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

Writ Petition No. 2105 of  
2019.

In the matter of:

An application under Article  
102(1) and (2)(a)(i)(ii) of the  
Constitution of the People's  
Republic of Bangladesh.

In the matter of:

Tamanna Kabir and another.  
..... Petitioners.

Vs.

Government of Bangladesh  
and others.

... Respondents.

Mr. Hassan MS Azim with  
Mr. Kamal Hossain Meahzi  
with  
Mr. Ashfaqur Rahman, with  
Mr. Mohammad Miftaul Alam,  
with  
Mr. Sumit Kumar Sarker, with  
Mr. Shahriar Shahid Saad  
Advocates

... For the petitioners.

Mr. Shaikh Mohammad Zakir  
Hossain with  
Mr. Biplab Kumar Poddar with  
Ms. Raziah Sultana Asman  
with  
Mr. Md. Anwarul Islam,  
Advocates

... For the respondent No. 2.

Mr. K.S. Salauddin Ahmed with  
Mr. Helal Uddin Sikder with  
Mr. Hasibul Huq, Advocates

... For the respondent Nos. 5-7.

Mr. Murad Reza, Senior  
Advocate with

Present:

Mr. Justice Sheikh Hassan Arif

And

Mr. Justice Md. Bazlur Rahman



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Mr. Milton Das, Advocate  
..For the respondent Nos.  
8,10,11 and 12.

Heard on 11.01.2024,  
15.01.2024, 07.02.2024 and  
12.02.2024.  
Judgment on: 19.02.2024.

**SHEIKH HASSAN ARIE, J**

1. At the instance of two Deputy Directors (Petitioner Nos. 1 and 2) of Rural Electrification Board (REB) (respondent No. 02), Rule Nisi was issued calling upon the respondents, including REB and respondent Nos. 5-12, to show cause as to why the purported seniority of the said respondent No. 5-12 over the petitioners in the post of Assistant Director in the service of respondent Nos. 2-REB and also in the post of Deputy Director, as evidenced by office orders dated 19.05.1997 and 22.12.2002 (Annexure-C and C1) and a "Draft Gradation List" dated 19.07.2017 (Annexure-D-2), should not be declared to be without lawful authority and are of no legal effect, and as to why the respondents should not be directed to amend and finalize the said gradation list restoring the seniority of the petitioners in the service

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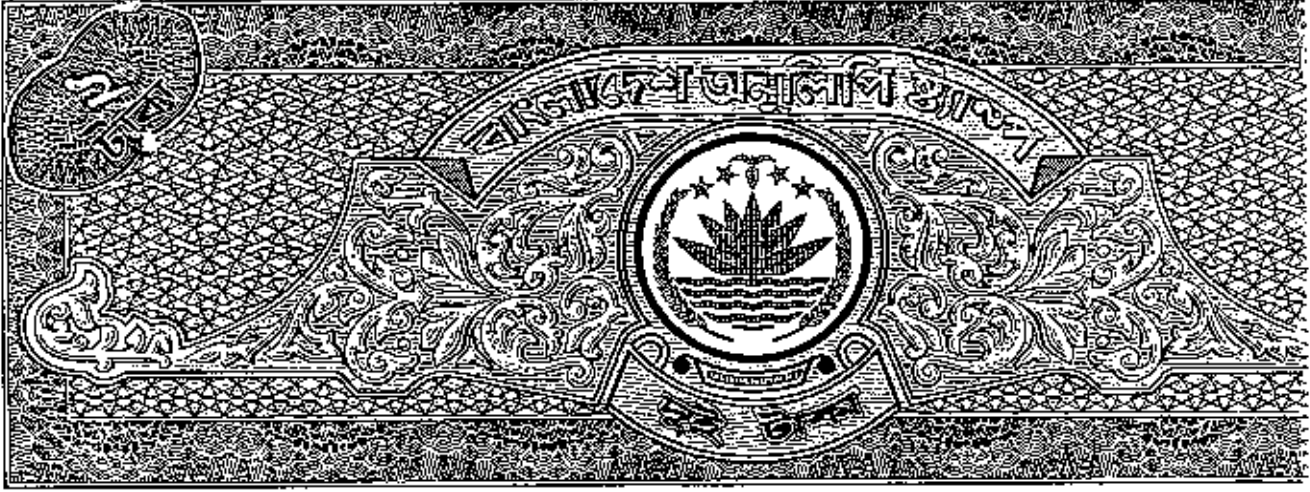
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by way of placing them above the respondent Nos. 5-12.

1.1 During pendency of the Rule, petitioner No. 02 opted to non-prosecute the Rule and, accordingly, the Rule in respect of petitioner No. 02 has been discharged for non-prosecution vide this Court's order dated 10.01.2022. Therefore, in this writ petition, now, we are required to dispose of the Rule only in respect of petitioner No.1, who will be referred as 'the petitioner'.

## 2. Background Facts:

2.1 Facts, relevant for the disposal of the Rule, in short, are that pursuant to the regular direct recruitment process, the petitioner was appointed as Assistant Director (Administration) of REB vide appointment letter dated 10.04.2000. Accordingly, she joined the service on 11.04.2000. Subsequently, she was promoted to the post of Deputy Director (Administration) on 02.08.2016. That in the meantime, respondent Nos. 5-12 were absorbed in the revenue budget under REB on different dates as



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Assistant Directors, and some of them were given retrospective effect in respect of their joining. The said absorption as well as retrospective effect of joining have ultimately put the petitioner in a junior position viz-a-viz the respondent Nos. 5-12 which prompted the petitioner to approach this Court. It is contended by the petitioner that the said respondent Nos. 5-12 were not appointed in the service of REB as against the vacant posts at the relevant time and that no vacant posts were created yet in accordance with the procedure applicable thereto. It is further contended that the said respondents were initially appointed in different projects on different dates solely on contractual basis and they did not have any right in such contract to be regularized in the revenue budget.

2.2 That respondent No. 5 joined the project under REB as Assistant Director (Project) on 15.07.1996 and the said project had the tenure up to financial year 2009-2010. However, during continuation of such project, respondent No. 5 was absorbed in REB,





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senior to the petitioner and they were promoted to the post of Deputy Director on 02.04.2014 and 21.07.2014 i.e. prior to petitioner's promotion to the said post, thereby, counting their seniority with effect from their date of absorption on 01.07.1999. Respondent Nos. 10-12 also joined some different projects under REB on 29.05.1997, 24.07.1996 and 24.07.1996 respectively, and during continuation of the said projects, they were absorbed in REB on 01.07.2002.

2.3 It is contended by the petitioner that although the relevant posts as against respondent Nos. 5-12 were in fact created vide office memo dated 17.12.2002, they were absorbed in the said posts even before creation of such posts. It is further contended that the relevant service Rules of REB as applicable at the relevant time, namely, REB Employees Service Regulations, 1990 ("hereinafter called "Service Regulation, 1990") did not have any provision to absorb any employee from projects and as such the said absorptions of respondent Nos. 5-12 as well as



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their promotion giving seniority above the petitioner were done illegally. It is contended that some of the respondents were even appointed/ regularized in the revenue budget even after recruitment of the petitioner, but they were given seniority above the petitioner counting their joining date with effect from their joining date in different projects and, accordingly, they were also promoted to the post of Deputy Director prior to the petitioner in violation of the relevant provisions of "উন্নয়ন প্রকল্প হহইতে রাজস্ব বাজেটে স্থানান্তরিত পদের পদাধারীদের নিয়মিতকরণ ও জ্যেষ্ঠতা নির্ধারণ বিধিমালা, ১৯৯৫ এবং ২০০৫ ("said Rule"), particularly when in the said Rules of 1995 and 2005, they were required to be given seniority with effect from their absorptions dates in the revenue budget. It is contended that the law as regards absorption of employees from project has in the meantime been settled by our Apex Court to that effect that such employees can only be absorbed through regular recruitment process after publishing advertisements upon competing with other candidates and in respect of such appointments, only their age limit may be relaxed.



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Therefore, it is contended, the said respondent Nos. 5-12 were in fact given back door appointments in violation of the relevant service Rules applicable at the relevant time even before creation of such posts as against them and even before conclusion of the said projects in violation of the said Absorption Rules, 1995 and 2005.

