

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Special Original Jurisdiction)**

WRIT PETITION NO. 15244 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. Abul Hossain

... Petitioner

-Versus-

Bangladesh, represented by the Secretary,
Ministry of Education, Bangladesh Secretariat,
Ramna, Dhaka and others.

... Respondents

Mr. Md. Eunus Ali, Advocate

...For the petitioner

Mr. Mohammad Mohsin Kabir, DAG,
Mr. Mostafizur Rahman (Tutul), AAG,
Mr. Md. Moniruzzaman, AAG
Mr. Md. Fuad Hasan, AAG
Ms. Sonia Tamanna, AAG and
Mr. Ashraful Alam, AAG

...For the respondents

**Heard on 31.07.2025, 03.08.2025
and Judgment on 03.08.2025**

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J.

On an 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 inaction of the respondents to pay the monthly pay order (shortly MPO) to the petitioner on the pay scale fixed at tk. 23000/- under Salary Code No. 8, in place of salary Code No. 16 for the post of Assistant Superintendent including the time scale benefit and yearly increment from the time of his attaining qualification and as to why inaction of taking into account of the recommendation issued vide memo No. 1890 dated 28.12.2015 by the respondent No. 4 (Annexure-N to the writ petition) for enlistment of the petitioner for monthly payment order (MPO) for the post of Assistant Superintendent of "Chand Miarhat Dakhil Madrasha" should not be declared to have been initiated without lawful authority and is of no legal effect and/or pass such other or further order or orders passed as to this Court may seem fit and proper.

The case of the petitioner so described in the writ petition in short is:

He passed the S.S.C Dakhil, Alim, Fazil and Kamil examinations from the respective institutions and at first got appointment as a Junior *Moulvi* at "Chand Miarhat Dakhil Madrasha" on 24.10.1992 and accordingly he joined the said post on 26.10.1992. Subsequently, the petitioner enlisted for the Monthly Payment Order (shortly, MPO) on December, 1992 for the said post as Junior *Moulvi* of the madrasha vide index no. 362201 and kept on getting his MPO under respective salary code and obtained a monthly amount of taka 4,440/-. Thereafter, the petitioner got promotion to the post of Assistant Moulvi on 31.07.1997

and accordingly he joined the said post on 01.08.1997 and since then he had been performing as an Assistant *Moulvi* at the madrasha. Thereafter, the Superintendent of the madrasha filed an application to the respondent No. 4 that is, District Education Officer, Bhola, seeking permission for appointment in two vacant posts namely, Assistant Superintendent as well as *Ebdadie* chief (teacher) and accordingly the respondent no. 4 gave opinion for appointment in those two posts vide memo no. 295 dated 02.03.2015. In view of the said approval one, Shib Shankar Debnath was selected as the representative of the Director General, Secondary and Higher Education (respondent no.2) to sit in the appointment board for selecting the teacher as well as Assistant Superintendent at the madrasha vide memo no. 490 dated 12.04.2015 so issued by the respondent no. 4. Accordingly, the managing committee of the madrasha took decision for publishing a notice to appoint a teacher as well as Assistant Superintendent of the said madrasha vide its resolution dated 06.03.2015 and a notice was then published in the newspapers inviting application from the qualified candidates for appointment to those two post on 20.03.2015. In view of the said notice, the petitioner and other candidates applied for the post of Assistant Superintendent and on scrutiny, the application of the petitioner and 2(two) others were found eligible for sitting in the written examination when an appointment (selection) committee was formed consisting of 5(five) members vide resolution dated 18.04.2015 taken by the managing committee of the madrasha. The petitioner appeared in the written and viva voce examination along with other two candidates and got highest mark in both written and viva voce

examination for the post of Assistant Superintendant. The selection committee of the madrasa then recommended to give appointment to the petitioner for the post of Assistant Superintendent vide its resolution dated 23.04.2015 and forwarded it to the managing committee to the madrasa.

