



LAW week



4 months more to separate judiciary

The Appellate Division of the Supreme Court has granted the government another four months for implementation of a 12-point directive on separation of the judiciary from the executive. This is for the 15th time the time has been extended. The 15th extension came after the government filed a petition on 25 September. The Appellate Division full bench of Chief Justice KM Hasan, Justice Ruhul Amin, Justice Mohammed Fazlul Karim, Justice Syed JR Muddassir Husain, Justice Hamidul Haque and Justice Tafazzul Islam allowed the time. -Law Desk.

JS body brings graft charge against BIWTC

A parliamentary standing committee has levelled allegation of corruption against Bangladesh Inland Water Transport Corporation (BIWTC) in the construction of three passenger vessels by amending tender at the last moment. The parliamentary standing committee on the shipping ministry asked the shipping ministry to adjourn the entire tender process for a month until the committee resolves the issue. The committee also asked the ministry to come up with all documents at its December 6 meeting to clarify the amendment to the tender for building three 900-passenger capacity vessels. Member of the Committee, Abul Hossain Khan MP raised the allegation of corruption in the tender process. He said the BIWTC authorities made the amendment just four days before the deadline for dropping bids ended. He alleged that the authorities did it to provide benefits for a special quarter he alleged. - Daily Star, 16 November.

Judge in Rob murder case embarrassed

The trial of the murder of Awami League mayoral candidate SMA Rob has been adjourned as the judge felt embarrassed. He has suggested that the case be tried by the High Court or any other competent court after its withdrawal from the Speedy Trial Tribunal. The judge felt embarrassed when some supporters of the slain Awami League leader brought out a procession and raised slogans in the court premises during the trial. The procession was brought out to protest the arrest of slain AL leader's wife Altafunessa and his son Mushfiqur Rahman Russell for failing to appear before court as prosecution witnesses even after receiving the summons on the dates of the hearings. They were arrested on a non-bailable warrant issued by Judge Abdus Samad. They were however released immediately after the judge adjourned the hearing feeling embarrassed. SMA Rob was gunned down on 11 August in 2000 in front of his residence in Sonadanga residential area. The case was transferred to the Speedy Trial Tribunal on August 20 this year. - Janakantha, 14 November.

713 foreigners still in jail after serving terms

A total of 713 foreigners are still languishing in jails although they have already served their jail terms. In addition, 734 foreigners are in the jails -- 258 of them are convicts and the rest are under-trial prisoners. The figures were revealed at the eighth meeting of the cabinet committee on jail reforms. Law Minister Moudud Ahmed presided over the meeting. The Foreign Office has been asked to take initiatives to send the foreign prisoners who have completed their sentences to their countries. -Daily Star, 13 November.

Delay in anti-graft body again

The Jatiya Sangsad gave a parliamentary standing committee another three months to submit its report on the independent anti-corruption commission bill to parliament. Khandkar Mahub Uddin Ahmed, chairman of the parliamentary standing committee on the law, justice and parliamentary affairs ministry sought time from parliament for scrutinising the much-talked-about bill. The law ministry plans to pass the bill in the next session of parliament, scheduled for January 2004. The bill was placed before parliament on 10 July and sent to the committee for submitting a report after scrutinising it within 15 days. After placing of the bill before parliament, criticism mounted against the inclusion of two ministers on the selection body of the proposed commission. The law minister declared that the two ministers would be excluded from the six-member selection committee. -Law Desk.

Contempt proceedings against judge stayed

The Appellate Division of the Supreme Court has stayed the contempt proceedings against District and Sessions Judge of Feni Mohammad Firoj Alam for two months. Chamber Judge Syed J R Muddassir Husain stayed the contempt proceedings that was drawn by High Court Division Judge Syed Amirul Islam on October 29. Justice Islam alleged that he made a visit to Feni on October 22 and was expecting Firoj Alam or his representatives to receive him at the rail station. He said although he informed Alam beforehand about his visit, no-one turned up at the station. Such a disregard prompted Justice Islam to issue a contempt rule on October 29 and direct District Judge Alam and his Nazir and Nayeb Nazir to appear before the High Court on November 12. On November 12, District Judge Alam appeared before court and apologised verbally for failing to receive Justice Islam in Feni. The court however asked him to apologise in writing. -Daily Star, 17 November.

