

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

**WRIT PETITION NO. 6063 of 2021**

**IN THE MATTER OF:**

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

**IN THE MATTER OF:**

Ohidul Islam and others

..... Petitioners.

-Versus-

The Government of Bangladesh and others

..... Respondents.

Mr. Md. Munsurul Hoque Chowdhury,  
Senior Adv. with

Mr. Md. Shafikul Islam Ripon, Advocate

..... For the petitioners.

Mr. Md. Raju Mia, Advocate

.....For the Respondent Nos. 2 and 6.

Mr. Sk. Shaifuzzaman, DAG with

Ms. Rehana Sultana, AAG and

Mr. Ashique Rubaiat, AAG and

Mr. Md. Samiul Alam Sarkar, A.A.G and

Ms. Zulfia Akhter, A.A.G

..... For the respondents.

**Heard on: 11.01.2024,**

**30.05.2024 and**

**Judgment on: 05.06.2024.**

**Present:**

**Mr. Justice K. M. Kamrul Kader**

**And**

**Mr. Justice Khizir Hayat**

**Khizir Hayat, J.**

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh, this Rule *Nisi* was issued on 06.12.2021, in the following terms:

*“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the circular dated 04.10.2018, contained in Memo No. 05.00.0000. 170. 11. 07. 18.276 (Annexure-I to the writ petition) issued under the signature of respondent no. 2 should not be declared to have been issued without lawful authority and in arbitrary manner in clear violative of direction as given in Writ Petition. No. 235 of 2012 as affirmed by the Hon'ble Appellate Division in civil petition for leave to appeal No. 2062 of 2013 and clear disregard to the vested right enjoyed by the Freedom fighter 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, are that the petitioners are the children of Nationally recognized freedom fighters 'বীর মুক্তিযোদ্ধা' being deprived of getting employment in different cadres of the Government Service, Semi Government, autonomous and others organ of the Government constrained to assemble together to raise demand to establish their right as well as the honour and dignity of Freedom Fighters, formed a platform (though not registered) namely 'Muktijoddar Sontan-O-Projonmo' means sons, daughters, how high or low what so ever of the Freedom Fighters and have agreed to ventilate their grievances in public and as such, they are competent to file this Writ Petition in representative capacity. It is stated that in recognition of and appreciation for the contribution of the Freedom Fighters during our Great Liberation War and to preserve the dignity and prestige

of the valiant Freedom Fighters, on the very inception of Bangladesh, after Liberation of Bangladesh, Father of the Nation, Bangabandhu Sheikh Mujibur Rahman, felt necessity for Immediate recruitment of the Freedom Fighters in the service of Republic at different posts and positions. Accordingly, the Ministry of Cabinet Affairs, Establishment Division issued a circular vide Office Memo No. Estt./RI/R-73/72 -109 (500) dated 05.09.1972 under the signature of the Secretary of Establishment Division relating to Interim Recruitment policy for allocation of district wise quota for filling vacancies in the Government Service, Semi Government, autonomous and others organ of the Government and introducing quota system preserving 30% quota or vacancies reserved for Freedom Fighters and 10% quota or vacancies reserved for affected women (Annexure-A to the writ petition).

After issuance of the circular, the quota system was given effect, maintaining the ratio till 1975 but after brutal killing of Bangabandhu, the Father of the Nation, on 15<sup>th</sup> August 1975, the quota system was though not repealed or abolished but in fact, neither the quota was maintained nor the Freedom Fighter were allowed to enjoy 30% quota in recruitment process till 1996. There was a deliberate intention to eliminate freedom fighters from being recruited in the service of Republic and in such process of elimination, a large number of non-Freedom Fighters