2.4 It is further contended that during such irregularity/illegality as regards appointment of respondent Nos. 5-12 and granting of their illegal seniority, the petitioner was not in Bangladesh as she went abroad under Norad Scholarship granted by the Norwegian Government for her higher studies, and, after her arrival in 2005, it took some time to digest the effect of such illegality, or irregularity, and finally she realized after publication of gradation list in 2017 that she has become victim of illegal practices by the respondents insofar as her seniority is concerned, particularly when she came to know about the detailed information from the impugned gradation list of 2017, wherein, she was shown as



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junior to the respondent Nos. 5-12. Under such circumstances, the petitioner filed objection before REB and, thereupon, a seniority selection committee comprising of three senior officers of REB was constituted and that the committee, after elaborate examination, found that in fact the grievances of the petitioner as regards seniority had substance, but the committee opined that since the Service Regulation of 2018 came into force in the meantime, they were not in a position to recommend seniority of the petitioner upon correcting such illegality. It is further contended that in reply to the audit objection, REB, vide its reply dated 05.01.2020, has also admitted clearly that such illegality/irregularity was committed in respect of absorption of respondent Nos. 5-12 and that the Purto Audit Sell Controller Office, REB has raised objections in that regard in 2014, 2015 and 2019. Under such circumstances the petitioner approached this Court under writ jurisdiction and obtained the aforesaid Rule. It is contended that although she was entitled to receive annual performance agreement bonus (APA bonus)



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for each financial year. such bonus has been stopped suddenly after filing of this writ petition.

2.5 The Rule is opposed by REB (respondent No. 2), respondent Nos. 5-7, and respondent Nos. 8, 10, 11 & 12 by filing three separate affidavits-in-opposition. The case of (respondent No. 2) REB is that the respondent Nos. 5-12 were absorbed lawfully and that 234 posts for such absorption were created for REB and, accordingly, there was no illegality in the absorption process. That at the time of creation of such 234 posts by the concerned ministry, it was decided that such posts would be filled-up by absorption from the project after completion of the projects and that the absorbed employees would get seniority in the REB through Bangladesh Rural Electrification Board Employees Service Code, 1990. Therefore, according to this respondent, the seniority given to the said absorbed employees was given lawfully. It is further contended that the petitioner even worked and performed her service under respondent No. 10 and that the respondent No. 10



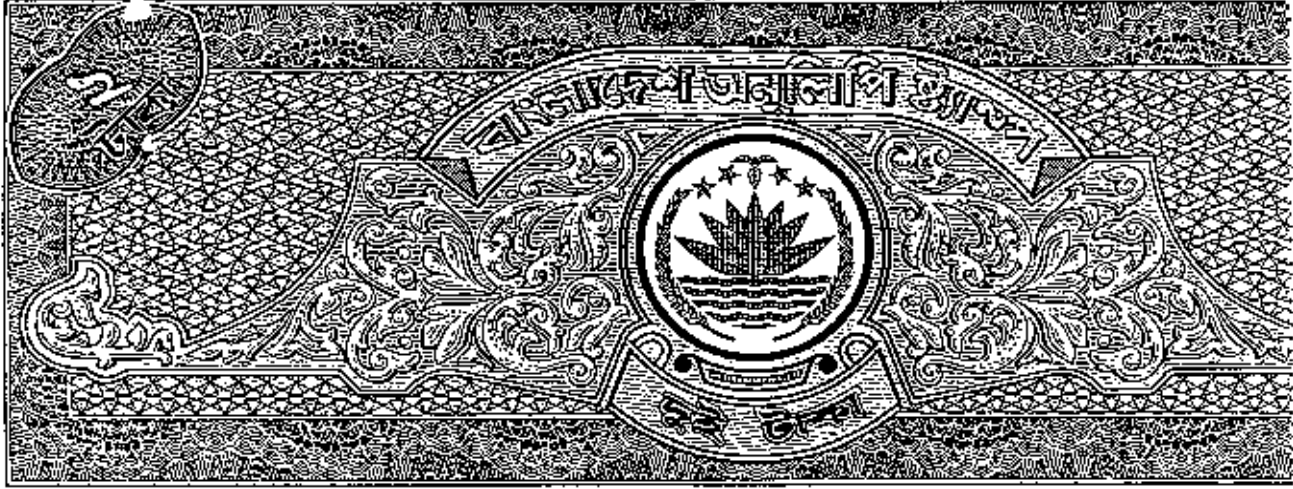
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even prepared the annual confidential report of the petitioner, but she did not raise any objection at the relevant time. It is contended that since respondent Nos. 5-12 were promoted to the post of Deputy Director much prior to the petitioner, the impugned gradation list was prepared correctly, and the enquiry committee formed upon objection of the petitioner did not find any illegality therein. That since the petitioner, did not raise any objection at the time of promotion to the post of Deputy Director or thereafter, the delay in filing this writ petition has vitiated petitioner's case and, accordingly, she should not get any relief from this Court.

2.6 The case of respondent Nos. 5-7 and respondent Nos. 8, 10, 11 and 12 are almost similar to REB. According to these respondents, since the 234 posts were subsequently created, the absorption in respect of respondent Nos. 5-12 were not illegal and that it was done following the common practice applicable at the relevant time and that the petitioner did not raise any objection at the relevant time. It is also contended that before the impugned gradation lists,

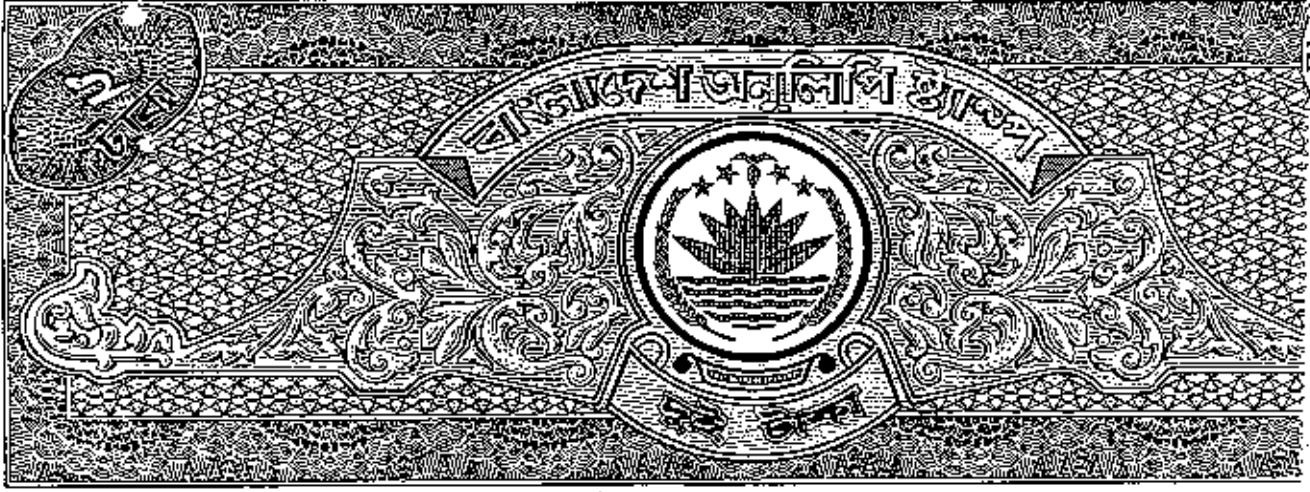


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there were two other gradation lists published in 2010 and 2013, and in both the gradation lists, the petitioner was shown as junior to respondent Nos. 5-12, but she did not raise any objection at that time. Therefore, she is now estopped by the principle of estoppel and acquiescence to raise any objection against impugned gradation list of 2017, which has only followed the seniority lists reflected in the earlier gradation lists of 2010 and 2013. It is contended that, admittedly, respondent Nos. 5, 6 and 7 were absorbed and regularized in the revenue budget under REB much prior to the joining of the petitioner and, accordingly, they were entitled to seniority even from their joining date which is, admittedly, prior to the joining date of the petitioner. It is contended that after absorption of respondent Nos. 5-12 in the revenue budget under REB, the petitioner has served with them as their junior for long time and accepted their seniority without any objection even after publication of gradation lists of 2010 and 2013. Therefore, it is contended that she cannot raise any objection now as regards gradation list of 2017,



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particularly when the said gradation list has become infructuous inasmuch as that the REB has published another gradation list in the meantime in 2021, which has not been challenged by the petitioner.