EC plans to update voters' roll

The Election Commission has instructed its field-level officers to upgrade the voters' roll before the municipal elections scheduled to be held in the middle of next year. The voters in their respective constituencies have to fill the voter's forms by January 15, 2004. It also asked the field officials to modify the existing voters' list through scrutiny. The Election Commission has also decided to extend the punishment for giving false statements in preparing the voters' list and casting false votes. According to the existing Act, if such anomalies are found, one can be jailed for six months or fined or both. The Election Commission has suggested a jail term of five years for the offences. -New Age, 18 November.

Amendments to Bar Council Order challenged

The High Court has issued a rule asking the government to show cause in three weeks why the amendments to the Bar Council Order should not be declared illegal. The rule came upon a writ filed by two advocates challenging the amendments made in September to the Bar Council Order 1972. The amendments barred election to the Bar Council of anyone for two consecutive terms. These provide for mandatory submission of its annual audit report for scrutiny to the Parliament's Public Accounts Committee and inclusion of Supreme Court judges in the enrolment committee. -Prothom Alo, 19 November.

Case against DGFJ for rape attempt

An attempted rape case has filed against a deputy director (DD) in-charge of the Directorate General of Forces Intelligence (DGFJ) Mr. Mostafa and his office assistant with the Court of Chief Metropolitan Magistrate, Dhaka on 18 December. Mosammet Sheuli Akhter, an information assistant at the Caab, alleged at about 8:30am on November 13, Mostafa asked her to meet him at his office room. But she did not go there and was waiting at the passengers service desk. After a while, Mostafa came there, frisked her and took her duty pass away. Later, she went to his office at around 10:00am to get her duty pass back. The DD did not return it, instead he made an attempt to violate her. She filed the case with the magistrate court as the police refused to record it. After hearing, Metropolitan Magistrate Mamun-Al-Rashed took the case into cognizance and directed the officer-in-charge of Airport Police Station to register the complaint as first information report. -Law Desk.

216 judges' posts vacant

Currently some two hundred and sixteen judge's posts are vacant in the country. The posts remained vacant due to retirement, promotion and non-recruitment of judges for long. Law, Justice and Parliamentary Affairs Minister Moudud Ahmed revealed this in the parliament. The minister told that the government took up a plan to appoint new judges to the vacant posts. The minister also told that construction and expansion works of judge's courts in 22 districts are on in full swing. He also told that the works of the court buildings have been taken under the Legal and Judiciary Capacity Building Project. Daily Star, 19 November.

IGP ordered to apologise by Jan 5

A High Court (HC) Division Bench has ordered Inspector General of Police (IGP) Shahudul Haque to file a formal petition tendering unqualified apology to the court by 5 January next year for his contemptuous remarks. The bench comprising justices MA Aziz and Syed Refaat Ahmed granted the time to the IGP. Advocate Khan Saifur Rahman, the IGP's counsel, told court that the petitioner has apologised to court for making contemptuous remarks in a clarification sent to High Court on the contempt of court charges against five police sergeants. Khan said the petitioner needs time to prepare a formal apology. Earlier, the HC bench issued a suo moto rule on the IGP asking him to explain why proceedings for contempt of court should not be drawn against him. It also ordered him to appear before court. -Prothom Alo, 16 November.

Star LAW report

Completion of probation is enough to be a permanent worker

High Court Division (Special Original Jurisdiction)  
Writ Petition No. 1409 of 1998  
Samir Malaker  
Vs  
The Chairman, Divisional Labour Court  
Khulna and another  
Before Mr. Justice MM Ruhul Amin and  
Mr. Justice AFM Ali Asghar  
Date of Judgment : May 28, 2003  
Result : Rule absolute

**Background**  
**M M Ruhul Amin, J:** This Rule Nisi was issued calling upon the respondents to show cause as to why the judgment and order dated 9.2.98 passed by the respondent No. 1 in IRO Case No. 48 of 1996 should not be declared to have been passed without lawful authority and is of no legal effect and/or such other or further order or orders passed as to this court may seem fit and proper.

