

**IN THE SUPREME COURT OF BANGLADESH**  
**APPELLATE DIVISION**

**PRESENT:**

**Mr. Justice Syed Mahmud Hossain,**  
**Chief Justice**  
**Mr. Justice Muhammad Imman Ali**  
**Mr. Justice Hasan Foez Siddique**  
**Mr. Justice Mirza Hussain Haider**

**CIVIL APPEAL NO.99 OF 2018 WITH CIVIL PETITION FOR LEAVE TO**  
**APPEAL NOS.1829,1830,1843,2379-2380 OF 2018.**

(From the judgment and order dated 19.10.2017, 04.01.208, 09.01.2018, 23.01.2018 passed by the High Court Division in Writ Petition No.3717 of 2017, 10961 of 2017, 11489 of 2017, 10936 of 2017, 10773 of 2017 & 13277 of 2017 respectively )

The Public Service Commission : Appellant.  
(C.A.No.99/18)

The Public Service Commission : Petitioners  
(In all the petitions)

**=Versus=**

Ripon Chandra Shil and others : Respondent.  
(C.A.No.99/18)

Md. Abdur Razzak and others : Respondent.  
(C.P.No.1829/18)

Tarikul Islam Tarek and others : Respondent.  
(C.P.No.1830/18)

Md. Mohsin and others : Respondent.  
(C.P.No.1843/18)

Md. Rezaul Karim and others : Respondent.  
(C.P.No.2379/18)

Biswajit Paul and others : Respondent.  
(C.P.No.2380/18)

For the Appellants : Mr. Mahbubey Alam, Senior  
(In C.A.No.99/18) Advocate instructed by Mr.  
Zainul Abedin, Advocate-on-Record.

For the Respondents : Mr. Sheik Fazle-Noor-Taposh,  
(In C.A.No.99/18) Advocate(with Mr. Salahuddin  
Dolan, Advocate) instructed by  
Mr. Md. Zahirul Islam,  
Advocate-on-Record.

For the Petitioners : Mr. Mahbubey Alam, Senior  
(In C.P.Nos.1829-1830 & 2379- Advocate instructed by Mohammad  
2380/18) Ali Azam, Advocate-on-Record.

For the Petitioners: Mr. Mahbubey Alam, Senior  
(In C.P.No.1843/18) Advocate instructed by Mrs.  
Sufia Khatun, Advocate-on-Record.

For the Respondents : Mr. Sharifuddin Chacklader,  
(In C.P.No.1829/18) Advocate instructed by Mr.  
Ashraf-uz-Zaman Khan, Advocate-on-Record.

For the Respondents : Mr. A.M. Aminuddin, Senior  
(In C.P.No.1830/18) Advocate(with Mr. A.B.M.

<p>For the Respondents : (In C.P.No.1843/18)</p> <p>For the Respondents: (In C.P.Nos.2379-2380/18)</p>	<p>Siddiqur Rahman Khan, Advocate) instructed by Mr. Md. Helal Amin, Advocate-on-Record</p> <p>Mr. Yusuf Hossain Humayun, Senior Advocate instructed by Mr. Mohammad Ali Azam, Advocate-on-Record.</p> <p>Mr. A.J. Mohammad Ali, Senior Advocate instructed by Mr. Md. Zahirul Islam, Advocate-on- Record</p>
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**Date of hearing : 04.07.2017**

**Date of judgment : 11<sup>th</sup> July, 2018**

### **J U D G M E N T**

**Hasan Foez Siddique, J:** The facts and laws relating to Civil Appeal No.99 of 2018 and Civil Petitions for Leave to Appeal No.1829, 1830,843, 2379-2380 of 2018 are identical. We heard all the matters together and they are being disposed of by this common judgment.

