

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)

**Writ Petition No. 12567 of 2016.**

IN THE MATTER OF:

An application under Article 102(2)(a)(ii) of the Constitution of the People's Republic of Bangladesh.

-And-

IN THE MATTER OF :

Mst. Ferdous Ara.

.....Petitioner.

**-V E R S U S-**

The Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Education, Secretariat, Dhaka and others.

.....Respondents

Mr. Md. Humayun Kabir, Advocate

...For the Petitioner.

Mr. ABM Abdullah Al Mahmud, D.A.G with

Mrs. Rehana Sultana with

Mr. Ashique Rubaiat, A.A.Gs.

..... For the Respondents.

**Present:**

**Mr. Justice K. M. Kamrul Kader**

**And**

**Mr. Justice Muhammad Mahbub Ul Islam**

**Heard on : 01.09.2021, 10.11.2021 & 17.11.2021**

**And**

**Judgment On: 06.03.2022.**

**K.M. Kamrul Kader, J :**

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh, this Rule Nisi was issued on 28.11.2016, in the following terms:

*“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the office order dated 13.07.2016 contained in Memo No.73/4G/1175-*

*Ma/11/4913/6 issued under the signature of the respondent No.4 directing the Headmaster, Jagarany Bidda Niketon, Baraigram, Natore, the respondent No.9 to return the received money by the petitioner as the Assistant Teacher of the said School without drawing any proceeding against the petitioner (Annexure-F), should not be directed to have been issued without lawful authority and is of no legal effect, and/or pass such other or further order or orders as to this Court may seem fit and proper.”*

The averments figured in the writ petition, in support of the Rule, in short are that the petitioner was appointed as Assistant Teacher (Computer), Jagarany Bidda Niketon, Baraigram, Natore. It is also stated that the petitioner applied for the post of Assistant Teacher of the said school, in response to the advertisement published by the concerned authority and the duly constituted selection committee selected the petitioner and she joined in the said School on 19.02.2005 as Assistant Teacher (Computer), in response to the appointment letter dated 17.02.2005 issued by the Headmaster of the School (Annexure A to the writ petition). It is also stated that thereafter, the Headmaster of the School submitted all necessary papers to the respondent No.2, Director General, Directorate of Secondary and Higher Education, Shikkha Bhavan, Dhaka for enlisting the name of the petitioner in the Monthly Pay Order (MPO) as Assistant Teacher (Computer) and after scrutinizing and examining all necessary papers and documents, the Director General, Directorate of the Secondary and Higher Education was pleased to enlist the name of the petitioner in the Monthly Pay Order (MPO) from July, 2011 under Index No. 1057803. Since then she has been receiving her government portion of monthly salary and other financial benefits

regularly without any objection from the part of the respondents. Next, on 13.07.2016, the respondent No.4, Assistant Director (Ma-2), Directorate of Secondary and Higher Education issued a show cause notice vide Memo No.73/4G/1175-M/11/4908/5 dated 13.07.2016 and directing the headmaster to give explanation about the enlistment of the petitioner's name in the Monthly Pay Order (MPO). On the self same date, the respondent No.4 issued another show cause notice vide memo No. 73/4G/1175-M/11/4908/6 dated 13.07.2016 upon the petitioner and directed her to give explanation relating to her enlistment in the monthly pay order (MPO) list and stopped her MPO. The petitioner as the Assistant Teacher has been enjoying the government portion of salary of from July, 2011. The respondent No.4 also issued a letter vide memo No. 73/4G/1175-M/11/4913/6 dated 13.07.2016 to the respondent No.9, Headmaster of the said school directing him to return the money received by the petitioner as the Assistant Teacher (agriculture) without drawing any proceeding against the petitioner, though she has been receiving the government portion of salary as the Assistant Teacher after completion of all legal formalities. It is stated that the petitioner has been serving as the Assistant Teacher (Computer) of Jagarany Bidda Niketon, Baraigram, Natore and the appointment of the petitioner was conducted by the duly constituted selection committee including the representative of the respondent No.2, Director General, Directorate of Secondary and Higher Education, Shikkha Bhaban, Dhaka and as such, the petitioner is legally entitled to get the government portion of salary against her service by way of Monthly Pay Order (MPO).

Being aggrieved by and dissatisfied with the impugned Memo No. 73/4G/1175-Ma/11/4913/6 dated 13.07.2016, the petitioner filed the instant writ petition before this court and obtained the instant Rule.

Mr. Md. Humayun Kabir, the learned Advocate appearing on behalf of the petitioner submits that the impugned order was issued by the respondent No.4, directing the Headmaster of the said School to return the money through Treasury Chalan which was received by the petitioner as Assistant Teacher is illegal. He further submits that once MPO is sanctioned in favour of a teacher it becomes her legal right and it cannot be stopped and she cannot be deprived of such benefits without any cogent ground or reason and without giving any notice to that effect and as such, the action of the respondents are in violation of the principle of natural justice and fundamental rights guaranteed in our Constitution. The petitioner has been serving as Assistant Teacher (Computer) or performing her duties sincerely with full satisfaction of the school authority and also received salary for more than 05(five) years against her service. She has requisite educational qualifications and experiences, but the respondents without considering the relevant rules and documents passed the impugned order in violation of the জনবল কাঠামা as well as the petitioner's fundamental rights as guaranteed in our Constitution.

To substantiate his submission the learned Advocate for the petitioner reliance a decision in the case of *Shaikh Rezaul Karim –vs.- Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Education, Bangladesh*, reported in 3 CLR (HCD)(2015) 216.

