

LEX/BDHC/0404/2019

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION)

Writ Petition No. 5062 of 2014

Decided On: 28.10.2019

Appellants: **Md. Moshir Rahman**

Vs.

Respondent: **Govt. of Bangladesh and Ors.**

Hon'ble Judges/Coram:

Naima Haider and Khizir Ahmed Choudhury, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: M. Moniruzzaman Asad, Advocate

JUDGMENT

Naima Haider, J.

1. In this application under Article 102(2) read with Article 44 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued calling upon the respondents to show cause as to why a direction should not be given upon them for absorption of the petitioner in Dhaka Power Distribution Company Limited, a Public Limited Company, registered under Companies Act, 1994 to his post of Sub-Assistant Engineer in accordance with the Surplus Public Servants Absorption Ordinance (Ordinance No. XXIV of 1985), 1985 and/or such other or farther order or orders passed as to this court may deem fit and proper.

2. The petitioner's case, as set out in the Writ Petition, in brief, is as follows:

The petitioner was appointed on 24.03.1994 as Sub-Assistant Engineer in the Dhaka Electric Supply Authority (DESA) which has now been converted to Dhaka Power Distribution Company Limited (DPDCL). After joining in his respective post, the petitioner had been discharging his function with great efficiency, honesty and dedication until DESA converted in to DPDCL.

3. Before the actual conversion of DESA to DPDCL, on 22.05.2008, one Director (Administration) issued a letter inviting the officers' employees/ staffs of the then DESA to apply for their absorption in DPDCL. in the Regular form which would be supplied by DPDCL by 28.05.2008. Dhaka Power Distribution Company Limited (DPDCL) was approved in the meeting of Advisory Board on 15.06.2008. After the approval of DPDCL. on 17.06.2008 one Senior Assistant Secretary, Ministry of Power, Energy and Mineral Resources issued a letter dated 17.06.2008 stating that the Officials and Staffs of said DFSA would be absorbed with DPDCL.

4. The Managing Director, DPDCL issued a letter dated 24.06.2008 to the Chairman, DESA stating, therein, that DPDCL has already issued the appointment letters to 1870 persons among Officers, 3rd. and 4th Class employees of DESA and also outside of DESA for DPDCL.

5. The said Senior Assistant Secretary, Ministry of Power, Energy and Mineral Resources issued an Office Order dated 30.06.2008 and stated in the said order that officially

DESA is converted and handed over to DPDCL and as per section 21 (as amended) of DESA Act 1990, DESA would be converted into DPDCL from midnight of 30.06.2018 and all the officials and employees of DESA would be released from DESA. On the same day one Additional Director (Admin), DESA released all the officials and Employees of DESA from DESA with effect from 10.06.2008 to enable them to join with DPDCL.

6. Section 21-A(3)(ga) of the said Ordinance, 2008 clearly stated that the employees of DESA would be absorbed in DPDCL in accordance with the Surplus Public Servants Absorption Ordinance, 1985.

7. At that time the petitioner unfortunately could not apply for the absorption in Dhaka Power Distribution Company Limited (DPDCL) from abolished DESA because he was suffering from severe colon disease and as per physician's advice his movement was restricted. After getting well from the colon disease, the petitioner subsequently on 19.03.2014 made an application to the competent authority requesting to absorb him in Dhaka Power Distribution Company Limited as a Sub-Assistant Engineer. But the respondents did not pay heed to his said written request for absorption in DPDCL though the petitioner is drawing his monthly salary regularly as Sub-Assistant Engineer, EX BOB Division, Narayanganj (East), abolished DESA which is evident from his salary bill of February, 2018.

8. Finding no other alternative efficacious remedy, the petitioner has moved this Court and obtained the instant writ.

9. The respondents No-3, entered into appearance by filing affidavit-in-opposition. The case of respondent no.3, in short is that: As a part of the power sector development and reform program of the Government of Bangladesh, the DPDC was formed who took over DESA. The assets and liabilities of DESA excluding the employees were transferred to DPDC.

