

2 SCOB [2015] AD 24**APPELLATE DIVISION****PRESENT:**

Mrs. Justice Nazmun Ara Sultana
Mr. Justice Muhammad Imman Ali
Mr. Justice Mohammad Anwarul Haque
Mr. Justice Hasan Foez Siddique

CIVIL APPEAL NOS.45-48 OF 2012.

(From the judgment and order dated 6th July, 2010, 27th September, 2010 and 8th October, 2009 passed by the High Court Division in Review Petition Nos.49 of 2010, 48 of 2010, 52 of 2010 and Writ Petition No.2331 of 2009.)

The Bangladesh Agricultural Development Corporation,
 represented by its Chairman, Krishi Bhaban, 49-50, Dilkusha
 C/A., Motijheel, Dhaka and others:

Appellants.
 (in all the cases)

=Versus=

Md. Abdur Rashid and others : Respondents.
 (In C.A. No.45 of 2012)

Md. Aaur Rahman and others : Respondents.
 (In C.A. No.46 of 2012)

Md. Rafiqul Islam : Respondent.
 (In C.A. No.47 of 2012)

Md. Shafiqul Alam Khan and others: Respondents.
 (In C.A. No.48 of 2012)

For the Appellants:
 (In all cases) Mr. Mahbubay Alam, Senior Advocate,
 instructed by Mr. N.I. Bhuiyan and Mr.
 Shamsul Alam, Advocate-on-Record.

For Respondent Nos.1-5:
 (In C.A. No.45 of 2012) Mr. Abdul Wadud Bhuiyan, Senior
 Advocate, instructed by Mr. Zainul
 Abedin, Advocate-on-Record.

For the Respondent:
 (In C.A. No.47 of 2012) Mr. Probir Neogi, Advocate, instructed by
 Mr. Taufique Hossain, Advocate-on-
 Record.

For Respondent:
 (In C.A. No.48 of 2012) Not represented.

Respondent Nos.6-8:
 (In C.A. No.45 of 2012) Not represented.

Respondent Nos.2-11:
 (In C.A. No.46 of 2012) Not represented.

Dates of hearing: 11-06-2013, 24.07.2013 and 30.07.2013

Judgment on:12.02.2014

Voluntary retirement scheme is a method used to reduce surplus staffs. Participation in the voluntary retirement plan is voluntary. It has to result in an overall reduction in the existing strength of employees. Accordingly, we are not inclined to accept the observation of the High Court Division that the respondents had been terminated in the garb of voluntary retirement. Moreover, the respondents have filed writ petitioners after about 8 years of the acceptance of their prayers and after receiving retirement benefits. ... (Para 21)

The instant process was a policy decision involving complex economic factors. The court would be slow from interfering with the economic decisions as it has been recognized that the economic expediencies lack adjudicative decision and unless the economic decision, based on economic expediencies, is demonstrated to be so violative of constitutional or legal limits. It is the administrators and legislators who are entitled to frame policies and take such administrative decisions as they think necessary in the public interest. The court should not ordinarily interfere with policy decisions, unless clearly illegal. We do not find any violation of constitutional provision or legal limits in the instant scheme. ... (Para 22)

J U D G M E N T

Hasan Foez Siddique, J:

1. Civil Appeal Nos.45 to 48 of 2012 have been heard together. Since all the appeals raised common points of law, they are being disposed of by this single judgment.

2. The common question in these appeals is as to whether employees who opted for voluntary retirement pursuant to or in response of a special scheme floated by the Bangladesh Agricultural Development Corporation (BADC) would be precluded from re-instatement in their services after acceptance of their prayers for voluntary retirement and payment of retirement benefits.

3. In Civil Appeal No.45 of 2012, the respondent Nos.1-5 filed Writ Petition No.8872 of 2008 being aggrieved by the notification dated 26.10.2002 issued by the Secretary, Ministry of Agriculture amending Clauses 4 and 5 of the Notification No.Krishi-5/Ma-2/98(Part-8)/727 dated 17.11.1999 issued by the Government with regard to reorganization of BADC and office order communicated under Memo No. ১৩৭১/ক-১/২০০২/২০০৩/৩৬১ dated 20.10.2002 purportedly terminating 135 employees including writ petitioners. The High Court Division made the said rule absolute holding that identical matter had been disposed of by a judgment and order dated 27.05.2008 by this Division in Civil Appeal Nos.158-184 of 2006 and Civil Appeal No.136 of 2007. Accordingly, the writ respondents were directed to re-instate the writ petitioners to their respective posts with all wages subject to refund of the termination benefits by the writ petitioners, if those were withdrawn by them. BADC filed Review Petition No.49 of 2010 in the High Court Division mainly on the ground that the writ petitioners were not terminated rather they had voluntarily retired from their service. The High Court Division rejected the said review petition summarily holding that the service of the petitioners were terminated in the garb of voluntary retirement. Against the said order of rejection of review petition, BADC filing leave petition, obtained leave.

