18 SCOB [2023] AD 62

APPELLATE DIVISION

PRESENT:
Mr. Justice Hasan Foez Siddique, Chief Justice
Mr. Justice M. Enayetur Rahim
Mr. Justice Jahangir Hossain

Civil Appeal No. 474 of 2017
(From the Judgment and order dated 08.12.2015 passed by the High Court Division in Writ Petition No. 7487 of 2014)

Insurance Development Regulatory Authority [IDRA] represented by its Chairman ....Appellant

=Versus=

Ms. Shaila Akhter and others ....Respondents

For the Appellants	**:**	**Mr. Shamim Aziz Khan, Advocate instructed by Mr. Zainul Abedin, Advocate-on-Record**
For the Respondent No.01	**:**	**Mr. M.A. Hannan, Advocate instructed by Mr. Syed Mahbubar Rahman, Advocate-on-Record**
Respondent Nos.2-5	**:**	**Not represented**

Date of hearing & judgment: The 03rd of January, 2023

Editors' Note:
In the appointment letter of the writ petitioner it was clearly mentioned that her appointment as a Junior Officer was on a temporary basis without mentioning in it any period for which she was appointed. She was assigned various duties by the authority during her service which indicated her good performance and she received a pay rise. Suddenly, the authority issued a show cause notice as to why she would not be removed from service for dissatisfactory performance requiring her to make the reply within one week. The writ-petitioner replied describing her good performance during her service but paying no heed to the reply and without giving any opportunity of personal hearing she was removed from service. The High Court Division directed the writ respondent to reinstate the writ petitioner. On appeal, the Appellate Division found that the writ petitioner could not be termed as temporary appointee because no specific period of her appointment was mentioned in the appointment letter. The Court also held that principle of natural justice demands before putting stigma of inefficiency an opportunity of being heard should have been given to the writ-petitioner. Mere mentioning of inefficiency in the impugned order of removal is nothing but an arbitrariness on the part of the authority. Consequently, the appeal was dismissed.

Key Words:
Temporary appointee; section 10 of বীমা উন্নয়ন ও নিয়ন্ত্রন কর্তৃপক্ষ আইন, ২০১০; putting stigma; principle of natural justice;

For categorizing an employee to be temporary the temporary period for which he is appointed has to be clearly mentioned:

Mere wording of 'temporary' used in the appointment letter cannot be the basis for categorizing the employee as temporary appointee in the absence of any fraction period or certain period mentioned in the appointment letter itself. (Para 20)

If the appointment letter does not contain any fraction period or certain period for which someone is appointed she could not be termed as temporary appointee:

Admittedly, Insurance Development and Regulatory Authority [IDRA] established under the বীমা উন্নয়ন ও নিয়ন্ত্রন কর্তৃপক্ষ আইন, ২০১০ and to run the aforesaid IDRA, some employees were appointed along with writ-petitioner without waiting for the formation of organogram of service rules under the said Ain, 2010. In the present case it reveals that the writ-petitioner [respondent No.01] was appointed initially on 01.08.2011 and subsequently after considering her good performance by office order dated 04.01.2012 her monthly salary has been increased to Tk. 12000/- with effect from 01.01.2012. It further appears that she got appointed in the post of Junior Officer on temporary basis. But the appointment letter of the writ-petitioner [respondent No. 01] does not contain any fraction period or certain period for which she was appointed and as such she could not be termed as temporary appointee. (Para 21)

It is well settled that before putting such stigma principle of natural justice demands an opportunity of being heard to be given of the writ-petitioner. In order to satisfy the authority about the performance in the service, although writ-petitioner made reply stating all facts but the authority could not show any material as to substantiating the allegation of dissatisfaction with the service of the writ-petitioner. And as such mere mentioning of dissatisfaction or inefficiency in the impugned order of removal is nothing but remains a disputed question of arbitrariness on the part of the authority which is not sustainable in law. (Para 24)

JUDGMENT

Jahangir Hossain, J:

1. This Civil Appeal, by leave, is directed against the judgment and order dated 08.12.2015 passed by a Division Bench of the High Court Division so far as it relates to Writ Petition No. 7487 of 2014 making the Rule Nisi absolute-in-Part.

