

IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. 2932 OF 2010

IN THE MATTER OF:

An application for a direction to the Respondents to allow the Petitioner No.1 and other persons with disabilities, having appropriate educational qualification, to sit for 33rd BCS examination and to ensure reasonable accommodation for them in the exam halls by providing physical access for persons with physical disabilities

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and eligible scribes for persons
with visual disabilities

AND

IN THE MATTER OF:

Shapan Chowkider and others

... .. Petitioners

-Versus-

Bangladesh, Represented by the
Secretary, Ministry of
Establishment, at present Ministry
of Public Administration, and
others.

... .. Respondents

To

Mr. Justice Md. Muzammel Hossain, the Hon'ble Chief Justice
of Bangladesh and his companion Justices of the said Hon'ble
Court

-:3:-

The humble petition on behalf of the
above named Petitioner most
respectfully

S H E W E T H:-

1. That the petitioners moved this Hon'ble Court under Article 102 of the Constitution of Bangladesh in the public interest impugning persistent deprivation of Bangladeshi citizens with disabilities from the opportunity of appearing for the Bangladesh Civil Services (BCS) Examinations and not allowing them to join any cadre as may be determined by the Bangladesh Public Service Commission. The petitioners had prayed for an order declaring the application of Schedule III of Bangladesh Civil Service (Age, Qualification and Examination for Direct Recruitment) Rules, 1982, being No. S.R.O. 142-L/82/ED/Recruitment/1-15/80, dated 11.5.1982, in general and without considering the fundamental rights of the citizens with disabilities, to that extent to be inconsistent with the Part III of the Constitution of the People's Republic of Bangladesh and as

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such void. They also prayed for an order directing the respondents to perform their statutory duties for ensuring the accommodation of persons with disabilities in appropriate cadre posts of Bangladesh civil service in compliance with Section 6(2) of the Disability Welfare Act, 2001 (Act XII of 2001) read with Schedule '*Cha*' of the said Act. It was further prayed for an order directing the respondents to publish a supplementary notice expressly specifying that there is no bar to persons with disabilities from applying for 30th BCS Examination – 2010, in addition to the Notification, bearing File No. 80.200.046.00.00.001.2010-360, dated 08.3.2010, published by the Respondent No.8.

2. That the Hon'ble High Court Division heard the matter in motion and passed an order, dated 25.4.2010, directing the Respondent No.6, the Chairman, Bangladesh Public Service Commission, to inform the Court as to the steps taken under section 6(2) and schedule '*Cha*' of the Disability Welfare Act, 2001, within 30 days from the receipt of that order.

3. That in compliance with that order dated 25.4.2010,

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Respondent Nos. 10, 11 and 12 submitted an affidavit in compliance and served a copy to the petitioners.

4. That it is stated that in paragraph q) of the said affidavit in compliance the respondents have stated that *relaxation of age and educational qualification for the employment of PWDs (Persons with Disabilities) was under consideration.*

5. That it is further stated that in paragraph s) of the said affidavit in compliance it was stated that a workshop was being designed with all possible stakeholders to identify some suitable class-I job/desk for the PWDs.

6. That with the said affidavit in compliance the respondents had annexed the 'প্রতিবন্ধী বিষয়ক জাতীয় নীতিমালা ডিসেম্বর, ১৯৯৫' (annexure-6). In clause (জ) of the article 8 of that policy it is stated that – "(জ) অন্যান্য বিষয়ে একজন প্রতিবন্ধী উপযুক্ত বিবেচিত হলে শুধুমাত্র প্রতিবন্ধীত্বের কারণে সরকারী চাকুরীতে অযোগ্য বিবেচিত করা যাবে না ও বি সি এস পরীক্ষায় অংশগ্রহণ থেকে বিরত রাখা যাবে না।".

7. That it is further stated that in clause (ঝ) of article 8 of the said policy it was stated that – "(ঝ) প্রতিবন্ধীদের ক্ষেত্রে নির্ধারিত বয়সসীমা ৫

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বছর পর্যন্ত শিথিলযোগ্য করা হবে”.

8. That it is respectfully stated that in spite of repeated public statements and assurances by the respondents and other high level government officials in pursuance to the প্রতিবন্ধী বিষয়ক জাতীয় নীতিমালা ডিসেম্বর, ১৯৯৫ no development has taken place in ensuring the appearance of PWDs in the BCS examination.

9. That after perusing the affidavit in compliance and hearing both the parties the Hon'ble Court issued a Rule Nisi, on 08.6.2010, calling upon the respondents to show cause as to why an order will not be passed directing the respondents for applying discretionary powers and performing duties of the respondents for ensuring the accommodation of citizens with disabilities in the appropriate cadre posts of Bangladesh Civil Service in compliance with section 6(2) of the Disability Welfare Act, 2001 (Act XII of 2001), read with schedule 'Cha' of the said Act and as to why an order will not be passed declaring the application of Schedule III of Bangladesh Civil Service (Age, Qualification and Examination for Direct Recruitment) Rules, 1982, being No. S.R.O. 142-L/82/ED/Recruitment/1-15/80,

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dated 11.5.1982, in general and without considering the fundamental rights of the citizens with disabilities, to that extent to be, inconsistent with the Part III of the Constitution of the People's Republic of Bangladesh and as such void shall not be declared to have been issued without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this court may seem fit and proper.

