

IN THE SUPREME COURT OF BANGLADESH
Appellate Division

PRESENT

Mr. Justice Hasan Foez Siddique, C.J.

Mr. Justice M. Enayetur Rahim

Mr. Justice Jahangir Hossain

CIVIL APPEAL NO. 159 OF 2018 WITH CIVIL APPEAL NOS. 160 -171 OF 2018

(From the judgment and order dated 07.02.2017 and 08.02.2017 in Writ Petition Nos. 4947 of 2014, 5885 of 2014, 6213 of 2014, 6274 of 2014, 8659 of 2014, 12028 of 2014, 487 of 2015, 774 of 2015, 7566 of 2015, 7291 of 2014, 13305 of 2016, 15927 of 2016, and 85 of 2017).

Bangladesh Council of Scientific and
Industrial Research (BCSIR),
represented by its Chairman

.....Appellant
(In all the cases)

-Versus-

G.R.M. Astaq Mohal Khan and others

.....Respondents
(In C.A. No.159 of 2018)

Md. Matiur Rahim and others

.....Respondents
(In C.A. No.160 of 2018)

Dr. Md. Tofazzal Hossain and others

.....Respondents
(In C.A. No.161 of 2018)

Md. Mashiar Rahman and others

.....Respondents
(In C.A. No.162 of 2018)

Dr. Md. Zahurul Hoque and others

.....Respondents
(In C.A. No.163 of 2018)

Mahfuza Khanam and others

.....Respondents
(In C.A. No.164 of 2018)

Dr. Ismet Ara Jahan and others

.....Respondents
(In C.A. No.165 of 2018)

Dr. Husna Parvin Nur and others

.....Respondents
(In C.A. No.166 of 2018)

Dr. Md. Munsur Rahman being dead
his heirs Rowsan Ara Begum and
others

.....Respondents
(In C.A. No.167 of 2018)

Dr. Khandker Nesar Ahmed being dead
his heirs: Salina Arju and others

.....Respondents
(In C.A. No.168 of 2018)

Dr. Shahina Islam being dead her heirs:
1(a) Md. Mosharaf Hossain and others

.....Respondents
(In C.A. No.169 of 2018)

Mrs. Katrun Nada and others

.....Respondents
(In C.A. No.170 of 2018)

Dr. Mohammad Abdur Rouf and others

.....Respondents
(In C.A. No.171 of 2018)

For the Appellant : Mr. A. M. Amin Uddin, Senior Advocate with Mr.
(In all the Cases) Sk. Md. Morshed, Senior Advocate and Mr.
Sheikh Reajul Hoque, Advocate) instructed by Mr.
Md. Abdul Malek, Advocate-on-Record.

For the Respondents : Mr. Abdul Wadud Bhuiya, Senior Advocate (with
(In all the Cases) Mr. A. J. Mohammad Ai, Senior Advocate, Mr. Nozrul Islam Choudhury, Senior Advocate Mr. M. Qumrul Haque Siddique, Advocate and Mr. Md. Salahuddin, Advocate instructed by Ms. Madhu Malati Chowdhury Barua, Advocate-on-Record, Mr. Md. Halal Amin, Advocate-on-Record and Ms. Nahid Sultana, Advocate-on-Record.

Date of hearing : **The 18th and 24th day of January, 2023**

Date of judgment: **The 31st day of January, 2023**

JUDGMENT

M. Enayetur Rahim,J: These 13 (thirteen) appeals, by leave, are directed against the common judgment and order delivered on 07.02.2017 and 08.02.2017, by the High Court Division in 13 (thirteen) Writ Petitions being No. 4947 of 2014, 5885 of 2014, 6213 of 2014, 6274 of 2014, 8659 of 2014, 12028 of 2014, 487 of 2015, 774 of 2015, 7566 of 2015, 7291 of 2014, 13305 of 2016, 15927 of 2016 and 85 of 2017, making all the Rules *Nisi* issued in all the above noted writ petitions absolute.

