

22.0X.1X, . . . 00

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

- 142-

WRIT PETITION NO. 9356 OF 2016

IN THE MATTER OF:

This Application under Article 102 of the  
Constitution of the People's Republic of  
Bangladesh.

AND

IN THE MATTER OF:

Md. Shahadat Hossain and others

..... Petitioners

VERSUS

Government of the People's Republic of  
Bangladesh, represented by the Secretary of  
the Ministry of Finance, Bangladesh  
Secretariat, Ramna, Dhaka and others

..... Respondents.

Mr. M. Amir-ul Islam, Senior Advocate with

Mr. Sheikh Rafiqul Islam, Advocate

..... For the Petitioners

Mr. Md. Muhibullah Tanvir, Advocate

... For the Added Petitioners

Mr. Shamim Khaled Ahmed, Advocate

... For the Respondent Nos. 1 and 2

Mr. Sheikh Fazle Noor Taposh, Adv. with

Mr. Mehedi Hasan, Advocate and

Mr. Shaikh Mohammad Zakir Hossain, Adv.

... For the Respondent No. 7

Heard on : 23.3.2017, 28.5.2017, 7.6.2017,  
2.7.2017 and 5.7.2017

Judgment on: 27.7.2017

Present :

Mr. Justice Syed Refaat Ahmed

And

Mr. Justice Md. Salim

01

SYED REFAAT AHMED, J:-

- 143 -


This Rule was issued calling upon the Respondents to show cause as to why the impugned recruitment notices dated 22.2.2016 being Nos. 07/2016, 08/2016 and 09/2016 (Annexures- 'J'- 'J-2' to the Writ Petition) for recruitment to the posts of Senior Officer, Officer and Officer (Cash) without recruiting the successfully passed Petitioners of the existing panels (Waiting Lists) to the above-mentioned posts of Sonlai Bank Limited should not be declared to be without lawful authority and of no legal effect and why a direction should not be given upon the Respondents for appointment of the Petitioners to those above-mentioned posts before any further recruitment is made pursuant to the notices dated 22.2.2016 (Annexure-'J' series to the Writ Petition) and/or pass such other or further Order or Orders as to this Court may seem fit and proper.

The facts focal to the disposal of the Rule are that Sonali Bank  
an  
urt  
ka. Ltd. ("Bank") published a recruitment circular dated 27.1.2014 in the Daily Ittefaq and the Financial Express (which was further published in 'Weekly Chakrir Bazaar' on 31.1.2014) seeking applications from eligible candidates for the posts of 'Senior Officer', 'Officer' and 'Officer (Cash) that would enable the Bank to directly recruit and appoint in the said posts as and when vacancies arose. The last date of submitting applications was 26.2.2014. This Court notes that while the Petitioners contend that the said recruitment circulars invited application for preparing a "Panel" of qualified candidates, a scrutiny of the said circular reveals no such declaration or statement of future preparation of any such "Panel" or indeed "Waiting List".

02  
/

The Bank states that the job circulars dated 27.1.2014 were for a total of 1,707 posts and after the *viva voce* examination Merit Lists of 1,508 candidates in the post of Senior Officer, 1,634 candidates in the post of Officer and 2,503 candidates in the post of Officer (Cash) were prepared. It is stated further that out of a total of 1,707 posts, 1,436 candidates were selected for direct recruitment. The Bank clarifies further that due to not having enough candidates in the "Freedom Fighters Quota" it was not possible to appoint 271 candidates in the same. It is stated that after sending the appointment letters out to 1,436 appointees, 1,396 appointees joined in their respective posts. Among the 40 candidates who had not joined, 8 candidates were in "Freedom Fighters Quota" and subsequently due to non-availability of the candidates under the said quota the Bank's Board of Directors ("BOD") on 28.7.2015 decided to recruit candidates against the 32 remaining posts where 25 candidates were in merit quota, 4 were in district quota, two were in female quota and 1 was from tribal quota and the said decision was approved at the BOD's 436<sup>th</sup> Meeting of 5.8.2015. The said decision was conveyed to the Respondent No. 7 being the Bank's Deputy General Manager, Human Resources Development Department on 6.8.2015. This, the Bank submits, goes to show that the said 32 candidates were appointed only against the posts which could not be filled by the otherwise directly selected candidates and states in reiteration that the said posts were among those covered by the circular of January, 2014.

