

## 12 SCOB [2019] AD 1

### Appellate Division

#### PRESENT:

**Mr. Justice Syed Mahmud Hossain.**  
-Chief Justice.  
**Mr. Justice Hasan Foez Siddique.**  
**Mr. Justice Mirza Hussain Haider.**

CIVIL APPEAL NOS.96 -111 OF 2015

(From the judgment and order dated 15.05.2014 passed by the High Court Division in Writ Petition Nos.1755, 1756, 1758, 1759, 1760, 1763, 1764, 1765, 1766, 1767, 1768, 1769, 1770, 1771, 1797, 1798 of 2008).

**Ashuganj Fertilizer and Chemical Company Limited, represented by its Managing Director and others.** .....Appellants.  
(In all the appeals)  
=Versus=

**Md. Abu Sufian Bhuiyan and another.** .....Respondents. - (In C.A.No.96/15)  
**Md. Monirul Haq and another.** .....Respondents.- (In C.A.No.97/15)  
**Md. Siddiquil Islam Khondoker and another.** .....Respondents. – (In C.A.No.98/15)  
**Md. Motalib Bhuiyan and another.** .....Respondents. – (In C.A.No.99/15)  
**Md. Mannur Rashid and another.** .....Respondents. – (In C.A.No.100/15)  
**Md. Jashim Uddin Talukder and another.** .....Respondents. – (In C.A.No.101/15)  
**Md. Shahab Uddin and another.** .....Respondents. – (In C.A.No.102/15)  
**Md. Nurul Islam (Nuru) and another.** .....Respondents. – (In C.A.No.103/15)  
**Md. Iftekhhar Bhuiyan and another.** .....Respondents. – (In C.A.No.104/15)  
**Md. Farahn Uddin and another.** .....Respondents. – (In C.A.No.105/15)  
**Md. Borhan Uddin (Bahar) and another.** .....Respondents. – (In C.A.No.106/15)  
**Md. Azizur Rahman and another.** .....Respondents. – (In C.A.No.107/15)  
**Md. Sayed Masud Shumon and another.** .....Respondents. – (In C.A.No.108/15)  
**Md. Emranur Reza and another.** .....Respondents. – (In C.A.No.109/15)  
**Md. Kabir Hossain and another.** .....Respondents. – (In C.A.No.110/15)  
**Md. Shaheen Miah and another.** .....Respondents. – (In C.A.No.111/15)

For the Appellants. : Mr. Tufailure Rahman, Senior Advocate,  
(In all the appeals) instructed by Mr. Md. Firoz Shah,  
Advocate-on-Record.

For the Respondents. : Mr. A. F. Hasan Ariff, Senior Advocate  
In all the appeals) instructed by Mr. Md. Zahirul Islam,  
Advocate-on-Record.

Dates of Hearing. : The 24<sup>th</sup> and 31<sup>st</sup> July, 2018  
Date of Judgment. : The 31<sup>st</sup> July, 2018

**Dismissed from service, termination simpliciter;**

**The orders of termination were not termination simpliciter. Consequently, this is the outcome of arbitrary exercise of power in a malafide way and as such, the High Court Division was justified in making the Rule absolute declaring the orders of termination to have been passed without lawful authority and to be of no legal effect.**

**There was an inquiry about the appointment of the writ-petitioner and pursuant to the said inquiry, the writ-petitioner were terminated from service. Therefore, it cannot be said that the writ-petitioner were terminated from service and in fact, they were dismissed from service in the garb of termination.**

**J U D G M E N T**

**SYED MAHMUD HOSSAIN, C. J:**

1. All the appeals, by leave, are directed against the judgment and order dated 15.05.2014 passed by the High Court Division in Writ Petition Nos.1755, 1756, 1758, 1759, 1760, 1763, 1764, 1765, 1766, 1767, 1768, 1769, 1770, 1771, 1797, 1798 of 2008 making all the Rules absolute with direction.

2. All the civil appeals have been heard together and are being disposed of by this common judgment as they do involve common questions of laws and facts.