The relevant facts for disposal of the appeals in brief, are that respondent No.1 in all the 13(thirteen) appeals, moved before the High Court Division under Article 102 of the Constitution in the aforementioned writ petitions challenging the inaction of the writ-respondents in not allowing them to remain in service till the retirement age of 67 years. It is contended in their respective writ petitions that all of them initially joined the service of Bangladesh Council of Scientific and Industrial Research (herein after referred to as BCSIR) in the year from 1979 to 1989 as Scientific Officers. Subsequently, they have been promoted to the post of Senior Scientific Officer, Principal Scientific Officer and Chief Scientific Officer, and finally some of

them have been promoted to the post of Director on different times by the Superior Selection Board. Their main contention is that they are the researchers and in recognition of their research works they have been promoted to the higher ranks and in addition to the promotion, some of them have been given with award certificate for number of research activities. They have good numbers of research publications, process and patent rights. However, all the writ petitioners are performing their jobs within the full satisfaction of the authority and are at the age of retirement from service.

In the meantime, the government enacted Bangladesh Council of Scientific and Industrial Research Act, 2013 (herein after referred to as Act of 2013). In Section 12(4) of the said Act it has been provided that those who have special talents and capacity in research would remain in service till attaining the age of 67 years so that they can utilize their talent, skill and experiences in the research properly. All the writ petitioners accordingly by their respective letters of different dates requested the writ respondent No.4 to do the needful, since they are entitled to continue in service till attaining the age of 67 years of age pursuant to the aforesaid provision of law. But the authority did not take any step or to reply to the said letters of all the writ petitioners.

Hence, the writ petitioners compelled to move before the High Court Division by filing separate writ petitions.

All the Rules *Nisi* are contested by the writ respondent No.4 (wrongly mentioned in the impugned judgment as respondent No.2) by filing affidavit-in-opposition contending, *inter alia*, that the said provision of law under which the writ petitioners are claiming to remain in service till 67 years of age are applicable only to persons working as a researcher. However, it is claimed that the merit, efficiency and eligibility of the writ petitioners are under consideration of the Board for determination as to whether they can stay in service till completion of 67 years of age.

The High Court Division, after hearing the parties and considering the materials on record, made all the Rules *Nisi* absolute directing the writ respondents to implement the provisions of Section 12(4) of the Bangladesh Council of Scientific and Industrial Research (BCSIR) Act, 2013 and thereby allowing the writ petitioners to remain in service till their retirement age of 67 years subject to any rule and guideline framed in the meantime.

Being aggrieved by the aforesaid judgment and order dated 07.02.2017 and 08.02.2017, writ-respondent No.4 filed separate 13 (thirteen) civil petitions for leave to appeal before this Division and accordingly leave was granted. Hence the present appeal.

Mr. A.M. Amin Uddin, Senior Advocate with Mr. Sk. Md. Morshed, Senior Advocate, and Mr. Sheikh Reajul Hoque, advocate made submissions on behalf of the appellants. It was submitted that section 12(4) of “বাংলাদেশ বিজ্ঞান ও শিল্প গবেষণা পরিষদ আইন

২০১৩” clearly states about two things for granting retirement age of 67 years for researcher of BCSIR, i.e. for those persons who are involved in research work have special talent (বিশেষ মেধা) and special ability (বিশেষ যোগ্যতা) and the High Court Division committed an error in constraining section 12 (4) holding that the said provision is applicable to all scientists in respect of their age of retirement. It was also submitted that in the affidavit-in-opposition the respondents having annexed a proposed service Rules framed in the year of 2014 and which is under process for approval from the government by gazette notification and in the said proposed service Rules criteria has been laid down for selecting the scientists involving in research work having extra ordinary merit and ability and until there is any guideline as per proposed service Rules publishing by way of gazette the writ petitioners cannot claim any right for retirement at the age of 67 years and without considering the same The High Court Division erroneously made the Rule absolute. It was further submitted that after enactment of Act of 2013 many scientists involved in research work have already retired and granting special retirement benefit to the present writ petitioners will create discrimination among the scientists. It was submitted that as to whether the writ petitioners are actually involved in potential research work for the nation or as to whether they possess extra ordinary merit and ability are to be determined by the concern authority under proposed Rules and those questions are matter of facts and High Court Division committed an error deciding those questions of fact sitting in writ jurisdiction. The learned Advocates submitted that in BCSIR there are 9 posts vacant out of 11 posts of the Director, 9 posts vacant out of 18 posts of Chief Scientific Officer