2. Relevant facts, involved in this civil appeal, are that the Respondent No.01 as writ-petitioner filed Writ Petition No.7487 of 2014, stating, inter alia, that she got appointed on 01.08.2011 in the Insurance Development and Regulatory Authority (IDRA) as Junior Officer on temporary basis. By the office order vide memo No. আইডিআরএ/জিএডি/১১২৩/২০১১-২০ dated 04.01.2012 her salary was increased at Tk. 12,000/- with effect from 01.01.2012 considering her performance in the service. She was assigned for various duties of the authority during her service in recognition of her performance, in particular, the following activities:

> "(a) Worked as a member of Internal Audit Team of IDRA since 14.11.2011 and acted as an Internal Auditor till issuing the Memo No. বীঃউঃনিঃকঃ /জিএডি/১৫২৮/২০১৪-৯৭৭ dated 27.07.2014 so nominated by IDRA;
> (b) Worked for preparing budget of IDRA on 25.10.2012;
> (c) Participated in the hearing for issuing license of new insurance company;
> (d) Called on by the Banking and Financial Institution Division of the Ministry

of Finance on 27.02.2014 to attend a meeting for the purpose of publication of a handbook under the heading ব্যাংক ও আর্থিক প্রতিষ্ঠান সমূহের কার্যক্রমঃ ২০১৩-২০১৪ ;

(d) Included in three committees on the same day by Memos No.বীঃউঃনিঃকঃ/চেঃ/১০৩০ /২০১১-(৩৯৭), বীঃউঃনিঃকঃ/ চেঃ/১০৩০/২০১১-(৩৯৯) all dated 18.03.2014, and the committees were formed to undertake the following tasks;

I) For publication of a handbook under the hearing, "ব্যাংক, বীমা ও আর্থিক প্রতিষ্ঠান সমূহের কার্যক্রমঃ ২০১৩-২০১৪;

II) For preparation of analytical report on aims and developments of the activities under IDRA;

III) For preparation of draft budget of IDRA for the year 2014-2015.

(e) For checking the statements of account of rentals on 10.07.2014 in respect of the lease of new spaces for office of IDRA and found payable of Taka 1,81,32,654/- which included rentals of Taka 1,54,82,588/- , income tax of Taka 9,46,452/- and VAT of Taka 17,03.614.

(f) For correspondences and meetings with the Ministry on behalf of IDRA."

3. Suddenly, the member of the IDRA [writ-respondent No.2] issued a show cause notice on 08.07.2014 upon the writ-petitioner as to why she would not be removed from service for dissatisfactory performance in the service requiring her to make the reply within one week from the date of service of the notice. Pursuant to the said show cause notice, the writ-petitioner replied on 16.07.2014 describing her performance during her service. But, paying no heed to the reply and without giving any opportunity of personal hearing to the writ-petitioner, the writ-respondent No.02 issued the impugned order removing her from service vide memo No. বীঃউঃনিঃকঃ/জিএডি /১৫২৮/২০১৪-৯৭৭ dated 27.07.2014 which led the writ-petitioner to file the writ petition.

4. In the writ petition writ-respondent No.1, the Chairman of the IDRA filed affidavit-in-opposition controverting the statements as made in the writ petition. It is stated that she was appointed purely on temporary basis and from the date of her joining in the service, there was no progress in her performance rather she was found inattentive and insincere. She was warned of her in-efficiency and despite repeated warnings, no betterment was found in her performance. Eventually, due to lack of minimum work skill, the writ-petitioner was asked to show cause but there being no satisfactory reply she was removed from service. It is further stated that due to want of organogram, the authority had to face shortage of employees, which was the main reason for nominating the writ-petitioner namely, Ms. Shaila Akhter in various extra assignments but the same could not be the credential for her service. Accordingly, the respondent IDRA prayed for discharging the Rule Nisi.

5. After hearing the parties and on perusal of the writ petition along with annexures thereto, the High Court Division passed the impugned judgment and order making the Rule Nisi absolute-in-part.

6. Challenging the aforesaid judgment and order the appellant [writ-respondent] IDRA presented Civil Petition for Leave to Appeal No. 1763 of 2016 and obtained Leave which gave rise to the instant appeal.

7. Mr. Shamim Aziz Khan, learned Advocate appearing on behalf of the appellant

submits that the High Court Division was wrong in making the Rule absolute on gross misconception of law as the writ petitioner's appointment was purely temporary basis and the appointment letter dated 04.012012 as well as all its terms and conditions has been accepted by the writ-petitioner and in clause '2' of the appointment letter it's clearly stated that "(2) এই নিয়োগ আপনাকে কর্তৃপক্ষের অধীনে নিয়মিত বা স্থায়ী নিয়োগের কোন নিশ্চয়তা প্রদান করবে না" and on accepting this term and condition the writ-petitioner joined in the service and as such she is bound by the said condition.

