

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

Writ Petition No. 13875 of 2016

IN THE MATTER OF:

An application under Article 102 of the Constitution of the People's Republic of Bangladesh.

-And-

IN THE MATTER OF :

Md. Faisal Billah

.....Petitioner

-Versus-

Bangladesh, represented by the Secretary, Power Division, Ministry of Power Energy and Mineral Resources and others.

.....Respondents

Mr. A .M. Amin Uddin, with

Ms. Hasina Akhter, Advocates

.....for the petitioner

Mr. Murad Reza, with

Ms. Jannat Sultana, Advocates

.....for respondent No.2

Heard on : 22.01.2017 & 09.02.2017,
08.03.2017 and 30.03.2017

Judgment on : 10.04.2017

Present:

Ms. Justice Naima Haider

&

Mr. Justice Abu Taher Md. Saifur Rahman

Naima Haider, J;

In this application under Article 102 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued calling upon

the respondents to show cause as to why the order under memo no.1 DESCO/HQ/ADMIN-A(13)/DA-13/2016/2449 dated 24.10.2016 communicating under the signature of the respondent no. 4 (Annexure- 'G') dismissing the appeal filed by the petitioner and thereby affirming the order under memo No. DESCO/HQ/ADMIN-A (13)/DA-13/2016/1354, dated 14.06.2016 passed by the respondent No.4 (Annexure-D) dismissing the petitioner from service of Assistant Engineer (IT), DESCO should not be declared to have been passed without lawful authority and of no legal effect and why a direction should not be given upon the respondents to reinstate the petitioner in the service with full employment benefits, and/or such other or further order or orders passed as to this court may seem fit and proper.

The necessary facts for disposal of the Rule, in brief, are:

Pursuant to an invitation for application dated 15.08.2008 published by the Dhaka Electric Supply Company Ltd. (DESCO), the petitioner applied for the post of Assistant Manager. Subsequently, after written and viva voce examination he was selected for the said post. After completion of official formalities, he was appointed on contractual basis in the said post on 12.11.2008 and subsequently, he joined in his post on 17.11.2015 and has been discharging his duty. The authority extended the tenure of the petitioner's service till 11.11.2019.

One Mr. H M Arif Ahmed (ID No. 1586), an Office Assistant (Revenue), was suspended by the DESCO and on 16.02.2016 an Inquiry committee was formed headed by Mr, Md. Main Uddin Khan, Executive Engineer, Department of Grid and Protection. The Inquiry Committee Engineer, Department of Grid and Protection after inquiry submitted a report which shows that the petitioner was involved with the illegal activities of HM Arif Ahmed (ID No. 1586) and on the basis of said report on 22.05.2016, a show cause notice was served upon the petitioner asking him to reply within 3 (three) working days as to why he should not be punished as per Service Rules of DESCO.

After receiving the show cause notice, the petitioner replied to the same in details on 16.05.2016 and prayed to discharge him from allegations brought against him, but without considering the same, the petitioner was dismissed from service under Memo No. DESCO/HQ/ADMIN-A(13)/DA-13/2016/1354, dated 14.06.2016. Thereafter, on 26.06.2016, the petitioner filed an application to the Chairman of Board of Directors to reinstate him as per Rule No. 8.16 of DESCO Service Rules-2002, but the Appeal was dismissed by the Board on 24.10.2016 (Annexure-G).

Against this backdrop, the petitioner having no other alternative and efficacious remedy had moved this Court and obtained the instant Rule Nisi.

The respondent No.2 entered appearance by filing affidavit in Opposition. The case of the respondent no. 2 is that: On 16.02.2016 an inquiry committee was formed to investigate into the allegation brought against one H.M. Arif Amed, Office Assistant (Revenue) and during investigation, the involvement of the instant writ petitioner was found and for that reason on 24.02.2016 an office order with three recommendations was passed. One of the recommendations was to suspend the instant writ petitioner. The DESCO management gave petitioner show cause notice on 22.05.2016 under clause 8.13, holding inquiry under clause 8.14 of DESCO Service Rules, 2002 giving opportunity of personal hearing by memo dated 07.06.2016.

On 12.04.2016, the inquiry committee submitted report and it was found that the writ petitioner was guilty and was dismissed from his contractual service according to the clause no. 8, 9 and 11 of the service contract. After dismissal order dated 14.06.2016, the petitioner preferred an appeal to reinstate before the DESCO Board on 26.06.2016. Thereafter, before the DESCO Board meeting dated 27.09.2016, the appeal for reinstatement of the petitioner was presented, and after perusing the inquiry report, the Board rejected the appeal of the writ petitioner.

