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

Present

Mr. Justice Sikder Mahmudur Razi
And
Mr. Justice Raziuddin Ahmed

Writ Petition No. 6945 of 2021

Md. Manir Hossain and others.
.....Petitioners.
-Versus-
Government of Bangladesh represented by the Secretary, Ministry of Health and Family Welfare-Health Service Division, Dhaka Bangladesh and others.
.....Respondents.

Mr. Jyotirmoy Barua, Senior Advocate with
Mr. Md. Billal Hossain, Advocate
.....For the petitioners.
Mr. Muhammad Rafiul Islam, Advocate
…For the respondent No. 3
Mr. Mohammad Mehdi Hasan, DAG with
Mr. Mohammad Rashadul Hassan, DAG
Mr. Kamrul Islam, AAG
Mr. Md. Shagar Hossain, AAG
Mr. Bishwanath Karmaker, AAG &
Mr. Sk. Obaidul Haque (Washim), AAG
.....For the respondent-Government.

Heard on: 27.11.2025 & 04.12.2025
And
Judgment on: The 11th December, 2025

(Sikder Mahmudur Razi, J:)

1. In an application under Article 102 of the Constitution of the People's Republic of Bangladesh a Rule Nisi was issued on 05.09.2021. Subsequently, following an application for modification of the Rule, the Court on 28.05.2025 issued the following modified Rule Nisi:

> *"Let a Rule Nisi be issued calling upon the Respondents to show cause as to why non-consideration of the claim of the Petitioners to implement the decision of the Respondent No. 1 dated 03.10.2018 communicated vide memo No. ঢামেকহা/প্রশাঃ dated 26.11.2018 (ANNEXURE-"F") for making the*

service of the Petitioners permanent with the National Institute of Burn and Plastic Surgery and also for non-consideration of the recommendation of the Respondent No. 1 dated 22.10.2018 and decision of the Respondent No. 1 dated 22.05.2019 vide Memo No. 45.140.011.00.00.005.2013-852 (ANNEXURE- "G") for making their job permanent as Dresser/ OT Boys/ Attendants/ Lab Attendants/ Mechanic/ Stretcher Bearer in the National Institute of Burn and Plastic Surgery by relaxing their age limit and educational qualification considering their experience on humanitarian ground and/or such other or further order or orders passed as to this Court may seem fit and proper.

2. Facts essential for disposal of the Instant Rule are that the petitioners are 68 individuals who joined the Burn Unit of Dhaka Medical College Hospital on 31st December 2003 as irregular/daily-basis workers in posts such as Dresser, OT Boy, Attendant, Lab Attendant, Attendants, Stretcher Bearer, Mechanic, Office Assistant. That Burn Unit has been subsequently converted into a 500-bed institute, now known as Sheikh Hasina National Institute of Burn and Plastic Surgery (SHNIBPS). The petitioners have been continuously serving since their joining, and were initially unpaid for many years. Later they received daily-basis remuneration from 2019 and monthly salary from 2021, though they were never permanent employees**.** Throughout this period, the petitioners underwent extensive training with modern equipment provided by the respondents and they have become skilled and experienced in their fields. The petitioners claimed that from the inception of their service, authorities repeatedly assured them that their services would be made permanent, subject to necessary amendments in age and educational requirements. On 03.10.2018, in a meeting presided over by the Health Minister, a decision was taken to temporarily appoint them until amendment of service rules to permanently absorb them. Follow-up decisions were taken on 24.04.2019 and 22.05.2019, with directions to prepare and send

proposals for their appointment, including relaxation of age limit up to 40 years and relevant qualifications. Accordingly, proposals listing all 68 petitioners were sent by the concerned Directors on 31.08.2019 and 02.10.2019. Very recently Respondent No. 3 in response to the application of the Petitioners dated the 03.10.2024 and 11.11.2024 forwarded application of the Petitioners to the Respondent No.1 requesting to take appropriate steps. In the said letter, the Respondent No. 3 reiterated that the 68 Casual Workers i.e., the Petitioners had been employed with the National Institute of Burn and Plastic Surgery as casual employees. However, no final action has been taken till date. However, the respondents published new recruitment circulars on 17.09.2019 and 09.08.2021 to fill different posts wherein the authority allowed age relaxation for departmental candidates while denying the same benefit to the petitioners and thus the petitioners have been discriminated. The petitioners claimed that they have legitimate expectation to be permanently absorbed, since they have served for more than 20 years, relying on repeated assurances of the authority.

