IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Md. Muzammel Hossain
-Chief Justice

Mr. Justice Surendra Kumar Sinha

Mr. Justice Md. Abdul Wahhab Miah

Mr. Justice Hasan Foez Siddique

Mr. Justice A.H.M. Shamsuddin Choudhury

CIVIL APPEAL NO.41 OF 2011.
(From the judgment and order dated 04.02.2010 passed by the High Court Division in Writ Petition No.11685 of 2006.)

Bangladesh, represented by the Cabinet Secretary, Cabinet Division, Bangladesh Secretariat, Dhaka, 1000. — Appellant.

=Versus=

Md. Ataur Rahman and others: — Respondents.

For the Appellant : Mr. Abdur Rob Chowdhury, Senior Advocate, instructed by Mrs. Sufia Khatun, Advocate -on-Record.

For the Respondent No.1: Mr. Rokanuddin Mahmud, Senior Advocate, with Mr. Asaduzzaman, Advocate, instructed by Mr. Syed Mahbubar Rahman, Advocate-on- Record.

For the Respondent No.2: Mr. Murad Reza, Additional Attorney General, instructed by Mrs. Mahmuda Begum, Advocate-on-Record.

For the Respondent No.3: Mr. Murad Reza, Additional Attorney General, instructed by Mr. Nawab Ali, Advocate-on-Record.

Date of hearing : The 6th January, 2015, 8th January, 2015 , 9th January, 2015 and 11th January, 2015.

Date of Judgment : 11th January, 2015.

(J U D G M E N T)

Md. Muzammel Hossain, CJ: This appeal, by leave, is directed against the impugned judgment and order dated 04.02.2010 passed by a Division Bench of the High Court Division in Writ Petition No.11685 of 2006 making the Rule absolute in modified form declaring the impugned Warrant of Precedence 1986 without lawful authority and of no legal effect and directing the writ Respondent No.1 to prepare a new Warrant of Precedence on the basis of the eight-point directives within 60(sixty) days of receipt of the judgment placing the District Judges, Additional District Judges, Chief Judicial Magistrates and Chief Metropolitan Magistrates in the same table above the Chiefs of Staff of the Defence Service of Bangladesh in the Warrant of Precedence.

The facts for disposal of this appeal, in brief, are that the writ petitioner-respondent No.1 while serving as an Additional District and Sessions Judge and holding the Office of Secretary-General of Bangladesh Judicial Service Association filed writ petition No.11685 of 2006 under Article 102 of the Constitution challenging Warrant of Precedence, 1986 (revised up to 12.04.2000), issued vide Cabinet Division's Notification No.CD-10/1/85-Rules/161, dated 11.09.1986 by the Writ respondent No.1, the appellant placing the members of judicial service and Constitutional posts equally with or subordinating them to the employees of the Republic particularly to the administrative cadres, in contravention to the spirit of the Constitution. A Division Bench of the High Court Division heard the petition and being satisfied issued Rule Nisi on the following terms:

> "Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned Warrant of Precedence issued vide Cabinet Division's Notification No.CD-10/1/85-Rules/161, dated 11.09.1986 as revised up to 12.04.2000 (Annexure-A to the writ petition) equating with or subordinating District Judges and other judicial officers equivalent to the rank of District Judges to the concerned officers of the administrative and other cadres therein should not be declared to have been issued without lawful authority and to be of no legal effect and why the respondents should not be directed to place District Judges and other judicial officers holding the rank of District Judges are on a par with the holders of Constitutional posts and above he positions of the persons in the service of the Republic in the aforesaid Warrant of Precedence and/or such other or further order or orders passed as to this Court may seem fit and proper."

It has been stated that the writ petitioner filed the writ petition in his capacity as a concerned, affected and aggrieved person to protect the interest of indefinite number of people of Bangladesh and to uphold the Rule of Law by way of public interest litigation and to prevent illegal

and arbitrary placement of the members of the judicial service and the Constitutional Office holders in inappropriate places in the Warrant of Precedence in derogation of their dignity and status in public perception. The writ petitioner being committed to the welfare of the Republic and to uphold the Rule of Law brought the petition "pro bono public" challenging the impugned Warrant of Precedence.

It has been further stated that in the table of the impugned Warrant of Precedence, the Chief Justice of Bangladesh being the head of the judicial organ has been placed at Serial No.4. Some Constitutional office holders like the Attorney General for Bangladesh, Comptroller and Auditor-General and Ombudsman have been placed at Serial No.15, while the members of the different services of the Republic like the Cabinet Secretary, the Chiefs of Staff of the Army, Navy and Air Force and the Principal Secretary to the Government have been placed at Serial No.12 in the said table. District Judges have been placed at Serial No.24 equating them with the Deputy Commissioners who are the mid-level employees of the Republic. The impugned Warrant of Precedence does not provide for any rational basis and as such it is arbitrary. In the scheme of our Constitution, the post of the District Judge is the highest post of the Bangladesh Judicial Service. The required qualification for appointment to the post of the District Judge is 15 (fifteen) years service

including two years experience as an Additional District Judge. In spite of the directions given by the Appellate Division in the case of Secretary, Ministry of Finance Vs. Masdar Hossain and others reported in 52 DLR (AD) 82 (hereinafter referred to as Masdar Hossain's case) the Government had failed to introduce a separate pay scale for the members of the judicial Service. The initial pay scale of a District Judge being at grade 3 of the National Pay Scale of 2005. The members of the other tiers of the Judicial service are Additional District Judge, Joint-District Judge, Senior Assistant Judges and Assistant Judges.

It has been further contended by the writ petitioner that the Judicial Service is not 'service' in the sense of employment. The Judges are not employees. As members of the Judiciary, they exercise the sovereign judicial power similarly as the members of the cabinet exercise the executive power and the members of the Legislature exercise the legislative power of the Republic. In a democracy such as ours the Executive, the Legislature and the Judiciary constitute the three pillars of the State and by such a conception, it is intended to be conveyed that the three essential functions of the State are entrusted to the three organs of the State and each one of them in turn represents the authority of the State. Those who exercise the State powers are the Ministers, the Legislators and the Judges but not the members of their

staff who implement or assist in the implementation of their decisions. So in that view of the matter, the members of the Judicial Service cannot be equated with the administrative executives: rather as the holders of the State power, they are on a par with political executives and legislators. Judicial independence cannot be secured by making mere solemn proclamations about it; rather, it has to be secured both in substance and in practice.

The society has stake in ensuring the independence of the judiciary and no price is too heavy to secure it. Subordinate courts occupy a special place in the Constitution under Articles 114 to 116A. The recruitment and the conditions of service of the members of the Judicial Services are regulated by the Rules made by the President under Article 115 of the Constitution. Since as per Note: 1 of the impugned Warrant of Precedence, the order therein is to be observed for State and ceremonial occasions as well as for all purposes of the Government, has disparaged the position of judicial officer in the estimation of the people. It is necessary for them in the public interest and in the interest of justice to be seen to be of a rank sufficient to command obedience to their judgments and orders. As the Warrant of Precedence has an effect on the public psyche, it should necessarily reflect the rank, status and precedence of the District Judges properly. So the relative ranking

of the functionaries in the table of the Warrant of Precedence is of a significant nature, and not merely of a ceremonial nature. This in fact, affects the ability of the District Judges and other judicial officers to perform their function effectively and independency without virtually being or being seen to be inferior to certain categories of civil servants. The placement of the District Judges at Serial No.24 in the table of the impugned Warrant of Precedence is derogatory to the dignity of their office and is violative of Article 31 of the Constitution. The impugned Warrant of Precedence fails to appreciate the dignity of all Constitutional posts such as the Judges of the Supreme Court of Bangladesh, Attorney General, Comptroller and Auditor General, Members of Parliament and Members of the Judicial Service of the Republic. They cannot be compared with the servants of the Republic and the members of the Civil Service and the Armed Forces in Particular. Hence, the impugned Warrant of Precedence is liable to be struck down as being arbitrary, malafide and ultra vires the Constitution.

The Writ respondent Nos.1 and 3 contested the Rule by filing affidavits-in-opposition making similar statements of facts.

