

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Md. Rezaul Haque.

Mr. Justice S.M. Emdadul Hoque.

Mrs. Justice Farah Mahbub.

CIVIL APPEAL NO.77 OF 2022.

(From the judgment and order dated 18.03.2021 passed by the High Court Division in Writ Petition No.5323 of 2016).

Bangladesh, represented by the Secretary, Law and Justice Division, Ministry of Law, Justice and Parliamentary Affairs, Bangladesh Secretariat, Ramna, Dhaka-1000 and others. : ...Appellants.

-Versus-

Md. Mahboob Murshed, Advocate, High Court Division, Supreme Court of Bangladesh, Apt#B6, House No.11, Road No.5, Sector-6, Uttara, Dhaka-1230 and others. :Respondents.

For the Appellants. : Mr. Mohammad Arshadur Rouf, Attorney General (in-charge) with Mr. Mohammad Aneek Rushd Haque, Additional Attorney General, Mr. Abdullah Al Mahmud, Deputy Attorney General, Mr. Eakramul Kabir, Assistant Attorney General, Mr. ASM Sayem Bhuiyan, Assistant Attorney General and Mr. AKM Nazmul Hasan, Assistant Attorney General instructed by Mr. Haridas Paul, Advocate-on-Record.

For the Respondents. : Mr. Md. Mahboob Murshed, (in person)

Date of Hearing. : 04.03.2026, 05.03.2026 and 11.03.2026

Date of Judgment. : 11.03.2026.

J U D G M E N T

Farah Mahbub,J:

This Civil Appeal by Leave is directed against the judgment and order dated 18.03.2021 passed by the High Court Division in Writ Petition No.5323 of 2016 making the Rule absolute-in-part.

The respondent-writ petitioner, a judicial officer who joined Bangladesh Judicial Service in December, 1991 as an Assistant Judge, tendered his resignation on 31.01.2011 after completing 19 (nineteen) years of service while he was serving the post of Additional District Judge. Accordingly, he applied to the concerned authority of the Ministry of Law, Justice and Parliamentary Affairs for pension in view of Memo no.অম (বিধি-১) তপি-২৮/৮৫/১০৬ dated 04.11.1989, issued by the Finance Division, Ministry of Finance, Government of Bangladesh. His prayer was duly approved by the said Ministry vide Memo no.১০.০০.০০০০.১২৮.০১৩.০১.২০১৫-৩৬৫ dated 02.03.2015 (Annexure-A to the writ petition) for being entitled to 61% pension having completed 19 (nineteen) years of pensionable service period.

The cause of action arose when the writ respondent no.5, Audit and Accounts Officer, Finance Division, Ministry of Finance vide the impugned Memo no. সিএও/আইন ও বিচার/পেন dated 25.03.2015 (Annexure-B to the writ petition) returned back the pension offer of the respondent-writ petitioner.

The impugned memo dated 25.03.2015 is quoted below for cursory glance:

“গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
প্রধান হিসাব রক্ষণ কর্মকর্তার কার্যালয়
আইন, বিচার ও সংসদ বিষয়ক মন্ত্রণালয়
সিজিএ ভবন, (৫ম তলা)
সেগুন বাগিচা, ঢাকা-১০০০।

স্মারক নং-সিএও/আইন ও বিচার/পেন/

তারিখঃ ২৫.০৩.২০১৫ খ্রিঃ

বরাবর,
সচিব
আইন, বিচার ও সংসদ বিষয়ক মন্ত্রণালয়
আইন ও বিচার বিভাগ
বাংলাদেশ সচিবালয়, ঢাকা।

দৃষ্টি আকর্ষণঃ- সিনিয়র সহকারী সচিব, বিচার শাখা-৪।

বিষয়ঃ- এককালীন পেনশন ও আনুতোষিক মঞ্জুরী প্রসঙ্গে।

সূত্র নং- তাহার স্মারক নং-১০.০০.০০০০.১২৮.০১৩.০১.২০১৫-৩৬৫ তারিখঃ ০২.০৩.২০১৫খ্রিঃ

উপরিউক্ত বিষয় ও সূত্রের প্রেক্ষিতে আদিষ্ট হয়ে জানানো যাচ্ছে যে, নিম্নলিখিত কারণে আইন কমিশনের অবসর প্রাপ্ত মূখ্য গবেষণা কর্মকর্তা(অতিরিক্ত জেলা জজ) জনাব মোঃ মাহবুব মোর্শেদ এর পেনশন কেইসটি ফেরৎ প্রদান করা হলো।

- ১। সরকারী চাকুরী হতে পদত্যাগ করলে পূর্বচাকুরীকাল বাজেয়াপ্ত হবে অর্থাৎ পেনশনের জন্য যোগ্য হবে না (বি, এস, আর ১ম খন্ডের বিধি-৩০০ সেকশন-৩)।
- ২। আলোচ্য ক্ষেত্রে পেনশনারের চাকুরী কাল ২৫ বছর পূর্ণ হয়নি এবং তিনি ২৫ বছর চাকুরী পূর্তি সাপেক্ষে সংশ্লিষ্ট বিধানের আলোকে পেনশনের জন্য কোন আবেদন করেন নাই বিধায় পেনশন প্রাপ্ত নহেন (গন কর্মচারী অবসর আইন ১৯৭৪ এর ৯ ধারা)।
- ৩। পেনশন মঞ্জুরকারী কর্তৃপক্ষ কোন বিধি বিধান অনুযায়ী পেনশন মঞ্জুর করেছেন তা মঞ্জুরী পত্রে উল্লেখ নাই।

