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HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

Writ Petition No. 11346 of 2014

Mr. Md. Hamidur Rahman, Advocate,

Khademuzzaman

...For the petitioner

..... Petitioner

Mr. Md. Ashraful Arafat Sufian, Advocate

-Versus-

.....For respondent no. 8

**The People's Republic of Bangladesh &
others**

Heard on: 16.06.2015, 25.06.2015
and Judgment on 02.07.2015.

... Respondents

Present:

Mr. Justice Md. Emdadul Huq

&

Mr. Justice Muhammad Khurshid Alam Sarkar

Article 102 of the Constitution:

The above conduct of the petitioner, as to non-disclosure of pendency of the representation before the Board, clearly suggests that he attempted to suppress the said fact before this Court and obtained this Rule by misleading the Court for which he deserves to be penalised. An aggrieved person, who wishes to come to this Court for seeking any remedy, must come with clean hands without attempting to hide any fact inasmuch as this Court in exercising the jurisdiction under Article 102 of the Constitution carries out its duty as an extra ordinary forum, unlike the other ordinary Courts. This Court, in essence, is an equity Court, for, the State has provided this provision in the Constitution for adjudication upon the bonafide claims of the citizens who will not have any forum, including civil Court, tribunal or a quasi-judicial body, for vindication of their rights. If a citizen seeks to abuse the said provision, this Court not only turns down his petition, but also penalises him. ... (Para 12)

JUDGMENT

MUHAMMAD KHURSHID ALAM SARKAR, J:

1. By filing an application under Article 102 of the Constitution, the petitioner questioned the legality and propriety of the Memo no. 2/Hp/732/6527/(5) dated 26.10.2014 (Annexure-F) issued by respondent no. 3 cancelling the Memo no. 2/Gm/732/6100 dated 10.09.2014 (Annexure-E) and, pursuant thereto, issuance of the Memo no. 2/Hp/732/6655/(5) dated 09.11.2014 Annexure-G issued by the same respondent no. 3 directing the Headmaster of the school to submit a proposal for the formation of an Ad-hoc Committee of the school for approval of the Board.

2. It is stated that the petitioner is serving as the acting Headmaster (Headmaster-in-charge) of Bakdokra Adarsha Uchcha Bidyalaya of Mirzaganj under Upazila Domar, District- Nilphamari and respondent no. 8 Jagodish Chandra Barman is the suspended Headmaster, who was suspended vide resolution of the Management Committee dated 21.07.2014, which was conveyed to the said suspended Headmaster on the same day by a letter signed and issued by the Chairman of the Managing Committee. Respondent no. 8 filed Other Class Suit no. 36 of 2014 challenging the above suspension order and the suit is still pending. The petitioner claims that he is performing functions of the Headmaster in absence of respondent no. 8 since the date of his suspension. The tenure of the Management Committee expired on 05.09.2014 and, accordingly, the petitioner, as the acting

Headmaster, took steps to form an Ad-hoc committee for regulating the affairs of the school and, pursuant thereto, respondent no. 3 vide Memo no. 2/Hp/732/6100(5) dated 10.09.2014 directed the petitioner to submit the names of the members of the Ad-hoc committee for approval of the Board. At this stage, respondent no. 5 by his letter dated 22.10.2014 nominated Mr. Robiul Islam, Assistant Teacher, as the representative of the teachers in the said committee, respondent no. 6 vide his letter dated 22.10.2014 nominated Mr. Md. Monirul Islam as the representative of the guardian category and the Member of Parliament by his letter dated 12.10.2014 nominated Mr. Md. Irtazul Islam as the Chairman of Ad-hoc committee. With the aforesaid names, the petitioner on 27.10.2014 submitted the said committee before the Board for its approval. Subsequently, respondent no. 3 vide memo no. 2/Hp/732/6527(5) dated 24.10.2014 withdrew the above-mentioned previous letter dated 10.09.2014 under memo no. 2/Hp/732/6100(5) dated 10.09.2014. Respondent no. 3, then, issued memo no. 2/Hp/732/6655(5) dated 09.11.2014 asking the suspended Headmaster to submit the names of the persons to be included in the Ad-hoc committee so that the Board may approve it.

3. The petitioner being aggrieved with the withdrawal of the above-mentioned previous letter dated 10.09.2014 and issuance of the subsequent letter dated 09.11.2014, wherein the Headmaster was addressed and asked to submit the names of the Ad-hoc committee, approached this Court and obtained this Rule.

