

IN THE SUPREME COURT OF BANGLADESH
(APPELLATE DIVISION)

PRESENT:

Mr. Justice Syed Mahmud Hossain, Chief Justice
Mr. Justice Muhammad Imman Ali
Mr. Justice Hasan Foez Siddique
Mr. Justice Mirza Hossain Haider

CIVIL PETITION FOR LEAVE TO APPEAL NO.161 of 2018 WITH CP NOS.397
699, 716-17 OF 2018

(From the judgement and order dated the 27th day of July, 2017 passed by
the High Court Division in Writ Petition No.9356 of 2016)

Md. Shamimul Ahsan, : Petitioners
Thakurgaon and others (in CP No.161 of '18)

Md. Sahadat Hossain and others : Petitioners
(in CP No.397 of '18)

Md. Rahmatullah Shamsul and : Petitioners
others (in CP No.699 of '18)

Md. Milon Mia and others : Petitioners
(in CP No.716 of '18)

Shamim Ara Sultana Shormy and : Petitioners
others (in CP No.717 of '18)

-Versus-

The Secretary, Ministry of : Respondents
Finance, Bangladesh Secretariat, (in all the cases)
Ramna, Dhaka and others

For the Petitioner : Dr. Rafiqur Rahman, Senior Advocate
(in CP No.161, 716 and 717 of '18) with Mr. Abdul Matin Khasru, Senior
Advocate and Mr. Qumrul Haque
Siddique, Advocate instructed by Mrs.
Madhumaloti Chowdhury Barua,
Advocate-on-Record

For the Petitioners : Dr. Rafiqur Rahman, Senior Advocate
(in CP No.699 of '18,) with Mr. Abdul Matin Khasru, Senior
Advocate and Mr. Qumrul Haque
Siddique, Advocate instructed by Syed
Mahbubar Rahman, Advocate-on-
Record

For the Petitioners : Dr. Rafiqur Rahman, Senior Advocate
(in CP No.397 of '18) with Mr. Abdul Matin Khasru, Senior
Advocate and Mr. Qumrul Haque
Siddique, Advocate instructed by Mr.

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Shamsul Alam, Advocate-on-Record

For Respondent Nos.1-6
(in CP No.161 of '18)

: Mr. Mahbubey Alam, learned Attorney General instructed by Mr. Haridas Paul, Advocate-on-Record

For Respondent No.7
(in CP No.161 of '18)

: Mr. Shamim Khaled Ahmed, Senior Advocate instructed by Shirin Afroz, Advocate-on-Record

For Respondent No.8
(in CP No.161 of '18)

: Mr. Sheik Fazle Noor Taposh, Advocate with Mohammad Mehedi Hasan Chowdhury, Advocate and Mr. Sheik Zakir Hossain, Advocate instructed by Mr. Nurul Islam Chowdhury, Advocate-on-Record

For the Respondents
(in CP No.397 of '18)

: Mr. Mahbubey Alam, Senior Advocate with Mr. Sheik Zakir Hossain, Advocate instructed by Mr. Nurul Islam Chowdhury, Advocate-on-Record

For the Respondents
(in CP No.699 and 716-717 of '18)

: Mr. Sheik Zakir Hossain, Advocate instructed by Mr. Nurul Islam Chowdhury, Advocate-on-Record

Date of Hearing

: The 13th day of February, 2018

(JUDGEMENT)

Muhammad Imman Ali, J: These petitions for leave to appeal have been filed against the judgement and order dated the 27th day of July, 2017 passed by the High Court Division in Writ Petition No.9356 of 2016 discharging the Rule *Nisi*.

The facts, relevant for disposal of these civil petitions for leave to appeal, are that Sonali Bank Limited published a recruitment circular dated 27.01.2014 in the Daily Ittefaq and the Financial Express (which was further published in 'Weekly Chakrir Bazaar' on 31.1.2014) inviting 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

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Appellate Division

last date of submitting applications was 26.02.2014. The writ-petitioners duly applied for the posts advertised in the recruitment circulars upon fulfilling the necessary prerequisites. They received their admit cards and sat for the examinations as per the job circular dated 27.01.2004. The MCQ and written examinations for the posts of Senior Officer, Officer and Officer Cash were held on 22.08.2014 and 13.09.2014 respectively. As the Bankers Selection Committee (BSC) delayed recruitment of the petitioners in the waiting list and published the impugned job circular, they filed Writ Petition No.9356 of 2016 and obtained the Rule *Nisi*.

The General Manager, Human Resources Development, Sonali Bank (respondent No.7), filed affidavit-in-opposition contending, *inter alia*, that the job circulars dated 27.01.2014 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, 1,306 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

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candidates under the said quota the Bank's Board of Directors

✓ ("BOD") on 28.07.2015 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 436th Meeting of 05.08.2015. The said decision was conveyed to respondent No.7, being the Bank's Deputy General Manager, Human Resources Development Department on 06.08.2015. 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.

