

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

WRIT PETITION NO. 9712 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. Akter Hossain

.....Petitioner

-VERSUS-

Bangladesh Rural Electrification Board, represented
by its Chairman and others

..... Respondents

Mr. Mohammad Ali Khan with
Ms. Zinat Parvin, Advocates

..... For the Petitioner

Mr. Md. Ershadul Bari Khandakar, D.A.G with
Ms. Nilufar Yesmin, A.A.G with
Mr. Md. Moshur Rahman (Rahat), A.A.G with
Mr. Md. Motasin Billah Parvez, A.A.G with
Mr. Md. Faridul Islam, A.A.G

.....For the Respondents

Mr. Sarwar Ahmed, Advocate

.....For the Respondent No.2

Present:

Mr. Justice Sashanka Shekhar Sarkar

And

Justice Urmee Rahman

**Heard on 06.01.2026, 07.01.2026 and
Judgment on 14.01.2026.**

Urmee Rahman, J:

In the instant matter a Rule Nisi was issued on an application under Article 102 of the Constitution of the People's Republic of Bangladesh calling upon the respondents to show cause as to why the Departmental proceedings initiated against the petitioner and final show cause notice vide Memo No. 72.12.0000.012.31.089.16.1638 dated 08.06.2017 issued by respondent no. 3, as evidenced by Annexure-G, shall not be declared to have been issued without lawful authority and to be of no legal effect and further as to why the respondents shall not be directed to pay all the previous salary and other attending benefits to the petitioner and/or such other or further order or orders passed as to this Court may seem fit and proper.

The fact necessary for disposal of the instant Rule, in short, are that, through a competitive process of recruitment the petitioner got appointment for the post of Assistant cashier and accordingly on 03.04.1997 he joined at Barisal Pally Biddut Samity-1. His service was regularized after one year and on 28.06.2006 he was promoted to the post of cashier and after completion of one year service his service for the post of cashier was made regular and permanent.

The petitioner joined at the Head Office of Barisal Pally Biddut Samity-1 on 03.04.1997, thereafter on transfer on 11.04.1997 he joined at Muladi Zonal Office under Barisal Pally Biddut Samity-1, on 10.01.2003 he was transferred to the head office of Barisal Pally Biddut Samity-1 then on 11.08.2005 he was transferred at Muladi Zonal Office, thereafter

he was transferred to Bakherganj Zonal Office on 30.7.2011 and again on 21.01.2015 he was transferred to Muladi Zonal Office under Barisal Pally Biddut Samity-1, thereafter he was transferred to Mehendigonj Sub-Zonal Office and accordingly on 10.08.2015 he joined therein, then he was transferred to Head Office, Barisal Pally Biddut Samity-1 and joined therein on 09.08.2016.

On 17.08.2016 the General Manager of Barisal Pally Biddut Samity-1 (respondent no. 5) suspended the petitioner and attested his service with the Administrative department of head office of Barisal Pally Biddut Samity-1.

The respondent No. 5 on 22.08.2016 issued a show cause notice to the petitioner as to why a departmental proceeding would not be initiated against him for anomalies amounting Tk. 1,36,598/- referring the Rules 38(1)(Ga) (Gha) of PBS Employee Service Rule 1992 (amended on 2012) and the petitioner replied to the same on 30.08.2016 stating that the allegation brought against him is not correct and it is a simple bona fide mistake of accounting process and prayed for exoneration and also prayed for permission to allow him to deposit the full amount to the account of the Association. Thereafter the respondent No. 5 on 25.10.2016 issued second show cause notice stating the same allegation of defalcation of money and as to why the petitioner would not be punished as per Rules 39 of same service Rules. The petitioner replied to the same on 31.10.2016 explaining his position regarding the allegation and sought for the

opportunity to deposit the charged amount of Tk.1,85,235/- to the account of respondent No. 5 office.

The respondent No. 5 directed the petitioner to deposit the charged amount of Tk. 1,85,235/- to his office by issuing a letter dated 26.11.2016 (Annexure D-1) and accordingly the petitioner on good faith deposited the same amount to the respondent No. 5 office on 30.11.2016 and no departmental proceeding was initiated against him by the respondent No. 5.