The short facts, for the disposal of this appeal and civil petitions are that the respondents filed different writ petitions, challenging the letter dated 28.11.2016 issued under the signature of the Assistant Secretary, Internal Resource Division, Section 3(Sulka), Ministry of Finance requesting the Chairman, Public Service Commission for recommendation of the appointment of the Assistant Revenue Officer (in short, ARO) against 700(seven hundreds) vacant posts from the successful candidates of 35<sup>th</sup> BCS examination, obtained Rules Nisi. The writ petitioners stated that pursuant to the

requisition of the National Board of Revenue (in short, NBR) the Public Service Commission (in short, the PSC) published an employment notification vide circular dated 15.9.2014 for filling up 411 vacant posts of ARO and, subsequently, on the further requisition, number of posts was increased to 546(411+135=546). The writ petitioner-respondents applied for the said posts and the PSC started the process of selecting suitable candidates. In response to the said advertisement, a total number of 1,23,802 candidates applied for those posts. Accordingly, 3812 candidates including the writ petitioner-respondents succeeded in written examination. Thus, they participated in viva voce examination held from 17.10.2016 to 10.11.2016. 3236 candidates out of 3812 passed in viva voce examination including the writ petitioner-respondents. Finally, the PSC published a list of 546 candidates on 5.12.2016 with recommendation for appointment in the posts of ARO. The other successful candidates were not recommended for appointment despite of availability of vacancies and requisite qualifications. The PSC by its memo dated 08.12.2016 sent the relevant documents to the writ respondent No.1 for further process of appointment of the recommended candidates along

with future appointment from the panel of the successful candidates. While the process of appointment was going on, the writ respondent No.1 by a letter dated 28.11.2016 requested the PSC to fill up the 700 vacant posts of ARO directly from the successful Candidates of 35<sup>th</sup> BCS examination (non-cadre), which, according to the writ petitioners, is violative of নন ক্যাডার পদে নিয়োগ বিধিমালা ২০১০, providing the terms and conditions of appointment in the non cadre posts of the successful candidates of different BCS examination and as such they have filed the instant writ petitions and obtained Rules Nisi.

The writ respondents No. 3 and 4 contested the Rules by filing affidavit-in-opposition contending, inter alia, that the writ petitioner-respondents applied for getting appointment pursuant to the employment notice dated 15.9.2014 published by the PSC as per requisition given by the National Board of Revenue. As such, they are concerned only to the appointment process pursuant to the said appointment notice. It was further contended that the appointment process under the impugned memo dated 28.11.2016 is completely a separate and independent appointment process which has no relation, whatsoever, with the appointment process of earlier employment notice dated

15.9.2014. Therefore, the writ petitioner respondents could not under any circumstances claim as of right to get appointment under the impugned letter dated 28.11.2016. Thus, the Rules should be discharged.

The High Court Division made all the Rules absolute declaring the impugned letter communicated under memo No.08.00.0000.038.12.021.07 (part-1)913 dated 28.11.2016 issued by the writ respondent No.6 unlawful and directed the writ respondents to consider the recruitment of the writ petitioners in the posts of Assistant Revenue Officer (ARO) under the NBR.

Against the said judgment and order, the PSC has filed the instant appeal getting leave and civil petitions.

Mr. Mahbubey Alam, learned Attorney General, appearing for the appellant of the appeal and petitions, submits that the PSC intimated the Government by letter dated 08.12.2016 to the effect that, "কমিশনে কৃতকার্য প্রার্থীদের একটি প্যানেল সংরক্ষিত আছে। মনোনীত কোন প্রার্থী চাকরিতে যোগদান না করলে এবং সংশ্লিষ্ট মন্ত্রণালয় তা কমিশনকে অবহিত করলে কমিশন উক্ত প্যানেল থেকে প্রার্থী মনোনয়ন দিতে পারে। তবে ভবিষ্যতে শূন্য/সৃষ্ট কোন পদের জন্য প্যানেল থেকে প্রার্থী মনোনয়ন দেয়া হবে না এবং প্যানেলের মেয়াদ প্রথমবারে প্রার্থী মনোনয়নের তারিখ থেকে ১(এক) বৎসরের বেশী বলবৎ থাকবে না।" and the aforesaid panel