### 3. Submissions:

3.1 Mr. Hassan M.S. Azim, learned advocate, appearing along with Mr. Kamal Hossain Meahzi, learned advocates, for the petitioner, has mainly submitted as follows:

- a) That the respondent Nos. 5-12 have been getting the fruits of illegality, namely, that illegal appointment or absorption at that relevant time particularly when such absorption was done in clear violation of Regulation No. 3 of REB Employee Regulations, 1990, wherein, there was no provision for absorption. Therefore, even if some of the said respondents were absorbed even before the appointment of the petitioner, the petitioner should not be allowed to compete for her seniority along with the said illegally appointed officers. In this regard, Mr. Azim has referred to an unreported decision of this Court



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in W.P. No. 4500 of 2011 Md. Shaheenur Islam vs. Jalalabad Gas Transmission and Distribution System Limited. According to the learned advocate, this Court in the said case has categorically held that the irregular or illegal appointees cannot be allowed to compete with regular employee/appointees in respect of seniority.

b) That the appointment of respondent Nos. 5-12 in the revenue budget under REB was a back door appointment as per the definition of back-door appointment as given by our Appellate Division in **Bangladesh vs. Abdul Razzak, 71 DLR (AD)-395**. Therefore, according to him, such back door appointees cannot get any benefits which may hamper the service benefit of the regular employees.

c) By referring to the Annexure-K to the supplementary-affidavit of the petitioner, he submits that even REB has admitted such illegality in absorbing the respondent Nos. 5-12



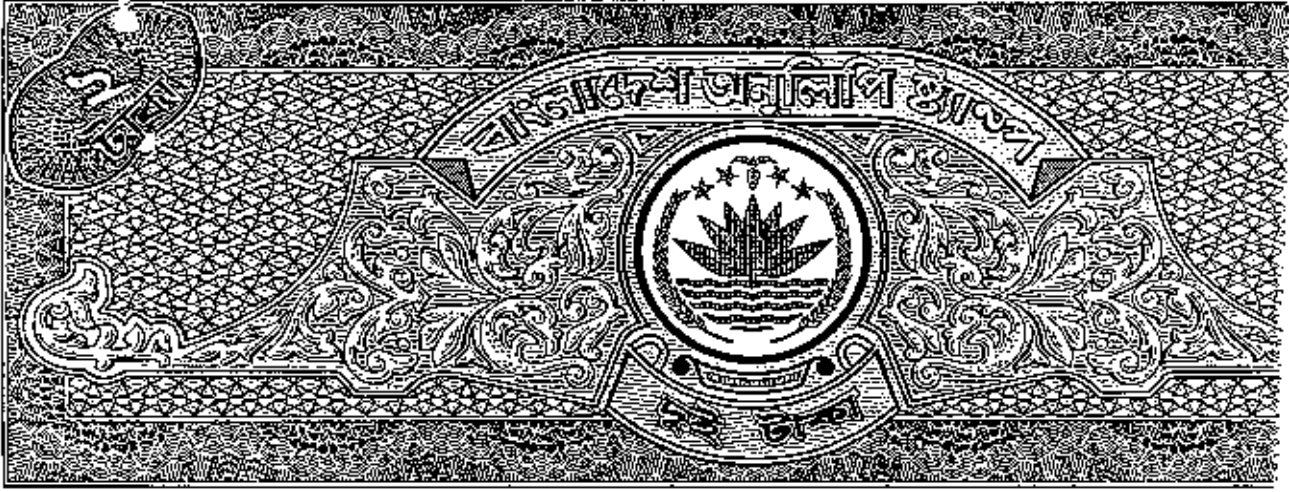
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in its reply dated 05.01.2020 to audit objection, which, according to him, reflects that such audit objections were raised long before, namely, in 1991, 1995, 2005, 2010, 2014, 2015, and 2019.

d) By referring to the report dated 12.11.2018 of the committee as constituted by REB, namely Annexure-J to the supplementary-affidavit, he submits that even the seniority determination committee of REB as constituted after objection raised by the petitioner as regards impugned gradation list, has admitted such illegality as regards appointment and seniority of respondent Nos. 5-12. However, according to him, the committee, most erroneously, concluded that with the coming into force of 2018 service regulations, in particular Regulation 12 (1) thereof, the committee became helpless in rectifying such illegality. This being so, according to him, since admittedly the petitioner joined the service through regular appointment process long before the said Probidhanmala of



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2018 came into force, any provision of the said Probidhanmala cannot stand in the way of petitioner's promotion or seniority. In support of his such submission, he has referred to a decision of our Appellate Division in **Bangladesh Bank vs. Sukamal Singha**, 21 BLC (AD)-213.

e) By referring to the earlier gradation lists, namely, the gradation list of 2010 and 2013, learned advocate submits that it is clear from the said gradation list that the information regarding the absorption dates of respondent Nos. 5-12 etc. from project were not given therein and, accordingly, it was quite impossible for an employee like the petitioner to realize from such gradation lists that her seniority was affected illegally thereby. Therefore, according to him, since the petitioner has sufficiently explained the delay in moving this writ petition challenging the impugned gradation list of 2017, it cannot be held that the petitioner came before this Court



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after inordinate delay or that the Rule has become infructuous because the REB has already published another gradation list in 2021, particularly when the new gradation list has also followed the same seniority pattern insofar as the petitioner and respondent Nos. 5-12 are concerned.

3.2 As against above submissions, Mr. Murad Reza, learned senior counsel and Mr. K.S. Salauddin Ahmed, learned advocate, appearing on behalf of two sets of respondents, namely, respondent Nos. 8,10,11 and 12 and respondent Nos. 5, 6 and 7 respectively, have made the following submissions:

- i) That since the petitioner did not raise objection at the relevant time of appointment/absorptions of the respondents under revenue budget and also failed to raise such objection subsequently when they were promoted to the post of Deputy Director before the petitioner, she has waved and acquiesced to such irregularity and as such she cannot raise objection now



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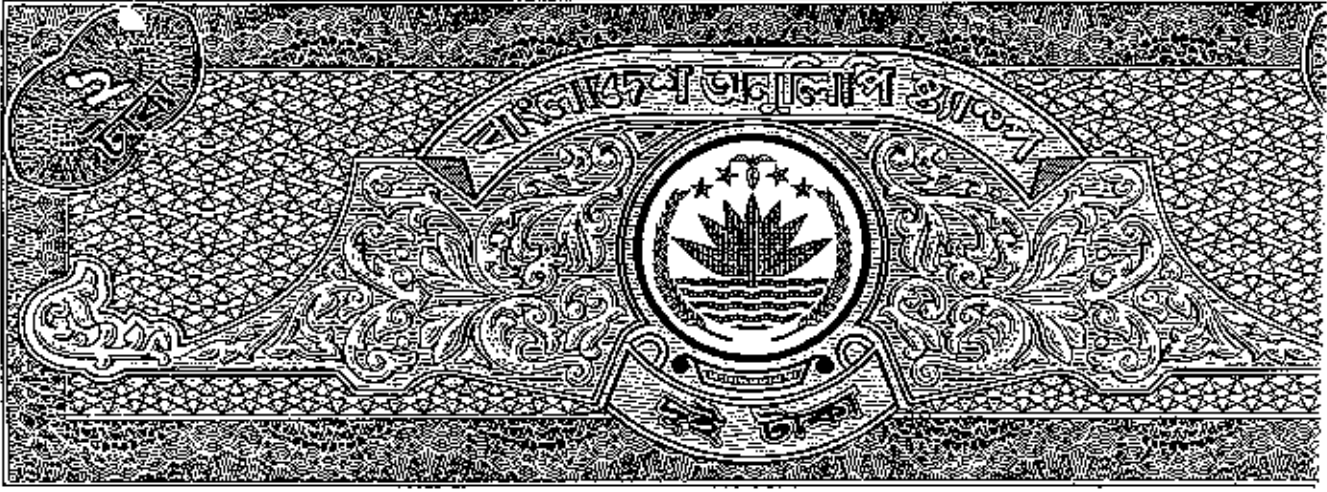


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after long delay. In support of his such submission, Murad Reza has referred to a decision of our Appellate Division in **Bangladesh vs. Akterun Nobil**, 71 DLR (AD)-318.

