writ petition is not maintainable.

It transpires from the record that the “*Aktee Bari Aktee Khamar Prokalpa*” which is now controlled by the Bank. This Project has been initiated by the Ministry of LGRD and Co-operatives during the period of 2009-2016 with a vision of suitable and permanent emancipation of poverty and durable development by enhancement of agricultural production and ascertaining livelihood. Primarily, the project was started by forming a co-operative society in all over the country. The project has been started with a goal to help families to increase their savings and to provide capital in order to enhance economic activities and to create self-employment for the purpose of securing self-dependency of the rural people. The Project has started its function with some vision and mission to poverty alleviation and sustainable development through fund mobilization and Family farming.

The petitioners were selected for the posts of "Computer Operator-Cum-Account Assistant" of the Project through a competitive selection process of written and viva voce examinations and given the appointment letter by the Project Authority. Subsequently, they joined in their respective work places. The Project was implemented during 2009-2016 and the project includes 40,215 Co-operative Society all over the country. For the purpose of holding the achievement, continuity and expansion of the Project, the Government created a specialized Bank namely “*Palli Sanchya Bank*” by the virtue of the Palli Sanchya Bank Ain, 2014 issued by the Gazette Notification dated July 08, 2014. The Project is a unique project backed by the Palli Sanchay Bank Ain, 2014 (hereinafter referred to as the said Act), which was

promulgated on 8th July, 2014 with immediate effect and as per section 2(5), i.e. the definition of the project, *Ektee Bari Ektee Khamar*, which runs as follows:-

২(৫) “প্রকল্প” অর্থ পল্লী উন্নয়ন ও সমবায় বিভাগ কর্তৃক বাস্তবায়নাধীন 'একটি বাড়ী, একটি খামার প্রকল্প':

As per provisions of section 6(1), the shareholder of the Bank are societies and the definition of the society is given in section 2(13), which directly denotes that a society formed under the Project will automatically become a registered society of the Bank. Section 2(13) runs as follows:-

২(১৩) "সমিতি" অর্থ একটি বাড়ী একটি খামার প্রকল্পের আওতায় গঠিত কোন সমিতি, উহা যে নামেই অভিহিত হউক না কেন, এবং প্রকল্পের উদ্দেশ্যের সাথে সামঞ্জস্যপূর্ণ অনুরূপ কোন সমিতিও ইহার অন্তর্ভুক্ত হইবে।

In pursuant to the Section 37 of the Palli Sanchoy Bank Ain, 2014 the concerned authority has published the Palli Sanchoy Bank Service (Employees) Regulations, 2016 has been published by a Gazette Notification being SRO No. 68-Ain/2016 dated May 28, 2016, wherein it is stated that:

(৬) এই প্রবিধানের অন্যান্য উপ-বিধানে যাহা কিছুই থাকুক না কেন, আইনের ধারা ৩৯(১)(খ)(১) এর উদ্দেশ্য পূরনকল্পে সরাসরি নিয়োগের ক্ষেত্রে, বোর্ড সর্বপ্রথম প্রকল্পে নিয়োজিত কর্মকর্তা-কর্মচারীদের মধ্য হইতে, বাছাই কমিটি কর্তৃক উপযুক্ততা যাচাই সাপেক্ষ, কোন পদে নিয়োগ প্রদানের উদ্যোগ গ্রহন করিবে।

(৭) যে সকল পদ প্রকল্পে নিয়োজিত কর্মকর্তা-কর্মচারীদের মধ্যে হইতে সরাসরি নিয়োগের মাধ্যমে পূরণ সম্ভব হইবে না কেবল সেই সকল পদ উন্মুক্ত বিজ্ঞাপনের মাধ্যমে পূরণ করিতে হইবে এবং বিভিন্ন সময়ে এইরূপ নিয়োগদানের ক্ষেত্রে সরকারের জারীকৃত কোটা সম্পর্কিত নির্দেশাবলী অনুসরণ করিতে হইবে।

As per Act of 2014, the project ended on 30th June, 2016 and the Palli Banchoy Bank started to work since 1st July, 2016 and as per section 39 of this act, all the assets, power, authority, loan, liability, responsibility,

manpower etc. of the Project has been transferred to the Bank from the aforesaid project. The project was abolished on 30th June, 2016 and according to section 39 of aforesaid Act, all the assets, power, authority, loan, liability, responsibility, manpower etc. of the Project was transferred to the Bank and all the staffs of the abolished Project are to serve in their respective posts as the staffs of the Bank. Thus, all the employees of the Ektee Bari Ektee Khamar project were duly absorbed into the Bank since 1st July, 2016 according to section 39 of the Palli Sanchoy Bank Ain 2014.

