

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Md. Nuruzzaman

Mr. Justice Borhanuddin

Ms. Justice Krishna Debnath

CIVIL PETITION FOR LEAVE TO APPEAL NO.4357 OF 2018.

(From the judgment and order dated 09.05.2018 passed by the High Court Division in Writ Petition No.6473 of 2014).

Government of the People's Republic of :Petitioner.
Bangladesh, represented by the Secretary,
Local Government Division, Ministry of
Local Government, Rural Development and Co-
operatives, Bangladesh Secretariat, Dhaka.

-Versus-

Md. Nurul Islam Khan and others. :Respondents.

For the Petitioner. : Mr. Md. Bodrul Islam, Advocate-
on-Record.

For Respondent Nos.1&3. : Mr. Momtaz Uddin Fakir, Senior
Advocate, instructed by Mr. Md.
Taufique Hossain, Advocate-on-Record.

For Respondent Nos.2&4-11. : Not represented.

Date of Hearing. : **The 28th August, 2022.**

Date of Judgment. : **The 29th August, 2022.**

J U D G M E N T

Borhanuddin,J: The delay of 200 days in filing the Civil
Petition for leave to appeal is condoned.

This civil petition for leave to appeal is directed
against the judgment and order dated 09.05.2018 passed by

the High Court Division in Writ Petition No.6473 of 2014 disposing of the Rule with observation and direction.

Background of the civil petition is that the respondent nos.1-5 as petitioners preferred the writ petition seeking direction upon the writ-respondents to upgrade pay scale of the petitioners in Grade-X and to pay all arrear dues to the petitioners from the date of their appointment and/or promotion as 'Assessor' and also for declaration to amend the Organogram of 'A', 'B' and 'C' category of Pourashava creating the post of 'Chief Assessor' in light of the "স্থানীয় সরকার (পৌরসভা) আইন, ২০০৯", Paurashava Ordinance, 1977, as well as "পৌরসভার কর্মচারী চাকুরী বিধিমালা, ১৯৯২" (hereinafter stated as 'the Rules, 1992') and also to make provision that 25% of the post of 'Chief Assessor' to be filled up by direct recruitment and rest 75% by promotion from the Assessors who served for a period of 5(five) years, stating interalia, that the petitioners were appointed and joined in their respective posts as per 'Chart-I' drawn below complying all formalities.

Chart-I

Petitioner	Name of the Post	Date of appointment	Date of Joining	Date of Promotion as Assessor
No.1	Assistant Assessor	20.05.1992	24.05.1992 in Savar Pourashava, Dhaka	04.03.2002
No.2	Assistant Assessor	16.01.1996	17.01.1996 in Barora Pourashava, Comilla	26.04.2001
No.3	Assistant Assessor	08.09.2005	11.09.2005 in Nakla Pourashava, Sherpur	02.12.2010
No.4	Assistant Assessor	10.11.1991	11.11.1991 in Sharishabari Pourashava, Jamalpur	-
No.5	Assistant Assessor	13.05.2001	17.05.2001 in Gopalganj Pourashava, Gopalganj	-

Service of the petitioners are governed and regulated under the Rules, 1992; As per serial 4 of the schedule of the Rules, 1992 under the heading 'Assessment Section', the feeder post for the post of 'Chief Assessor' is 'Assessor' and in case of 'Assessor' is 'Assistant Assessor'; As per column 6 of the said schedule, if any employee successfully complete 5(five) years of service as 'Assessor' is eligible to be promoted as 'Chief Assessor' but though the petitioners are serving as 'Assessor' for more than 5(five) years, still they are not promoted to the post of 'Chief Assessor' because of

non-existence of the post 'Chief Assessor' in the Organogram of 'A', 'B' and 'C' category Pourashava; The Ministry of Local Government, Rural Development and Co-operative prepared job description of Pourashava employees in the year, 2005 assigning functions of the 'Chief Assessor' but in reality there is no such post exists; Said Ministry under the sponsorship of Asian Development Bank planned a project under the title "Urban Governance and Infrastructure Improvement" wherein the post of 'Assessor' was categorized in Grade-X; The Rules, 1992 provides that 25% posts of the 'Chief Assessor' would be recruited directly and rest 75% by way of promotion from the 'Assessor'; The Organogram of 'A', 'B' and 'C' category Pourashava under the Rules, 1992 prepared without the post of 'Chief Assessor'; Earlier two Pourashava namely Tongi and Narayangonj had retain the post of 'Chief Assessor' but these two Pourashava are now declared as City Corporation; There are 317 Pourashava in Bangladesh but in the Organogram of the Pourashava there exists no post of 'Chief Assessor'; The provisions of the Rules, 1992 and the Organogram of 'A',

'B' and 'C' category Pourashava are conflicting to each other; On several occasions, the petitioners requested the respondents to address the issue but without response; The petitioners served notice for demand of justice upon the respondents to amend the existing Organogram in line with the Rules, 1992 but to no avail. As such the writ-petitioners constrained to invoke writ jurisdiction under Article 102 of the Constitution.