744

53  


-145-

Given this scenario, it is submitted on behalf of the Bank that the statements made in the instant Writ Petition that the Petitioners were supposed to be recruited from a "Panel List" is absolutely imaginary, vague, baseless and misconceived. It is asserted that there was nothing in the job circulars that even remotely suggested the prospects of any panel or waiting list permitting of an available pool of prospective recruits. The Bank's position generally is that it only appointed the successful candidates from the Merit List in the vacant posts and that the impugned job circulars published on 22.2.2016 are for completely new posts other than the ones advertised on 27.1.2014. In the circumstances, therefore, the Bank sees no automatic right arising in favour of the Petitioners to be recruited for the new posts at any future date.

A perusal of the records reveals that initially on 20.8.2015 the Bank's BOD at its 435<sup>th</sup> Meeting decided to recruit in the post of 'Senior Officer', 'Officer' and 'Officer (Cash)' as per vacancies arising on 31.12.2014 according to rankings in a Merit List. This led to communications back and forth between the Bank's BOD and the Ministry of Finance seeking the latter's approval of appointments from the Merit List against existing vacancies. Significantly, in its communication of 1.9.2015 to the Ministry, the Bank confirmed *inter alia* that the Merit List itself had a validity period till 13.8.2015. The Petitioners' learned Advocate Mr. M. Amirul Islam argues in this regard that it is *para materia* in this case that the legitimate expectation of his clients was for their appointments to positively take place within that

09

date acknowledging, thereby, that no extension was in the facts made to such validity period. Mr. Islam argues that it was, accordingly, expected of the Bank to complete the recruitment process by exhausting the entire Merit List by 13.8.2015. That not being done, the fallout, Mr. Islam submits has been a ruination faced collectively by the Petitioners because of the Bank's whims and caprices. 146-

The genesis of the impugned recruitment notices of 2016, on the other hand, this Court finds is to be traced to the formation of a new body named the 'Bankers Selection Committee' (BSC) by the Ministry of Finance (Bank and Financial Institution Department) on 21.9.2015 for recruitment of 1<sup>st</sup> and 2<sup>nd</sup> Class Officials in the State-owned banks and other financial institutions replacing the old 'Bankers Recruitment Council' (BRC). The Circular notably states that if any bank or financial institution has unresolved issues of recruitment on the date of issuance of the Circular, the said institution shall have to inform the BSC of the same in order for recommendations to be made for the resolution of such issues.

It is against this general backdrop that the BSC is shown to have published the impugned circulars being Nos. 07/2016, 08/2016 and 09/2016 in various dailies on 22.2.2016 for recruitment in the posts of Senior Officer, Officer and Officer-Cash.

In this Writ Petition, the 474 initial and added Petitioners are represented by two sets of legal Counsel of whom learned Senior Advocate Mr. M. Amir-ul Islam acts as the lead Counsel and the learned

05  
/

Advocate for the added Petitioners Mr. Md. Mahibullah Tanvir has at the outset notified this Court of adopting Mr. Islam's submissions. -147-

The Petitioners' case, Mr. Amir-ul Islam submits, is of a betrayal of the new generation by the State evident in a disregard of the basic tenet of the Constitution to foster equality and social justice. Referring to the recruitment circular January 2014, Mr. Islam submits that outwardly it appears an attractive, encouraging and stimulating advertisement to which the Petitioners responded. Sadly, however, the outcome of the process generated by the recruitment circular has had the effect, he argues, in the long run of frustrating the aspirations of "মেধাবী (meritorious) কর্মঠ (hardworking) উদ্যমী (enterprising) and আগ্রহী (aspirant) Bangladeshis." Mr. Islam's initial contention was that the 2014 recruitment circular comes with the promise of creating a Panel but such contention is not found by this Court to, however, be substantiated by and accompanied with any information on either the creation of such Panel or the Panel-validity period or indeed any indication of the authority retained and reserved to extend, modify or terminate the Panel-period. Predicated on that initial line of argument, Mr. Islam's initial line of argument was that the creation of the Panel itself leads to a legitimate expectation of a certain course of action to follow by way of its continuity at least for a reasonable period in a manner wholly beneficial to the Petitioners. The Respondent No. 7 has, however, disputed such contention stating in response that the "idea of preparing and recruiting from such 'panel' or waiting list is just fictitious imagination of the