Later on, the tenure of the project has been extended up to 30th June, 2020. In the mean time, an amendment of section 39 of the Act has been brought wherein it was stated that the government may ascertain the date of abolishment of the Project and the manpower, assets and all other things of the project may be exchanged and transferred to the Bank through a memorandum of understanding and the same may be used for executing the function and purpose of the Bank. However, in the mean time, the petitioners were also absorbed with the Bank on different dates.

We also find that according to the provision of section 6(1), the shareholder of the Bank are societies and the definition of the society is given in section 2(13), which directly denotes that a society formed under the Project will automatically become a registered society of the said Bank. According to the provisions of section 39(1) (Re) of the said Act, all the orders, direction, Rules or instruments that has been enacted or passed, subject to the consistency with this Act, will be valid and operative unless and until any such provision is made by the bank or in certain cases repealed by it;

and it will have its continuity and the effect as if the same has been passed or enacted by the Bank itself, which reads as follows:-

৩৯(১) (খ)- প্রণীত ও জারীকৃত সকল আদেশ, নির্দেশ, নীতিমালা বা ইনস্ট্রুমেন্ট, এই আইনের সহিত সামঞ্জস্যপূর্ণ হওয়া সাপেক্ষে একই বিষয় ও উদ্দেশ্যে ব্যাংক কর্তৃক প্রণীত ও জারী না হওয়া পর্যন্ত বা, ক্ষেত্রমতে, বিলুপ্ত না করা পর্যন্ত, প্রয়োজনীয় অভিযোজনসহ, পূর্বের ন্যায় এমনভাবে চলমান, অব্যাহত ও কার্যকর থাকিবে যেন উহারা ব্যাংক কর্তৃক প্রণীত ও জারী হইয়াছে;

Therefore, any order, direction and instrument of the Project remain as an order, direction and instrument of Palli Shanchay Bank unless and until provisions are enacted and any other orders are passed by it (Bank) in this regard. Since no such provision has been introduced by the bank for posting the “Field Organizers” (মাঠ সংগঠক) to the post of “Field Supervisors” and that the organogram of Palli Sanchay Bank (Officer-Staffs) Service Regulations, 2016 does not have existence of any such post. Therefore, the discrimination done during subsistence of the project would be deemed as discrimination done by the bank itself.

Third question raised by the learned Advocates for the respondents that there is no discrimination with the post of the petitioners namely, Computer Operators-cum-Account Assistants, because creation and sanction of post or up-gradation of posts of Field Supervisor and non up-gradation of posts of the petitioners does not come within the definition of 'discrimination'. If there is application of pick and choose policy within some persons in the same post, it can be defined as 'discrimination'. The service of no employees within the post of Computer Operator-Cum-Account Assistant was up-gradated and as such, the petitioners cannot take the plea of 'discrimination'.

The expression of discrimination indicates an unjust, unfair or unreasonable, arbitrary and bias in favour of one against another. It's involved an element of intentional and purposeful differentiation thereby creating economic barrier and involves an element of an unfavourable bias. Discrimination implies an unfair classification. 'Discrimination' means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights, or fundamental rights and freedoms in the political, economic, social, cultural, civil or any other field. In the instant writ petitions, the petitioners invoked their fundamental rights as they were discriminated by the same authority, while they are working in the same project and Bank, though their posts were different.

We also noticed that the bank also acknowledged that the discrimination has already been done to the petitioner, Computer Operators and has sent a proposal to the concerned Ministry for upgrading the salary scale of Computer Operators to 12th grade as evident Annexure-"S" and "S(1)" to the Supplementary Affidavit No. 2 on behalf of the Petitioners.