4. Respondent no. 8 contested this Rule and by filing affidavit-in-opposition contending, *inter-alia*, that he is no longer a suspended teacher and presently discharging his duty as the Headmaster of the school. The Chairman of the immediate past Managing Committee, which had earlier suspended him, had later on withdrawn the suspension order during the tenure of the said committee having asked him to resume his duties as the Headmaster. It is stated that before placing him on suspension, some notices were issued by the Chairman of the Managing Committee and this respondent replied to all the notices, but when the Chairman of the said Managing Committee was not receiving the replies, he sent the same by registered post to the Chairman of the Managing Committee. Eventually, a letter was issued on 21.07.2014 by the Chairman of the Managing Committee suspending this respondent and, at that point of time, he did not have any option other than taking resort to the Court and, accordingly, he filed Other Class Suit no. 36 of 2014 before the Court of learned Assistant Judge, Domar, Nilphamari.

5. Mr. Md. Hamidur Rahman, the learned Advocate appearing for the petitioner, takes us through the annexures to the writ petition as well as the supplementary-affidavit and submits that these papers strongly suggest that respondent no. 8 still remains on suspension and, thus, he is not in his service and, therefore, issuance of the letter dated 09.11.2014 by respondent no. 3 is a whimsical and arbitrary decision. In an endeavour to vitiate the operation of annexure-H, filed by respondent no. 8 before this Court, he submits that the Chairman of the Managing Committee alone has withdrawn the suspension of respondent no. 8 as there was no resolution of the past Managing Committee to undo the previous resolution dated 21.07.2014 by which he was suspended. He refers to annexure- J to the supplementary-affidavit and contends that till to-day the petitioner is serving as the acting Headmaster and, accordingly, argues that the statement made by respondent no. 8 claiming that he is functioning as the Headmaster is totally false. He next submits that respondent no.3 ought to have issued show cause notice to the petitioner before issuance of the impugned letter dated 09.11.2014 and thereby could have ascertained the true position of respondent no. 8.

6. By making the aforesaid submissions, the learned Advocate for the petitioner prays for making the Rule absolute.

7. Per contra, Mr. Md. Ashrafur Arafat Sufian, the learned Advocate appearing for respondent no. 8, submits that the order of suspension was taken by the Chairman of the Managing Committee in violation of Rule 13(1) of the Recognized Non-Government Secondary School Teachers (Board of Intermediate and Higher Secondary Education, Rajshahi) Terms and Conditions of Service Regulation, 1979. However, subsequently, the said suspension order having been withdrawn by the same person of the Managing Committee of Bakdokra, Nilphamary, there cannot be any grievance by

the petitioner. He refers to annexure-1 and submits that when the Chairman of the Managing Committee directed the petitioner to return to his original post of the Assistant Headmaster upon informing the withdrawal of suspension of the respondent no. 8 on 04.09.2014, the petitioner did not raise any objection thereto, neither before the Chairman of the managing committee nor before the Board. Finally, he submits that the petitioner does not have any locus-standi to file the instant writ petition inasmuch as the issue with regard to formation of an Ad-hoc committee is an exclusive function of the Board. In an endeavour to elaborate his submission on this point, he submits that a committee would be formed only after the approval of the Board and the Board's decision and order is to be followed and complied with by the educational institution, otherwise, the Board is empowered to cancel the committee. He submits that the petitioner, being an acting Headmaster, does not have anything to be aggrieved with the impugned memo in the light of the fact that the acting Headmaster or Headmaster, whoever will be performing the functions of the Head of the institution, will simply be discharging the secretarial duty in the said committee holding the ex-officio post of the Member Secretary of the said committee. Finally, he submits that the petitioner ought to have approached the Board for resolving the dispute before directly jumping to this Court given that had the Board authority been updated with the contentious facts of both the parties, there would have been effective resolution of the matter.

8. After hearing both the sides, it appeared to us that the grievance of the writ petitioner is actually with regard to reinstatement of the suspended Headmaster by the Chairman of the immediate past Managing Committee, for, it transpires that issuance of annexure-G being a letter dated 09.11.2014, by which the Board has asked the Headmaster to send a proposal for formation of an Ad-hoc Committee, prompted the writ petitioner to approach before this Court.

9. Admittedly, the Chairman of the immediate past Managing Committee had suspended the Headmaster vide his letter dated 21.07.2014 and the same person, being the Chairman of the Managing Committee, has reinstated him on 04.09.2014 before the tenure of the said Managing Committee expired. The writ petitioner's claim is that the suspension of the Headmaster was done properly, but reinstatement of the Headmaster was done without observing the legal procedure.

