18 SCOB [2023] AD 11

APPELLATE DIVISION

PRESENT:
Mr. Justice Hasan Foez Siddique, Chief Justice
Mr. Justice Obaidul Hassan
Mr. Justice M. Enayetur Rahim

CIVIL PETITION FOR LEAVE TO APPEAL NO.51 OF 2022
(From the order dated 08.11.2021 passed by the High Court Division in Writ Petition No.10075 of 2021)

Secretary, Posts and Telecommunications Division, Ministry of Posts and another : ……..…..Petitioners

-Versus-

Shudangshu Shekhar Bhadra and others : ..…..…Respondents

For the petitioners : Mr. A.M. Amin Uddin, senior Advocate, instructed by Mr. Syed Mahbubar Rahman, Advocate-on-Record.

For the respondents : Mr. Probir Neogi, senior Advocate with Mr. Murad Reza, senior Advocate, instructed by Mr. Md. Ziaur Rahman, Advocate-on-Record.

Date of hearing and judgment : The 7th day of March, 2022

Editors' Note:
A retired public servant filed a writ petition in relation to his service matter and got a rule and stay in his favour. The Government filed leave petition in the Appellate Division against the interim order of the High Court Division challenging its legality arguing that in service matter even retired public servants are required to seek relief in the Administrative Tribunal in view of section 4(3) of the Administrative Tribunal Act, 1980. Appellate Division accepted the argument of the Government and found that in an earlier decision reported in 71 DLR (AD) 319 the highest court wrongly held that in service matter writ petition by retired public servant is maintainable. The Appellate Division then departed from its earlier decision finding it to be *per incuriam* and discharged the Rule issued by the High Court Division. However, the Court also observed that in view of the article 111 of the Constitution, High Court Division is not competent to hold any decision of the Appellate Division to be *per incuriam* and it must follow the decision in toto. High Court Division only can bring the matter in the notice of the Honorable Chief Justice of Bangladesh. Similarly, subordinate Courts have no jurisdiction to raise any question regarding the legality of the judgment of the High Court Division saying that it was a judgment *per incuriam*. Because only a Court equivalent to the Court which pronounced the judgment *per incuriam* is free to depart from a decision of that Court where the earlier judgment was decided wrongly.

Key Words:
Per incuriam; Section 4(3) of the Administrative Tribunal Act, 1980; Article 111 of the Constitution; maintainability of the writ petition by a retired public servant in service matter

Section 4(3) of the Administrative Tribunal Act, 1980:
Administrative tribunal has the exclusive jurisdiction to deal with the matters when a person in the service of the Republic is aggrieved by any order or decision in respect of the terms and conditions of his service including pension rights or by any action taken in relation to him as a person in the service of the Republic. In the present case, the writ-petitioner-respondent No.1 is a person in the service of the Republic as per the provision of section 4(3) of the Administrative Tribunal Act, 1980 and as such the Tribunal has the exclusive jurisdiction to deal with the matter regarding the terms and conditions of the service of the writ petitioner-respondent No.1. (Para 11)

Paragraph 24 of 71 DLR (AD) 319 is a *per incuriam* decision:
We are of the view that the part of the judgment reported in 71 DLR (AD) 319 particularly in paragraph 24 regarding maintainability of the writ petition was passed without considering the latest provision of law and, as such, the part of the said judgment regarding maintainability of the writ petition filed by a retired public servant is a *per incuriam* decision. (Para 12)

Any Court equivalent to the Court which pronounced the judgment *per incuriam* is free to depart from a decision of that Court where that earlier judgment was decided *per incuriam:*
***Per incuriam,* literally translated as "through lack of care" is a device within the common law system of judicial precedent. A finding of *per incuriam* means that a previous Court judgment has failed to pay attention to relevant statutory provision or precedents. The significance of a judgment having been decided *per incuriam* is that it need not be followed by any equivalent Court. Ordinarily, the *rationes* of a judgment is binding upon all sub-ordinate Courts in similar cases. However, any Court equivalent to the Court which pronounced the judgment *per incuriam* is free to depart from a decision of that Court where that earlier judgment was decided *per incuriam.* (Para 13)**