We find support of this contention in the decision of *Bangladesh vs. Sontosh Kumar Saha reported in 21 BLC (AD)*, wherein All the government appeals preferred in the Sontosh Kumar Case were allowed except two appeals (Civil Petition for Leave to Appeals No.644 and 645 of 2015) which were dismissed by the Hon'ble Appellate Division upholding the decisions of the High Court Division while making the Rule absolute found a palpable discrimination that was done in respect of the Bench Officers of the High

Court Division of the Supreme Court with the other officers of the same rank of the Appellate Division. In Sontosh Kumar's case upholding those decisions of the High Court our Apex Court held that:-

“These petitions are quite distinguishable from the other cases. The writ petitioners invoked their fundamental rights as they were discriminated by the same authority and they are working in the same court. More so, the works of Bench Readers of the Appellate Division and Assistant Bench Officers of the High Court Division are completely different. The Bench Readers are appointed from among the Bench Officers/Assistant Bench Officers of the High Court Division and if the Bench Officers get status higher than them, certainly they will be discriminated. It is to be noted that the working hours of these officers is from 9.00 a.m. to 5.00 p.m. but they used to work till 8/9 p.m. every day. In respect of Assistant Bench Officers, the very nature of their job is painstaking. They work almost 12/14 hours a day and even on holidays because they are attached to the Judges. During the vacation as well, they cannot enjoy the holidays as they remain busy with finalization of judgments. The High court Division has rightly exercised its jurisdiction and we find no infirmity to interfere with the judgment.”

Further, the learned Advocates for the respondents argued that if the employer has to explain why the post of Field Supervisor in the project was created or up-gradated, then the respondents have to explain the necessity of creation of the post of Field Supervisor and it will raised so many disputed question of facts. Thus, creating the post 'Field Supervisor' or upgrading the post of 'Field Assistant' to 'Field Supervisor' is neither violation of constitutional or statutory provisions of laws nor it is an arbitrary or *malafide* act of the employer. The employer after considering the ambit of works, duties and liabilities relating to the post of 'Field Assistant' and up-gradated

the same as 'Field Supervisor' and their pay scale from 14 to 12. But the ambit of works, duties and liabilities of the posts of the petitioner namely, Computer Operator-cum-Account Assistant were remains unchanged, their dignity and benefit of the post was not changed. Thus, the petitioners were not deprived from any benefit of their posts.

It appears from the record that the “Filed Organizers” were appointed as Field Supervisors and the posts were upgraded from Grade-14 to Grade-12 and the post has been renamed as Field Supervisors, though these posts should be filled up by direct appointment as per organogram

We further noticed that the posts of Accounts Assistant and Data Entry Operators Grade were upgraded from Grade-16 to Grade-12. Field Assistant was upgraded from Grade-16 to Grade-14 before their appointment and joining, but the Grade and name of the petitioners post were kept unchanged. Though, the educational qualifications for the post of Computer Operator-cum-Account Assistant were graduation with computer operating skill. In the 2nd Amendment, the pay scale and salary of all post of Upazilla level were upgraded excluding the pay scale and salary grade of the petitioner’s posts and their grade were unchanged, though the Field Organizer then Field Supervisors now Junior Officer (Field) from Grade-14 to Grade-12 and Account Assistant and Data Entry Operator were upgraded from Grade-16 to Grade-12 and a list of discrimination committed by the respondents relating to the Grade of its employees are as follow:-

Initial Post and Position	Charge in 1 st Amendment	Charge in 2 nd Amendment	Charge in 3 rd Amendment	Transfer to the Palli Sanchay Bank
Upazila Co-ordinator (Grade-II)	Grade-10	Grade-10	Grade-10	Officer (General) Grade-10

Computer Operator-cum-Account Assistant Grade-13	Grade-13 Petitioners Post remain unchanged	Grade-13 Petitioners Post remain unchanged	Grade-13 Petitioners Post remain unchanged	Computer Operator (curtailed post name) Grade unchanged
Field Organizer (Grade-14)	Field Organizer (Grade-14)	Field Supervisor (Grade-12)	Field Supervisor (Grade-12)	Junior Officer (Field) Grade-12
	Data Entry Operator (Grade-16)	Grade-12	Grade-12	Data Entry Operator (Grade-12)
	Account Assistant (Grade-16)	Grade-12	Grade-12	Account Assistant
	Field Assistant (Grade-16)	Grade-14	Grade-14	Field Assistant (Grade-14)