3. The facts, leading to the filing of all the appeals, in a nutshell, are:

All the writ-petitioners were serving in different clerical posts as Senior Clerk, MLSS, LDA-cum-Typist, Bearer, Typist, Assistant Clerk, Office Assistant etc. At the Zia Fertilizer Company Limited (hereinafter referred to as ZFCL) for several years on daily basis. The writ-petitioners applied to the ZFCL authority to appoint them permanently in the vacant posts. On consideration of their quality of service and sound performance, the authority by Memo No.ZFCL/Proshason/ LSA/7(a)/1607 dated 09.10.2006 sent a proposal to the Chief of Bangladesh Chemical Industries Corporation (BCIC), which is the controlling authority of ZFCL seeking approval under Article 13(5) of the Bangladesh Chemical Industries Enterprise (Nationalization) Order, 1972 (P. O. 27 of 1972) for the permanent appointment of the writ-petitioners against vacant posts at ZFCL. It has been further stated in the said letter that “তারা নিজ নিজ কর্মক্ষেত্রে উল্লেখযোগ্য অবদান রেখেছেন। কিন্তু বছরের পর বছর কাজ করার পরও তাদেরকে স্থায়ীভাবে চাকুরীতে নিয়োগ না করায় তাদের মধ্যে অনিশ্চয়তা ও হতাশা বিরাজ করছে। তাদেরকে স্থায়ীভাবে নিয়োগ দেয়া হলে তাদের কর্ম স্পৃহা বৃদ্ধি পাবে।” It is further stated that as a regular practice vacant posts at the ZFCL are generally filled in by regular appointment from daily basis workers, who possess required qualifications.

4. In response to the aforesaid letter dated 09.10.2006 seeking approval under Article 13(5) of the Bangladesh Chemical Industries Enterprise (Nationalization) Order, 1972 (P. O. 27 of 1972) for permanent appointment of the writ-petitioners, the Deputy Employee Chief on behalf of the Employee Chief vide Memo No.BCIC/Niog-3/ZFCL-6/45 dated 05.02.2007 intimated the Managing Director of ZFCL about the approval of BCIC for permanent appointment of the writ-petitioners at ZFCL subject to approval of the ZFCL. In the letter it was clearly stated that “আপনাদের ০৯.১০.২০০৬ ইং তারিখের সূত্র নং-জেডএফসিএল/প্রশা/এলএসএ/৭(এ)/১৬০৭ এবং ৩১.০১.২০০৭ ইং তারিখের সূত্র নং--জেডএফসিএল/প্রশা/এলএসএ/১১৯/৪৯৯৫/৩০১৩ পত্রের প্রেক্ষিতে জানানো যাচ্ছে

যে, নিম্নে উল্লেখিত ১৮(আঠার) জন কে শূন্য পদের বিপরীত তাদের নামের পার্শ্বে উল্লেখিত পদ বেতনক্রম/মজুরীক্রম সম্পূর্ণ অস্থায়ী ও এডহক ভিত্তিতে নিয়োগদানের জন্য কর্তৃপক্ষ অনুমোদন করেছেন।’

5. After getting formal approval from the Bangladesh Chemical Industries Corporation, ZFCL Authority vide Memo dated 06.02.2007 issued appointment letter to the writ-petitioners and after getting the said appointment letters the writ-petitioners joined in their posts and started serving the authority to the satisfaction of all concerned. It is stated that there is no allegation from any quarter against the writ-petitioners’ service or their efficiency. Thereafter, suddenly by letter dated 29.11.2007, the Senior Assistant Secretary of the Ministry of Industries, informed the Chairman of the Bangladesh Chemical Industries Corporation that a newspaper article showed that there were certain irregularities in the appointment of 19 employees at ZFCL and that the writ-petitioners having been found unsuitable for the post, their services should be terminated. On receipt of the aforesaid Memo dated 29.11.2007, Bangladesh Chemical Industries Corporation by letter dated 05.12.2007 informed ZFCL to terminate the Service of the writ-petitioners at once. The ZFCL Authority as per direction of writ-respondent No.2, thereafter, by the impugned letter dated 11.12.2007 informed the writ-petitioners that their services were terminated and they would be entitled to one month’s pay in lieu of any prior notice.