3. Respondent nos. 3 & 5 contested the Rule by filing affidavit-in-opposition. The said respondents asserted that Sheikh Hasina National Institute of Burn and Plastic Surgery (SHNIBPS) is an independent institute. Before that, it was a unit under Dhaka Medical College and Hospital which started its journey in 1986. In November, 2015 the Executive Committee of the National Economic Council (ECNEC) approved the project for establishment of the Institute and formally it starts functioning from 04.07.2019 and the same is distinct from Dhaka Medical College. According to them, the petitioners never served as their employees prior to 2020. They contended that the petitioners are outsourcing workers supplied by private agencies namely State Services Ltd., Trust Security Services Ltd., and Ekushey Security Services (Pvt.) Ltd. under

contractual agreements, and paid by those companies, not by the Institute. Therefore, the petitioners have no employer-employee relationship with SHNIBPS and hence no *locus standi* to file the instant writ petition. The respondents further asserted that any decisions or communications between Ministries/Directorates were merely internal communications incapable of conferring rights. They deny giving any assurances for permanent absorption, and stated that the petitioners are not eligible under the Non-Medical Employees Recruitment Rules, 2018 (as amended) due to lack of qualification and over age. The respondents further asserted that as per Section 54 of the Government Service Act, 2018, outsourced workers shall not be treated as Government employees, and therefore, there is no scope to make their job permanent.

4. Mr. Jotirmoy Barua, learned advocate along with Mr. Md. Billal Hossain, learned advocates appeared in the matter on behalf of the petitioners. Mr. Jotirmoy Barua taking us through the writ petition and the documents annexed therewith submitted that the petitioners were engaged on a daily-wage basis in various posts such as Dresser, OT Boy, Lab Attendant, Attendant, Stretcher Bearer, Mechanic and Office Assistant at the Dhaka Medical College Burn Unit in 2003. In 2018, the said Burn Unit was institutionalized as the National Institute of Burn and Plastic Surgery, Dhaka, and Respondent No.1 thereafter created permanent posts in the revenue set-up for different positions. On 03.10.2018, Respondent Nos.1 and 6, in a meeting chaired by the Hon'ble Minister, decided to temporarily absorb the petitioners into revenue posts by relaxing age and educational qualifications and also decided to amend the Service Rules to confirm them permanently. On 22.05.2019, respondent Nos.1 and 4 further directed that proposals be sent to the concerned Ministry with a complete checklist and amended rules to implement that decision. However,

despite the Petitioners' continuous service and reliance on such assurances, no step has been taken to finalize their absorption. The learned advocate further submitted that the failure to implement the decisions dated 03.10.2018, 22.10.2018 and 22.05.2019, communicated vide Memo dated 26.11.2018 and dated 28.05.2019 regarding the Petitioners' permanent appointment by relaxing age limit and educational qualification on humanitarian grounds is arbitrary, discriminatory and without lawful authority.

The learned advocate next submitted that despite the above decisions, Respondent No.3 issued a recruitment circular on 08.08.2021 inviting applications for identical posts, granting age relaxation to other departmental candidates while denying the same treatment to the Petitioners. Such selective exclusion is malafide, unequal and unreasonable.

He next submitted that the Petitioners have received extensive institutional training over the years from the Respondents and possess more than 20 years of uninterrupted practical experience in the concerned areas. Denying them permanent status despite duly acknowledged skill and experience is manifestly arbitrary and defeats legitimate expectation based on official assurances.

The learned advocate further submitted that the petitioners began service in 2003–2004 and initially received daily wages directly from the Dhaka Medical College & Hospital. They were never outsourcing workers under any third-party contractor. The Respondents' continued refusal to regularize their service despite multiple decisions to do so is illegal, inequitable and therefore liable to be remedied by judicial intervention.

Relying on the judgment of the Hon'ble Appellate Division in *Government of Bangladesh & others vs. Md. Saiful Islam & others*, 16 SCOB

(2022) AD 44, the learned advocate argued that it is wholly contrary to socio-economic justice and constitutional policy to keep work charged employees who have rendered 20 years of continuous service in uncertainty regarding their future. With these submissions the learned advocate prayed to make the Rule absolute.

