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

**Writ Petition No. 8913 of 2018**

IN THE MATTER OF:

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

-And-

IN THE MATTER OF:

Md. Altaf Husain ...Petitioner

-Versus-

The Government of the People's  
Republic of Bangladesh, represented  
by the Secretary, Ministry of Disaster  
Management and Relief, Secretariat,  
Dhaka and others

...Respondents

Mr. Sheikh Mohammad Zakir Hossain,  
Adv.

.....For the petitioner

Mr. Wayesh Al Haroni, DAG with  
Mr. Rayhan Kabir, A.A.G

.....For the respondents

Present:

Mr. Justice K.M. Kamrul Kader  
and

Mr. Justice Muhammad Mahbub Ul Islam

Heard on: 24.06.2021, 12.08.2021

and

Judgment on: 19.08.2021

K.M. Kamrul Kader, J:

On an application under Article 102 of the  
Constitution of the People's Republic of Bangladesh a Rule  
Nisi was issued on 07.08.2018 in the following terms:

"Let a Rule Nisi be issued calling upon the  
respondents to show cause as to why the  
Memo No. 51.01.0000.003.18.194.10.359  
dated 08.05.2018 issued by the  
respondent No.7 (Annexure-L to the writ

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petition) directing the petitioner to refund all service benefits which he enjoyed during his extended period of service from 03.02.2016 to 02.02.2017 should not be declared to be without lawful authority and of no legal effect and why the respondent Nos. 3, 4, 6, 8 and 10 should not be directed to enlist the petitioner's name in the Gazettee of Freedom Fighters published on 22.11.2005 and/or pass such other or further order of orders as to this Court may seem fit and proper."

Facts relevant for disposal of the Rule, in short, are that the petitioner is a freedom Fighter and participated in the war of liberation in sector-09 under the command of Major M. A. Jalil in different places of Patuakhali. It is stated that after liberation war the petitioner received certificate as a freedom fighter signed by Mr. Md. Ataul Gani Osmani and Major M. A. Jalil, commander of Bangladesh Armed Forces and commander of sector-9 respectively. Thereafter, Md. Gais uddin, Bir Protik, Secretary General of Bangladesh Muktiyodha Sangsad on 29.10.1987 wrote to the secretary of Bangladesh Public Service Commission to employ the petitioner as a distress freedom fighter. The Chairman of the Bangladesh Muktiyodha Sangsad also gave a certificate on 17.02.1988 to the petitioner, certifying that he is Freedom Fighter

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কই টাকা



বাংলাদেশ  
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(Annexure- A, A-1, A-2 and A-3 to the writ petition). It is stated that on 01.02.1989 the petitioner was recruited as a Project Implementation Officer at the office of the respondent No.3 under freedom fighter quota. He was serving in the said post with the full satisfaction of the authority and he was promoted time to time. The petitioner retired on 02.02.2017 and his Post Retirement Leave (P.R.L) started from 03.02.2017. It is stated that the petitioner is recognized as a freedom fighter in his service period and time to time he took government approved facilities as a freedom fighter. It is also stated that the petitioner is a freedom fighter according to the definition given under the Gazette notification being Memo No. 48.00.0000.004.49.233.09-1832 dated 10.11.2016 which clearly stated that, "জাতির পিতা বঙ্গবন্ধু শেখ মুজিবুর রহমান কর্তৃক স্বাধীনতার ঘোষণায় সাড়া দিয়ে ১৯৭১ সালে ২৬ শে মার্চ হতে ১৬ ডিসেম্বর পর্যন্ত সময়ের মধ্যে যে সকল ব্যক্তি বাংলাদেশের মহান স্বাধীনতার অর্জনের লক্ষে মুক্তিযুদ্ধে অংশগ্রহণ করেছেন তাঁরাই মুক্তিযোদ্ধা হিসেবে গণ্য হবেন।" Moreover, Circular being Memo No. 48.00.0000.002. 10.2624 .2017/25 dated 17.01.2018 stated that those who complied with Clause-1 of the said Gazette dated 10.11.2016 and had attained the age of 12(Twelve) years and 6 (Six) months on or before 30.11.1971 during the Liberation War will be considered as "Freedom Fighter". The petitioner was born on 02.03.1957 and hence he attained the required age before the stipulated date as mentioned in the aforesaid circular. Therefore, the petitioner satisfied all the requirements

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under the said Gazette dated 10.11.2016 and the Circular dated 17.01.2018. Thus, he is entitled to be enlisted in the list of Freedom Fighters. It is stated that the name of the petitioner was excluded from the recent local list of freedom fighters due to his absence from the locality. Thereafter, the petitioner submitted an application to the respondent No. 6 to enlist his name in the Freedom Fighter's list but the respondents did not take any initiative in this regards.