- ii) That the respondent Nos. 5-12 have already enjoyed the benefit of seniority for long time and such enjoyment of respondent Nos. 5-12 has been accepted by the petitioner repeatedly, particular when she did not raise any objection against the gradation lists of 2010 and 2013, wherein she was shown as junior to the respondent Nos. 5-12. This being so, according to them, the petitioner has no case before this Court. In support of such submission, they referred to a decision of our Appellate Division in **Delowar Hossain Mollah vs. Bangladesh**, 9 MLR (AD)-89.

- iii) By referring to a Memo dated 10.07.2000 issued by the Ministry of Power, Energy and



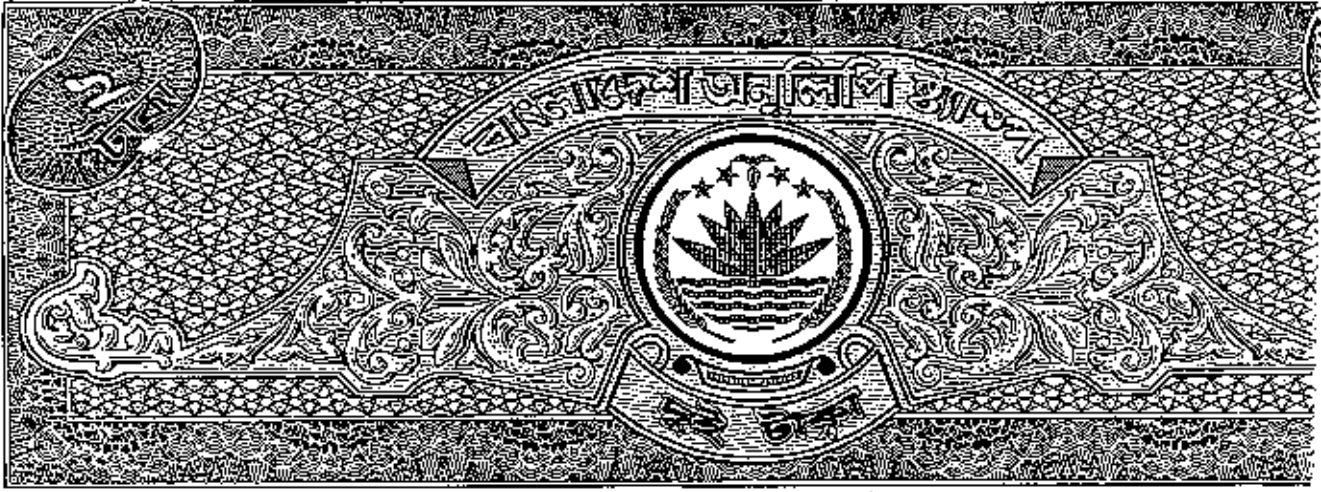
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Mineral Resources (Annexure-Z) and other circulars, as annexed to the affidavit-in-opposition of respondent Nos. 8, 10, 11 and 12 as Annexure-Z, Mr. Reza submits that since 336 posts were sanctioned by the Ministry under REB for filling up such posts from the project employees it cannot be said that the respondent Nos. 5-12 were not appointed in vacant posts or that REB did not have any posts being created by the concerned Ministry for their absorption. He submits that even the petitioner was appointed in violation of the said circular dated 10.07.2000.

iv) That the petitioner has come before this Court after a long delay. Therefore, according to him, such inordinate delay has vitiated petitioner's case insofar as equitable relief under writ jurisdiction is concerned.

3.3 Mr. Shaikh Mohammad Zakir Hossain, learned advocate appearing for REB (respondent No. 02),



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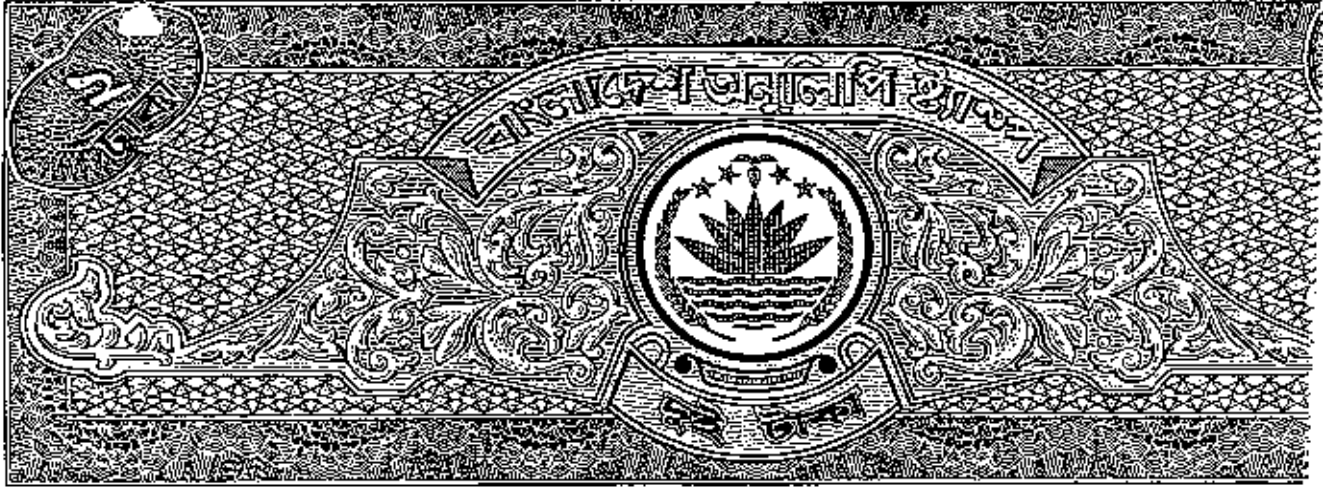
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has mainly adopted the above submissions of Mr. Murad Reza and Mr. Salauddin Ahmed, learned advocates. Therefore, his submissions need not be mentioned.

#### 4. Deliberations, Findings and Orders of the Court:

4.1 It appears from the above statements of the parties in the writ petition, affidavits-in-opposition and supplementary thereto as well as the submissions of the learned advocates that the main points for determination in this writ petition are as follows:

- a) Whether the respondent Nos. 5-12 were absorbed/appointed illegally/irregularly in post of Assistant Directors under revenue budget of REB.
- b) If so, whether illegally/irregularly appointed employees may be allowed to compete with the regularly appointed employees at par, particularly when such competition may cause disadvantage to the regularly appointed employees insofar as their service benefits are concerned.



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c) If the answers to the above points are found in the negative, whether the petitioner should be allowed any relief under writ jurisdiction, particularly when she has apparently caused huge delay in approaching this Court.

R | a) ~~Whether respondent Nos. 5-12 were appointed illegally/regularly:~~

4.2. Admittedly, respondent Nos. 5-12 were absorbed in the revenue budget during a period from 1997-2002. At the initial period of 1997, the applicable service Rules was titled 'REB Employee Service Regulation, 1990' as promulgated by REB under Section 26 of the Rural Electrification Board Ordinance, 1997 (Ordinance No. 51 of 1997). Sub-regulation (2) of Regulation No. 01 provides that the said service regulation shall be applicable in respect of all full time employees under REB. Regulation 3 provides five ways of recruitments, namely:

- (1) By way of direct recruitment.
- (2) By way of promotion.
- (3) By way of deputation.

W.P. No. 2105 of 2019 (Judgment dated 19.02.2024)

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- (4) By way of contract.
- (5) By way of temporary appointment.

4.3. The said Regulation No. 03 does not provide any other way of recruitment under REB. The admitted position in this writ petition is that the respondent Nos. 5-12 were initially appointed in different development projects under REB and that they were subsequently absorbed under the revenue head of the REB during a period from 1997-2002. The new regulation, namely, REB Employees Service Regulation, 2018, as promulgated under Section 29 of the new legislation, namely, BREB Act, 2013 (Act No. 57 of 2013) provides for three ways of recruitments (regulation Nos. 3, 4 and 5), namely, appointment by direct recruitment, appointment by promotion and appointment by outsourcing.

