

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

**WRIT PETITION NO. 9401 OF 2019**

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:

S.M. Golam Haider

-----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, DAG

Mr. Mohammed Rezaul Hoque, AAG

-----For the respondent No.4

**Judgment On: 19.10.2023**

**Present:**

**Mr. Justice Md. Khasruzzaman**

**And**

**Mr. Justice Md. Khairul Alam**

**Md. Khasruzzaman , J:**

In the instant writ petition, on 29.08.2019 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.18.5 of the “বেসরকারী শিক্ষা প্রতিষ্ঠানের (স্কুল ও কলেজ) জনবল কাঠামো ও এম.পি.ও নীতিমালা-২০১৮” 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 from the Government Fund (Annexure-L) should not be declared ultra vires the Constitution and further as to why they should not be directed to take necessary steps for releasing the arrear government portion of the salary of the petitioner during suspension period from November, 2014 to January, 2018 including retirement and welfare benefits which remained unpaid to him during that period of time after proper assessment”*

Pertinent facts necessary for disposal of the Rule are that the petitioner applied for the post of Principal, 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 the said College on 17.03.2005 in response to the appointment letter issued by the President of the governing body of the college on

16.03.2005 and since then he has been discharging his duties honestly, sincerely and with full satisfaction of the authority. The petitioner was enlisted in the monthly pay order (MPO) from March, 2005 as the Principal being Index No. 010916 and since then he has been receiving government portion of his monthly salary and other financial benefit regularly without any interruption till January, 2018 i.e the date of retirement. On 22.01.2015 the governing body of the college took a decision to suspend the petitioner from his service on the ground that the petitioner was taken into custody in a criminal case and on 01.02.2015 the President of the governing body of the college (respondent No.5) issued a letter to that effect under memo No. 05/15 dated 01.02.2015. On 02.11.2016 the petitioner was discharged from the allegations brought against him by the Senior Judicial Magistrate, Court No.1, Khulna vide order No.16 dated 02.11.2016. The governing body of the college has failed to start any proceedings against the petitioner in compliance with the provisions of the Service Regulations, 1994 or 2015 resulting on 19.11.2017 the petitioner filed an application before the Vice-Chancellor, National University, Gazipur (respondent No.2) requesting him to take necessary action against the order of suspension of the petitioner from his service as the Principal, Dumuria College, Dumuria, Khulna under regulation 34 of the জাতীয় বিশ্ববিদ্যালয়ের অধিভুক্ত বেসরকারী কলেজ

শিক্ষকদের চাকুরীর শর্তাবলী রেগুলেশন (সংশোধিত)-২০১৫, but the respondent remained silent without considering the prayer of the petitioner and giving any reply. Though the said application has duly been received by the office of the Vice-Chancellor, National University (respondent No.2) on 19.11.2017, he did not take any step over the matter till to date. Without getting any result on the application filed by the petitioner on 19.11.2017, the petitioner was compelled to file Writ Petition No.17464 of 2017 and on 08.01.2018 the High Court Division disposed of the writ petition with a direction upon the respondents to dispose of the representation of the petitioner dated 19.11.2017 within 60 (sixty) days from the date of receipt of a copy of the order. In pursuance of the order dated 08.02.2018 passed in Writ Petition No. 17464 of 2017, on 08.02.2018 the Inspector of College (In-Charge), National University (respondent No.3) issued a letter directing the President, Governing Body, Dumuria College, Dumuria (respondent No.7) to reinstate the petitioner in his service after withdrawing the suspension order under memo No. ০৭(খু-২০৮) জাতীঃ বিঃ/কঃপঃ/কোড-০৩২৮/৩৮০৮৭ dated 08.02.2018. The letter of the National University has duly been received by the President of the governing body and the Principal (In-Charge) of the college (respondent Nos.7 & 8) but they did not take any step for reinstating the petitioner in his service as the Principal of the college till to date.

The petitioner was suspended from his service on 22.11.2014. But the governing body of the college has failed to conclude the proceedings initiated against the petitioner before the date of retirement of the petitioner on 30.01.2018 and for this reason on 08.02.2018 the National University issued a letter directing the President, Governing Body, Dumuria College to withdraw the suspension order of the petitioner and to pay all arrear salaries of the petitioner. But the governing body of the college did not withdraw the suspension order of the petitioner and also did not pay the arrear salaries of the petitioner as per direction of the National University. On 19.02.2018, 23.10.2018 and 20.12.2018 the petitioner filed three applications before the President, Governing Body, Dumuria College (respondent No.7) requesting him to take necessary steps for releasing the arrear salaries of the petitioner during suspension period from 22.11.2014 to January, 2018 including the retirement and welfare benefits, but he did not take any step over the matter till to date. On 28.01.2019 and 31.01.2019 the petitioner filed an application before the Vice-Chancellor, National University, Gazipur (respondent No.2) requesting him to take all necessary steps for releasing the arrear salaries of the petitioner during suspension including the retirement and welfare benefits, but he did not take any step over the matter. The National University is under legal

