

19 SCOB [2024] HCD 140**HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)****WRIT PETITION NO. 6147 OF 2022**

Prof. Dr. Md. Rahmat Ullah
...Petitioner
Vs.
Government of Bangladesh and others
....Respondents

Mr. Md. Ahsanul Karim, Senior Advocate
with
Ms. Syeda Nasrin, Advocate
.....For the petitioner
Mr. Mohammad Sazzad Hossain,
Advocate
....For the respondent Nos. 3 and 4

Heard on: 16.03.2023, 01.06.2023,
15.06.2023 and 16.08.2023
Judgment on: 29.08.2023

Present:

Mr. Justice Zafar Ahmed
And
Mr. Justice Md. Bashir Ullah

Editors' Note:

In the instant case, the High Court Division examined whether the Syndicate of the University of Dhaka has the power to release a Professor of Law temporarily (সাময়িক অব্যাহতি) from all academic and administrative duties of the University and in view of the stand taken by the University whether formal departmental proceedings have been initiated against the petitioner Professor. The Court found that the term 'সাময়িক অব্যাহতি' (temporary release) used against the petitioner is not synonymous to 'suspension' because the committee formed by the Syndicate, being not formed in accordance with law, cannot be termed as a statutory Enquiry Committee. The Court also found that the Syndicate did not take any decision to initiate any formal departmental proceedings against the petitioner by framing formal charge. Based on these grounds, the Court held that the Syndicate's decision to release the petitioner temporarily from his duties is beyond the purview of law and the said decision was taken without lawful authority and without jurisdiction.

Key Words:

Article 52 and 56 (3) of the Dhaka University Order, 1973; clause 45(3) of the First Statutes; temporary release; suspension

Article 56(3) of the Dhaka University Order, 1973:

It is clear that the Syndicate did not frame any formal charge against the petitioner under Article 56(3) of the Order, 1973. The committee formed by the Syndicate cannot be termed as a statutory Enquiry Committee. It can be termed as a fact-finding committee. Accordingly, the show cause notice dated 08.06.2022 can be considered as a notice in relation to the fact-finding committee, not a statutory notice forming part of a

formal disciplinary proceedings inasmuch as no formal disciplinary proceeding were initiated against the petitioner. ... (Para 15)

It is true that the power to ‘appoint’ includes the power to ‘suspend’. It is well settled that an order of interim suspension can be passed while a departmental enquiry is pending against the delinquent even though there is no such term in the service rules.

... (Para 16)

The Syndicate’s decision to release the petitioner temporarily from his duties is beyond the purview of law:

In the instant case, the Syndicate did not deliberately use the term ‘suspension’ (সাময়িক বরখাস্ত), rather it used the term ‘সাময়িক অব্যাহতি’ (temporary release) which is not synonymous to ‘suspension’ for the reason that the syndicate did not take any decision to initiate any formal departmental proceedings against the petitioner by framing formal charge. The Syndicate formed a committee which seems to be merely a fact-finding committee. In our view, there was no exigency or circumstances envisaged by law to release the petitioner temporarily from his duties. Moreover, the term ‘temporary release from duties’ is uncommon in service jurisprudence. The University Order, Statutes and Service Regulations do not recognise such action. Therefore, we have no hesitation to hold that the Syndicate’s decision to release the petitioner temporarily from his duties is beyond the purview of law and the said decision was taken without lawful authority and without jurisdiction.

... (Para 16)

Article 52 of the Dhaka University Order, 1973:

The learned Advocate appearing for the respondent Dhaka University submits that the petitioner filed the instant writ petition prior to disposal of the appeal and as such, the instant writ petition is premature and the same is not maintainable. Article 52 of the Order, 1973 provides provisions for appeal to the Chancellor. Challenging the Syndicate’s decision and the office order temporarily releasing the petitioner from duties, he preferred an appeal to the Chancellor. Clause 45(5) of the First Statutes states that appeal to the Chancellor can be made against any order passed by the Syndicate on the recommendation of the Tribunal. In this case, the Syndicate’s decision was taken without any recommendation of the Tribunal. Therefore, the decision and subsequent office order in question are not appealable under Article 52 of the Order, 1973. Authority for this proposition of law is the case of *Samia Rahman vs. Government of Bangladesh and others*, 17 SCOB [2023] HCD 182 in which one of us was party. The appeal in question was misconceived and not being a statutory appeal, the instant writ petition is maintainable.