and even the anti-liberation forces occupied almost all services of the Republic and in such process as adopted in disguise, numbers of Freedom Fighters including pro-liberation minded aspirants were deprived from getting employment in the service of the Republic and consequently, a large number of meritorious and competent freedom fighters were screened out and their children were also knocked out by technical ways, due to this reason, a large group of freedom fighters who have had direct contribution in our liberation war, though competent and meritorious, could not get employment and not only that many of the freedom fighters out of fear of screening out did not dare to claim quota system in the recruitment process of service but competed from general quota, the most common device used by introducing viva examination. The steadfast wish of the government to recruit the Freedom Fighters and their heirs in the service of the Republic, the Recruitment policy has been reintroduced again in 1997 when the pro-liberation Government was formed by Bangladesh Awami League under the leadership of Hon'ble Prime Minister Sheikh Hasina and as such, earlier quota system, which introduced by the Father of the Nation Bangabandhu Sheikh Mujibur Rahman has been restored for freedom fighters. In order to keep continuity of the quota of vacancies reserved for Freedom Fighters another memo being No. সম (বিধি-১) এস-৮/৯৫ (অংশ-২)-৫৬(৫০০) dated 17.03.1997 (Annexure-B to the

writ petition) was issued by the Ministry of Establishment and by the said memo, for the first time 30% quota of vacancies was reserved for Freedom Fighters has been extended to their sons and daughters introducing a clear method to identify the sons and daughters of Freedom Fighters as well as *Shahid* Freedom Fighters. Meanwhile, it was found that the quota for the Freedom Fighters had still been flouted and ignored; under such circumstance, on 24.03.1999 another circular was issued under Memo No. সম (বিধি-১)- এস-৩/৯৯(অংশ-১) ৫৪ (১০০০) (Annexure-C to the writ petition) with further amendments of the earlier circular dated 17.03.1997 introducing manner how to utilize and distribute 30% quota in different categories and posts. It was a great shock for the surviving Freedom Fighters and their family members, when the new government assumed power in the year 2001, the Ministry of Establishment issued a Memo being No. সম (বিধি-১)-এস-১৪/৯৯-২৮৪ dated 04.09.2002 (Annexure-D to the writ petition) by disregarding and offending the National Heroes amended all the three previous Memos with ulterior motive relaxing the same by adding that if 30% quota, is not fulfilled from amongst the Freedom Fighters, in 21st BCS examination then the same can be filled up from the merit list. Thereafter on 16.02.2010 another memo No. 05.170.022.07.01.020.2010-59 has been issued from the Ministry of establishment by which earlier 02(two) notifications dated 04.09.2002 and 09.02.2000 were cancelled

and held that if 30% quota reserved for Freedom Fighter not fulfilled the same shall be kept vacant. This office Memo has been introduced to prevent malafide device and scheme to deprive the Freedom Fighters from employment in the service of Republic from out of their 30% reserve quota.

It is also stated that 3 (three) month later another Memo being No. 05.170.022.07.04.068.2010-150 dated 05.05.2010 was issued by the Ministry of Establishment with some modification, wherein it was stated that if the quota, namely reserved for Freedom Fighters, women, and indigenous people are not fulfilled from the District quota, then the same will have to be filled up from amongst the merit list and thus it is the step or devise to eliminate the Freedom Fighters and their children. Due to this reason and to preserve the Freedom Fighter Quota another memo was issued being Memo No. 05.170.022.07.01.124.2010-26 dated 16.01.2011 wherein the Government was pleased to extend the Freedom Fighters quota even to the grandsons and grand daughters of the Freedom Fighters, which in fact nothing but paper work and seems to be eye wash to the Freedom Fighters because the scope of elimination process has not been prevented.

It is further stated that after long lapse of 7(seven) years, the Ministry of Public Administration vide Memo No. 08.00.0000.590.55.008.59-56 dated 05.04.2018, in the name of certain clarifications, introduced a scheme that in the case of direct

appointment in Class I and Class II post that if the quota is not filled up, then the vacant post be filled up from the merit list out of the Districts quotas.

Thereafter, the Ministry of Public Administration vide Memo No. ০৫.০০.০০০০.১৭০.১১.০৭.১৮-২৭৬ dated 04.10.2018 (Annexure-I to the writ petition) has been issued in colorable exercise of power and degrading the image of the Freedom Fighters withdrawing the quota of the Freedom Fighters in grade No. 9<sup>th</sup> (previous class-I), 10<sup>th</sup> to 13<sup>th</sup> of the service by keeping quota system only in 3rd class and below up to the cleaners (though not mentioned in the circular but apparently implies) and by this memo the design of elimination process has completed to share the slogan that the Freedom Fighter and the heirs are meritless and if the quota is maintain in grades 9<sup>th</sup> to 13<sup>th</sup> the country will be meritless and by the said memo, the Freedom Fighters have been classified as untouchable. Next, the Ministry of Public Administration vide Memo No. 05.00.0000.170.11.007.18-17 dated 26.01.2020 in the name of certain clarification stated that in place of '৯ম গ্রেড' will be replaced by "৯ম ও তদুর্ধ্ব গ্রেড".

