

IN THE SUPREME COURT OF BANGLADESH
Appellate Division

PRESENT

Mr. Justice Muhammad Imman Ali
Mr. Justice Mirza Hussain Haider
Mr. Justice Abu Bakar Siddiquee

CIVIL PETITION FOR LEAVE TO APPEAL NO.1977 OF 2017

(From the judgement and order dated the 8th day of March, 2017 passed by the High Court Division in Writ Petition No.8683 of 2015).

Gas Transmission Company Ltd. ... Petitioner
Represented by Managing
Director, Head Office Complex,
Plot No. F-18/A, Shere-e-Bangla
Nagar, Administrative Area,
Agargaon, Dhaka-1207

= Versus=

Mohammad Abdul Aziz ... Respondents
(Compressor Operator) and
others

For the Petitioner : Mr. Tanjibul Alam
Advocate, instructed by
Mr. Helal Amin
Advocate-on-Record

For Respondent No.1 : Mr. Sayed Ahmed
Advocate, with
Mr. Syed Muhaymen Baksh
Advocate, instructed by
Mr. Md. Nurul Islam Chowdhury
Advocate-on-Record

For Respondent Nos.2-11 : None represented

Date of hearing & judgement : The 6th day of December, 2020

J U D G E M E N T

MUHAMMAD IMMAN ALL, J:- The delay of 77 days in filing the civil petition for leave to appeal is hereby condoned.

This civil petition for leave to appeal is directed against the judgement and order dated 08.03.2017 passed by the High Court Division in Writ Petition No.8683 of 2015 making the Rule *Nisi* absolute.

The facts of the case, stated in the writ petition, in brief, are that the Gas Transmission Company Limited (GTCL),

a company owned by Petro Bangla, which is a statutory corporation created under P.O. 27 of 1972, published an advertisement in the Daily Prothom Alo on 24.06.2011 for recruitment for the post of Compressor Operator and Technician along with other posts. Accordingly, writ-petitioner Nos.1-3 applied for the post of Compressor Operator and writ-petitioner No.4 applied for the post of Technician through due process. Thereupon, the writ-petitioners sat for the written examination and succeeded in the written and viva voce examination. The GTCL constituted a five members Junior Selection Committee vide Memo No.HR/RT/Appoint-10.01/740 dated 22.07.2012 for appointing candidates for the post of Compressor Operators and Technician. The Committee vide report dated 20.09.2012, recommended seven persons including the writ-petitioners for the post of Compressor Operator under pay scale of Tk.5500-12095/- and three other candidates including writ-petitioner No.4 for the post of Technician under pay scale of Tk.5200-11235/-. Thereafter, the Human Resource Division of the GTCL, vide Memo No.HR/RT/Appoint/10.02/933 dated 30.09.2012, constituted two committees for conducting inquiry as regards the genuineness of the certificates and experiences of the candidates. The said committees gave reports on 19.11.2012 and 20.11.2012 finding such genuineness. Thereafter, the GTCL reconstituted the Junior Selection Committee consisting five members vide another office order No.28.012.011.03.00.005.2005.53 dated 19.02.2013 for the purpose of recommendation of successful candidates keeping in view the quota system, namely freedom fighter quota, women quota and district quota etc. Accordingly, the said

reconstituted committee also recommended writ-petitioner Nos.1-3 for the post of Compressor Operator and writ-petitioner No.4 for the post of Technician. However, writ-respondent No.3-GTCL did not finally appoint the writ-petitioners and as such, when the petitioners were waiting to get final appointment letters, the GTCL, on 23.07.2015, decided to cancel the appointment process of the writ-petitioners and, vide impugned memo dated 30.07.2015, published such decision in the Daily Star on 30.07.2015. Being aggrieved by such cancellation, the writ-petitioners moved the High Court Division and obtained Rule *Nisi*. It is further stated that, the GTCL could not appoint the writ-petitioners because of the absence of the administrative representative of the said reconstituted committee in the meeting and the said administrative representative did not sign the final recommendation for appointing the writ-petitioners. At the time of issuance of the Rule, High Court Division, vide order dated 24.08.2015, directed the concerned authority to keep three post of Compressor Operator and one post of Technician reserved for a period of 06(six) months, which was subsequently extended time to time.