... (Para 17)

JUDGMENT

Zafar Ahmed, J.

1. In the instant writ petition, the petitioner challenged the letter being No. প্রশাসন-১/৭০৫৩৮ dated 24.04.2022 issued by the respondent No. 3 under the signature of respondent No. 5 (Annexure-F1) releasing the petitioner from all kinds of academic and administrative duties of the University of Dhaka pursuant to the decision of the Syndicate dated 20.04.2022 (Annexure-F) and also letter being No. রেজি/প্রশাসন-৪ dated 24.04.2022 removing him from the post of Dean of the Faculty of Law (Annexure-F2).

2. This Court, on 08.06.2022, issued a Rule Nisi and passed an interim order staying operation of impugned letter dated 24.04.2022 (Annexure-F1) so far as it relates to releasing the petitioner from the academic activities for a period of 06 (six) months from date.

3. Challenging the interim order, the respondent Dhaka University filed Civil Petition For Leave to Appeal (CP) No. 1914 of 2022 before the Appellate Division. The Apex Court did not interfere with the interim order and, vide order dated 02.02.2023 directed this Bench to dispose of the Rule on merit.

4. The Vice Chancellor and Registrar of the University of Dhaka filed a joint affidavit-in-opposition.

5. It is stated in the writ petition that the petitioner was appointed as a Lecturer of the Department of Law, University of Dhaka, vide appointment letter dated 06.08.1999 with effect from 13.12.2000. He was made permanent in the said post on 29.03.2004. Eventually, he was promoted to the post of Professor on 03.07.2014. He was elected as Dean of the Faculty of Law for three consecutive terms from 2016 to till date. He was elected as a Member of Dhaka University Syndicate four times, member of the Senate five times, Secretary of the Dhaka University Teachers' Association (DUTA) one time (2016-2017) and President of the DUTA twice (2020-2021 and 2021-2022). He was the Member of Bangladesh Judicial Service Commission (BJSC) for five years (2017-2022).

6. On 17.04.2022, while the Dhaka University was celebrating the historical Mujib Nagar Day, the petitioner as the President of the DUTA gave speech dedicating his deepest respect to the Father of the Nation Bangabandhu Sheikh Mujibur Rahman, his family members, the great four leaders of the Nation and our heroic freedom fighters. While describing the historical background, formation and role of the Mujib Nagar Government, he mentioned the names of all Ministers who were responsible and entrusted with different ministries of the Mujib Nagar Government. Thus, generally the name of the erstwhile Minister of Foreign Affairs, Law and Parliamentary Affairs, namely Khondaker Mostaq Ahmad came into chronology. The petitioner also expressed his hatred and dissatisfaction to that Minister who was subsequently involved in the brutal and tragic assassination of our Father of the Nation along with his family members. It is stated that the petitioner's speech was twisted and protest was made. The Vice Chancellor was asked to expunge the statements of the petitioner, who during his speech expunged those. Subsequently, on the same day it was published in some of the newspapers that the petitioner had payed his respect to the then Minister of Foreign Affairs, Law and Parliamentary Affairs in his speech. On the following day (18.04.2022), the petitioner held a press conference explaining his position in clear terms.