Mr. ABM Abdullah Al Mahmud, the learned Deputy Attorney General appearing on behalf of the respondents opposes the Rule without filing any affidavit-in-opposition.

We have heard the learned Advocate for the petitioner and the learned Deputy Attorney General for the respondents perused the writ petition and the material on record annexed herewith. It appears from the record that the petitioner was appointed in the said school, after completion of all legal formalities and she joined in the said school on 19.02.2005 as Assistant Teacher (Computer) as evident Annexure A and A-1 to the writ petition. Next, the Headmaster of the School submitted all necessary papers to the respondent No.2, Director General, Directorate of Secondary and Higher Education, for enlisting the name of the petitioner in the Monthly Pay Order (MPO) as Assistant Teacher and after scrutinizing and examining all necessary papers and documents, the respondent No.2 was pleased to enlist the name of the petitioner in the Monthly Pay Order (MPO) from July, 2011 under Index No. 1057803. Since then she has been receiving her government portion of monthly salary and other financial benefits regularly as Assistant Teacher (agriculture) without any objection from the part of the respondents. We also noticed that though the petitioner was appointed as Assistant Teacher (Computer), but mistakenly or otherwise her name was enlisted in the MPO as Assistant Teacher (Agriculture) and since then she has been receiving her government portion of monthly salary and other financial benefits regularly. After long laps of time on 13.07.2016, respondent No.4 issued show cause notices to the Headmaster of the said School and the petitioner to give explanation about the enlistment of the name of the petitioner in the Monthly Pay Order (MPO). On receipt of this notice the petitioner furnished a reply denying

the entire allegation brought against her. On receipt of this reply the respondent No.4 issued a letter to the Headmaster of the said School directing him to return the received money by the petitioner as the Assistant Teacher (Computer) without drawing any proceeding against the petitioner. Though, the petitioner has been enjoying the government portion of salary as Assistant Teacher from July, 2011. It appears from the record that her name was wrongly enlisted in the MPO list as Assistant Teacher (agriculture) but she was appointed as Assistant Teacher (Computer) and at the time of enlistment of the petitioner the Headmaster of the said school sent all relevant documents including the documents of her appointment proceeding which prevail the petitioner was duly appointed as Assistant Teacher. We also noticed that the impugned order issued by the respondent No.4 the Assistant Director (Ma-2), Directorate of Secondary and Higher Education, Shikkha Bhaban, Dhaka, though as per clause 18 of the said “*Janabol Kathamo*, 2010 the Ministry of Education is only authorized to suspend the MPO of the respective teachers and staffs of the institution temporarily or curtail the said benefit partially or wholly, not the Directorate of Secondary and Higher Education, which reads as follows:

“১৮। বেতন ভাতাদির সরকারি অংশ স্থগিত, কর্তন, বাতিলকরণঃ

১৮(১) শিক্ষা মন্ত্রনালয় নিম্নোক্ত কারণে কোন বেসরকারি প্রতিষ্ঠানের শিক্ষক, কর্মকর্তা ও কর্মচারীদের বেতন-ভাতাদির সরকারের অংশের বরাদ্দ নির্দিষ্ট সময়ের জন্য সাময়িক বন্ধ, আংশিক বা সম্পূর্ণ কর্তন কিংবা বাতিল করতে পারবেঃ

১৮(১)(ক) এ নির্দেশিকার ৫নং অনুচ্ছেদে বর্ণিত আবশ্যিকীয় শর্ত পূরণ না করলেঃ

১৮(১)(খ) ... ..”

We find support of this contention in Writ Petition No.4070 of 2014, wherein their Lordships held that,

*“However, nowhere within the four corners of the said “Janabol Kathamo” the power to suspend or curtail MPO of the respective teachers and staffs by the said Ministry appears to have been delegated to the Directorate concern. In that view of the matter stopping MPO of the petitioner by the respondent No.4 vide memo No. ৪৬৬-২১১/৮৭৭/০৩ dated 11.02.2014 (Annexure-D) is without jurisdiction.”*

It appears from the record that the Assistant Director (Ma-2), Directorate of Secondary and Higher Education, Shikkha Bhaban, Dhaka passed the impugned order which is without jurisdiction as per Clause-18 of Janabol Kathamo. Thus, we are of the view that the impugned order passed by the respondent No.4 is without jurisdiction and illegal.

We also noticed that the mistake relating to the subject of the petitioner as Assistant Teacher occurred by the concerned school authority and the respondents but without considering this aspect of matter and her reply, the respondents passed these orders in violation of the principle of natural justice and fundamental rights guaranteed in our Constitution. Under such circumstances the respondents may take necessary step to correct the mistake occurred in the Monthly Pay Order (MPO) list relating to the subject of the petitioner as Assistant Teacher in accordance with law, taking in to consideration of her service to the school. Considering the facts and circumstances of the matter, we find merit in the submission of the learned Advocate for the petitioner.

In the result, the Rule is made absolute without any order as to costs. The impugned order vide Memo No.73/4G/1175-Ma/11/4913/6 dated 13.07.2016 issued under the signature of the respondent No.4 directing the respondent No.9 Headmaster, Jagarany Bidda Niketon, Baraigram, Natore, to return money

(Monthly Pay Order) which received by the petitioner as Assistant Teacher of the said School without drawing any proceeding against the petitioner is hereby declared illegal and without lawful authority.

Communicate the judgment and order at once.

**Muhammad Mahbub-Ul Islam, J:**

I agree.