The case of the petitioner in a nutshell is that he was appointed as Comptist on 1.12.1985 for a period of 3 months by the respondent No. 2 in the Provident Fund section and the petitioner joined accordingly on casual basis. Thereafter his service was extended from time up to 14.7.86. The respondent No. 2 by letter dated 8.6.87



STAR FILE PHOTO

appointed the petitioner as composite on ad-hoc basis and his basic salary was fixed at Tk 750/- per month. His salary was subsequently re-fixed from time to time. The petitioner also allowed all increments and 10% increment as decided by the Government and also got time scale for rendering requisite period of his service. The petitioner also got 2 yearly bonus and other benefits like other regular employees. The petitioner got higher scale with effect from 1.7.95. The petitioner thus worked for about 10 years and got all benefits like a permanent worker and the respondent No. 2 informed the petitioner verbally that his service was treated as permanent from the date of his joining.

The respondent no. 2 in October, 1996 appointed some ad-hoc workers but their previous services were not counted. The petitioner came to know that he will be appointed afresh without counting his 10 years service on ad-hoc basis. The petitioner accordingly on 15.10.96 submitted a grievance petition by registered post with A/D and demanded that his service be treated as permanent from the date of his joining. The respondent No. 2 received the same and verbally informed the petitioner that they will not do anything according to the demand. The petitioner then filed IRO Case No. 48 of 1996 before the Labour Court, Khulna for declaration of his service as permanent from the date of his joining on ad-hoc basis. The respondent No. 2 appeared before the Labour Court and filed written statement by denying all material facts and prayed for dismissal of the case. The Labour Court, Khulna dismissed the case by judgment and order dated 9.2.98.

It is submitted that the petitioner was appointed as casual worker as defined under section 4 of the Employment of Labour (SO) Act, 1965 and his probation period was six months from his appointment and should be treated as a permanent worker after completion of the probation period and as such the impugned judgment and order of the Labour Court is without any lawful authority. It is also submitted that the petitioner has been serving for a period of 10/12 years continuously without break and under such circumstances he should be treated as a permanent worker allowing him all facilities like a permanent worker.

Being aggrieved the petitioner moved this court and obtained the present Rule.

**Deliberation**

We have heard Mr. Kh. Gulzar Hossain the learned Advocate for the petitioner and Mr. Tufailur Rahman the learned Advocate for the respondent No. 2.

It is undisputed that the petitioner was first appointed by the respondent No. 2 as comptist in the provident fund section on casual basis for a period of 3 months by the appointment letter dated 30.11.1985 and the petitioner accordingly joined. It is also undisputed that the temporary appointment of the petitioner as casual basis was subsequently extended three wide Annexure A series. Annexures B to the writ petition shows that the respondent No. 2 appointed the petitioner as comptist on ad-hoc basis to the provident fund section by order dated 8.6.1987 in the National Pay Scale of Tk. 750-1550 with other benefits also. It was further mentioned that he will be entitled to get normal annual increment from 1st January, 1988 and his appointment may be ceased at any time but he will not be entitled to PF and Gratuity until his service was made permanent. It is also undisputed that the petitioner was given annual increments and his pay scale was also raised from time to time accordingly. Annexure-C series to the writ petition show that the petitioner was given higher scale and his increment was given in the higher scale. Annexure-D to the writ petition shows that the petitioner was given additional increment and his pay was accordingly fixed at higher stage.

The further case of the petitioner is that already he has rendered more than 10 years service on ad-hoc basis and he has not made permanent worker. The learned Advocate for the petitioner submits that under section 4 of the Employment of Labour (Standing Order) Act 1965 workers have been classified as apprentices, badlis casual, permanent, probationer and temporary. The period of probation for a worker whose function is of clerical nature, shall be six months and for other workers such period shall be three months, including breaks due to leave, illegal loc-out or strike (not being an illegal strike) in the shop for commercial or industrial establishment.

It is undisputed that the petitions was appointed as comptist and he was performing the job of clerical nature and according to the petitioner his period or probation shall be six months. And after 6 months his service is to be treated as permanent. It is true that the petitioner was initially appointed as a casual worker and then appointed on and-hoc basis.