Article 111 of the Constitution:
If any judgment pronounced by the Appellate Division, as per provision of Article 111 of the Constitution the High Court Division is not competent to say the judgment is *per incuriam*. Primarily the High Court Division must follow the judgment in toto, however, in such a situation the High Court Division may draw attention of the Hon'ble Chief Justice regarding the matter. On the other hand even if any judgment is pronounced by the High Court Division, the subordinate Courts have no jurisdiction to raise any question regarding the legality of the judgment on the point of *per imcuriam*. Parties may get remedy on preferring appeal. (Para 24)

JUDGMENT

Obaidul Hassan, J:

1. This Civil Petition for Leave to Appeal (CPLA) is directed against the order dated 08.11.2021 passed by a Division Bench of the High Court Division in Writ Petition No.10075

of 2021 staying the operation of the impugned memo No.14.00.0000.006.27. 016.19.256 dated 24.10.2021 (Annexure-I to the writ petition).

2. The writ-petitioner-respondent No.1 filed the Writ Petition No.10075 of 2021 challenging the notification vide memo No.14.00. 0000.006.99.001.21.07 dated 06.01.2021 issued under signature of the respondent No.4 giving retirement to writ-petitioner-respondent No.1 in the post of Additional Director General (Grade-2) under section 43(1) of the সরকারী চাকুরী আইন, ২০১৮ without granting Post Retirement Leave (PRL) with other attending benefits as required under section 47 of the সরকারী চাকুরী আইন, ২০১৮ and the memo No.14.00. 0000.006.27.016.19.256 dated 24.10.2021 issued by the respondent No.4 asking the writ-petitioner-respondent No.1 to show cause as to why compensation should not be realized from the pension, gratuity of the petitioner and rest under Public Demand Recovery (PDR) Act as per Rule 247 of the BSR, Part-1 and also praying for a direction upon the writ-respondents to grant writ-petitioner-respondent No.1 PRL with all attending benefits from 09.01.2021 to 08.01.2022 and then all other service benefits i.e. pension, gratuity etc. having allowed him to go on normal retirement.

3. The facts leading to the filing of the Writ Petition are that the writ-petitioner-respondent No.1 was appointed as Assistant Post Master General cum Post Master qualifying in the BCS (Posts) Cadre in 1985 and joined in the Directorate of Posts. He was promoted to the post of Additional Director General, Grade-3 on 31.03.2013 and on 14.12.2017 he was given current charge to the post of Additional Director General (Grade-2) and on 27.02.2019 he was given promotion to the post of Additional Director General, Grade-2. On 13.03.2019 the immediate past Director General of the Directorate of Posts Mr. Susanta Kumar Mondal sent a proposal to the writ-respondent No.1-petitioner No.1 for posting the writ-petitioner-respondent No.1 as Director General being the most senior and competent officer and in the said proposal the then Director General praised the writ-petitioner. Thereafter, on 03.04.2019 the writ-petitioner-respondent No.1 was given current charge to the post of Director General of the Directorate of Posts by notification vide memo No.14.00.0000.006.11.003.19.84 dated 03.04.2019 and accordingly the writ-petitioner joined the said post. The writ-petitioner-respondent No.1 performed his duty as Director General (Current Charge) with utmost sincerity and honesty without any blemish. But all of a sudden the writ-respondent No.1 the present petitioner No.1 sent the writ-petitioner on forced leave by letter dated 09.11.2020 without assigning any reason. As per S.S.C. Certificate the writ-petitioner's date of birth is on 09.01.1962 and accordingly he was supposed to go on retirement on 09.01.2021 with one year PRL at the age of superannuation as per provision of section 47 of the সরকারী চাকুরী আইন, ২০১৮. Accordingly the writ-petitioner on 21.12.2020 applied to the writ-respondent No.1 the present petitioner No.1 for granting him PRL for a period of one year from 09.01.2021. During pendency of the writ-petitioner's application for PRL, on 30.12.2020 the writ-respondent No.4 arbitrarily cancelled the earlier notification issued vide memo No.14.00.0000.006.11.003.19.84 dated 03.04.2019 by which current charge was given to the writ-petitioner to the post of Director General and thereby the current charge held by the writ petitioner No.1 in the post of Director General was cancelled without assigning any reason. The writ-respondent No.4 by notification vide memo no. 14.00.0000.006.99.001.21.07 dated 06.01.2021 granted the writ-petitioner retirement as per section 43(1)(Ka) of the সরকারী চাকুরী আইন, ২০১৮. Even after filing application for PRL, no PRL and other attending benefits were granted to the writ-petitioner-respondent No.1 till date in violation of provision of section 47 of the সরকারী চাকুরী আইন, ২০১৮. After granting direct retirement the respondents-petitioners initiated the departmental proceeding directing the writ-petitioner-respondent No.1 to appear before inquiry committee. The writ-respondents created mental pressure upon the writ-

