

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No.4506 of 2017

Md. Nazrul Islam

... Petitioner

-Versus-

Upazilla Nirbahi Officer and others

...Opposite-parties

Ms. Nusrat Jahan with

Ms. Nigar Sultana, Advocates

...For the petitioner

No one appeared

...For the opposite-parties.

Judgment on 27th November, 2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued at the instance of the petitioner calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 18.06.2017 passed by the learned Joint District Judge, 1st Court, Cumilla in Title Appeal No. 361 of 2009 disallowing the same and thereby affirming the judgment and decree dated 18.11.2009 passed by the learned Assistant Judge, Burichong, Cumilla in Title Suit No.20 of 2007 dismissing the suit should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts relevant for disposal of this Rule, in short, are that the petitioner, as plaintiff, filed Title Suit No.20 of 2007 in the Court of

Assistant Judge, Burichong, Cumilla against the opposite parties, as defendant for declaration that dismissal of the plaintiff from service vide order dated 17.03.2007 is collusive, illegal, mala fide, without jurisdiction and the plaintiff is still in service stating that the plaintiff was appointed as Office Assistant in Choygram Alim Madrasha on 04.04.2001. While serving in the Madrasha, at a point of time defendant No.2 induced the petitioner to help and assist him in his various immoral and illegal activities, but the plaintiff-petitioner refused to do so. Resultantly, out of enmity the defendant No.2 issued show cause notice to the plaintiff on 02.12.2003 on the allegation that the plaintiff was absenting from his duty and disobeying instructions of the defendant No.2, asking him to reply within 7(seven) days. The plaintiff duly replied the show cause on 09.12.2003 denying the allegations brought against him. Again by letters dated 14.03.2005 and 17.10.2005 brought some vague allegations against the plaintiff. The plaintiff replied those notices on 29.10.2005. Pending decision of those notices and replies, the defendant No.2 again by a notice dated 29.10.2005 bringing some new allegations asked the plaintiff to show cause. The plaintiff by

its letter dated 06.11.2005 replied the show cause. After receipt of reply, the defendant No.2 has become more furious towards plaintiff, resultantly, by manufacturing a board resolution, vide letter dated 14.11.2005 placed the plaintiff on suspension and asked the plaintiff to explain as to why a disciplinary proceeding should not be drawn against him for the offences mentioned in earlier show cause notices and formed an inquiry committee on 08.11.2005 comprising single person one Mofizul Islam, Principal of Kalikapur Abdul Matin Khosru Degree College for enquiry into the allegations against the plaintiff. However, the plaintiff by its letter dated 20.03.2006 filed a reply before D.G., Secondary and Higher Secondary Directorate, (অধিদপ্তর). Thereafter, defendant No.2 with an intention to harass the plaintiff by its letter dated 13.12.2005 forwarded an allegation to the defendant No.14. Inquiry officer formed by the Madrasha committee held an inquiry on 19.12.2005, wherein, the plaintiff personally appeared and explained his position by filing a written statement on 20.02.2006.

Apart from this the plaintiff also filed explanation before the defendant No.1, Chairman of the Managing Committee on

01.02.2006. Unfortunately, the plaintiff could not know about consequences of forming inquiry committee and ultimate result of the same. Moreover, the committee did not afford opportunity to the plaintiff to defend himself and to adduce any witness on his behalf. The defendant No.2 as a part of his mala fide act by letter dated 05.01.2006 requested the Manager, Janata Bank not to disburse subsistence allowance to the plaintiff. On protest, the bank became compelled to disburse the allowance to the plaintiff. The defendant No.2 again by letter dated 12.07.2006 brought some false allegations against the plaintiff and served show cause notice asking him to reply. The plaintiff by its letter dated 22.07.2006 replied the show cause. Again the defendant No.2 by letter dated 17.07.2006 raising some false allegations asked the plaintiff to reply the same. The plaintiff on 23.07.2006 replied to the show cause notice. Thereafter, the defendant No.2 again by letters dated 24.07.2006 and 27.07.2006 served 2(two) notices to show cause upon the plaintiff which was also replied on 08.08.2006. The defendant No.2 again by letters dated 15.08.2006 and 17.08.2006 served notice to show cause terming those as final notices which

were also replied by the plaintiff on 21.08.2006. After receipt of all the replies, the defendant No.2 has written letter to the Upazilla Nirbahi Officer and managed to form an inquiry committee comprised of Upazilla Secondary Education Officer who under the garb of holding inquiry fixed a date asking the plaintiff to appear, wherein he did not afford any opportunity to the plaintiff to defend himself and to cite witnesses. No proceeding was initiated, no evidence was recorded, but without recording any evidence and affording opportunity to the plaintiff to defend himself submitted a manufactured report on 28.01.2007. The defendants did not issue any notice to show cause enclosing inquiry report to the plaintiff and without letting know about inquiry report and issuing notice to show cause as to why he should not be dismissed from service by letter dated 17.03.2007 dismissed the plaintiff from service. All those allegations whatever brought against the plaintiff are vague, indefinite, false, fabricated and mala fide. Moreover, the plaintiff duly replied all those allegations, but the managing committee failed to consider the reply of the plaintiff and most illegally

without following procedure and natural justice dismissed the plaintiff. Hence, the present suit for declaration.