From the above list it transpires that at the initial stage of appointment, the Upazilla coordinator post was at Grade-11, the grade of Computer Operator-Cum-Account Assistant was at Grade-13, the Grade of Field Organizer was at Grade-14. The Revised Development Project Proposal (hereinafter referred to as RDPP) of the project has been approved on 13.09.2011, wherein the salary of Upazilla Coordinator has been upgraded from Grade-11 to Grade-10 of National Pay Scale. The salary of other Grades was unchanged. After the amendments the salary of Computer Operator-Cum-Account Assistant remain unchanged at Grade-13, Field Organizer at Grade-14, Account Assistant at Grade-16, Data Entry Operator at Grade-16, Field Assistant at Grade-16 (out Sourcing). On 30.07.2013 2nd Amendment of RDPP was approved in the ECNEC Meeting. In this Amendments, the Grade and Salary of the petitioners have been kept unchanged, but the salaries of other posts were upgraded. The posts which were below the rank, grade and scales from the petitioners were upgraded excluding the petitioners. Thus, the petitioners were deprived from their service benefit/grade relating their posts

and thus, the action of the employer /respondents are arbitrary, *malafide* and
fragrant violation of our constitution and statutory provisions of laws.

We support of this contention in the case of *Ministry of Fisheries and
Livestock and others. Vs. Abdul Razzak and others 71 DLR (AD) 2019, 395*
wherein their Lordships observed that;-

*“Creation and sanction of post is a prerogative of the
executive or legislative authority and the Court cannot
arrogate to itself this purely executive or legislative function.
The creation and abolition of post, formation and Criteria
structure/re-structure of cadre, prescribing the source and
mode of recruitment and qualification and criteria of
selection, etc. are matters which fall within the exclusive
domain of the employer. Although the decision of the
employer to create or abolish post or cadre or to prescribe
the source or mode of recruitment and lying down the
qualification etc. is not immune from judicial review. The
Court ought to be always extremely cautious and
Circumspect in tinkering with the exercise of discretion by
the employer. The power of judicial review can be exercised
in such matter only if it is shown that the action of the
employer is contrary to any constitutional or statutory
provision or is patently arbitrary or malafide.”*

Fourth question raised by the learned Advocates for the petitioners are
that their writ petitions are governed by the principle of *legitimate expectation*
as the authority of the concerned bank made a promise and has sent a
proposal to the concerned Ministry for upgrading the salary scale of
Computer Operators to 12th grade as evident Annexure-"S" and "S-1" to the
Supplementary Affidavit No. 2 on behalf of the Petitioners but the petitioners
have been deprived by the respondents till today.

It is to be noted that the doctrine of 'legitimate expectation' is inapplicable where changing the eligibility criteria, creation and sanction of post or up-gradation of post/grade/salary are made solely on merit and other suitability factors. In *Civil Petition for Leave to Appeal Nos. 512-14 of 2010*, our Apex Court held that:-

“It was argued on behalf of the writ petitioners in the High Court Division as well as in this Division that the writ petitioners having gone through rigorous process of selection by the PSC, they had acquired the right of legitimate expectation of being appointed to their respective posts. The High Court Division accepted the contention. This contention is devoid of substance. It must be remembered that entry into the selective posts in the Republic, the legitimate expectation doctrine can have no relevance in determining the suitability of the appointees. The legitimate expectation doctrine is inapplicable as it would destroy the representative character of the said selected posts, which is absolutely essential for every segment of society to have confidence in the system. Appointments to these posts should be solely on merit and other suitability factors and not on the basis of any other factor. There can be no room for the legitimate expectation doctrine in cases where the appointments are on merits. The doctrine of legitimate expectation simply ensures the circumstances in which that expectation may be denied or restricted.”

Legitimate expectation can be claimed, where a person is the victim of an unfavourable decision taken by a public authority, this may amount to an infringement of that person's legitimate expectations where, for example, the decision contradicts an earlier promise or course of conduct on the part of the public authority concerned. Such expectation will also arise where a public authority makes a promise and then reneges on it or where there has been some established practice entitling the

claimant to expect that practice to be followed and it is not followed.”

In **Halsbuty’s Laws of England, 4th Edition** *Legitimate Expectation* has been defined as follows:

“A person may have a legitimate expectation of being treated in a certain way by administrative authority even though he has no legal right in law to receive such treatment. The expectation may arise either from a representation or promise made by the authority including an implied representation or consistent past practice.”