স্বাঃ/

(ফারুক আহম্মদ)

নিরীক্ষা ও হিসাব রক্ষণ কর্মকর্তা

ফোনঃ ৫৮৩১০৫৯৮।

স্মারক নং-সিএও/আইন ও বিচার/পেন/১১০৭(২)

তারিখঃ ২৫.০৩.২০১৫ খ্রিঃ

অবগতি ও প্রয়োজনীয় ব্যবস্থা গ্রহণের জন্য অনুলিপি প্রেরণ করা হলো।

১। সচিব, আইন কমিশন, ১৫ কলেজ রোড, ঢাকা।

২। জনাব মোঃ মাহবুব মোর্শেদ, অবসর প্রাপ্ত মূখ্য গবেষণা কর্মকর্তা(অতিরিক্ত জেলা জজ)

এ্যাপার্টমেন্ট-বি-৬, বাসা নং-১১, সড়ক নং-৫, সেক্টর-৬, উত্তরা, ঢাকা।

৩। অফিস কপি।

(ফারুক আহম্মদ)

নিরীক্ষা ও হিসাব রক্ষণ কর্মকর্তা

ফোনঃ ৫৮৩১০৫৯৮।”

Being aggrieved, he filed Writ Petition No.5323 of 2016 before the High Court Division under Article 102 of the Constitution of the People's Republic of Bangladesh (in short, the Constitution) challenging the constitutional validity of Rule 300 of the Bangladesh Service Rules (in short, BSR), Part-I along with Memo no. CAO/Ain O Bichar/Pen dated 25.03.2015 issued by the writ respondent no.5, with a prayer for direction to provide all pensionary benefits to him in view of Memo no. ১০.০০.০০০০.১২৮.০১৩.০১.২০১৫-৩৬৫ dated 02.03.2015 issued by the Ministry of Law, Justice and Parliamentary Affairs, writ respondent no.1, whereupon a *Rule Nisi* was issued by the said Division.

The moot question being raised in that writ petition is, when the service of the writ petitioner, a judicial officer, has been put to an end consequent to his resignation, can he claim pension having rendered 19 (nineteen) years of service. Further issue being raised by the writ petitioner is that in view of Rule 300(a) if the service holder resigns from his post his past service shall be forfeited, which is violation of Articles 27 and 31 of the Constitution. In that regard, the core contention of the writ petitioner is that in Rule 300(a) the context of resignation of a person having clean record of service has been put at par with the context of dismissal or removal of a person which entails misconduct or insolvency or inefficiency, as the case may be; hence, offends the principles of equality clause guaranteed under Article 27; it also fails the test of reasonableness and is tantamount to non-compliance with the right to be treated in accordance with law, as guaranteed under Article 31 of the

Constitution. In that view of the matter Rule 300(a) is liable to be knocked down as being *ultra vires* the Constitution.

The High Court Division accepting the said proposition of the writ petitioner declared Rule 300(a) of the BSR, Part-I *ultra vires* the Constitution with the findings that forfeiture is a form of punishment occasioning loss of some valuable right to property. However, applying Rule 300(a) for two categories of persons said Division goes to observe, *inter alia*, “To put it plainly, an employee with an unblemished service record is being treated on the same scale as an employee who has been found guilty of some misdemeanor and therefore dismissed from service. It is apparent that two different categories of persons are being subjected to the very same treatment, although there is a gross distinction between ‘resignation’ and ‘dismissal’.....”

To fortify the above findings said Division further observed that prior to dismissal or removal the person concerned passes through due process of law, i.e., show cause notice, departmental enquiry, with opportunity of personal hearing, whereas, in case of resignation from service, a person loses his right to pension, without any show cause notice or holding any enquiry; hence, is tantamount to non-compliance with the right to be treated in accordance with law, as guaranteed under Article 31 of the Constitution. The High Court Division also goes to find that putting two classes of persons, i.e., persons resigning from service and persons being dismissed from service in the same bracket tantamounts to punishing a person although he has not committed any offence. This is a

violation of equality clause, guaranteed under Article 27 of the Constitution. Accordingly, said Division made the Rule absolute in part declaring Rule 300(a) of BSR, Part-I *ultra vires* the Constitution so far as it relates to “*forfeiture of pension in the event of resignation from service.*”

Consequently, impugned Memo no. CAO/Ain O Bichar/Pen dated 25.03.2015 issued by the writ respondent no.5 returning the pension case of the writ petitioner, has been declared to have been issued without lawful authority and hence, of no legal effect with direction upon the appellants-writ respondents to calculate and grant the pension and other benefits to the respondent-writ petitioner within a prescribed period basing on his length of service.

