

5 SCOB [2015] HCD 1**HIGH COURT DIVISION
(Special Original Jurisdiction)**

WRIT PETITION NO. 5920 OF 2007

Mr. Shamsuddin Babul with
Mr. Kanai Lal Shaha
... For the petitioner**Md. Mijanur Rahman**
... PetitionerMr. S. Rashed Jahangir, DAG with
Mr. Titus Hillol Rema, AAG
... For the respondents

Versus

Bangladesh and others
... RespondentsHeard on the 4th November 2015,
Judgment on the 9th November, 2015**Present:****Ms. Justice Zinat Ara**
And
Mr. Justice A. K. M. Shahidul Huq

Meaning of “A person in the service of the Republic or of any statutory public authority”:
“A person in the service of the Republic or of any statutory public authority” includes a person who is or has retired or is dismissed, removed or discharged from such service but does not include a person in the defence services of Bangladesh or of the Bangladesh Rifles.
... (Para 14)

From the Rule and supplementary Rule issuing orders, it appears that the petitioner has not challenged the *vires* of any law on the ground of its fundamental right. Therefore, the petitioner’s remedy is before the Administrative Tribunal having jurisdiction and not in writ jurisdiction.
... (Para 18)

Judgment**Zinat Ara, J:**

1. In the original writ petition, the petitioner has challenged the legality of departmental proceeding No. 9/2006 dated 25.11.2006, charges dated 11.11.2006 and order dated 30.05.2007 (Annexures-C-1, G and H respectively to the writ petition).

2. During pendency of the Rule Nisi, final order dated 25.06.2007 (Annexure-K to the writ petition) was issued under the signature of respondent No. 3 dismissing the petitioner from service. Therefore, the petitioner filed an application dated 27.07.2009 for issuance of supplementary Rule and accordingly, a supplementary Rule Nisi was issued on 30.05.2012 with the following terms:-

“Let a supplementary Rule issue calling upon the respondents to show cause as to why the final order dated 25.06.2007 issued under the signature of the respondent No. 3 dismissing the petitioner from service as in Annexure-K to the petition should not be declared to have been passed without any lawful authority and to be of no legal effect and why a direction shall not be issued upon the respondents to reinstate the petitioner in service with all attendant benefits and/or pass such other or further order or orders as to this Court may seem fit and proper.”

3. The petitioner’s case as narrated in the writ petition and a series of supplementary affidavits, in brief, are as under:-

The petitioner through written and viva-voce examinations was selected for appointment to the post of a Sub-Inspector of Police on 17.08.2005 vide Memo No. 4048 issued by the D.I.G., Barisal Range of Bangladesh Police (Annexure-A to the writ petition). After successful completion of six months’ training in the Police Academy, Sarda, Rajshahi, he joined as a Probationer Sub-Inspector of Police on 10.03.2006 vide Memo No. RADM/17-2002. Earlier on successful completion of the foundation course, certificate was issued to him by the Principal of

Sarda Police Academy. But within six months from his joining, a show cause notice was issued upon him by the Superintendent of Police, Patuakhali, with the allegations that in his application, he had suppressed that he had been in jail for more than three months in connection with Ramna P. S. Case No. 46 dated 14.04.2001 and Ramna P. S. Case No. 47 dated 14.04.2001. Thereafter, departmental proceeding was initiated against the petitioner. In fact, the petitioner was arrested on suspicion and he was forwarded to the court under section 54 of the Code of Criminal Procedure, 1898 (hereinafter stated as the Cr. P. C.). Subsequently, he was granted bail after 78 days on 11.11. 2006, but he was neither named in the F.I.R. nor he was sent up in charge-sheet. So, he was not an accused of any case. A charge under the provisions of PRB was framed against the petitioner with the allegation that the petitioner has committed an offence under section 861 of the PRB. Then after a short enquiry, on 12.05.2007, the enquiry officer submitted an enquiry report with a recommendation to terminate the petitioner from service on the finding that the petitioner had given wrong information at serial Nos. 11 and 13 of BP Form No. 150. Respondent No. 3 then issued an order purporting to dismiss the petitioner temporarily on 30.05.2007 which was received by the petitioner on 13.06.2007. Eventually, during pendency of the Rule, the petitioner was finally dismissed from service by order dated 25.06.2007 issued under the signature of respondent No. 3.

4. In the backdrop of the aforesaid facts and circumstances, the petitioner filed the writ petition and obtained the Rule and the Supplementary Rule.

