

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)

**WRIT PETITION NO. 9010 of 2018**

In the matter of:

An application under Article 102 of  
the Constitution of the People's  
Republic of Bangladesh.

-And-

In the matter of:

Md. Ifekhar Arif and another  
.....Petitioners

-Versus-

The Government of Bangladesh and  
others  
..... Respondents

Mr. Mustafizur Rahman Khan with  
Mr. Sk. Sharifuddin, Advocate  
..... For the petitioners  
Mr. Chowdhury Mowsumee Fatema,  
Advocate  
..... For the respondent No. 2  
Mr. Cumar Debul Dey, Advocate  
..... For the respondent No. 4

**Heard on 27.01.2021, 03.02.2021, 03.03.2021 and  
Judgment on 11.03.2021**

Present:  
Mr. Justice Md. Ashfaul Islam  
And  
Mr. Justice Mohammad Ali

**Md. Ashfaul Islam, J:**

This Rule under adjudication, at the instance of the petitioners,  
issued on 15.07.2018, was in the following terms:

*“Let a Rule Nisi be issued calling upon the respondents to  
show cause as to why the Memo No. এ-৫৫৬/৪৪৭২/সাগ dated*

*24.06.2018 purportedly cancelling the decisions, office order/letters of absorption of the petitioners as Teachers of the Chittagong University since 01.07.2012 (Annexure-‘C’ to the writ petition) should not be declared to be 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.”*

At the time of issuance of the Rule this Division also stayed the operation of the impugned order (Annexure-C).

The background leading to the Rule is that the petitioners are Assistant Professors of Institution of Education and Research (“the IER”) which is a constituent of Faculty of Arts, University of Chittagong (hereinafter referred to as ‘the University’). The petitioners were absorbed with an effect from 01.07.2012 by a decision of the Senate of the University and they are engaged imparting lessons to the students of the IER since its establishment. This petitioners in this writ petition impugns Memo being No. A-556/4472/Sha dated 24.06.2018 (Annexure-‘C’) issued by the respondent No. 4, the Registrar, the Chittagong University purportedly cancelling with effect from 01.07.2012 the decisions, office orders/letters of absorption of the petitioners as Teachers of the University.

The petitioner Nos. 1 and 2 were appointed on adhoc basis in the post of Lecturer (Management) and Lecturer (Bangla) on 24.06.2012 and joined their respective posts on 24.06.2012 and 25.06.2012 respectively. While they continuing the service on adhoc basis an advertisement dated 02.03.2013 for permanent appointment for the posts, amongst others, Lecturer of Management and Bangla was published in the Daily Newspaper namely Daily Azadi. Both the petitioners having noticed the advertisement submitted application for appointment and both of them were invited to appear for the interview by letters dated 04.05.2013 and 02.05.2013 (Annexure-‘F’ and G, G-1).

Both the petitioners having been successful in their interview held on 15.05.2013 by the Interview Board constituted by the University, they were permanently appointed by an office order dated 05.06.2013 with effect from 31.05.2013. Their appointments were conditional for confirmation upon fulfillment of 2 years probationary period of time. The petitioners subsequently thereafter were upgraded to the post of Assistant Professor by letters dated 13.10.2014 and 19.03.2015 with an effect from 18.06.2014 and 17.01.2015 and finally were confirmed on 04.07.2017 (Annexure-‘I’, ‘I-1’, ‘I-2’ and ‘I-3’).

The University used to run School and College namely “Chittagong University School and College” financed through the estimated budget of

the University of the Government and decided to establish an “Institute for Education, Research and Training (IERT)” and pursuant to decision No. 22 taken in the 202<sup>nd</sup> meeting of the Academic Council on 24.03.2005 and approval contained in decision No. 2 taken in the 421<sup>st</sup> meeting of the Syndicate, the Senate vide decision No. 5 of the Annual meeting held on 29.06.2005 approved by the statute regarding the said IERT (Annexure- ‘M-5’ and ‘M-6’).