7. Thereafter, an urgent meeting of the Syndicate was held on 20.04.2022 in which the following decisions were taken (Annexure-F):

“সিদ্ধান্ত : (১) আইন বিভাগের অধ্যাপক ড. মো: রহমত উল্লাহ মুজিবনগর সরকারের সাথে যুক্তিত্ব খুনী মোজাকের নাম সম্পৃক্ত করে শ্রদ্ধা জ্ঞাপনের সংশ্লিষ্ট বক্তব্যের নিন্দা জ্ঞাপন করা হয়।

(২) অধ্যাপক ড. মো: রহমত উল্লাহ-কে ঢাকা বিশ্ববিদ্যালয়ের সকল একাডেমিক ও প্রশাসনিক দায়িত্ব থেকে সাময়িক অব্যাহতি দেয়া হলো।

(৩) তাঁর কাছ থেকে উল্লেখিত নিন্দনীয় বক্তব্য প্রদানের লক্ষ্য ও উদ্দেশ্য বিষয়ে লিখিত ব্যাখ্যা চাওয়া হোক।

(৪) অধ্যাপক ড. মো: রহমত উল্লাহ-এর বক্তব্য পর্যালোচনা করে সুপারিশসহ রিপোর্ট প্রদানের জন্য নিম্নোক্তদের সমন্বয়ে একটি কমিটি গঠন করা হলো:

.....
.....”

8. In accordance with the decision of the Syndicate, the Registrar issued the impugned letter dated 24.04.2022 (Annexure-F1) informing the petitioner that he had been temporarily released from all kinds of academic and administrative duties of the University in view of the decision of the Syndicate. Subsequently, he was also removed from his elected post of Dean of the Faculty of Law.

9. On 12.05.2022, the petitioner preferred an appeal before the Hon'ble Chancellor. However, he did not receive any response and hence, the instant writ petition.

10. It appears from the supplementary affidavit filed by the petitioner that the Registrar of the University issued a show cause notice dated 08.06.2022 to the petitioner. The said show cause notice is reproduced below:

“কারণ দর্শানোর নোটিশ”

তারিখ: ০৮/০৬/২০২২

অধ্যাপক ড. মো. রহমত উল্লাহ
আইন বিভাগ
ঢাকা বিশ্ববিদ্যালয়
মহোদয়,

আপনার সদয় অবগতির জন্য জানানো যাচ্ছে যে, আপনি ঢাকা বিশ্ববিদ্যালয়ের শিক্ষক সমিতির সভাপতি ও আইন বিভাগের অধ্যাপক ড. মো. রহমত উল্লাহ গত ১৭ এপ্রিল, ২০২২ তারিখ ঢাকা বিশ্ববিদ্যালয় কর্তৃক আয়োজিত মুজিবনগর দিবসের আলোচনা সভায় আপনার প্রদত্ত বক্তব্যকে কেন্দ্র করে উদ্ভূত পরিস্থিতি এবং এ বিষয়ে আপনার বক্তব্য পর্যালোচনা করে সুপারিশসহ রিপোর্ট প্রদানের জন্য সিডিকেট (২০-০৪-২০২২) কর্তৃক একটি কমিটি গঠন করা হয়েছে এবং আপনার বিরুদ্ধে নিম্নোক্ত অভিযোগ আনয়ন করা হয়েছে:

আপনি ঢাকা বিশ্ববিদ্যালয়ের শিক্ষক সমিতির সভাপতি হিসেবে গত ১৭ এপ্রিল, ২০২২ তারিখ ঐতিহাসিক মুজিবনগর দিবসে ছাত্র-শিক্ষক কেন্দ্রে আলোচনা সভায় আপনার বক্তব্যের এক পর্যায়ে মুজিবনগর সরকারের বিভিন্ন মন্ত্রণালয়ের দায়িত্বে নিয়োজিত সদস্যদের প্রতি শ্রদ্ধা জানাতে গিয়ে তাঁদের সাথে তৎকালীন পররাষ্ট্র মন্ত্রণালয়ের দায়িত্বে নিয়োজিত বঙ্গবন্ধুর ঘৃণিত খুনি বিশ্বাসঘাতক খন্দকার মোশতাকের প্রতিও শ্রদ্ধা নিবেদন করে বক্তব্য দেন যা অগ্রহণযোগ্য ও নিন্দনীয়;