It is stated that with regard to quota reserved for the Freedom Fighters, number of Writ Petitions were filed by different Freedom Fighters and their children and in all Writ Petitions our Apex Court clearly held that the 30% quota reserved for Freedom Fighters and their children should strictly be maintained.

Unfortunately, these directions have been flouted by applying various devices which amount to clear violation of direction the superior Court amounting to contempt of Court and offending of Article 111 & 112 of the constitution of People's Republic of Bangladesh.

It is also stated that in order to establish the right and privilege of Freedom Fighters one Gazi Md. Shafikul Islam and others filed Writ Petition No. 6406 of 2010 against the Ministry of Food and Disasters Management challenging the appointment orders when the sons of Freedom Fighters though been qualified in written examination were driven out through viva-voce examination in clear disregard of 30% reserved quota for Freedom Fighters and the High Court Division of the Hon'ble Supreme Court considering the reality by Judgment and order dated 12.02.2012 made the Rule absolute with direction for maintaining 30% reserved quota for Freedom Fighters.

Thereafter, another Writ Petition being No.235 of 2012 was moved by one Md. Jamal Uddin Sikider (Freedom Fighter public servant) upon hearing both the parties, a division bench of the Hon'ble High Court Division by its judgment and Order dated 05.12.2012 were pleased to disposed off the Rule with certain observation and directions by taking the similar view to preserve 30% quota reserved for the children of the Freedom Fighters



echoing with the direction as given in Writ Petition No. 6406 of 2010.

Against the said Judgment and Order of High Court Division passed in Writ Petition No. 235 of 2012 the government filed Civil Petition for Leave to Appeal No. 2062 of 2013 before the Appellate Division of the Hon'ble Supreme Court and after hearing the parties, their Lordships were pleased to affirmed the direction of the High Court Division regarding 30% reserve quota of Freedom Fighters.

Being aggrieved by and dissatisfied with the impugned circular dated 04.10.2018, as contained in Memo No. 05.00.0000.170.11.07.18.276 (Annexure-I to the writ petition) issued under the signature of respondent no. 2, finding no other alternative equally efficacious remedy, the petitioner filed this writ petition before this Court and obtained the instant Rule.

Mr. Md. Munsurul Hoque Chowdhury, the learned Senior Advocate for the petitioners submits that the freedom fighters are pride of our Nation and they are still most backward section of the citizen and in order to upbringing the Freedom Fighters and to place them in the service of Republic the 1st notification was issued by the government of People's Republic of Bangladesh and is still continuing pursuant to article 28(4), 29 and 150 of the constitution. It is historically recorded that at the call of the undisputed leader of the then East Pakistan Banga Bandhu

Sheikh Mujibur Rahman as made on 7th of March 1971 declaring "এবারের সংগ্রাম মুক্তির সংগ্রাম, এবারের সংগ্রাম স্বাধীনতার সংগ্রাম" a large section of youths from all works of life being inspired by the said call of Bangabondhu and out of patriotic feeling joined liberation war dedicating their heart and soul for liberation of the then East Pakistan from the clutch of Pakistani regime knowing eminent danger of their life and livelihood.

He also submits that after 09 (nine) months of struggle of freedom fighters facing a very powerful and well equipped Pakistani Soldiers achieved the goal, liberating the country and during liberation more than two lacs of young fighters dedicated their life at the war field and survived Freedom Fighters were found handicapped and almost all the families suffered consequences very badly and the Father of the Nation Bangabandhu Sheikh Mujibur Rahman felt seriously that the Freedom Fighter had since been seriously affected, and since rendered heroic services to the nation liberating the soil they should be given all opportunities to up bring them by introducing special provision i.e. 30% Quota in all sectors of employment. The impugned notification since suffered from clear discrimination taking away consistent enjoyment of Quota in the service of Republic in grade 9<sup>th</sup> -13<sup>th</sup> as enjoyed by the Freedom Fighters and their children in recognition of their accepted the contribution and issuance of the impugned notification having

been issued in the name of clarification amounts to clear dishonoring and disregarding the Freedom Fighters and their children.

He next submits that 30% reserved quota for the family members of the Freedom Fighters being affirmed upto the Appellate Division. Thus the impugned notification in the garb of clarification amount to a clear device to exclude the children of Freedom Fighters in grade 9<sup>th</sup> to 13<sup>th</sup> in the service of the Republic being violative of Judgment of the Apex Court is arbitrary and malafide and contemptuous and the 30% Quota as reserved for Freedom Fighters and their children /grand children, since from inception of Bangladesh, the same cannot be taken away by abolishing the same quota, in Grade 9<sup>th</sup> to 13<sup>th</sup> in the service of Republic without any clear reasons but clearly undermining the respect, merits, honour and dignity of the Freedom Fighters and their generation.

Learned Senior Advocate finally submits that according to the judgment and order, in Writ Petition No. 235 of 2012 in all direct recruitment in the service of Republic, 30% quota reserved for Freedom Fighter has been made directory and the notification in the name of clarification, curtailing the 30% quota of Freedom Fighters in direct recruitment in grade 9<sup>th</sup> to 13<sup>th</sup> manifestly amounts to offend the integrity and dignity of the Freedom Fighters and in clear violation of judgment and order in Writ

Petition No. 235 of 2012 and as such, the same is liable to be held to have been issued in colourable exercise of power and with malafide intention and in arbitrary manner and total withdrawal of 30% quota of Freedom Fighters in 9<sup>th</sup> to 13<sup>th</sup> grade of service amounts to clear discrimination. When matter was decided up to the Appellate Division of the Hon'ble Supreme Court of Bangladesh in Civil Petition for Leave to Appeal No. 2062 of 2013 affirmed the Judgment and order of the Writ Petition No. 235 of 2012 and affirmed 30% quota reserved for Freedom Fighters and their off springs in all government services as being directed. The vested right as enjoyed by the Freedom Fighter from very inception and the same having been affirmed by the Apex Court directing to maintain 30% quota reserved for the Freedom Fighter irrespective of any grade cannot be discriminated by the impugned notice and curtailing the right without any basis is illegal and unconstitutional and as such, he prays for making the Rule absolute.

Mr. Md. Raju Mia, the learned Advocate by filing an affidavit in opposition for the respondent Nos. 1 and 6 submits that in order to amend the existing quota system, the government earlier formed a high-level committee headed by the Cabinet Secretary to review/amend/repeal the existing quota system under Memo No. 05.00.0000.170.11.007.18-163 dated 02.07.2018. After thorough examination and analyzing the present context of the country, the

Committee submitted a Report on 17.09.2018 and made recommendation in the report for abolishing all forms of quota system in grade 9<sup>th</sup> to 13<sup>th</sup> in the office of the government, semi-government, autonomous body. Thereafter, the Ministry of Public Administration placed this recommendation to the Cabinet Division and the Hon'ble Prime Minister of the People's Republic of Bangladesh approved the recommendation vide Memo No. 04.00.0000.311.06.127.18.767 (2)/1(1) dated 04-10-2018. After approval from the Cabinet Division, the Ministry of Public Administration issued the impugned Circular vide Memo No. 05.00.0000.170.11.07.18-276 dated 04.10.2018 canceling all forms of quota system in grade 9<sup>th</sup> to 13<sup>th</sup> in the office of the government, semi-government, autonomous body and as such, he prays for discharging the Rule.

Mr. Sk. Shaifuzzaman, the learned Deputy Attorney General appearing on behalf of the respondents adopted the submission made by learned Advocate for the respondent Nos. 1 and 6, and opposes the Rule. He also submits that it is also policy matter of the Government and this Court may not interfere with this matter. He prays for discharging the Rule.

Heard the learned Advocates of both sides and perused the writ petition, affidavit-in-opposition, supplementary affidavit-in-opposition and other materials on record available thereto.

