

IN THE SUPREME COURT OF BANGLADESH
Appellate Division

PRESENT

Mr. Justice Borhanuddin,
Mr. Justice M. Enayetur Rahim
Mr. Justice Md. Ashfaqul Islam
Mr. Justice Md. Abu Zafor Siddique
Mr. Justice Jahangir Hossain

CIVIL PETITION FOR LEAVE TO APPEAL NO.1062 OF 2018

(From the judgment and order dated the 24th day of August, 2017 passed by the High Court Division in Writ Petition No.4716 of 2017).

Government of Bangladesh and : . . . Petitioners
others

-Versus-

Sonia Khatun and others : . . . Respondents

For the Petitioners : Mr. Sk. Md. Morshed, Additional
Attorney General, instructed by
Ms. Mahmuda Begum,
Advocate-on-Record

For Respondents : Mr. Mirza Salah Uddin Ahmed,
instructed by Mr. Mohammad Abdul
Hai, Advocate-on-Record

Date of hearing and judgment : The 28th day of January, 2024

JUDGMENT

M. Enayetur Rahim, J: Delay of 186 days in filing this civil petition for leave to appeal is condoned.

This civil petition for leave to appeal is directed against the judgment and order dated the 24.08.2017 passed by the High Court Division in Writ Petition No.4716 of 2017 making the Rule absolute.

The relevant facts leading to the filing of the present leave petition are that the present respondents-writ petitioners having required qualifications, applied for the post of Assistant Teachers in different primary schools. Accordingly, through interview and examination process, they

were appointed as Assistant Teachers of those schools. The particulars of their appointment and joining in the Registered Non-Government Primary Schools are given in the writ petition. In the writ petition it was stated that, the schools of the writ petitioners were established in accordance with the provisions under the 'বেসরকারী উদ্যোগে প্রাথমিক বিদ্যালয় স্থাপন, পরিচালনা ও নিবন্ধনের শর্ত নীতিমালা' as published by the Ministry of Primary and Mass Education as well as the Rules and notifications made by the Government time to time. Pursuant to the decision of the Government, the Gazette notification dated 17.01.2013 which was issued for scrutiny of Non-Government Primary schools and Teachers for nationalization. Thereafter, the Government, vide Gazette Notification dated 08.10.2013, as published in the Gazette on 27 October, 2013, nationalized 429 Registered Non-Government Primary, Schools as Government Schools with effect from 01.01.2013. In such process, the schools of the writ petitioners were also nationalized being serial No. 296. 297 and 298 in the said Gazette. Accordingly, the Government, through Ministry of Primary and Mass Education, started scrutiny process for selecting the teachers of those Primary Schools for absorption under the revenue head. In such process, a list was published with the names of the writ petitioners and others on 30.06.2016 asking the concerned to send amendments, if any, to the said list. Accordingly, after scrutiny, the concerned District Education Officer, Mirpur, Dhaka sent a list of the writ petitioners along with others on 28.07.2016 for their absorption under revenue head as against Bawniabadh A-Block Government Primary School, Mirpur, Dhaka, Bawniabad E-Block Government Primary School Mirpur, Dhaka and Sheikh

Kamal Government Primary School Mirpur, Dhaka. However, the Ministry, vide Office Order dated 01.12.2016, appointed some of the teachers from the said list as against the said schools excluding the names of the writ petitioners without assigning any reason. Under such circumstances, they moved before the High Court Division by filing writ petition.

The Rule was opposed by writ respondent No.6 though no affidavit-in-opposition had been filed.

In due course after hearing and considering the materials on record the High Court Division made the Rule *Nisi* absolute directing the writ respondents to appoint the writ petitioners as Assistant Teachers as against their respective primary schools within a period of 30 (thirty) days from receipt of the copy of this judgment riving their service and other benefits with effect from 01.01.2013.

Being aggrieved by the said judgment and order, the writ respondents have preferred this civil petition for leave to appeal before this Division.

