

LEX/BDAD/0102/2017

Equivalent Citation: 71 DLR(AD) (2019) 1

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION)

Civil Appeal No. 91 of 2011

Decided On: 14.11.2017

Appellants: **Bangladesh Krishi Bank and Ors.**
Vs.

Respondent: **Arun Chandra Banik and Ors.**

Hon'ble Judges:

Md. Abdul Wahhab Miah, Syed Mahmud Hossain, Md. Imman Ali, Hasan Foez Siddique and Mirza Hussain Haider, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Mahbubey Alam, Senior Advocate and Shah Monjurul Hoque, Advocate instructed by Sufia Khatun, Advocate-on-Record

For Respondents/Defendant: Md. Khurshid Alam Khan, Advocate instructed by Syed Mahbubar Rahman, Advocate-on-Record

JUDGMENT

Syed Mahmud Hossain, J.

1. This appeal by leave is directed against the judgment and order dated 15-3-2009 passed by the High Court Division, in Writ Petition No. 708 of 2005 making Rule absolute.

2. The facts, leading to the filing of this civil appeal, in short, are:

The case of the writ-petitioners as stated in the High Court Division is that the writ-petitioners were appointed as the Sub-Assistant Engineers in 1982 in different branches of Bangladesh Krishi Bank. They were treated as Senior Officers of the Bank. The Bank prepared a seniority list on 19th November, 1998 and afforded them selection grade through a gradation list of 16th May, 1999. The writ-petitioners were promoted as Assistant Engineers and their names have been mentioned in the gradation list in accordance with their seniority. They were given facilities and financial benefits on the basis of the said seniority list. Thereafter, all of a sudden, the Bank issued a separate seniority list on 10th April, 2004, in which, only the writ-petitioners' names were mentioned without mentioning the names of other Senior Officers, who got joint seniority and same grade earlier. It has further been stated that for collateral purpose and with an ulterior motive illegally and mala fide manner, the respondent-bank further prepared another seniority list for the Senior Officers only excluding the names of the petitioners under the signature of writ-respondent No. 5 vide office memo dated 2-12-2004. The writ-petitioners made several presentations for correction of the seniority list and giving them proper promotion but their representations were not acceded to. The Bank published a uniform seniority list on 2nd February, 1999 but without following the previous list issued the impugned memo for the purpose of promoting Senior Officers to the posts of Principal Officers without mentioning the names of the writ-petitioners, in it, which is violative

of their fundamental rights.

3. Finding no other alternative, they filed a writ petition before the High Court Division and obtained Rule Nisi in Writ Petition No. 708 of 2005.

4. Writ-respondents did not file any affidavit-in-opposition to contest the Rule. But learned Assistant Attorney-General appearing on their behalf before the High Court Division raised the question of maintainability of the writ petition on the ground that the writ-petitioners are the officers of Bangladesh Krishi Bank which is included in the schedule of the Administrative Tribunals Act, 1980. Therefore, the writ petition is not maintainable. He further submits that the Krishi Bank Employees Service Rules provide that the Assistant Engineer could be promoted upto Executive Engineer for which the respondent-bank prepared separate gradation list. Though the Rule provides that the writ-petitioners would be promoted as Executive Engineer, the writ-petitioners did not challenge the said Rules, namely, বাংলাদেশ কৃষি ব্যাংক কর্মচারী শ্রেণিবিধানমাল, ১৯৮৮ and, as such, the writ-petitioners cannot get relief under writ jurisdiction without challenging the same. On that score the Rule is liable to be discharged.

5. The learned Judges of the High Court Division, upon hearing the Rule, by the impugned judgment and order dated 15-3-2009 made the Rule absolute with direction.

6. Feeling aggrieved by and dissatisfied with the judgment and order passed by the High Court Division, the writ-respondents as the leave-petitioners have filed Civil Petition for Leave to Appeal No. 1245 of 2009 before this Division and obtained leave on 1-11-2010, resulting in Civil Appeal No. 91 of 2011.