In the instant writ petition, the petitioner challenged the circular dated 04.10.2018, as contained in Memo No. 05.00.0000.170.11.07.18.276 (Annexure-I to the writ petition) which cancelled all special quotas reserved for the backward section of people i.e. (i) Freedom Fighters and their children/grand children, (ii) District (iii) Women, (iv) Physically challenged person, (v) Tribes, minor races and ethnic group.

First question raised by the learned Deputy Attorney General that it is a policy matter of the Government and this Court may not interfere with this matter. On the contrary, learned advocate for the petitioners argued that all decisions of the government cannot be said to be policy matter by ignoring mandate of the Constitution, particularly the quota system as introduced by the Government of Bangladesh immediately after liberation of the country, at the stage, when even the constitution of the people's Republic of Bangladesh not commenced.

Admittedly, this is a policy matter of the Government. However, it's transpires from the record that the quotas reserved for the freedom fighters and affected women was introduced absolutely on clear recognition to the freedom fighters for their heroic contribution to the Nation which has also been extended to the children and grandchildren of the freedom fighters, a clear recognition which the Freedom Fighters have achieved. Since, the notification was issued as early as on 5th day of September, 1972

before framing and commencement of our Constitution and by Article 150 all acts and deeds done during the transitional period being ratified and after commencement of our constitution as on 16<sup>th</sup> December 1972 till the impugned notification as evident in the Annexure-I to the writ petition, the said rights/privileges being continuously guaranteed and followed has become legal and vested right of the freedom fighters and their children and grand children. The quota system for Freedom Fighters and their children and grand children was followed in all sectors. Suddenly, the impugned circular was issued under the signature of Respondent No.1, amended the quota system by withdrawing all special quotas reserved for backward section of people including 30% quota reserved for Freedom Fighters and their children and grand children, in respect of direct appointment in grade 9<sup>th</sup> -13<sup>th</sup> in the office of government, semi-government and autonomous body in the name of clarification/amendment of the circular dated 17.03.1997 as evident Annexure-B to the writ petition though the same is unambiguous and clear. Thus, it cannot be said to be a mere policy of the government as the same is absolutely given as recognition to the freedom fighters for their heroic contribution for emancipation of Bangladesh which cannot be and should not be taken so lightly equating with other citizens of the republic. The heroic contribution of the freedom fighters, and suffering and pain sustained by the Freedom Fighters and

their offspring during 9 (nine) month of our war of liberation and after 15<sup>th</sup> August 1975 to till 1996 i.e. for last 21 years cannot be ignored and nation must have highest regard to the freedom fighters and anything is done derogatory or taken away the right and privilege should be treated as illegal and unconstitutional. Such constitutional and legal right of (i) Freedom Fighters and their children and grand children and others i.e. (ii) District (iii) Women, (iv) Physically challenged person, (v) Tribes, minor races and ethnic group are not being inconsistent with Article 28(4) and 29(3)(a) of the constitution and the same cannot be taken away by a stroke of pen as policy decision of the Government.

Second question raised by Mr. Chowdhury, the learned Senior Advocate for the petitioners, who argued that the freedom fighters and their family members are still most backward section of the citizen. Now the question is whether the Freedom Fighters, their children and grand children are backward section of the citizen /people or not.

To answer this question we have to consider the brief history of our Nation.

In 1947, the British India was divided into two independent dominions in South Asia: India and Pakistan. The Dominion of Pakistan comprised two geographically and culturally separate areas to the east and the west, however, political power was