The doctrine of '*legitimate expectation*' can be traced in the opinion of the Judicial Committee of the Privy Council delivered by Lord Fraser in *Attorney-General of Hong Kong vs Ng Tuen Shiu (1983) 2 AC 629, (1983) 3 All ER 346*. Ng Tuen Shiu was an illegal immigrant from Macau. The government announced a policy of repatriating such persons and stated that each would be interviewed and each case would be treated on its merits. But during the interview he was not allowed to explain his position i.e. the humanitarian grounds on which he might be allowed to stay, but only to answer the questions put to him; that he was given a hearing, but not the hearing as promised, wherein 'mercy' could be argued. The judicial Committee agreed on a narrow point of view that the Government's promise had not been implemented; his case had not been considered on its merits, and the removal order was quashed. Ng Tuen Shiu succeeded on the ground that he had a *legitimate expectation* that he would be allowed to put his case, arising out of the Government promise that everyone affected would be allowed to do so. Wherein, the Privy Council has observed that the expectation may be based upon some statement or undertaken by, or on behalf

of the public authority which has the duty of making decisions, if the authority has, through his officers acted in any way that could make it unfair or inconsistent with administrations from him. In the case of *Council of Civil Service Unions vs Minister for the Civil Service ("GCHQ ")* 3 All ER 935, the House of Lords has observed

"Legitimate, or reasonable, expectation may arise either from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue."

Our Apex Court formulated the principle of *legitimate expectation* in case of *Government of Bangladesh vs. Md. Jahangir Alam*, 17 BLC (AD) 115 wherein their Lordships observed that;-

"An examination of the various decisions discussed and noted above would show that the principle of legitimate of expectation may arise or be applicable both in the subjective or procedural Sense in the following manner.

- i) although the concerned person may not have the legal right but because of well established prior practice, he would have an expectation which is crystallized into a legitimate one, based on the consistent conduct of the concerned authorities; unless there is overwhelming public interest to do otherwise;*
- ii) mere indulgence may create an expectation in the mind of the incumbent but on its own, without more, would not render it a legitimate one;*
- iii) it is however, a legitimate expectation on the part of the incumbent that the concerned authorities; under the circumstances of the case, would act fairly;*
- iv) when an incumbent has an expectation, which is reasonable in the circumstances, capable of including expectations which may go beyond enforceable legal rights and render it legitimate;*

- v) *a public authority is bound to follow a certain procedure which is culminated into a promise or undertaking, because of its express or implied consistent practice unless of course, it does not contravene any statutory duty;*
- vi) *if from the evidence it is apparent that contractual term, is frequently departed from to something beneficial to the incumbent, his expectation may be crystallized into a legitimate one,*
- vii) *if the practice is well established that it would be unfair on the part of the Government to depart from the said practice legitimate expectation may rise that the incumbent can reasonably expect the said practice to continue to his benefit, even though he may not have strict legal right to the said benefit.*
- viii) *if some benefit or advantage which a class of persons had in the past been allowed by the Government which they can legitimately expect to continue unless there is some rational grounds for the authority to withdraw it,*
- ix) *not a mere anticipation or a wish or a hope it must be a definite expectation, which is reasonable and fair in the circumstances based on clear facts and consistent practice so that a person or a class of persons may feel that there is no reason to discontinue the practice to his or their disadvantage, then the said expectation would be crystallized into a legitimate one and in such a case, the power of judicial review would be available to protect the said legitimate expectation unless there is overwhelming public interest against it."*

In the *Chief Engineer vs People s Republic of Bangladesh (Rural Development)* 32 BLD (AD) 177 = 17 BLC (AD) 91 wherein their Lordships observed that;-

"The doctrine of legitimate expectation is a concept which 'is akin to that a promissory estoppel and· this concept has been developed in the European Community Law. According to the

doctrine, where a person is the victim of an unfavourable decision taken by a public authority, this may amount to an infringement of that person's legitimate expectation, where for example, the decision contradicts an earlier promise or course of conduct on the part of the public authority concerned. Therefore, this doctrine is circumscribed by certain limitations and exceptions. The first and foremost consideration is that is that there must be a foundation in the petition claiming legitimate expectation and secondly, there must be a promise or a representation on the part of the public authority on the claim of the persons aggrieved by the decision."