obligation to take all necessary steps for executing their own order dated 08.02.2018, but he remained silent without considering the claim of the petitioner. On 12.02.2019 the petitioner filed two applications before the Secretary, Secondary and Higher Education Division, Ministry of Education (respondent No.1) and the Director General, Directorate of Secondary and Higher Education, Shikkha Bhaban, Dhaka (respondent No.4) requesting them to take all necessary steps for releasing the arrear salaries of the petitioner during suspension period including the retirement and welfare benefits, but they did not take any step over the matter. Under the provision of clause No. 18.5 of the “বেসরকারী শিক্ষা প্রতিষ্ঠানের (স্কুল ও কলেজ) জনবল কাঠামো ও এম.পি.ও নীতিমালা-২০১৮”, the Secretary, Secondary and Higher Education Division, Ministry of Education (respondent No.1) verbally refused to pay the arrear government portion of salary of the petitioner during his suspension period from November, 2014 to January, 2018. Since the governing body of the college did not withdraw the arrear government portion of salary of the petitioner during suspension period, 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. As per 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. The governing body of the college did not pay the government portion of salary of the petitioner during suspension period and the said money has already been returned to and deposited in the Government fund due to lapse of the financial year. 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 as per 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 18.5 of the Guidelines, 2018. It is stated 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”. Thus 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 his service in the year of 2014, but he has not been dismissed from his service and the respondents did not pay the arrear government portion of the salary of the petitioner from November, 2014 to January, 2018 and as such the petitioner is entitled to get the arrear government portion of salary of the petitioner during suspension period. In this backdrop, the petitioner filed this writ petition and obtained the present *Rule Nisi*.

The respondent No.4 contested the Rule by filing an affidavit-in-opposition to controvert the statements as made in the writ petition.

At the time of hearing, Mr. Md. Humayun Kabir, the learned Advocate for the petitioner submits that at this moment, the petitioner is not inclined to press the first part of the Rule and as such the first part of the Rule is liable to be discharged as being non-prosecution.

Mr. Md. Humayun Kabir, the learned Advocate for the petitioner pressed his submissions on the second part of the Rule



only and submits that the action of the respondents in not making payment of the arrear government portion of the salary of the petitioner during suspension period is malafide, arbitrary, without jurisdiction and against the principal of natural justice and as such the respondents are required to be directed to take necessary steps for releasing the arrear government portion of the salary of the petitioner during suspension period including retirement and welfare benefits which remained unpaid to him during that period of time.

Mr. Kabir further 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 the 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. Bepul Bagmar, the learned Deputy Attorney General appearing for the respondent No.4 by filing an affidavit-in-opposition submits that the dispute was between the petitioner and the governing body and for the said reason, the arrear salaries which was refunded to the government, can not be given in view of the clause 18.5 of the “বেসরকারী শিক্ষা প্রতিষ্ঠানের (স্কুল ও কলেজ) জনবল কাঠামো ও এম.পি.ও নীতিমালা-২০১৮”. He further submits that he did not rejoin his post and as such he can not claim the arrear salaries for the period from November, 2014 to January, 2018 including retirement and welfare benefits which remained unpaid to him during his suspension period.

We have considered the submissions of the learned Advocate for the petitioner and the learned Deputy Attorney General, 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 No.18.5 of the “বেসরকারী শিক্ষা প্রতিষ্ঠানের (স্কুল ও কলেজ) জনবল কাঠামো ও এম.পি.ও নীতিমালা-২০১৮” and the second issue relates to the payment of the arrear salary of the petitioner during suspension period from November, 2014 to January, 2018 including retirement and welfare benefits which remained unpaid to him.

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 2<sup>nd</sup> part of the Rule, the question has been arisen whether the petitioner is entitled to get his arrear salary during suspension period from November, 2014 to January, 2018.

That the question whether the petitioner is entitled to get his arrear salary during suspension period from November, 2014 to January, 2018 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 i.e. similar type of issue has already been settled by both 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 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 November, 2014 to January, 2018 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 his arrear salary during suspension period from November, 2014 to January, 2018 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 November, 2014 to January, 2018 including retirement and welfare benefits which remained unpaid to him during that period of time after proper assessment within 3 (three) months from the date of receipt of this judgment.

Communicate the order.

**Md. Khairul Alam, J:**

I agree.