GTCL (writ respondent No.3) contested the Rule *Nisi* by filing affidavit-in-opposition stating, *inter alia*, that the decisions and recommendations of different committees of the GTCL were internal communications and as such the same cannot be enforced by the writ-petitioner under writ jurisdiction.

In due course after hearing both the parties, by the impugned judgement and order the said Rule *Nisi* was made absolute. Hence, writ-respondent No.3 is now before us having filed the instant civil petition for leave to appeal.

This petition was heard using virtual means under the provisions of the আদালত কর্তৃক তথ্য-প্রযুক্তি ব্যবহার আইন, ২০২০।

Mr. Tanjibul Alam, learned Advocate, appearing on behalf of the petitioner submitted that the High Court Division committed an error of law in passing the judgement and order dated 08.03.2017, inasmuch as it failed to appreciate that cancellation of recruitment dated 30.07.2015 and the advertisement for new circular dated 10.08.2015 are legal, having been done by the petitioner under lawful authority. He submitted that the writ petition was filed on the basis of such documents which were confidential minutes of a meeting and never communicated to the writ-petitioners, and the writ-petitioners obtained such confidential information by unlawful means. He submitted that it was never communicated to the writ-petitioners whether they passed the viva voce in order to be appointed in the posts of Compressor and Technician. He submitted that the recommendation dated 20.08.2014 was not final since one of the members of the Junior Selection Committee, respondent No.8 did not sign the same. Therefore, no assurance or promise has ever been made from writ respondent No.3 and as such there is no violation of legitimate expectation. He submitted that the High Court Division failed to appreciate the established principle that the Government's noting is not enforceable in writ jurisdiction. Therefore, no legal right is established on the basis of the internal documents of GCTL. He submitted that the writ-petitioners are at liberty to re-apply in response to the new recruitment notice published for the posts of Compressor Operator and Technician on 12 and 14 August 2015 in different national daily newspapers, and as such the

judgment and order of the High Court Division is liable to be set aside. In support of his contention that internal communication do not create any right of legitimate expectation, the learned Advocate has referred to the decision in the case of **Bangladesh, represented by the Secretary, Ministry of Industries, Government of the People's Republic of Bangladesh and anr Vs. Dhaka Steel Works Ltd. & others**, reported in **45 DLR(AD) 69**. He also referred to the decision in the case of **Secretary, Ministry of Establishment Government of Bangladesh and others vs Md. Jahangir Hossain and 65 others** reported in **51 DLR (AD) 148**. In this decision it was observed as follows:

"If the petitioners merely prepared a list and kept it to themselves or their different departments for implementation as and when possible the writ petitioners had nothing to complain about:"

Mustafa Kamal, J. as his Lordship was then went on to say that if some persons were appointed from them while denying appointment to others then they could legitimately complain of inequality before law and discrimination in public employment.

Mr. Sayed Ahmed, learned Advocate appearing for the writ petitioners-respondent No.1 herein painstakingly submitted that the writ petitioners went through such arduous process of written and viva examination and were recommended for the posts concern, hence they are in every respect eligible to be appointed for the posts for which they qualified. He further submitted that one of the members of the committee did not sign the recommendation for reasons best known to him, but the fact that the writ petitioners

were recommended having completed all formalities is ample evidence that they have acquired a legitimate right to be appointed in their respective posts.

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

The High Court Division observed that the petitioners having been successful in their written and viva examinations were finally recommended for the post of Compressor Operator and Technician by the specially constituted committees comprising high officials of GTCL and as such the recommendation of the said committees could be termed as internal notes or internal communication of GTCL. The High Court Division observed "Though the recommendations or the fact of constitution of such committees were not officially communicated to the petitioners at any stage, it cannot be denied that, in a transparent appointment process by a government owned enterprise, such process of appointment cannot be kept secret terming the same as internal communication. Therefore, obviously, the petitioners somehow got information about those recommendations of the committees." The High Court Division went on to hold that the writ petitioners acquired a legitimate right in favour of their appointment in the GTCL and, therefore, declared the impugned notification cancelling the appointment process as without lawful authority.

In view of the above, we are of the opinion that the High Court Division was not correct in finding that the writ

petitioners had acquired a legitimate right to appointment in GTCL. Accordingly, the judgement and order of the High Court Division is hereby set aside and the civil petitioner for leave to appeal is disposed of.

J.

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