6. Being aggrieved by and dissatisfied with the impugned letters dated 11.12.2007 (Annexure-B) issued by writ-respondent No.3 under the signature of writ-respondent No.5, the writ-petitioners filed the writ petitions before the High Court Division and obtained Rules Nisi in the above writ petitions.

7. Writ-respondent Nos.2 and 5 contested the Rules by filing affidavit-in-opposition controverting the material statements made in the writ petitions. Their case, in short, is that the writ-petitioners were appointed on purely temporary and ad-hoc basis and the same was mentioned in their appointment letters. The petitioners joined their services accepting the said terms and conditions as stated in the appointment letters and the employer had every right to terminate their services without assigning any reason and this is also the case as per provision of Bangladesh Labour Law,2006. It has been further stated that since the appointment of the writ-petitioners were irregular, they were legally terminated as per instruction made by the Ministry of Industry in terms of clause-3 of the appointment letter and that the writ-petitioners cannot have any grievance against the same. It has been further stated that as per P. O. 27 of 1972, the concerned Ministry has supervisory and controlling authority over BCIC and ZFCL and as such, ZFCL is bound to carry out the instructions of the Ministry as well as Bangladesh Chemical Industries Corporation. It has been further stated that the writ-petitioners’ services have been terminated in accordance with the provision of law and that the impugned orders of termination are nothing but termination simpliciter and hence the writ-petitioners cannot have any grievance against the same and that the Rules are liable to be discharged.

8. The learned Judges of the High Court Division, upon hearing the Rules, by the impugned judgment and order dated 15.05.2014, made the Rules absolute with direction.

9. Feeling aggrieved by and dissatisfied with judgment and order passed by the High Court Division, the writ-respondents as the leave-petitioners have filed Civil Petition for Leave to Appeal Nos.3028-3043 of 2014 before this Division, in which, leave was granted on 19.02.2015, resulting in Civil Appeal Nos.96-111 of 2015.

10. Mr. Tofailure Rahman, learned Senior Advocate, appearing on behalf of the appellants in all the civil appeals, submits that according to term and condition No.3 of the appointment letter, the writ-petitioner-respondents were terminated from service and as such, the termination in question is mere termination simpliciter and not a stigma and that the High Court Division taking into consideration some extraneous matter held that the orders of termination were arbitrary and malafide and as such, the impugned judgment should be set aside. He further submits that according to clause (2) of Article 11 of P.O. No.27 of 1972, the Board shall be subject to the superintendence and control of the Government and shall be guided, in discharge of its functions, by such general or special instruction as may, from time to time, be given to it by the Government and as such, the writ-petitioner-respondents were rightly terminated as per instruction of the concerned Ministry and as such, no interference is called for.

11. In support of his submissions, the learned Senior Advocate relied on the case of Secretary, EPIDC vs. Md. Serajul Haque, (1970) 22 DLR (SC)284.

12. Mr. A. F. Hasan Ariff, learned Senior Advocate, appearing on behalf of the respondents of all the civil appeals, on the other hand, submits that the instant orders of terminations were not termination simpliciter and in fact, the writ-petitioner-respondents had been dismissed from their service in the garb of termination and as such, the High Court Division was justified in making the Rules absolute.

13. We have considered the submissions of the learned Counsel of both the sides, perused the impugned judgment and the materials on record.

14. Admittedly, the writ-petitioners were appointed to the vacant posts at Zia Fertilizer Company Limited (ZFCL) as per recommendation of ZFCL authority. On consideration of their long standing service, the Bangladesh Chemical Industries Corporation at its discretion considered the recommendation of ZFCL and approved the appointment of the writ-petitioners to the respective posts. The writ-petitioners joined those posts and continued to work without any complaint from any quarter. It appears that suddenly the Ministry of Industries by its letter dated 29.11.2007 issued by the Senior Assistant Secretary informed the Bangladesh Chemical Industries Corporation that the writ-petitioners were not fit for the job against which, they were appointed and consequently, they were liable to be terminated.