The Government, i.e. writ respondent nos.1, 2, 3 and 4 being aggrieved by this judgment and order filed Civil Petition for Leave to Appeal No.2379 of 2021 before this Division, whereupon leave was granted on 4(four) different counts.

Mr. Mohammad Arshadur Rouf, learned Attorney General (in-charge) with Mr. Aneek R. Haque, learned Additional Attorney General on behalf of the appellants submits that, the High Court Division committed a manifest error of law in declaring Rule 300(a) of the BSR, Part-I *ultra vires* the Constitution, so far as it provides for forfeiture of pension upon resignation, on a misinterpretation of Articles 27 and 31 of the Constitution, notwithstanding the absence of any discriminatory treatment among similarly situated public servants who resigned prior to attaining

pension eligibility under Section 9(1) and (2) of the Public Servants (Retirement) Act, 1974 (in short, the Act, 1974). The impugned declaration of the High Court Division, therefore, not only disregards the governing statutory scheme but also disrupts the settled administrative policy regulating retirement and entitlement of pension benefit in public service.

He further goes to argue that resignation operates as a voluntary and conscious severance of service, undertaken with full knowledge of its legal consequences, including forfeiture of past service for the purpose of pension. In such circumstances, no issue of denial of due process arises. The High Court Division, as such, erred in invoking constitutional safeguards in a context where the consequences flow directly from the deliberate act of the employee. Also, he submits that the High Court Division fell into serious error in equating pension with other service benefits such as gratuity or provident fund, ignoring the distinct and conditional nature of pension, which accrues only upon retirement under Section 4 or Section 9(1) and (2) of the Act, 1974. Hence, the respondent-writ petitioner, not having retired under any of the relevant statutory provisions and having failed to challenge their validity, is not entitled to pension as a matter of law, rather such entitlement being governed exclusively by the administrative policy of the executive regulating public service, in no manner, can be declared *ultra vires* the Constitution.

Accordingly, he submits that the impugned judgment and order of the High Court Division warrant interference and the appeal may, therefore, be allowed.

Conversely, Md. Mahboob Murshed, in person for the respondent no.1 submits that, the High Court Division committed no error of law by declaring the impugned portion of Rule 300(a) of the BSR, Part-I, unconstitutional, for, Section 9 of the Act, 1974 does not require maturity of pension entitlement, nor does it permit forfeiture of past service without due process. Resignation, being a voluntary act, cannot justify deprivation of accrued rights; consequently, any attempt to deny pension benefits without observing due process of law would be unlawful. More so, he submits, Sections 4 and 9 of the Act, 1974 merely regulate superannuation or optional retirement and do not prescribe exclusive conditions for pension accrual. Hence, the respondent was not obliged to challenge these provisions to obtain relief.

He also goes to argue that, resignation cannot be treated as equal to misconduct or criminal act so as to justify the forfeiture of pension benefits accrued through years of service, thereby the confiscation of service for voluntary resignation is inconsistent with constitutional safeguards. Also, the practical ramifications of such forfeiture would be absurd, potentially nullifying all the valid judicial acts done by the writ petitioner throughout his service period. Relying upon the decision as affirmed in *Bangladesh Krishi Bank Vs. Meghna Enterprises and another*:50DLR(AD)194, he submits that the impugned Rule 300(a) being inconsistent with fundamental rights must yield to constitutional guarantees, and accordingly, the High Court Division rightly held the same as *ultra vires* the Constitution.

Additionally, as he contends, the requirement of due process, including show-cause notices and departmental enquiries, apply to dismissals, whereas resignation is voluntary and does not trigger such procedures. Thereby, without due process denying pension in such cases by forfeiting the service of the respondent-writ petitioner contravenes constitutional protections and legislative intent.

Taking us through the circular dated 04.11.1989 and its subsequent amendments, he further submits that the High Court Division rightly interpreted that the quantum of pension depends on the length of service as evident from the relevant circulars. Legislative instruments such as the Supreme Court Judges (Leave, Pension, and Privileges) Ordinance, 1982, and the “সরকারী চাকুরী আইন, ২০১৮” (in short, Act, 2018), explicitly allow pension even in cases of resignation, reflecting a clear legislative and administrative intent to safeguard pension rights of public servants. In the absence of any specific law on pension, the pension benefits of the respondent-writ petitioner were, therefore, lawfully conferred vide executive order in accordance with this legal and policy framework.

He next submits that Section 10 of the Public Servants (Retirement) Act, 1974 exhaustively specified the grounds for forfeiture of pension, and resignation was not one of them; hence, a benefit not withdrawn by primary legislation cannot be curtailed by subordinate law. This position is reinforced by Sections 50 and 53 of the Act, 2018, which expressly recognize entitlement of pension benefits even upon resignation, reflecting a clear legislative intent to protect accrued benefits. The

continued executive inaction in framing pension provisions for judicial officers, despite the mandatory directions of this Division in the case of *Secretary, Ministry of Finance vs. Masdar Hossain*:52DLR(AD) 82 further necessitates recognition of such rights to uphold constitutional guarantees and principles of equity.