Thereafter on 23.03.2017 the respondent No.3 i.e. the Director, Inquiry and Discipline, Bangladesh Rural Electrification Board (BREB) issued a show cause notice to the petitioner stating the same allegation which was brought by the respondent No. 5 long time ago. The petitioner replied the same by the letter dated 03.04.2017 stating the allegation as a bona fide accounting mistake and he had no intention to misappropriate the charged amount and sought unconditional apology.

Thereafter enquiry proceeding was started and on completion the enquiry officer submitted the report stating liabilities of a number of staffs and officers including the petitioner. In his findings the enquiry officer categorically stated that, “তবে আলোচ্য ক্ষেত্রে একমাত্র ক্যাসিয়ার জনাব মোঃ আক্তার হোসেন-ই দায়ী নন।”

Despite the enquiry report, the respondent No. 3 on 08.06.2017 issued the final show cause notice to the petitioner as to why he would not

be removed from the service stating that the charges brought against the petitioner was proved.

Being aggrieved by the same the petitioner filed the instant writ petition and obtained Rule on 10.07.2017. During pendency of the Rule he was removed from service by the memo dated 19.07.2017 and therefore a supplementary Rule was issued on 20.08.2017 at the prayer of the petitioner challenging the order of removal. The Supplementary Rule was issued in the following terms:

“Let a Supplementary Rule Nisi be issued calling upon the respondents to show cause as to why the Memo No. 72.12.0651.502.027(1).301.17.2022 dated 19.07.2017 issued by respondent No. 5, as evidenced by Annexure-J, removing the petitioner from his service shall not be declared to have been issued without lawful authority and to be of no legal effect and further as to why the respondents shall not be directed to pay all the previous salary, seniority and all other attending benefits to the petitioner and/or pass such other or further order or orders as to this Court may seem fit and proper.”

During pendency of the Rule the petitioner on 13.08.2017 preferred appeal before the Barishal Pally Biddut Samity-1 Board. The Board in its 350th meeting recommended restoring the service of the petitioner however with a demotion to the post of Assistant Cashier from the post of Cashier and forwarded the recommendation to the respondent No. 1 i.e. BREB for approval. After receiving the proposal the respondent No. 1

issued a memo on 12.06.2018 informing the petitioner that since a writ petition is pending before the High Court Division against the decision of BREB, it would take action in accordance with the judgment passed by the Court.

Being aggrieved by and dissatisfied with the recommendation made by the Barisal Pally Bidyut Samity-1, the petitioner filed an application for issuance of another Supplementary Rule. Accordingly another Supplementary Rule was issued on 08.07.2025 in the following terms:

“Let a Supplementary Rule Nisi be issued calling upon the respondents to show cause as to why the appeal disposal decision degrading the post of the petitioner to the post of Assistant Cashier being No.03/350/2017 dated 20.09.2017 (Annexure-L) shall not be declared to have been taken without lawful authority and is of no legal effect and further as to why the respondents shall not be directed to pay all the previous salary, seniority and all other attending benefits to the petitioner counting his position as Cashier should not be declared 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.”

Mr. Mohammad Ali Khan, learned Advocate appeared on behalf of the petitioner and submitted that the petitioner served at different zonal office of Barisal Pally Biddut Samity-1 for a long period of 20 years and

no such allegation was ever found or brought against him all through his service length but suddenly the respondents brought two charges against him manipulating the admission of truthful bona fide calculation mistake and as such the impugned decision is liable to be declared as illegal and is of no legal effect. He further submitted that the respondent No. 5 who preliminary initiated the department proceeding, dropped the matter upon receiving the alleged amount from the petitioner on 30.11.2016 but long after the respondent No. 3 with mala fide intention again initiated departmental proceedings against the petitioner which is unjust and liable to be declared illegal and without any lawful authority.

Mr. Khan then contented that the respondent No. 3 with mala fide intention did not consider the petitioner's bona fide calculation mistake and intended to impose maximum punishment to him although the respondents released others liable higher supervising officers and staffs by issuing only warning letters and as such the petitioner was not treated equally and as such the impugned order is liable to be declared illegal, issued without lawful authority and is of no legal effect.