The substance of their claim is that Chapter I of Part IX of the Constitution deals with the Service of Bangladesh generally; persons belonging to the Judicial Service are not members of the civil executive

service, though they are in the service of the Republic, does not mean or imply that they enjoy higher status than that of the person's belonging to the Defence Service, Local Government Service and Civil Executive Service. The service condition stipulated under Articles 133 and 135 of he Constitution do equally apply to the judicial officers as well as the civil executive officers. Therefore, civil executive officers are also within the scheme of the same Constitution and they may certainly be different in respect of powers and functions from judicial officers. But for that reason, civil executive officers cannot be treated as inferior to judicial officers and vice versa. Different services like Defence Service, Local Government Service, Judicial Service and all other services of the Republic have been duly considered, contemplated, recognized and dealt with at different places and under different articles of the Constitution, as were deemed appropriate by the framers of the Constitution keeping in mind the broad principles of separation of powers in the scheme of the Constitution.

Nowhere in the Constitution, it has been contemplated that the judicial Service shall enjoy a higher rank and status or position than other services of the Republic. It is contended the terms and conditions of services of the Constitutional functionaries are regulated and determined by special laws, and not by Rules, as mandated by Article

147 of the Constitution. The attempt of the Writ petitioner to raise the judicial officers to the level of he Constitutional functionaries is an unscrupulous attempt to undermine the dignity, status and position of the Constitutional functionaries. Since the judicial officers are persons in the service of the Republic, the District Judges have been rightly and properly placed at Serial No.24 in the table of the impugned Warrant of Precedence. District Judges hold district-level posts like Deputy Commissioners and at the district level, they have been shown at the highest serial number above Civil Surgeons and Superintendents of Police. Deputy Secretaries to the Government are national-level posts and for that reason; they have been shown at Serial No.25 not as being within their respective charge. It is an unfounded claim that District Judges being the highest post-holders in the Bangladesh Judicial Service are on the same footing like political executives and legislators. Such a claim has no legal or constitutional basis.

A Division Bench of the High Court Division by the judgment and order dated 04.02.2010 made the Rule absolute in a modified form with eight-point directives upon the writ respondent-appellant to make a new Warrant of Precedence in accordance with the directives within a period of 60 days from the date of receipt of a copy of the judgment and order and to place the District Judges, Members of the Judicial Service holding

equivalent judicial posts of the District Judges, Additional District Judges, Chief Judicial Magistrates and Chief Metropolitan Magistrates in appropriate places in the Table of new Warrant of Precedence. The appellant was also directed to submit an affidavit-of-compliance along with the copy of the new Warrant of Precedence by 13.05.2010.

The Division Bench further held that the writ petitioner had *locus standi* to file the writ petition which was filed in the nature of pro bono public litigation, and the writ petitioner was a person aggrieved within the meaning of Article 102 of the Constitution; that the Warrant of Precedence cannot shrug off the disqualification of being arbitrary, irrational, whimsical and capricious and is subject to the judicial review; that members of the judicial service are not the creatures of the Constitution but of law and that they are not Constitutional functionaries; that the members of the judicial service are persons in the service of the public; that the administrative executive is always at the beck and call of the political executives but a judicial officer is independent in the discharge of his function subject to the provisions of the Constitution as postulated by Article 116A; that the Chiefs of Defence Services are subject to the control of the political executives; that the Warrant of Precedence has to be observed for all purposes of the Government and that placement of the District Judges above the

Administrative and Defence Executives in the table thereof is all the more necessary with an eye to uphold their rank, priority and status in public perception and that the impugned Warrant of Precedence is fundamentally different from those of India, Pakistan and USA and the impugned Warrant of Precedence is a type by itself.

Being aggrieved by and dissatisfied with the impugned judgment and order dated 04.02.2010 passed by the High Court Division the appellant preferred the instant appeal by leave of this court.

Leave was granted to consider the following grounds:

> "I. Because civil executive officers are also within the scheme of the Constitution and as such, they may certainly be different in respect of powers and functions from judicial offices, but for that reason, they cannot be treated as inferior or subordinate to judicial officers, nor the judicial offices be equated with or treated as subordinate or inferior to civil executive offices considering the nature and jurisdictional function.
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> II. Because neither any constitutional nor any legal right of the writ petitioner has been violated by the impugned Warrant of Precedence seeking redress under Article 102 of the Constitution and that in framing the impugned Warrant

of Precedence, the executive government follows the age old principles, conventions and traditions considering the functions and authority of respective office(s)/person(s) in the governance of the affairs of the State and different neighbouring countries Warrant of Precedence have also been taken into consideration and that no illegality has been committed by placing the District Judges at serial No.24 of the Warrant of Precedence with other persons(s) of the same rank and status and the High Court Division acted beyond the jurisdiction in making the rule absolute directing the respondent No.1 to make a new Warrant of Precedence placing the District Judges, members of judicial service holding equivalent judicial posts of District Judges, Additional District Judges, Chief Judicial Magistrates and Chief Metropolitan Magistrates in the table above the Chiefs of Army, Navy and Air Force and the Secretaries to the government while it remained silent about other class of officers of the same rank and status employed in the service of the Republic.

III. Because the Warrant of Precedence as promulgated by the President of the Republic under the authority of Rule 7 as

specified in schedule at Serial No.7 of the Rules of Business 1996, involves the policy decision of the government to be observed for State and ceremonial occasions as well as government purposes as a matter of protocol which is neither amenable to judicial review under Article 102 of the Constitution nor it is justifiable and that the writ petitioner cannot be said to have been aggrieved in his power, function, position and authority by the impugned Warrant of Precedence and no public interest is involved in the matter.

IV. Because the members of the subordinate judiciary are not holders of constitutional posts and they are very much in the service of the Republic and subject to various Acts and Rules as are applicable to members of other civil service and the High Court Division committed an error of law by treating the members of the judicial service at par with the political executives and legislators and above the administrative and defence executives.

V. Because the members of judicial service are also public servants and employees in the service of the Republic and that the Public Servant (Retirement) Act, 1974, the Provident Fund Act, 1925, Government Servants (Discipline and Appeal)

Rules, 1985 and Government Servant Conduct Rules, 1979 are equally applicable to the members of judicial service and the High Court Division committed grave error passing the impugned judgment without any rationale causing indiscipline in the governance of the State and affecting harmonious relationship and polity among the three organs of the State namely the Executive, the Legislature and the Judiciary."

Mr. Abdur Rob Chowdhury, the learned Senior Advocate appearing for the appellant submits that claiming precedence by one organ of the State over other organs is against the letter and spirit of separation of powers as a Constitutional principle and may amount to interference with the other organs of the State violating rule of law. He contends that the Warrant of Precedence is the prerogative of the President who is the head of the State and thus the directives of the High Court Division are derogative to the name, fame and dignity of the President. There is no distinction between political and administrative executive in our Constitutional dispensation, inasmuch as, as per Article 55(2) of the Constitution, the executive power of Republic vests in the Prime Minister not in the Cabinet. It is an unreasonable proposition that there is a parity in between the members of lower judicial service and the political executives or legislators, inasmuch as, a member of the judicial

service in that case stands on the same footing like that of Ministers and in such case if a member of judicial service wants to hold an executive office, he or she needs to be appointed not below the rank of a Minister.

Mr. Abdur Rob Chowdhury then submits that the members of judicial service should not be equated with political executives and other Constitutional post holders, who hold the distinct constitutional offices and their terms and conditions of service being regulated and determined, not by rules, but by special Acts of Parliament and that before entering upon their offices, they require to subscribe oaths under Article 148 of he Constitution. Merely because an administrative action of the executive may be tested by judicial review does not mean that the judiciary enjoys higher status over the executive branch. The separation of judiciary from the executive or for that matter the independence of judiciary does not mean that the judiciary is above of the executive branch but that the judiciary is independent in the exercise of its judicial functions. The civil service as a whole is a part of the executive and subordinate to the political executives as the subordinate judiciary is also a part of total judiciary in a similar manner.

