

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Special Original Jurisdiction)

WRIT PETITION NO. 6451 OF 2017

IN THE MATTER OF:

An application under article 102 (2) (a) (i) &
(ii) of the Constitution of the People's
Republic of Bangladesh.

AND

IN THE MATTER OF:

Nasrin Akter

-----Petitioner

-Versus-

The Government of the People's Republic of
Bangladesh, represented by the Secretary,
Secondary and Higher Education Division,
Ministry of Education, Secretariat Building,
Ramna, Dhaka and others.

-----Respondents

Mr. Md. Humayun Kabir, Advocate with
Mr. Haripada Barman, Advocate and
Mrs. Taslima Yeasmin, Advocate

-----For the petitioner

Mr. Bepul Bagmar, D.A.G.

Mr. Taufiq Anwar Chowdhury, Advocate

-----For the respondent No.1

Judgment On: 29.11.2023

Present:

Mr. Justice Md. Khasruzzaman

And

Mr. Justice K M Zahid Sarwar

Md. Khasruzzaman , J:

In the instant writ petition, on 21.05.2017 the *Rule Nisi* was
issued in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the provision of the clause No.18(2) & 18 (6) of the “বেসরকারী শিক্ষা প্রতিষ্ঠানের (স্কুল, কলেজ, মাদ্রাসা ও কারিগরী শিক্ষা প্রতিষ্ঠানসমূহ)- এর শিক্ষক ও কর্মচারীদের বেতন-ভাতাদির সরকারী অংশ প্রদান এবং জনবল কাঠামো সম্পর্কিত নির্দেশিকা- ২০১০ (মার্চ, ২০১৩ পর্যন্ত সংশোধিত)” imposing condition not to pay the arrear government portion of salary of the teachers and employees of the Non-Government Educational institutions i.e the School, College and Madrasha from the Government Fund (Annexure-G) should not be declared ultra vires the Constitution and further as to why they should not be directed to pay the arrear government portion of the salary of the petitioner during suspension period from August, 2012 to August, 2014 including festival bonus and other financial benefits and/or pass such other or further order or orders as to this Court may seem fit and proper.”

Pertinent facts necessary for disposal of the Rule Nisi are that the petitioner applied for the post of Lecturer, department of Secretarial Science and Office Management, in response to the advertisement published by the concerned authority, and the duly constituted selection committee selected the petitioner to be

appointed for the said post and consequently the petitioner joined in the said College on 01.01.2005 and since then she has been discharging her duties honestly, sincerely and with full satisfaction of the authority.

That after getting appointment as the Lecturer of the said College, the name of the petitioner was enlisted in the monthly pay order (MPO) from September, 2005 being Index No. 3071590 and since then he has been enjoying and receiving government portion of her monthly salary and other financial benefit regularly untill August, 2012.

While the petitioner rendering her service as a Lecturer, department of Secretarial Science and Office Management of Fariduddin Sardar (Degree) College, Muradnagar, Comilla, the Governing Body of the College took a decision to suspend the petitioner from her service from on 06.03.2010.

That under the provisions of the “বেসরকারী ডিগ্রী কলেজ শিক্ষক চাকুরীর শর্তবিধি-১৯৯৪”, the governing body of the college has no power and jurisdiction to keep the petitioner under suspension for an unidentified period resulting the petitioner has compelled to file the appeal before the Vice-Chancellor, National University, Gazipur against the inaction or decision of the governing body of the college.

Being aggrieved by the order of suspension of the petitioner from her service as Lecturer by the Governing Body of the said College on 06.03.2010, on 05.05.2013 the petitioner filed an appeal before the Vice-Chancellor, National University, Gazipur (respondent No.3) under rule 18(2) of the “বেসরকারী ডিগ্রী কলেজ শিক্ষক চাকুরীর শর্তবিধি-১৯৯৪” requesting him to take necessary steps against the order of suspension of the petitioner from her service. But the respondents did not take any step for disposing the appeal till to date.