Mr. Khan next submitted that the charge sheet was issued by the respondent No. 3 on 23.04.2017 but the petitioner was suspended by the respondent No. 5 on 17.08.2016 which violated Rules 43(1) of the PBS Service Rules in this regard. The respondents without following the Rule 40(3) of PBS Service Rule and with a view to harass the petitioner formed

a high power inquiry committee who without giving the petitioner proper chance to defend himself most illegally completed the inquiry.

It was finally submitted by the learned Advocate for the petitioner that there are four categories of minor punishments and five categories of major punishments mentioned in Rule 39 of PBS Service Rules but with a mala fide intention the respondent No. 3 imposed the highest punishment of removal relating to a past and closed matter.

Mr. Sarwar Ahmed, Senior Advocate appeared on behalf of the Respondent No. 2 and contested the Rule by filing an affidavit in opposition. Upon placing the affidavit he submitted that, the petitioner in connivance with the staffs frequently committed the offence causing serious pecuniary loss to the Samity, hence the BREB formed an enquiry committee to inquire into the matter because the allegations brought against the petitioner was on the basis of concrete evidence and the same allegations were found to be true and substantive and accordingly the authority concerned framed charge against the petitioner after giving him the opportunity of self-defense. On the basis of the inquiry report, relevant laws and regulation the departmental proceeding was initiated and punishment was imposed upon him proportionate to the gravity of offence as committed by the petitioner. Therefore the Rule is liable to be discharged.

Mr. Ahmed next submitted that according to the provision of section 24 of the Rural Electrification Board Act, 2013, the Board is

competent to appoint requisite number of employees subject to the approval of the Government and as such the instant writ is not maintainable according to the case of *Md. Humayun Kabir-Vs-Santosh Kumar Saha and others* reported in *4 CLR (AD) 230* and hence the Rule is liable to be discharged.

He finally submitted that the contentions of the petitioner made in the writ petition are based on the disputed question of facts, hence the instant writ petition is not maintainable in the eye of law and the same is liable to be rejected uprightly.

We have heard the learned advocates for the petitioner as well as the respondents and perused the writ petition, supplementary affidavits, the affidavit in opposition and the documents annexed therewith.

It appears from the record that the petitioner was removed from service by the memo dated 19.07.2017 by the General Manager, Barisal Rural Electrification Association-1 in accordance with Rule 38 (1) (ka) and (ga) of “পল্লী বিদ্যুৎ সমিতি কর্মচারী চাকুরী বিধি ১৯৯২, সংশোধিত: ২০১২” for misconduct (অসদাচরণ) and misappropriation of association’s fund (সমিতির অর্থ আত্মসাৎ). This is a major penalty (গুরুদণ্ড) under Rule 39 (1) (kha) (3) of the Rule. Rule 39 (1) (kha) of Pally Bidyut Samity (PBS) Service Rules provides as many as five categories of major penalties which are quoted below:

“(খ) গুরুদণ্ড -

- (১) নিম্ন পদে নিম্নতর বেতনক্রমে বা বেতনক্রমের অথবা নিম্ন বেতন অবনতকরণ বা ০৩ (তিন) বৎস-র অধিক যে কোন মেয়াদ-র জন্য বেতন বর্ধন/প্রবিদ্ধি স্থগিত রাখা।
- (২) কর্মচারী কর্তৃক সংঘটিত সমিতির আর্থিক ক্ষতির অংশ বি-শেষ বা সম্পূর্ণ অংশ তাহার বেতন বা অন্য কোন খা-তর পাওনা হই-ত আদায়করণ।
- (৩) চাকুরী হই-ত অপসারণ (*Removal from Service*)।
- (৪) বাধ্যতামূলক অবসর প্রদান (*Compulsory Retirement*)।
- (৫) চাকুরী হই-ত বরখাস্তকরণ (*Dismissal from Service*)।

According to this Section Dismissal from service is the highest punishment given in a disciplinary action and the employee who is dismissed from service will be considered to be ineligible for employment in the same service in future. Compulsory retirement is the second highest punishment and removal from service remains in the third position. Rule 39 (4) (ga) provides for ‘any type of punishment’ for committing ‘misconduct’. In the definition clause 2 (ka) ‘misconduct’ has been defined and as many as thirty six types of conducts has been specified as misconduct. Therefore there is a scope for applying discretion while determining punishment for misconduct in terms of the gravity of the offence. Severity of punishment must be proportionate with the act of misconduct.

