

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Md. Ashfaquul Islam
Mr. Justice Zubayer Rahman Chowdhury
Mr. Justice Md. Rezaul Haque
Mr. Justice S.M. Emdadul Hoque
Mr. Justice A.K.M. Asaduzzaman
Mrs. Justice Farah Mahbub

CIVIL APPEAL NO.11 OF 2024.

(From the judgment and order dated 29.05.2018 passed by the High Court Division in Writ Petition No.5251 of 2013).

Government of Bangladesh, represented by the
Secretary, Ministry of Land, Bangladesh
Secretariat, Dhaka and others. : ...Appellants.

-Versus-

Md. Mozibul Haque and others. :Respondents.

For the Appellants. : Mr. Mohammad Arshadur Rouf, Additional
Attorney General with Mr. Abdullah Al
Mahmud, Deputy Attorney General instructed
by Mr. Haridas Paul, Advocate-on-Record.

For the Respondent No.1. : Mr. Faisal Mahmud Foizey, Advocate
instructed by Ms. Madhumalati
Chowdhury Barua, Advocate-on-Record.

For Respondent Nos.2-17. : Not represented.

Date of Hearing. : **30.04.2025 and 20.05.2025.**

Date of Judgment. : **20.05.2025.**

J U D G M E N T

Farah Mahbub,J: This civil appeal by leave is directed against the
judgment and order dated 29.05.2018 passed by the High Court Division
in Writ Petition No.5251 of 2013 making the Rule absolute.

Facts of this civil appeal, in brief, are that the respondents-writ petitioners, who joined as Surveyors under the Ministry of Land on different dates and scales, have been discharging their duties in different offices of the Deputy Commissioner to the satisfaction of the authority concerned, but without any promotion.

Furthermore, significant disparity arose when pursuant to the decision of the National Implementation Committee for Administrative Reorganization (NICAR), the Government re-organized the revenue set up under the administrative control of the then Ministry of Land Administration and Land Reforms vide Order No.IC-15/84/1689-Estt.dated 24.12.1984, which was duly notified in the official Gazette on 10.01.1985. Accordingly, the posts of Tahsildars and Assistant Tahsildars were renamed as Union Land Assistant Officer (ULAO) and Union Land Sub-Assistant Officer (ULSAO). Their scales were fixed at Tk.300-540/- and Tk.275-480/- respectively despite having lower entry qualifications and less technical responsibility than the Surveyors, which was an act of treating the unequals equally in violation of Article 29 of the Constitution. Moreso, both the ULAO/ULSAO and the Surveyors had been treated at

par for the purpose of fixation of pay scales overlooking the intelligible differentia between them.

Pursuant to multiple deliberations with the Ministry of Land and the Directorate of Land Records and Survey on the issue of discrimination in respect of the pay scale and other benefits of the Surveyors, the Ministry of Finance upgraded their pay scale from grade XVI(scale of Tk.3000-5920) to Grade XIV(scale of Tk.3300–6940) vide notification No. On/Odhi(Basto:- 1)/Bhumi-10/2006/444 dated 20.04.2008 with prospective effect. Later, the Civil Audit Directorate of the Government of Bangladesh vide Memo No. CAA/Process/Misc-8(Part-3)/385 dated 15.03.2012(Annexure-C) clarified that the up-graded pay scale and fixation of benefits had been given effect from 01.07.1977. However, although the Surveyors received some financial benefits and time scales, their grade and status remained unchanged.

Per contra, the Sub-Assistant Engineers (SAEs) holding equivalent post with educational qualification of 4(four) years Diploma, were upgraded from Class III to Class II status by the then Ministry of Establishment vide Notification No. Shomo (Bidi-2) Promotion-27/94-164 dated 19.11.1994.

In the light of the ongoing disparity in pay and status, the Directorate of Land Records and Survey deemed it necessary to upgrade the pay scale of the writ petitioners and other Surveyors and accordingly, began corresponding with the Ministry of Public Administration to that effect. In response thereof, the Ministry of Public Administration, vide office letter No.05.123.035.00. 00.001.2004-96 dated 10.03.2011, asked for opinion and information regarding the total number of employees holding 4(four) years Diploma, from the Ministry of Land.

Subsequently, the Senior Assistant Secretary of the Ministry of Land vide Memo No. Bhu:mo:/Sha-12/Misc-11(18)/2009-255 dated 15.03.2011 addressing the Deputy Secretary, Ministry of Land (Administration-1) stated, *inter-alia*, that while the Sub-Assistant Engineers were enjoying Class II status with scale of Tk. (8000–16540), the Surveyors were receiving the scale of Tk.(5200–11235) and were holding Class III status. It was also noted that the Diploma in Survey Technology, previously a 3(three) years course, was extended to a 4(four) years course after 2004. Reiterating the same notion on the ongoing disparity, the Ministry of Land in reply to office letter dated 10.03.2011 sent another letter vide Memo No. Bhu: mo:/Sha-1/Misc.-2504 (part-4)-

383 dated 30.03.2011 to the then Ministry of Establishment (now, Public Administration).