concentrated in West Pakistan, and East Pakistan (Bangladesh) was being exploited politically, socially and economically, leading to many grievances. In 1952, Pakistani regime wanted to impose Urdu as the only national language of Pakistan, excluding Bengali, the mother tongue of the people of East Pakistan (Bangladesh). Bangabandhu Sheikh Mujibur Rahman a magnetic organizer had announced his famous “six-point programme” in 1966, which is our Charter for Survival / independence. Following the presentation of the Six-point programme, the Ayub regime put Bangabandhu Sheikh Mujibur Rahman behind the bar in Agartala conspiracy case. Due to the mass movement, organized especially by the younger generation, the Ayub regime was forced to withdraw the case and Bangabandhu Sheikh Mujib was released unconditionally on 22<sup>nd</sup> February, 1969. Thereafter, first general election of Pakistan was held in December 1970, the Awami League won 167 (including 7 women reserved seats) out of 169 seats of the East Pakistan in the Pakistan National Assembly under his leadership. President General Yahya and Mr. Z. A. Bhutto M.P. had conspired not to allow Bangabandhu Sheikh Mujibur Rahman to form the government in the centre. President Yahya Khan had postponed the National Assembly meet unilaterally on 1<sup>st</sup> March, 1971, which scheduled to be held on 3<sup>rd</sup> March 1971. The announcement triggered off the general agitation in East Pakistan. In response, Bangabandhu called for

non-cooperation movement in East Pakistan. During the course of non-cooperation movement from 2<sup>nd</sup> to 25<sup>th</sup> March 1971; the entire civil administration in East Pakistan came under his control and moved according to his directives. On 7<sup>th</sup> March, 1971 Bangabandhu Mujib made a historic address at a gathering of a million of people at the Race Course, which marked a turning point in the history of the Bangali Nation and conditional declaration of Independence. At the end of his speech, he declared:

প্রত্যেক গ্রামে, প্রত্যেক মহল্লায় আওয়ামী লীগের নেতৃত্বে সংগ্রাম পরিষদ গড়ে তোলা। এবং তোমাদের যা কিছু আছে, তাই নিয়ে প্রস্তুত থাকো। মনে রাখবা রক্ত যখন দিয়েছি, রক্ত আরো দেবো। এই দেশের মানুষকে মুক্ত করে ছাড়বো ইনশাআল্লাহ। এবারের সংগ্রাম আমাদের মুক্তির সংগ্রাম, এবারের সংগ্রাম স্বাধীনতার সংগ্রাম। জয় বাংলা।

Against this backdrop, at mid-night of 25 March 1971, the Pakistan army launched its brutal crackdown in different areas of Dhaka City, killing students, teachers and innocent people in the name of operation searchlight. Bangabandhu Sheikh Mujibur Rahman was arrested at the early hours of 26<sup>th</sup> March, 1971 and was kept confined at Dhaka Cantonment until he was taken to West Pakistan for facing trial. Before his arrest Bangabandhu sent a wireless message to the peoples of Bangladesh, declaring the Independence of Bangladesh.

At the call of the undisputed leader of the then East Pakistan Bangabandhu Sheikh Mujibur Rahman as made on 7<sup>th</sup>

of March 1971 and the declaration of the Independence of Bangladesh, a large section of youths from all works of life being inspired by the said call and declaration of the Independence by Bangabandhu and out of patriotic feeling they joined liberation war dedicating their heart and soul for liberation of the then East Pakistan from the clutch of Pakistani regime knowing eminent danger of their life, livelihood and property. After 09 (nine) months of struggle of freedom fighters facing a very powerful and well equipped Pakistani Soldiers and their local collaborator i.e. Razakars, Al-Badr and Al-Shams, achieved the goal, liberating the country and during liberation more than two lacs of young fighters dedicated their life at the war field. Pakistani Army and their local collaborator namely Razakars, Al-Badr and Al-Shams committed genocide by killings of an estimated 3,000,000 (three Million) innocent and unarmed people. They operated concentration camps and used rape as weapon of war. Pakistani forces raped between 200,000 (two lac) and 400,000 (four lac) Bengali women and girls in a systematic campaign of genocidal rape and survived Freedom Fighters were found handicapped and almost all the families suffered consequences very badly, their houses were burnt down, properties were damaged, consequently, they lost their livelihood. At this stage, the Father of the Nation Bangabandhu Sheikh Mujibur Rahman felt seriously that the Freedom Fighter had since been seriously affected, and as they