He also contends that the impugned Rule 300(a) stipulates only forfeiture of past service upon resignation and does not expressly provide for forfeiture of pension; therefore, under the Golden Rule of Interpretation, the provision must be confined to its plain and ordinary meaning, without importing words or consequences not contemplated by the legislature. In the absence of an explicit exclusion, Rule 300(a) cannot be interpreted so as to defeat the accrued right of the respondent to pension benefits.

Accordingly, he submits that the declaration of the High Court Division that Rule 300(a) is unconstitutional insofar as it purports to forfeit service upon resignation is legally sound, constitutionally compliant, and in harmony with the legislative intent. Hence, the appeal challenging this decision is entirely without merit and should be dismissed with costs.

In order to appreciate the respective arguments of both the parties it is necessary to first have a look at Rule 300(a) of the BSR, Part-1, which has been struck down by the High Court Division as being *ultra vires* the Constitution.

Rule 300(a) of BSR Part-I provides as under:

“300 (a): Resignation of the public service, or dismissal or removal from it for misconduct, insolvency, inefficiency not due to age, or failure to pass a prescribed examination entails forfeiture of past service.”

The aforesaid Rule, thus, provides that resignation of the public service entails forfeiture of his entire past service, and consequently, he would not be qualified for pension benefit, as has also been opined by the appellant-writ respondent no.5 while issuing the impugned memo dated 25.03.2015.

According to Black’s Law Dictionary, 11(eleventh) Edition “pension” is a series of payments made by the government or by an employer as a retirement benefit to a person or the person’s representation or beneficiaries for past services or some type of meritorious work done.

In *Bangladesh Retired Government Employees Welfare Association and others Vs. Bangladesh represented by the Secretary, Ministry of Finance and another*, reported in 51 DLR (AD) 121, para-6, this Division while elaborating the concept of “pension” goes to observe:

“Pension paid to the retired government employees is not a bounty paid by the State, but is an essential term and condition of service and is paid on consideration of the State's obligation not to leave the citizens rendering service during the useful span of life to penury in their old age. The very purpose of pension is to enable the retired government employees to live free from want,

with decency, independence and self-respect and at a standard equivalent to the pre-retirement level.....”

Although pension is not a bounty but is earned on satisfactory completion of qualifying service and subject to the further consideration that the person concerned is not otherwise disentitled thereto: *UOI VS. PD Yadav*, (2002) 1SCC 405.

The cardinal issue which, thus, has cropped up for consideration is, whether *forfeiture of the entire past service for “resignation”*, as incorporated in Rule 300(a), can be branded as *“punishment”*, for having been placed at par with the person whose past service is also forfeited for being dismissed or removed from service for misconduct, insolvency or inefficiency, as the case may be.

Every service conditions provide a terminal point when the tenure of employment comes to an end.

The service of the respondent-writ petitioner has been ended with his resignation, which was duly accepted by the authority concerned. Fact remains, at the relevant time the “বাংলাদেশ জুডিসিয়াল সার্ভিস (কর্মস্থল নির্ধারণ, পদোন্নতি, ছুটি মঞ্জুরী, নিয়ন্ত্রণ, শৃঙ্খলা-বিধান এবং চাকুরীর অন্যান্য শর্তাবলী) বিধিমালা, ২০০৭” (in short, Rules, 2007), framed under Article 133 of the Constitution, was in operation.

However, Rule 9 of the Rules, 2007 provides that:

“কর্মের অন্যান্য শর্তাবলী।-

(১) সার্ভিসের সদস্যদের কর্মের শর্তাবলী নির্ধারণ করিয়া আলাদা বিধান প্রণীত না হওয়া পর্যন্ত অবসর গ্রহণ, পেনশন, ভবিষ্য তহবিল এবং চাকুরীর

অন্যান্য শর্তাবলীর ক্ষেত্রে সরকারের প্রথম শ্রেণীর [গেজেটেড কর্মকর্তা গণ্য হইবেন এবং উক্ত] কর্মকর্তাদের ক্ষেত্রে প্রযোজ্য বিধি-বিধান [ও সুবিধাদি] সার্ভিসের সদস্যদের ক্ষেত্রে প্রযোজ্য হইবে।

(২) উপ-বিধি(১) এ যাহা কিছুই থাকুক না কেন, সার্ভিসের সদস্যদের কর্মের শর্তাবলী নির্ধারণের ক্ষেত্রে বিদ্যমান সুযোগ-সুবিধাদির হানি ঘটাইয়া বা রদ করিয়া কোন বিধান প্রণয়ন বা যাইবে না।”

However, there was no separate Rules determining the terms and conditions of judicial service holders. Consequently, vide Rule 9 of the Rules, 2007 the terms and conditions of the Public Servants (Retirement) Act, 1974 (in short, Act, 1974) and other ancillary rules and regulations including BSR, Part-I, were made applicable for the judicial officers including the respondent-writ petitioner.

In view of Section 4 of the Act, 1974 every public servant including the judicial officer shall retire from service on attaining the age of 57 years [now, 59 years pursuant to Section 43(1)(m) of “সরকারি চাকরি আইন, ২০১৮”, which came into operation on 14.11.2018].