06

*petitioners" and that the "petitioners with ill motive are trying to make positive impression repeating that the respondents sought application for preparing a panel or waiting list in respect of future vacant posts."*

- 148 -

Significantly, in a related Application under Article 102 of the Constitution in Writ Petition No. 3877 of 2016 this Court in making the Rule absolute found on the clear existence of Panels of qualified candidates and that both the BSC and the bank concerned, being Janata Bank, had lost sight of the essential and crucial factor in the petitioners' case that the Panels in question were indeed not only subject to a validity period but benefited from an extended validity date. It was also found in that case that the impugned BSC job circular was issued within such period of Panel-validity thereby abruptly, prematurely, peremptorily and arbitrarily sounding the death knell of such Panels. It was also this Court's finding that the said Panels predated the BSC and, accordingly, the appointments to the posts of Senior Officer, Officer and Officer (Cash) from such Panels remained prospective but in motion over a defined extended period straddling both the dates of creation and functioning thereafter of the BSC. In that context this Court in Writ Petition No. 3877 of 2016 found that the impugned job circulars were issued by the BSC in disruption of an extant process of appointment to existing posts, thereby, initiating a fresh but wholly redundant process of recruitment to those very posts in a manner that was illegal by reason of disregard of the petitioners' legitimate expectation to a continued process of assured employment set in motion as early as in 2014.

07

- 149 -

It was further noted by this Court in the facts in Writ Petition No. 3877 of 2016 that the Panel-validity period was focal to the petitioners' case given that the concerned respondents were found to have actively endorsed it, deliberated upon the same and assigned initial and extended dates so much so that, for example, at a material point in time the Panel of Senior Officer, Officer and that for Officer (Cash) were found to have been valid until 31.12.2015. The Panels in that earlier case, as evident to this Court, were created to have a ready pool of qualified candidates handy, thereby, deterring the wastage of time and administrative costs otherwise brought on by repeated and successive processes of fresh recruitments and appointments.

In light of the above, and by way of a summation, this Court's relevant core findings in Writ Petition No. 3877 of 2016 were *inter alia* enumerated thus :

- i. *The creation of Panels/ Waiting Lists in the facts validly gave rise at the very least to a tacit promise or undertaking of assured employment, thereby, creating a right with a concomitant obligation on the employing authority to positively hire the Petitioners;*
- ii. *repeated extensions of time/ validity periods of Panels at the Bank's own volition substantiate the Petitioners' contention that the Bank as late as in December, 2015 was of clear intent to keep alive the possibility of appointments from such Panels;*
- iii. ...
- iv. *the impugned job circulars of March, 2016 are found to be illegal and arbitrary precisely because of being issued during and within the validity period of the Panels/ Waiting List."*

The present case is, however, found notably to be distinguishable from that earlier Writ Petition in that the Merit List in this case

08



admittedly expired on 13.8.2015, i.e., several weeks prior to the BSC's formation on 21.9.2015. Such expiration notwithstanding, on 2.11.2015 the Respondent No. 7, i.e., Bank's Human Resource Department informed the Bank's BOD of the need to secure the BSC's approval for recruitment from the said Merit List. Given the facts, however, the newly formed BSC decided to embark on the process of fresh recruitment against the newly vacant posts on the basis of the impugned fresh job circulars. This Court finds that this the BSC was clearly entitled to do in the circumstances. The BSC as successor to the BRC for recruitment of 1<sup>st</sup> and 2<sup>nd</sup> Class Officials in the State-owned banks and other financial institutions. The said circular also states that any bank or financial institution would have to refer any unresolved issue ("নিয়োগ প্রক্রিয়া অসমাপ্ত থাকিলে") of recruitment on the date of the issuance of the circular to the BSC for recommendation at resolving any such outstanding issue. That circular, this Court notes, makes two essential points about the BSC's projected activities:

- (i) প্রথম ও দ্বিতীয় শ্রেণির শূণ্য পদসমূহে জনবল নিয়োগের চাহিদার প্রেক্ষিতে প্রার্থী বাছাই এবং নিয়োগের লক্ষ্যে সংশ্লিষ্ট ব্যাংক/আর্থিক প্রতিষ্ঠান কর্তৃপক্ষ বরাবরে একটি 'প্যানেল' সুপারিশ করিবে;
- (ii) এই আদেশ জারি হওয়ার তারিখে কোন ব্যাংক/আর্থিক প্রতিষ্ঠানে সংশ্লিষ্ট পদসমূহে কোনরূপ নিয়োগ প্রক্রিয়া অসমাপ্ত থাকিলে উক্ত ব্যাংক/ আর্থিক প্রতিষ্ঠান তাহা কমিটিকে অবহিত করিবে এবং কমিটি এ বিষয়ে যথাযথ সুপারিশ প্রদান করিবে।

০৭

- 151 -

This Court finds in the facts that by reason of the expiration of the Merit List on 13.8.2015, there was no extant, current and hence unresolved recruitment issue that the Bank could refer to BSC. It followed, therefore, the BSC could aptly and legally embark as it did on a fresh process of panel creation for ultimate recruitment in the Bank.

It must be appreciated, this Court emphasizes, that the doctrine of legitimate expectation, such as has been the basis of the Petitioners' claim to relief under judicial review here, operates at the fundamental level against arbitrariness in any administrative authority's dealings with citizens. The doctrine is invoked when any administrative body by reason of a representation or by past practice or conduct causes an expectation to germinate which it would be within such authority's powers to fulfill. It is found in the facts that the job circular of January 2014 silent as it was regarding the creation of "Panels" or "Waiting Lists" did not indeed provide any unequivocal assurance, whether by means of a promise or an established practice, that the successfully passed candidates who have not been appointed at the initial stage shall nevertheless be appointed to any posts created in the future from any "Panel" or a "Waiting List". The Merit List that the Respondents have relied upon in the facts for their internal purposes is instead, and in contradistinction to the notion of "Panel" or "Waiting List", found by this Court to be an integral part of any fair and transparent evaluation and selection process leading to appointments based purely on merit. Such a Merit List cannot, in this Court's view, inherently be deemed to

10

-152-

reflect a reserve pool of potential appointees-in-waiting in denoting additionally a promise of assured appointments operating indefinitely to give rise to anything akin to a legal and vested right to appointments. Moreover, the Merit List in question in the facts is found to have lost all efficacy beyond 13.8.2015, i.e., its declared and recorded validity period. In the facts, this Court, therefore, finds that upon filling up of posts as initially remained vacant due to the non-acceptance of appointments by directly selected candidates against advertised posts, the Merit List ceased to have all efficacy, and definitely so, beyond 13.8.2015. As both Mr. Sheikh Fazle Noor Taposh and Mr. Mehedi Hasan as learned Advocates for the Respondent No. 7 have aptly and satisfactorily argued, the Petitioners in these facts and circumstances only had an expectation of the filling up of the posts advertised in 2014 and that once all appointments against such advertised posts had been made they had no outstanding or residual claim to appointments against the same posts at any future date as sought to be done by the impugned job circular or recruitment notices of 2016. This Court, accordingly, finds that the said impugned recruitment notices of 2016 suffer from no legal infirmity and are not found to be products of any arbitrary exercise of authority by the BSC. The Petitioners, are, therefore, found not to have a judicially reviewable claim in the facts.

This Court having thus found no adequate grounds to consider the recruitment notices dated 22.2.2016 to be declared as having been issued

11

without lawful authority, there is found no merit in this Application and  
no substance in the Rule Nisi issued.

-153-

The Rule Nisi, is accordingly, discharged.

There are no Orders as to costs.

Communicate this Judgment and Order at once.

Syed Refaat Ahmed.

MD. SALIM, J:

I agree.

Md. Salim.