15. For better appreciation, the letter dated 29.11.2007 is produced below:

গনপ্রজাতন্ত্রী বাংলাদেশ সরকার  
শিল্প মন্ত্রনালয়  
টেক্স-বিসিআইসি শাখা  
৯১, মতিঝিল বাণিজ্যিক এলাকা, ঢাকা।

নং-শিম/স্বস(বিসিআইসি)বিবিধ-১/২০০৭/১০৪১

তারিখ ২৯, নভেম্বর, ২০০৭

বিষয়ঃ আশুগঞ্জের জিয়া সার কারাখানায় গোপনে নিয়োগ, আড়াইশ জন বঞ্চিত সংবাদ পত্রিকায় প্রকাশিত হওয়ার প্রেক্ষিতে ইতোপূর্বে গঠিত তদন্ত কমিটির দাখিলকৃত প্রতিবেদনে উলিখিত নিয়োগপ্রাপ্ত ১৯ (উনিশ) জন কর্মচারী ও শ্রমিক নিয়োগ যাচাই বিষয়ে দায়ী কর্মকর্তা/কর্মচারীদের পূর্ব-দায়িত্ব নিরূপনের তদন্ত প্রতিবেদন।

উপর্যুক্ত বিষয়ের আলোকে ১৯৮৫ ই.স. তৎকালীন কর্মচারী প্রধান জনাব আব্দুর রহমান, জিয়া সার খারখানার তৎকালীন ব্যবস্থাপনা পরিচালক জনাব গোলাম কিবরিয়া, তৎকালীন মহাব্যবস্থাপক (ভারপ্রাপ্ত) জনাব এম, এ, আক্বাস, তৎকালীন ব্যবস্থাপক (প্রশাসন) সৈয়দ আইনুল হক এবং সিবিএর প্রাক্তন ও বর্তমান নেতৃবৃন্দ যথাক্রমে সর্বজনাব মোজাম্মেল হক খন্দকার, ফরিদউদ্দিন আহমেদ, মোঃ গাউছুর রহমান ও আমিন খন্দকার এর বিরুদ্ধে বিধি মোতাবেক ব্যবস্থা গ্রহণ এবং তদন্ত প্রতিবেদনে উলিখিত নিয়োগপ্রাপ্ত ১৯ (উনিশ) জন শ্রমিক কর্মচারী যাচাই অন্বেষণ অযোগ্য বিবেচিত হওয়ায় নিয়োগপত্রের শর্ত মোতাবেক তাদেরকে অপসারণ করার জন্য অনুরোধ করা হলো।

স্বাক্ষর অস্পষ্ট

২৯.১১.২০০৭

(এ, কে, এম, সামসুল আরফীন)

সিনিয়র সহকারী সচিব

ফোন ৪-৯৫৫১৪৩৫

16. The aforesaid letter reveals that inquiries against some other officers of Bangladesh Chemical Industries Corporation indicated that the writ-petitioners were not fit for the job and as such, they should be terminated. There is nothing on record to show that during the course of inquiry held at the instance of the Ministry, the writ-petitioners were heard and they were allowed to defend their case. There is no doubt that the Government in the Ministry of Industries is the controlling authority of ZFCL but it cannot direct BCIC to remove employees of ZFCL, who were appointed by the proper authority.

17. In this connection, clause (1) and (2) of Article 11 of the Bangladesh Industrial Enterprises (Nationalisation) Order, 1972 is quoted below:

“11.(1) The general direction and administration of the affairs and business of a corporation shall vest in a Board of Directors which may exercise all powers and do all acts and things which may be exercised or done by the Corporation.

(2) The Board shall be subject to the superintendence and control of the Government and shall be guided, in the discharge of its functions, by such general or special instruction as may, from time to time, be given to it by the Government.”

18. Clause (1) of Article 11 provides that general direction and administration of the affairs of the business of a corporation shall vest in a Board of Directors, which may exercise all powers and do all acts and things, which may be exercised or done by the Corporation.

19. Clause (2) of Article 11 provides that the Board shall be subject to the superintendence and control of the Government and shall be guided, in the discharge of its functions, by such general or special instruction as may, from time to time, be given to it by the Government.