petitioner, ousted him from government residence within 30 (thirty) days and forcefully took his government vehicle within 2(two) days. The writ-respondents-petitioners issued a show cause notice on 24.10.2021 for realization of compensation in the form of punishment and as such, the writ-petitioner finding no other alternative and efficacious remedy filed the writ petition under Article 102 of the Constitution of the People's Republic of Bangladesh. Since writ-petitioner-respondent No.1 retired from service on 08.01.2021, he had no scope of exhausting jurisdiction of the Administrative Tribunals. While the petitioner was Additional Director General (Planning) he was given the additional charge of Project Director of the Post e-Centre for Rural Community vide office order dated 08.12.2014. The Post e-Centre for Rural Community was one of the most priority based projects of the Government under direct supervision and control of the Ministry of Posts, Telecommunications and Information Technology and the Office of the Prime Minister. The project was successfully completed in the year 2017. But a vested group was always against the petitioner and they had been trying to oust the petitioner from the project as they failed to get financial benefit from the project. At their instance a daily national newspaper namely the 'Daily Inqilab' had published several reports against the petitioner and some other officers and employees of the said project. Some other vested group complained to the Anti-Corruption Commission (ACC) that some irregularity and corruption were committed in the said project. On the basis of such complaint the ACC inquired into the allegation and concluded the inquiry holding that no allegation was proved in the inquiry against the writ-petitioner, accordingly the ACC disposed of the complaint by office order dated 09.07.2019 and that was duly intimated to all the concerned departments including the writ-respondent No.1 petitioner No.1. But even after getting no proof of the allegation by the ACC a vested quarter did not refrain themselves from propagatory activities against the writ-petitioner-respondent No.1. At the instance of some other dishonest officers of the Posts department the Daily Inqilab newspaper published some propagatory news involving the writ-petitioner and others. On the basis of the report of the newspaper departmental proceeding was initiated against the writ-petitioner and charge sheet was issued on 19.11.2020 i.e. before 1 month 20 days of the issuance of the impugned retirement order. On that very day the writ-petitioner was not on effective duty due to sending him on forced leave which is a clear violation of the Rule 247 of the Bangladesh Service Rules, Part-1. However, the writ-petitioner submitted his reply and an inquiry committee was formed and before the inquiry committee the petitioner appeared for hearing, but he was not allowed to cross-examine-the witnesses. The petitioner was sent on forced leave on 09.11.2020 and the departmental proceeding was initiated on 20.11.2020 when the petitioner was not on effective duty and as such the prior permission of the Hon'ble President of the Republic was required as per Rule 247 of the Bangladesh Service Rules, Part-1 for instituting the proceeding against the relinquished employee, but that mandatory provision was not followed by the respondents-petitioners.