Mr. A.M. Amin Uddin, learned Advocate for the petitioner submits that the petitioner's service is controlled under Service Rules of

DESCO. Petitioner cannot be dismissed from service without departmental proceedings as per Service Rules. Board of Enquiry was formed against one HM Arif Ahmed (ID No. 1586), the said Inquiry Committee heard the petitioner and on 12.04.2016, submitted a report stating that the petitioner was involved with the illegal activities of HM Arif Ahmed and on the basis of said report on 22.05.2016, a show cause notice was served upon him which is illegal and unlawful, because no Enquiry Committee was formed against the Petitioner to inquire into the matter of the petitioner.

Mr. Amin Uddin further submits that in reply to the show cause notice, the petitioner strongly denied the allegations brought against him. No allegation was proved against the petitioner and the charge against him was refuted, but the Authority did not scrutinize the same as per Rule No.8. 13.9 and did not constitute a Board of Inquiry as per Rule No. 8.13.10. Without departmental proceeding as per Service Rules, the petitioner was thrown out from service in violation of the DESCO Service Rules-2002. He next points out that the petitioner filed an appeal which was dismissed on 24.10.2016 by the Board of Directors without applying judicial mind.

Mr. Murad Reza, learned Advocate appearing on behalf of respondent No.2 submits that the report dated 12.04.2016 disclosed allegations against the petitioner and the Board of Inquiry heard the

petitioner and after observing official formalities he was rightly dismissed from service. He further contends that this writ petition is not maintainable.

We have perused the writ petition, affidavit in opposition filed by the respondent no. 2, its annexures and other relevant papers and also considered the submissions of the Advocates.

It appears from the records that the petitioner was appointed on contractual basis on 12.11.2008 and after joining he has been discharging his duties and his period of service was extended up to 11.11.2019. As per the provision of Rule 4.3.1 of the DESCO Service rule-2002, contractual employees mean a permanent employee who has been engaged on a contract basis.

On 16.02.2016 an Inquiry Committee was formed to investigate into the allegations against one Mr. HM Arif Ahmed (ID No. 1586) and after investigation, the said committee submitted a report stating that the petitioner was involved with Mr. HM Arif Ahmed (ID No.1586) for misappropriation and illegal activities. Thereafter, the authority had served a show cause notice on 22.05.2016 and the petitioner replied to the same on 26.05.2016. After receiving the explanation of the petitioner, he was dismissed on 14.06.2016.

We examined the DESCO Service Rules-2002 carefully and also examined the annexures. The relevant portion of the DESCO Service Rules-2002 runs as follows:

8.13.9- *If however, the charge is refuted by the employee, the explanation should be carefully scrutinized to see if the explanation offered is satisfactory. If it is so, further proceeding may be dropped. But, if the explanation is not satisfactory and acceptable, a formal inquiry must be instituted.*

8.3.10-*If the show cause explanation of the accused if found unsatisfactory on the accused fail to submit explanation, a board of inquiry must be constituted. A Letter of Inquiry stating the name(s) of the board members date, place and time will be issued by the Admin dept to the concerned employee to appear before the board of inquiry.*

8.14.6.1-*The employee proceeded against has been informed clearly of the charges involved against him/her.*

8.14.6.2-*The witness(es) are examined in the presence of the employee in respect of the charge.*

8.14.6.3-*The accused is given fair opportunity to cross examine witness (es).*

8.14.6.4-*The accused is given a fair opportunity to bring witness(es) in his/her defence.*

8.14.8-*The board of inquiry did not prepare any report and submitted the same to the admin Department.*

8.14.9-*The board of inquiry did not give their findings as to whether or not the charges leveled against the petitioner are proceed on the basis of the evidence led at the inquiry.*

During the course of hearing it was argued by Mr.Aminuddin that there is nothing on record to show that departmental proceeding against the petitioner was drawn as per Service Rules-2002. The learned Advocate appearing for respondent No.2 also did not submit anything that DESCO Authority dismissed the petitioner by initiating any departmental proceeding as per the Service Rules-2002.

We are of the view that after receiving explanation from the petitioner, the DESCO Authority ought to have formed an Inquiry Committee as per Rule No. 8.13.9, but no inquiry committee was formed to investigate into the allegations against the petitioner as per Service Rules. Without departmental proceeding as per Service Rules, the petitioner was thrown out from service in violation of the DESCO Service Rules-2002.

Faced with the facts and the circumstances and the relevant provisions of law, we are inclined to hold that the Rule has merit and is bound to succeed.

Accordingly, the Rule is made absolute. The impugned letter dismissing the appeal filed by the petitioner (Annexure-G) and dismissal order dated 14.06.2016 (Annexure-D) are declared to have been issued without lawfully authority and are of no legal effect. The respondents are

directed to reinstate the petitioner in his services within 30 (thirty) days from the date of receipt of a copy of this judgment and order.

No order as to costs.

Abu Taher Md. Saifur Rahman, J:

I agree.