8. He next submits that the writ-petitioner is an apprentice officer and she was appointed on temporary basis. Moreover, her performance was not satisfactory but to show fairness in view of the natural justice, the appellate Authority issued show cause notice to the writ-petitioner to the effect that her service was not satisfactory to the authority to which she gave reply and the same was not accepted and hence she has no locus standi to maintain the writ petition under Article 102 of the Constitution of the People's Republic of Bangladesh.

9. It is also submitted that the High Court Division manifestly erred in law in failing to consider that admittedly no organogram has yet been approved or framed in respect of employers of the Insurance Development and Regulatory Authority (IDRA), then, the terms and conditions of the Employment can only be ascertained by the appointment letter which is clearly manifesting that the job is purely temporary basis and hence the impugned judgment and order is beyond the limit of terms and conditions of the appointment and therefore, the impugned judgment and order dated 08.12.2015 passed by the High Court Division is liable to be set aside.

10. Mr. M. A. Hannan, learned Advocate for the Respondent No.01 [writ-petitioner] contends that the term as contained in the leave granting order is not tenable in the eye of law, in view of the facts and circumstances of the present case and the same is contrary to the applicable laws. He next submits that the word 'temporarily' used in the appointment letter cannot be attributed for classifying the employee as temporary appointee and that the court has ample power to go beyond whatsoever is meant by appointment letter and as such, just mentioning in the appointment letter that the appointment was on temporary basis as on the date of appointment there was no organogram, cannot be disentitled the respondent No.01 to claim to be permanent as of right after having regular organogram of IDRA. In this respect he has relied upon the case of **Government of Bangladesh –Versus- Md. Ismail Hossain reported in 31 DLR (AD) 127.**

11. He finally submits that the respondent No.01 having been appointed as Junior officer on formation of the Authority in absence of any organogram approved by the government and without having any service regulations under section 10 of the Insurance Development & Regularity Authority Act, 2010 (Act No. 12 of 2010), she acquired a legal right and has legitimate expectation to get the permanent service/post as junior officer in the said Authority having continuous service with the said Authority after having organogram approved by the Government under the applicable laws.

12. Having heard the learned Advocates appearing on behalf of the respective parties and on perusal of the materials on record including the impugned judgment and order it appears that the respondent No. 01 as writ petitioner filed Writ Petition No. 7487 of 2014 challenging the order of removal/dismissal from her service by the Annexures-B and D to the writ petition, dated 08.07.2014 and 27.07.2014 respectively and obtained Rule. The High Court Division after hearing the parties and on perusal of the materials on record made the Rule Nisi absolute-in-part by the impugned judgment and order.

13. The High Court Division came to a definite finding that the writ-petitioner rendered service to the authority for a long time performing various duties. If it is absolutely temporary appointment given to the writ-petitioners, then, she could be removed from service in terms

of condition of the letter of appointment. But in the present case, the authority passed the impugned order of removal for not only the reason as to service of temporary nature rather the authority passed the impugned order removing the writ-petitioner putting a stigma, as to dissatisfaction of inefficiency of her service and that before putting such stigma, principle of natural justice demands an opportunity of being heard to be given to the writ-petitioner in order to satisfy the authority as to her performance and service. Although a show cause notice was served upon the writ-petitioner but pursuant to the same, the writ-petitioner made reply stating all the facts as to her sincerity and efficiency in the service. The writ-respondents could not deny the same rather they utterly failed to show any material as to their dissatisfaction with the service of the writ-petitioner.

14. With such finding the High Court Division made the Rule Nisi absolute-in-part declaring the order of removal vide Annexure-D of the writ petition to be without lawful authority and is of no legal effect and also directed the respondents to reinstate the writ-petitioner [Respondent No.01] in her post, as was at the time of passing the impugned order within 60[sixty] days from the date of receipt of the impugned judgment and order.

15. Feeling aggrieved by and dissatisfied with the said judgment and order the writ-respondent No. 01 filed civil petition for leave to appeal as mentioned above and obtained leave which gave rise to this appeal.

16. The point for determination by this Division as raised by the appellant is whether the writ-petitioner could claim absorption as of right since in the appointment it was clearly mentioned that the appointment was purely on temporary basis.

17. In this regard, to resolve the dispute as to whether the writ-petitioner as temporary employee, a reliance may be relied upon the case of **Government of Bangladesh –Vs- Md. Ismail Hossain, reported in 31 DLR (AD) 127.**

18. In the said case question arose as to whether the appointment of respondent was temporary and whether the order of reversion amounted to reduction in rank within the meaning of Article 135 of the Constitution. However, it was observed in the said case which is run as follows;

> **"The respondent was appointed for the life of the cadre itself, not for a fraction of that period of the cadre. The word 'temporarily' used in the appointment order cannot be attributed for classifying the respondent as a temporary appointee. The respondent held his office substantively in the temporary cadre and he cannot be removed during the period the cadre remains in existence except for misconduct or for some such reason and by following the service rules."**

19. It was further held in the said case that;

> **"The undefined duration in the appointment order of the respondent goes to show that his appointment was temporary as the cadre was temporary and not on any other count. If there would have been a defined period in the appointment order of the respondent within the period of the tenure of the cadre then it could be said that his appointment being temporary for a particular period, his reversion to his former post would not amount to reduction in rank."**

20. Having gone through the aforesaid decision it appears that mere wording of 'temporary' used in the appointment letter cannot be the basis for categorizing the employee as temporary appointee in the absence of any fraction period or certain period mentioned in the appointment letter itself.

21. Admittedly, Insurance Development and Regulatory Authority [IDRA] established under the বীমা উন্নয়ন ও নিয়ন্ত্রন কর্তৃপক্ষ আইন, ২০১০ and to run the aforesaid IDRA, some

employees were appointed along with writ-petitioner without waiting for the formation of organogram of service rules under the said Ain, 2010. In the present case it reveals that the writ-petitioner [respondent No.01] was appointed initially on 01.08.2011 and subsequently after considering her good performance by office order dated 04.01.2012 her monthly salary has been increased to Tk. 12000/- with effect from 01.01.2012. It further appears that she got appointed in the post of Junior Officer on temporary basis. But the appointment letter of the writ-petitioner [respondent No. 01] does not contain any fraction period or certain period for which she was appointed and as such she could not be termed as temporary appointee.

22. It is not denied that though the writ-petitioner was appointed as Junior Officer for a particular official duty but she was assigned with various important job/task because the authority having satisfied with the performance rendered by the writ-petitioner and was assigned with the aforesaid task in addition to her schedule official duty. It is also not denied that she was the member of the audit team of the authority and implementation of budget; she also worked in conducting the hearing in respect of registration of insurance company more importantly, she also attended the workshop namely ব্যাংক ও আর্থীক প্রতিষ্ঠান সমুহের কার্যক্রম ২০১৩-২০১৪ organized by the Bank and Financial Institution Division of the Ministry of Finance. Apart from the aforesaid performance, she also acted as member of three committees, formed by the authority.

23. On perusal of the affidavit-in-opposition filed by the present appellant in the writ petition it appears that the appellant took a plea that due to want of organogram the authority has been facing shortage of employees which is the main reason for nominating her for various extra curriculum or outside programs that cannot be a credential report for her service. This plea clearly proves that she has earned competency and good-will by rendering her additional services bestowed on her by the authority, after being satisfied. So, the question of absorption of the writ-petitioner as raised by the appellant relying on the decision in the case of Bangladesh –Vs- Abdul Razzak, reported in 71 DLR (AD) 395 has no manner of application in the facts and circumstances of the present case. Direction of the High Court Division in the instant case in hand is crystal clear that to reinstate the writ-petitioner [herein respondent No. 01] in her respective post, as was at the time of passing the removal order and her service would be temporary basis until organogram and service Rule is promulgated.

24. It appears from the order of removal that the authority passed an order putting a stigma simply stating as to dissatisfaction and 'inefficiency of her service' which is not sustainable in view of the facts and circumstances stated above. It is well settled that before putting such stigma principle of natural justice demands an opportunity of being heard to be given of the writ-petitioner. In order to satisfy the authority about the performance in the service, although writ-petitioner made reply stating all facts but the authority could not show any material as to substantiating the allegation of dissatisfaction with the service of the writ-petitioner. And as such mere mentioning of dissatisfaction or inefficiency in the impugned order of removal is nothing but remains a disputed question of arbitrariness on the part of the authority which is not sustainable in law.

25. Having gone through the judgment and order impugned before us, it is our considered view that the finding and decision arrived at by the High Court Division in making the Rule Nisi absolute in part, being based on proper appreciation of facts and law, and the same does not suffer from any legal infirmity to interfere with by this Division. We do not find any substance in the submission of the learned Advocate for the appellant. Therefore, the point raised in this appeal is not sustainable in law.

26. Accordingly, there is no merit in this appeal and the Appeal is liable to be dismissed. In the result, this Civil Appeal is dismissed without any order as to costs.