Vide Section 9(1) of the Act, 1974 on completion of 25 years of service he may opt to retire by giving notice in writing to the appointing authority at least 30(thirty) days prior to the date of his intended retirement. Conversely, the government is empowered to retire a public servant in public interest without assigning any reason whatsoever, on completion of his 25 years of service, i.e., before the stipulated date of retirement. In substance, under Section 9 there is a premature end of the relationship of the employer and employee before the employee reaches the prescribed age of retirement or superannuation.

Thus, retirement envisages three eventualities- firstly, a person who retired in terms of Section 4 of the Act, 1974; secondly, a voluntary retirement under the provision of Section 9(1) of the said Act; and thirdly, a compulsory retirement under Section 9(2) of the Act. None of those two provisions of law incorporate “*resignation from service*”, another form of ending service tenure without any stigma.

It is the established principle of service jurisprudence that pension is a retirement benefit embodies the character of regular payment to a public servant who is legally entitled to receive on attaining the age retirement and also, on retiring from service.

The words “resignation” and “retirement” have been discussed eloquently with precision in the case of *UCO Bank and others Vs. Sanwar Mal*, (2004) 4 SCC 42.

Relevant part is quoted below for reference:

“..... The words “resignation” and “retirement” carry different meanings in common parlance. An employee can resign at any point of time, even on the second day of his appointment but in the case of retirement he retires only after attaining the age of superannuation or in the case of voluntary retirement on completion of qualifying service. The effect of resignation and retirement to the extent that there is severance of employment but in service jurisprudence both the expressions are understood differently..... Moreover, resignation brings about complete cessation of master-and-servant relationship whereas voluntary retirement maintains the relationship for the purposes

of grant of retiral benefits, in view of the past service. Similarly, acceptance of resignation is dependent upon discretion of the employer whereas retirement is completion of service in terms of regulations/rules framed by the Bank. Resignation can be tendered irrespective of the length of service whereas in the case of voluntary retirement, the employee has to complete qualifying service for retiral benefits.”

Thus, “resignation” entails a unilateral act on the part of a public servant/employee desirous of not continuing with his/her service with the employer and then, acceptance of the same by the employer, with or without a notice period, as the case may be. In other words, on the relevant date he took a conscious decision to disengage himself from the service of the employer, on the terms and conditions, as were prevalent on that date.

Evidently, Section 9 of the Act of 1974 has not in express term incorporated “*resignation from service*”, which is another mode of ending service tenure at any point of time of service depending on the will of the person concerned.

The impugned Rule 300(a) of the BSR, Part-1 provides that when a public servant resigns, the consequence is forfeiture of service.

However, the expressions like “resignation”, “dismissal”, “removal”, have been used in Rule 300(a) with the context of “reckoning service”, as contained under Chapter XIX, Section 1- Special Additions, where the term ‘pension’ has not been used. As observed earlier, a

government servant becomes eligible to earn pension benefit on satisfactory completion of qualifying service period. According to Rule 300(a), the person concerned having resigned his entire past service stands forfeited. Consequent thereto there remains no qualifying service period in order to claim pension.

The crucial point being involved in the instant case is that the respondent-writ petitioner resigned. Being a government servant he was fully aware of all the terms and conditions and having agreed he duly joined in service. Now, he claims pension benefit on the plea that having resigned from service without any stigma he cannot be put at par with those who were dismissed or removed from service as a mode of punishment, the context which is altogether different from those who resigned.

In service law ‘punishment’ has a special meaning. In brief, it is a penal action taken against a public servant (by way of dismissal, removal, reduction in rank, withholding of promotion etc.) for misconduct after holding an enquiry. Punishment normally entails forfeiture of some accrued benefits and invariably casts a stigma on the employee concerned.

Conversely, “resignation” is not a punishment, for the following reasons, namely:

- (a) *Every termination of service is not a punishment except only those which were brought about by “removal” or “dismissal” for misconduct after enquiry;*
- (b) *There is no element of charge or imputation in the case of resignation;*

(c) *Resignation has no stigma or implication of insolvency or inefficiency. It is the unilateral or privilege of every employee to resign his office.*

In other words, Rule 300(a) so far as it relates to “*forfeiture of past service on account of resignation*” cannot be held to be in the nature of penalty, but a disentitlement, as a consequence of having resigned from service.

In this regard, the High Court Division has misdirected itself in terming “*forfeiture of past service for resignation*” as “*punishment*” and accordingly, found the same as being discriminatory for having not been allowed to be treated in accordance with law, guaranteed under Article 31 of the Constitution and also, for having vitiated equality clause, ensured under Article 27 of the Constitution.

The question of discrimination arises when by law or executive action a classification is made within such a class and the two or more classes born out of such classification are treated unequally without any justifiable reason.

It is the rule of interpretation that when different expressions are used in the same Rule, in different context, then all of them cannot be given the same meaning: *Member, Board of Revenue Vs. Arthur Paul Bentall* (1955) 2 SCR 842.

Rule 300(a) categorises two classes of persons whose past services having been forfeited are consequently barred from claiming pension. As has been observed earlier, use of expression “resignation” or “dismissal”

or “removal” in Rule 300 (a) has to be weighed considering its respective contexts. Merely because those terms have been used in the impugned Rule do not go to make them stand at par for having separate and distinct features altogether. As such, question of discrimination, as alleged by the respondent-writ petitioner does not arise at all. Resultantly, allegations of violation of equality clause, guaranteed under Article 27 as well as not being treated in accordance with law in view of Article 31, fall through.