rendered heroic services to the Nation, in liberating the soil from the Pakistani regime, they should be given all opportunities to up bring them by introducing special provision i.e. 30% Quota in all sectors of employment, on 5th day of September, 1972 before framing and commencement of our Constitution and by Article 150 of our constitution all acts and deeds done during the transitional period were being ratified. After issuance of the circular, the quota system was given effect and maintaining the ratio till 1975 but after the unfortunate event of killing of Bangabandhu, the father of the nation and his other family members, on 15<sup>th</sup> August 1975, the anti-liberation forces in disguise of pro-liberation forces came to power and at that time, a notorious collaborator namely Shah Azizur Rahman became prime minister of newly born Bangladesh and all Pakistani notorious collaborators and war criminals came back to Bangladesh. During this time, the quota system was though not abolished but in fact neither the quota system for the Freedom Fighters were maintained nor the Freedom Fighters were allowed to enjoy 30% quota in recruiting process till 1996 i.e. for last 21 years with deliberate intention of a gradual process for elimination of Freedom Fighters from being recruited in the service of Republic. Due to such process of elimination, a large number of non-Freedom Fighters and even the anti-liberation forces occupied all most all services of the Republic and they

adopted such policy for elimination of Freedom Fighters, due to this reason, numbers of Freedom Fighters including pro-liberation minded aspirants were deprived from getting employment in the service of Republic. Consequently, a large number of meritorious and competent Freedom Fighters screened out and their children were also knocked out by technical means/ways and in this way, a large group of Freedom Fighters (and their offspring), who had direct contribution in liberation war, though competent and meritorious, could not get employment in services of the Republic. This argument was not contradicted by the Respondents. The Freedom Fighters are pride of our Nation. Thus, we are of the view that during the period of 15<sup>th</sup> August 1975 to 1996 for the last 21 years, the Freedom Fighters and their children and grand children have been suffering socially, economically and politically, which makes them one of the most backward sections of the citizen of this country.

Admittedly, some district/upazilla are more develop then others and the citizen of a develop district/upazilla were enjoy more privilege then an undeveloped and backward district/upazilla. Other category namely Women, Physically challenged person, Tribes, minor races and ethnic group are still backward sections of the citizen. However, there very few people/citizen who may come within the category of (i) Freedom Fighters and their children and grand children and others i.e. (ii) District

(iii) Women, (iv) Physically challenged person, (v) Tribes, minor races and ethnic group were not to be considered as backward sections of the citizen. It's depends on geographical, social, economical and political back ground of a particular person. This is a serious disputed question of facts, which cannot be resolved under Article 102 of the Constitution. The proceeding under Article 102 of the Constitution is a summary one and it is decided on the basis of statements made by the concern parties and the documents annexed with the petition and the affidavit-in-opposition. With this regard, the respondents may take necessary step by framing rules/ guidelines to ensure participation of backward sections of the citizen in the recruitment process of the Government.

Finally, Mr. Chowdhury, the learned Senior Advocate for the petitioners argued that the impugned notification was issued in violation of the Judgment and Order dated 05.12.2012 passed by the High Court Division in Writ Petition No.235 of 2012, which affirmed by Appellate Division of the Hon'ble Supreme Court of Bangladesh with modification in Civil Petition for Leave to Appeal No.2062 of 2013.

We noticed that there are several writ petitions were filed to maintain the quota reserved for the Freedom Fighters, by different Freedom Fighters and their children and in all Writ Petitions this Hon'ble Court clearly held that the 30% quota reserved for

Freedom Fighters and their children should strictly be maintained.

In Writ Petition No.6406 of 2010, their Lordships held that

*“For us the question is whether the respondents’ decision was lawful. As a result of the respondents’ failure to come up with any affidavit in opposition, we have no choice but to accept as true the averments and the claims that has been laid by the petitioners. The petitioner claims that the 30% quota system has not been followed in the recruitment process. There is no doubt that there is a policy being followed by the Government that in every appointment 30% quota must be kept for the freedom fighters or there offsprings. In this case as the documents shows, this policy has not been followed. The impugned decision, can, hence not be termed as lawful.*

*As a result the rule is made absolute without any order on coast.*

*The respondents are directed to accommodate the petitioners, seven in number, and either in addition to those people already appointed or by excluding seven persons from the bottom of the list, forthwith.”*

So it appears that the High Court Division directed the Government to follow the 30% quota reserved for children of the Freedom Fighters strictly as per the relevant Rules.

In Writ Petition No.235 of 2012, their Lordships held that we are disposing the Writ Petition with the following observation and directions;

1.....