Further case of the writ-petitioners is that the authority concerned did not take any initiative whatsoever to upgrade the pay scale and status of the Surveyors; instead they took steps only for the ULAOs and ULSAOs respectively, enjoying the scales of Grade-XVI and XVII. Consequent thereupon, vide Order No. Bhu:mo:/sha-12/02/93-405 dated 23.04.2010, the Ministry of Land drastically upgraded the pay scale of ULAOS and ULSAO from Grade-XVI and XVII to Grade-XI and XII respectively, but without any effect because of the non-approval of the Ministry of Finance.

Despite the fact that the respondent-writ petitioners are working as Surveyors with degree of Diploma in Survey but their pay scale has not been upgraded to Tk.8000-16540/- like that of the Sub-Assistant Engineer. In that view of the matter, they filed Writ Petition No.5251 of 2013 before the High Court Division under Article 102 of the Constitution alleging discrimination and accordingly, sought direction upon the appellants-writ respondents to upgrade their pay scale at Tk.8000-16540/- at grade-X under the National Pay Scale, 2009; to pay

all arrears with effect from the date of their entitlement and also, to upgrade their status from class III to class II; whereupon a Rule Nisi was issued by the said Division.

Subsequently, allowing the prayer of the writ petitioners a supplementary Rule was issued by the said Division as to why the impugned Memo No. memorandum No. 07.00.0000.161.31.028.12(part)-124 dated 30.05.2013 should not be declared to have been issued without lawful authority and hence, of no legal effect. However, during the course of hearing, the learned Advocate appearing for the writ petitioners did not press the supplementary Rule.

In support of the Rule *Nisi*, the categorical contention of the writ-petitioners was that the entry post of ULSAOs (Assistant Tahsilder) requires HSC, and promotions in that post are being made from feeder posts like Chainman, Process Server, etc. Conversely, the requisite qualification for appointment of Surveyor is SSC with diploma and that there is no scope for promotion for the said post. In the given context, the decision to grant the ULAOs and ULSAOs with lower entry qualifications, three and two steps higher grade than the writ petitioners and other Surveyors are *ex-facie* illegal, without lawful authority and

violative of the principle of protection of pay that requires that if a senior/higher post holder gets lower pay than his junior/lower post holder, the pay of the higher post holder should be protected.

Further contention of the writ-petitioners was that they were getting much lower pay than the Sub-Assistant Engineers (SAEs) of other departments and public bodies due to failure of the respondents, resulting discrimination as per the equality provisions of the Constitution; hence, violative of Articles 27, 29 and 31 of the Constitution and against the spirit of the Services (Re-Organization and Conditions) Act, 1975, which has been promulgated by the Legislature to ensure equality, fairness, transparency and to bring uniformity in public service.

Although, there were numerous instances where the Ministry of Finance and other offices had upgraded the pay scales of senior officers or employees who were getting lower pay than their juniors, but unfortunately, no such steps were taken so far the writ-petitioners were concerned.

The High Court Division upon hearing the respective contending parties ultimately, made the Rule absolute vide the impugned judgment and order dated 29.05.2018 with direction.

Being aggrieved by and dissatisfied with the petitioners-writ respondents filed Civil Petition for Leave to Appeal No. 4309 of 2018 under Article 103 of the Constitution. After hearing the parties leave was granted by this Division predominantly on the ground that the respondents writ-petitioners are in the service of the Republic and their grievances are related to the terms and conditions of service in respect of grade and pay scale; as such, they ought to seek remedy before the Administrative Tribunal established under Article 117 of the Constitution. In that view of the matter, without seeking relief before the appropriate forum filing the writ petition under Article 102 of the Constitution is not maintainable; as such, the impugned judgment is liable to be set aside.

Consequent thereupon, instant civil appeal arose.

Mr. Mohammad Arshadur Rouf, the learned Additional Attorney General appearing for the appellants submits that the High Court Division erred in law in passing the impugned judgment and order without considering the core issue, i.e. the writ petition is not maintainable, for, the issue in question clearly touches the terms and conditions of service, such as, pay scale and grade of the public servants. In this regard, he goes to argue that terms and conditions of service is to be addressed by the

Administrative Tribunal, which is the appropriate forum established under Article 117 of the Constitution. The petitioners without invoking said forum have directly approached the High Court Division by filing application under Article 102 of the Constitution. As such, in view of Article 102(2) of the Constitution the writ-petitioners having had equally efficacious alternative remedy, the Rule *Nisi* in connection with Writ Petition No.5251 of 2013 was liable to be knocked down as being not maintainable.