That without getting any result on the appeal filed by the petitioner on 05.05.2013, the petitioner was compelled to file Writ Petition No. 6684 of 2013, and on 08.07.2013 the High Court Division directed the concerned respondents to dispose of the petitioner’s application dated 05.05.2013 in accordance with law within 30(thirty) days from the date of receipt of the order.

That in pursuance of the order dated 08.07.2013 passed in writ petition No. 6684 of 2013, on 27.08.2014 the Registrar (In-Charge), National University, Gazipur (respondent No.3) issued a letter directing the Principal of Fariduddin Sarkar Degree College, Muradnagar, Comilla (respondent No.8) to reinstate the petitioner in her service under memo No. ৩০(১৪৭৬) জাতীঃ বিঃ/আইন/২০১৪/১/৩৬৬ dated 27.08.2014.

That in pursuance of the said letter dated 27.08.2014 issued by the Registrar (In-Charge), National University, Gazipur (respondent No3) (Annexure-C), on 17.08.2014 the governing body of the college took a decision to reinstate the petitioner in her service and on 26.08.2014 the Principal of the college issued a letter to the petitioner requesting her to rejoin her service.

That in response to the said letter dated 26.08.2014 (Annexure-D), on 01.09.2014 the petitioner rejoined her service and since then she has been discharging her duties honestly, sincerely and with full satisfaction of the authority.

That after rejoining the petitioner in her service on 01.09.2014, the governing body of the college took a decision to release the government portion of salary of the petitioner from September, 2014 and since then she has been enjoying and receiving government portion of his monthly salary and other financial benefit regularly without any interruption.

That on 25.03.2015 the petitioner filed an application before the Secretary, Ministry of Education, the Government of the People's Republic of Bangladesh, Dhaka (respondent No.1) requesting him to pay the arrear salary of the government portion of the petitioner from August 2012 to August 2014. But the said respondent remained silent without considering the claim of the petitioner and giving any reply.

That on 09.06.2015 the petitioner served a notice for demanding justice upon the respondents through her learned Advocate by registered post requesting him to pay the arrear salary of the government portion of the petitioner from August 2012 to August 2014. But the said respondent remained silent without considering the claim of the petitioner and giving any reply.

That under the provision of the clause Nos.18(2) and 18(6) of the “বেসরকারী শিক্ষা প্রতিষ্ঠান (স্কুল, কলেজ, মাদ্রাসা ও কারিগরী শিক্ষা প্রতিষ্ঠানসমূহ)-এর শিক্ষক ও কর্মচারীদের বেতন-ভাতাদির সরকারী অংশ প্রদান এবং জনবল কাঠামো সম্পর্কিত নির্দেশিকা-২০১০ (মার্চ, ২০১৩ পর্যন্ত সংশোধিত)”, the Secretary, Ministry of Education (respondent No.1) refused to pay the arrear government portion of salary of the petitioner during his suspension period from August 2012 to August 2014.

Since the governing body of the college did not withdraw the arrear government portion of salary of the petitioner during suspension period from August 2012 to August 2014, the governing body of the college is not bound to pay the said arrear government portion of salary of the petitioner from their own pocket.

That under the provision of the Service Regulations, 1994, the governing body of the college has no power to withdraw the government portion of salary of any suspended / dismissed teachers

or employees of the Non-Government Educational Institutions i.e School, College or Madrasha.

That the governing body of the college did not pay the government portion of salary of the petitioner during suspension period from August 2012 to August 2014 and the said money has already been returned to and deposited in the Government fund due to lapse of the financial year.

That the governing body of the college did not receive or withdraw the remaining government portion of the salary of the petitioner during his suspension period and under the Service Rules, 1994, the governing body of the college has only power to pay 50% of the government portion of salary during suspension period as subsistence allowance. But the governing body of the college has no power to receive or withdraw the remaining 50% of the government portion of salary and due to lapse of the financial year, the remaining 50% of the government portion of salary of the petitioner has been returned and deposited into the Government Treasury and the respondents are wholly disentitled to refuse to pay the remaining 50% of the government portion of salary of the petitioner to rely under clause 18(2) and 18(6) of the **Guideline, 2010 (Amendment in 2013)**.