Mr. Sk. Mohammad Morshed, learned Additional Attorney General appearing on behalf of the leave petitioners having placed the notification dated 17.01.2013 in regard to the 'বেসরকারি প্রাথমিক বিদ্যালয় জাতীয়করণ এবং কর্মরত শিক্ষকদের চাকুরি জাতীয়করণের সিদ্ধান্ত' submits that in view of the said notification there is no scope to appoint the writ petitioners-respondents as Assistant Teachers as against their respective primary schools as they are the excess teachers and in the said schools as per the Nitimala one Head Master and 3(three) other teachers have already been appointed.

Mr. Mirza Salah Uddin Ahmed, learned Advocate appearing for the respondents makes submissions in support of the impugned judgment and order passed the High Court Division.

We have considered the submissions of the learned Advocates for the parties concerned, perused the impugned judgment and order of the High Court Division and other connected papers on record.

"Clause 4.2" of the notification dated 07.01.2013 relating to the 'বেসরকারি প্রাথমিক বিদ্যালয় জাতীয়করণ এবং কর্মরত শিক্ষকদের চাকুরী সরকারিকরণের সিদ্ধান্ত' runs as follows:

৪.২ শিক্ষক সংক্রান্তঃ

- "(ক) এমপিওভুক্ত সকল শিক্ষকের চাকুরী সরকারিকরণের উপযুক্ত বিবেচিত হইবে;
- (খ) বিদ্যালয়ে কর্মরত শিক্ষকদের চাকুরীতে যোগদানকালীন সময়ে বা তারিখে প্রয়োজ্য/প্রয়োজনীয় যোগ্যতা থাকিতে হইবে। তবে যথাযথ প্রক্রিয়ায় নিয়োগকৃত হইয়া থাকিলে চাকুরী সরকারিকরণের পরবর্তী ৩ বৎসরের মধ্যে নির্ধারিত যোগ্যতা অর্জনের শর্তে প্রয়োজনীয় যোগ্যতাবিহীন শিক্ষককেও বিবেচনা করা যাইবে;
- (গ) ইতঃপূর্বে এমপিওভুক্ত হইয়াছে কিন্তু শৃঙ্খলাজনিত কিংবা প্রশাসনিক অথবা অন্যবিধ কারণে বর্তমানে এমপিও স্থগিত রহিয়াছে এইরূপ শিক্ষককেও বিবেচনা করা যাইবে;
- (ঘ) বিদ্যালয়ে সাধারণভাবে ১ জন প্রধান শিক্ষকসহ ৪ জন শিক্ষকের পদ থাকিবে। তবে ৪০০ জনের অধিক ছাত্র-ছাত্রী আছে এমন বিদ্যালয়ে ৫ম শিক্ষকের পদ সৃজিত থাকিলে তাহা বিবেচনা করা যাইবে;
- (ঙ) প্রয়োজনীয় যোগ্যতা এবং নির্ধারিত পদ্ধতিতে নিয়োগকৃত হইয়া থাকিলে নির্ধারিত বয়সের কম অথবা বেশী বয়সে যোগদানকারী শিক্ষককে প্রয়োজনীয় যোগ্যতা থাকা ও নির্ধারিত পদ্ধতিতে নিয়োগকৃত হওয়া সাপেক্ষে বিবেচনা করা যাইবে।"(Underlines supplied).

In view of the provision of clause 4.2 it is abundantly clear that the approved limit of making appointment of the teachers in a nationalized school were 4(four) and one of which will be Headmaster; and one more teacher would be considered if number of students are more than 400. Here the writ petitioners were all beyond the approved limit. The High Court Division without going into the depth of the position and status of the writ petitioners made the Rule absolute without considering the existing organogram of the

nationalized school, i.e. these primary schools cannot be made over 4(four) persons as teachers.

Further, the issue involved in this case has already been decided in Civil Petition for Leave to Appeal No. 4234 of 2018.

In view of the above, we are inclined to interfere with the impugned judgment and order; however, since, we have heard both the parties at length, we are inclined to dispose of the civil petition for leave to appeal without granting any leave to avoid further delay in disposing of the case.

Accordingly, the civil petition for leave to appeal is disposed of. The impugned judgment and order dated 24.08.2017 passed by the High Court Division is set aside.

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