having not been prepared for filling up subsequent vacancies for which impugned notification was issued, the High Court Division erred in law in declaring the letter dated 28.11.2016 unlawful. He further submits that in the year 2014 the PSC arranged examination for selecting and recommending for the posts of ARO as per requisition made by the Government but, subsequently, the Government took decision not to hold any examination for filling up vacant posts and to recruit from the successful candidates of 35<sup>th</sup> BCS examination(non-cadre) but could not be recommended in the cadre posts due to non-availability of cadre posts, the High Court Division erred in law in taking wrong view that the appointment is to be made who appeared in the examination in view of the earlier advertisement. He submits that the High Court Division failed to consider that the panel which was prepared on 08.12.2016 is not an open panel for subsequent appointment for the vacant posts rather the same was limited for filling up any post if the recommended candidates do not join in the posts. He lastly submits that mere empanelment of the writ petitioners did not confer any enforceable right in their favour, the High Court Division erred in law in making the Rules absolute.

Mr. Sheik Fazle-Noor-Taposh, learned Counsel appearing for the respondents in appeal and all the civil petitions, submits that the recruitment process of the writ petitioners was started in view of advertisement dated 15.09.2014 and the panel was prepared on 08.12.2016 and during this process of recruitment the PSC was requested to fill up 835 posts of Assistant Revenue Officer (135 posts on 18.08.2016 and 700 posts on 28.11.2016), therefore, it is crystal clear that the writ petitioners did not make any claim for appointment from 'future vacancies' but from the vacancies created when their recruitment process was going on. He further submits that the Public Service Commission had included the 135 posts in the recruitment process of the writ petitioners, requisition of which, was made, therefore, now they can not blow hot and cold together by treating the requisition of 700 posts differently inasmuch as the requisition of 700 posts was given during the pendency of the recruitment process of the writ petitioners. He further submits that the writ petitioners have got legitimate expectation to get appointment as Assistant Revenue Officer since they passed the written examination, viva voce examination and found them eligible, suitable and fit for the job and, accordingly, the PSC has

empanelled them, and as such the High Court Division, upon proper appreciation of the materials on record passed the impugned order.

It appears from the materials on record that the PSC issued an employment notification for the purpose of appointment in 411 posts of Assistant Revenue Officers under National Board of Revenue on 15.09.2014. The writ petitioners and others filed application and participated in written test and became successful. Thereafter, the PSC issued a notification for Viva Voce examination inviting the writ petitioners and others who were 3812 in number. After viva voce examination, 456 participants were provisionally recommended for appointment as ARO by the PSC on 05.12.2016. The PSC was bound to follow the stipulations made in the advertisement itself.

Thereafter, the Board of Revenue issued letters requesting the PSC for making recommendation of 135 more posts. Accordingly, the PSC recommended the aforesaid 546 posts by a letter dated 08.12.2016 with a stipulation that,,  
"কমিশনে কৃতকার্য প্রার্থীদের একটি প্যানেল সংরক্ষিত আছে । মনোনীত কোন প্রার্থী চাকরিতে যোগদান না করলে এবং সংশ্লিষ্ট মন্ত্রণালয় তা কমিশনকে অবহিত করলে কমিশন উক্ত প্যানেল থেকে প্রার্থী মনোনয়ন দিতে পারে । তবে ভবিষ্যতে শূন্য /সৃষ্ট কোন পদের জন্য প্যানেল থেকে প্রার্থী মনোনয়ন দেয়া হবে না এবং প্যানেলের মেয়াদ প্রথমবারে প্রার্থী মনোনয়নের তারিখ থেকে ১(এক)



বৎসরের বেশী বলবৎ থাকবে না।" (emphasis supplied). The waiting list of the selected candidates shall remain in operation, according to notification of the PSC, for a period of one year from the date of publication of notification. If within such one year, any of the candidates empanelled is not appointed, the panel would loss its efficacy. It was also specifically stipulated that no appointment shall be made from the panel in future vacant/created posts. From the stipulation quoted above, it appears that the PSC prepared a waiting list with the stipulation that if any recommendee does not join in service and if the appointing authority intimate the same to the PSC then only the PSC can recommend from empanelled candidates. The said panel will be effective for a period of one year from the date of issuance of the said letter dated 08.12.2016. The tenure of said penal has expired on 07.12.2017.

The process of final selection had to be closed at some stage. If the same list has to be kept subsisting for the purpose of filing up future vacancies that would amount to deprivation of rights of other candidates who would have become eligible subsequent to the said advertisement and selection process. The actual

appointments to the posts have to be confined to the posts for recruitment to which requisition is sent by the Government. In such an eventuality, candidates in excess of the posts requisitioned who are at the bottom of merit list can only be treated as wait listed candidates in order to fill up only the vacancies in the event of any better candidate not being available to fill up the posts requisitioned.

The list is prepared in order of merit. The one higher in rank is deemed to be more meritorious than the one who is lower in rank. It could never be said that one who is top of the list is equal in merit to the one who is at the bottom of the same. Except that they are all mentioned in one list, each one of them stands on a separate level of competence as compared with another.

On 28<sup>th</sup> November, 2016 the Ministry of Finance issued a letter requesting the Public Service Commission for making recommendation for appointment in 700 vacant posts from the candidates who passed in 35<sup>th</sup> BCS examination. In the instant writ petitions, the writ petitioners challenged the said letter dated 28.11.2016 and sought for a direction for getting appointment in

the posts of Assistant Revenue Officer since they were empanelled earlier.

The main question in the instant case, "Are the writ petitioners have acquired any enforceable right since their names are empanelled?"

The total scenario, in a nutshell, is that advertisement was published for appointment of 411 vacant posts which was subsequently increased at the instance of requisitioning authority adding 135 more posts. Accordingly, the PSC recommended 546 persons for appointment. The recruitment process, as is well known, must commensurate with the statute or the statutory rule operating in the field. In advertisement published it was not indicated that a panel for filling up of the future vacancies is to be prepared by the PSC. From the notification of the PSC it appears that the life of the panel prepared was for a limited period and limited purpose and purpose was that if out of 546 candidates any candidate or candidates do not join the same should be filled up from the panel.

In the case of Gujarat State Dy. Executive Engineers' Association V. State of Gujarat

reported in 1994 Supp(2) SCC 591 Supreme Court of India has observed,

“Coming to the next issue, the first question is what is a waiting list? can it be treated as a source of recruitment from which candidates may be drawn as and when necessary?; and lastly how long can it operate? These are some important questions which do arise as a result of direction issued by the High Court. A waiting list prepared in service matters by the competent authority is a list of eligible and qualified candidates who in order of merit are placed below the last selected candidate. How it should operate and what is its nature may be governed by the rules. Usually it is linked with the selection or examination for which it is prepared. For instance, if an examination is held say for selecting 10 candidates for 1990 and the competent authority prepares a waiting list then it is in respect of those 10 seats only for which selection or competition was held. Reason for it is that whenever selection is held, except where it is for single post, it is normally held by taking into

account not only the number of vacancies existing on the date when advertisement is issued or applications are invited but even those which are likely to arise in future within one year or so due to retirement etc. It is more so where selections are held regularly by the Commission. Such lists are prepared either under the rules or even otherwise mainly to ensure that the working in the office does not suffer if the selected candidates do not join for one or the other reason or the next selection or examination is not held soon. A candidate in the waiting list in the order of merit has a right to claim that he may be appointed if one or the other selected candidate does not join. But once the selected candidates join and no vacancy arises due to resignation etc. or for any other reason within the period the list is to operate under the rules or within reasonable period where no specific period is provided then the candidate from the waiting list has no right to claim appointment to any future vacancy which may arise unless the selection was

held for it. He has no vested right except to the limited extent, indicated above, or when the appointing authority acts arbitrarily and makes appointment from the waiting list by picking and choosing for extraneous reasons.

A waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from the waiting list. But the view taken by the High Court that since the vacancies have not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed does not appear to be sound. This practice, may result in depriving those candidates who become eligible for competing for the vacancies available in future. If the waiting list in one

examination was to operate as an infinite stock for appointments, there is a danger that the State Government may resort to the device of not holding an examination for years together and pick up candidates from the waiting list as and when required. The constitutional discipline requires that this Court should not permit such improper exercise of power which may result in creating a vested interest and perpetrate waiting list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even from service."

In the aforesaid case the Supreme Court of India explained the scope and intent of a waiting list and how it is to operate in service jurisprudence. It cannot be used as a perennial source of recruitment filling up the vacancies not advertised. It is not approved that since vacancies had not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed. Candidates in the waiting list have no vested right to be appointed except to the limited extent that when a candidate, selected against existing vacancy, does not join

for some reason and the waiting list is still operative.

If a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates do not acquire any indefeasible right to be appointed against the existing vacancies. Ordinarily the notification merely amount to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the state is under no legal duty to fill up all or any of the vacancies. The aforesaid views have been expressed in the case of Shankarsan Dash V. Union of India reported in (1991)3 SCC 47. The selection process by way of requisition an advertisement can be started for clear vacancy but not for future vacancy. In the instant case since the name of the writ petitioners were empanelled they had not acquired any vested right to get appointment. In the notification for employment there was no stipulation that any such panel was to be prepared for future appointment in future vacancies. In the case of Surender Singh V. State Punjab (AIR 1998 SC 18) as against 2461 advertised vacancies for teachers 7737 posts of various categories of



teachers had become available for appointment. The State Government keeping in view the interest of the students filled up all the available vacancies of 7737 posts. The Supreme Court of India found no exceptional circumstances existed or there was any emergency situation for the State to deviate from principle of limiting the number of appointments so advertised. Supreme Court upheld the decision of the High Court setting aside the appointments of teachers over and above those advertised.

The examination is for the purpose of showing that a particular candidate is eligible for consideration. The selection for appointment comes later. It is open to the appointing authority to decide how many appointment should be made. The mere fact that a candidate's name appears in the waiting list will not entitle him to be appointed. Only because a panel has been prepared by the PSC, the same by itself would not mean that the same should be given effect to irrespective of the fact that there was no such rule operating in the field. The empanelled candidates have not acquired any enforceable right since there is no statutory provision conferring a right upon them to claim appointment. In the case of State of Hariyana V. Ajoy Walia reported in AIR 1997 SC 2007 there was a requisition from the Irrigation Department for

filling up four vacancies but the Subordinate Selection Board prepared a list of 28 candidates and recommended them for appointment. The High Court allowed the writ petition and directed the State to appoint all the selected candidates. While setting aside the order of the High Court, the Supreme Court of India held that the Board had no jurisdiction to select 28 candidates against 4 vacancies. The PSC has improperly exercised its jurisdiction in preparing a list having large number of candidates which is the cause of this litigation. The constitutional discipline requires that this Court should not permit such improper exercise of power which may result in creating a vested interest and perpetrate waiting list for the candidates of one examination at the cost of entire set of fresh candidates. Considering the facts and circumstances stated above, we are of the view that the High Court Division has committed an error of law in passing the impugned observations and directions. Sympathy to the candidates, in our opinion, can not be a good ground to allow High Court Division judgment to be sustained.

Accordingly, we find substance in the appeal. Thus the appeal is allowed. The judgment and order passed by the High Court Division is set aside.

All the civil petitions are disposed of in the light of observations and decision made in the appeal.

**C.J.**

**J.**

**J.**

**J.**

**The 11<sup>th</sup> July, 2018.**  
M.N.S./words-3642 /