4. In Civil Appeal No.46 of 2012, the writ petitioners Md. Ataur Rahman and 7 others filed Writ Petition No.7724 of 2008 being aggrieved by the above mentioned notifications and the orders of termination from their service. The High Court Division made the said Rule absolute taking similar views. BADC filed Review Petition No.48 of 2010 on similar grounds. The High Court Division rejected the said review petition summarily holding that the order of termination had been passed in the garb of voluntary retirement. Against the said order, BADC, filing Civil Petition for leave to Appeal, got leave. While pressing this appeal No. 46 of 2012 Mr. Mahbubey Alam, learned Senior Counsel, submits that out of 8 writ petitioners, writ petitioners Md. Ataur Rahman, Md. Abdul Hakim, Mozibor Rahman and Md. Anowarul Hoque had retired from their service voluntarily and the rest writ petitioners were terminated. Though the rest writ petitioners namely, Md. Mostafizur Rahman,

Md. Alauddin, Md. Amir Hossain and Nobiul Islam have been impleaded as respondent Nos.5-8 in this appeal but he would not press the appeal against respondent Nos.5-8. Accordingly, the appeal be dismissed in respect of the respondents No.5, Md. Mostafizur Rahman, 6.Md. Alauddin, 7.Md. Amir Hossain and 8. Nobiul Islam.

5. In Civil Appeal No.47 of 2012, respondent Md. Rafiqul Alam was writ petitioner No.5 in Writ Petition No.7682 of 2007. Said Md. Rafiqul Alam and 5 others filed the aforesaid writ petition challenging the above mentioned notices and the orders of termination. Similarly, Rule was also made absolute by the High Court Division observing that since identical matter had been disposed of by this Division, the writ petitioners were entitled to get relief in the light of the said judgment. BADC filed Review Petition No.52 of 2010 impleading Md. Rafiqul Alam, stating that he had voluntarily retired from his service. So, the matter decided by the Appellate Division was not identical so far as it relates to Md. Rafiqul Alam. The High Court Division summarily rejected the said review petition by an order dated 27.09.2010. Then, BADC preferred this appeal getting leave.

6. In Civil Appeal No.48 of 2012, the respondents were 20 in number. They filed Writ Petition No.2331 of 2009 being aggrieved by the above mentioned notifications and the orders of termination. The High Court Division made the said Rule absolute in the light of the decision of the this Division and directed to reinstate the writ petitioners in their service. Against the said judgment and order, BADC preferred this appeal getting leave. Mr. Mahbubey Alam, learned Senior Counsel, submits that he would not press the appeal in respect of other respondents except respondent No.9 Md. Safiul Alam Khondoker who had retired from service voluntarily. Accordingly, the appeal be dismissed against the other respondents except the respondent No.9 Md. Safiul Alam Khondoker.

7. Mr. Mahbubey Alam, learned Senior Counsel appears on behalf of the appellants for all the appeals. On the other hand, Mr. Abdul Wadud Bhuiyan, Senior Counsel appears for respondent Nos.1-5 in Civil Appeal No.45 of 2012 and Mr. Probir Neogi appears for the respondent in Civil Appeal No.47 of 2012.

8. No one appears on behalf of the respondents in other appeals.

9. Mr. Mahbubey Alam, submits that the respondents, against whom he is pressing the appeals, had voluntary retired from their services and had withdrawn their financial benefits. They were not terminated from their service. After acceptance of their prayers for voluntary retirement and payment the financial benefits, the respondents could not claim that they had been terminated from the service. The High Court Division has committed error of law in holding that the service of these respondents had been terminated in the garb of voluntary retirement.

10. Mr. Abdul Wadud Bhuiyan, learned Senior Counsel appearing for the respondent Nos.1-5 in Civil Appeal No.45 of 2012, submits that the prayers for voluntary retirement of respondents were stayed by BADC and allowed them to continue for a considerable period thereby those prayers had been rejected by implication. By the impugned orders all the respondents had been terminated in the garb of voluntary retirement. The High Court Division rightly held so.