In view of the above extracted principle of legitimate expectation, we are of the view that the petitioners can invoke the principle of legitimate expectation if they can show that they had a reasonable expectation of some occurrence or action preceding the decision complained of and that reasonable expectation was not fulfilled in that event which can be termed as *Wednesbury unreasonableness*.

On perusal of these writ petitions; we find that the petitioners were duly appointed in the post of Computer Operator-Cum-Account Assistant in the Project namely “একটি বাড়ি একটি খামার” which has been initiated by the Rural Development and Co-operative Division of the Ministry of LGRD at Grade 13 of the National Pay Scale of 2005, after maintaining all formalities and they joined in their respective posts in different district of the country. The petitioners have been performing their functions with utmost sincerity, honesty and full satisfaction of the authority.

We also noticed that the posts of the Computer Operator-Cum-Accounts Assistants are at serial No.18 and the Field Organizers (মাঠ সংগঠক)

are at serial No.19 having National Pay Scale at Grade 13th and 14th respectively. Thereafter, the post of the Field Supervisor was created in the “একটি বাড়ি একটি খামার প্রকল্প (২য় সংশোধিত)” project from 01.07.2013 to 30.06.2016 and preserved for 01.07.2013 to 31.05.2014 vide office order under Memo No. 47.034.014.00.00.025.2013-330, dated 02.10.2013 posts for “একটি বাড়ি একটি খামার” (2nd Amendment)” Project wherein the post of was inserted over the Computer Operator Cum-Account Assistant. Accordingly, the said Division circulated an office order under Memo No. এবাএখা/প্রশা/পরিপত্র/১১১/২০১০/২৪২২, dated 20.10.2013 changing the designation of the post from Field Organizer to Field Supervisor and also upgraded the salary scale from grade 14th to 12th grade of the National Pay Scale of 2009, whereas the salary scale of the petitioners were not accordingly upgraded to grade-11 of the National Pay Scale of 2009, which has created anomaly and discrimination in the service of the petitioners and administration of the Bank, but respondents did not take any step to cure the said discrimination. We are of the view that the petitioners are victim of an unfavourable decision of the public authority; this may amount to an infringement of their legitimate expectations. Where a class/group of employees of the same employer were getting favourable treatment and others employees were debarred by imposing new eligibility criteria, creating and sanction of new post or up-gradation of post/grade/salary is illegal, unconstitutional and not sustainable in law. Thus, we find substance in the submission of the learned Advocate for the petitioner.

Fifth question raised by the learned Advocates for the Respondents that the Government tried to keep uniformity in the service of computer personals

at the Government Institutions as per the Recruitment of Computer Personnel in Government Institutions Rules, 2019 as evident Annexure-"1" to the Affidavit-in- opposition submitted by the Respondent No. 4 and as such, the post/grade of the petitioner cannot be upgraded.

On the contrary learned Advocates for the petitioners argued that the computer operators in different government institutions are enjoying different grades for example, the Computer Operators of National Board of Revenue, Rajshahi Krishi Unnayan Bank and Customs Excise and VAT Commissionerate, Chattogram are at 11th grade of National Pay Scale, while the Computer Operators working at Bangladesh Krishi Bank are enjoying 10th Grade of National pay scale as evident Annexure-"R" to "R(3)" to the Supplementary Affidavit No. 2.

Admittedly, the services of the petitioners are guided by the provision of Palli Sanchoy Bank Ain, 2014 and Polli Sanchoy Bank (Karmakarta Karmachari) Chakri Probidhanmala, 2016 and Polli Sanchoy Bank Karmachari Probidhanmala, 2022 and the provision of the সরকারি প্রতিষ্ঠানের কম্পিউটার পার্সোনাল নিয়োগ বিধিমালা, ২০১৯. We also noticed that the post of Data Entry Operator and Field Assistant were at 16th grade of the Project. However, the salary scale of Data Entry Operators were upgraded to 12th grade from 16th grade and the salary sales of Field Assistants were upgraded to 14th grade from 16th grade; whereas, the petitioners were kept at 13th grade as usual. The Data Entry Operators were also transferred and absorbed in the Bank as Junior Officer (Field) vide letter dated 20.06.2021. Thus, we find substance in the submission of the learned Advocate for the petitioners.

Therefore, we are of the view that the plea of the respondents relating to the uniformity in the service has no lag to stand.