4. The writ-petitioner was granted retirement on 06.01.2021 with effect from 08.01.2021. On 24.10.2021 the respondent No.4 issued a show cause notice upon the writ-petitioner to show cause as to why part of amount of Taka 92.87 crore (ninety two crore eighty seven lacs taka only) should not be realized from his pension and gratuity as per Rule 247 of BSR, Part-1 and rest of the financial losses should not be recovered under PDR Act for wasting government money and damaging revenue. In the said show cause notice it is stated that the allegations of corruption, negligence and misconduct were proved under Rule 32(Kha) of the সরকারী চাকুরী আইন, ২০১৮ and Rule 3(Kha) and 3(Ga)(e) of the Government Servant (Discipline and Appeal) Rules, 2018, but no punishment could be awarded due to his retirement from service on 08.01.2021. The writ-petitioner applied for time to reply to the show cause notice. Though all other officers and employees of the respondents-petitioners have been enjoying

the PRL as per provision of section 7 of the Public Servants (Retirement) Act, 1974 as well as সরকারী চাকুরী আইন, ২০১৮ the respondents-petitioners have denied to give the PRL and other attending leave benefits to the writ-petitioner, which is a gross discrimination on the part of the respondents-petitioners. The immediate past Director General of the Directorate of Posts Mr. Susanta Kumar Mondal has also granted PRL by notification No.14.00.0000.006.99.00319.64 dated 11.03.2019 and the writ-petitioner was posted as Director General (current charge) with effect from 03.04.2019 after his retirement. While the impugned order was passed the writ-petitioner was on forced leave and on 20.12.2020 the writ-petitioner applied for granting him PRL with effect from 09.01.2021 for a period of 1(one) year with attending benefits, but the respondent No.1-petitioner No.1 without considering the said application of the writ-petitioner and without assigning any reason sent the writ-petitioner on direct retirement as per section 43(1) of the সরকারী চাকুরী আইন, ২০১৮ in violation of provision of section 47 of the সরকারী চাকুরী আইন, ২০১৮ and as such the impugned order has been passed in violation of the mandatory provision of law and the same is also arbitrary and *malafide*.

5. It is the case of the respondent that all other officers and employees of the Directorate of Posts and other offices of the government have been enjoying PRL as per provision of section 247. The immediate past Director General of the Directorate of Posts Mr. Susanta Kumar Mondal was also granted PRL, but the writ-petitioner's PRL and other allowances have been denied and thereby the writ-petitioner has been grossly discriminated by the respondents-petitioners and as such the impugned order of retirement without granting PRL with attending benefits is liable to be declared illegal and without lawful authority.

6. Upon hearing the writ petition a Division Bench of the High Court Division on 08.11.2021 issued Rule and stayed the operation of the impugned memo No.14.00.0000.006.27.016.19.256 dated 24.10.2021.

7. Mr. A.M. Amin Uddin, the learned senior Advocate appearing on behalf of the writ-petitioner-respondent No.1 took us through the order of the High Court Division dated 08.11.2021, the materials on record and submits that the High Court Division erred in law by passing the impugned order of stay in as much as the writ-petitioner- respondent No.1 retired from the post of the Additional Director General (Grade-2) of the Directorate of Posts, which is the service of the Republic and the matter in issue involves terms and condition of service. According to section 4 of the Administrative Tribunal Act, 1980 the Administrative Tribunal has the only exclusive jurisdiction to hear and determine in respect of the terms and conditions of his service including pension rights, or in respect of any action taken in relation to him as a person in the service of the Republic and as such the Writ Petition No.10075 of 2021, which is now pending in the Hon'ble High Court Division is not at all maintainable and as such the impugned order of stay dated 08.11.2021 is liable to be set aside. Referring to the decision in the case of Secretary, Ministry of Home Affairs and others Vs. Sontosh Kumar Saha and others 21 BLC(AD)(2016) 94 the learned Advocate for the petitioner-writ respondent No.1 submits that according to Article 117 of the Constitution of the People's Republic of Bangladesh Administrative Tribunal has the exclusive jurisdiction to hear and determine the issues in respect of the terms and conditions of service of the Republic and without considering the same, the High Court Division passed the impugned order.

8. On the other hand, Mr. Probir Neogi, the learned senior Advocate on behalf of the respondents-writ petitioners submits that the High Court Division rightly issued Rule and stayed the operation of the memo No.14.00.0000.006.27.016.19.256 dated 24.10.2021 issued

by the respondent No.5. He further submits referring the case of Government of Bangladesh, represented by the Secretary, Ministry of Social Welfare, Bangladesh Secretariat and others Vs. Md. Akterun Nabi 71 DLR (AD)(2019) 319 that it is against the principle of natural justice to ask the writ-petitioner-respondent No.1 to pay the service related benefit for the alleged excess 2 years as the writ-petitioner-respondent No.1 was never served with any notice and was not given any opportunity of being heard. Over and above when any person renders service to anybody he has a right to get remuneration for the service he rendered and it is the duty of the party who received such service to pay for such service he received. On reply learned Attorney General further submits that if the writ petitioner has any grievance against the action of the authority he must go to the Administrative Tribunal. As we drew attention of the learned Attorney General regarding the decision reported in 71 DLR(AD)319 (paragraph-24) regarding maintainability of the writ petition on behalf of a retired public servant the learned Attorney General submits that part of the said decision has been given in contrary to the statutory provision of law as mentioned in section 4(3) of the Administrative Tribunal Act, 1980. Possibly at the time of hearing of the case reported in 71 DLR(AD) 319 the latest provision of law was not brought to the notice of the Court. Had it been brought to notice of the Court the said decision might not been passed.

9. We have considered the submissions of the learned advocates for the both sides, perused the order dated 08.11.2021 passed by the High Court Division, and the materials on record.

10. It would be benefitted for all of us, if we go through the powers and jurisdiction of Administrative Tribunal as has been mentioned in section 4 of the Administrative Tribunal Act, 1980 which provides as follows:

> "**4. Jurisdiction of Administrative Tribunals-**
> (1) An Administrative Tribunal shall have exclusive jurisdiction to hear and determine applications made by any person in the service of the Republic (or of any statutory public authority in respect of the terms and conditions of his service including pension rights, or in respect of any action taken in relation to him as a person in the service of the Republic or of any statutory public authority).
> (2) A person in the service of the Republic (or of any statutory public authority) may make an application to an Administrative Tribunal under sub-section (1), if he is aggrieved by any order or decision in respect of the terms and conditions of his service including pension rights or by any action taken in relation to him as a person in the service of the Republic (or of any statutory public authority).
>
> Provided that no application in respect of an order, decision or action which can be set aside, varied or modified by a higher administrative authority under any law for the time being in force relating to the terms and conditions of the service of the Republic (or of any statutory public authority) or the discipline of that service can be made to the Administrative Tribunal until such higher authority has taken a decision on the matter.
> Provided further that, where no decision on an appeal or application for review in respect of an order, decision or action referred to in the preceding proviso has been taken by the higher administrative authority within a period of two months from the date on which the appeal or application was preferred or made, it shall, on the expiry of such period, be deemed, for the purpose of making an application to the Administrative Tribunals under this section, that such higher authority has disallowed the appeal or the application).

> Provided further that no such application shall be entertained by the Administrative Tribunal unless it is made within six months from the date of making or taking of the order, decision or action concerned or making of the decision on the matter by the higher administrative authority, as the case may be.
> **(3) In this section "person in the service of the Republic (or of any statutory public authority)" includes a person who is or has retired or is dismissed, removed or discharged from such service but does not include a person in the defence services of Bangladesh (or of the Bangladesh Rifles)."**

11. From the above provision of law it is abundantly clear that administrative tribunal has the exclusive jurisdiction to deal with the matters when a person in the service of the Republic is aggrieved by any order or decision in respect of the terms and conditions of his service including pension rights or by any action taken in relation to him as a person in the service of the Republic. In the present case, the writ-petitioner-respondent No.1 is a person in the service of the Republic as per the provision of section 4(3) of the Administrative Tribunal Act, 1980 and as such the Tribunal has the exclusive jurisdiction to deal with the matter regarding the terms and conditions of the service of the writ petitioner-respondent No.1.