Then on the basis of the said recommendation given by the appointment board (selection committee), the managing committee then took decision for appointing the petitioner to the post of Assistant Superintendent on 30.04.2015 and asked the superintendent to take necessary step to that effect. Then the petitioner got appointment letter issued by the respondent no. 7 that is, the Superintendent of the said madrasa on 01.05.2015 and he joined the said post on 04.05.2015 and since then he has been performing his duty as Assistant Superintendent at the madrasa. Subsequently, the respondent no. 7 on 25.05.2015 prepared a list of teachers and staffs of the madrasa including the petitioner as Assistant Superintendent for enlistment in the MPO and sent it to the respondent no. 2 though respondent no. 4. Since the respondent no. 2 was not responding to the said letter, the respondent no. 4 then issued another letter on 28.12.2015 to the respondent no. 2 requesting it to enlist the petitioner in the MPO for the post of Assistant Superintendent. But as the respondent no. 2, kept on sitting over the issue, the petitioner has then compelled to file the instant writ petition challenging the inaction of the respondent no. 2 for not taking step in regard to implementing letter issued by the respondent no. 4 dated 28.12.2015 as has been annexed as of Annexure-‘N’ to the writ petition.

Mr. Md. Eunus Ali, the learned counsel appearing for the petitioner upon taking us to the writ petition and all the documents so have been appended with it, at the very outset submits that, all the requisite formalities in getting appointment to the post of Assistant Superintendent had been accomplished yet the respondents without assigning any reason is not enlisting the petitioner in the MPO as Assistant Superintendent and therefore a direction is required to be passed by this Hon'ble court, so that the petitioner can get his MPO for the post of Assistant Superintendent.

The learned counsel by taking us through two resolutions so have been taken by the managing committee of the madrasa as well as the selection committee dated 30.04.2015 as well as 23.04.2015 also contends that since recommendation was given by the selection committee as well as the managing committee vide their respective resolution and appointment letter was give to the petitioner and he joined the post accordingly, so there has been no legal shortcomings in giving MPO to the petitioner for the post of Assistant Superintendent.

The learned counsel further contends that, the requisite qualification for the appointment of Assistant Superintendent has been outlined in “বেসরকারি শিক্ষাপ্রতিষ্ঠান (স্কুল, ক-লজ, মাদ্রাস ও কারিগরি শিক্ষাপ্রতিষ্ঠানসমূহ) এর শিক্ষক ও কর্মচারী-দর বেতন-ভাতাতির সরকারি অংশ প্রদান এবং জনবলকাঠা-মা সম্পর্কিত নি-র্দেশিকা-২০১০” (shortly, জনবল কাঠা-মা-২০১৩) (amended up to 2013) where it has clearly been specified that to get appointment for the position of Assistant Superintendent, a candidate must have a *Kamil* degree having no specification about the grade thereof and even then in জনবল কাঠা-মা-২০১০ it has also been mentioned that for the post of Assistant

Superintendent, a candidate must have a second class *Kamil* degree and from the application filed by the petitioner for appointment as Assistant Superintendent, which has been annexed as Annexure ‘L’, it shows that the petitioner obtained second class in *Kamil* examination, so there has been no shortcomings for the petitioner to get MPO dedicated for the post of Assistant Superintendent and finally prays for making the rule absolute.

On the contrary, Mr. Md. Fuad Hasan, the learned Assistant Attorney General by taking us to clause no. 15 of জনবল কাঠা-মা-২০১০ (amended up to 2013) contends that in that clause there has been clear assertion that no one can be appointed as any employee or teacher having more than one third division in his/her entire educational qualifications when Annexure ‘L’ to the writ petition shows that the petitioner has got three consecutive third divisions and therefore the petitioner is not entitled to get MPO for the post he appointed.