4.4. The admitted position in this writ petition is that the petitioner was appointed as Assistant Director (Administration) on 11.04.2000 by way of direct recruitment process as per the relevant provision of the said new service Regulation. Further admitted



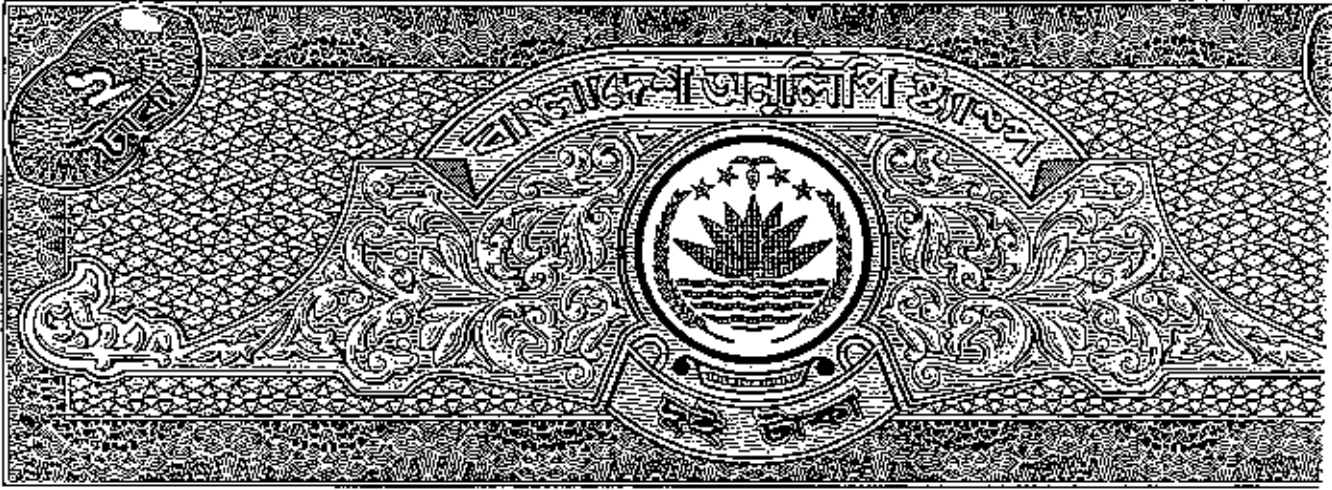
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position is that the respondent Nos. 5-12 were not recruited or absorbed in accordance with the said service Regulations. Rather, they were, admittedly, absorbed in the service under the revenue budget of REB during a period from 1997-2002 from different projects wherein they were appointed on contractual basis. Another admitted position is that in the said contract appointing the said respondents on contractual basis, there was no obligation of REB to absorb them under revenue budget. Therefore, apparently, they were back-door appointees as held by our Appellate Division in the above cited **Abdul Razzak's Case, 71 DLR (AD)-395.**

4.5. In this regard, we have also examined the memo dated 10.07.2000, as issued by the Energy Ministry, as regards creation of 336 posts in the organogram of the REB for filling up the said posts by the employees of development projects. Therefore, apparently, most of the respondent Nos. 5-12 were absorbed in the revenue budget of REB

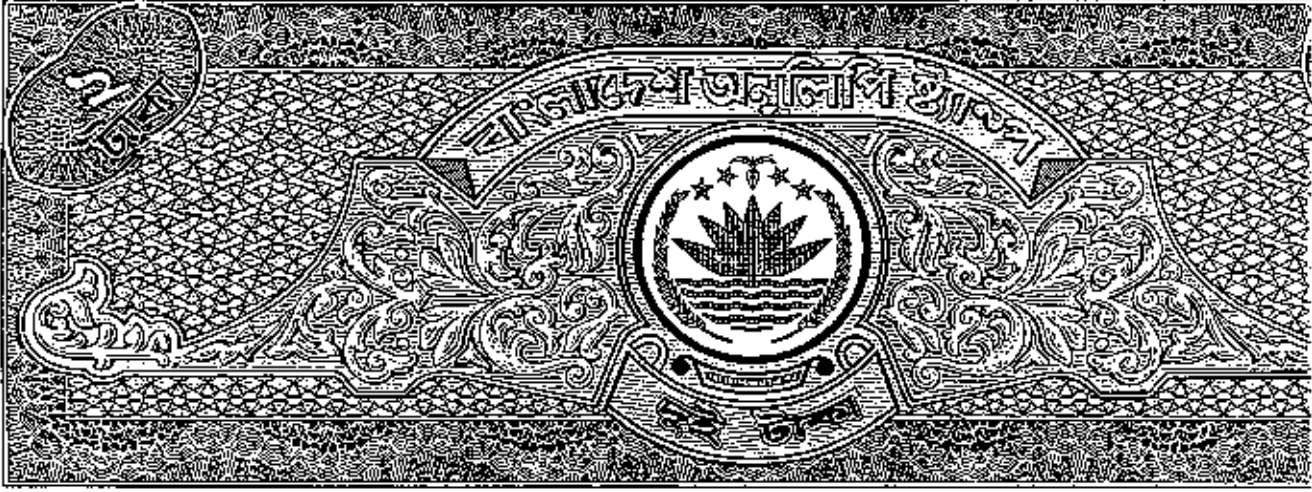


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even before creation of their posts. Not only that, even if some posts are created by the ministry concerned for the purpose of absorbing the employees of development project, such employees of development project cannot get any upper-hand appointment without following the due process of appointment as provided by service regulation concerned, which means that, they are bound to compete with other aspirant appointees and they may only get the benefit of age relaxation. This aspect has been clearly declared by our Appellate Division in the above referred **Abdul Razzak's Case**. Another aspect of illegality or irregularity in the appointment of respondent Nos. 5-12 is that they were absorbed even before completion of their respective projects, which was not allowed under the Absorption Rules of 1995 and 2005. It further appears from the said Absorption Rules of 1995 and 2005 that even if some employees from project, after completion of the project, are appointed under the revenue head, their seniority will be counted from the date of their



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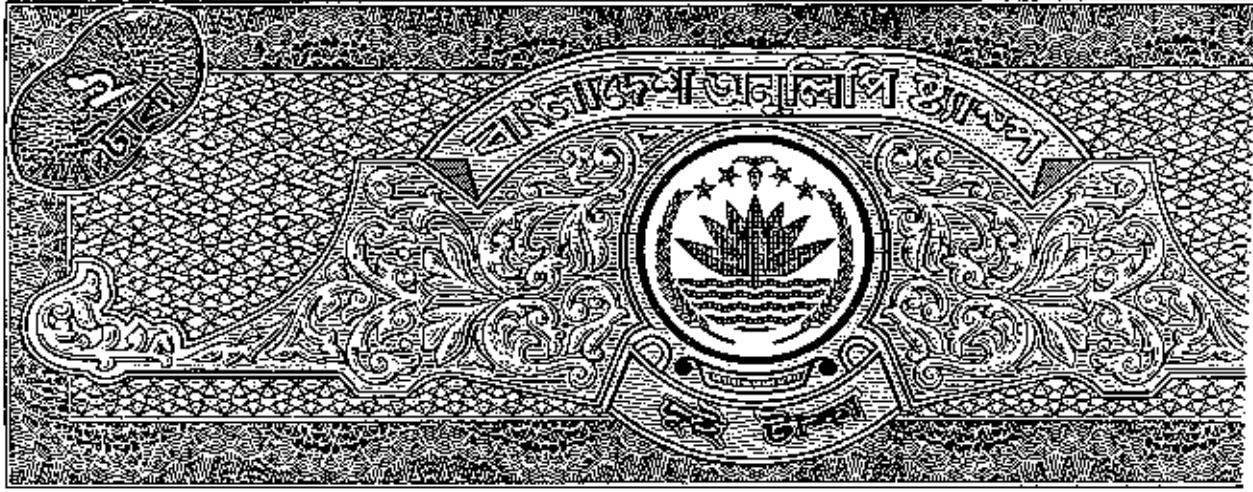


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absorption and such seniority cannot be given any retrospective effect. This position has been pointed by the audit objection as reflected in Annexure-K to the supplementary-affidavit of the petitioner.