Before the High Court Division, it was submitted on behalf of the Bank that the statements made in the said writ petition that the writ-petitioners were supposed to be recruited from a "Panel List" is absolutely imaginary, vague, baseless and misconceived. It was 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 recruitees. 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 22.02.2016 are for completely new posts other than the ones advertised on 27.01.2014. In the circumstances, therefore, the Bank sees no automatic right arising in favour of the writ-petitioners to be recruited for the new posts at any future date. ✓

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Superintendent

Appellate Division

Writ-respondent No.7 further contended that there was nothing included in the job circular dated 27.01.2014 that 'a panel' or 'waiting list' would be prepared for future recruitment in the posts of Senior Officer, Officer and Officer Cash. He further contended that the idea of preparation and recruitment from such 'panel' or 'waiting list' was just a fictitious belief of the writ-petitioners. Mere proposal of recommendations made by the concerned authority as reflected in the annexure to the writ petition did not create any legal or vested right in favour of the petitioners to be recruited in the new posts circulated on 22.02.2016 in various dailies. He further contended that the writ-respondents did not provide any unequivocal assurance whether by means of an expressed promise or an established practice that the successful candidates would be recruited for any post created in future from the panel or waiting list.

Writ-respondent No.2 by filing affidavit-in-opposition contended that the panel waiting list had validity and the awaiting candidates would be called up if the appointed candidate failed to join, left the post or otherwise the post fell vacant. Under the recruitment circular dated 27.01.2014, the validity period for appointment in the post of Senior Officer, Officer and Officer Cash from the panel waiting list was on 30.06.2015 which was extended till 31.12.2015. The impugned recruitment circular dated 22.02.2016 was published after expiry of the panel waiting list's validity period and the panel waiting list prepared under a particular recruitment circular was not entitled to be considered in the subsequent recruitment

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Appellate Division

Supreme Court of Bangladesh

✓circular. Writ-respondent No.2 further contended that the said panel of Senior Officer, Officer and Officer Cash were prepared by Sonali Bank Limited before formation of BSC and BSC had no jurisdiction to give any suggestion in this regard. The impugned job circular was issued as per decision of the Ministry of Finance.

In due course, after hearing both the parties, by the impugned judgement and order, the Rule *Nisi* was discharged. Hence, the writ-petitioners filed the instant civil petitions for leave to appeal before this Court.

Dr. Rafiqur Rahman, learned Counsel, appearing for the petitioners submitted that the writ-petitioners had gone through the complete recruitment process and successfully qualified to be recruited for the positions advertised at the relevant time in 2014. The Bank authority had filled up the vacancies as per merit list from the qualified candidates. Subsequently, they prepared a waiting panel list with the successfully qualified candidates including the petitioners for the purpose of filling up the vacancies in future. The long time practice and custom of the state-owned Banks and other financial institutions is that the recruitment in the upcoming vacant positions is always filled up from the waiting panel list. Thereby, the writ-petitioners had a legitimate expectation to be recruited in the post of Senior Officer, Officer and Officer Cash in Sonali Bank Limited. He further submitted that in all the circulars pre-formation of the Bankers Selection Committee, did not contain any word that a Panel or Waiting List would be prepared with the successful candidates but it was a regular practice to form the said Panel or Waiting List for filling up the upcoming vacancies. The writ-respondents have already acted on the said

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Appellate Division

tradition or practice and cannot deny without giving prior notice to the writ-petitioners. Hence the impugned judgement and order dated 27.07.2017 is liable to be set aside. He further submitted that the High Court Division failed to consider the fact that customs are also recognised as having force of law as per article 152 of the Constitution of the People's Republic of Bangladesh. Considering the definition of law in the said article, the High Court Division should have made the Rule absolute and as such, the impugned judgement and order dated 27.07.2017 is liable to be set aside. He further submitted that the High Court Division failed to appreciate that admittedly the list prepared by the respondents had not been made public by way of publishing the same in any manner. The petitioners own source gathered information about the said list. Once a List is prepared with the successfully qualified candidates to fill up specific vacancies, the respondents cannot refuse to appoint them whimsically in those posts when vacancy exists. Due to the promise of the respondents, the petitioners relied upon their promise and they had been waiting to be appointed in the vacant posts and in the meantime, most of them have crossed the age limit to get appointment in the civil service. The High Court Division without considering the above facts and circumstances arrived at an erroneous conclusion of the case and as such, the impugned judgement and order dated 27.07 2017 is liable to be set aside. He further submitted that the High Court Division failed to appreciate that the respondents have promised to the petitioners that they will be recruited as and when vacancy occurs in the future and accordingly there had been vacancies in the aforesaid three posts, but respondent No.2 without considering the demand of the petitioners had published the job circulars dated 22.02.2016 which is apparent violation of the established "principle of estoppel" from going