12. We find substance in the submissions of the learned Attorney General regarding the case reported in 71 DLR (AD) [2019] 319 in respect of maintainability of the writ petition. For the reason that the decision regarding maintainability of the writ petition filed by a retired government servant mentioned in paragraph-24 of the said judgment wherein it has been held that "we are of the view that since the order impugned before the High Court Division had been issued after retirement of the writ-petitioner-respondent he cannot be treated in the service of the Republic." The said decision was given referring another decision in the case of ***Syed Abdul Ali Vs. Secretary, Ministry of Cabinet Affairs, Establishment Division and ors.*** reported in ***31 DLR (AD)[1979] 256***. In the said case the judgment was pronounced on February 6, 1979 and the judgment of the case reported in 71 DLR(AD)319 was pronounced on 23rd April, 2019. During this long gap of time from 1980 to 2019 the law has been changed. The sub-section 3 of section 4 of the Administrative Tribunal Act, 1980 has been added in the said provision of law in the year 1984 vide Ordinance No.LX of 1984. When the judgment of the case reported in 31 DLR (AD) 256 was pronounced at that time sub-section 3 of section 4 of the Administrative Tribunal Act, 1980 had no existence, but when the judgment was pronounced in the case reported in 71 DLR (AD) 319 the provision of sub-section 3 of section 4 of the said Act came into force and found place in the statute book. Thus, we are of the view that the part of the judgment reported in 71 DLR (AD) 319 particularly in paragraph 24 regarding maintainability of the writ petition was passed without considering the latest provision of law and, as such, the part of the said judgment regarding maintainability of the writ petition filed by a retired public servant is a *per incuriam* decision.

13. What is the meaning of *per incuriam*? *Per incuriam,* literally translated as "through lack of care" is a device within the common law system of judicial precedent. A finding of *per incuriam* means that a previous Court judgment has failed to pay attention to relevant statutory provision or precedents. The significance of a judgment having been decided *per incuriam* is that it need not be followed by any equivalent Court. Ordinarily, the *rationes* of a judgment is binding upon all sub-ordinate Courts in similar cases. However, any Court equivalent to the Court which pronounced the judgment *per incuriam* is free to depart from a decision of that Court where that earlier judgment was decided *per incuriam.*

14. The Court of Appeal in ***Morelle Ltd v. Wakeling [1955] 2 QB 379*** stated that "as a general rule the only cases in which decisions should be held to have given *per incuriam* are those of decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned: so that in such cases some part of the decision or some step in the reasoning on which it is based is found, on that account, to be demonstrably wrong."

15. The exception of *per incuriam* under the doctrine of precedents can be understood in two ways. *Per incuriam* means "carelessness", although in practice it is understood as per ignoratium, meaning ignorance of law. When courts ignore law and proceed to pass judgment, the said decision falls under the spectrum of *per incuriam* and does not necessarily need to be followed.

16. In the case of ***Hyder Consulting (UK) Limited Vs. Governor, State of Orissa*** reported in ***(2015) Supreme Court Cases 189*** their Lordships held that "A decision can be said to be given *per incuriam* when the court of record has acted in ignorance of any previous decision of its own, or a subordinate court has acted in ignorance of a decision of the court of record. As regards the judgments of the Supreme Court rendered *per incuriam*, it cannot be said that the Supreme Court has "declared the law" on a given subject-matter, if the relevant law was not duly considered by the Supreme Court in its decision."

17. In the case of ***Dr. Shah Faesal and ors. Vs. Union of India and anr.,*** judgment delivered on 02.03.2020 by the Supreme Court of India in Writ Petition (Civil) No.1099 of 2019, their Lordships held that "A decision or judgment can also be *per incuriam* if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a coequal or larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the *per incuriam* Rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta."

18. The problem of judgment *per incurim* when actually arises, should present no difficulty as this Court can lay down the law afresh, if two or more of its earlier judgments cannot stand together.

19. Since the judgment report in 71 DLR(AD) 319 was delivered without considering the latest statutory provision (section 4(3) of the Administrative Tribunal Act, 1980) this judgment is a judgment per incuriam. As per decision given in the case of ***Dr. Shah Faesal and ors. Vs. Union of India and anr. in Writ Petition (Civil) No.1099 of 2019,*** since it has come to the knowledge of this Court that the previous judgment reported in 71 DLR(AD) 319 was delivered due to ignorance of the statutory provision of section 4(3) of the Administrative Tribunal Act, 1980. This Court should address the matter in accordance with law. We are of the view that it is the duty of this Court to make it very clear that if any judgment passed by the Court of co-equal jurisdiction has been passed on carelessness, or due to non-consideration of any statutory provision or previous judgment it must rectify the error.