4.6. Therefore, it appears from the above position that the respondent Nos. 5-12 were in fact appointed through back-door appointment process, not permitted by law. Such appointment /absorption of the respondent Nos. 5-12 has not only violated the relevant provisions of service regulations applicable to REB recruitment, it has also violated the fundamental rights of numerous aspirants of this country as guaranteed by Article 29 of the Constitution. Since no public notice seeking application for recruitment in the said posts was published by REB allowing the other aspirant citizens of this country to apply for the said posts, their fundamental rights guaranteed under Article 29 of the Constitution have been violated and, in doing so, the respondent Nos. 5-12 were given an

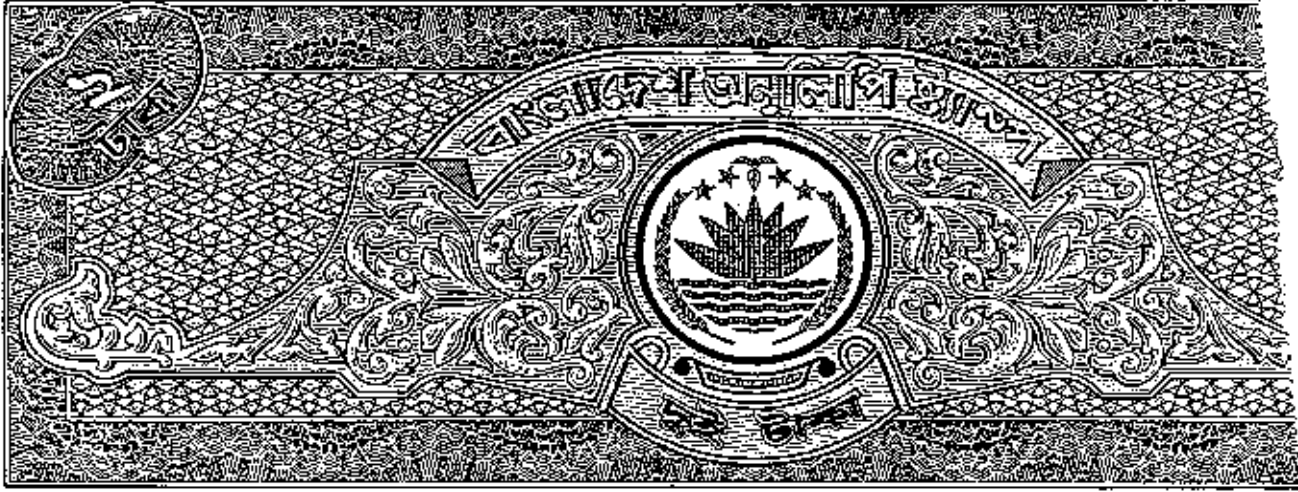
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illegal treatment to their advantage but to the disadvantage of numerous aspirants of this country.

4.7. It is true that such illegal/irregular appointments were done in ~~an~~numerable numbers in the past and such back-door appointments were even allowed by this Court, including our Appellate Division, through different writ petitions. But, finally, our Apex Court has put the brake by the above referred **Abdul Razzak's** case and categorically declared that such illegal appointment should not be allowed in the future. But, under no circumstances, such illegal or irregular appointment can be termed as regular legal appointment by the passage of time. Illegality remains illegality despite the passage of time. Sometimes this Court allows to continue such illegality for the sake of greater interest of public peace and to avoid anarchy, as has been done in the earlier writ petitions wherein such back-door appointments were allowed. But that does not mean, or is not tantamount to, giving, legality to such illegal or irregular appointments. Allowing



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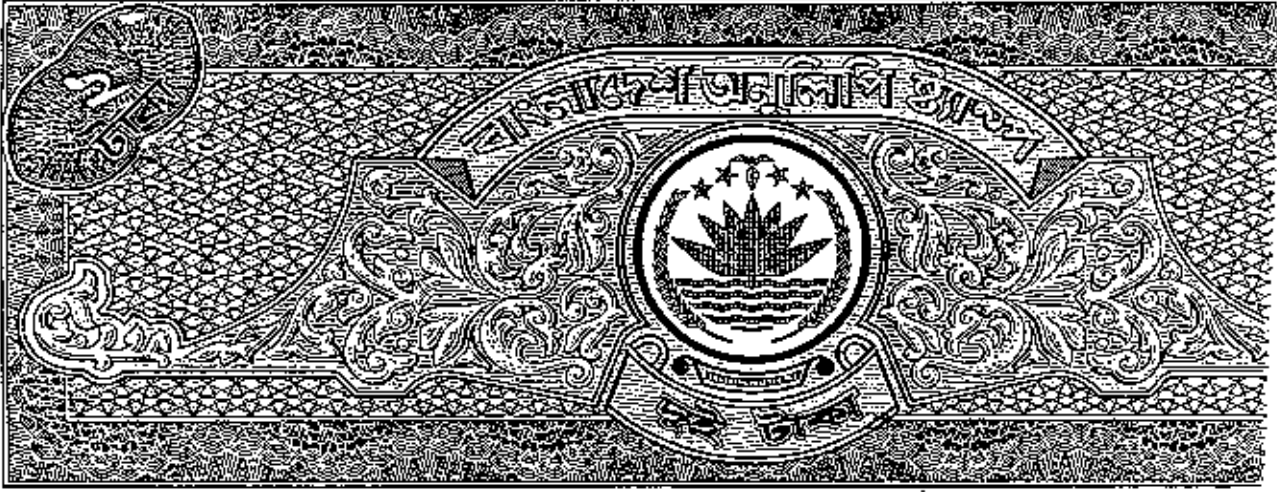


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such illegality to continue for greater public interest has been recognized in the sub-continent in various cases. Even the judgments in our 5<sup>th</sup> Amendment case, and 7<sup>th</sup> Amendment case as passed by our Appellate Division, have also allowed such illegality to continue provisionally for the sake of avoiding public anarchy on the question of public necessity, holding that the said episodes are closed and past episodes. That condonation of past illegal episodes does not give them legality. In the present case as well, although we are not inclined to hold that the respondent Nos. 5-12 should face the consequence of such illegal appointment, thereby, directing the REB to initiate the recruitment process in respect of them afresh, we cannot shut our eyes to the admitted position that they were recruited or absorbed illegally.

4.8. In view of above discussions facts and law, we are of the view that the absorption/recruitment of the respondent Nos. 5-12 under REB, during a period from 1997 to 2002, were done in violation of relevant service Rule/regulations. However, such

  
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illegality may be condoned only to the extent that their such illegal or irregular recruitment does not cause any disadvantage to other legally recruited employees. Therefore, we are of the view that the answer to the question No. (a) above is in the Affirmative.

4.9. With the above answer of this Court to the question No. (a) in the affirmative, we need to decide whether such illegal appointees should be allowed to compete with the regular appointees like the petitioner in respect of seniority viz-a-viz other service benefits. Admittedly, the petitioner was regularly appointed in accordance with the service rules concerned as Assistant Director (Administration) on 11.04.2000. Therefore, apparently, some of the respondents were regularized/absorbed before the petitioner in the revenue budget and some of them were absorbed subsequently, but were given retrospective effect from their joining in the project. A division bench of this Court, to which one of us was party, has