20. For harmonious construction, both clause (1) and (2) must be read together. Consideration of clause (2) in isolation without considering the other clause cannot give a harmonious interpretation. If the Ministry dictates the Corporation in all matters then the purpose of clause (1) of Article 11 will become nugatory. There is, of course, no doubt that the Ministry has the control and superintendence over the Corporation but the Ministry cannot interfere in its internal management without concurrence of the Board of Directors. Therefore, the letter dated 29.11.2007 issued by the Senior Assistant Secretary of the Ministry of Industry was malafide exercise of power. The concerned authority of ZFCL recommended the appointment of the writ-petitioners to Bangladesh Chemical Industries Corporation which after considering everything recommended the absorption of the writ-

petitioners against the vacant posts. After that, the writ-petitioners were appointed to the said posts and no complaint was made by the Company about their performance. For the reasons best known to the Ministry, it instructed the Corporation to terminate the writ-petitioners' job. Therefore, the orders of termination were not termination simpliciter. Consequently, this is the outcome of arbitrary exercise of power in a malafide way and as such, the High Court Division was justified in making the Rule absolute declaring the orders of termination to have been passed without lawful authority and to be of no legal effect.

21. Mr. Tofailue Rahman, learned Senior Advocate, appearing on behalf of the appellants of all the civil appeals, relied on the case of *Secretary, EPIDC vs. Md. Serajul Haque (1970)22 DLR (SC)284* where the orders of termination do not at all contain any charge or stigma against the respondents. By these orders, their services were terminated with an offer of 1 month's pay in lieu of notice on the sole ground that their services were no longer required by the Corporation. These orders cannot, therefore, be regarded as orders terminating the services of the respondents by way of penalty.

22. In the case in hand, at the instruction of the Ministry of Industries, the Corporation initiated inquiry against some officials of the Corporation and subsequently pursuant to the letter dated 29.11.2007 of the Ministry, the services of the writ-petitioners were terminated. Therefore, the termination in the instant case is not a termination simpliciter and as such, the case cited by the learned Senior Advocate for the respondents has no manner of application.

23. In the case of *The Chartered Bank, Mombay, vs. The Chartered Bank Employees' Union and another AIR 1960 (SC)919*, it has been held as under:

“.....The form of the order of termination is not conclusive of the true nature of the order, for it is possible that the form may be merely a camouflage for an order of dismissal for misconduct. It is therefore always open to the tribunal to go behind the form and look at the substance; and if it comes to the conclusion, for example, that though in form the order amounts to termination simpliciter it in reality cloaks a dismissal for misconduct it will be open to it to set it aside as a colourable exercise of the power.”

24. In order to arrive at a correct decision, the Court has the power to go behind order of termination and may look to the cause underlining the dismissal.

25. Reliance may be placed on the case of *Bangladesh Road Transport Corporation and another vs. Md. Shahidullah (2002)54 DLR (AD)124*, it has been held as under:

“It appears that the Corporation initially wanted to remove the respondent through a proceeding and that having failed, they wanted to take action for compulsory retirement under Regulation 55(2) of Service Regulations,1990 and that also having failed his service was terminated. As a matter of fact from the materials on record, the learned Judges of the High Court Division correctly held that in the present case, it was punishment/dismissal in the garb of termination and consequently set aside the order of termination.”

26. Reliance may be placed on the case of *Parjatan Corporation vs. Md. Ali Hossain and another, (2013) 65 DLR (AD)158* wherein it has been held that the impugned letter of termination passed against the petitioner of this case though appears to be a termination simpliciter, but in fact, it is not. The petitioner was dismissed from his service in the garb of termination by resorting to regulation 50(2) of the Employees Service Regulations,1990.

27. The principle expounded in the case referred to above also applies to the facts and circumstances of the present case as the letter dated 29.11.2007 reveals that there was an inquiry about the appointment of the writ-petitioner-respondents and pursuant to the said inquiry, the writ-petitioner-respondents were terminated from service by the letter dated 11.12.2007. Therefore, it cannot be said that the writ-petitioner-respondents were terminated from service and in fact, they were dismissed from service in the garb of termination.

28. In the light of the findings made before, we do not find any substance in these appeals. Accordingly, all the appeals are dismissed without any order as to costs.