10. Under section 2(e) Surplus Public Servants Absorption Ordinance 1985 (Ordinance 24 of 85), on 28.09.2010, the Power Division, Ministry of Power, Energy & Mineral Resources vide office order No. 27.087.004.00.00 dated 28.09.2010 abolished 411 post of DESA. Therefore, the petitioner is treated as "Surplus Public Servant".

11. On 19.03.2014, the petitioner made an application to the competent authority requesting to absorb him in DPDCL as Sub-Assistant Engineer. However, he did not apply for the absorption in DPDCL, from abolished DESA within the stipulated time.

12. Mr. M. Moniruzzaman Asad, the learned advocate for the petitioner submits that in 2008 DESA has been converted into DPDC and at that time, the petitioner was suffering from severe colon disease. As a result, he could not apply for absorption in the DPDCL. He next contends that after recovering from colon disease, the petitioner on 19.03.2014 made an application requesting to absorb him in the DPDCL but it was not considered. He lastly submits that the petitioner has legitimately expected that he will be absorbed in the DPDCL since the authority concerned made promise that the Officials and Employees of DESA would be absorbed into DPDCL in accordance with the Surplus Public Servants Absorption Ordinance, 1985.

13. Mr. Sk. Abdullah, learned Advocate for the respondent No. 3, submits that the petitioner being as a surplus public servant is presently completely under the responsibility of Ministry of Establishment (now Ministry of Public Administration). Moreover, Ministry of Establishment now is under legal obligation to absorb in a post in any office under the administrative control of Government. He further contends that

Ordinance No. 40 of 2008 having dissolved DESA with effect from the date of transfer its undertakings, assets, etc. to DPDC as provided in section 21-ka (1) & (2). The same having been so transferred through an agreement dated 11.09.2008 giving retrospective effect from 30.06.2008. He lastly submits that all employees and officers of DESA having been declared surplus with effect from the said date by operation of subparagraph (Ga) of section (3) of section 21Ka of DESA Act by application of Ordinance No. 24 of 1985 leaving no scope for absorption of the petitioner in DPDC to his post of Sub-Assistant Engineer in view of the fact that at the relevant time he was not in service being surplus.

14. We have perused the writ petition, its annexures, affidavit in opposition filed by the respondent No. 3 and other materials on record placed before this Court.

15. From the materials placed before this Court, it appears that as the pan of the power sector development and reform program of the Government of Bangladesh the DPDC has been formed and was taken over by DESA. The assets and liabilities of DESA excluding the employees were transferred to DPDC vide ^{২১ক-(১) of ঢাকা বিদ্যুৎ বিতরণ কর্তৃপক্ষ আইন, ১৯৯০} as amended vide Dhaka Electricity Supply Authority (amendment) Ordinance -2008 which was passed on 13.08.2008 and was made effective on 30.06.2008 inserting a new section 21A in the Dhaka Electricity Supply Authority Act 1990, which was ratified by the parliament vide Act No. 22 of 2009 and was made effective from 30.06.2008. Accordingly, the DESA has been abolished as per section ^{২১ক-(২) of ঢাকা বিদ্যুৎ বিতরণ কর্তৃপক্ষ আইন, ১৯৯০}. Further section ^{২১ক-(৩)} states as follows:

(৩) উপ-ধারা(২) এর অধীন কর্তৃপক্ষ বিদ্যুৎ হইবার সংশ্লিষ্ট সংশ্লিষ্ট
(ক) বিদ্যুৎ কর্তৃপক্ষের সকল স্থল দ্বারা ও দায়িত্ব এবং উহার দ্বারা,
উহার পক্ষে বা উহার সহিত সম্পাদিত সকল চুক্তি, যথাক্রমে, কোম্পানীর স্থল,
দায় ও দায়িত্ব এবং উহার দ্বারা, উহার পক্ষে বা উহার সহিত সম্পাদিত চুক্তি
বিলুপ্ত গণ্য হইবে।
(খ) বিদ্যুৎ কর্তৃপক্ষ বা উহার বিক্রেতার দ্বারা কোন মামলা বা
সূচীত কোন আইনগত কার্যধারা কোম্পানী কর্তৃক বা উহার বিরুদ্ধে দায়েরকৃত
কোন মামলা সূচীত কোন আইনগত কার্যধারা বিলুপ্ত গণ্য হইবে;
(গ) বিদ্যুৎ কর্তৃপক্ষের সকল কর্মকর্তা ও কর্মচারী Surplus
Public Servant Absorption Ordinance, 1985(Ord. No.
XXIV of 1985) এর উদ্দেশ্য পূরণকল্পে উদ্ধৃত (surplus) কর্মচারী
হিসাবে গণ্য হইবেন এবং তাহাদের ক্ষেত্রে উক্ত Ordinance এর
বিধানাবলী প্রযোজ্য হইবে;

16. It further appears that on 06.04.2009 Dhaka electric Supply Authority (Amendment) Ordinance 2008, the Ordinance No. 40 of 2008 was ratified by the Act No. 22 of 2009 in the name of Dhaka Electric Supply Authority (Amendment) Act-2009.

17. Admittedly, under section 2(e) Surplus Public Servants Absorption Ordinance 1985 (Ordinance -24 of 85) "Surplus Public Servant" means "a public servant whose post is abolished by the government for the purpose of administrative re-organization...." Further under section 5 Surplus Employees were required to be absorbed a post in any office under the administrative control of Government and a surplus public servant shall not be absorbed in any post unless he is nominated by the Ministry of establishment.

18. Reverting to the case in hand, we find that the petitioner was Sub-Assistant Engineer, Sales and Distribution Division of the then DESA. After abolition of DESA, as per law the Ministry of Establishment vide its letter dated 06.04.2010 permitted Power Division, Ministry of Power, Energy & Mineral Recourses to declare 411 post of DESA as abolished with a view to absorb them under section 5 of the Surplus Public Servants Absorption Ordinance, 1985.

19. For felicity of reference, section 5 of the Surplus Public Servants Absorption Ordinance, 1985 runs as follows:

"(I) A surplus Public servant shall as far as practicable, be absorbed in a post" carrying the same scale of pay of the post which he held immediately before becoming surplus had carried;

Provided that if a surplus public servant cannot be absorbed in any post which carried same scale of pay, he may be offered a post carrying lower scale of pay, and if he does not accept the offer, he shall be deemed to have been retired from the date of receipt of the offer, whichever is earlier.

(2) A surplus public, servant shall not be absorbed in any post unless he is nominated by the Ministry of Establishment (now Ministry of Public Administration):

Provided that the Ministry of Establishment (now Ministry of Public Administration) may authorize a Ministry, Division or local authority to absorb a surplus public servant in any office under its administrative control.

20. In order to comply with section 2(e) Surplus Public Servants Absorption Ordinance 1985 (Ordinance 24 of 85), on 28.09.2010 the Power Division, Ministry of Power, Energy & Mineral Resources vide its office Order abolished 411 post of DESA. The petitioner was treated as Surplus Public Servant.

21. We note that the petitioner made an application on 19.03.2014 to the competent authority requesting him to absorb him in DPDCL as Sub-Assistant Engineer. It was brought to the Court by the respondent that the petitioner did not apply for the absorption in DPDCL from abolished DESA within stipulated time.

22. In view of the above discussions, made hereinbefore, we do not find any merit in this Rule.

23. Accordingly, the Rule is discharged.

24. The learned Advocate for the petitioner after pronouncement of judgment has filed a supplementary affidavit dated 04.11.2019 but this Court did not find any substance in the contents of the supplementary affidavit.

25. No order as to cost.

26. Communicate the judgment and order at once.

Khizir Ahmed Choudhury, J.

I agree.

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