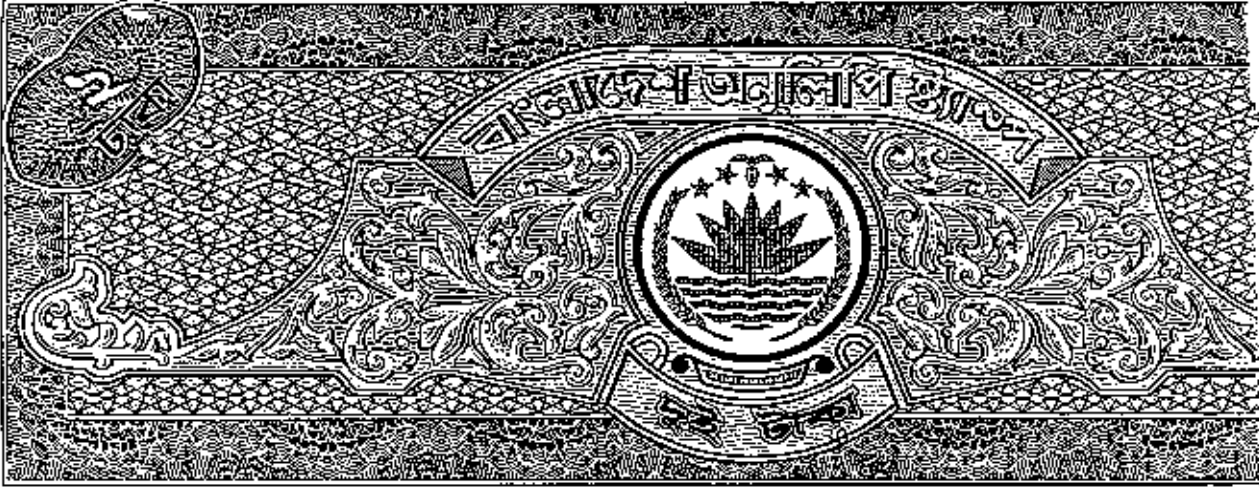
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already decided this point in an unreported W.P. No. 4500 of 2011 (Md. Shaheenur Islam vs. Jalalabad Gas Transmission) after elaborate discussions. Similar issue was raised therein as regards seniority. This Court categorically held therein that such back-door employees, or unqualified appointees, cannot be allowed to contest with the qualified employees in terms of seniority and other service benefits. The relevant observation of this Court in the said decision is quoted below:

*"Admittedly, petitioner was the qualified candidate in the same recruitment process and examination. Therefore, a qualified candidate cannot be compelled to contest with the disqualified candidates as regards seniority or other benefits including promotion. This Court has time and again declared in favour of sanctity of merit list even when the employees are promoted from one post to another. After promotion of the employees appointed at the same time, even their initial seniority depending on the merit list at the time of recruitment cannot be disturbed irrespective of their date of promotion to the next post. This position has been declared*



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*with approval by this Court in unreported Writ Petition No. 12471 of 2013 (Md. Abul Kalam Azad and another vs. Govt. of Bangladesh and others.). Therefore, we have no option but to hold that the petitioner has time and again been deprived of his legitimate expectation and rights. His seniority has been jeopardized by the illegal actions of Jalalabad authority by preparing gradation list from the very beginning wherein the petitioner has been placed below respondent Nos. 8 and 9. Accordingly, we hold that though we cannot give back all the benefits of seniority to the petitioner from the very beginning, the petitioner should be given such benefits of seniority with effect from 2009 when the post of General Manager became vacant."*

4.10. In view of above question No. (a), we have no option now but to hold that the respondent Nos. 5-12, under no circumstances, can be allowed to compete with the petitioner in respect of seniority and other benefits at any stage of their service tenure. It has to be kept in mind that the respondent Nos. 5-12 have been in service, or will continue to be in service, on the basis of an illegal recruitment process, though such illegal recruitment is being



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condoned by this Court in order to avoid chaotic situation in REB, particularly when they have in the meantime served REB for long time and have taken huge benefits as against their such service. But that condonation, or mercy of the Court, does not mean that they will be allowed to cause harm to the legally recruited employees like the petitioner in respect of her seniority or other service benefits. Accordingly, we are of the view that there cannot be any competition between the respondent Nos. 5-12 and petitioner in respect of seniority viz-a-viz and/or other benefits including preparation of gradation list by respondent-REB.

4.11. Now, whether the delay in approaching this Court should vitiate petitioner's case. Admittedly, the petitioner has approached this Court in 2019 under writ jurisdiction after she has failed to convince the seniority committee of REB to get back her seniority and other benefits. The admitted position is that before publication of impugned gradation list in 2017, REB had already published two other



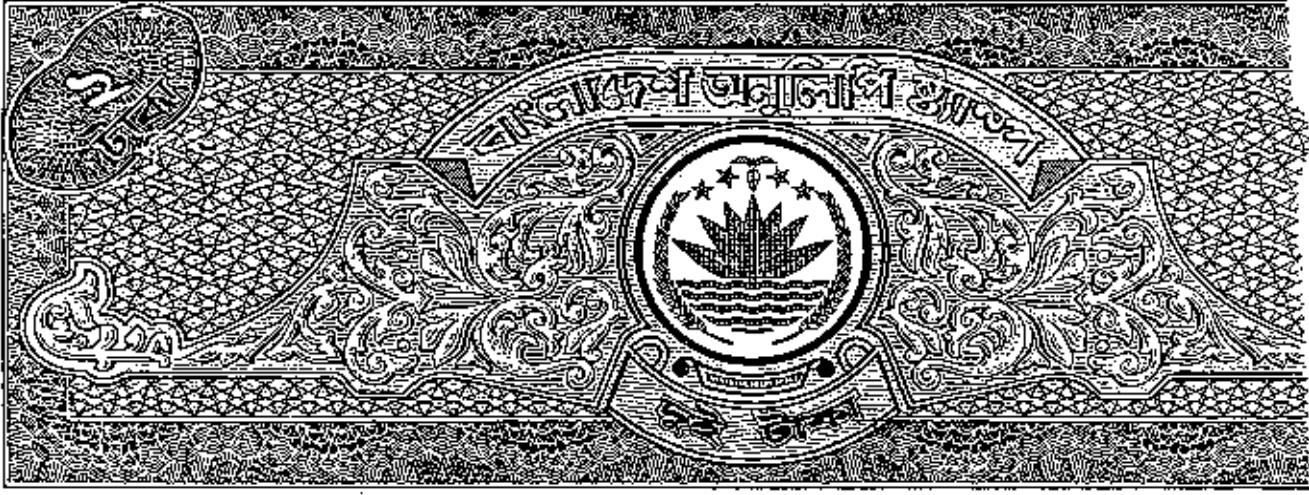
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gradation lists in 2010 and 2013. In both the gradation lists, the petitioner was shown as junior to respondent Nos. 5-12. Further admitted position is that the petitioner did not raise any voice against such violation of her seniority. She has only raised her voice after the gradation list of 2017 has been published. Therefore, a strong objection has been put forward by the respondents that since the petitioner has acquiesced her right to protest at the earliest opportunity, when the said gradation lists were published and when the respondent Nos. 5-12 were promoted to the post of Deputy Director before the petitioner, she should be estopped from raising such objection now.

4.12. To address this objection, we have examined the case of delay as stated by the petitioner in paragraph-8 of the supplementary-affidavit. It appears from the said paragraph that according to the petitioner she was abroad until 2005 on scholarship, and, after her arrival, she took some time to understand illegality committed in respect of



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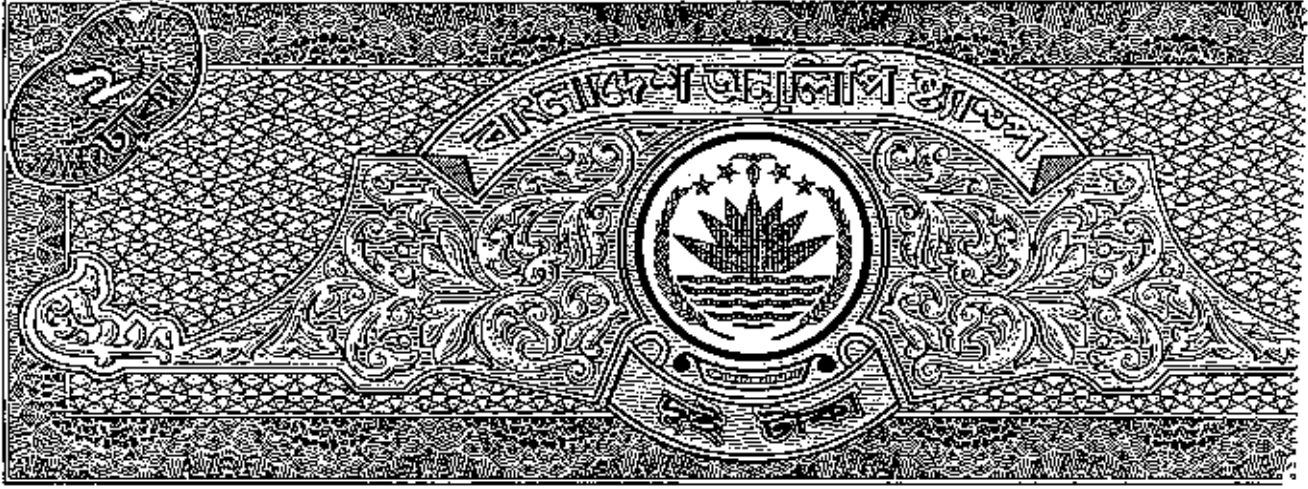
respondent Nos. 5-12 and, finally, she realized such illegality clearly after the impugned gradation list of 2017 was published.