It is stated that the respondent No.7 vide their letter dated 07.02.2012 confirmed that the petitioner is a freedom fighter officer and his retirement age has determined as per the relevant provisions of law relating to the Freedom Fighters. The petitioner also informed the authority time to time for enhancement of his service in accordance with law. It is stated that the respondent No. 5 most surprisingly vide letter dated 18.01.2016 directed the petitioner to retire from service and go on to P.R.L from 02.02.2016, on the completion of the fifty nine year of his age. Even he entered into the service as a freedom fighter which violated the provision of section 4 A of the Public Servant (retirement) Act-1974. Challenging the said order dated 18.01.2016, the petitioner filed writ petition No. 1199 of 2016 and obtained an order of stay, which extended time to time. Consequently, the petitioner completed his 60 (sixty) years age, as being freedom fighter and retired from his service as per section 4A of the Public Servants (Retirement) Act 1974 on 02.02.2017. Due to existence of

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the said rule and order of stay, he was unable to withdraw his retirement benefits. Subsequently, the rule is discharged as being in fructuous on 04.10.2017. Thereafter, the petitioner tried to withdraw his provident fund an amount of Taka 25,96,421.00 but failed and on 04.12.2017, he sent a letter to the respondent No.1 for seeking permission for withdrawal of the GPF money. It is also stated that after retirement the petitioner is entitled to get 18 (eighteen) month's salary of Taka 7,35,121.00 from 03.02.2017 to 03.08.2018 and he made an application on 04.12.2017 to the respondent No. 1 but the respondent failed to take any initiative in this regards. After receiving the letter dated 04.12.2017, the respondent No.7 issued the impugned letter dated 08.05.2018 alleging that the petitioner has distracted the Ministry of Liberation War Affairs and the Ministry of Disaster Management and Relief by providing wrong information relating to his identity as a freedom fighter and directed them to take legal action against the petitioner and also directed the petitioner to refund all money to the Government Treasury, which he took as salary during his extended period of service from 03.02.2016 to 02.02.2017 in violation of section 27 of the constitution of the Republic of Bangladesh.

Being aggrieved by and dissatisfied with the order dated 08.05.2018 the petitioner preferred this instant writ

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petition before this Court and obtained the instant rule and an order of stay.

Mr. Shaikh Mohammad Zakir Hossain, the learned Advocate for the petitioner submits that the petitioner have actively participated in the liberation war in sector-9 under the command of Major M.A. Jalil and he has all relevant certificate with this regard. The petitioner was recruited under the freedom fighter quota after being scrutinizing all relevant documents related to the freedom fighter. Learned Advocate submits that the petitioner is a recognized freedom fighter waiting to be enlisted in the Gazettee of freedom fighter, but the respondents after 28 years of service, without any lawful authority challenged the identity of the petitioner as freedom fighter. He also submits that the allegation brought against the petitioner in the impugned letter is baseless, malafide and arbitrary. He also submits that the petitioner made an application dated 20.08.2013 to the respondent No.6 to enlist the name of the petitioner in the Gazettee but the respondents failed to do so till today. He further submits that the petitioner stands on the same footing with other freedom fighter who has been enlisted in the freedom fighter's list. He also submits that failure of respondents to include the name of the petitioner in the list of Freedom Fighter is discriminatory, thus it violated the provision of Article 27 of the Constitution of the Peoples Republic of Bangladesh. He also submits that petitioner's long standing service period

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has earned the provident fund, P.R.L and all other retirement benefits and there is no single allegation which negates the petitioner's service carrier as freedom fighter. He further submits that after scrutinized all relevant documents as freedom fighter the petitioner was appointed as Project Implementation Officer and he had been serving for more than 30(thirty) years but by the impugned letter dated 08.05.2018 his identity as freedom fighter is veined which liable to be declared illegal. As such, he prays for direction upon the respondents to enlist his name in the Gazettee of the freedom fighter and also directed to the respondents No. 1, 5, 7 and 9 to release the retirements benefit without any delay.

The learned Deputy Attorney General for the respondent without filing any affidavit in opposition opposes the rule.

Heard the learned Advocates for both sides and perused the writ petition, supplementary affidavit filed by the petitioner and other materials on record. It transpires that the petitioner was appointed in the post of Project Implementation Officer under the Ministry of Disaster Management and Relief as Freedom Fighter and he has severed under this Ministry up to 60 ( sixty ) years his age and after completion of service, the concerned ministry illegally stopped his service benefits and directed to refund all service benefits which he enjoyed during his extended

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No circular or paripotra or office letter can supersede the binding effect of the law enacted by the National Parliament.