5. *Per contra*, Mr. Mohammad Rafiul Islam, learned advocate for the respondents submitted that sympathy and long service alone cannot justify permanent regularization. He next submitted that creation and filling of permanent posts is strictly a policy decision for the executive branch of the Government. He further submitted that outsourced or project/casual workers must follow competitive recruitment and may only receive age relaxation, not automatic absorption. In support of his submission the learned advocate relied on the judgment passed by the Hon'ble Appellate Division in the case of *The Secretary, Ministry of Fisheries and Livestock and others -vs- Abdur Razzak and others [Civil Appeal No. 460 of 2017 with Civil Review Petition No. 181 of 2018, reported in 71 DLR (AD) page 395* as well as upon the Judgment passed in the case of *The Director General, Bangladesh Rural Development Board vs. Asma Sharif and others, reported in 72 DLR (AD) page-189*. The learned advocate relying on the case of *Al-haj Abul Basher and others -vs- Government of Bangladesh and others, reported in 50 DLR (AD) page- 11*, further submitted that writ is not maintainable challenging decisions communicated between Ministry and its departments/directorates, because they are merely policy guidelines. The learned Advocate concluded by submitting that, through the modified Rule, the petitioners have attempted, in a subtle and calculated manner, to disguise their ultimate objective of securing an order of absorption, which is

not permissible in law. With these submissions the learned advocate prayed to discharge the Rule.

6. We have heard the learned advocates of the respective parties and also examined the materials of record.

7. Both the parties during the course of hearing referred some decisions of our Apex Court. We consider it expedient to mention those judgments at the very outset. The petitioners in their affidavit for additional grounds referred *Government of Bangladesh and others Vs. Md. Saiful Islam & others, 16 SCOB (2022) AD, [Review Petition Nos. 404 of 2019, 07 of 2020, 30 of 2020, 42 of 2020 & 62 of 2020]*, The Apex Court disposed of the above Review Petitions with the following observation and direction;

> *We are of the same view that after receiving continuous service for 20 years from a work-charged employee without a break, if he is left in uncertainty over this future, that is wholly denying socio-economic justice and completely contrary to the fundamental principle of State Policy as enumerated in part II of our Constitution. The Government should formulate a policy instrument for giving pensionary and other benefits to the work-charged employees who have served without break for a considerable period of time, i.e., 20 years or more. All the authorities should take immediate appropriate action in that behalf.*

8. On the other hand, the respondents relied on in the case of *Bangladesh Rural Development Board (BRDB), Dhaka vs. Asma Sharif and others, reported in 72 DLR (AD) 188* wherein it has been held that;

> *When the employees of the development projects or casual employees appointed as stop-gap arrangement have put in for considerable years of service in the post and their works have been approved but they could not be regularized, the only provision provides for them is to qualify the requisite examination and in such circumstances, they would get*

relaxation of upper age limit. If they are not selected, at the end of the day, they would return home from their respective working place with empty hand. It is the duty of the Government/employers to provide some benefits to them, on the basis of the period of service they rendered, so that they may not fall in extreme hardship otherwise the families of the those employees would face economic ruination.

9. The respondents further relied on in the case of *The Secretary, Ministry of Fisheries and Livestock and others vs. Abdur Razzak and others [Civil Appeal No. 460 of 2017 with Civil Review Petition No. 181 of 2018], reported in 71 DLR (AD) page 395* and in that judgment their Lordships hold that the petitioners are not entitled to be appointed permanently in the revenue budget applying the doctrine of legitimate expectation as the doctrine of legitimate expectation cannot be invoked for creation of posts to facilitate absorption. Creation of permanent posts is a matter for the employer and the same is based on policy decision. Their Lordships in that judgment further held that it is not the role of the courts to encourage or approve appointments made outside the constitutional scheme and statutory provisions. It is not proper for the courts to direct absorption in permanent employment of those who have been recruited without following due process of selection as envisaged by the constitutional scheme.

10. Here it is the submission of Mr. Barua that in the case of the petitioners, the respondents took a decision to formulate a recruitment rule only for the Petitioners, but they did not implement their decision. Moreover, the Respondents decided to make the Petitioners' job permanent as Dressers/OT Boys/Attendants/Lab Attendants/Mechanics/Stretcher Bearer in the National Institute of Burn and Plastic Surgery by relaxing their age limit and educational qualification, considering their experiences on humanitarian grounds, but the

Respondents remained silent. Therefore, a direction should be given to the Respondents to implement the decision taken by the Respondent No. 1 dated 22.10.2018 and decision of the Respondent No. 1 dated 22.05.2019 communicated on 28.05.2019 vide Memo No. 45.140.011.00.00.005.2013-852 for making the Petitioners' job permanent as Dressers/OT Boys/Attendants/Lab Attendants/Mechanic/Stretcher Bearer in the National Institute of Burn and Plastic Surgery by relaxing their age limit and educational qualification considering their experiences on humanitarian ground.