The learned Assistant Attorney General by taking us to serial No. 16 and 17 of “বেসরকারী শিক্ষাপ্রতিষ্ঠান এর শিক্ষক ও কর্মচারী-দের জন্য নি-য়াগ--যাগ্যতা অভিজ্ঞতা ও বেতনস্কেল” of জনবল কাঠা-মা-২০১০ (amended up to 2013) also contends that, the petitioner alleged to have promoted/ appointed from the post of Assistant *Moulvi* to Assistant Superintendent but the salary scale (বেতন স্কেল) for the post of Assistant Superintendent has been fixed at taka 12,000/- though in the rule issuing order the petitioner claimed to get taka 23,000/- which is contrary to the scale so have been mentioned in the said জনবল কাঠা-মা and therefore the rule itself cannot be sustained in law.

The learned Assistant Attorney General by showing Annexure 'O1' to the writ petition where the petitioner wanted to show that another person named, Mohammad Bashirullah holding the post of Assistant Superintendent is drawing taka 23,120/- under pay salary cocde no. 8 but that very scale cannot commensurate with the petitioner's claim because the person drawing that salary may get that amount after adding increments which does not *ipsofacto* give entitlement to the petitioner to get the said amount. With those submissions, the learned Assistant Attorney General finally prays for discharging the rule.

Be that as it may, we have considered the submission so placed by the learned counsel for the petitioner and that of the learned Assistant Attorney General and perused the writ petition and all the annexure appended therewith. Together, we have also gone through the জনবল কাঠা-মা-২০১০ (that is, guidelines of 2010 amended up to of 2013) so supplied by the learned Assistant Attorney General. It is admitted position that, in the process of appointment of the petitioner to the post of Assistant Superintendent, there had been no flaws to be accomplished by the respondent because for falling vacancy an advertisement for the appointment was invited and upon competitive examinations, the petitioner was appointed for the post of Assistant Superintendent on the basis of recommendation and resolution taken by the selection committee and the managing committee of the madrasa and he ultimately joined the said post. Now only question remains, whether the respondent is obligated to give petitioner MPO assigned for the post of Assistant Superintendent as per the required code. On going through Annexure 'M' and 'L' to the

writ petition, we find that, the respondent no. 4 that is, the District Education Officer, by two consecutive letters to the respondent no. 2, Director General, Higher and Secondary Education requested of arranging MPO for the petitioner for the post of Assistant Superintendent. Since within the absolute knowledge of the respondent no. 2, the petitioner has been given appointment to the post of Assistant Superintendent, as his representative namely, Shib Shankar Debnath sat on the board of selection committee, so there has been no scope to raise any question about the propriety of appointment of the petitioner to the post of Assistant Superintendent and if that is the case, then the respondents are duty bound to provide required MPO to the petitioner moment he joined in the said post of the *madrasha*. It is the contention of the learned Assistant Attorney General by showing Annexure 'N' to the writ petition that perhaps the said letter has not been received by the respondent no. 2. But we are of the view that, in that case both the respondent no. 4 and respondent no. 2 will be held responsible for that, because the said letter has not been issued by the petitioner. Further, with the absolute knowledge and recommendation at the instance of the respondent no. 2, the petitioner was appointed to the post of Assistant Superintendent as evident from annexure 'L' and 'M' to the writ petition as well. On top of that, denying MPO to the petitioner for the post of Assistant Superintendent rather demonstrates high handedness of the respondents towards the hapless petitioner in spite of having no latches on his part.

All in all, we find substance in the submission so placed by the learned counsel for the petitioner resulting in, we are inclined to make the rule absolute.

Accordingly, the rule is made absolute however without any order as to costs.

The respondents are hereby directed to provide MPO to the petitioner for the post of Assistant Superintendent of “Chand Miarhat Dakhil Madrasha” as per the letter issued by respondent No. 4 (Annexure ‘N’ to the writ petition) with all arrear service benefits from the date of his joining dated 04.05.2015 (Annexure;J1 to the writ petition) within a period of 2 (two) months from the date of receipt of the copy of this order

Let a copy of this judgment and order be communicated to the respondents forthwith.

Md. Bashir Ullah, J.

I agree.