The defendant Nos.1-4, 6-10, 12 and 13 contested the suit by filing a joint written statement denying all the material allegations made in the plaint contending, inter alia, that the plaintiff was appointed in the Madrasha as Office Assistant. He could not perform his duty properly to the satisfaction of the appointing authority. After his joining in his service, he used to misbehave unpleasantly with the principal and found careless in his duty and used to come in the office at his will and he was habitually late attendant in office, very much disobedient and habit of insubordination. Because of his irregular attendance, unpleasant behavior towards managing committee and principal, lack of maintaining official records, he was cautioned once again with direction to correct himself, but he could not rectify himself, consequently, on behalf of the management defendant No.2 as principal of the institution issued several notices to the plaintiff with various allegations asking him to reply. Though, the plaintiff replied all those notices to show cause, the management found

those reply unsatisfactory, consequently, he was placed under suspension and initiated a departmental proceeding against him and the proceeding was ended with the submission of inquiry report by the inquiry officer. Before dismissal of plaintiff the authority completed departmental proceeding following all the rules and laws in this regard. Since the plaintiff found guilty of the allegations brought against him, the management decided to dismiss him from service, accordingly, by letter dated 17.03.2007 he was finally dismissed. There was no illegality or irregularity in the proceeding drawn against him, he was given sufficient opportunity to reply, defend himself, adduce evidence and after affording all those opportunities the proceeding was concluded.

It is also stated that the service of the plaintiff is regulated by law of master and servant, as such, the present suit is not maintainable in its present form. He was dismissed from service as per decision of the managing committee dated 13.03.2007. Because of his violent behavior and attitude, the defendant No.2 registered a G.D. on 05.04.2007 bearing entry No.197. The suit of the plaintiff

is false and fabricated and the statements made in the plaint has no basis at all and as such, the suit is liable to be dismissed.

The trial court framed 2(two) issues for determination of the dispute. In course of hearing, the plaintiff examined 2(two) witnesses as P.Ws and the defendants examined 2(two) witnesses as D.Ws. Both the parties submitted series of documents in support of their respective claim, most of the documents are common which were duly marked as Exhibits on both the sides. The trial court after hearing by its judgment and decree dated 18.11.2009 dismissed the suit.

Being aggrieved by and dissatisfied with the judgment and decree of the trial court, the plaintiff preferred Title Appeal No.361 of 2009 before the District Judge, Cumilla. Eventually, the said appeal was transferred to the Court of learned Joint District Judge, 1st Court, Cumilla for hearing and disposal who after hearing by the impugned judgment and decree dated 18.06.2017 disallowed the appeal and thereby affirmed the judgment and decree passed by the trial court. At this juncture, the petitioner, moved this Court by filing this revision and obtained the present Rule.

This matter is appearing in the daily cause list for hearing with the names of the learned Advocates of both the sides for a couple of days as heard in part. None has come forward for the opposite parties to oppose the Rule, consequently, this Court heard the learned Advocate for the petitioner.

Ms. Nusrat Jahan with Ms. Nigar Sultana, learned Advocates appearing for the petitioner at the very outset submit that the trial court did not frame proper issues and issues so framed has not been decided properly, rather those 2(two) issues are not sufficient for determination of the dispute. She argued that the opposite parties in dismissing the plaintiff did not mention any provisions of law in the notice to show cause and proceeding drawn even in the letter of dismissal, meaning thereby, the plaintiff was dismissed from service without following any provisions of law. She submits that in bringing allegations against the employee the appointing authority must specify the allegation brought against him. In the instant case, a series of allegations on different issues have been brought against the plaintiff without any specification. However, the plaintiff duly submitted his reply to all those show cause

notices. Ms. Nusrat submits that at the first stage of notice to show cause there has been an enquiry report in which the plaintiff was not found guilty of any offence. The management abandoned the proceeding first initiated against him, subsequently, issued series of notices to show cause, but without giving any specification in the notice. The plaintiff duly replied all those notices. Finally, Upazilla Nirbahi Officer on the prayer of defendant No.2 appointed Upazilla Secondary Education Officer Burichang, Cumilla to enquire into the matter who by a letter dated 25.09.2006 issued a notice fixing 28.09.2006 for holding inquiry about the allegation brought against the plaintiff, asking him to appear before the inquiry officer with all papers and documents. The plaintiff duly appeared before the inquiry officer, placed his statement, subsequently, inquiry officer without affording any opportunity to the plaintiff to adduce any witness or cross-examine the witness of the managing committee, even without recording any evidence from both the sides on his own motion unilaterally submitted a report on 25.01.2007 before the Upazilla Nirbahi Officer. Terming the plaintiff guilty of offences after submission of report the managing committee

without issuing any notice to show cause enclosing the report furnished by the Inquiry Officer, by letter dated 17.03.2007 dismissed the plaintiff from service and the management took time about 2(two) years for dismissing the plaintiff from service.