আপনার উপরোক্ত বক্তব্যের পরিপ্রেক্ষিতে ১৭ এপ্রিলের পর ১৮-০৪-২০২২ তারিখ বাংলাদেশ ছাত্রলীগ ঢাকা বিশ্ববিদ্যালয় শাখা প্রতিবাদ স্মারকলিপি, ঢাকা বিশ্ববিদ্যালয় শিক্ষক সমিতি ২০.০৪.২০২২ ও ঢাকা বিশ্ববিদ্যালয় শিক্ষকদের একটি সংগঠন নীলদল ২০-০৪-২০২২ তারিখে বিবৃতি প্রদান করে। বিবৃতিতে এই ধরনের বক্তব্যের তীব্র নিন্দা ও প্রতিবাদ জানানো হয় এবং ঘটনায় প্রত্য্যখ্যান করা হয়। বিবৃতিতে আরো উল্লেখ করা হয় যে, এই বক্তব্য অধ্যাপক ড. মো. রহমত উল্লাহর নিজস্ব বক্তব্য, এর দায় দায়িত্ব শিক্ষক সমিতি বা নীলদল নিবে না। যদিও আপনি ১৮ই এপ্রিল ২০২২ সাংবাদিক সম্মেলনে এবং সিডিকেট (২০-০৪-২০২২) সভায় উপস্থিত হয়ে পূর্বাগত অবস্থান তুলে ধরে অনিচ্ছাকৃত ভুলের জন্য দুঃখ প্রকাশ ও ক্ষমা প্রার্থনা করেন। কিন্তু সিডিকেটে উপস্থিত সকল সম্মানিত সদস্য মনে করেন যে, ঢাকা বিশ্ববিদ্যালয়ে মহান মুক্তিযুদ্ধ এবং জাতির পিতা বঙ্গবন্ধু শেখ মুজিবুর রহমানের সুমহান মর্যাদা ক্ষুণ্ণ হয় এমন কোন মন্তব্য, বক্তব্য ও আচরণ কোনক্রমেই গ্রহণযোগ্য নয়;

অতএব, আপনার মতো একজন দায়িত্বশীল শিক্ষকের নিকট থেকে এ ধরনের অগ্রহণযোগ্য বক্তব্য দেশ বা জাতি কখনো আশা করে না। এমতাবস্থায়, আপনার উল্লেখিত নিন্দনীয় বক্তব্য প্রদানের লক্ষ্য ও উদ্দেশ্য বিষয়ে লিখিত ব্যাখ্যা চিঠি ইস্যুর তারিখ থেকে আগামী ৭ (সাত) কার্যদিবসের মধ্যে জানানোর জন্য এবং উপরোক্ত বিষয়ে

আপনি ব্যক্তিগত শুনানি দিতে আগ্রহী কিনা তাও লিখিতভাবে জানানোর জন্য আদিষ্ট হয়ে আপনাকে অনুরোধ
জানাচ্ছে।

আপনার বিশ্বস্ত
প্রবীর কুমার সরকার
রেজিস্টার (ভারপ্রাপ্ত)
ঢাকা বিশ্ববিদ্যালয়

11. The petitioner replied to the show cause notice on 19.06.2022 clarifying his position.

12. The case of the respondent Dhaka University, which is summarized in paragraph No. 7 of the affidavit-in-opposition, is that after the petitioner's speech, there was a huge uproar from all walks of the society condemning the petitioner's speech. Recognizing the exigency of the situation the Vice-Chancellor convened a meeting of the Syndicate. The Syndicate in its meeting dated 20.04.2022 duly formed a Committee as required by Article 56(3) of the Dhaka University Order, 1973 and clause 45(3) of the First Statutes. Pending enquiry, the petitioner was lawfully suspended as it is a universal practice that an employee may be suspended during a disciplinary proceeding. The Syndicate being the appointing authority of the petitioner (Article 24(f) of Dhaka University Order, 1973) has the power and authority to suspend him temporarily. Therefore, contrary to the petitioner's allegations, the University authorities have done nothing wrong in forming an enquiry committee or placing him under suspension.