That if the petitioner does not get the remaining government portion of the salary from the Government, the petitioner will not get any benefit from the Kallayan Trust under the provision of the “বেসরকারি শিক্ষা প্রতিষ্ঠান শিক্ষক ও কর্মচারী কল্যাণ ট্রাস্ট আইন, ১৯৯০” and also will not get any retirement benefit from the government under the provision of the “বেসরকারি শিক্ষা প্রতিষ্ঠান শিক্ষক ও কর্মচারী অবসর সুবিধা প্রবিধানমালা, ২০০৫” and as such if the remaining government portion of the salary of the petitioner will not pay, the petitioner will suffer irreparable lose and injury.

The petitioner has been suspended from her service in the year of 2012. But she was not dismissed from her service as a result the respondents did not pay the arrear government portion of the salary of the petitioner from August 2012 to August 2014 and as such the petitioner is entitled to get the arrear government portion of salary during her suspension period.

Against this backdrop, the petitioner moved before this Court and obtained the present *Rule Nisi*.

The respondent No.1 contested the Rule by filing an affidavit-in-opposition to controvert the statements made in the writ petition.

At the very outset, Mr. Md. Humayun Kabir, the learned Advocate for the petitioner submits that he will not press the first part of the Rule so far as it relates to the provision of the clause Nos.

18(2) and 18(6) of the Janobal Kathamo, 2010 (as amended upto 2013).

Mr. Kabir submits that the issue involved in this writ petition has already been decided by the High Court Division as well as by the Appellate Division in the series of cases.

Mr. Kabir relying on an unreported decision in the case of Md. Kamruzzaman -Vs.- The Government of the People's Republic of Bangladesh & others in Writ Petition No. 9755 of 2017 (one of us is a party) wherein this Division elaborately discussed the similar issue about the payment of arrear salaries during suspension period as well as dismissal period of a teacher of a Non-Government School/College/Madrasha of the Country and the said judgment has already been affirmed by the Appellate Division in CPLA No. 1485 of 2022.

On the other hand, Mr. Taufiq Anwar Chowdhury, the learned Advocate for the respondent No.1 by filing an affidavit-in-opposition submits that there is no provision for payment of the government portion of the salary as arrear under clause 18.2 of the “বেসরকারী শিক্ষা প্রতিষ্ঠানের (স্কুল, কলেজ, মাদ্রাসা ও কারিগরী শিক্ষা প্রতিষ্ঠানসমূহ)- এর শিক্ষক ও কর্মচারীদের বেতন-ভাতাদির সরকারী অংশ প্রদান এবং জনবল কাঠামো সম্পর্কিত নির্দেশিকা- ২০১০ (মার্চ, ২০১৩ পর্যন্ত সংশোধিত)”.

Mr. Anwar further submits that if any teacher/employee fails to withdraw his/her government portion of the salary due to internal dispute between the teacher/employee and the Managing Committee/Governing Body of the institution or for any pending litigation between them or for any other reason, later on the said government portion of salary can not be withdrawn as arrear, the relevant institution is liable to pay the unpaid salary from its own fund under clause 18.6 of the “বেসরকারী শিক্ষা প্রতিষ্ঠানের (স্কুল, কলেজ, মাদ্রাসা ও কারিগরী শিক্ষা প্রতিষ্ঠানসমূহ)- এর শিক্ষক ও কর্মচারীদের বেতন-ভাতাদির সরকারী অংশ প্রদান এবং জনবল কাঠামো সম্পর্কিত নির্দেশিকা-২০১০ (মার্চ, ২০১৩ পর্যন্ত সংশোধিত)”.

We have considered the submissions of the learned Advocates for the parties, perused the materials on record and gone through the decisions referred to.