The learned advocate for the respondent no. 2 submits that a worker can be appointed on temporary or casual basis but he cannot be appointed on ad-hoc basis under section 4 of the Act. The respondent No. 2 being aware of the legal position that there was no provision for appointment of the petitioner on ad-hoc basis appointed him as such only to avoid the provision of section 4 of the Act. Mr Tufailur Rahman tried to argue that a worker appointed on temporary basis on completion of the period of probation is to be treated as permanent. As the petitioner was not appointed on temporary basis rater on ad-hoc basis he cannot claim to be treated as permanent worker.

It is true that there is no provision in the Act to appoint a worker on ad-hoc basis under section 4 of the Act but still the respondent no. 2 appointed the petitioner as such. If the petitioner is treated as temporary worker then his period of probation will be 6 months as his function was clerical in nature. And on completion of 6 months probation period he would be treated as a permanent and entitled to get all benefits of his service including gratuity etc. In the instant case the petitioner has been serving in the post of comptist continuously for the last more than 10 years.

The learned Advocate for the petitioner submits that there is no complain against the petitioner and he has been serving in the Provident Fund section of the Mills for the last more than ten years but has not been made permanent. The learned Advocate for the petitioner cited the case of Managing Director, Rupali Bank Limited and others Vs Chairman, Ist Labour Court and others reported in 46 DLR 143. In that case it has held that, the term "temporary worker" has a connotation which is different from popular and dictionary meaning of the term. The term temporary worker as defined in section 2(s) of the Employment of Labour (Standing Orders) Act, 1965 means "worker" who has been engaged for work which is essentially of a temporary nature and is likely to be finished within a limited period.

Further, the term permanent worker has been defined in section 2(m) of the Act to mean "a worker who has satisfactorily completed the period of his probation in the shop or the commercial or the industrial establishment. "In that case it was further held that, thus having regard to the language employed in the above sub-section of the Act it is clear that the worker in order to be treated as permanent worker need not require appointment on permanent basis. It will be sufficient if he has satisfactorily completed the period of probation. In the instant case the petitioner who initially was employed on casual basis and subsequently on ad-hoc basis rendered more than 11 years continuous service and in the circumstances of the case we are of the view that the petitioner must be treated as a temporary worker.

It is undisputed as we have already indicated that the respondent No. 2 has given annual increments and others service benefits to the petitioner as per law like permanent worker and his salary was fixed like a permanent worker. Therefore, in our view the case reported in 46 DLR 143 is fully applicable to the facts of the present case and the mere fact that the petitioner was appointed on ad-hoc basis will not disentitle him from getting the benefit under section 4 of the Employment of Labour (Standing Orders) Act, 1965, the learned Labour Court without considering the material facts and legal position committed error of law in dismissing the case of the petitioner and the same is not tenable in law and liable to be set aside.

The rule is accordingly made absolute without any order as to costs. The judgment and order dated 9.2.98 passed by the respondent no. 1 are hereby declared to have been passed without any lawful authority and to be of no legal effect.

The respondent no. 2 is directed to treat the petitioner as permanent worker from the date of appointment on ad-hoc basis that is with effect from 8.6.1987.

Mr. Kh. Gulzar Hossain, for the petitioner and Mr. Tufailur Rahman for respondent No. 2.

LAW letter

Another violation of fundamental rights

Recently a parliamentary committee has decided to endorse legislation that would allow the Bangladesh authorities to intercept and tap phone calls and e-mails. I am at a loss reading the news as it is a clear invasion of privacy, a fundamental right of the citizens guaranteed by the Constitution. Of course this fundamental right is subject to reasonable restriction. I guess this move of the government is to apprehend the criminal and to curb criminal activity. I understand that under certain special circumstances the authorities may need to monitor the phones and the e-mails. But is it necessary for all and every citizen?

It is alleged that the top criminals are often protected by powerful politicians. It is the political will which is necessary to reduce criminal activity and arrest the offenders. Giving this short of blank power to our unscrupulous law enforcers will certainly encourage abusing the law. The government must rethink before giving effect to this decision as it will limit the peoples' constitutional right.