Mr. Abdur Rob Chowdhury submits that the judgment of the High Court Division is based on misconception about nature and purpose of the Warrant of Precedence which is only used for State and ceremonial

occasions. The officials mentioned in the warrant of Precedence are expected to attend the reception line at the airport when the President and the Prime Minister is leaving for and coming back from foreign trips and if the District Judges and equivalent post holders are placed above the Cabinet Secretary and the Chiefs of Army, Navy and Air force, it would be obligatory for them to attend the ceremony which would be against historical precedent.

Mr. Abdur Rob Chowdhury further submits that the Warrant of Precedence does not indicate or affect the rank, pay and status of a public servant, no public servant including a District Judge has a right to be placed in any particular place in the Warrant of Precedence. The Secretaries of the Government are functioning all over the country and as such they may not be confined to any special area but the District Judges, the Deputy Commissioner, the District Superintendent of Police are in administrative charge of a local area and that the High Court Division did not properly construe the purpose and objective in determining their order in the table of Precedence; in the USA and in the Common Wealth countries like Australia, the precedence of Governors are fixed in relation to their State but the officials of Ministry and Departments of Government are decided in relation to their work for the entire country.

The final submission of Mr. Abdur Rob Chowdhury is that the Legislature, the Executive and the judiciary all have their own broad spheres of operation, ordinarily it is not proper for any of these organs of the State to encroach upon the domain of another otherwise the delicate balance in the Constitution will be upset and there will be reaction and indiscipline. The impugned Warrant of Precedence was made by the President of the Republic after careful consideration of the practice followed in the neighbouring countries as also in the USA and the Commonwealth countries. The High Court Division in their directives for making a new Warrant of Precedence by placing the District Judges and other equivalent judicial officers above the Cabinet Secretary/Principal Secretary and the Chiefs of Army, Navy and Air Force has exceeded the historically validated restraint and overlooked the customs and practices followed in other countries.

Mr. Murad Reza, the learned Additional Attorney General appearing on behalf of the respondent nos.2 and 3 has adopted the submissions of Mr. Abdur Rob Chowdhury, the learned Senior Advocate for the appellant. The learned Additional Attorney General submits that civil executive officers are also within the scheme of the Constitution and that they may certainly be different in respect of powers and functions from judicial officers, but for that reason, they cannot be

treated as inferior or subordinate to judicial officers and as such the impugned judgment and order passed by the High Court Division is liable to be set aside. He then submits that by the impugned Warrant of Precedence neither constitutional nor any legal right of the writ petitioner has been violated and that no illegality has been committed by placing the District Judges at Serial No.24 of the Warrant of Precedence with other persons of the same rank and status and that the High Court Division acted without lawful authority in making the Rule absolute directing the appellant No.1 to make new Warrant of Precedence placing the District Judges and members of the Judicial Service holding equivalent judicial posts of District Judges in the Table above the Chiefs of Army, Navy and Air force and the Secretaries to the Government. The learned Additional Attorney General also submits that the impugned Warrant of Precedence is for State and ceremonial occasions and as such the expressions "as well as for all purpose of the Government" in note No.1 be deleted. Therefore he contends that after such deletion there is no reason for the respondent No.1 to be aggrieved.

Mr. Murad Reza, the learned Additional Attorney General further submits that in framing the impugned Warrant of Precedence the appellant follows the age old principles, conventions and traditions considering the functions and authority of respective officers in the

service of the Republic and also different neighbouring countries' Warrant of Precedence and as such no illegality is committed by placing the District Judges at Serial No.24 of the Warrant of Precedence. The learned Additional Attorney General submits that the Warrant of Precedence as promulgated by the President of the Republic involves the policy decision of the Government which is not amenable to judicial review under Article 102 of the Constitution and as such impugned judgment and order passed by the High Court Division is liable to be set aside.

On the other hand Mr. Rokanuddin Mahmud, the learned Senior Advocate appearing for the respondent No.1 submits that the appellant has admitted that the judicial officers cannot be equated with or treated as subordinate or inferior to civil executive officers considering the nature and jurisdictional function and as such placing the District Judge at Serial No.24 of the impugned Warrant of Precedence is admittedly illegal, arbitrary and without any lawful authority for which the High Court Division rightly passed the impugned judgment.

Mr. Rokanuddin Mahmud, learned Senior Advocate submits that the equal application of the provisions of the Public Servants (Retirement) Act 1974, the Provident Fund Act, 1925, Government Servants Conduct Rules, 1979 to the members of judicial service and

civil executive officers cannot be a ground to place the District Judges at Serial No.24, inasmuch as, those provisions are applicable to all the government servants including those who are not even included in the impugned Warrant of Precedence.

His further submission is that the impugned Warrant of Precedence is not only for the purpose of expecting the officials to attend the reception line at the airport when the President and the Prime Minister is leaving for and coming back from foreign trips inasmuch as note No.1 of the impugned Warrant of Precedence has clearly stated that it is for all purposes of the State and as such the High Court Division correctly passed the impugned judgment.

Mr. Mahmud, the learned Advocate appearing for the respondent no.1 submits that the High Court Division did not commit any wrong in holding that the petitioner is a member of the Judicial Service and the secretary General of Bangladesh Judicial Service Association who by way of invoking the Writ Jurisdiction of the High Court Division under Article 102 of the Constitution has brought to the notice of the Court a public wrong or a public injury and that is not doubt justiciable and his membership of the Judicial Service and office hold with the Bangladesh 'Judicial Service Association' eminently equip him both with the sufficiency of interest and the insight and ability to file a pro bono

publico litigation and the petitioner is a 'person aggrieved' within the meaning of Article 102 of the Constitution. The High Court Division has not committed any wrong in holding that a policy decision of the Government is not subject to judicial review under Article 102 of the Constitution unless it is arbitrary, whimsical and capricious and in the instant case the absence of evidence of any discernible guidelines, objective standards, criteria or yardsticks upon which the impugned Warrant of Precedence is or ought to be predicated is very much apparent and as such the Court felt rightly constrained to hold that the Warrant of Precedence cannot shrug off the disqualification of being arbitrary, irrational, whimsical and capricious and is, therefore, subject to judicial review under Article 102 of the Constitution.

Mr. Mahmud then submits that the High Court Division has not committed any wrong in holding that the Appellate Division in the decision in Masdar Hossain's case in paragraph 44 has adopted the findings and observations made by the Indian Supreme Court in the case of All India Judges' Association reported in AIR 1993 SC 2493 for which the natural corollary is that the Appellate Division has declared a law to the effect that the members of the Judicial Service are on a par with the political executives or the legislators and above the administrative executives which is binding upon the High Court Division

in view of the mandate of Article 111 of our Constitution and as such the impugned judgment is maintainable.

He contends that the Appellate Division on 09.08.2009 observed in Masdar Hossain Case that "It should be noted that the attitude of the supposed parallelism of the Judicial Service with the Executive Service is not the intention of the relevant provisions of the Constitution. The notion of such parallelism that existed in the past has been abandoned by the framers of the Constitution and the constitutional reality has to be materialized in the relevant areas including pay and allowances of the members of the Judicial Service" and as such in view of the above observation, the impugned judgment is maintainable.

His further contention is that in course of hearing *interlocutory* matter on 08.12.2009 in Masdar Hossain's case, the learned Attorney General verbally submitted that he would do his best to highlight the legal position in this regard to the concerned authorities of the Government that the Pay Scale of the highest post of the Judicial Service should be re-fixed having regard to the recommendation of the Judicial Service Pay Commission and should not be below the Grade No.1 of the National Pay Scale" and as such in view of the above findings, the impugned judgment is maintainable.

Mr. Rokanuddin Mahmud further submits that the three organs of the State, namely the Executive the Legislature and the Judiciary are respectively headed by the Prime Minister, the Speaker and the Chief Justice and these three organs are to perform their respective functions within the bounds set by the Constitution. As the political executives, that is to say, the Ministers including the Prime Minister exercise the executive power of the Republic, the legislators exercise the legislative power while Judges of both the Higher Judiciary and the Subordinate Judiciary exercise the judicial power of the Republic and as such the impugned judgment passed with the above finding is absolutely maintainable.