In the instant case, there were two issues under challenge by the petitioner before this Court, the first issue relates to the legality of the clause Nos. 18(2) and 18(6) of the “বেসরকারী শিক্ষা প্রতিষ্ঠান (স্কুল, কলেজ, মাদ্রাসা ও কারিগরী শিক্ষা প্রতিষ্ঠানসমূহ)-এর শিক্ষক ও কর্মচারীদের বেতন-ভাতাদির সরকারী অংশ প্রদান এবং জনবল কাঠামো সম্পর্কিত নির্দেশিকা-২০১০ (মার্চ, ২০১৩ পর্যন্ত সংশোধিত)” and the second issue relates to the payment of the arrear salary of the petitioner during suspension period from August 2012 to August 2014 including festival bonus and other financial benefit.

Admittedly, at the time of hearing of the Rule, the learned Advocate for the petitioner submits that he has clear instruction from his client not to press the first part of the Rule and therefore, the first part of the Rule is discharged as being non prosecution.

Now, considering the 2nd part of the Rule, the question has been arisen whether the petitioner is entitled to get his arrear salary during suspension period from August 2012 to August 2014.

That the question whether the petitioner is entitled to get his arrear salary during suspension period from August 2012 to August 2014 was answered by this Division. **In the case of Md. Kamruzzaman Vs. The Government of the People's Republic of Bangladesh & others, unreported judgment in Writ Petition No. 9755 of 2017** (one of us is a party) wherein this Division elaborately discussed the similar issue about the payment of arrear salaries during suspension period as well as dismissal period of a teacher of a Non-Government School/College/Madrasha of the Country and the said judgment has already been affirmed by the Appellate Division in CPLA No. 1485 of 2022.

It is undisputed that the present issue has already been settled by the High Court Division and the Appellate Division. On the same issue the respondents unsuccessfully moved to the Appellate Division in CPLA No. 1485 of 2022.

In the said judgment dated 13.01.2022 in Writ Petition No.9755 of 2017, this Court observed as under:

“From the facts and circumstances as stated above, we are of the view that the petitioner having on the same footing as those of the cases referred above, the relief as sought for by the petitioner can be granted without striking down the legal provision challenged in the writ petition. Moreover, in the present case, the petitioner is not pressing the first part of the Rule Nisi so far it relates to challenging the legal provision of law.

Accordingly, the Rule is made absolute in part and as such the refusal to pay the arrear salaries and other benefits during the suspension period of the petitioner is declared to be illegal and without lawful authority.

Hence, the respondents are directed to pay the arrear Government portion of the salary of the petitioner during the suspension period from October, 2012 to June, 2014 including festival bonus and other financial benefits to the petitioner in accordance with law within 3 (three) months from date of receipt of this judgment and order.”

In this regard the learned Deputy Attorney General submits that as per the Nitimala, 2018 if once the arrear government portion of

salary is returned to the government fund because of dispute between the Principal and the government body, it can not be refunded to the teacher.

In reply, Mr. Md. Humayun Kabir submits that in the case of ABM Abdul Latif Howlader Vs. the People's Republic of Bangladesh & others, 22 BLC (HCD) 372 (paragraph No.35) wherein it was held that:

“In such a situation, we hold that paragraph 18(6) of the পরিপত্র as quoted above and referred to by the learned DAG does not stand as a bar to petitioner's entitlement to get the 50% of the MPO that was returned.”

It is the established principal of law that the Nitimala has no force of law and as such the submissions of the learned Deputy Attorney General has no legs to stand. Having regard to the above, the petitioner is entitled to get his arrear salary during suspension period from August 2012 to August 2014 including retirement and welfare benefits which remained unpaid to him.

In view of the above recorded deliberation, we have no hesitation to hold that the petitioner is entitled to get her arrear salary during suspension period from August 2012 to August 2014

including retirement and welfare benefits which remained unpaid to him. Hence, the Rule succeeds.

In the result, the *Rule Nisi* is made absolute in part.

Thus the respondents are hereby directed to take necessary steps for releasing the arrear government portion of the salary of the petitioner during suspension period from August 2012 to August 2014 including retirement and welfare benefits within 3 (three) months from the date of receipt of this judgment.

Communicate the order.

K M Zahid Sarwar, J:

I agree.