It transpires from the record that the petitioner was a Freedom Fighter who had undergone all small arms training under the guidance and supervision of sector-9, Bangladesh Armed Forces, Mujibnagar for the period from 6<sup>th</sup> August 1971 to 8<sup>th</sup> September 1971 and after liberation, he surrendered his Arms and ammunition on 31.01.1972. The petitioner obtained armed forces training certificate signed by the Sub-sector commander sector-9 Bangladesh Armed Forces, Mujibnagar on 31.01.1972 and also obtained an arms receipt certificate on 31.01.1972 signed by camp commandant of National Militia Camp, Patuakhali as evident in Annexure-M and M-1 to the writ petition. We also noticed that after considering the application of the petitioner, the Assistant Secretary (Relief Administration) sent letter on 19.05.2015 to the Secretary, Ministry of Freedom Fighter Affairs to issue a Freedom Fighters certificate to the petitioner as evident in the Annexure-P to the writ petition.

We also noticed that there are some greedy people who tried to illegally grab government benefit for the freedom fighters and in doing so they created forged document. But on the contrary there are some genuine Freedom Fighters have been deprived and put them at risk of exclusion from freedom fighter's list and they have not

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period of service from 03.02.2016 to 02.02.2017 as Freedom Fighter.

Learned Advocate for the petitioner argued that since the petitioner entered the service of Republic declaring himself as a freedom fighter therefore, the opinion put forward by the Ministry of Liberation War Affairs in respect of his status as a freedom fighter came within the purview of legal provisions as laid down under section 4A (3) of the Public Servants (Retirement) Act, 1974 (amended in 2010 and 2013). He entered in his respective post as a freedom fighter and in the application form for appointment, he claimed himself a freedom fighter. It is to be mentioned here that The Public Servants (Retirement) Act, 1974 (amended in 2010 and 2013) for dealing with the retirement of a freedom fighter and by virtue of this section, the petitioner is exempted from being subject to verification of a freedom fighter since he entered the service of republic as a freedom fighter. The National Parliament of Bangladesh is the apex body for formulating any laws in Bangladesh and the same has enacted the law i.e. The Public Servants (Retirement) Act, 1974 (amended in 2010 & 2013) for regulating the retirement issues of public servants of the republic and section 4A deals with the 'Retirement of a Freedom Fighter'. In this section, it clear lays down that if a public servant who entered the service of republic as a Freedom Fighter, the same is exempted from evaluation whether he/she is a Freedom Fighter by the Ministry of Liberation War Affairs.

*[Handwritten signature]*

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been able to enjoy the government benefits and honorariums though they have been identified as genuine Freedom Fighter. In the instant writ petition, we find that after proper scrutiny of the documents of the petitioner, the Respondent No. 1 enlisted the name of the petitioner as Freedom Fighter and giving allowance to him, which cannot be stopped or asking him to return his service benefits, without giving opportunity of being heard or only because the circular was issued subsequently by the Ministry of Liberation War Affairs. The respondents also failed to take necessary step as per Gazette notification of the Freedom Fighters for scrutinizing and enlisting the genuine freedom fighters and also to ensure their all Government benefits and honorarium as per law so that, a single genuine Freedom Fighter should not be excluded from the said list.

Having given our anxious consideration to the facts and circumstances of the case and the submission advanced by learned Advocate for the petitioner bears merit for consideration, as such the impugned letter containing memo No. 51.01.0000.003. 18.198.10.359 dated 08.05.2018 issued by the respondent No. 7 (Annexure-L) is illegal and without lawful authority.

Accordingly, the Rule is made absolute in part and the impugned letter as containing memo No. 51.01.0000.003.18.198. 10.359 dated 08.05.2018 issued by the respondent No. 7 (Annexure-L) is hereby declared illegal and without lawful authority and the respondents

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are directed to release his General Provident Fund, lump grant against his 18 (eighteen) months post retirement leave, in accordance with the law, within one month from the <sup>date</sup> of receipt of this order, without any fail and also directed to form a committee to inquiry about authenticity of his documents produced for enlistment of his name in the Freedom Fighter list, if they find these documents are genuine then the respondents should take necessary steps to pay other service benefits of the petitioner as freedom fighter, if any, in accordance with law and to enlist his name in the Gazette of Freedom Fighter as soon as possible preferably within 6(six) months from the date of receipt of this order and if the committee find the aforesaid documents are false and forged one then the respondents are at liberty to take appropriate steps against the petitioner in accordance with law.

Communicate at once.

Muhammad Mahbub Ul Islam, J:

K.M.Kamrul Kader

I agree.

Muhammad Mahbub Ul Islam

Typed by: Sayed 19.04.2022

Read by:

Exam. by:

Readied by:

প্রত্যায়িত অবিকল প্রতিলিপি

সহকারী রেজিস্ট্রার  
বাংলাদেশ সুপ্রীম কোর্ট, হাইকোর্ট বিভাগ  
(১৮৭২ ইং সনের ১নং আইনের)  
৭৬ ধারামতে ক্ষমতা প্রাপ্ত

“মোঃ মনিরুল ইসলাম শপথ নিয়ে আবদুল মোমেন সুপারিনটেন্ডেন্টকে বিদায় দিন”