The respondent-writ petitioner, however, took shelter of Section 53 of the Act, 2018 in order to claim pension on the pretext that said provision recognises entitlement of pension benefit even after resignation. Said proposition is misconceived, for, Act, 2018 came into operation on 14.11.2018 and the cause of action of the respondent-writ petitioner cropped up on 25.03.2015 with the issuance of impugned memo. Hence, Act, 2018 is not applicable for him. More so, it has no retrospective effect. In addition, said Act does not in express term guarantees right to claim pension on resignation.

Further reliance the respondent-writ petitioner has made is Section 10 of the Act, 1974. In this regard, the contention of the respondent no.1 is that since the expression “resignation” has not been incorporated/included therein hence, a benefit not withdrawn by the Act, 1974 cannot be curtailed vide Rule 300(a), a subordinate legislation. Said proposition of the respondent-writ petitioner is also fallacious, for, the legislature while incorporating Section 10 of the Act, 1974 in clear terms expressed its intention as to disentitlement of a public servant to

any pension or other retiral benefits pending judicial proceedings instituted against, till the determination of and subject to the findings in such proceedings.

In order to understand the true purport of Section 10, it has to be read along with Sections 4 and 9 of the Act, 1974, not in isolation.

As has been observed earlier, nowhere within the four corners of the Act of 1974 the legislature introduced the concept of resignation which gives entitlement to a public servant to claim pension except retirement on attaining the age of 59 years [Section 4] (now, 59 years vide Section 43(1)(ka) of the Act No.57 of 2018) or optional retirement [Section 9(1)] or compulsory retirement [Section 9(2)] on completion of the qualifying service period i.e. 25 years.

The golden rule of interpretation is that the words must be given their ordinary, plain and clear meaning and the language of the provision being clear, there is no reason for introducing additional words into it: *Felix Vs. Thomas*, [1967]1AC292.

In construing the provision of a statute, the principle *expressio unius est exclusio alterius* is applicable. It means that express mention of a thing excludes things which are not mentioned. If a statute enumerates the things upon which it is to operate, everything else must necessarily and by implication be excluded from its operation and effect: *Qudrat-E-Elahi Vs. Bangladesh*, (1992)44DLR(AD)319,333.

Further, if the language of the court is not plain, but admits of only one meaning, the language declares the intention: *Anowar Hossain Chowdhury Vs. Bangladesh, 1989 BLD(Spl)1*. In such a case the court is not at liberty to search for a meaning beyond the instrument: *Lake City Vs. US,(1888)130 US662*.

In view of the clear context, as enumerated in Section 10, there is no scope for this court to extend the context by giving entitlement of pension to the public servant who resigned from his post before the qualifying service period.

Another contention of the respondent-writ petitioner for declaring Rule 300(a) *ultra vires* the Constitution is that his service period, if forfeited, will have the effect of nullifying all judicial acts done by him throughout his service period. The High Court Division took cognizance of the said proposition while declaring Rule 300(a) as *ultra vires* the Constitution.

Fact remains, the respondent-writ petitioner resigned from his post on 31.01.2011, obtained *Rule Nisi* in Writ Petition No.5323 of 2016. Said Rule has been heard and disposed of by the High Court Division on 18.03.2021. Till the date of delivery of judgment by the High Court Division, or even today when this appeal is being disposed of the said respondent could not place any document whatsoever to show that the respective judgments and orders he passed while serving as judicial officers have been declared null and void for having resigned from his

respective post. Resultantly, said submission of the respondent no.1 miserably falls through.

In view of the above, this Division categorically finds that Rule 300(a) so far as it relates to “*forfeiture of past service on account of resignation*” is not *ultra vires* the Constitution.

The High Court Division, however, while declaring the impugned memo dated 25.03.2025 to have been passed without lawful authority has taken into consideration of Memo no. অম (বিধি-১) তপি-২৮/৮৫/১০৬ dated 04.11.1989 along with notification bearing no.07.00.0000.171.13.006.15-81 dated 14.10.2015 recognising lesser period (in the instant case, 19 years of service period) than that of 25 years as a qualifying service period to claim pension before completing 25 years. Accordingly, said Division gave entitlement to those to claim pension who resigned from service before reaching the age of superannuation depending on the number of years of his/her service.

At this juncture, Mr. Arshadur Rouf, the learned Attorney General (in-charge) drawing attention to Chapter XX of the BSR, Part-I, containing the respective classification of pension, submits that there are 6 (six) different classes of pension attached with conditions to govern their grant. However, none of the conditions entail “resignation”. Referring to the respective notification dated 14.10.2015, as relied upon by the High Court Division for giving pension, he goes to argue that, the concerned authority of the appellant government while amending the

table, as contained in the earlier memo dated 04.11.1989, has included an explanation “ব্যাখ্যা” which provides conditions for being entitled to pension after rendering the qualifying service period. Those conditions do not enumerate the context of resignation. In such circumstances, he argues that said “ব্যাখ্যা” being an integral and operative component of the notification hence, disregarding the same grant of entitlement of pension benefit by the High Court Division to a person who has resigned from service basing solely upon the table of the pensionable period, is *ex facie* misconceived and unsustainable in the eye of law. More so, the claim of the respondent-writ petitioner for pension in respect of the service rendered prior to his resignation cannot be sustained, for, the right to pension on resignation is not recognised under the law applicable to him.