He again contends that in the case of Mujibur Rahman (Md.) Vs. Government of Bangladesh, 33 DLR (AD) 111, it was held in paragraph 71 that both "the Supreme Court and the Subordinate Courts are the repository of judicial power of the State" and the High Court Division rightly held in the impugned judgment that constitutionally, functionally and structurally, judicial service stands on a different level from the civil administrative executive service of the Republic while the function of the civil administrative executive service is to assist the political executives in formulation of policies and in execution of the policy decisions is the Government of the day, the function of the judicial

service is neither of them and it is an independent arm of the Republic which sits on judgment over parliamentary, executive and quasi-judicial actions, decision is and orders and as such to equate and to put on the same plane the judicial service with the civil administrative executive service is to treat two unequal as equals and hence the impugned judgment is maintainable.

His further contention is that the High Court Division has rightly held that there is no gainsaying of the fact that the Constitution has accorded special status to the constitutional incumbents for which their priority comes first in the Warrant of Precedence and the status of the constitutionally recognized and referred post-holders, though public functionaries, is ingrained in the scheme of the Constitution. So in terms of priority their placement should follow that of the constitutional incumbents and the priority of other public functionaries should be fixed depending on their relative status.

Mr. Mahmud again contends that the High Court Division has rightly found that the current Warrant of Precedence in India has not been challenged by any quarter and as such the priority or status of the District Judges of India has not been reflected therein as per the ‘ratio’ decided in the case of All India Judges’ Association and that cannot be a ground to refrain from assailing the impugned Warrant of Precedence in

view of the sound jurisprudential base emanating from Masdar Hossain's case in our own jurisdiction and hence the impugned judgment is maintainable and the appeal is liable to the dismissed. The High Court Division has correctly found that from a bare reading of the Table of the impugned Warrant of Precedence, it is evident that some constitutional and public functionaries have been placed together at different serial numbers haphazardly, arbitrarily, irrationally, inequitably and unreasonably inasmuch as the Cabinet Secretary, the Principal Secretary to the Government and the Chiefs of Staff of the Army, Navy and Air Force have been bracketed together at serial No.12; but stunningly enough, some constitutional office-holders like the Members of Parliament have been placed at Serial No.13, and the Attorney-General, Comptroller and Auditor-General and Ombudsman have been placed at Serial No.15.

Mr. Mahmud finally submits that the High Court Division has not committed any wrong in holding that under the constitutional scheme, the Prime Minister, the Speaker and the Chief Justice respectively head the three organs of the State, the scheme appears to have been accorded recognition in the previous Warrant of Precedence of 1975 to the extent of the Speaker and the Chief Justice being placed at the same Serial No.4 but it appears that quite inexplicably, that arrangement has been

disturbed in the impugned Warrant of Precedence where the position of the Chief Justice has been downgraded by placing the Speaker at Serial No.3 without any justifiable reason and as such the impugned judgment is maintainable.

We have considered the submissions of Mr. Abdur Rob Chowdhury on behalf of the appellant, Mr. Rokanuddin Mahamud with Mr. Asaduzzaman on behalf of the respondent No.l, Mr. Murad Raza, learned Additional Attorney General on behalf of the respondent nos.2 and 3, perused the impugned judgment and order, and the materials on record.

In determining the *locus standi* of the writ petitioner-respondent No.1 the High Court Division having referred to Article 102 of the Constitution observed that except for an application for habeas corpus or quo warranto a writ petition in the nature of certiorari, mandamus or prohibition can be filed by a person aggrieved. The High Court Division referred to the English case of Exparte Sidebotham (1880) 14 Ch.D.458 wherein the court defined an aggrieved person is a person "who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongly deprived him of something, or wrongfully refused him something, or

wrongfully affected his title to something". It has been rightly noticed that the apex courts of the sub-continent were influenced by the English decisions. However, in the case of Mian Fazal Din v. Lahore Improvement Trust, 21 DLR (SC) 225, the Supreme Court of Pakistan had taken somewhat liberal view to the following effect : ".....the right considered sufficient for maintaining a proceeding of this nature is not necessarily a right in the strict juristic sense; but it is enough if the applicant discloses that he had a personal interest in the performance of the legal duty, which if not performed or performed in a manner not permitted by law, would result in the loss of some personal benefit or advantage or the curtailment of a privilege or liberty or franchise." The High Court Division rightly noticed that with the increase of governmental functions the English Courts found the necessity of liberalizing the rule on *locus standi* view to preserve the integrity of the rule of law in the cases of R.V. Metropolitan Police Commissioner ex p. Blackburn [1968] 1 All E.R. 763, Blackburn v. Attorney-General [1971] 2 All E.R. 1380 and of R.V. Metropolitan Police Commissioner ex p. Blackburn [1973] All E.R. 324 wherein the duty owed by the public authorities was to the general public and not to an individual or to a determinate class of persons and the applicants were found to have *locus standi* as they had 'sufficient

interest' in the performance of the public duty. The Supreme Court of India in the case of S.P. Gupta and others v. President of India and others reported in AIR 1982 SC 149 observed "Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is, by reason of poverty, helplessness of disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application..... seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons."

In the case of Bangladesh Sangbadpatra Parishad Vs- Bangladesh and others reported in 43 DLR (AD) 126, the Association of news paper-owners as the petitioners challenged an award delivered by the Wage Board. In this case public interest litigation was not involved. The news paper-owners were competent to challenge the award themselves. The Appellate Division held that the Association of the news paper-owners had no *locus standi* to file the case. However, in the case of Bangladesh Retired Government Employees' Welfare Association Vs. Bangladesh

reported in 46 DLR (HCD) 426, the High Court Division held that the Retired Government Employees' Welfare Association had a *locus standi* to file the case observing that: "Since the Association has an interest in ventilating the common grievance of all its members who are retired Government employees, in our view, this Association is a 'person aggrieved'....."

In the instant case the High Court Division observed: "The expression 'person aggrieved' means a person who even without being personally affected has sufficient interest in the matter in dispute. When a public functionary has a public duty owed to the public in general, every citizen has sufficient interest in the performance of that public duty." In the case of Dr. Mohiuddin Faroque v. Bangladesh reported in 49 DLR (AD)1, Mostafa kamal, CJ observed: "48.....the traditional view remains true, valid and effective till to-day in so far as-individual rights and individual infraction thereof are concerned. But when a public injury or public wrong or infraction of a fundamental right affecting an indeterminate number of people is involved, it is not necessary, in the scheme of our Constitution, that the multitude of individuals who have been collectively wronged or injured or whose collective fundamental rights have been invaded are to invoke the jurisdiction under Article 102 in a multitude of individual writ petitions, each representing his own

portion of concern. In so far as it concerns public wrong or public injury or invasion of fundamental rights of an indeterminate number of people, any member of the public, being a citizen, suffering the common injury or common invasion in common with others or any citizen or an indigenous association, as distinguished from a local component of a foreign organization, espousing that particular cause is a person aggrieved and has the right to invoke the jurisdiction under Article 102."

In the said case B.B. Roy Chowdhury,J observed: "In this backdrop the meaning of the expression "person aggrieved" occurring in the aforesaid clauses (1) and (2) (a) of Article 102 is to be understood and not in an isolated manner. It cannot be conceived that its interpretation should be purged of the spirit of the Constitution as clearly indicated in the Preamble and other provisions of our Constitution, as discussed above. It is unthinkable that the framers of the Constitution had in their mind that the grievances of millions of our people should go unredressed, merely because they are unable to reach the doors of the court owing to abject poverty, illiteracy, ignorance and disadvantaged condition. It could never have been the intention of the framers of the Constitution to outclass them. In such harrowing conditions of our people in general if socially conscious and public-spirited persons are not allowed to approach the court on behalf of the public or a section

thereof for enforcement of their rights the very scheme of the Constitution will be frustrated. The inescapable conclusion, therefore, is that the expression "person aggrieved" means not only any person who is personally aggrieved but also one whose heart bleeds for his less fortunate fellow beings for a wrong done by the Government, or a local authority in not fulfilling its constitutional or statutory obligations. It does not however, extend to a person who is an interloper and interferes with things which do not concern him. This approach is in keeping with the constitutional principles that are being evolved in the recent times in different countries."