5. Respondent No. 2, the Inspector General of Police, contested the Rule by filing an affidavit-in-opposition controverting and denying the statements made in the writ petition contending, inter-alia, that the enquiry was made with due process of law against the petitioner; that the petitioner was not dismissed under Rule 3 of the Public Servants (Dismissal on Conviction) and that the petitioner by suppressing truth has deliberately provided wrong information in his V. R. roll and the dismissal has been awarded as a punishment under Rule 857 of the PRB; that the petitioner himself admitted that he was arrested in connection with Ramna P. S. Case No. 46 dated 14.04.2001 and Ramna P. S. Case No. 47 dated 14.04.2001 and he was in custody for 78 days and so, he had full knowledge about those cases at the time of filing information in his VR roll, but he suppressed the same fact intentionally; that the petitioner is disqualified for the job of Bangladesh Police, as he has committed an offence under Rule 861 of the PRB; that the punishment awarded to the petitioner for committing an offence under Rule 861 of the PRB in accordance with law; that the writ petition is not maintainable and the Rule is, thus, liable to be discharged with costs.

6. Mr. Shamsuddin Babul, the learned Advocate for the petitioner, appearing with Mr. Kanai Lal Shaha, takes us through the writ petition, the supplementary affidavits and the materials on record and submits that the petitioner was appointed by D.I.G. and therefore, the dismissal order of the petitioner by the Superintendent of Police is without lawful authority. He next submits that the petitioner was arrested under section 54 of the Cr. P. C. in connection with Ramna P. S. Case No. 46 dated 14.04.2001 and Ramna P. S. Case No. 47 dated 14.04.2001, but he was neither named in the F.I.R. nor he was shown arrested in the said cases and therefore, the petitioner did not mention that he was an accused in connection with any case. He also submits that the arrest of the petitioner under section 54 of the Cr. P. C. does not mean that the petitioner is an accused in any specific case and, as such, the entire proceeding brought against the petitioner is unlawful. He finally submits that as there is no provision for appeal against the order of dismissal of the petitioner, there is no scope for challenging his dismissal order before the Administrative Tribunal as constituted under article 117 of the Constitution.

7. In reply, Mr. S. Rashed Jahangir, the learned Deputy Attorney General, appearing with Mr. Titus Hillol Rema, the learned Assistant Attorney General, takes us through the writ petition, the affidavit-in-opposition, the relevant provisions of law and contends that under section 4 of the Administrative Tribunal Act, 1980 (hereinafter referred to as the Act), the Administrative Tribunal has exclusive jurisdiction to hear and determine the application made by any person in the service of the Republic. He next contends that the petitioner was admittedly in the service of the Republic and his dismissal order falls within the terms and conditions of his service and therefore, the petitioner's remedy lies before the Administrative Tribunal having jurisdiction and the instant writ petition is not maintainable.

8. In support of his submission, the learned Deputy Attorney General has relied in the case of Government of Bangladesh and others Vs Md. Mojibul Hoque and others reported in 20 BLC (AD) 177.

9. At this stage, in reply, Mr. Shamsuddin Babul, the learned Advocate for the petitioner, submits that if it is found that the writ petition is not maintainable, as the petitioner's remedy is before the Administrative Tribunal, in such case, an opportunity may be given to the petitioner to file an application before the Administrative Tribunal considering the fact that the petitioner has pursued his case in wrong forum.

10. In support of his contention, he has relied in the case of Abdul Wahab Shaikh Vs Md. Kamal Hossain alias Md. Kalam Hossain and others reported in 20 BLT (AD) 282.

11. We have examined the writ petition, the series of supplementary affidavits filed by the petitioner, the affidavit-in-opposition filed by respondent No. 2 and the connected materials on record.