11. Mr. Probir Neogi, appearing on behalf of the respondent in Civil Appeal No.47 of 2012, submits that the respondent Md. Rafiqul Alam initially though submitted an application for voluntary retirement but the same was not accepted and by the impugned order he had been terminated. He further submits that Rafiqul Islam did not receive any financial benefit out of same scheme of voluntary retirement like other respondents who had retired from services voluntarily. He submits that the High Court Division rightly declared the order of termination void and meanwhile BADC had reinstated him and he has been serving in BADC.

12. It appears from the materials on record that in Civil Appeal No.45 of 2012 the respondents are 5 in number. They are 1. Md. Abdur Rashid, 2. Md. Fazlur Rahman, 3. Solaiman Ali, 4. Md. Abdur Rashid Mondal, 5. Md. Jahangir Alam. Md. Abdur Rashid prayed for voluntary retirement with effect

from 30.09.1994. BADC, accepting the said prayer by a letter communicated under memo No.স্বচ্ছা/সক-1/2002-2003/369 dated 20.10.2002, paid his retirement benefits who received 80% of the payable benefits on 23.11.2002. Respondent No.2, Md. Fazlar Rahman prayed for voluntary retirement from service with effect from 30.09.1994 which was accepted by BADC on 20.10.2002. This respondent received his entire retirement benefits of Tk.2,85,728/- on 26.11.2002 under special scheme of voluntary retirement and 19.05.2003. Respondent No.3, Solaiman Ali prayed for such voluntary retirement with effect from 30.09.1994 which was accepted on 20.10.2002. The payable financial benefits of retirement was 4,48,425/-. He had received Tk.3,65,120/- on 23.11.2002 and Tk.16,610/- on 31.07.2004. The respondent No.4, Md. Abdur Rashid Mondal prayed for voluntary retirement from his service with effect from 30.09.1994. The payable amount against his retirement benefits was Tk.2,62,729/-. He received Tk.76,737/- on 12.05.2003 and 23,311/- on 20.12.2004. Respondent No.5, Md. Jahangir Alam prayed for a voluntary retirement from service with effect from 30.09.1994 and payable amount against his retirement benefits was Tk.3,61,145/-. He received Tk.3,51,145/- on 30.11.2002 and Tk.10,615/- on 31.07.2004. Similarly, respondent No.1, Md. Aaur Rahman, 2. Md. Abdul Hakim, 3. Mozibor Rahman, 4. Md. Anowarul Hoque in Civil Appeal No.46 of 2012 filed their respective applications for voluntary retirement from services with effect from 30.09.1994. BADC assessed the payable amount of financial benefits against their services and almost all of them withdrew considerable amount out of the amounts payable under such a special scheme of voluntary retirement.

13. Mr. Probir Neogi, learned counsel for the respondent Md. Rafiqul Alam, in Civil Appeal No.47 of 2012 submits that meanwhile this respondent of this appeal has been re-instated and he has been serving in BADC. After such re-instatement of respondent Md. Rafiqul Alam, we are of the view that the appeal against him is not tenable.

14. In Civil Appeal No.48 of 2012, Mr. Mahbubey Alam, submits that the respondent No.9 Md. Safiul Alam Khondoker had retired from his service voluntarily. From the materials on record it appears that the respondent No.9 Md. Safiul Alam Khondoker prayed from voluntary retirement from service with effect from 30.09.1994. The same was accepted on 20.10.2002. Though it appears that, on 30.10.2002, he was terminated from service but Mr. Alam submits that the same was a clerical mistake. After acceptance of the prayer for voluntary retirement from service, the question of termination thereafter does not arise. It further appears from the materials produced by the appellants that he had also received a considerable amount out of the amount payable as retirement benefits.

15. BADC was said to be overstaffed. For the purpose of effective management, manpower planning was contemplated by the Ministry of Agriculture. In order to downsize the strength of staffs of BADC, the Ministry of Agriculture issued a circular communicated under Memo No.Lto-5/j - 2/(Awn-1)/375 dated 13.12.1992, the Voluntary Retirement Scheme in which some privileges had been specially offered to the employees of BADC who intended to retire from their services voluntarily. As per terms of the scheme, the employees who sought for voluntary retirement, were entitled to accept ex gratia payment as specified therein. In said circular there was a clause wherein it was specifically mentioned, “এই ব্যবস্থা সম্পূর্ণ ঐচ্ছিক। তবে, একবার অবসর গ্রহণের ইচ্ছা প্রকাশ করলে তা পরে প্রত্যাহার করা যাবে না।” In their respective applications for voluntary retirement from service the respondents mentioned that in view of the aforesaid circular they decided to retire from service voluntarily. Knowing fully well about the consequence of the aforesaid clause of the circular they offered their prayers. That is, admitted position is that the respondents, while working in the BADC had applied for voluntary retirement, pursuant to the scheme framed by the Ministry of Agriculture to relieve the surplus staffs, which had been accepted by the impugned orders. Since the respondents had been relieved from the duty after acceptance of their offers of voluntary retirement and special payment of retirement benefits, the Jural relationship of the BADC and respondents came to an end.

