

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Hasan Foez Siddique,
Chief Justice
Mr. Justice M. Enayetur Rahim
Mr. Justice Jahangir Hossain

CIVIL APPEAL NO.63 OF 2008.

(From the judgment and order dated 31.07.2006 passed by the High Court Division in Writ Petition No.5517 of 2005.)

Mohammad Forman Ullah : Appellant.

=Versus=

Kazi Mahmudul Hasan Ansari and Respondents.
others :

For the Appellant : Mr. Zainul Abedin,
Advocate-on-Record.

For the Respondent No.1 : Mr. Mohammad Hossain,
Advocate, instructed by
Mr. Nurul Islam Bhuiya ,
Advocate-on-Record.

Respondent Nos.2-5: Not represented.

Date of hearing & judgment : 31-01-2023

JUDGMENT

Hasan Foez Siddique, J: This appeal is directed against the judgment and order dated 31.07.2006 passed by the High Court Division in Writ Petition No.5517 of 2005 making the Rule absolute.

The facts, leading to the case, are that the writ petitioner was the principal of Podua Ainul Ulum Darus Sunna Fazil Madrasha, Podua, Lohagara, Chittagong. He filed an application

for getting appointment as Nikah Registrar for Union Nos.1-9 of Lohagara Upozilla. The Advisory Committee selected him for such appointment for 4 Unions, namely, Amirabad, Podua, Lohagara and Kalauzan. Initially, he was appointed as Nikah Registrar for 3 Unions, namely, Amirabad, Kalauzan and Lohagara. Thereafter, on 12.06.2001, the writ petitioner was appointed as Nikah Registrar for Podua Union. Thereafter, except Lohagara Union, 3 Unions were curtailed from his allotted areas. On 16.09.2004, writ respondent No.1 issued a notice to the writ petitioner to show cause within 7 days as to why his license of Nikah Registrar should not be cancelled on the ground that he had been serving in a Madrasha situated beyond his area, for which, he was lastly licensed. On 03.10.2004, the writ petitioner replied to the notice admitting the fact of serving in a Madrasha situated beyond the area for which he was licensed as the Nikah Registrar. In such circumstances, writ respondent No.1 cancelled the writ petitioner's license as Nikah Registrar under section 11 of the Muslim Marriage and Divorces (Registration) Act, 1974 and accorded approval for appointing writ respondent No.5

therein. Later, writ respondent No.4 issued a temporary license of Nikah Registrar to respondent No.5.

The respondent No.5 petitioner contended that the writ petition was not maintainable and that the Government rightly cancelled the writ petitioner's license under the provisions of section 11 of the Muslim Marriage and Divorces (Registration) Act, 1974 and Rule 17 of the Muslim Marriage and Divorces (Registration) Rules, 1975.

On 13.04.2006, the writ petitioner filed a supplementary affidavit stating, inter alia, that the appointment of respondent No.5 in his place as Nikah Registrar was illegal on the ground that the respondent No.5 is also involved in profession of teaching in a Madrasha outside the area of his appointment.

However, finally the High Court Division by the impugned judgment and order made the said Rule absolute. Thus, the appellant has preferred this appeal upon getting leave.

Mr. Zainul Abedin, learned Advocate-on-Record appearing on behalf of the appellant, submits that the principle of law is that the Nikah Registrar being a licensee and/ or agent

of the Government does not acquire any vested right on being appointed as such; the High Court Division was wrong in law in not holding that the writ petitioner being a licensee could not claim protection against offending the bar in continuing service outside of the area of his appointment.

Mr. Mohammad Hossain, learned Advocate appearing for the respondent No.1, submits that the license of the writ petitioner respondent was cancelled on 10.07.2005 though he was not guilty of any misconduct in discharging of his duties or he has not become unfit in discharging his duties.

Admittedly, at the time of giving license to the writ petitioner there was no bar to appoint the petitioner as Nika Registrar. New provision was provided on 19.01.1993 incorporating bar to give license to a person as Nika Registrar who has been serving in a Madrasha beyond area for which he was licensed as the Nika registrar. There is no allegation against the writ petitioner and no misconduct has been alleged and proved. The license of the writ petitioner was cancelled under section 11 of the Muslim Marriage and Divorce (Registration

Act), 1974 on the ground of offending the provision of amended rule, though when he was appointed there was no such bar in unamended Rule 17 of the Muslim Marriage and Divorces (Registration) Rules, 1975. Aforesaid rule 17 was not given effect retrospectively.

It is a well-settled rule of interpretation that statutes are to be interpreted prospectively, unless the language of the Statutes makes them retrospective, either expressly or by necessary intendment. The statement of this rule has been made in Craies on Statute Law (6th Edition, 1963) at pp 388-389 in the following words;

"And perhaps no rule of construction is more firmly established than this that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation otherwise than as regards matter of procedure unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only." The past rights which have already accrued have not been sought to be

affected by President's Order No 137 of 1972 retrospectively, but such rights were purported to be affected only prospectively [31 DLR (AD) page 195]. In the case of Motiur Rahman and others vs. Chowdhury Md Mahfuzul Islam and others 55 DLR (AD) 104 it was held that the general rule of law being, that unless there is a clear indication from the wording of the statute it is not to receive a construction retrospective in effect. The cardinal principle of construction is that every statute is prima facie prospective unless it is expressly, or by necessary implication, given a retrospective effect.

The license was a privilege created. The right or privilege accrued and prevailing pursuant to the previous law could not deprive that person by subsequent legislation. A vested right cannot be impaired by enacting law.

In view of the facts and position of law, we do not find any substance in the appeal.

Thus, the appeal is dismissed.

C. J.

J.

J.