

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

**Present:**

Mr. Justice Syed Mahmud Hossain, *Chief Justice*  
Mr. Justice Hasan Foez Siddique  
Mr. Justice Md. Nuruzzaman  
Mr. Justice Obaidul Hassan

**CIVIL APPEAL NO.23 OF 2010**

*(From the judgment and order dated 18.01.2009 passed by the High Court Division in Writ Petition No.7455 of 2007).*

Government of Bangladesh : .....Appellants  
and others

**Versus**

Jannatul Ferdous and others : .....Respondents

For the appellants : Mr. Samarendra Nath  
Biswas, Deputy  
Attorney General,  
instructed by Mr.  
Haridas Paul, Advocate-  
on-Record.

For the respondent No.1 : Mr. Zahirul Islam,  
Advocate-on-Record.

For the respondents No.2-4 : Not represented.

**Date of hearing and judgment** : **The 7<sup>th</sup> day of October,  
2020.**

**JUDGMENT**

**Obaidul Hassan, J.** This appeal, by leave, is directed against the judgment and order dated 18.01.2009 passed by the High Court Division in Writ Petition No.7455 of 2007 disposing of the Rule with a direction to the writ-respondent appellants to issue an appointment letter in favour of the writ-petitioner respondent in a similar/equivalent vacant post of the District.

The short facts of the case relevant for disposal of this appeal are that the writ-respondent appellant No.3 issued a

notification dated 11.12.2006 under memo No.সি.এস/কিশোর/প্রশাসন/০৬/২৮৮৭৬ for filling up the vacant posts of Health Assistants in various Upazilas under Kishoreganj District. The writ-petitioner, herein the respondent No.1, applied for the said post and accordingly she appeared in the written examination which was held by an appointment committee comprising 5(five) members headed by the writ-respondent appellant No.2 as the Chairman. The respondent No.1 sat for the examination and became qualified and accordingly, she was asked for viva-voce examination before the said committee and also she became qualified. Thereafter, the said recruitment committee made a final selection for giving appointment of 58 candidates including the respondent No.1, but, subsequently, the writ-respondent appellant No.3 published the final selection list vide memo No.সি.এস/কিশোর/প্রশাসন/০৭/১১৬৭০ dated 07.06.2007, wherein it has been mentioned that the addresses of 5(five) candidates found incorrect including the respondent No.1. Thereafter, the writ-respondent appellant No.3 appointed writ-respondent No.4, namely, Masum Ahmed, son of late Basir Ahmed instead of the respondent No.1 in the said Union whereas the respondent No.1 was qualified for the said post and the name of the writ-respondent No.4 was not mentioned in the selection list. The address of the respondent No.1 and other documents

were duly attached with the said application, but the writ-respondent appellant No.3 without considering the said material facts illegally appointed the writ-respondent No.4 instead of the respondent No.1.

The High Court Division after hearing the matter by judgment and order dated 18.01.2009 passed in Writ Petition No.7455 of 2007 disposed of the same with a direction to the writ-respondent appellants No.1-3 to issue an appointment letter to the respondent No.1 in a similar/equivalent vacant post of the District within two months from the date of receipt of the judgment.

Being aggrieved by and dissatisfied with the aforementioned judgment and order dated 18.01.2009 passed by a Division Bench of the High Court Division in Writ Petition No.7455 of 2007, the present appellants preferred Civil Petition for Leave to Appeal being No.1128 of 2009 before this Division and after hearing the leave petition, this Division granted leave on 23.11.2009, which gave rise to the instant appeal.

Mr. Samarendra Nath Biswas, learned Deputy Attorney General appearing on behalf of the appellants, submits that the High Court Division ought to have considered that there is no similar vacant post in the District to appoint the respondent No.1 and, as such, the direction of the High Court Division to

issue an appointment letter to the respondent No.1 is not sustainable. Thus, the present appeal is liable to be allowed and the judgment and order dated 18.01.2009 in Writ Petition No.7455 of 2007 passed by the High Court Division is liable to be set aside.

Mr. Zahirul Islam, learned Advocate-on-record appearing on behalf of the respondent No.1, submits that she became qualified in all respects and she was finally selected by the appointment committee. He also submits that the address of the respondent No.1 given in her job application and other documents was genuine and true. Thus, there was nothing to question about the genuineness of her address. He prays for dismissal of the appeal.

None appears, before us, on behalf of the respondents No.2-4.

We have considered the submissions of the learned advocates appearing on behalf of the parties concerned, perused the impugned judgment and order passed by the High Court Division and other connected papers on record. It might be true that the respondent No.1 was found as a qualified candidate in written and viva voce examination, but she in her application used her father's address of Itna as her own address while she was married and became the resident of Kishoregonj

much earlier. The post for which the respondent No.1 claimed to be qualified was under the Itna Upazila. As per condition No.12 of the notification dated 11.12.2006, the candidates from the Union or Ward, where the post is vacant would be given preference. When the fact was revealed that the respondent No.1 is an inhabitant of Kishoregonj not of Itna Upazila, the appellant-writ respondents restrained themselves from giving her appointment in the post and filled the said post with the writ-respondent No.4, who already had joined his office before filing the writ petition. Considering this aspect, the High Court Division did not interfere with the appointment of the writ-respondent No.4. However, the High Court Division directed the appellant-respondents No.1-3 to appoint the respondent No.1-writ petitioner in an equivalent or similar post within the District which could not be carried out by the appellant writ-respondent, because no vacant post was available at the relevant time. Hence, the order passed by the High Court Division was not executable, as there was no equivalent post or similar post in the office of the writ-respondent No.3 vacant at that time. Furthermore, the writ respondent had/has no authority to create any new post in his office. Creation of any new post in any Government office is absolutely under the domain of the Government, more particularly, under the

domain of the Ministry of Public Administration and the Ministry of Finance.

When it is impossible to conduct an execution, since the object to be executed is unavailable, it must be considered as non executable judgment due to unavailability of object to execute and court cannot pass any order which cannot be executed.

The judgment and order passed by the High Court Division on 18.01.2009 in Writ Petition No.7455 of 2007 is unexecutable. We are of the view that the said judgment has been passed beyond the jurisdiction of the High Court Division. Thus the same is a nullity and it requires to be set aside.

Accordingly, the appeal is allowed, without any order as to costs. The judgment and order dated 18.01.2009 passed by the High Court Division in Writ Petition No.7455 of 2007 is hereby set aside.

C.J.

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