16. In the case of AIR India Vs. Nergesh Mirza. Supreme Court of India held that Government servant is not entitled to demand as of right, permission to withdraw the letter of voluntary retirement, it could only be given as a matter of grace. In the case of State of Haryana Vs. S.K. Singhal reported

in (1999)4 S.C.C. 293 Supreme Court of India observed that the cases of voluntary retirement can broadly be decided into the following categories:

- i. Where voluntary retirement is automatic and comes into force on the expiry of notice period,
- ii. When it comes into force; unless an order is passed within the notice period with holding permission; and
- iii. When voluntary retirement does not come to force unless permission to this effect is specifically granted by the controlling authority.

17. In the cases, in hand, the respondents, while working in the appellant BADC, had applied for voluntary retirement, and, thereafter, they withdrew all or a considerable amounts of retirement benefits from BADC. Since the respondents had applied for voluntary retirements, such applications should be effective in view of the provision of the circular as quoted above or by the relevant law.

18. Mr. Bhuiyan submits that since the BADC allowed the respondents to continue in service for a considerable period thereby BADC had rejected the prayers for voluntary retirement of the respondents by implication. It is not possible to accept the contention because as a general principle, one who knowingly accepts the benefits of the offer is estopped to deny the validity and binding effect of the offer and acceptance of the same. Moreover, clause 2 of the circular provides, “*Zte GKewi Aemi Mh̄t̄bi B̄Qv cKvk Kitj Zv c̄ti cZ̄v̄v̄vi Kiv h̄t̄e bv̄/ô* Implication may arise in consideration of statute is of something not expressly declared. Here the circular quoted above provides that option once exercise shall be final. Section 9 of the Public Servant (Retirement) Act also provides so. Since the respondents accepted the exgratia payment, in our considered opinion, could not have resiled therefrom.

19. In the case of Nand Keshwar Prasad Vs. Indian Farmers Fertilizers Co-operative Ltd. Supreme Court of India held that unless controlled by condition of service or the statutory provisions, the retirement mentioned in the letter of resignation must take effect from the date mentioned therein. The option having once been exercised the respondents could not go back on the same because the principle is that one person may not approbate and reprobate expresses two proposition.

20. In view of the specific provision in the circular that, “তবে, একবার অবসর গ্রহণের ইচ্ছা প্রকাশ করলে তা পরে প্রত্যাহার করা যাবে না।”, which indicates as absolute terms and since that there is no provision quoted clause to withdraw prayers, we are of the view that prayers of voluntary retirements came in effect after acceptance of the prayers. The moment prayers are accepted the retirement became effective.

21. “Termination” and “voluntary retirement from the service” have different connotations and cannot be equated for the reasons that the termination can be termed as “naked hire and fire” rule and paralld of which was to be found only the “Henry VIII clause”. On the other hand, voluntary retirement scheme is a method used to reduce surplus staffs. Participation in the voluntary retirement plan is voluntary. It has to result in an overall reduction in the existing strength of employees. Accordingly, we are not inclined to accept the observation of the High Court Division that the respondents had been terminated in the grab of voluntary retirement. Moreover, the respondents have filed writ petitioners after about 8 years of the acceptance of their prayers and after receiving retirement benefits.

22. The instant process was a policy decision involving complex economic factors. The court would be slow from interfering with the economic decisions as it has been recognized that the economic expediencies lack adjudicative decision and unless the economic decision, based on economic expediencies, is demonstrated to be so violative of constitutional or legal limits. It is the administrators and legislators who are entitled to frame policies and take such administrative decisions as they think necessary in the public interest. The court should not ordinarily interfere with

policy decisions, unless clearly illegal. We do not find any violation of constitutional provision or legal limits in the instant scheme.

23. In view of the discussion made above Civil Appeal No.45 of 2012 is allowed; Civil Appeal No.46 of 2012 is allowed so far as it relates to respondents No.1-4 namely (1) Md. Ataur Rahman, (2) Md. Abdul Hakim, (3) Mozibur Rahman and (4) Md. Anwarul Haque and dismissed against the rests. Civil Appeal No.47 of 2012 is dismissed. Civil Appeal No.48 of 2012 is allowed so far as it relates to respondent No.9 Md. Saiful Alam Khondker and dismissed against the rests.