**Mizanur Rahman,**  
Kajrul, Dhaka.

Thanks to frank admission

Generally government officers in our country don't admit the facts. Exceptionally Dhaka police commissioner Mr. Ashraful Huda admitted in a meeting at the Crime Reporter Association that his traffic police take even one taka as bribe. Thanks for admitting the fact. He confessed that this kickback taking is only during the current Eid time. But most of the people believe that not only the traffic police but also many of the police force take bribe in the whole year. In the time of Eid it increases only. Recent two vivid examples were one in Khilgoan police station and another was in Khulna. Now we look forward to see what action he takes against his corrupted fellowmen to fulfill his commitment.

**Md. Zillur Rahman,**  
Dhaka University.

Who is correct?

Few days back I read a news item in The Daily Star that the State Minister for Home is not satisfied with the police force as they have failed to maintain and improve the law and order of the country. According to the news, he also blamed the police for tarnishing image of the government. Some days before the Home Minister claimed in the Parliament that the Police is doing very good and the law and order of the country is OK. I find it very interesting as they are contradicting each other.

Police is under the direct control of the Home Ministry. So, when the two top most people concerned contradict each other, who should we believe? We all are aware of the prevailing law and order of the country. All sorts of crimes are rising day by day and we the general people are getting used to it. But recently, one more crime has

been added to the list, kidnapping and snatching by the law enforcers. Over the last few days, a good number of allegations have been reported in the news papers. Some of the police members are arresting people for realising money. This is quite alarming. When the law enforcers, who are supposed to nab the criminal, also join them, where should the people go?

I don't think the Ministry is not aware of these incidents. But have it taken any step to stop these and bring the perpetrators to book? For some unruly member, the whole police department is losing its image. I believe there are many honest and efficient officers in our police force. It should be wise for the govt to let the police work independently. And I sincerely believe, if the police are allowed to work freely without any political interference, they will perform better. So I urge the govt not to use the police for political purpose.

**Farhana Dilshad,**  
Advocate, Dhaka Judge Court.

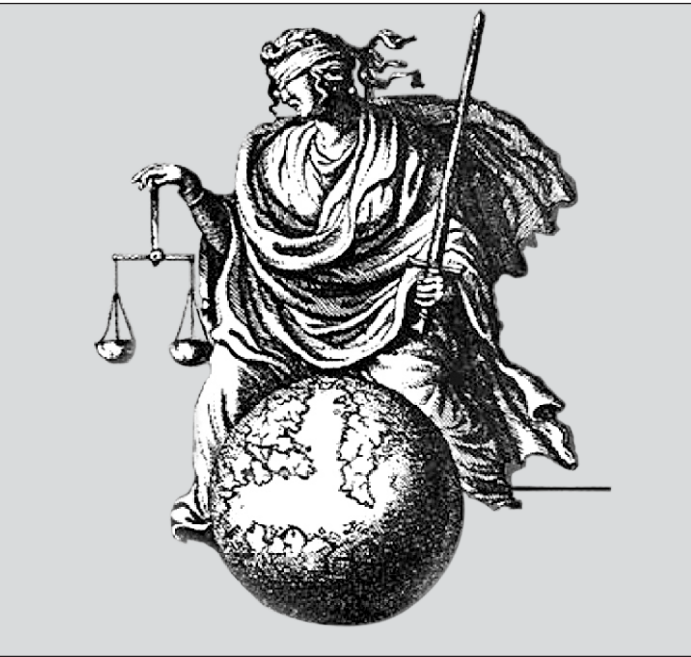


SYED ZAKIR HOSSAIN

READER'S queries



Your Advocate



This week your advocate is M. Moazzam Husain of the Supreme Court of Bangladesh. His professional interests include civil law, criminal law and constitutional law.

**Q:** My younger brother divorced her wife in December 2003 and her wife filed a case under the Nari O Shishu Nirjaton Ain in January 2003. Police arrest my brother the very next day of filing of the case. In her case alleged that her husband used to torture her physically and also demanded dowry form her. Since the my brother is in the jail. We engaged a lawyer for my brother. The lawyer moved bail petition for several time in the court, but failed. In the mean time, some of our relatives advised us to move bail petition in the High Court. But the problem is, the first lawyer is not giving the papers of the case back. He is saying that he wants to do it by himself. But we don't want him any more to deal with the case. We have paid all the fees of the lawyer. Now, we are in a great difficulty. Can you please advice us what should we do in this circumstances?