ATTESTED

Superintendent
Appellate Division
Supreme Court of Bangladesh

back on their earlier promise. He further submitted that the petitioners had a legitimate expectation that they will be recruited in the aforesaid three posts, but respondent No.2 most arbitrarily and illegally published the impugned job circulars dated 22.02.2016 with an intention to fill up the vacancies excluding the petitioners who are on the waiting panel list. It is a settled principle that judicial review may be allowed on the plea of frustration of legitimate expectation in five specific situations: (i) if there is a promise by the authority expressed either by their representation or conduct, (ii) the decision of the authority was arbitrary or unreasonable within the Wednesbury principle, (iii) there was a failure on the part of the concerned authority to act fairly in taking the decision, (iv) the expectation to be crystallized into a legitimate one, it must be based on clear facts and circumstances leading to a definite expectation and not a mere anticipation or a wish or hope and also must be reasonable in the circumstances and (v) judicial review may allow such a legitimate expectation and quash the impugned decision even in the absence of a strict legal right unless there is an overriding public interest to defeat such an expectation. In the present case, the above observation falls squarely in favour of the petitioners and as such, the impugned judgement and order dated 27.07.2017 is liable to be set aside. He further submitted that the petitioners have already crossed their age limit to apply for public service while waiting to be recruited in the aforesaid three posts. The policy of the Government in the present era cannot be of ignoring the public interest. If the respondents are allowed to proceed with the recruitment in the aforesaid post of Senior Officer, Officer and Officer Cash then the petitioners will be nowhere with their lives and will suffer irreparable loss and injury and hence all further actions on the basis of the impugned job circular dated 22.02.2016 should

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Appellate Division

Supreme Court of Bangladesh

Impugned-App-18 Dismissal and Dec. of F. Branch/C.P.No.101 of 2018 with 397 of 2018 and 699, 716-17 of 2019, Sec 2,274 sub-sec

be stayed for ends of justice. He further submitted that the petitioners will be highly prejudiced if their right to have equal opportunity in the public service is denied only on technical ground. There are instances in other state-owned banks and financial institutions wherein the validity of the Panel is extended from time to time to facilitate the respective banks to fill up the upcoming vacancies to meet their urgent need. There is no specific law or tradition barring extension of the validity period of a Panel or Waiting List. At the same time, it cannot be decided whimsically to deprive the petitioners from their legitimate right. The High Court Division failed to appreciate the aforesaid aspect of the fact and law and as such the impugned judgement and order is liable to be set aside for ends of justice.

Mr. Mahbubey Alam, learned Attorney General appearing for respondent Nos.1-6 in CP Nos.161 and 397 of 2018 supported the impugned judgement and order of the High Court Division.

Mr. Shamim Khaled, learned Advocate appearing on behalf of respondent No.7 in CP No.161 of 2018 also supported the impugned judgment and order of the High Court Division.

Mr. Sheikh Zakir Hossain, learned Advocate appearing on behalf of the respondents in CP Nos.699 and 716-717 of 2018 supported the impugned judgement and order.

We have considered the submissions of the learned Advocates appearing on behalf of the respective parties and perused the impugned judgement of the High Court Division and other connected papers on record.

It appears from the judgement of the High Court Division that "the job circular of January, 2014 is silent regarding the creation of "Panels" or "Waiting Lists" and did not provide any unequivocal assurance, whether by

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Superintendent
Appellate Division
Supreme Court of Bangladesh

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 contradiction to the notion of "Panel" or "Waiting List", found by the High Court Division to be an integral part of any fair and transparent evaluation and selection process leading to appointments based purely on merit." The High Court Division observed that the merit list in question in the facts was found to have lost all efficacy beyond 13.08.2015, i.e. its declared and recorded validity period. The High Court Division found 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.

On perusal of the materials on record, we do not find anything to suggest that any indication was given to the intending applicants that they would be included in a "Panel" or "Waiting List" and would be considered for recruitment in the future. The advertisement in response to which the petitioners applied was for a finite number of vacancies. Once those vacancies are filled in there cannot be any expectation that the candidates who were successful in the examination would automatically be appointed in any future recruitment drive. We do not find that any such assurance was given by the authorities.

The High Court Division observed that from the records it appeared that initially on 20.08.2015 the Bank's Board of Directors(BoD) at its 435th meeting decided to recruit in the post of

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8

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Appellate Division

Supreme Court of Bangladesh

'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 in the vacancies. Significantly, in its communication of 01.09.2015 to the Ministry, the Bank confirmed, *inter alia*, that the merit list itself had a validity period till 13.08.2015. Hence, the applicants, though successful, cannot remain in expectation of being appointed after that date.

In view of the discussion above, we do not find any illegality or impropriety in the impugned judgement and order of the High Court Division.

Accordingly, all the civil petitions for leave to appeal are dismissed.

Sdt S. M. Hasbain, CJ
 Sdt M. Imman Ali T
 Sdt Hasan Raza Biddin
 Sdt M. H. Hossain, J

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 09.08.18
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CP-161/18
 Date of application 09.08.18
 Value of Cause 3000 No of Pages 30
 Search Fee or Tax 15 Applied in Fee 30
 Total Court Fee of Tk 45+150 = 195/-
 Date of ready 09.08.18
 Date of delivery 09.08.18
 Controled by M. A. Salam
 For Secretary/Clerk Taslima
 Received by Mrs. Nahid Sultana
 A.O.P