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In the Supreme Court Bangladesh  
High Court Division  
(Special Original Jurisdiction)

**Writ Petition No. 3056 of 2015**

**In the matter of:**

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

-And-

**In the matter of:**

Md. Razzak Ali Pramanik  
..... Petitioner.

Vs.

Bangladesh represented by the  
secretary, Ministry of Fisheries and  
Livestock and others.

..... Respondents.

Mr. Sheikh Mohammad Zakir Hossain,  
Advocate

..... For the petitioner.

Mr. Pratikar Chakma, A.A.G with  
Ms. Shuchira Hossain, A.A.G with  
Mr. Mizanur Rahman Khan Shaheen,  
A.A.G

..For the respondent no.1.

Mr. Mohammad Arshadur Rouf,  
Advocate

..For the respondent No.4.

**Present:**

Mr. Justice Sheikh Hassan Arif  
And  
Mr. Justice Md. Badruzzaman

**Heard on 09.10.2017 and  
judgment on: 17.10.2017.**

**SHEIKH HASSAN ARIF, J**

Rule Nisi was issued calling upon the respondents to show cause as to why they should not be directed to transfer the petitioner to revenue set up with continuity of service and other attendant benefits within a stipulated period of time and/or pass such other or further order or orders as to this Court may seem fit and proper.

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Short facts, relevant for the disposal of the Rule, are that, the petitioner joined the service of a development project named 'Strengthening Livestock Research Programs' "পশুসম্পদ গবেষণা কার্যক্রম জোরদারকরণ", under the Ministry of Fisheries and Livestock, People's Republic of Bangladesh as Assistant Director (Amine). The project commenced its work in July, 1997 and was expected to be completed in June, 2001. It is stated that, the petitioner joined the said project on 24.09.2001 and continued his service successfully and unblemishedly until completion of the same on 30.06.2002. It is also stated that, when the petitioner joined the said project, he had to undergo the competitive recruitment process having all requisite qualifications pursuant to an advertisement dated 29.11.2000 published in the "Daily Janakontha" on 07.12.2000. It is stated that, before completion of the said project in 2002, the transfer process of employees of the said project to the revenue set-up commenced and, on the verbal instructions of respondent no. 4, the employees of the said project including the petitioner continued their service upto 29.12.2005 without any salary. It is further stated that, the petitioner joined the said service in the project upon relying on the specific statement in the project proforma (PP) that after completion of the said project, the authority would make necessary arrangements for absorption of the employees of the said project in the revenue set-up. On such assurance and legitimate expectation, it is stated, the petitioner continued his service until 2005 and then remained unemployed with the hope that one day vacant posts would be created under the concerned ministry and the petitioner would be absorbed therein. During such long expectation and waiting period, the petitioner came to know that, a vacant post of Assistant Director (Admin) had been created under the revenue setup on 08.06.2011 and that some

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officials of the Livestock Research Institute at Savar were given additional charges for the said post. It is further stated that, the Livestock Ministry as well as the Finance Ministry of the government have in the meantime in 2010 approved creation of nine posts on temporary basis under the revenue setup and the said nine posts include a post of the petitioner, namely a post of Assistant Director, and such process of creation of the said posts is apparent from the memo dated 20.06.2010 issued by the Ministry of Finance and memo dated 08.06.2011 issued by Ministry of Fisheries and Livestock. Under such circumstances, the petitioner made various representations to the Director General of Bangladesh Livestock Research Institute, Savar followed by notice demanding justice dated 02.02.2015 to absorb him in the said vacant post of Assistant Director. The petitioner then moved this Court and obtained the aforesaid Rule as the respondents did not take any steps for absorbing him.

The Rule is opposed by the respondent nos. 1 and 4, though respondent No.4 filed affidavit-in-opposition. The main case of the respondent No.4 is that, though nine posts including the said post, of Assistant Director, have been created under the revenue setup, the said posts are yet to be included in the service Rules of the Livestock Research Institute and that the requisite qualifications for recruitment in the said post are yet to be finalized. This being so, it is stated that, the petitioner does not have any case before this Court.

Mr. Sheikh Mohammad Zakir Hossain, learned advocate appearing for the petitioner, at the very outset, has referred to the guidelines set out by our Appellate Division in **LGED vs. Mizanur Rahman, 17 BLC (AD)-91**, in

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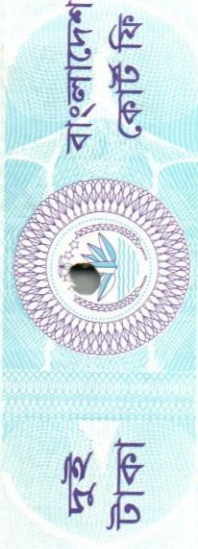
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particular the guidelines as appearing in paragraph-38 of the same. Learned advocate then submits that, admittedly, the petitioner worked in the said project successfully during project period from 2001-2002. Not only that, he submits, the petitioner also continued his service until up to 2005 without any salary. Referring to the particular statement in the Project Proforma of the said project under the heading "MOFL Will", thereby specifying the obligations of the Ministry of Fisheries and Livestock, he submits that, the petitioner and others were given assurance that they would be absorbed in the revenue setup after completion of the said project. Therefore, he submits, on the basis of such assurance of the Ministry (MOFL), the petitioner joined the service of the said project and continued as such successfully till completion of the same. This being so, according to him, a legitimate expectation has been created in favour of the petitioner which has become in-alienable and in-separable, as held by our Appellate Division in the above cited **LGED vs. Mizanur Rahman's case**. Mr. Zakir Hossain then submits that, due to his long service in the project, the petitioner has in the meantime crossed the age limit to sit for any competitive examination along with young competitors. This being so, he submits, the petitioner should not be pushed to apply in due course once advertisement for recruitment in the said vacant posts is published.

As against above submissions, Mr. Mohammad Arshadur Rouf, learned advocate appearing for the respondent No.4, submits that, just because the petitioner served in a project, a right automatically did not create in his favour to be absorbed in the revenue setup. In this regard, learned advocate has referred to the observation of our Appellate Division in the said LGED Case under paragraph-27 referring to the **Umadevi case** of

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Indian Supreme Court as reported in (2006) 4 SCC 1. Learned advocate further submits that, according to his instructions, though the posts in the Livestock Research Institute have been created, the same are yet to be included in the service Rules of the concerned Institute and no terms and conditions as well as the requisite qualifications for recruitment in the said posts have yet been finalized. This being so, according to him, no direction should be given to absorb the petitioner in the said post of Assistant Director.

It appears from the materials on record, in particular the statements in the writ petition as well as in the affidavit-in-opposition, that, the basic case of the petitioner is that he has successfully served in the project named "Strengthening Livestock Research Programs" from 2001-2002. This successful service of the petitioner in the project of the Bangladesh Livestock Research Institute under the Ministry of Fishery and Livestock is an admitted position in this writ petition. It is also not denied that, the petitioner was not absorbed at the relevant time after completion of the said project as there was no such vacant posts of Assistant of Director under the revenue setup. However, it now appears from the correspondences between the Ministry of Fisheries and Livestock and the Ministry of Finance dated 08.06.2011 and 20.06.2010 (Annexure-F series) that, the concerned Ministry has in the meantime created nine posts under Bangladesh Livestock Research Institute under the Ministry of Fisheries and Livestock, and one of such posts is 'Assistant Director'. Admittedly, the petitioner worked in the said project as Assistant Director (Admin). Therefore, it is quite natural that, the petitioner will now have some legitimate expectation to have him absorbed in the said post. The basis of

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petitioner's such expectation is the Project Proforma of the said project itself. Under Appendix-2 of the said Project Proforma (a copy of which has been supplied by the learned advocate for the respondent no.4), under heading "MOFL Will", it has described some obligations of the Ministry of Fisheries and Livestock. One of such obligations is as follows:

*"after completion of the project it will make necessary arrangement for absorption of the recruited manpower in revenue budget"*

Therefore, it appears that, in fact, the petitioner joined the said project on the basis of this assurance that he would be absorbed in the revenue set up after completion of the project. However, unfortunately, the petitioner could not be absorbed after such completion of the project admittedly because of the fact that, there was no such vacant post under the revenue set up at the relevant time.

Now, when the concerned Ministry as well as the Ministry of Fisheries and Livestock have created nine posts including the post of Assistant Director, such expectation of the petitioner to be absorbed in the said post of the Institute cannot be tagged with the finalization of the terms and conditions of such recruitment in the said posts as well as finalization of minimum qualifications for such recruitment, as submitted by the learned advocate for the respondent No. 4. The very reason of our such view is that, admittedly, the petitioner was given assurance to be absorbed after completion of the project and such assurance was not given with any other condition, namely to sit for examination or to compete with other

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fresh applicants after publication of advertisements for such recruitment. This scenario has been addressed by our Appellate Division in the well discussed case of **LGED vs. Mizanur Rahman, 17 BLC (AD)-91**, wherein some engineers, who worked in project under LGED, claimed similar legitimate expectations like the petitioner. In the said decision, though our Appellate Division (Author Judge was Justice S K Sinha, as his Lordship then was), at the beginning, praised the view adopted by the **Indian Supreme Court in the Secretary, State of Kanataka vs. Umadevi (2006) 4SCC 1**, our Apex Court finally deviated from the said view on sympathetic ground considering the facts that the said engineers worked in concerned project for long time successfully, and, by such work, they had already crossed their age limit for recruitment in due process after publication of advertisements. Accordingly, our Apex Court has given eleven guidelines under paragraph-38 of the said reported case for absorption of such employees of the projects.

After considering the facts and circumstances of the case of the parties and the fact that the petitioner in fact worked in the said project till completion of the same successfully and remained unemployed for long time even after 2005, this Court is of the view that, the petitioner has in the meantime met the requirements of the said guidelines as enunciated by our Appellate Division in the said case and as such a legitimate

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expectation has accrued in his favour which has in the meantime become inalienable and inseparable.

It further appears that, after creation of the said vacant posts, the same are being filled up by some officials of the Institute to be performed as their additional duties. Therefore, this Court does not find any reason as to why the petitioner should not be absorbed in the said vacant post of Assistant Director of the Institute in view of the guidelines of our Appellate Division in the said LGED case. Thus, since absorption of the petitioner cannot be tagged with the finalization of the terms and conditions of recruitment process as well as finalization of the requisite qualifications for requirement in the said post, this Court is of the view that, since the petitioner was recruited in the project after competing through due examination process having requisite qualifications, he is entitled to be absorbed in the post of Assistant Director of the said Institute and the said Institute should not publish any advertisement for recruitment in the said post until and unless the petitioner is absorbed therein.

In view of above, we find merit in the Rule and as such the same should be made absolute.

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In the result, the Rule is made absolute. Accordingly, the concerned respondents are directed to absorb the petitioner in the revenue setup in the post of Assistant Director of respondent no.4 within a period of 60(sixty) days from receipt of the copy of this judgment.

Communicate this.

S.H. Arif

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(Sheikh Hassan Arif, J)

I agree,

M. B. Zaman

.....  
(Md. Badruzzaman, J)

Typed by: Nipa: 01.01.2018.

Read by:

Exam. by:

Readied by:

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01.01.18

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01.01.17

প্রত্যয়িত অবিকল প্রতিলিপি

*[Signature]*  
01.01.18  
সহকারী রেজিস্ট্রার  
বাংলাদেশ সুপ্রীম কোর্ট, হাইকোর্ট বিজগ  
(১৮৭২ ইং সনের ১নং আইনের)  
৭৬ ধারামতে ক্ষমতা প্রাপ্ত

*[Signature]*  
মোঃ আব্দুর রশিদ  
প্রশাসনিক কর্মকর্তা

*[Signature]*  
01.01.18  
Md. Shamsul Haque  
Superintendent

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