She finally argued that all the acts and activities starting from initiation of disciplinary proceeding and its ending, the principle of natural justice has been vigorously violated as such, the act of dismissal of the plaintiff from service is violative of principle of natural justice and violative of general laws in this regard. The trial court as well as the appellate court while dismissing the suit as well as disallowing the appeal did not even touched the merit of the case, discussed evidence both oral and documentary, but unfortunately, found that all the legal procedure and provisions of law have been complied with in dismissing the plaintiff, but failed to explain under what procedure and under which provisions of law the plaintiff was dismissed.

Heard the learned Advocate for the petitioner, have gone through the application under Section 115(1) of the Code of Civil Procedure, plaint, written statement, evidences both oral and

documentary available in lower court records and the impugned judgment and decree of both the courts below.

It is fact that the plaintiff was appointed in the Choygram Madrasha as Office Assistant on 04.04.2001 and it is true that defendant No.2 issued several notices to show cause on various allegations to the plaintiff asking him to reply. From series of exhibits, it appears that the plaintiff duly replied all those allegations brought against him.

From record, I find that the plaintiff was made accused of series of allegations issuing series of show cause notices. All those notices contain allegation of irregular attendance in the office, non co-operation, misbehavior of the plaintiff and taking away some goods from the Madrasha. All those allegations are in lump not specific giving dates and time quantity etc. However, the Madrasha management took time to get the proceedings concluded near about 2(two) years. The Inquiry Officer enquired the allegations only on 28.09.2006 as appearing from notice dated 25.09.2006 and the report dated 25.0.1.2007. There is no proceeding in record when the Inquiry Officer started enquiry, recorded evidence, afforded any

opportunity to the parties to cross-examine the witnesses and what papers and documents were produced by the managing committee before the Inquiry Officer to establish their allegations against the plaintiff are not available in records. The defendants in their written statement as well as at the time of hearing and deposing before the trial court did not utter a single word whether any proceeding was drawn against the plaintiff to prove all those allegations. Mere submission of some show cause notice, replies to those notices, appointment of Upazilla Secondary Education as Inquiry Officer and a piece of report without, any supporting evidence and documents is not at all sufficient to dismiss the plaintiff from his service. The conduct of the managing committee of Madarasha is found to be apathetic and full of whims and caprices. The committee in initiating disciplinary proceeding against the plaintiff did not follow minimum procedure either provided in law applicable in respect of the plaintiff or the principle of natural justice.

One page enquiry report furnished by Inquiry Officer dated 25.01.2007 contain nothing. Series of allegations brought against

the plaintiff, such as, stolen of blanket, mattress, unauthorized absence, late attendance, non performance of duty, misbehavior etc. But the report contain no specification which property and number of blanket took away by the plaintiff, when he was absenting from duties, on which days he came in late, what work was entrusted upon him has not been performed, when and how at what time in whose presence to whom he misbehaved has not been stated in the report. Only stated that the plaintiff admitted his guilt and he has undertaken that he will not repeat the same in future and to that effect the management could not produce single piece of evidence showing that the plaintiff admitted his guilt. In the absence of any evidence both oral and documentary and specification of offences the report is not sufficient to impose major punishment upon the plaintiff dismissing him from service. The management of the Madrasha committee seriously violated the law, rules, proceeding, and rules of natural justice in this regard.

When an Inquiry Officer is appointed for conducting enquiry against the plaintiff he must initiate a proceeding asking the plaintiff to appear before the inquiry committee in person with

evidence and witness, he should record the evidence against the plaintiff brought by the management and should afford opportunity to the plaintiff to cross-examine the witness of the management committee. But the Madrasa authority did not file any proceeding showing that the plaintiff was given sufficient opportunity to defend himself by adducing evidence, citing witness, cross-examining the witness of the management committee. Not only that he was not given any show cause notice enclosing enquiry report asking him to show cause why he should not be dismissed from the service. In the absence of any notice to show cause forwarding the enquiry report before dismissal, the management committee cannot dismiss him from service.

In view of the above, I find that the proceeding taken by the Madrasa authority against the plaintiff is not in accordance with law and violative of principles of natural justice.

Both the courts below wrongly observed and found that the plaintiff was given sufficient opportunity to defend himself and he was dismissed from service following all the laws, procedure and

natural justice, as such, both the courts below committed illegality and an error of law in the decision occasioning failure of justice.

Taking into consideration of the above, this Court finds merit in the Rule as well as in the submissions of the learned Advocate for the petitioner calling for interference by this Court.

In the result, the Rule is made absolute, however, without any order as to costs.

The impugned judgment and decree passed by both the courts below are hereby *set aside*. The suit of the plaintiff is decreed. Order of dismissal dated 17.03.2007 issued by the defendant No.2 is hereby declared illegal, collusive, mala fide, without jurisdiction and violative of principles of natural justice. It is also hereby declared that the plaintiff is still in service and is entitled to get all the benefits including arrear salaries.

Communicate a copy of the judgment to the Court concerned and send down the lower court records at once.