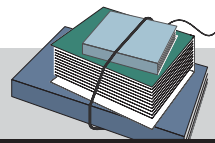
**Abul Kashem,**  
Mirpur, Dhaka

**Your Advocate:** Your whole concern , as it appears from a plain reading of the query, is that you want to get your brother released on bail. You have meanwhile tried for bail several times through a lawyer but failed. Now upon advice of some of your relatives you have decided to move the Hon'ble High Court Division for bail of your brother. In the circumstances you want back the file from the lawyer once for all. The lawyer is found to be unwilling to return your file and wanted to do the needful in the High Court Division all by himself. You are not satisfied and want to start things afresh by a new lawyer. The refusal of the lawyer has made you aggrieved and you want a way out.

True it is that you have the right to get your case dealt with by a lawyer of your choice. But that should not mean that once you have engaged a lawyer you can take the brief back at will without showing any reasonable cause, that is, "misconduct" on his part. The words of the query suggest that your lawyer tried for bail several times but failed, nothing more nothing less. This failure may be the cause of your sorrows and sufferings but does not constitute misconduct on the part of a lawyer so as to justify a move for total cut-off from him. He is well within his competence to desire that he would appear in the higher forum, provided that he is a lawyer of that court. But on the other hand the mere fact that your original lawyer is a lawyer of the High Court Division as well does not confer upon him the right to prevent you from engaging a new lawyer in the higher court in that a bail-petition in the High Court Division arising out of a case pending in the lower court is a separate case and you have the right to engage a separate lawyer and do your things independent of the original lawyer. In that event also you can not demand your file back from the original lawyer. He remains to be your lawyer in respect of the original case. If there is no case against your lawyer, other than that the one disclosed, you must have been swayed by wrong advice given by your relatives who are seemingly non-lawyers. Advice of the lay people in technical matters very often proves fatal.

Yours is not a case of taking back the brief from a lawyer but a simple case of taking his help in procuring certified copies of the papers required for filing bail petition in the High Court Division. Collect all the necessary certified copies and, if you decide not to engage the same lawyer in the High Court Division, approach any other lawyer of your choice for the purpose. There is no legal or ethical bar for you to try bail for your brother in the higher court through a different lawyer. If you still find your lawyer non-co-operating with you in your new approach his conduct amounts to "misconduct" and you, meaning your brother, acquire legal right to cancel the appointment given to the particular lawyer as per Order III of the CPC and ask him to return the brief and also make a complaint to the Bangladesh Bar Council asking for an action for violating professional etiquette.

LAW lexicon



**Ombudsman**

A person whose occupation consists of investigating customer complaints against his or her employer. Many governments have ombudsmen who will investigate citizen complaints against government services.

**Onus**

Latin: the burden. It is usually used in the context of evidence. The onus of proof in criminal cases lies with the state. It is the state that has the burden of proving beyond reasonable doubt. In civil cases, the onus of proof lies with the plaintiff who must prove his case by balance of probabilities. So "onus" refers both to the party with the burden, and to the scope of that burden, the latter depending whether the context is criminal or civil.

**Open-ended agreement**

An agreement or contract which does not have an ending date but which will continue for as long as certain conditions, identified in the agreement, exist.

**Ordinance**

An executive decision of a government which has not been subjected to a legislative assembly (contrary to a statute). It is often detailed and not, as would be a statute, of general wording or application. This term is in disuse in many jurisdictions and the words "regulations" or "bylaws" are preferred.

**Paralegal**

A person who is not a lawyer or is not acting in that capacity but who provides a limited number of legal services. Each country differs in the authority it gives paralegals in exercising what traditionally would be lawyers' work.

**Parole**

An early release from incarceration in which the prisoner promises to heed certain conditions (usually set by a parole board) and under the supervision of a parole officer. Any violation of those conditions would result in the return of the person to prison.

**Corresponding Law Desk**

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