(CS0), 12 posts vacant out of 56 posts of Principal Scientific Officer (PSO), 55 posts vacant out of 121 posts of Senior Scientific Officer (SSO) and there are 201 post for Scientific Officer (SO) and in total 316 research posts are vacant out of 471 posts are for research works and as the Government did not find any capable person(s) to fill-up all those posts by giving promotion from the existing researchers, the writ petitioners cannot claim themselves that they are in possess of extraordinary merit and ability and the High Court Division failed to take any consideration that the writ petitioner(s) possess those qualifications so that he /she might have been promoted to the highest post of the BCSIR, rather the High Court Division most erroneously hold that the provision of section 12 (4) of the Act is applicable to all scientists in respect of their age of retirement and thus the impugned judgment is liable to be set aside.

Mr. Abdul Wadud Bhuiyan, learned Senior Advocate, appearing on behalf of the respondents in all the appeals submitted that the writ petitioners being engaged in research work for more than 30 years and have special talent and special ability the provision of Section 12(4) of “বাংলাদেশ বিজ্ঞান ও শিল্প গবেষণা পরিষদ আইন, ২০১৩” is applicable to the writ petitioners for increase of their age of retirement to 67 years. He submitted that section 12(4) of “বাংলাদেশ বিজ্ঞান ও শিল্প গবেষণা পরিষদ আইন, ২০১৩” confers right on the scientists engaged in research work to continue in service till 67 years of age, but any scientist may not go for that right and accept retirement but such voluntary act of one or more individual scientist to retire at 59 years of age does not affect the right of other scientists to continue in service till 67 years of

age. The learned Advocate submitted that Section 12 (4) of the “বাংলাদেশ বিজ্ঞান ও শিল্প গবেষণা পরিষদ আইন, ২০১৩” does not provide for, or require, framing of Rules for giving effect to the said provision of law which itself demonstrates the legislative intent to increase the retirement age of the scientists to 67 years and the writ petitioners are certainly engaged in research because the posts of Scientific Officer, Senior Scientific Officer, Principle Scientific Officer and Chief Scientific Officer are exclusively research posts and a Director and Member is also engaged in research work and since the writ petitioners fulfil the criteria of having special talent and ability under the proposed rules which are undisputed facts, the High Court Division has not decided any disputed questions of fact and, therefore, the impugned judgment and order is sustainable in law.

We have considered the submissions of the learned Advocates appearing for the parties concerned, perused the impugned judgment and order of the High Court Division and other connected papers on record.

To decide the issue involved in these cases it is needed to examine the provision of section 12(4) of the বাংলাদেশ বিজ্ঞান ও শিল্প গবেষণা পরিষদ আইন, ২০১৩ which is as follows:

“(৪) বিশেষ মেধা ও যোগ্যতার অধিকারী গবেষকগণকে গবেষণা কর্মে আকৃষ্ট ও উৎসাহিত করণ এবং তাহাদের মেধা, দক্ষতা ও অভিজ্ঞতা গবেষণার কাজে যথাযথভাবে ব্যবহারের লক্ষ্যে তাহাদের চাকুরির বয়সসীমা হইবে ৬৭ (সাতষাট) বছর।” (Underlines supplied)

Upon plain reading of the said provision of law it manifests that above provision is conditional one, i.e. the retirement age of 67 (sixty seven) years would be applicable subject to fulfillment of certain conditions, i.e. extra ordinary merit and special ability for research work. There is no scope to

interpret that the said provision of law has been made applicable for all the Scientists of BCSIR to get 67 (sixty seven) years age for retirement. Only the persons, who are to be selected by the competent authority, for their 'বিশেষ মেধা ও যোগ্যতা' are entitled to get the benefit of the said provision of law. It is not applicable for each and every Scientists of the BCSIR. Having regard to the fact that for fulfillment of the said provision of law a draft Service Rules was also prepared, which was under active consideration of the authority concerned, i.e. the Ministry and while the said draft Service Rules was under consideration for approval, the writ petitioners hurriedly moved before the High Court Division in its writ jurisdiction and obtained the Rules.

It is pertinent to mention here that while the appeal is pending, Government has repealed the said provision of law by amending the law. The said amendment has taken effect from 19.04.2018. As such the provision of section 12(4) has already been repealed.