7. Mr. Mahbubey Alam, learned Senior Advocate (Mr. Shah Monjurul Haque, learned Advocate with him), appearing on behalf of the appellants, submits that the writ petition was filed before the High Court Division challenging the gradation list which essentially relates to the terms and conditions of the service of the writ-petitioner-respondents and, as such, their remedy lies before the Administrative Tribunal as Bangladesh Krishi Bank Limited has been included within the schedule of Administrative Tribunals Act, 1980 and, as such, the impugned judgment should be set aside. He further submits that if the impugned gradation list is taken as mala fide out of vengeance or with ulterior motive to take revenge, in that case, the Tribunal can strike down the gradation list and, as such, the impugned judgment should be set aside.

8. Mr. Khurshid Alam Khan, learned Advocate, appearing on behalf of the writ-petitioner-respondents, on the other hand, submits that as the writ-petitioners could make out a case out of mala fide, the writ petition filed before the High Court Division was maintainable.

9. We have considered the submissions of the learned Senior Advocate for the appellants and the learned Advocate for the writ-petitioner-respondents, perused the impugned judgment and the materials on record.

10. The High Court Division noted that the appellants prepared a gradation list on 3-11-1998 where the writ-petitioners and other officers of the said bank have been included according to their seniority. The High Court Division further noted that by the impugned gradation list dated 10-4-2004 (Annexure-C to the writ petition) and dated 2-12-2004 (Annexure-D), the bank authority excluded the names of the writ-petitioners and prepared a separate gradation list for them. The High Court Division came to a definite finding that separate gradation lists were prepared by the appellant-bank with a mala fide intention and that the appellant-bank deprived the

writ-petitioner-respondents of promotion from the post of Principal Officers to Senior Principal Officers and that the bank-authority asked only the Principal Officers to appear before the Promotion Board for promotion to the post of Senior Principal Officers which is a mala fide action of the bank authority and, as such, the writ petition was maintainable.

11. Admittedly, the writ-petitioner-respondents challenged the gradation lists (Annexures-C and D) which essentially relate to the terms and conditions of their service. In such a case, the Administrative Tribunal has the jurisdiction to resolve any of the disputes relating to the terms and conditions of service as Bangladesh Krishi Bank Limited has been included within the schedule of Administrative Tribunals Act, 1980 and as such the very writ petition before the High Court Division was not maintainable.

12. It is contended that if the gradation list is a mala fide one prepared out of vengeance or ill motive, the writ petition is maintainable on that score alone.

13. In the case of Bangladesh, represented by the Secretary, Ministry of Home Affairs vs. Sontosh Kumar Saha, 21 BLC (AD) 94, this Division has already settled that except challenging the vires of law or alleging violation of fundamental rights, judicial review of a decision of the authority relating to the terms and conditions of the service under Article 102(1) of the Constitution is not maintainable.

14. In the above reported case, this Division further held that if the decision is taken mala fide out of vengeance or with ill motive to take revenge, in all those cases the Tribunal can strike down the action taken against the aggrieved person.

15. The principle expounded in the case referred to above applies to the facts and circumstances of the instant case. In the case in hand, the writ-petitioner-respondents alleged mala fide in preparation of the gradation list which relates to the terms and conditions of service and as per the principle expounded in the case referred to above, the instant writ petition was not maintainable.

16. The writ-petitioner-respondents have come to a wrong forum and they may still approach appellants, that is, the bank authority by filing departmental appeal to get redress of their grievances in respect of gradation list. If they fail to get proper redress from the appellants, the writ-petitioner-respondents will be at liberty to go to the Administrative Tribunal, which can decide any question relating to the terms and conditions of the service of the writ-petitioner-respondents including the question of mala fide in preparation of the gradation list.

17. In the light of the findings made before, this appeal is allowed with the observation made in the body of the judgment that the writ-petitioner-respondents are at liberty to go to the Administrative Tribunal to vindicate their grievances.

18. Accordingly, the impugned judgment delivered by the High Court Division is set aside.

There is no order as to costs.

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