Final question raised by the learned Advocate for the petitioners is that the promulgation of the Palli Sanchay Bank Staff Service Regulations, 2022 so far it relates to the Serial No. 19 to the Schedule of the said regulations determining eligibility of the petitioners for promotion to the post of Officer (General) as 7 (seven) years of service instead of 3 (three) years of service, as per Palli Sanchay Bank (Officer Staff) Service Regulations, 2016 would have no applicability to the petitioners.

We noticed that the petitioners were duly absorbed in the Bank with effect from 01.07.2016 as Computer Operators since the post existed at serial No.23 of the *Palli Sanchay Bank* (Officer-Staff) Service Regulations, 2016, whereas, the Field Supervisors were absorbed in Bank as Junior Officer (Field) vide letter dated 29.11.2020 with effect from 01.07.2016, though the said post was not available in the schedule of the aforesaid Regulations, 2016. The post of Junior Officer (Field) appears at serial No. 22 of the Palli Sanchay Bank Staff Service Regulations, 2022, which was promulgated on 18.09.2022 and published in Bangladesh Gazette on 30.11.2022, i.e., during pendency of the present Rules as evident Annexure-K to the application for supplementary Rule. The post of Junior Officer (Field) in the Organogram of the Bank was admittedly approved at serial No. 23 by the Ministry of Finance on 05.09.2021. Since, the authorities were willing to implement the Service Regulations of 2022, in contravention of the petitioners' vested right, that they have accrued as per Regulations of 2016. Therefore, the petitioners have

challenged the applicability of the said Regulations of 2022 in the supplementary Rule.

It is now a settled proposition that an employee shall definitely be entitled to the new service benefits given or created by the new Rule, but no Rule can be framed to his disadvantage or detriment or to the denial of his/her accrued/vested rights, 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 for the next higher post shall be effective and applicable to the employees, who will be appointed after it coming into effect or force of the same. Thus, the terms and conditions of the service of an employee will be guided by the service rules under which they were appointed. The petitioners were appointed on 01.07.2016 to the said post of the Bank. The Palli Sanchay Bank (Officer-Employee) Service Regulation 2022 was published in the Gazettee vide SRO No. 293-Ain/2022 dated 30.11.2022 after their appointment. Amendment of the existing service rules of any department is a sweet will of the concerned authority but the same cannot be amended to the detriment or disadvantage of an existing employee although the authority is at liberty to amend/enact new service rules to the benefit or advantage of the existing employees. Promotion to a higher post is not a fundamental right or a legal right of an employee, but the right to be considered for promotion to the higher post in accordance with law is a fundamental right. Therefore, by amending the service rules by which an employee was appointed/ promoted or by enacting new service rules right to be considered for promotion to a higher post cannot be taken away. Therefore, the petitioners are legally entitled to be considered for promotion as per provision of Palli Sanchay

Bank (Officer-Employee) Service Regulation, 2016. We find support of this contention in the case of *Bakhrabad Gas System Limited Vs. Al Masud-ar-Noor and others reported in 66 DLR (AD) 187*, wherein the apex Court held as under:

“The appointing authority has every right to amend/alter the service rules to suit the need of the time but not to the detriment or disadvantage to the rights or privileges that existed at the relevant time when an employee of such appointing authority entered into its service. 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.”

Similar views were taken the case of *Bangladesh Bank and another vs Sukamal Sinha Choudhury and another reported in 21 BLC (AD) 212*.

Thus, we are of the view that justice would be better served if we direct the respondents to up-gradation of the posts of the petitioners from grade 13th to grade 11th of National Pay Scale and consider the petitioner’s promotion in accordance with the law. The Service/promotion of petitioners shall be governed by the Palli Sanchay Bank (Officer-Employee) Service Regulation 2016, under which they were appointed.

With the above observation, both the Rules and supplementary Rule are disposed of with direction and the respondents are directed to up-grade of the posts of the petitioners from grade 13th to grade 11th of National Pay Scale and the service benefits/promotion of petitioners would be governed by the Palli Sanchay Bank (Officer-Employee) Service Regulation 2016, under which they were appointed and to consider the petitioners' promotion in accordance with law and to give all service benefits, if any, on priority basis within 2 (two) months from the date of receipt of this order.

However, there will be no order as to costs.

Communicate at once.

Mohammad Showkat Ali Chowdhury, J:

I agree.