10. That it is stated that recently the respondent No.1 issued a circular, bearing Memo No. 05.00.0000.170.07.057.11-15, dated 12.1.2012, deciding to preserve a quota of 1% (one percent) in 1st and 2nd class government services in government offices, autonomous/semi-autonomous bodies and different corporations including BCS cadres. It is further contended in that circular that this 1% quota of PWDs will be accommodated only in those places wherein other quotas would not be filled up.

A copy of the said circular, bearing

Memo No.

05.00.0000.170.07.057.11-15,

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dated 12.1.2012, is annexed

herewith and marked as

ANNEXURE A

11. That it is further stated that in the meantime a circular for 33rd BCS examination was published, vide Memo No. 80.200.046.00.00.016.2012-70, dated 29.12.2012, by the Respondent No.8 for taking examinations to select persons for the post of 4206 in different cadres of Bangladesh Civil Service.

A copy of the 33rd BCS circular,

bearing Memo No.

80.200.046.00.00.016.2012-70,

dated 29.12.2012, is annexed

herewith and marked as

ANNEXURE B

12. That it is respectfully submitted that in the aforesaid 33rd BCS circular there was no accommodation were made for the persons with disabilities. In clause 24 of the circular it is clearly mentioned that the participants of the 33rd BCS examination have to be of extremely sound physical standard and their eye

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sight must be appropriate. Instead of the circular, bearing Memo No. 05.00.0000.170.07.057.11-15, dated 12.1.2012, allocating 1% quota for PWDs, there was no indication for the persons with disabilities.

13. That it is again submitted that the period for submitting the applications has been started on 08.3.2012 and will end on 07.4.2012 at 11.59 p.m. Under such circumstances persons with disabilities, with appropriate educational qualificationx, and otherwise eligible candidates are being denied the opportunity of even applying for employment and in particular denied any for some additional support for them to appear in the examination following the principle of Reasonable Accommodation, i.e., physical access for the persons with physical disability, eligible scribe for persons with visual disability. Without the approval of the authority for availing such facilities it will not be possible for them to appear in the examination.

14. That it is further submitted that the Petitioner No.1 is a person with visual impairments. He filed the instant writ petition

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at the time of filing application of 30th BCS in 2010 for an order allowing him to appear in that examination. Bur he has not been able to appear in that examination nor in two other BCS examinations held in the meantime. At present he has reached the age of 29 and the respondents have not made any significant change in the rules for extending the age limit for PWDs. Hence, if the petitioner No.1 cannot appear in the 33rd BCS examination he will not be able to attend any BCS examination and shall be highly prejudiced.

15. That it is submitted that respondents are not willing to accommodate persons with disabilities within the posts of BCS cadre and playing an unscrupulous role by expressing their commitment through many ways but not to implement that practically.

16. That it is submitted that the Petitioner No.1 and the persons with disabilities, having appropriate educational qualification, of Bangladesh, in general, shall be prejudice and shall suffer irreparable loss if the respondents are not directed to allow PWDs to appear in the BCS examination.

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10. That the annexures being circulars of the government, which has the effect of law, and have been collected from internet and as such photocopies of the same are provided herewith.

Wherefore it is humbly prayed that your Lordships may graciously be pleased to pass an order directing the Respondents to allow the Petitioner No.1 and other persons with disabilities, having appropriate educational qualification, to sit for 33rd BCS examination and to ensure reasonable accommodation for them in the exam halls by providing physical access for persons with physical disabilities and eligible scribes for persons with visual disabilities and or pass such other order

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or orders as to your Lordship may deem

fit and proper.

And for this act of kindness your Petitioner, as in duty bound,
shall ever pray.

A F F I D A V I T

I, Shapan Chowkider, son of Md. Nurul Islam Chowkider, of
Village: South Chakdh, Post: Chakdh Bazzar, Police Station-
Naroia, District - Shariatpur, by profession advocate, aged
about ... years, by nationality Bangladeshi by birth do hereby
solemnly affirm and say as follows:

1. That I am the Petitioner No.1 and conversant with the
facts and circumstances of this case and competent to

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swear this affidavit.

2. That the statements made above are true to the best of my knowledge and belief.

Prepared in my office

Advocate

Deponent

The deponent is known to me and identified by me.

Advocate

Solemnly affirmed before me
by the said deponent this
the day of March 2012 at. . . .

COMMISSIONER OF AFFIDAVIT
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA