

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

**Writ Petition No. 20 of 2018**

**In the matter of:**

An application under Article 102(2)  
(a) of the Constitution of the People's  
Republic of Bangladesh

-AND-

**In the matter of:**

Abdur Rashid, Son of Md. Asiruddin  
Molla of 69/1-D, Azimpur Colony,  
Post Office: New market, Lalbag,  
Dhaka-1205.

.....Petitioner

-Versus-

Bangladesh represented by the  
Secretary, Ministry of Education,  
Bangladesh Secretariat, Ramna,  
Dhaka-1000 and others.

..... Respondents

Mr. Asaduzzaman, Advocate

.....For the petitioner

Mr. Majedul Hasan Miajee, Advocate.

.....For the Respondent No.3.

Mr. SK.Shaifuzzaman (Zaman),DAG

Mr. Asique Rubaiat, AAG

..... For the respondents

**Heard on: 02.11.2021 & 20.07.2023, 10.08.2023.**

**Judgment on 16.08.2023.**

**Present:**

**Mr. Justice K.M. Kamrul Kader**

**And**

**Mr. Justice Showkat Ali Chowdhury**

**Mohammad Showkat Ali Chowdhury, J:**      On an

application under Article 102(2)(a)of the Constitution, the Rule

Nisi was issued on 03.01.2018 in the following terms:

“Let a Rule Nisi be issued calling upon the respondents  
to show cause as to why they should not be directed to pay all  
the retirement benefits and entitlements of the petitioner upon

computing his total length of service taking into account his government service in the BCS (General Education) Cadre in compliance with his letter of appointment dated 13.07.2004 (Annexure-A) read with Rule 78(3)(b) of the Statute-6 of the National University Service Rules and Rule 300 (b) of BSR-Part-1 and/or such other or further order or orders pass as to this court may seem fit and proper.”

2. Relevant facts leading to issuance of the Rule Nisi in brief are that the petitioner served in several Government colleges and different departments of Ministry of Education as a member of the BCS (General Education) Cadre from 30.09.1994 to 31.05.2004. Then he joined in the Respondent No.3 as the Inspector of Colleges on 31.05.2004 and later on retired as the Director, Curriculum, Development and Evaluation Centre on 30.06.2016 from the office of the said Respondent No.3. The petitioner prays for a direction upon the Respondents to pay all the retirement benefits and entitlements of the petitioner upon computing his total length of service taking into account his government service under the BCS (General Education) Cadre in compliance with his letter of appointment issued by the Respondent No.3 dated 13.07.2004 read with Rule 78(3) (b) of the National University Service (Statute-6) (hereinafter referred to as “Statute-6”) of the National University Service Rules ratified on 23 June, 2007 at the 13<sup>th</sup> meeting of the Senate of the Respondent No.3 and Rule

300(b) of Bangladesh Service Rules-Part-1( hereinafter referred to as “BSR-Part-1. The Petitioner duly resigned from his post of the BCS (General Education) Cadre. The resignation of the petitioner was approved by the Hon’ble President of the People’s Republic of Bangladesh and a circular dated 09.06.2016 was subsequently issued by the Ministry of Education in this regard. The petitioner then joined with Respondent No. 3 in the position of Inspector of Colleges through a joining letter dated 31.05.2004. Then the Respondent No.3 issued an appointment letter dated 31.05.2004 appointing the petitioner on a temporary basis. Subsequently, the Respondent No. 3 issued a permanent appointment letter vide Ref. No. 01(740) Jati:Bi:/Prosha:/2004/1/301 dated 13.07.2004 appointing the Petitioner as the Inspector of Colleges on permanent basis mentioning, amongst other, that the petitioners total time period in the Government service shall be taken into account while calculating the pension and the appointment is made effective from the initial date of joining by maintaining the continuity of previous service. The Petitioner, subsequently, pursuant to the order of the Respondent No.3 dated 07.05.2009 was transferred to serve as the Director, Curriculum Development and Evaluation Centre, of the Respondent No. 3. The petitioner then retired as the Director, Curriculum Development and Evaluation Centre on 30.06.2016 from the office of the said respondent No.3.