University Grants Commission (UGC) approved opening of IERT vide Memo dated 15.03.2012 (Annexure-‘N’) subject only to the condition that no funds would be required from UGC for IERT for the years of 2012-2013 and 2013-2014 but UGC imposed no restriction as to absorption of Chittagong University College Teachers.

It appears manifestly in para 15 to 20 of the petition, different decisions and steps in respect of the Chittagong University Laboratory School and College for IERT which would be in the nature of a research and training oriented Institution of the University.

In paragraph 21 it has been stated that pursuant to inspection report it has been found that though an approval to set up the then IERT was granted but absorption of the petitioners from the University Laboratory College was never approved. It has been further stated that without prior approval and for want of minimum eligibility there is no scope for

absorption of the petitioners with the IERT. However, against this background the impugned order was passed clearly stating that the Petitioners cannot be absorbed as Teachers of the University as it appears from Annexure-‘C’; dated 24.06.2018. It is at this stage, the petitioners moved this writ petition and obtained the present Rule and order of stay as aforesaid.

Mr. Mustafizur Rahman Khan, the learned Advocate appearing for the petitioners after placing the petition and other materials on record mainly submits that the petitioners were appointed on adhoc basis by the University admittedly on 24.06.2012 in the post of Lecturer (Management and Bangla) vide Annexure-D and D-1. They were also absorbed on an adhoc basis by IERT of the University pursuant Section 15 of Statutes by office order dated 10.07.2012 (Annexure-E and E-1). Then in response to an advertisement the petitioners applied for appointment of Lecturers and upon interview, were permanently appointed vide office orders dated 05.06.2013 with effect from 31.05.2013 (Annexure- ‘H’ and ‘H-1’).

He further contends that it is pertinent to note that the clause 2(ka) of the said advertisement expressly provided that in case Lecturers appointed to the University on an adhoc basis, the qualification at the time of their joining will be applicable, that is, for those working as Teachers, the earlier qualification will be maintained. Admittedly the posts of the petitioners

were upgraded to the post of Assistant Professor in the year of 2014 and 2015 respectively. But the impugned order was issued almost 6 years after the petitioners had been absorbed, and 5 years after permanent appointment as Teachers of the University. Highlighting this he submits that the impugned order is silent as to the causes for the impugned decision and the same does not ascribe any fault or disqualification to the petitioners. Even the decision has not been preceded by any opportunity to the petitioners to show cause. He draws our attention to section 15(b) of the statute which provides “the primary, secondary and Higher Secondary levels of education under Chittagong University College will be a laboratory for research and practice teaching of the teachers, students and scholars of the institute. The Chittagong University College will be considered a part of the Institute and its recurrent and development budgets will be a part of the annual budget of the Institute”

He contends that the petitioners have learnt that the impugned decision was probably predicated upon a report dated 20.12.2017 (Annexure-‘R-2 to the writ petition) of an inspection team of UGC constituted pursuant to a memo dated 16.10.2017 (Annexure-R-1). The petitioners were never communicated this report before the impugned order and had no opportunity to respond to it. They would have pointed out

several discrepancies and irregularities in respect of UGC and the University justifying their disapproval against the impugned order.

Further he submits that this is a classic of violation of the principles of natural justice and referred to the time honoured principle laid down in the *University of Dhaka vs. Zakir Ahmed* (1964) 16 DLR (SC) 722. Substantiating this aspect he submits that the facts and circumstances of the matter where the authority has proceeded to the prejudice of the petitioners on the basis of the report containing highly contentious and prima facie rebuttable conclusion, are such that the impugned order ought to have been preceded by a meaningful opportunity to the petitioners to show cause. He emphatically submits that the absorption of the petitioners took place lawfully pursuant to section 15(2) of the statute as per recommendations of the Academic Council and Syndicate and the decision of the Senate of the University. Had the petitioners been given an opportunity to show cause, they would have been able to place the points so far narrated as above covering all his submissions mainly based on admitted facts.