11. In reply to such submission Mr. Rafiul Islam referred বাংলাদেশ স্বাস্থ্য বিভাগীয় নন-মেডিকেল কর্মচারি নিয়োগ বিধিমালা, ২০১৮ and in rule 7 of that rules it has been provided as follows:

> **৭। বিশেষ বিধান।-(১)** তফসিলে উল্লিখিত কোনো পদ পূরণের ক্ষেত্রে সরাসরি ও পদোন্নতির কোটা বিভাজনে কোনো ভগ্নাংশ আসিলে উভয় কোটার ভগ্নাংশ পূর্ণ সংখ্যা হিসাবে পদোন্নতির কোটার সহিত যুক্ত হইবে।
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> (২) পরিচ্ছন্নতা কর্মী, ডোম, অফিস সহায়ক, মালি, বাবুর্চি, সহকারী বাবুর্চি, ধূপি, আয়া, বোতল ওয়াসার, ওয়ার্ড বয়, ডিসপেন্সারি বয়, লাইব্রেরি অ্যাটেনডেন্ট, নিরাপত্তা প্রহরী, হাজাম, পোলট্রি হাউজ অ্যাটেনডেন্ট, অ্যানিম্যাল কেয়ার টেকার, নাপিত, প্লাম্বার, হেড কারপেন্টার, প্যাকার, প্রধান নিরাপত্তা প্রহরী, ফায়ার ম্যান, পোল্ট্রি সহকারী, অ্যান্টি ম্যালেরিয়া কুলি, হেলপার, লোডার, এসকর্ট, অডিওভিজ্যুয়াল হেলপার বা টিন স্মিথ পদে কর্মরত কোনো কর্মচারী পদ পদোন্নতি অবসর, পদত্যাগ, মৃত্যু বা অন্য কোনো কারণে শূন্য হইলে-
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> (ক) উহার বিপরীতে "আউট সোসিং (out sourcing) এর মাধ্যমে "সেবা গ্রহণ নীতিমালা, ২০০৮" অনুযায়ী সেবা গ্রহণ করা হইবে; এবং
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> (খ) উক্ত পদ হইতে কোনো পদে পদোন্নতির বিধান কার্যকর থাকিবে না।

i.e. on vacancy of those posts, service of those works will be taken by way of out sourcing service.

12. As against the submission of the learned advocate for the petitioner to the effect that as the respondents recognized the petitioners as their employees since

2003-2004, therefore, they cannot now shift their position and say that they are the employees of the respondents only from 2020, the learned advocate for the respondents citing the case of *Shawn Apparels Ltd vs. Commissioner of Customs and others, reported in 52 DLR (2020) 316* submitted that for illegal and unauthorized actions of the Government officials, Government cannot be held responsible.

13. We have anxiously considered the facts of the present case as well as the precedents cited by the learned advocates. It is now a well-entrenched principle that Courts cannot direct the Government to create posts or amend service rules to facilitate regularization or absorption as because such directions would amount to trenching upon the domain exclusively entrusted to the Legislature and the Executive. Apart from the judgments as cited by the learned advocate for the respondents, we also find support of this view on the persuasive authority from Indian Jurisdiction. The Supreme Court of India in *Divisional Manager, Aravali Golf Club and otehrs vs. Chander Hass and others*, (2008) 1 SCC 683, has unequivocally held that the creation and sanction of posts is purely an Executive function involving economic and administrative considerations and that the Court cannot arrogate to itself such power. Likewise, in *Census Commissioner vs. R. Krishnamurthy*, (2015) 2 SCC 716, it has been held that no mandamus can be issued requiring the Government to implement a policy in a particular manner.

14. In the instant case, the relief sought by the petitioners though appears to be in the form of certiorari, but effectively requires this Court to command the Government to restructure its manpower policy, amend relevant service rules, and absorb the petitioners into permanent posts in the revenue establishment by relaxing eligibility criteria. Such an order or even declaring the impugned non-

consideration as illegal would tantamount to issuing a command upon the Executive to make law or amend rules and, thus, exceed our constitutional jurisdiction under Article 102.

15. Although we are not unmindful of the socio-economic hardship faced by the petitioners, but equity cannot be invoked to legitimize an appointment contrary to the constitutional scheme, particularly in public employment. Therefore, based on the discussion made hereinabove and in view of the settled propositions of law as laid down by our Appellate Division as well as persuasive authority from Indian Jurisdiction, we are of the view that the petitioners have failed to demonstrate any legal right justifying interference in the present case as well as failed to demonstrate any enforceable legal right to claim absorption or permanence in service, and as such we do not find any merit in the present writ petition.

16. In the result, the Rule is hereby discharged. The interim order, if any, stands vacated. There shall be no order as to costs.

Communicate the Judgment at once.

(Sikder Mahmudur Razi, J:)

I agree.

(Raziuddin Ahmed, J:)