

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

Writ Petitioner No. 8549 of 2017.

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. Mostafizur Rahman.

.....Petitioner.

-Versus-

Bangladesh and others.

.....Respondents.

Mr. Mohammad Bakir Uddin Bhuiyan, Advocate

...For the Petitioner.

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

Mr. Md. Humayun Kabir with

Mr. Ashique Rubaiat, A.A.Gs.

..... For the Respondents.

Present:

Mr. Justice K. M. Kamrul Kader

And

Mr. Justice Sardar Md. Rashed Jahangir.

Heard on : 01.12.2021 & 08.12.2021

And

Judgment on: 10.02.2022.

K.M. Kamrul Kader, J :

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued on 07.06.2017, in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the arbitrary and mala-fide action of the respondents in not including the post of Headmaster against the name of the petitioner in the MPO Sheet of Rangamati Abul Hossain Johura High School situated within Police Station-Dhunat, District-Bogra should not be declared to be without any lawful

authority and is of no legal effect and as to why a direction should not be passed upon the respondents to include the post of Headmaster against the name of the petitioner in the MPO Sheet of Rangamati Abul Hossain Johura High School situated within Police Station-Dhunat, District-Bogra 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 Headmaster by the Managing Committee of *Rangamati Abul Hossain Johura High School, Dhunat, Bogra* on 10.01.1993 and the petitioner joined the post of Headmaster pursuant to the appointment letter dated 14.01.1993. Subsequently, the Managing Committee of the said School has published an advertisement in the Daily Karotoa on 28.04.1997 for regularization of the appointment of the petitioner and other teachers. Accordingly, the managing committee in its meeting dated 24.02.1998 took decision to regularize the service of the teachers and staffs and on the same day i.e. on 24.02.1998 an oral interview of the teachers and staffs of the said school was held at the office of Headmaster, Bogra Zilla School, Bogra in presence of the representative of the respondent No.2. Next, the Managing Committee of the said school in its meeting dated 25.02.1198 approved the decision taken on 24.02.1998 for regularization the service of the teachers and staffs of the said school. Thereafter, the said school was enlisted in the MPO list in the month of May, 1998 and Index Number of the petitioner is 541368 as teacher of the said school and he has been receiving MPO regularly from the government. It is also stated that the President of Managing Committee of the said school issued a

certificate certifying that the petitioner was appointed as Headmaster in the said school on 14.01.1993 and his Teacher's Index No.541368 and date of birth is 22.12.1961 and the date of his enlistment in the MPO on 01.02.1998. Though the petitioner all through 3rd Class, this circular is not applicable to this petitioner. As per this circular this petitioner is entitled to get all service benefit of Headmaster as per notification No.১১/বিবিধ-৫/৯৪(অংশ-৬)/১৭১(২)-শিক্ষা dated 07.02.2001. It is also stated in the application that as per circular No.১১/বিবিধ-৫/৯৪(অংশ-৬)/১৭১(২)-শিক্ষা dated 07.02.2001 wherein it was stated that no person having any 3rd Class up to graduation level will not be eligible to be appointed as Headmaster of a Non-government High School and as such the same decision will not be applicable to this particular petitioner. However, as the petitioner's appointment in the year of 1993 as Headmaster of the said school and as such, the said circular is not applicable to this particular petitioner. Thereafter, on 29.03.2017, the petitioner submitted an application to the Director General, Directorate of Secondary and Higher Education, Dhaka praying for inclusion of his post as Headmaster in the MPO Sheet of *Rangamati Abul Hossain Johura High School, Dhunat, Bogra*, but the respondents did not pay any heed to the same. The petitioner through his learned Advocate served a Notice Demanding for Justice on 15.05.2017 upon the respondents by registered post, but they did no response to the said notice as yet.

Being aggrieved by and dissatisfied with the decision of the respondents the petitioner filed this instant writ petition before this court and obtained this present Rule.

Mr. Mohammad Bakir Uddin Bhuiyan, the learned Advocate for the petitioner submits that the petitioner was appointed as Headmaster of *Rangamati Abul Hossain Johura High School, Dhunat, Bogra* on 14.01.1993 and his

appointment was regularized by taking viva-voce examination on 24.02.1998 and as he was appointed before 07.02.2001 and his service was duly regularization of the authority in presence of the representative of the Director General, Directorate of Secondary and Higher Education, Dhaka and the records of service of the petitioner was sent to the office of Director General, Directorate of Secondary and Higher Education, Dhaka for regularization through proper channel and as the petitioner is getting MPO regularly and as such, the petitioner has the legitimate expectation to get in the Monthly Payment Order (MPO) as Headmaster of the said School. Learned Advocate for the petitioner lastly submits that in the mean time, the petitioner had retired from his service on 21.12.2021.