4.13. We have examined the above referred gradation lists of 2010 and 2013, as annexed to the affidavit-in-opposition of respondent No. 2 as Annexure-4 and 4(a). We have also compared the said gradation lists with the impugned gradation list of 2017 as annexed to writ petition as Annexure-D2. It appears from such comparison that the gradation lists of 2010 and 2013 did not mention a single word about the service history of respondent Nos. 5-12 being employees of development projects before their absorption in REB. On the other hand, for the first time REB has published impugned gradation list of 2017 wherein such history of respondent Nos. 5-12 viz-a-viz the petitioner has been given to the effect that the respondent Nos. 5-12 were initially employed in the development projects and that they were subsequently absorbed under revenue budget of REB. Therefore, as

submitted by the learned advocate for the

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petitioner, under no circumstances, an employee of REB had any occasion to know from any publication of REB at the relevant time that the respondent Nos. 5-12 were not regular appointees but they were back-door appointees. This was the first time that the employees of REB came to know the history of respondent Nos. 5-12 as regards their initial appointment in the project. Quite reasonably, after knowing such history, the petitioner, or any employee like the petitioner came to realize what illegality had been committed by REB in respect of respondent Nos. 5-12 and how they were kept in dark by REB about such illegality. It further appears that the petitioner, immediately after publication of this impugned gradation list and realizing that she has long been deprived of her seniority above the respondent Nos. 5-12, made representation to REB, and, on her such representation, REB constituted the aforesaid enquiry committee.

4.14. Let us now turn to the report of the said enquiry committee. It appears from the said report (Annexure-J to the supplementary-affidavit of the

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petitioner) that the said enquiry committee prepared a table to show the service history of respondent Nos. 5-12 as well as the petitioner giving all relevant information. After detailed examination and deliberations, it held as follows under Clause-'Neo' which is reproduced below:

"এখানে আবেদনকারী ০৩ (তিন) জন কর্মকর্তা জনাব মোঃ আহিদ উল্লাহ গং এর সাথে বাপবিবোর্ডের বর্ণিত ০৬ (ছয়) জন কর্মকর্তার মিসেস হাসিনা বেগম গংদের সহকারী পরিচালক পদে জ্যেষ্ঠতা নির্ধারণে আইন ও বিধি-বিধানের সংঘন স্পষ্ট, কিন্তু তারা বর্তমানে সবাই উপ-পরিচালক। তাদের জ্যেষ্ঠতা বিবেচনার দাবিটি কমিটির নিকট উপস্থাপিত হয়েছে উপ-পরিচালক হিসেবে, সহকারী পরিচালক হিসেবে নয়। সুতরাং এক্ষত্রে বাংলাদেশ পল্লী বিদ্যুতায়ন বোর্ড কর্মচারী চাকুরী প্রবিধানমালা, ২০১৮ এর ১২(১) বিবেচনায় নিতে হবে। উক্ত ধারা মতে এই আবেদনের মেরিট থাকে না।"

4.15. It appears from the above conclusion that the committee even did not address the illegal/irregular recruitment of respondent Nos. 5-12 and it did not also address whether a illegally recruited employee might be allowed to compete with legally recruited employee in so far as the seniority and other matters were concerned. Therefore, the conclusion or recommendation of the committee to the effect



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that such illegality regarding seniority cannot be cured because all of them have in the meantime been promoted to the post of Deputy Director, has no manner of application in the facts and circumstances of the issues involved in this writ petition, particularly when this Court has categorically held that respondent Nos. 5-12 were recruited illegally/irregularly and that they cannot be allowed to compete with the petitioner in so far as their seniority and other service benefits are concerned. In view of above, it appears that it is not the petitioner who has caused delay in raising her voice or bringing this matter before the High Court Division, rather it was the respondent-REB which published two gradation lists in 2010 and 2013 in such a misleading way that it prevented the employees like the petitioner to raise their voice against such illegality. Therefore, the delay, or negligence whatever, may only be attributable to the REB's conduct in publishing the said earlier gradation lists.

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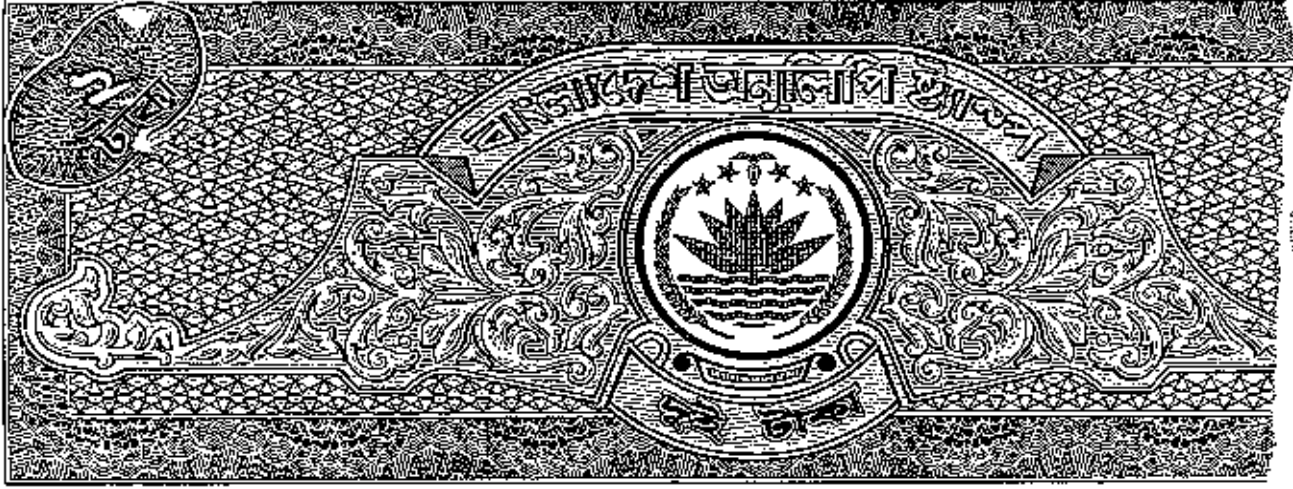


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4.16. This being the position, we are of the view that the petitioner in fact has caused no delay in raising her voice. Rather, she has raised her voice by way of objection immediately after publication of the impugned gradation list of 2017 when she, for the first time, realized that she was illegally deprived of her seniority and other service benefits and that she was illegally shown junior to the respondent Nos. 5-12 in the said gradation list in violation of law as well as of her legal and legitimate expectation.

4.17. Seniority of an employee does not only carry with it financial or service benefits. Rather, it is a matter of prestige and honour which cannot be quantified by any amount of money or service benefits. When an illegally recruited back-door employee is given the same benefit of seniority like the legally recruited employee, the entire purpose of Rule of Law will be frustrated. In such circumstances, a Constitutional Court like this one cannot shut its eyes in respect of continuity of such illegality. Of course, we are not inclined to declare such appointments illegal

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because of the above stated reasons to avoid chaotic situation in REB, but we are of the view that such illegal or back- door appointees cannot be allowed to get any upper- hand against the regular employees in terms of seniority or other service benefits. On the other hand, since the 2021 gradation list, as published during pendency of the Rule, is just a routine work of REB and it has just reflected the position in the impugned gradation list of 2017, insofar as seniority of the petitioner is concerned, publication of such new gradation list has not in any way made the Rule in this writ petition infructuous, particularly when the grievance of the petitioner has not been addressed in the said new gradation list. Therefore, the submission of Mr. Murad Reza as regards the Rule being infructuous has no substance.

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

4.19. In the result, the Rule is made absolute.

Accordingly, the impugned gradation list of 2017

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