

2 SCOB [2015] HCD 66

**HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

Writ petition No. 12211 of 2012

Md. Kamal Mia and others

.....Petitioners

-Versus-

Ministry of Communication and others

..... Respondents.

Mr. ABM Siddiquir Rahman Khan Advocate.

.... For the petitioners.

None appeared

....For the respondents.

Heard on 25.02.2015

Judgment on 12.03.2015

Present:

Mr. Justice Quazi Reza-Ul Hoque

and

Mr. Justice Abu Taher Md. Saifur Rahman

Legitimate Expectation:

On the basis of several decisions passed by our Apex Court, now it has been established that generally the legitimate expectation may arise-

- I. if there is an express promise given by a public authority; or**
- II. because of the existence of a regular practice which the claimant can reasonably expect to continue;**
- III. Such an expectation must be reasonable.**

However, if there is a change in the policy or in the public interest the position is altered by a rule or legislation, no question of legitimate expectation would arise. ... (Para 9 & 10)

JUDGMENT

Abu Taher Md. Saifur Rahman, J

1. This Rule was issued on an application calling upon the respondents to show cause as to why a direction should not be given upon the respondents to absorb the petitioners in the revenue Sector and /or to make their job permanent by implementing the agreement dated 16.11.92 (annexure-“A”) and 22.11.2000 (annexure “C”) respectively and in the light of the judgement and order dated 04.05.2010 in writ petition No. 4856 of 2009 and /or pass such other or further order or orders as to this Court may seem fit and proper.

2. For the purpose of disposal of the Rule the relevant facts may briefly be stated as follows:

The petitioners have been appointed in the service of Bangladesh Railway as Wayman, Gate keeper, Valbeman, Khalashi etc on temporary basis. During their service an agreement was executed between the Ministry of Communication and the leaders of the Sramik Karmachari Sangram Parishad dated 16.11.1992 wherein it has been stated in clause 3 and 4 that the temporary employees would be regularized upon completion of five years service in regard to their respective post. Thereafter on the basis of the said agreement the concerned authority absorbed 18 employees under the revenue budget. Subsequently another agreement was also executed between the same dated 22.11.2000. In order to execute the said contract a committee was formed to prepare a final list from the TLR/Substitute and Project Employees of Eastern Zone after scrutinizing with necessary recommendation vide letter dated 04.12.2009. After scrutiny, the said committee finalized a list of 151 employees among the TLR/ Substitute and Project Employees. After long time the Cabinet Division issued a Government order No. MPB/Ka:B:Sha:/Ka-Pa-GA-11/2011-111 dated 03.05.2003 wherein it is mentioned in

clause No. 5 that after 3 years of service the temporary posts may be made permanent. Subsequently at the initiative of the Ministry of Communication a meeting was held on 29.08.2004 and decision was taken for requesting the concern authority for absorbing the temporary employees under the revenue set up. But no step was taken as yet regarding the said matter. In these circumstances, some of the temporary employees of Bangladesh Railway filed several writ petitions being No. 8456 of 2009, 2263 of 2011 and 5265 of 2011 before the High Court division. After hearing, those Rules were made absolute. Thereafter the concerned authority on the basis of the said judgement absorbed all petitioners of those writ petitions under the revenue set up. But so far the instant writ petitioners are concerned no step was taken as yet. Being aggrieved, the petitioners have preferred this application before this Court and obtained the instant Rule.

3. This Rule is being contested by respondent No.2-6 by filling an affidavit-in-opposition wherein it has been stated that the petitioners have been appointed in the service of Bangladesh Railway on daily and temporary basis. Regarding the matter of absorption a contract has been made between the authority and leader of Bangladesh Railway Sramik Karmachari Sangram Parishad on 16.11.1992. But there was a condition that the employee would be regularizes from 1st January of 6th year who had been recruited before 16.11.1992 and working uninterruptedly 5 years up to 25.01.2000. Accordingly the concerned authority regularised such 18 employees who worked uninterruptedly for the period of 5 years. It is further stated that subsequently another contract has been made between the Ministry of Communication and the Sramik Karmachari Sangram Parisha dated 22.11.2000. Subsequently a committee formed in order to execute the said contract and prepared a list of 151 persons. It is also stated that though several meeting was held with the concerned Ministry but no final approval has been made due to want of necessary papers. As result it is not possible to regularize the temporary employees of Bangladesh Railway. It is further stated the petitioners has no locus stand to invoke the writ jurisdiction, since the proper forum lies before the Administrative Tribunal and as such the instant Rule is liable to be discharged.

4. Mr. ABM Siddiquir Rahman Khan, the learned advocate appearing on behalf of the petitioners having led us through the writ petitions and other connected papers mainly submits that the petitioners are entitled to be absorbed under the revenue budget on the ground of legitimate expectation. In support of his contention he pointed out that the petitioners have been appointed in the service of Bangladesh Railway on temporary basis. During their service the concerned authority agreed by their agreements dated 16.11.1992 and 22.11.2000 that after completion of five years service they would be regularized under the revenue setup as evident from annexure "A" and "C" of the writ petition.

5. He further contended that this matter has already been settled by this Court in writ petitions No. 4856 of 2009, 2263 of 2011 and 5265 of 2011 filed earlier by some other temporary employees of Bangladesh Railway regarding the same matter. Accordingly pursuant to the judgement of those writ petitions, the petitioners are required to be absorbed under the revenue set up on the ground of legitimate expectation.

6. As against this no one appears to oppose the Rule.

7. We have considered the submissions of the learned Advocate for the petitioners and perused the writ petition and other connected papers thoroughly.