10. Since the writ petitioner was serving as the acting Headmaster, the copy of both the resolutions (first one is- adopting resolution for suspension of the Headmaster and subsequent one is- withdrawal of the suspension) are supposed to be under his custody in the light of the fact that he was performing the functions of the Member Secretary of the Managing Committee by dint of holding the post of Headmaster-in-charge. The Headmaster would not be in a position to produce the subsequent resolution before this Court, if the writ petitioner does not cooperate with the former. In order to establish or controvert the writ petitioner's claim that there was no resolution of the Managing Committee, evidence of the Chairman and other members of the past committee are required to be taken. Also, whether the Headmaster is currently performing the functions of the Headmaster of the Bakdokra Model High School, appears to be a disputed question of fact in the light of the fact that while the Board by issuing annexure-G confirms that respondent no. 8 is currently carrying out the duties of the Headmaster of the said school, the petitioner is seeking to dispute the said fact by producing a piece of paper from the Upazilla Education Officer. The above scenario of this case led us to express our view in the open Court that the first option for the petitioner was either to approach the Board with a request to hear the dispute in presence of the writ petitioner, the Headmaster, Chairman and other members of the Committee and his second option was to seek declaration from the civil Court that the reinstatement of the Headmaster by the Chairman of the past Managing Committee was illegal, and, accordingly, at this juncture, this Court asked the learned Advocate for the petitioner whether the writ petitioner had availed the said forums. In reply thereto, the learned Advocate informed us that no civil suit has been instituted challenging the impugned memos and, also, he is not aware of any representation made by the petitioner to the Board.

11. However, on the date of delivery of this judgment, the learned Advocate for the petitioner informed this Court that the petitioner indeed has made a written representation to the Chairman of the Board on 13.11.2014, but the same has not been disposed of and in support of his submission a

photo copy of the said application was produced before us for our perusal and consideration. The learned Advocate for the petitioner could not satisfactorily explain as to why he did not produce this paper by way of annexing the same to the writ petition or by making any statement in the writ petition. Had this information been available before this Court at the time of issuance of the Rule, this Court instead of issuance of the Rule, would have been in a position to direct respondent no. 2 to dispose of the same as, in our opinion, there is no legal issue for examination of this Court, until a decision is made by the concerned authority on the factual issue as to whether the Headmaster's suspension has been withdrawn at all.

12. The above conduct of the petitioner, as to non-disclosure of pendency of the representation before the Board, clearly suggests that he attempted to suppress the said fact before this Court and obtained this Rule by misleading the Court for which he deserves to be penalised. An aggrieved person, who wishes to come to this Court for seeking any remedy, must come with clean hands without attempting to hide any fact inasmuch as this Court in exercising the jurisdiction under Article 102 of the Constitution carries out its duty as an extra ordinary forum, unlike the other ordinary Courts. This Court, in essence, is an equity Court, for, the State has provided this provision in the Constitution for adjudication upon the bonafide claims of the citizens who will not have any forum, including civil Court, tribunal or a quasi-judicial body, for vindication of their rights. If a citizen seeks to abuse the said provision, this Court not only turns down his petition, but also penalises him.

13. Accordingly, we are of the view that this is a fit case to penalise the petitioner for his mysterious conduct of non-production of the representation dated 13.11.2014 filed by him before the Board.

14. However, for proper resolution of the dispute, we are of the view that respondent no. 2 should be directed to dispose of the petitioner's representation within a stipulated time upon hearing the petitioner, Headmaster and the Chairman & other members of the immediate past committee.

15. In the result, the Rule is discharged with a cost of Taka 10,000/- (Ten Thousand) to be paid by the petitioner in the national exchequer by way of submitting Treasury Challan within 30 (thirty) days. The order of stay granted at the time of issuance of the Rule is hereby vacated.

16. We direct respondent no. 2 to dispose of the petitioner's application dated 13.11.2014 within 30 (thirty) days from the date of receipt of this judgment by asking the writ petitioner, the Headmaster (respondent no. 8) and if necessary the Chairman & other members of the immediate past Managing Committee.

17. Office is directed to communicate this order to respondent no. 2 at once.

18. Respondent no. 2 is directed to communicate its decision on the petitioner's application dated 13.11.2014 to the writ petitioner and also to respondent no. 8 immediately after disposing of the said application.