

3 SCOB [2015] AD 27

APPELLATE DIVISION

PRESENT:

Mr. Justice Surendra Kumar Sinha,
Chief Justice
Mrs. Justice Nazmun Ara Sultana
Mr. Justice Syed Mahmud Hossain
Mr. Justice Hasan Foez Siddique

CIVIL PETITION FOR LEAVE TO APPEAL NO.2495 OF 2010.
(From the judgment and order dated 22.07.2010 passed by the High Court Division in Writ Petition No.1251 of 2010)

Pachimanchol Gas Company Limited

Petitioner.

=Versus=

Md. Nuruzzaman and others.

Respondents.

For the Petitioner :

Mr. Mahbubey Alam, Senior Advocate with (Mr. Tanjib-ul-Alam, Advocate), instructed by Mr. Md. Zahirul Islam, Advocate-on-Record.

For the Respondents :

Mr. A.M. Mahbubuddin, Advocate, instructed by Mr. Md. Taufique Hossain, Advocate-on-Record.

Date of hearing and judgment: 30-07-2015

“পশ্চিমাঞ্চল গ্যাস কোম্পানী লিমিটেড এর চাকুরী প্রবিধানমালা (সংশোধিত ২০০৫)”

Applicability of Service Rules:

The petitioner got appointment in 1997, that is, long before the promulgation of the Service Rules of 2005. So he is entitled to get benefit of the Service Rules under which he got his appointment, that is, he is entitled to get the benefits as provided in Service Rules of 1988 and his service would be regulated under the said provision of law. ...(Para 8)

J U D G M E N T

Hasan Foez Siddique, J:

1. This petition for leave to appeal is directed against the judgment and order dated 22.07.2010 passed by the High Court Division in Writ Petition No.1251 of 2010 making the Rule absolute.

2. Relevant facts for the disposal of this petition, in short, are that the writ petitioner is an employee of Paschimanchal Gas Company Limited, a Subsidiary of the Petrobangla. He got his appointment on 05.10.1997 as a Sub-Assistant Engineer in the Jalalabad Gas

Transmission and Distribution System Limited, another Subsidiary of petrobangla. He was transferred to Paschimanchal Gas Company Limited, Nakla, Sirajgonj. He joined there on 05.08.2010 as a Sub-Assistant Engineer. He was promoted to the post of Sub-Divisional Engineer on 20.09.2004. At present, he has been performing his duties at Bhagabari Regional Office, Paschimanchal Gas Company Limited. On 15th November 1988, the Ministry of Power Energy and Mineral Resources published a gazette notification regarding the Service Rules, 1988 for all employees of the Petrobangla including its subsidiary company. In Writ Petition Nos.403 of 1989 and 496 of 1989 the High Court Division declared the criteria mentioned in item No.15 and 16 of Column No.06 of said Rules illegal. Against which Petrobangla preferred Civil Petition for Leave to Appeal which was dismissed. Thereafter, Petrobangla in its 17th meeting held on 11.11.1993 took a resolution to follow the judgment and order of the High Court Division and accordingly amended the provision of the service rules inserting the provisions that educational qualification of three years Diploma Engineer and the employees who had been appointed before making the service rules of Petrobangla, 1988 is relaxable. Thereafter, all on a sudden on 06.06.2005 in the 352nd Board Meeting of the Board of Directors of Bangladesh Oil, Gas and Mineral Corporation (Petrobangla) passed a resolution regarding unified model service rules for employees of its companies. On 21.08.2005, the Board of Directors of Paschimanchal Gas Company Limited, in its 72nd meeting took a resolution adopting a new service Rules namely “পশ্চিমাঞ্চল গ্যাস কোম্পানী লিমিটেড এর চাকুরী প্রবিধানমালা (সংশোধিত ২০০৫)” following the Petrobangla Service Rules of the employees providing the provisions to the effect that the provision of experience of 6 years in the category mentioned (serial No.14) and 4 years experience in the category of serial No.13 instead of 3 years experience and also providing minimum qualification of Bachelor degree provided in serial No.12 for the promotion to the next higher posts.

3. Challenging the said provisions, the writ petitioner filed writ petition and obtained instant Rule.

4. The writ respondent No.4 contested the writ petition, contending, inter alia, that the judgment and order referred to and annexed to the writ petition as mentioned above are not applicable to the present writ petitioner respondent No.1. Since he has accepted the Service Rules of 2005 by accepting Selection Grade, he could not approbate and reprobate by filing the writ petition. The date of appointment of the petitioner could not be used as a ground to challenge the new Service Rules of 2005 regarding the provision of experience and minimum qualification.

5. The High Court Division hearing the parties made the Rule absolute.

6. Mr. Mahbubey Alam, learned Senior Counsel appearing on behalf of the petitioner, submits that since the petitioner accepted the benefit of the Service Rules of 2005, he is not entitled to challenge any provision of the said Rule.

7. Mr. A.M. Mahbubuddin, learned Senior Counsel appearing for the respondent, submits that since the writ petitioner got his appointment before enforcement of Service Rules 2005 and under the provision of Service Rules of 1988, the terms and conditions as provided in Service Rules 2005 would not operate as a bar to get benefit, which he was entitled under the Service Rules of 1988.

8. There is no dispute that the petitioner got appointment in 1997, that is, long before the promulgation of the Service Rules of 2005. So he is entitled to get benefit of the Service

Rules under which he got his appointment, that is, he is entitled to get the benefits as provided in Service Rules of 1988 and his service would be regulated under the said provision of law.

9. The High Court Division rightly held that the provision of Service Rules of 2005 are to be effective in respect of the appointment of the employees who have been appointed on 21.01.2005 or onward.

10. We do not find any wrong in the judgment and order of the High Court Division.

11. Accordingly, this petition is dismissed.