8. The only points for determination in this Rule is that whether the petitioners are entitled to be absorbed under the revenue budget on the ground of legitimate expectation.

9. In order to appreciate the contention raised by the learned advocate for the petitioners, it is necessary to examine the relevant doctrine of legitimate expectation. Legitimate expectation cannot be pressed as matter of legal right. It must be founded on sanction of law or custom or an established procedure followed in natural and regular sequence. Principle of legitimate expectation can be invoked only in a case where the aggrieved person was deprived of some benefit or advantage which in the past had been permitted to be enjoyed until he was given reasons for its withdrawal and

opportunity to comment on these reasons because he had received an assurance that it would not be withdrawn before he had been given the opportunity of making representation against the withdrawal. On the basis of several decisions passed by our Apex Court, now it has been established that generally the legitimate expectation may arise-

- (i) if there is an express promise given by a public authority; or
- (ii) because of the existence of a regular practice which the claimant can reasonably expect to continue;
- (iii) Such an expectation must be reasonable.

10. However, if there is a change in the policy or in the public interest the position is altered by a rule or legislation, no question of legitimate expectation would arise.

11. The principle of legitimate expectation is still at a stage of evolution. The principle is at the root of the rule of law and requires regularity, predictability and certainty in the government's dealing with the public. The substantive part of the principle is that if a representation is made that a benefit of substantive nature will be granted or if the person is already in receipt of the benefit that it will be continued and not be substantially varied, then the same could be enforced. The doctrine of legitimate expectation in substantive sense has been accepted as a part of law of this country. The decision maker can normally be compelled to give effect to his representation in regard to expectation based on the previous practice or past conduct unless the same overriding public interest comes in the way.

12. So far the question of legitimate expectation is concerned, our Appellate Division after reviewing all previous judgments and rules provide a guide lines in the case of Chief Engineer, the Local Government of Engineering Department and others vs Kazi Mizanur Rahman and others reported in 17 BLC (AD) 2012 at page 91 which are as follows:

(i) "Whenever any vacancy in LGED is created in the revenue set up, it shall consider for absorption of employees or officers of the development project within the meaning of section 2(ga) of the Rules, 2005, if the project in which she/working is completed subject to the condition that such employee or officer has requisite qualifications for the said post.

(ii) Whenever a vacant post is created in the revenue budget, the LGED shall absorb/transfer an employee or officer from the development project mentioned in clause (1) to fill up that post in accordance with Rules of 1985 and the ECNEC'S decision dated 10th January, 2008.

(iii) An officer or employee shall be absorbed if she/he was appointed in the development project within the meaning of rule 2(ka) of Rules, 2005 in accordance with the procedures prescribed for appointment in public employment.

(iv) An officer or employee must have requisite qualifications for the post in which he is seeking absorption.

(v) An officer or employee must have continuity in service in the project in which he is working.

(vi) An officer or employee must have satisfactory service record before his case is considered for regularization in the revenue budget.

(vii) If an officer and employee whose rank and status does not relate to the posts advertised by the impugned notifications on the day of its publications, such officer or employee would not be eligible for consideration for absorption.

(viii) The employees and officers who have been working in the development projects mentioned in clause (1) on monthly pay basis would only be eligible for consideration for absorption in the revenue budget.

(ix) Unless and until vacancies in the revenue budget in the LGED are created, the employees and officers of the development projects mentioned in clause (1) cannot claim as of right to be absorbed in the revenue budget;

(x) While considering and selecting an employee or officer of the development project for absorption in the revenue budget, the appointing authority shall maintain strictly the prevailing quota system for employment in the public employment being followed by the Government.

(xi) The LGED shall consider the cases of those working on master roll basis for absorption in the revenue budget by phases if they have requisite qualifications subject to availability if vacancies according to their seniority.”

13. In view of the aforesaid principal of legitimate expectation and the guide lines passed by our Appellate Division, now we will see whether the petitioners are entitled to be absorbed in their respective post under the revenue budget.

14. On perusal of the instant writ petition it transpires that the petitioners have been appointed in different post on temporary basis in the service of Bangladesh Rail way. As per agreement dated 16.11.1992 as contained in annexure “A” it appears that during service of the petitioners an agreement was executed between the Ministry of Communication and the leaders of Saramik karmachari Sangram Parishad wherein it has been stated in clause 3 and 4 that the temporary employees would be regularized upon completion of 5 years service in regard to their respective post. When a public authority has promised to follow a certain procedure, it should be implement fairly for the interest of good administration. On the basis of the agreement dated 16.11.2011 the concerned authority has already absorbed 18 temporary employees under the revenue budget as evident from annexure “B”. So the agreement dated 16.11.1992 has acted upon. On perusal of annexure “C” it also transpire that that subsequently another agreement was executed between the Ministry of Communication and the Somik Saramik karmachari Sangram Parishad dated 22.11.2000 wherein it is stated that all temporary employees would be regularized under the revenue budged. Moreover this matter has already been settled by this Court in writ petitions No. 4856 of 2009, 2263 of 2011 and 5265 of 2011 which were filed by other temporary employees of Bangladesh Railway regarding the same matter.

15. Under the aforesaid circumstances and the reasons as stated above we found substance in this Rule

16. In the result the Rule is made absolute without any order as to cost.

17. The respondents are hereby directed to consider the case of the petitioners subject to vacancy, if they are not found to be otherwise incompetent by law, in the light of the agreement dated 16.11.1992 and 22.11.2000 (annexure “A” and “C”) before taking any steps of appointment afresh.

18. Let a copy of this judgment be sent to the respondents for information and necessary actions.