It appears that the writ petitioner-respondent No.1 is a member of the judicial service and the Secretary-General of Bangladesh judicial Service Association. He averred that he is conscious of his duty as a citizen in consonance with Article 21 of the Constitution and to ensure the prevention of illegal and unconstitutional encroachments upon the civil rights of the indefinite number of people or citizen of Bangladesh he is interested in the welfare of those people of the Republic and aware of the fundamental rights enshrined in Articles 27 and 31 of the Constitution. In view of the statements made in the writ petition the writ petitioner-respondent No.1 having sufficient interest feels aggrieved by the impugned Warrant of precedence and accordingly he filed the writ

petition in his capacity as a concerned, affected and aggrieved person to protect the interest of indefinite number of people of Bangladesh and to uphold the rule of law by way of public interest litigation and to prevent illegal and arbitrary placement of the constitutional functionaries and the members of the judicial service in inappropriate places in the Warrant of Precedence in derogation of their dignity and status in public perception. The writ petitioner does not appear to be either an officious by-stander or an interloper or a busy body to invoke writ jurisdiction under Article 102 of the Constitution to bring to the notice of the High Court Division a public wrong or a public injury which is justiciable. The High Court Division having relied on the principles enunciated in the case of secretary, Ministry of Finance v. Md. Masdar Hossain and others 52 DLR (AD) 82, Kazi Mokhlesur Rahman v. Bangladesh and another. 26 DLR (AD) 44 and Ekhushey Television Ltd. and others v. Dr. Chowdhory Mahmood Hasan and others, 54 DLR (AD) 130 rightly held that it is a probono publico litigation and the writ petitioner being a person aggrieved within the meaning of Article 102 of the Constitution has *locus standi* to invoke the writ jurisdiction.

On the question of judicial review of the impugned warrant of precedence the High Court Division observed as under:

"In judicial review, the Court is concerned with the question whether the impugned action is lawful or unlawful and the basic power of the court in relation to an illegal decision is to quash it. If the matter has to be decided again, it must be done by the original deciding authority. The court exercises the power of judicial review on the basis that powers can be validly exercised only within their limits and a public functionary is not to be allowed to transgress the limits of his authority conferred by the constitution or the laws. The court also exercises the power of judicial review if an impugned action or decision is *malafide* and in case of violation of fundamental rights.

Judicial review is a common law remedy in England. In 'Administrative Law", by H.W.R. Wade, 6th edition, it has been mentioned at page 280 "The courts of law have inherent jurisdiction, as a matter of common law, to prevent administrative authorities from exceeding their powers or neglecting their duties." The power of judicial review conferred by Article 102 in our jurisdiction is a basic feature of the constitution and in view of the decision in Anwar Hossain Chowdhury's case (1989) BLD (Special

> Issue)1, it can not be taken away or curtailed even by amendment of the Constitution."

The High Court Division has taken the above views on consideration of the cases of Apex Court including the case of Dr. Mohiuddin Farooque V. Bangladesh, 49 DLR(AD)1. In the case of Mohiuddin Farooque, this Division observed:

> "The expression 'person aggrieved' means a person who even without being personally affected has sufficient interest in the matter in dispute. When a public functionary has a public duty owed to the public in general, every citizen has sufficient interest in the performance of that public duty."

We fully endorse the views taken by the High Court Division.

We have to decide whether the civil executive officers are within the scheme of the constitution and whether judicial officers are different in respect of powers and functions from the civil executive officers and whether the civil executive officers can be treated as inferior or subordinate to the judicial officers or vice versa. In Masder Hossain's case the Appellate Division having considered the provisions and scheme of the constitution held that Chapter II of Part VI of the Constitution contains provisions for the subordinate judiciary and that

judicial service is quite separate and distinct from the executive service of the Republic. This court observed: “The judicial service has a permanent entity as a separate service altogether and it must always remain so in order that Chapter II of Part VI is not rendered nugatory.” The members of the subordinate judiciary are independent in the exercise of their judicial functions while members of the administrative executive service carries out the decisions of the political executives and they are not independent in the discharge of their duty and therefore, the members of the administrative executive service or members of the other services cannot be placed on a par with the members of the judicial service or subordinate judiciary either constitutionally or functionally. Therefore, there is no difficulty in holding that though civil executive officers being in the service of the Republic are within the scheme of the Constitution they are different in respect of powers and functions from the judicial officers. In the scheme of the Constitution and in view of the judgment passed in Masder Hossain’s case we have no hesitation in holding that the members of the judicial service cannot be treated subordinate to the administrative executives and vice versa.

In view of this Division’s decision in Masder Hossain’s case that judicial service is a separate service altogether from the administrative executive service and independent in the discharge of its judicial

function and in view of our finding that writ petitioner-respondent No.1 being a member of the judicial service is an aggrieved person to uphold the legal rights of the writ petitioner-respondent no.1 and other judicial officers which have been violated by the impugned Warrant of precedence placing the constitutional functionaries and the members of the judicial service i.e. the District judges and other judicial officers below their status and positions in derogation of their dignity and status in public perception.

In this connection the High Court Division held that 'The three organs of the State, namely, the Executive, the Legislature and the Judiciary are headed by the Prime Minister, the Speaker and the Chief Justice respectively and the three organs are to perform their respective functions within the bounds set by the Constitution. The political executives, that is to say, the Ministers including the Prime Minister exercise the executive power of Republic. The legislators exercise the legislative power while the Judges of both the Higher Judiciary and the Subordinate Judiciary exercise the judicial power of the Republic. It must not be lost sight of the fact that in the case of Mujibur Rahman (Md) ...V... Government of Bangladesh, 33 DLR (AD) 111, it was held in paragraph 71 that both "the Supreme Court and the Sub-ordinate Courts are the repository of judicial power of the State."

Constitutionally, functionally and structurally, judicial service stands on a different level from the civil administrative executive services of the Republic. While the function of the civil administrative executive services is to assist the political executives in formulation of policies and in execution of the policy decisions of the Government of the day, the function of the judicial service is neither of them. It is an independent arm of the Republic which sits on judgment over parliamentary, executive and quasi-judicial actions, decisions and orders. To equate and to put on the same plane the judicial service with the civil administrative executive services is to treat two unequals as equals".

The High Court Division has rightly held the functions of the three organs of the state which are independent in the performance of its respective fields. Mr. Murad Reza, learned Additional Attorney General fails to repel ... the observations of the High Court Division.

We have perused the Warrant of Precedence of the neighbouring countries. In India the president's Secretariat by notification dated 26-07-1979 issued the following table with respect to the rank and precedence of the persons named therein, the relevant entries of which have been stated below:-

Serial No. "1. President.

2. Vice-President.

3. Prime Minister.

4. Governors of states within

their respective states.

5. Former Presidents.

5A.....

6. Chief justice of India.

speaker of the Lok Sabha

7. Cabinet Minister of the union...

7A.....

8. .....

9. judges of the Supreme Court .

9A.....

10. .....

11. Attorney General, Cabinet

Secretary.....

12. Chiefs of Staff holding the rank of full

General of equivalent rank.

13. .....

17. Chairman, Central Administrative Tribunal.

.....

Chairman, union service Commission.

18.....

23. Army commander/ Vice Chief of the Army Staff or equivalent in other in other Services.

.....

Secretary to the president.

Secretary to prime Minister.

24. .....

26. Joint secretaries to the Government of India and officers of equivalent rank, officers of the rank equivalent rank.

Note 1: The order in this Table of Precedence is meant for state and Ceremonial occasions and has no application in the day-to-day business of the Government..... .....”

The Warrant of Precedence for Pakistan is a protocol list at which Government of Pakistan functions and officials are seated according to their rank and office. The relevant entries in the table is modified on 13-11-2010 as under:

Article No. “1. President of Pakistan.

Prime Minister of Pakistan.

.....

2. Speaker of the National Assembly of Pakistan.

.....

3. Chief justice of the Supreme Court of Pakistan Senior Federal Ministers.

.....

4. .....

.....

Attorney General to the Government of Pakistan (If of the Status of Federal Minister).

5. .....

6. Chief of the Army Staff.

Chief of the Naval Staff.

Chief of the Air Staff.

7. .....

8. .....

9. .....

10. Advisors/Special Assistants to the Prime Minister Secretaries General to the Federal Government.

.....

11. Envoys Extraordinary and Ministers Plenipotentiary.

12. judges of the Supreme Court of Pakistan.

.....

.....

17. Attorney General for Pakistan.

.....

24. Senior joint Secretaries/joint Secretaries to the Federal Government.

.....

25.....

26. Deputy Director General intelligence Bureau.

.....

District and Session judge.

.....

Additional District and Session judges.

.....

29.....

Extra Assistant Commissioners/ Deputy District officers.

judicial Magistrate/Civil judge.

Deputy Superintendents of Police.

30.....

"The Order of Precedence in Sri Lanka the protocol list at which Sri Lanka government officials are seated according to their rank. This is not the list of succession.

- The President
- The Prime Minister
- The Speaker of the Parliament
- .....
- .....
- .....
- The Chief justice
- .....
- .....
- .....
- Members of the Parliament of Sri Lanka. There is no established order of precedence over members of parliament in general, although each party has its internal ranking.
- Attorney General
- Judges of the Supreme Court of Sri Lanka

- .....
- .....

- .....

“The following is the Australia Table of Precedence:

1. The Queen of Australia (Elizabeth II)
2. The Governor-General of Australia
3. .....
4. The prime Minister
5. The president of the Senate and the Speaker of the House of Representatives in order of appointment:
6. The Chief Justice of Australia
7. .....
8. Members of the Federal Executive Council:

Ministers.....

22. The Chief of the Defence Force

23. .....

24. Members of parliament (see list of Australian Senators and list of members of the Australian House of Representatives)

25. Judges of Federal courts and Deputy Presidents of the Australian Conciliation and Arbitration Commission in order of appointment.

26. .....

.....

39. The Secretaries of Departments of the Australian public Service and their peers.

1. Vice-Chief of the Defence Force.

2. Chief of the Army.

3. Chief of the navy.

4. Chief of the Air Force.

42.....”

It has been found that in those countries their Warrant of Precedence are different from that of Bangladesh. Because in the notes, in serial No.1 of the impugned Warrant of Precedence it has been stipulated that the order in the Warrant of Precedence is to be observed for State and ceremonial occasions as well as for all purposes of the Government. But the Warrant of Precedence of the neighbouring countries are not similar because in those countries the Warrant of Precedence are not being used for all purposes of the State. In view of the above, the High Court Division has rightly held that ‘this is perhaps

the only instrument of the government for determination of one's relative status in the eyes of the public'. The High Court Division having analyzed the impugned Warrant of Precedence found that the Chief Justice has been downgraded to Serial No.4 without any justifiable reason while the Speaker has been upgraded to Serial No.3 of the impugned Warrant of Precedence though in the Warrant of Precedence of 1975 both of them were placed at Serial No.4.

It is to be noted that Vice-President was placed at Serial No.2 and the Prime Minister was placed Serial No.3 of the Table of the Warrant of Precedence of 1975. Because of the abolition of the post of Vice-President the post of Prime Minister was upgraded to Serial No.2 and the Speaker was upgraded to Serial No.3 alone keeping the Chief Justice in Serial No.4 thereby degrading the position of the Chief Justice which is not contemplated in the Constitution. The Chief Justice should be placed at Serial No.3 of the impugned Warrant of Precedence along with the Speaker. Similarly the Judges of the Appellate Division should be placed at Serial No.7 and those of the High Court Division as well as the Attorney General be placed at Serial No.8. The Members of Parliament, the Comptroller and Auditor General and Ombudsman should be placed at Serial No. 12. The Chairman of the Public Service Commission should also be placed at Serial No.15 in the impugned Warrant of

Precedence. We hope that the Government shall act accordingly in the light of the above observation.

The High Court Division rightly found that many constitutional functionaries are not placed in proper place of the table of the Warrant of Precedence but the Cabinet Secretary and other senior administrative executives and some other functionaries have been placed above them and bracketed at Serial No.12, but some constitutional functionaries like the Members of Parliament have been placed at Serial No.13, and the Attorney General, Comptroller and Auditor-General and Ombudsman have been placed at Serial No.15, and the Chairman of the Public Service Commission has been placed at Serial No.16, in derogation of their status and position as envisaged in the Constitution. The High Court Division having considered the respective status and positions of different constitutional functionaries and the persons in service of the Republic rightly held that though impugned Warrant of Precedence is a policy decision of the Government yet "in the absence of evidence of any discernible guidelines, objective standards, criteria or yardsticks upon-which the impugned Warrant of Precedence is ought to be predicated, we feel constrained to hold that the said Warrant of Precedence cannot shrug off the disqualification of being arbitrary,

irrational, whimsical and capricious and is, therefore, subject to judicial review under Article 102 of the Constitution."

We do not accept the contention of Mr. Abdur Rob Chowdhury and Mr. Murad Reza that the object of determining the warrant of precedence in relation to their work for the entire country. We also fully endorse the views that the Warrant of Precedence being a policy decision of the government which is not amenable under Article 102 of the Constitution. This warrant of precedence no doubt carries the status, benefits and other facilities. Unless and until an officer attains certain status, he is not entitled to use a vehicle or accommodation. In the administrative services as soon as an officer is promoted to the rank of Joint Secretary, he is entitled to use a vehicle and such other status and benefits. If such officer is promoted to the post of Additional Secretary, he will get corresponding higher benefits than a Joint Secretary and a Secretary to the Government is getting much higher benefits than an Additional Secretary. This will be evident from the following fact.

When this judgment was being prepared, the Ministry of Public Administration by notification dated 29th January, 2015 published under the heading "প্রাধিকারপ্রাপ্ত সরকারি কর্মকর্তাদের সুদমুক্ত বিশেষ অগ্রিম এবং গাড়ি সেবা নগদায়ন নীতিমালা, ২০১৪ (সংশোধিত) ।"

In the definition clause;

(গ) "প্রাধিকারপ্রাপ্ত কর্মকর্তা" অর্থ-

(অ) সরকারের যুগ্ম-সচিব, অতিরক্তি সচিব ও সচিব,

(আ) বি.সি.এস. (ইকনমিক) ক্যাডারের যুগ্ম-প্রধান বা তদূর্ধ্ব কর্মকর্তা, লেজিসলেটিভ ও সংসদ বিষয়ক বিভাগের যুগ্ম-সচিব (ড্রাফটিং) থেকে তদূর্ধ্ব পর্যায়ের কর্মকর্তা যারা সরকারি যানবাহন অধিদপ্তর হতে সার্বক্ষণিক ব্যবহারের জন্য গাড়ির সুবিধা প্রাপ্ত তবে উল্লিখিত পদসমূহে চুক্তিতে বা প্রেষণে নিয়োজিত কর্মকর্তাবৃন্দ এর অন্তর্ভুক্ত হবে না;

Paragraph 4 provides the qualification for availing special advance facilities which are as under:

"৪। বিশেষ অগ্রিম সুবিধা প্রাপ্তির যোগ্যতা।–(১) এ নীতিমালার অধীন বিশেষ অগ্রিম সুবিধা প্রাপ্তির জন্য সংশ্লিষ্ট কর্মকর্তাকে সার্বক্ষণিক গাড়ি ব্যবহারের প্রাধিকারপ্রাপ্ত কর্মকর্তা হতে হবে।

(২) কোন প্রাধিকারপ্রাপ্ত কর্মকর্তা গাড়ি সেবা নগদায়নের চেক উত্তোলন করলে তিনি তা প্রত্যাহার করতে পারবে না। এর ব্যত্যয় হলে শতকরা ১৫ ভাগ হারে সুদ প্রদান করতে হবে।