12. Let us first examine the question relating to maintainability of the writ petition.

13. To decide the question, it is necessary to examine the relevant provisions of section 4 of the Act which runs as under:-

“4. Jurisdiction of Administrative Tribunals—

(1) An Administrative Tribunal shall have **exclusive jurisdiction to hear and determine applications made by any person in the service of the Republic or of any statutory public authority in respect of the terms and conditions of his service including pension rights, or in respect of any action taken in relation to him as a person in the service of the Republic or of any statutory public authority.**

(2) **A person in the service of the Republic or of any statutory public authority may make an application to an Administrative Tribunal under sub-section (1), if he is aggrieved by any order or decision in respect of the terms and conditions of his service including pension rights or by any action taken in relation to him as a person in the service of the Republic or of any statutory public authority.**

Provided that no application in respect of an order, decision or action which can be set aside, varied or modified by a higher administrative authority under any law for the time being in force relating to the terms and conditions of the service of the Republic or of any statutory public authority or the discipline of that service can be made to the Administrative Tribunal until such higher authority has taken a decision on the matter:

Provided further that, where no decision on an appeal or application for review in respect of an order, decision or action referred to in the preceding proviso has been taken by the higher administrative authority within a period of two months from the date on which the appeal or application was preferred or made, it shall, on the expiry of such period, be deemed, for the purpose of making an application to the Administrative Tribunals under this section, that such higher authority has disallowed the appeal or the application.

Provided further that no such application shall be entertained by the Administrative Tribunal unless it made within six months from the date of making or taking of the order, decision or action concerned or making of the decision on the matter by the higher administrative authority, as the case may be.

(3) **In this section “person in the service ml of the Republic or of any statutory public authority” includes a person who is or has retired or is dismissed, removed or discharged from such service but does not include a person in the defence services of Bangladesh or of the Bangladesh Rifles.”**

(Bold, emphasis supplied)

14. Thus, it appears that “a person in the service of the Republic or of any statutory public authority” includes a person who is or has retired or is dismissed, removed or discharged from such service but does not include a person in the defence services of Bangladesh or of the Bangladesh Rifles.

15. In the instant case, admittedly, the petitioner as a person in the service of the Republic, has been dismissed from service. Therefore, under section 4(3) of the Act, the Administrative Tribunal has the exclusive jurisdiction to hear and determine the matter relating to the dismissal of the petitioner from service.

16. In the case of reported in 20 BLC (AD) 177, it was decided by their lordships as under:-

“67. The question can be answered in a short compass by referring to the case of Mujibur Rahman (supra). In that case, this Court has held that

“Within its jurisdiction the Tribunal can strike down an order for violation of principles of natural justice as well as for infringement of fundamental rights, guaranteed by the Constitution, or of any other law, in respect of matters relating to or arising of sub-clause (a), but such Tribunals cannot, like the Indian Administrative Tribunals in exercise of a more comprehensive jurisdiction under Article 323 (see SP Sampath Kumar vs Union of India, AIR 1937 SC 386 (Para 16) and JB Chopra vs Union of India AIR 1987 SC 357 (Para 2), strike down any law or rule on the ground of its constitution. A person in the service of the Republic who intends to invoke fundamental right for challenging the vires of a law will seek his remedy under Article 102(1), but in all other cases he will be required to seek remedy under Article 117(2).

68. In the case of **Delwar Hossain Mia (Md) and another vs Bangladesh, represented by the Secretary, Ministry of Home Affairs, 52 DLR (AD) 120** the same statement of law has been reiterated and this is being followed consistently.”

(Bold, to give emphasis)

17. Similar view was taken by their lordships of the Appellate Division in a series of cases.

18. From the Rule and supplementary Rule issuing orders, it appears that the petitioner has not challenged the vires of any law on the ground of its fundamental right. Therefore, the petitioner’s remedy is before the Administrative Tribunal having jurisdiction and not in writ jurisdiction.

19. In view of the discussions made hereinbefore, vis-à-vis the law, our considered view is that the instant writ petition is not maintainable.

20. Be that as it may, admittedly, the petitioner was dismissed from service by order dated 25.06.2007 during pendency of Writ Petition No. 5920 of 20078 challenging the departmental proceeding against the petitioner. However, it appears that the petitioner pursued in the wrong forum without approaching the Administrative Tribunal having jurisdiction by filing application challenging his dismissal order. If the petitioner submits any application before the Administrative Tribunal, then the petitioner may refer the decision reported in 20 BLT (AD) 282 before the concerned Administrative Tribunal.

21. At this stage, in this writ petition, there is no scope to allow the petitioner to file an application before the Administrative Tribunal by condoning the delay.

22. In view of above, we find no merit in the submissions of Mr. Shamsuddin Babul and we find merit and force in the submissions of Mr. S. Rashed Jahangir.

23. Since it is found that the instant writ petition is not maintainable, we do not like to enter into the other issues touching the merit of the Rule.

24. In the result, the Rule is discharged without any order as to costs.

25. Communicate the order to respondent No. 1 at once.