Section 12(4) of the Act of 2013 *ipso facto* does not create any legal or vested right in favour of the writ petitioners to get benefit of the same and the High Court Division has committed serious error in directing the respondents-appellants to implement the provision of section 12(4) of Act of 2013 by allowing the writ petitioners to remain in service till attending their age of 67 (sixty seven) years.

It is a recognised rule of interpretation of statutes that expression used therein should ordinarily be understood in a sense in which they best harmonies with the object of the statute. In other words a statute has to be interpreted taking consideration of 'intention' 'object' and 'policy' of the enactment as a whole. In the case of **Mrs.Ummida Khan Vs.**

Salauddin Khan & ors., reported in **37 DLR (HC) 117** it was been held that the scheme and purpose of an Act is to be gathered from a reading of the enactment as a whole.

According to **Maxwell** [Interpretation of statutes, 12th edition, page 1-2], the function of a Court is to interpret a statute according to the intent of the legislature, in doing so it must be bear in mind that its function is **jus dicere**, not **jus dare**.

Jus Dicere means the right to speak or to declare or state the law; to expound the law. **Jus Dicere**, et non jus dare means to declare the law, not to make it. The term is often used to explain the power which the court has to expound the law and not to make it.

JUS DICERE

(Latin: "To say [what] the law [is].") This is the traditional function of courts, and it is usually understood as a limitation upon their power (jus dicere, et non jus dare). "It is emphatically the province of the judicial department to say what the law is"- Chief Justice John Marshall in Marbury v. Madison (1803).

In the case of **A.K.M. Ruhul Amin Vs. District Judge and Appellate Election Tribunal, Bholu and others** (heard along with some other cases) reported in **38 DLR (AD) 172** this Division has held that:

"It should well be remembered that while interpreting statutes Judges are not expected to apply pre-conceived notions nor can they be expected to arrive at the conclusion by considering the provisions concerned in an isolated or piecemeal fashion. While construing a statute, its provisions should be considered as a whole, bearing in mind its object and purpose." (Underline supplied).

In the above case it has been quoted from the judgment **Lord Davey in Carala Sugar Refining Co. Vs K (1898)1C 735 (74)** to the effect:

‘Every clause of a statute should be construed with reference to the context and the other clause of the Act, so as, so far as possible, to make a consistent enactment of the whole statutes or series of statutes relating to the subject matter.’

In the case of **Nur Mohammad and others vs. Moulvi Mainuddin Ahmed and others**, reported in **39 DLR (AD)1** it has been held by this Division to the effect:

“A Judge may have sympathy for a litigant’s suffering due to technicalities of law made by the legislature, still in view of the express legislative intention, he must follow the “hands-off doctrine”. Otherwise, chaos and anarchy would prevail leading to all sorts of complexities and confusion.”

It should be borne in mind that a cardinal principle of construction is that it must be presumed that the legislature does not use any word unnecessarily or without any meaning or purpose. As such no word in a statute should be treated as surplusage or redundant. When the intention of the legislature is clear, no consideration of expediency or possibility of abuse can be allowed to deviate from natural consequences following the correct interpretation.

Lord Wensbydale who propounded the Golden Rule of Construction stated:

“In construing wills and indeed statute and all written instruments the grammatical and ordinary sense is to be adhered to, unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument in which case grammatical and ordinary sense of the word may be modified so as to avoid the absurdity and inconsistency but no further.”

[Source: **Bangladesh vs. Haji Abdul Gani Biswas and others, 1981 BLD (AD) 8**].

If we considered the present cases in the light of the above proposition and interpretation, then we have no hesitation to come to a definite conclusion that the High Court Division misread and misconstrued the provision of section 12 (4) of the Act of 2013 and thus, came to an erroneous decision in making the Rule absolute giving direction to implement the said provision by allowing the writ-petitioners to remain in service till their retirement age of 67 (sixty seven) years.

Thus, we find merit in the appeals. Accordingly, all the appeals are allowed.

The impugned judgment and order of the High Court Division is set aside.

No order as to costs.

However, the appellant shall not be entitled to get return of the salaries and other service benefits paid to the writ petitioners-respondents as they have rendered their service to the appellant pursuant to the order of the High Court Division and as they have served the appellant till passing the order of stay granted by this Division. The respondents who rendered their service during the aforesaid period are entitled to get return the amount of their respective provident fund. They will get their retirement benefits after attending their age of 59 years.

C. J.

J.

J.