Upon hearing the petitioners, a Division Bench of the High Court Division issued a Rule Nisi upon the writ-respondents.

The writ-respondent no.1 contested the Rule by filing affidavit-in-opposition denying material allegations made in the writ petition stating, interalia, that the Rules, 1992 attach condition of 2nd class graduation for direct recruitment in the post of 'Chief Assessor' and for the promotees satisfactory service record; Promotion is not a matter of right but it requires necessary academic qualification as well as satisfactory service record; A sub-committee was formed on 16.08.2011 who prepared a draft rule and accordingly the matter is under process

before the higher administrative authority; The Rule is liable to be discharged.

Upon hearing the parties, a Division Bench of the High Court Division disposed of the Rule with the following observation and direction:

"Considering the above facts and circumstances, we hold and find that the petitioners are entitled to get promotion but after amending the Organograms of 'A', 'B' and 'C' categories of Pourashava creating the post of Chief 'Assessor's and upgrade it to the higher scale for the post of 'Assessor' and 'Chief Assessor' respectively as early as possible.

Therefore, the respondents are directed to amend the Organograms of 'A', 'B' and 'C' categories of Pourashava creating the post of Chief 'Assessor' and upgrade the scale of 'Assessor' and so that they may be promoted as they are qualified 'Assessors' to the post of Chief 'Assessor' preferably within 6(six) months from the date of receipt of this Judgment." (sic.)

Feeling aggrieved, the writ-respondent no.1 as petitioner preferred instant civil petition for leave to appeal under Article 103 of the Constitution.

Mr. Md. Bodrul Islam, learned Advocate-on-record appearing for the leave petitioner submits that the High Court Division erred in law in passing the impugned judgment and order without considering that the upgradation of scale of any post is a policy decision of the Government and the issue cannot be decided under Article 102 of the Constitution. He also submits that the High Court Division committed an error of law in not holding that promotion in the higher post rests upon the decision of the higher administrative authority who considers requisite qualification and past record of the deserving candidates as such the impugned judgment and order is liable to be set-aside.

Mr. Momtaz Uddin Fakir, learned Advocate for the respondent nos.1 and 3 supports the impugned judgment and order passed by the High Court Division.

Heard the learned Advocates and perused the impugned judgment and order alongwith the papers/documents contained in the paper book.

Admittedly, the Rules, 1992 promulgated for the regular employees of the Pourashava categorized under Grade 'A', 'B' and 'C'.

It appears from serial no.4 of the schedule of the Rules, 1992 under the heading 'Assessment Section' provides that 25% of the candidates would be recruited directly in the post of 'Chief Assessor' and rest 75% by way of promotion. Condition attached for the direct recruitment to the post is 2nd class graduation from any recognized University and preferably 2(two) years experience in tax assessment. For the promotees the requisite qualification is 5(five) years experience in the post of Assessor. The petitioners are appointed and joined and promoted in the service as depicted in 'Chart-I' and according to said Chart the experience of the petitioners is more than 5(five) years as such, no doubt, they have requisite qualification to be promoted as 'Chief Assessor'. But from the Organogram it appears that there exist no post under the category of 'Chief Assessor' in the Assessment Section. As such the Organogram without the post of 'Chief Assessor' is in

conflict with column 4 under the heading 'Assessment Section' of the Rules, 1992 which describe the procedure for recruitment in the post, 25% by direct recruitment and rest 75% by way of promotion with requisite qualification of 5(five) years experience. The petitioners are working for a long time in the post of 'Assessor' and surely they have a legitimate expectation to be promoted as 'Chief Assessor' as described in the column 4 of the Rules, 1992 but since no post of 'Chief Assessor' exist in the Organogram, the petitioners are deprived from their desire post and as such the petitioners made several representation to the authority concerned and being unsuccessful invoke the writ jurisdiction.

The High Court Division under Article 102 of the Constitution can pass certain orders and directions as enumerated in the Article but the High Court Division under Article 102 cannot pass any order or direction in a matter of administrative policy of the Government or any policy decision matter. Upgradation of a post described in the Rules, 1992 is a policy decision of the

Government. Similarly, promotion is an administrative decision rests upon the higher administrative authority of the concerned department based on requisite qualification and satisfactory service record of the candidates.

In view of the above, we hold that justice would be best served if the impugned judgment and order passed by the High Court Division is modified in the following manner:

"Therefore, the respondents are directed to amend the Organogram of 'A', 'B' and 'C' category Pourashava creating the post of 'Chief Assessor' in light of column 4 under the heading 'Assessment Section' of the Rules, 1992."

Remaining portion of the direction issued in the impugned judgment and order "upgrade the scale of Assessor and so that they may be promoted as they are qualified Assessors to the post of Chief Assessor preferably within 6(six) month from the date of receipt of this judgment" are expunged.

Accordingly, the civil petition is disposed of with
the above modification and direction.

J.

J.

J.

The 29th August, 2022.
Jamal/B.R./Words-*1707*