At this juncture, we will determine whether the punishment given to the petitioner was proportionate to the alleged offence committed by him as well as the propriety of the recommendation made by the Association to reinstate the petitioner with demotion to a lower post.

From the enquiry report as annexed as Annexure-H to the writ petition it appears that, allegation against the petitioner was that, (1) he misappropriated a total amount of Tk.1,86,403/- (One lac eighty six thousand four hundred and three taka) during the period of 2007 to 2016 while working as cashier in different zonal office by not depositing the full amount of the security deposit and the amount collected from the customers on giving official receipts to the account of the Association and (2) after disclosure of the act of misappropriation, he deposited an amount of Tk.1,85,235/- (One lac eighty five thousand and two thirty five taka) on 30.11.2016 to the account of the Association, which proved the fact that he intentionally committed the act of misappropriation. The fact of misappropriation was for the first time found out on 20.06.2016 during cash inventory held by BREA.

In the letter of suspension dated 17.08.2016 (Annexure- A) a total amount of Tk.1,36,598/- (One lac thirty six thousand five hundred ninety eight taka only) has been said to have misappropriated by the petitioner (from Mehendigonj Sub Zonal Office- 37,958/- , Muladi Zonal Office- 56,228/- and from Bakergonj Zonal Office- 42,412/-). The suspension letter was issued after obtaining an enquiry report in this regard. However, in the second show cause notice (Annexure-C) it was stated that:

“উপযুক্ত বিষ-য়ের প্রেক্ষিত জানা-না যা-চ্ছ যে,
বাগবি-বা-উর নি-র্দশনানুযায়ী আপনার যোগদা-নর তারিখ থে-ক

ডি-সম্বর/১২ পর্যন্ত কর্মকালীন সম-য়র ক্যাশ শাখার যাবতীয় কাগজপত্র/লেজার সমূহ তদন্ত পূর্বক রিপোর্ট প্রদানের জন্য ০৪(চার) সদস্য বিশিষ্ট কমিটি গঠন করা হয়। কমিটি আপনার যোগদান অর্থাৎ ৩/০৪/১৯৯৭ খ্রিঃ তারিখ থে-ক ডি-সম্বর/২০১২ পর্যন্ত সম-য়র কর্মকালীন সম-য়র দৈনিক আদায় প্রতি-বদন যাচাই/বাহাই ক-রন। তা-দর দাখিলকৃত রি-পোর্ট হ-ত দেখা যায় আপনি গ্রাহক নিরাপত্তা জামানত ও অফিসিয়াল রশিদের মাধ্যমে আদায়কৃত অর্থ হ-ত সমুদয় অর্থ সমিতির হিসা-ব জমা প্রদান না ক-র ৪৮,৬৩৭/- (আটচল্লিশ হাজার ছয় শত সাইত্রিশ) টাকা কম জমা প্রদান/তহবিল তহরুপ ক-র-ছেন। উ-ল্লখ্য প্রাথমিক তদন্ত রি-পোর্ট অনুযায়ী আপনি ০৩/০৪/১৯৯৭ খ্রিঃ হ-ত ৩০/০৬/২০১৬ খ্রিঃ পর্যন্ত মোট ১,৮৫,২৩৫/- (এক লক্ষ পঁচাশি হাজার দুই শত পঁয়ত্রিশ) টাকা আতুসাৎ ক-র-ছেন।”

Thereafter, in the second show cause notice dated 23.03.2017 (Annexure-E) issued by the BREB the amount to be misappropriated has been said to be Tk.1,86,403/- (One lac eighty six thousand four hundred and three taka). It is thus apparent that the authority itself is uncertain as to the determination of the amount alleged to be misappropriated by the petitioner. All the notices have been issued after conducting enquiry in this regard hence there should not be any anomaly regarding the amount of misappropriation.

