

Present:
Mr. Justice Shamim Hasnain
and
Mr. Justice Md. Ruhul Quddus

Writ Petition No.7903 of 2011

Md. Sadek Ali
...Petitioner

-Versus-

Government of Bangladesh and others
...Respondents

Mr. Yousuf Hossain Humayun, Advocate
... for the petitioner
Mr. Tufailur Rahman, Advocate
... for respondent 2

Judgment on 13.1.2013

Md. Ruhul Quddus, J:

This Rule *nisi* was issued calling in question the legality of an order as contained in Memo No.CJM/LB/13(Ka) 68 dated 4.8.2011 issued by the General Manager, Crescent Jute Mills Ltd. terminating the writ petitioner from his service of a labour *sarder* in the said Mills.

Facts leading to issuance of the Rule, in brief, are that the writ petitioner joined Crescent Jute Mills Ltd., Khalishpur, Khulna on 12.11.1986 as a weaver. He was promoted twice, firstly to the post of Senior Weaver (বড় তাঁতী) and secondly to that of Labour Sarder in 2009. He

performed his duty honestly and diligently. Being a popular worker-leader, he was elected as Assistant Secretary of Crescent Jute Mills Workersq Union for consecutive two terms in 2008-2010. Because of his increasing popularity and possible candidature for the office of Secretary of the Workersq Union in next election, he was targeted by his opponents, who in collusion with the Management of the Mills hatched up a conspiracy against him. Consequently the General Manager of the Mills (respondent 2) terminated him from service under the impugned memo. In so doing, he (respondent 2) did not serve him any prior notice or give him any opportunity of being heard in any manner. Within a week after his termination, Crescent Jute Mills Workersq Union made a representation on 7.8.2011 to the Management mentioning his termination to be arbitrary and motivated (annex-D to the supplementary affidavit filed by the petitioner).

Respondent 2 contests the Rule by filling an affidavit-in-opposition denying the material allegations of the writ petition contending, *inter alia*, that he was not aware of any conspiracy as alleged by the writ petitioner or that he was terminated consequent thereto. The Mills did not require his service, hence under authority of section 26 (Kha) of the Bangladesh Labour Act, 2006 the petitioner was lawfully terminated from service. The

power given under the law to terminate the service of a worker is absolute and without any qualification. In lieu of notice, the worker concerned is only entitled to receive compensation as mentioned in the law. The impugned termination had nothing to do with any trade union activities of the writ petitioner. Since the impugned order was of termination simpliciter, no show cause notice was required to be served upon the petitioner.

Mr. Yousuf Hossain Humayun, learned Advocate appearing for the writ petitioner submits that in fact the Management of Crescent Jute Mills Ltd. dismissed the petitioner from his service under the cloak of termination because of his trade union activities. He was in session of meeting of the Union held on 4-7.1.2011, while respondent 2 removed him from service under the impugned order without serving any prior show cause notice. A few days after the impugned order was passed, the WorkersqUnion of the Mills made a representation to the Management, which was not taken into consideration. The petitioner successfully completed more than 24 years of his service in the Mills. During this long period, he did never face any departmental proceeding even any complaint. Because of his satisfactory performance, honesty and sincerity he was promoted twice by the same Management, but at the end he was turned out from service in an arbitrary manner without due process of law

and as such the impugned order is amenable in writ jurisdiction.

Mr. Tufailur Rahman, learned Advocate appearing for respondent 2 submits that the petitioner's termination had nothing to do with his trade union activities. The question raised by the writ petitioner that he was actually dismissed under the cloak of termination being a question of fact cannot be decided in a writ petition. Even if, it was so done he had alternative remedy under the Labour Act and as such the instant writ petition is not maintainable for not exhausting the alternative remedy provided in law.

We have considered the submissions of the learned Advocates of both the sides and consulted the relevant law. Section 33 (3) of The Bangladesh Labour Act, 2006 contemplates filing of complaint before the Labour Court seeking necessary redress by a removed worker, while section 33 (9) provides that a worker whose termination is motivated or who has been terminated for trade union activities can also file a complaint before the Labour Court after due service of grievance notice under section 33 (1).

In the present case, the writ petitioner did not serve any grievance notice as provided in section 33 (1) of the Act and avail the alternative remedy before the Labour Court for no valid reason. The writ petition, therefore, does not appear to be maintainable. Under the

circumstances, it is difficult for us to provide him the relief sought for, although his removal after more than 24 years of service without assigning any reason touches our anxiety. We also feel that the impugned termination may not be a termination simpliciter. However, since the Workersq Union made a representation to the Management mentioning his termination to be arbitrary and motivated and the Management has not yet responded thereto, we think it would be just and proper if the Management of Crescent Jute Mills Ltd. considers the said representation and take a decision thereon.

The Rule is thus disposed of with the above observations.

Shamim Hasnain, J:

I agree.