Mr. ABM Abdullah Al Mahmud the learned Deputy Attorney General appeared on behalf of the respondents opposes the Rule.

We have heard the learned Advocate and the learned Deputy Attorney General, perused the writ petition and other materials on record. It's transpires from the record that the petitioner was appointed as Headmaster by the Managing Committee of *Rangamati Abul Hossain Johura High School, Dhunat, Bogra* on 10.01.1993 and the petitioner joined the post of Headmaster pursuant to the appointment letter dated 14.01.1993. His appointment was regularized by taking viva-voce examination on 24.02.1998. The Petitioner was enlisted in the MPO list in the month of May, 1998 and Index Number of the petitioner is 541368 as teacher of the said school and he has been receiving MPO regularly from the government as teacher not as Headmaster of the said school. Learned Advocate for the petitioner argued that the circular /notification vide memo No.১১/বিবিধ-৫/৯৪(অংশ-৬)/১৭১(২)-শিক্ষা dated 07.02.2001 is not applicable to this petitioner

though he had all through 3rd Class and he is entitled to get all service benefit as Headmaster of the said school. The aforesaid circular is reproduced in verbatim:

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
শিক্ষা মন্ত্রণালয়

নং- শাঃ ১১/বিবিধ-৫/৯৪ (অংশ-৬)/১৭১ (২)- শিক্ষা তারিখ ০৭/০২/২০০১ ইং

বিষয়ঃ বেসরকারী শিক্ষা প্রতিষ্ঠানের নিয়োগকৃত শিক্ষকদের শিক্ষাগত যোগ্যতা সংক্রান্ত।

উপর্যুক্ত বিষয়ে নির্দেশক্রমে জানানো যাচ্ছে যে, সরকারের সংগে ২৪-০৮-২০০০ তারিখে ভিন্ন শিক্ষক সমিতি ফেডারেশনের আলোচনায় প্রেক্ষিতে সর্বসম্মতভাবে সম্পাদিত চুক্তিনামার ১ নং শর্তে উল্লেখ রয়েছে যে, এস.এস.সি থেকে স্নাতকোত্তর পর্যায় পর্যন্ত কোন তৃতীয় বিভাগ/শ্রেণীধারীকে নিয়োগ দেয়া যাব না এবং তিনি এম.পি.ও প্রাপ্তির জন্য বিবচিত হবেন বিষয়টির স্পষ্টিকরণ প্রয়োজন বিধায় সরকার এ বিষয়ে নিম্নোক্ত ব্যাখ্যা প্রদান করছেঃ

যারা ২৪-৮-২০০০ তারিখের পূর্ব তৎকালীন প্রচলিত নিয়মনীতি অনুযায়ী বৈধ ও সর্বসম্মতভাবে নিয়োগপ্রাপ্ত হয়েছেন তাদের ক্ষেত্রে ৯ নং শর্তটি প্রযোজ্য হবে না। অর্থাৎ তারা প্রচলিত নিয়ম অনুযায়ী মাসিক বেতন ভাতার সরকারী অংশ (এম.পি.ও) প্রাপ্য হবেন। তবে এ সব তৃতীয় শ্রেণী প্রাপ্ত শিক্ষক নিয়মনীতি পরিপন্থী উপায়ে অথবা অবৈধ উপায়ে নিয়োগপ্রাপ্ত হয়েছেন পরীক্ষান্তে তাদেরকে পরবর্তীতে এম.পি.ও তালিকা হতে বাদ দেয়া হবে।

মোঃ সাবের হোসন
সিনিয়র সহকারী সচিব

Admittedly, the petitioner has all through 3rd Class due to this reason, the authority did not enlist the petitioner as headmaster of the said school. He had receipt MPO regularly from the Government as Teacher not as Headmaster and as per provision of the said Circular dated 07.02.2021 the petitioner is not entitle to get service benefits or MPO as Headmaster of the said school. Considering these aspect of the matter, we do not find any merit in this Rule. In the mean time, the petitioner had already been retired from his service on 21.12.2021. Thus, the Rule has become *infructuous*.

Accordingly, the Rule is discharged without any order as to costs.

Communicate the order at once.

Sardar Md. Rashed Jahangir, J:

I agree.