The petitioner joined the service on 03.04.1997 as Assistant Cashier and was promoted to the post of cashier on 28.06.2005. He was suspended from his service on 17.08.2016 on the allegations stated hereinabove. It transpires from the enquiry report that during his twenty years of service no other allegations have ever been brought against him.

It also appears from the enquiry report that Farida Yasmin, the billing supervisor of Muladi zonal office admitted her unintentional mistake in preparing the daily cash collection report; Md. Abdus Salam, Assistant Plant Accountant of Muladi and Bakergonj zonal office also admitted his fault stating that since he was new to the system at that time, thus he could not detect the wrong done by the cashier and prayed for forgiveness. Md. Sultan Uddin, Assistant Plant Accountant stated that he did not scrutiny the cash collection reports because there was not any direction to do so by the higher authority, the mistake occurred is not intentional. Md. Younus, DGM of Muladi zonal office stated that, cashier has the main duty to prepare the report after collecting cash, thereafter the assistant accountant or billing supervisor examines the same and after getting approval from the principal office the report is sent to the head office.

From the statement of these and some other officials it becomes clear that after collecting the cash from the customers the cashier prepares a report and then submits to the billing supervisor or assistant accountant for verification, who after verification send it to the DGM for approval and finally the DGM send the report to the Head Office. Some officials have categorically stated that, if the cash collection reports were properly verified by the concerned officers, the discrepancy would have been detected easily at the earliest opportunity; that the officer who gave approval to the report also cannot escape liability.

Though it was decided by the committee that the petitioner intentionally misappropriated the amount during a period of ten years, we find that he would not be able to do that if the other officials had performed their duties sincerely. Yet, those officials were given only warning letters whereas the petitioner was imposed with the highest punishment of removal from service. We find this punishment to be disproportionate to the alleged conduct as well as discriminatory.

Moreover, Clause 39(1) (kha) of the Service Rules provides for five kinds of major penalties; second one of those is “to recover the amount in full or a part thereof from the salary or other entitlement of the person who has committed financial loss to the Association”. In the present case the Barisal Rural Electrification Association-1 directed the petitioner to deposit the amount by the letter dated 26.11.2016 and accordingly the petitioner deposited the full amount at a time to the Association fund on 30.11.2016 which is evident from Annexure D, D-1 and D-2 to the writ petition. As such, one of the major penalties as mentioned in clause 39 (1) (kha) has already been served out by the petitioner and he should not be punished twice for the same act.

Challenging the order of removal, the petitioner preferred appeal before the authority. From the minutes of the Board meeting of Barisal Rural Electrification Association-1, annexed as Annexure-L, it transpires that the authority realised that the punishment given to the petitioner was excessive and as such they recommended to reduce the punishment by

reinstating him to a lower post of Assistant cashier and sent the recommendation to the BREB authority for approval. We find that this decision of the Board is arbitrary inasmuch as the petitioner already served out the penalty by depositing the full amount claimed by the authority as per their direction.

After receiving the aforesaid recommendation, the BREB informed the Association that a writ petition being pending before the High Court Division regarding this subject matter; the Board would act in accordance with the decision given by the Court (Annexure-M).

Considering the facts and circumstances discussed hereinabove and also considering the fact that the petitioner is at the fag end of his service tenure, we hold that justice would be better served if the petitioner is directed to be reinstated in his service to the post where he was before the removal order was made i.e. to the post of cashier.

With the foregoing discussions and findings we find substance in the Rule and the supplementary Rules.

In the result, the Rule is made absolute.

However, without any order as to costs.

The impugned orders removing the petitioner from service and the impugned decision of the appellate authority recommending demotion are hereby declared to have been issued without lawful authority and are of no legal effect and hereby set aside.

The respondents are directed to reinstate the petitioner to the post of Cashier within 30 days from receiving this order. The petitioner shall be entitled to get his previous salary, seniority and all other service benefits in accordance with law counting his position as Cashier.

Communicate the judgment and order at once.

Justice Sashanka Shekhar Sarkar, J:

I agree.

Helal/ABO