Ignoring completely the said jurisdictional issue and without giving an iota of findings on the said issue the High Court Division upon making the Rule absolute gave direction upon the appellant-writ-respondents to upgrade the pay scale of the writ-petitioners in grade-X under the National Pay Scale, 2009 with all arrears with effect from the date of their entitlement; hence, it is liable to be set-aside.

Mr. Faisal Mahmud Foizey, learned Advocate for the respondent No.1 supports the impugned judgment and order passed by the High Court Division, however, without being able to overcome the issue of maintainability.

The respondent-writ petitioners invoked writ jurisdiction of the High Court Division on the categorical assertion that by upgrading the pay scales of junior post holders, i.e. ULAOs and ULSAOs at 5(five) steps higher level than that of Surveyors the principle of 'Protection of Pay' and the spirit of the relevant provisions of the 'Services (Re-organization and Conditions) Act, 1975 have been violated. Thus, caused discrimination as per Articles 27, 29 and 31 of the Constitution, for, the Sub-Assistant Engineers of other departments, being on the same footing as of the Surveyors, are getting pay scale at grade-X with class II status.

It is to be taken into consideration that leave was granted by this Division to consider the maintainability of the writ petition before the High Court Division as the writ petitioners are admittedly in the service of the Republic and their grievances are squarely touching the terms and conditions of service in respect of grade and pay scale.

Vide Article 117(1) of the Constitution, the Government has the authority to form Administrative Tribunals that handle issues relating to the terms and conditions of service of the public servants, including disciplinary actions. By dint of Article 117(2) no court shall entertain any proceedings or make any order in respect of any matter falling within the jurisdiction of

such tribunal. As a result, if a government employee is dissatisfied with a decision affecting his service conditions or any disciplinary measure taken against him, he shall seek remedy through the Administrative Tribunal.

In ***Bangladesh and others vs. Sontosh Kumar Shaha and others*** (6 SCOB [2016] AD), para-78, page-31 the Appellate Division in clear terms has categorically found, *inter-alia*, that under Article 102(5) and Article 117(2), the High Court Division cannot exercise jurisdiction over matters relating to terms and conditions of public service except in cases involving a challenge to the validity of law or violation of fundamental rights. However, to invoke fundamental rights in service related matters, a public servant or an employee of a statutory corporation must clearly and specifically plead such violations. Mere evasive statement of violation of fundamental rights or making stray statements that the order is discriminatory or *mala fide*, will not suffice in this respect.

Similar findings have been reiterated in ***Delwar Hossain Mia -Vs- Bangladesh***, 52DLR(AD)121, where this Division held that a person in the service of the Republic who intends to invoke fundamental rights for challenging the vires of law will seek his remedy under Article 102(1), but in all other cases he will be required to seek remedy under Article 117(2) of the Constitution.

Also, in *Bangladesh v. AKM Enayetullah*, 11BLC(AD)205, the respondent sought judicial review of his retirement order by filing a writ petition before the High Court Division. The High Court Division, however, allowing the prayer made the Rule absolute. In appeal, the Appellate Division overruled the decision, determining that the Administrative Tribunal is the proper forum for a government servant to agitate any violation in the matter of the terms and conditions of service and in such view of the matter, impugned judgment of the High Court Division is liable to be set aside.

In the present case, the respondents-writ petitioners claimed that they are getting much lower pay than the Sub-Assistant Engineers (SAE) of other departments and public bodies due to the failure of the appellant-writ respondents to take proper steps to that effect, resulting discrimination as per the equality provisions of the Constitution and against the spirit of the Services (Re-Organization and Conditions) Act 1975.

Fact remains, the High Court Division while making the Rule absolute declaring that the Government is legally obliged, under the Services (Re-organisation and Conditions) Act, 1975, to bring uniformity in the pay scales of the petitioners and Sub-Assistant Engineers by treating them at par, did not give an iota of observation and findings on

the maintainability of the Rule Nisi in view of having alternative efficacious remedy, as provided under Article 117 of the Constitution.

As such, there is no doubt to find that the High Court Division erred in law by making the Rule absolute, for, the case of the respondents-writ petitioners lacks maintainability in relation to question of law at the very outset.

In view of the above, the judgment and order passed by the High Court Division calls for intervention by this Division.

Consequently, the appeal is allowed.

The judgment and order dated 29.05.2018 passed by the High Court Division in Writ Petition No.5251 of 2013 is hereby set aside.

No order as to costs.

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