13. In the instant case, the issues before us for adjudication are whether the Syndicate has the power to release the petitioner temporarily (সাময়িক অব্যাহতি) from all academic and administrative duties of the University and in view of the stand taken by the University whether a formal department proceedings have been initiated against the petitioner.

14. Under Article 56(3) of the Dhaka University Order, 1973 (in short, the 'Order, 1973') a teacher of the University may be dismissed on the grounds mentioned therein subject to an enquiry into the charges held by the Enquiry Committee. Under clause 45(4) of the First Statutes of the University if a *prima facie* case is established as a result of the enquiry, a Tribunal shall consider the case and recommend to the Syndicate such action as it deems fit. The procedures to be followed by the Enquiry Committee and the Tribunal have been laid down in the Enquiry Committee and Tribunal (Teachers and Officers) Regulations, 1980.

15. The impugned decision of the Syndicate dated 20.04.2022 has already been quoted above. It is clear that the Syndicate did not frame any formal charge against the petitioner under Article 56(3) of the Order, 1973. The committee formed by the Syndicate cannot be termed as a statutory Enquiry Committee. It can be termed as a fact-finding committee. Accordingly, the show cause notice dated 08.06.2022 can be considered as a notice in relation to the fact-finding committee, not a statutory notice forming part of a formal disciplinary proceedings inasmuch as no formal disciplinary proceeding were initiated against the petitioner.

16. The petitioner was temporarily released from his duties which the University in its affidavit-in-opposition termed as suspension. It is true that the power to ‘appoint’ includes the power to ‘suspend’. It is well settled that an order of interim suspension can be passed while a departmental enquiry is pending against the delinquent even though there is no such term in the service rules. In *Subramaniam vs. State of Kerala*, (1973) KLR 47= (1973) KLJ 31, it was held that before ordering the suspension, the appointing authority must come to a conclusion that the allegations are such that in the interests of maintenance of the purity of administrative or the upkeep of proper standard, discipline and morale in the service, it would not be proper to associate the delinquent with the day to day work until he is cleared of the charges. In the instant case, the Syndicate did not deliberately use the term ‘suspension’ (সাময়িক বরখাস্ত), rather it used the term ‘সাময়িক অব্যাহতি’ (temporary release) which is not synonymous to ‘suspension’ for the reason that the syndicate did not take any decision to initiate any formal departmental proceedings against the petitioner by framing formal charge. The Syndicate formed a committee which seems to be merely a fact-finding committee. In our view, there was no exigency or circumstances envisaged by law to release the petitioner temporarily from his duties. Moreover, the term ‘temporary release from duties’ is uncommon in service jurisprudence. The University Order, Statutes and Service Regulations do not recognise such action. Therefore, we have no hesitation to hold that the Syndicate’s decision to release the petitioner temporarily from his duties is beyond the purview of law and the said decision was taken without lawful authority and without jurisdiction.

17. The learned Advocate appearing for the respondent Dhaka University submits that the petitioner filed the instant writ petition prior to disposal of the appeal and as such, the instant writ petition is premature and the same is not maintainable. Article 52 of the Order, 1973 provides provisions for appeal to the Chancellor. Challenging the Syndicate’s decision and the office order temporarily releasing the petitioner from duties, he preferred an appeal to the Chancellor. Clause 45(5) of the First Statutes states that appeal to the Chancellor can be made against any order passed by the Syndicate on the recommendation of the Tribunal. In this case, the Syndicate’s decision was taken without any recommendation of the Tribunal. Therefore, the decision and subsequent office order in question are not appealable under Article 52 of the Order, 1973. Authority for this proposition of law is the case of *Samia Rahman vs. Government of Bangladesh and others*, 17 SCOB [2023] HCD 182 in which one of us was party. The appeal in question was misconceived and not being a statutory appeal, the instant writ petition is maintainable.

18, In view of the foregoing discussions, we find merit in the Rule.

19. In the result, the Rule is made absolute. The impugned decision of the Syndicate releasing the petitioner from all academic and administrative duties of the Dhaka University and subsequent office orders issued pursuant to the said decision of the Syndicate are declared to have issued without lawful authority and are of no legal effect.