Chapter XX, Section-1 of the BSR, Part-I deals with different classes of pension with conditions which govern the entitlement/right to claim pension; namely, compensation pension (Section II) (granted on being discharged owing to the abolition of a permanent post), invalid pension (Section III) (granted to one who retires on account of bodily or mental infirmity), superannuation pension (Section IV) (granted to an officer having attained the age of superannuation or compulsory retirement); retiring pension (Section V) (granted to an officer, on his resignation being accepted, after completing qualifying service of not less than 25 years); wound and other extraordinary person (Chapter XXIV. Section -1) (granted to those who are employed in civil capacity under the Army department) and family pension.

However, Chapter XXI, Section-1 of the BSR, Part-I contains the general rules, which prescribe the amount of pension that may be granted and is determined by the length of service, as set forth in Rules 351 to 361. The table, as prescribed therein, has undergone several amendments vide the respective memos and notifications. The table incorporated in Memo no. অম(বিধি-১) তপি-২৮/৮৫/১০৬ dated 04.11.1989 contains the respective percentage of pension which is granted basing on the length of service. Said table has been refixed by the authority concerned vide notification bearing no.07.00.0000.171.13.006.15-81 dated 14.10.2015 in particular clause (ক). The High Court Division while granting pension to the respondent-writ petitioner relied upon the said table with the following findings:

“..... a sliding scale is provided for the person who retires before completing 25 years of service. By the same corollary, a person who resigns from service before reaching the age of superannuation should also be entitled to receive pension depending on the number of years of service rendered by person.....”

It is, however, pertinent to note that the table, as contained in clause “Ka” of the said notification dated 14.10.2015 includes “explanation” “ব্যাখ্যা” prescribing the conditions/contexts which govern the grant of pension for rendering the respective qualifying service period.

The notification dated 14.10.2015 is quoted below for ready reference:

“গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
অর্থ মন্ত্রণালয়, অর্থ বিভাগ
প্রবিধি অনুবিভাগ
প্রবিধি-১ শাখা
প্রজ্ঞাপন

তারিখ: ১৪ অক্টোবর ২০১৫ খ্রিস্টাব্দ/২৯ আশ্বিন ১৪২২ বঙ্গাব্দ
নং-০৭.০০.০০০০.১৭১.১৩.০০৬.১৫-৮১-সরকারি কর্মচারীগণের অবসরকালীন সুবিধাদি/ প্রাপ্যতা নিম্নরূপভাবে পুনর্নির্ধারণ করা হয়েছে:

- (ক) পেনশনযোগ্য চাকরিকাল এবং পেনশনের পরিমাণ:
পেনশনযোগ্য চাকরিকাল বর্তমানে প্রচলিত ১০-২৫ বছর এর স্থলে ৫-২৫ বছর এবং পেনশনের হার সর্বশেষ আহরিত বেতনের ৮০%-এর স্থলে ৯০%-এ উন্নীত করা হয়েছে। সে পরিশ্রমিতে অর্থ বিভাগের ০৪-১১-১৯৮৯ খ্রিঃ তারিখের অম(বিধি-১) তপি-২৮/৮৫/১০৬ সংখ্যক স্মারক পত্রের ক্রমধারায় পেনশনের হার নিম্নরূপভাবে পুনর্নির্ধারণ করা হলো:

পেনশন টেবিল

পেনশনযোগ্য চাকরিকাল	বিদ্যমান পেনশনের পরিমাণ	পুনর্নির্ধারিত পেনশনের পরিমাণ
৫ বছর	-	২১%
৬ বছর	-	২৪%
৭ বছর	-	২৭%
৮ বছর	-	৩০%
৯ বছর	-	৩৩%
১০ বছর	৩২%	৩৬%
১১ বছর	৩৫%	৩৯%
১২ বছর	৩৮%	৪৩%
১৩ বছর	৪২%	৪৭%
১৪ বছর	৪৫%	৫১%
১৫ বছর	৪৮%	৫৪%
১৬ বছর	৫১%	৫৭%
১৭ বছর	৫৪%	৬৩%
১৮ বছর	৫৮%	৬৫%
১৯ বছর	৬১%	৬৯%
২০ বছর	৬৪%	৭২%
২১ বছর	৬৭%	৭৫%
২২ বছর	৭০%	৭৯%
২৩ বছর	৭৪%	৮৩%
২৪ বছর	৭৭%	৮৭%
২৫ বছর এবং তদূর্ধ্ব	৮০%	৯০%

ব্যাখ্যাঃ ৫-২৪ বছরের পেনশনযোগ্য চাকরিকালের পেনশন কেবল নিম্নোক্ত ক্ষেত্রে প্রাপ্য হবেন:

- (১) একজন সরকারি কর্মচারী মৃত্যুবরণ করলে কিংবা সরকার কর্তৃক গঠিত মেডিকেল বোর্ড দ্বারা (শারিরিক ও মানসিক বৈকল্যের কারণে) স্থায়ীভাবে অক্ষম (Invalid) ঘোষিত হলে; এবং
(২) স্থায়ী পদ বিলুপ্তির কারণে চাকরি থেকে ছাটাইয়ের ক্ষেত্রে।
(খ)
(গ)
(ঘ)

রাষ্ট্রপতির আদেশক্রমে
ড. মোহাম্মদ আলী খান. এনডিসি
অতিরিক্ত সচিব”

From the above, it is apparent that said “explanation” or “ব্যাখ্যা” is an integral part of the notification dated 14.10.2015 and governs the right to pension for the respective pensionable service period “৫-২৪ বছরের পেনশনযোগ্য চাকরিকালের পেনশন কেবল নিম্নোক্ত ক্ষেত্রে প্রাপ্য হবেন”. Most importantly, these prescribed conditions do not recognise “resignation” to claim pension.

The High Court Division without considering the context as provided in the “ব্যাখ্যা” of the said notification gave entitlement of pension to the respondent-writ petitioner basing upon the table only, which in the given facts and circumstances, observations and findings is not sustainable in the eye of law.

Last but not the least, the High Court Division declared the impugned order dated 25.03.2015 passed by the writ respondent no.5 to have been passed without lawful authority on the findings that vide order dated 02.03.2015 the appellant i.e. the Ministry of Law, Justice and Parliamentary Affairs approved the prayer of the respondent-writ petitioner seeking pension following his resignation from service with copy to the said respondent. As such, without further intimation to the respondent-writ petitioner returning his pension case is not only a violation of the principles of natural justice, but also, has the effect of taking away a benefit/privilege that had already been granted to him by the government; hence, curtailed his fundamental right as guaranteed under Article 31 of the Constitution.

It is the universally accepted principle that even when a statute is silent notice has to be given if any person is sought to be affected in his

right, interest, property or character: *Abul A'la Moudoodi VS. West Pakistan*, (1965)17DLR(SC)209.

In the instant case, the respondent-writ petitioner is claiming pension for the respective service period following his resignation. As has been observed earlier, the right to pension on resignation is not recognised under the law applicable to him. As such, giving approval by the Ministry of Law, Justice and Parliamentary Affairs to have pension vide order dated 02.03.2015 without having the mandate of law does not go to create any right or privilege in favour of the respondent-writ petitioner. Consequent thereto, returning the pension case of the respondent-writ petitioner by the appellant vide the impugned memo dated 25.03.2015 does not go to offend Article 31 of the Constitution.

In view of the above, the direction given by the High Court Division upon the appellants to grant pension to the respondent-writ petitioner on the basis of his length of service also falls through for the simple reason i.e., it is not an executable order, for, the law does not permit the same.

In addition to the above, it is also pertinent to observe from a common-sense perspective that if pension and retirement benefits were freely available even before completion of the prescribed 25 years of qualifying service, it could weaken the discipline, stability, and long-term commitment expected in public service. Public employment is designed not merely as short-term work, but as a structured career requiring continuity, accountability, and sustained institutional loyalty.

If officers could resign early yet still enjoy full pensionary protection, some might treat government service as a temporary platform to gain experience, training, prestige, or financial security before leaving for personal advantage. That could encourage premature exits, disrupt workforce planning, reduce retention of experienced officers, and dilute the seriousness and discipline traditionally associated with career public service. Therefore, the qualifying-service threshold reflects a rational policy choice to preserve commitment, order, and institutional discipline within the public service.

The legislature, in its wisdom and based on logical considerations, left no benefit to accrue in favour of a public servant who resigns before completing 25 years of service, which is the prescribed cut-off period.

The respondent-writ petitioner, however, by filing application under Article 104 of the Constitution sought for complete justice by directing the appellants to restore his service in Bangladesh Judicial Service with due seniority, promotion, back wages and service benefits; alternatively, to pay the pension benefit with compensation of Tk.2,00,00,000/- (Taka two crore) within a prescribed period.

Article 104 of the Constitution vests power upon the Appellate Division to issue such orders or directions as may be necessary for doing complete justice in any cause or matter pending before it. This extraordinary power of the Appellate Division is exercised when this Division finds that no remedy is available to the person concerned though gross injustice has been done to him for no fault or laches of his own: *Raziul Hasan Vs. Badiuzzaman*, 1996 BLD (AD)253.

The respondent-writ petitioner being a government servant was conversant with the terms and conditions of service in particular that resignation from service does not confer right to pension for the respective service period. He was also aware that memo dated 04.11.1989 and notification dated 14.10.2015 containing the table of pensionable period is subject to conditions which do not entail “resignation”. Taking into consideration of the above, and also, in view of the observations and findings of this Division we find no substance to entertain the application filed under Article 104 of the Constitution; hence, it is rejected.

In the result, the appeal is allowed. The impugned judgment and order dated 18.03.2021 passed by the High Court Division in Writ Petition No.5323 of 2016 is hereby set aside.

There will be order as to costs.

Communicate the judgment at once.

J.

J.

J.