2.....

3. *The 30% quota reserved for the children of Freedom Fighters shall be followed strictly as possible and the concerned department will take all necessary steps to fill up the same with the children of Freedom Fighters and in case, if the quota cannot be filled up the concerned posts be kept vacant as directed of this Court in Writ Petition No.6406 of 2010.*

Challenging the said Judgment and Order dated 05.12.2012, in Writ Petition No. 235 of 2012, the Government of Bangladesh and others as petitioners filed the Civil Petition for Leave to Appeal No. 2062 of 2013, wherein their Lordships held that

*“This petition is from a judgment of the High Court Division in exercise of its writ jurisdiction disposing of the rule with certain observations.*

*Learned Attorney General has drawn our attention to certain observations and submits that government has filed the leave petition for expunging some observations made in the body of the judgment which are not conformity with law. We have given our anxious consideration to the facts and circumstance of the case. The government by notification dated 3.2.2010 had given 1(one) year extension of the service of the freedom fighters. The writ petitioner now seeks the consequential benefits which were available to a freedom*



fighter in the government service. This is altogether the policy matter. The government enacted Public Servants (Retirement) (Amendment) Act, 2013 extending the age of 1 (one) year more in respect of the retirement age of freedom fighters. **The High Court Division observed that the reservation of 30% quota for the children of freedom fighters shall be followed strictly and in case “if the quota cannot be filled up the concerned posts be kept vacant’ as directed in Writ Petition No. 6406 of 2010.”** and that “The Freedom Fighter should get treatment in all government and semi government medical institutions without any cost as much as they should be allowed discounted fare in all types of public transport”.

The learned Attorney General submits that as regards the post for the Muktijoddah quota in different organizations has already been filled up. He further submits that the latter direction as quoted above that all freedom fighters should be afforded medical facilities at discounted price is without jurisdiction.

We find substance of the submission of the learned Attorney General. **The said observation as quoted above is hereby expunged.**

The leave petition is accordingly disposed of with the above expunction.”

**(Emphasis by us)**

Wherefrom it transpires that the 30% quota reserved for the children of freedom fighters had already been protected in Civil Petition for Leave to Appeal No. 2062 of 2013 arising out of Judgment and Order dated 05.12.2012 passed by the High Court

Division in Writ Petition No. 235 of 2012 wherein their Lordships affirmed the Judgment and Order of the High Court Division and held that "the High Court Division observed that the reservation of 30% quota for the children of Freedom Fighters shall be followed strictly, and expunged the words "if the quota cannot be filled up the concerned post be kept vacant". Since, the Hon'ble Appellate Division has already settled the matter and affirmed the Judgment and order of the High Court Division with the modification as quoted above, the same is binding upon us as well as all authorities of the state machinery as per Article 111 and 112 of our Constitution and violation of the same is contemptuous.

Considering these aspects of the matter and the observation as made above, we find merit in this Rule.

Accordingly, the Rule is made absolute with direction.

The impugned circular dated 04.10.2018 as contained in Memo No. 05.00.0000. 170. 11. 07. 18.276 (Annexure-'I' to the writ petition) issued under the signature of respondent no. 2 is hereby declared illegal, to have been issued without lawful authority and is of no legal effect. The respondents are directed to restore the Quota for the children/grand children of Freedom Fighters, following the Judgment and order in Writ Petition. No. 235 of 2012 as affirmed and modified by the Hon'ble Appellate Division in Civil Petition for Leave to Appeal No. 2062 of 2013 and

the office order vide Memo No. 05.170.022.07.01.124.2010-26 dated 16.01.2011, and also directed to maintain the Quotas for (i) district (ii) women, (iii) physically challenged person, (iv) tribes, minor races and ethnic group and others, if any, and published a notification with this regard as soon as possible preferably within 03 (three) months from the date of receipt of this order. However, this judgment will not create any bar upon the respondents if they change, reduce or increase the ratio or percentage of the quotas relating to the aforesaid criteria as and when necessary. The respondents are at liberty to fill up the vacant post from the general merit list, if any quota is not fulfilled in any public examination.

There is no order as to costs.

Communicate the order at once.

K. M. Kamrul Kader, J.

I agree.