(৩) নীতি ৪ (১) ও (২) এর নিম্নবর্ণিত ক্ষেত্রে কোন একজন প্রাধিকারপ্রাপ্ত কর্মকর্তা এ নীতিমালার অধীন গাড়ি ক্রয়ের জন্য বিশেষ অগ্রিম সুবিধা পাবেন, যথা ঃ

(ক) প্রাধিকারপ্রাপ্ত কর্মকর্তার প্রাপ্যতা যতদিন থাকবে ততদিনের মধ্যে আবেদন করতে পারবেন। তবে মঞ্জুরি আদেশ জারির তারিখ হতে চাকুরী অবশ্যই এক বছর থাকতে হবে;

(খ) নীতিমালা জারির পর, কোন প্রাধিকারপ্রাপ্ত কর্মকর্তা সরকারি যানবাহন অধিদপ্তর হতে গাড়ি সুবিধা গ্রহণ করলেও গাড়ি সেবা নগদায়নের আবেদন করতে পারবেন। কিন্তু বিশেষ অগ্রিম গ্রহণপূর্বক গাড়ি ক্রয়ের পর যানবাহন অধিদপ্তর গাড়ি ব্যাবহারের সুবিধা আর বহাল থাকবে না।"

Under paragraph 6 provisions have been made for affording advance amount for purchasing a vehicle as under:

"৬। বিশেষ অগ্রিম মঞ্জুরের শর্ত।–(১) সরকারের পক্ষে জনপ্রশাসন মন্ত্রণালয় এ নীতিমালার অধীন গাড়ি ক্রয়ের অগ্রিম মঞ্জুরকারী কর্তৃপক্ষ বলে বিবেচিত হবে।

(২) প্রাধিকারপ্রাপ্ত কর্মকর্তাবৃন্দ পরিশিষ্ট-'ক' ফরমে অগ্রিমের আবেদন যথাযথ কর্তৃপক্ষের মাধ্যমে জনপ্রশাসন মন্ত্রণালয়ের সচিব বরাবর দাখিল করবেন।

(৩) নীতি ৬ (১) ও এ নীতিমালার অন্যান্য উদ্দেশ্য পূরণকল্পে সরকার জনপ্রশাসন মন্ত্রলায়ের অনুকূলে প্রয়োজনীয় বাজেট বরাদ্দ করবে।

(৪) সরকার একজন প্রাধিকারপ্রাপ্ত কর্মকর্তাকে গাড়ি ক্রয় এবং এর আনুষঙ্গিক অন্যান্য খরচাদি যেমন রেজিস্ট্রেশন, ফিটনেস, ট্যাক্স টোকেন ইত্যাদি সকল খরচ নির্বাহের জন্য

একককালীন সুদমুক্ত অগ্রিম হিসেবে সর্বোচ্চ ২৫,০০,০০০/- (পঁচিশ লক্ষ) টাকা প্রদান করতে পারবে। এ ছাড়া বাজার মূল্যের সাথে সঙ্গতি রেখে যুক্তিসঙ্গত সময় অন্তর অন্তর সরকার বিশেষ অগ্রিমের পরিমাণ পুনঃ নির্ধারণ করতে পারবে।

(৫) নীতি ৬ (২) এর অধীন আবেদনকারীদের মধ্য হতে জ্যেষ্ঠতা অনুসারে বিশেষ অগ্রিম মঞ্জুর করতে হবে,তবে এক্ষেত্রে অবসর গমনের বা পি.আর.এল. নিকটবর্তী কর্মকর্তাদের অগ্রাধিকার প্রদান করতে হবে।

(৬) কোন কর্মকর্তা তার সমগ্র চাকুরীকালে ০১ (এক) বারের বেশী এ নীতিমালার অধীন কোন অগ্রিম গ্রহণ করতে পারবে না।"

In the definition clause "প্রাধিকারপ্রাপ্ত কর্মকর্তা" means Joint Secretary, Additional Secretary, Secretary and some other officers of similar ranks who are entitled to full time use of a vehicle. Those officers will be entitled to advance amount of money for purchasing a vehicle. In paragraph 10 it is stated that such officers shall be entitled to Tk.45,000/- per month for the maintenance, fuel, diver’s salary etc. The advance amount shall be adjusted by one hundred twenty equal installments and after such adjustment such officer shall be entitled to own the car free from all encumbrances. Such facilities are not given to a judicial officer. Therefore, though the Warrant of Precedence is a policy decision of the Government, it is used for all purposes of the Government. It also carries

with status, benefits and perks. Mr. Rokonuddin Mahmood submitted that the District Judges are not entitled to use the VIP lounge in the Air Ports in Bangladesh while leaving the country and entering into the country, whereas the Joint Secretaries and other officers holding the similar status are using those benefits. On our query in this regard, the learned Additional Attorney General fails to give any reply as to whether the submissions of Mr. Mahmood is correct or not. In the absence of repelling the submission, we may accept the submission of Mr. Rokonuddin Mahmood. It is very unfortunate to note that the District Judges who are holding the highest post in the subordinate judiciary are not given the status and such benefits, they are legally entitled to.

On the question of the placement of the District Judges in the Table of Warrant of Precedence the High Court Division has made a distinction between the Judges of the higher judiciary and the lower judiciary and held as under:

> "In that regard, we note that in Article 152(1) of the Constitution, 'Judicial service', 'the service of the Republic' and 'District Judge', amongst others, have been defined. "Judicial service" means a service comprising persons holding judicial posts not being posts superior to that of a District Judge. 'The service of the Republic"

> means any service, post or office whether in a civil or military capacity, in respect of the Government of Bangladesh, and any other service declared by law to be a service of the Republic. "District Judge" includes Additional District Judge."

"The logic that the District Judges and Deputy Commissioners being district level officials have been equated with and bracketed together at serial No. 24 in the Table of the impugned Warrant of Precedence is fallacious for simple reason that the District Judges wield the state-authority. Again, Deputy Secretaries to the Government being national-level post holders have been placed below the Deputy Commissioners at serial No. 25 in the Table. So we think, the impugned Warrant of Precedence has no sound basis."

As regards the placement of the District Judges at serial No. 24 in the Table while the Judges of the High Court Division at serial No. 9, the High Court Division held that this placement has no rational basis. It observed :

> "Judges of the High Court Division have been placed at serial No. 9, though District Judges have been placed at serial No. 24 in the Table of the impugned Warrant of

> Precedence. But when a District Judge is appointed a Judge of the High Court Division under Article 95(1) of the Constitution, he makes a quantum leap from serial No. 24 to serial No. 9. The non-placement of the District Judges at a serial number in close proximity to that of the Judges of the High Court Division is in absolute disregard of the constitutionally recognised potential of upward mobility is really astounding."

Mr. Murad Reza, the learned Additional Attorney General was unable to give any satisfactory reply in this regard. The placement of those two offices as above is clear indicative that it was an arbitrary exercise of discretionary power. Article 95(2)(b) provides that a Judge of the Supreme Court shall be appointed by the President if he has, for not less than ten years, held judicial office in the territory of Bangladesh'. At present a judicial officer cannot become a District Judge unless he has minimum twenty years in the judicial service.

The District Judges being the highest post in the judicial service cannot be equated with or placed at par with administrative and defence executives at serial No.24 in the Warrant of Precedence and thereby the position and status of the District Judges have been degraded for all practical purposes. It will not be out of place to mention here that in

view of this pronouncement, the observations made by this Division on 14.03.2013 in Civil Appeal No. 79 of 1999 stands reviewed. In fact, that order was made in order to remove the anomaly relating to the payment of salaries and other benefits to the Judges of the subordinate judiciary in pursuance of the Judicial Pay Commission Report that was not implemented for a long time. But by this pronouncement, the status of District Judges are upgraded equivalent to the status of the Secretaries to the Government accordingly, the District Judges and equivalent judicial officers will be entitled to the status and other benefits on the basis of the direction given below.

It has already been noticed that the impugned Warrant of Precedence is to be observed for all purposes of the Government. The placement of District Judges at Serial No.24 in the Table is derogatory to the dignity and status of the District Judges.