On the other hand Mr. Cumar Debul Dey, the learned Advocate by filing affidavit-in-opposition on behalf of the respondent No. 4, the Registrar, University of Chittagong controverted the submissions pressed into service by the petitioners. He has highlighted the submissions as made in paragraph 5 of the affidavit in opposition. It has been submitted that the

petitioners is not a entitled to get any remedy from this Division because the petitioners were not appointed according to the Rules framed by the Academic Council, University of Chittagong at 201<sup>st</sup> meeting of Academic Council held on 12.10.2004. According to the Rules earlier framed to appoint teacher from University College there was a condition precedent that the teacher willing to be the teacher of the Institution of Education, Research and Training (IERT) must have an M.Ed Degree but the petitioners who were given appointment as the teacher of the IERT on 24.06.2012, was in clear violation of that Rules as neither of petitioners had the M.Ed degree at the time of appointment as such and in the view of the above provisions of law the petitioners appointment was not in accordance with law and the petitioner's application under Article 102 of the Constitutions is not maintainable in law and the Rule in the instant matter is liable to be discharged.

It has been submitted that when the Chittagong University Authority applied for the approval of the Institution of Education, Research and Training before the university Grants Commission (UGC), the UGC imposed two conditions upon the Chittagong University Authority for recognition for the proposed IERT, one of which was that UGC will not provide any financial support to the Institution and the other was no man power from the local School and Colleges under the said University can be



included /absorbed as the man power of the University as well as the man power of the said proposed Institution of the Education Research and Training (IERT). In the instant present case absorption of the petitioners as the man power of the University was a clear violation of the condition No. 2 imposed by the UGC as such the petitioner's instant writ application is not maintainable in law and the Rule in the instant matter is liable to be discharged.

It has been further submitted that due to non-compliance of the pre-condition imposed by the UGC, there occurred another problem which was that there was a mismatching/discrepancy in the Annual Audit Reports in the financial year 2015-2017 where total Taka 3,55,95,342.60 were paid to the teachers who were absorbed form the University School and Colleges violating the pre-condition imposed by the UGC and the payment of said amount of money to the teachers/petitioners as an expenditure as salary of the petitioners in no way can be legalized as such the petitioner's application is not maintainable in law and the Rule in the instant matter is liable to be discharged.

Upon the submissions as made above the learned Counsel appearing for the respondent No. 4 submits that this Rule should be discharged being devoid of any substance.

We have heard the learned Counsel of both sides at length and considered their submissions carefully. All the admitted facts have been incorporated categorically by the petitioners that how they were absorbed in the University and how they were promoted subsequently to the post of Assistant Professors. The only question that calls for consideration in this writ petition is whether considering all the facts and circumstances together conjunct with the relevant provisions governing the Management, Administration, appointments of the teachers of the University the decision vide Annexure-‘C’ dated 24.06.2018 was justified. The submissions of learned Advocate Mr. Mustafizur Rahman Khan that it is a classical case of violation of principle of natural justice certainly gets paramount consideration. The admitted facts are absolutely clear and unambiguous on this issue. In our view there was an utter disdain in the manner the case of the petitioners was handled and considered. We are really flabbergasted to note that the petitioners having all the requisite qualifications and absolutely standing at par with their colleagues have been left out being not considered to be absorbed by the impugned order. It seems that they were not liked by the University Authority from the get-go. We cannot say that UGC is the kingpin in the whole issue rather it was the boundened duty of the University authority to give an opportunity of hearing to the petitioners and then to decide their fate. This Act is certainly hypocritical and it should

not be allowed to burgeon. In other words we are absolutely in respectful agreement with the decision of Zakir Hossain's case as reported hereinbefore.

That being the situation, we are of the view that this Rule merits substance which should succeed. The submissions of the learned Counsel for the petitioner have substance.

In the result the rule is made absolute. The impugned order is declared without lawful authority having no legal effect and set aside.

Communicate at once.

Mohammad Ali, J

I agree.