20. We are of the view that the ratio decided in the case of ***Government of Bangladesh, represented by the Secretary, Ministry of Social Welfare, Bangladesh Secretariat and others Vs. Md. Akterun Nabi*** reported in ***71 DLR(AD) 319*** in respect of maintainability of the writ petition by a retired public servant is not applicable in this case as the said judgment is pronounced *per incuriam*.

21. In the jurisdiction of UK in many cases it has been observed that *per incuriam* judgment should not be followed by any equal Court even by the subordinate Court. We are unable to accept this proposition in toto. As per provision of Article 111 of the Constitution

the law declared by the Appellate Division is binding upon the High Court Division and all other subordinate Courts and the law declared by the High Court Division is binding upon all the subordinate Courts. In the case of ***Bangladesh Agricultural Development Corporation (BADC) vs. Abdul Barek Dewan being dead his heirs: Bali Begum and others*** reported in ***4 BLC(AD)85*** their Lordships held that "The word *"per incuriam"* is a Latin expression. It means through inadvertence. A decision can be said generally to be given *per incuriam* when the court had acted in ignorance of a previous decision of its own or when the High Court Division had acted in ignorance of a decision of the Appellate Division. *[see Punjab Land Development and Reclamation Corporation Ltd. vs Presiding Officer, Labour Court, 1990(3)SCC685(705)].* Nothing could be shown that the Appellate Division in deciding the said case had overlooked any of its earlier decision on the point. So, it was not open to the High Court Division to describe it as one given *"per incuriam"*. Even if it were so, it could not have been ignored by the High Court Division in view of Article 111 of the Constitution which embodies, as a rule of law, the doctrine of precedent.

22. Apart from the provision of Article 111 of the Constitution enjoining upon all courts below to obey the law laid down by this Court, judicial discipline requires that the High Court Division should follow the decision of the Appellate Division and that it is necessary for the lower tiers of courts to accept the decision of the higher tiers as a binding precedent. This view was poignantly highlighted in *Cassell & Co. Ltd vs Broome and another, (1972) AC 1027* where Lord Hailsham of St. Marylebone, the Lord Chancellor, in his judgment said:

> "The fact is, and I hope it will never be necessary to say so again, that, in the hierarchical system of courts which exists in this country, it is necessary for each lower tier, including the Court of Appeal, to accept loyally the decisions of the higher tiers."

23. The provision of Article 111 of the Constitution runs a follows:

> "The law declared by the Appellate Division shall be binding on the High Court Division and the law declared by either division of the Supreme Court shall be binding on all courts subordinate to it."

24. In view of the above judgment reported in 4 BLC(AD) 85, if any judgment pronounced by the Appellate Division, as per provision of Article 111 of the Constitution the High Court Division is not competent to say the judgment is *per incuriam*. Primarily the High Court Division must follow the judgment in toto, however, in such a situation the High Court Division may draw attention of the Hon'ble Chief Justice regarding the matter. On the other hand even if any judgment is pronounced by the High Court Division, the subordinate Courts have no jurisdiction to raise any question regarding the legality of the judgment on the point of *per imcuriam*. Parties may get remedy on preferring appeal.

25. In view of the above discussions and considering other materials on record, we are of the view that the High Court Division committed illegality in issuing Rule and passing an order staying the operation of the impugned memo No.14.00.0000.006.27. 016.27.016.19.256 dated 24.10.2021.

26. In the light of the observations made above, we find merit in the submissions of the learned Attorney General appearing for the petitioners and therefore the Rule issued by the High Court Division is liable to be discharged.

27. Hence, the Rule issued by the High Court Division on 08.11.2021 is discharged. However, the petitioners are directed to issue a fresh notice upon the respondent No.1 giving him opportunity to submit his reply and then to dispose of the matter in accordance with law.

28. Accordingly, the Civil Petition for Leave to Appeal is **disposed of.**