In view of the above discussions and findings it would not be proper to place the District Judges and members of judicial service holding equivalent judicial posts in the Table above the Chiefs of Defence Services. Rather ends of justice would be best served if the District Judges and equivalent judicial officers are placed in the same table of the Warrant of Precedence along with the Secretaries and equivalent public servants. There is no denying that members of the

judicial service (i.e., the subordinate judiciary) are not holders of the constitutional posts but they being public servants are in the service of the Republic and the nature of their service is totally different from the civil administrative executives. District Judges and holders of the equivalent judicial posts are the highest posts in the subordinate judiciary. In view of the provisions of the Article 116A of the Constitution all persons employed in the judicial service and all magistrates exercising judicial functions shall be independent in the exercise of their judicial functions, so it is immaterial to say that members of judicial service or the subordinate judiciary are above the senior administrative and defence executives.

In this context, it is pertinent to state here that the three organs of the State, namely, the executives, legislatures and judiciary, are to perform their respective functions within the perimeters set by the Constitution. For observing harmonious relationship amongst the three organs of the State, the Constitution recognises and gives effect to the concept of equality among the three organs of the State and the concept of check and balances. Therefore, the impugned Warrant of Precedence should be framed in such a manner so as to reflect the concept of equality amongst the three organs of the State.

As regards the eight-point directives issued by the High Court Division an argument has been advanced that the judiciary cannot issue such directives upon the writ respondent No.1 for making a new Warrant of Precedence. In the facts and circumstances of the case, it has to be taken into consideration that the directives issued by the High Court Division cannot be issued to follow in verbatim and in that view of the matter, the impugned Warrant of Precedence should be modified and the eight-point directives of the High Court Division should also be modified because in the present case the aforesaid deviation from the constitutional arrangement has been made in the impugned Warrant of Precedence by placing some of the constitutional functionaries and the members of the judicial service inappropriate places in the Warrant of Precedence in derogation of their dignity and status. This Warrant of Precedence is illogical will be evident from the fact that the Attorney General has been placed at serial No. 15, below the posts of some civil and other executives. He is the chief law officer of the country. In India the Attorney General has been placed together with the Cabinet Secretary and above the Chiefs of staff holding the rank of full General. In Sri Lanka he has been placed above the Judges of the Supreme Court. In view of these anomaly the High Court Division rightly held that ‘a bare reading of the Table of the impugned Warrant of Precedence, it is

evident that some constitutional and public functionaries have been placed together at different serial numbers haphazardly, arbitrarily, irrationally, inequitably and unreasonably.'

In this context we may profitably refer to the decisions of the apex courts of the sub-continent. In the case of Secretary, Ministry of Finance Vs. Masdar Hossain, 52 DLR(AD)82, an argument was made by the learned Attorney-General that the judiciary cannot direct the Parliament to adopt legislative measures or direct the President to frame Rules under the proviso to Articles 133 of the Constitution. Mustafa Kamal, C.J. has rightly held relying upon certain decisions of this Court that-

> "Although we shall depart in some ways from the direction given by the High Court Division, we think that in the present case there is a constitutional deviation and constitutional arrangements have been interfered with and altered both by the Parliament by enacting the Act and by the Government by issuing various Orders in respect of the judicial service. For long 28 years after liberation sub-paragraph (6) of paragraph 6 of the Fourth Schedule to the Constitution remains unimplemented. When Parliament and the executive, instead of implementing the provisions of Chapter II of Part VI follow a different course not sanctioned by the Constitution, the higher

judiciary is within its jurisdiction to bring back the Parliament and the executive from constitutional derailment and give necessary directions to follow the constitutional course. This exercise was made by this Court in the case of Kudrat-e-Elahi Panir Vs. Bangladesh, 44 DLR(AD) 319. We do not see why the High Court Division or this Court cannot repeat that exercise when a constitutional deviation is detected and when there is a constitutional mandate to implement certain provisions of the Constitution. The Supreme Court of Pakistan too, consistent with the mandate contained in Article 175 of the present Constitution of Pakistan, to secure the separation of the judiciary from the executive, issued directions in the nature of adoption of legislative and executive measures in the case of Government of Sindh Vs. Sharaf Faridi, PLD 1994 SC 105."

In the case of All India Judges' Association V. union of India, AIR 1993 SC 2493, Supreme Court of India observed:

"However, it cannot be contended that pending such essential reforms, the overdue demands of the judiciary can be overlooked. As early as in 1958, the Law Commission of India in its 14th report on the System of Judicial Administration in this country made certain

recommendations to improve the system

.....”

The report made recommendations in respect of various aspects of the service conditions of the judicial officers and also emphasised that there was no connection between the service conditions of the judiciary and those of the other services .....

“These recommendations were made to improve the system of justice and thereby to improve the content and quality of justice administered by the Courts. The recommendations were made in the year 1958. Over the years the circumstances which impelled the said recommendations have undergone a metamorphosis. Instead of improving, they have deteriorated making it necessary to update and better them to meet the needs of the present times.”

“Although the report made the recommendations in question to further the implementation of the Constitutional mandate to make proper justice available to the people, the mandate has been consistently ignored both by the executive and the legislature by neglecting to improve the service conditions. By giving the directions in question, this Court has only called upon the executive and the legislature to implement their imperative duties. The Courts do issue directions to the authorities to perform their obligatory duties whenever there is a failure on their part

to discharge them. The power to issue such mandates in proper cases belongs to the Courts. As has been pointed out in the judgment under review, this Court was impelled to issue the said directions firstly because the executive and the legislature had failed in their obligations in that behalf. Secondly, the judiciary in this country is a unified institution judicially though not administratively. Hence uniform designations and hierarchy, with uniform service conditions are unavoidable necessary consequences. The further directions given, therefore, should not be looked upon as an encroachment on the powers of the executive and the legislature to determine the service conditions of the judiciary. They are directions to perform the long overdue obligatory duties."

When there is a deviation from the constitutional arrangements or constitutional arrangements have been interfered with or altered by the Government or when the Government fails to implement the provisions of Chapter II of Part VI of the Constitution and instead follow a different course not sanctioned by the Constitution, the High Court Division as well as the Appellate Division is competent enough to give necessary directions to follow the mandate of the Constitution. This means the Apex Court of the Country is competent to issue directions upon the authorities concerned to perform their obligatory duties whenever there

is a failure on their part to discharge their duties. It is stipulated that the order in the impugned Warrant of Precedence is to be observed for State and ceremonial occasions as well as for all purpose of the Government. Therefore, it cannot be said that the impugned Warrant of Precedence involves the Policy Decision of the government rather it has deviated, altered or interfered with the constitutional arrangements or envisaged a different course not sanctioned by the Constitution.

At this point, we feel constrained to observe that the Warrant of Precedence of the neighbouring countries include the holders of highest civil awards, however the impugned Warrant of Precedence of our country does not include such dignitaries, who are not constitutional or public functionaries. As such, it is expected that those dignitaries who have been honoured or decorated with civil awards, e.i., Shadhinata Padak, or Ekhushey Padak, and those valiant freedom fighters who have been honoured with galantry awards of Bir Uttam should be included in the Table of the impugned Warrant of Precedence in such order as deemed appropriate.

In view of the foregoing discussions, observations and findings the appeal is disposed of and the eight-points directives issued by the High Court Division are hereby modified, and the impugned Warrant of

Precedence being based on utter irrationality and arbitrariness is to be modified and amended in the following manner:

1) As the Constitution is the supreme law of the land, all constitutional functionaries shall be placed first in order of priority in the Table of the impugned Warrant of Precedence.

2) Members of judicial service holding the posts of District Judges or equivalent posts of District Judges shall be placed at Serial No.16 in the Table along with the Secretaries to the Government and equivalent public servants in the service of the Republic.

3) Additional District Judges or holders of equivalent judicial posts shall be placed at the serial number 17 immediately after the District Judges.

Accordingly, the appeal is disposed of with expunction, modification, observations and findings as stated above.

C.J.

J.

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J.

The 11th January, 2015
Md. Mahbub Hossain.
APPROVED FOR REPORTING