3. It is further stated in the petition that the petitioner before his retirement, submitted 2 (two) written requests to the Respondent No.5 on 30.03.2016 and 20.06.2016 for considering the length of the service of the petitioner (19 years 8 Months and 1 Day) as BCS (General Education) Cadre to be taken into account for the calculating pensions and other benefits. The Petitioner personally met with the Respondent No. 5 on several times for this purpose. Even after his retirement, the Petitioner sent letters to the respondent No.5 on 20.09.2016, 13.11.2016 and 23.11.2016 and to the respondent No.4 on 21.06.2017 for taking into account the length of the service of the Petitioner as BCS (General Education) Cadre and resolving the complexities regarding one-off encashment of eighteen month's leave (i.e. lump grant) and payment of the provident fund. The petitioner even after sending several letters, unfortunately no steps had been taken by the respondents in this matter. Rather, the Respondent No.5 vide memo No. 02(1926) Jati:Bi:/Prosha:/Bakti/2004/1/249 dated 31.07.2017 informed the Petitioner that Post Retirement Leave (PRL) of 252 days had been approved starting from the date of 30.06.2016. However, no basis for such arbitrary calculation of 252 days of PRL was provided to the Petitioner. Moreover, 13 months after the retirement of the Petitioner such approval of the 252 days of PRL is absolutely arbitrary in nature and has no legal basis. In response to the letter from the Respondent No.5, the petitioner

submitted another written request to the Respondent No. 4 on 14.09.17 for considering the length of the service of the petitioner as BCS (General Education) Cadre to be pensionable. However, no response to that letter has been given to the Petitioner. The petitioner served a notice of demanding justice to the Respondents on 03.12.2017 praying for payment of pension and all PRL benefits to the Petitioner considering his total service length of 31 years 9 months. As per Rule 78(3) (b) of the Statute -6 of the National University Service Rules, the length of Government service of the Petitioner has to be taken into account for calculating pension. Moreover, as per the Rule 300(b) of the BSR-Part-1, even after resigning from the position of BCS (General Education) Cadre, the service length of the Petitioner in that position should be considered to be pensionable along with the service length with the Notice Recipient No.3. Moreover, pursuant to the appointment letter dated 13.07.2004 appointing the petitioner as the Inspector of Colleges on a permanent basis Respondent No.4 mentioned, amongst the others, that the Petitioner's total time period in the Government service shall be taken into account while calculating the pension and the appointment is effective from the initial date of joining i.e.31.05.2004 by maintaining the continuity of previous service. Inaction of the National University with regard to the claim of the petitioner in

computing previous service for pension and other benefits of the petitioner felt aggrieved.

4. Being aggrieved by the inaction of the respondents, about the claims of the petitioner, he finds no other efficacious alternative remedy filed this instant Writ Petition before this Court under Article 102 of our Constitution and obtained the present Rule.

5. The Rule is contested by the respondent No.3 by submitting affidavit in Opposition and stated that the petitioner resigned from his government service on personal ground. Rule 300 B of the BSR-Part -1 clearly states that the period of service of the previous post shall be computable with the service of the subsequent post(pensionable) only if the employee resigns for the purpose of joining in another pensionable job. In the instant case since the petitioner resigned on personal ground, he will not get the benefits which he claims. The Rule is liable to be discharged.

6. Mr. Asaduzzaman, the learned Advocate appearing on behalf of the petitioner submits that the petitioner before joining with the respondent No. 3.i.e National University served in several government colleges and different departments of the Ministry of Education as a member of BCS (General Education) cadre from 30.09.1984 to 31.05.2004 and then resigned from the said service which was approved by the Hon'ble President and then joined with the National University

and in the appointment letter guarantee among others was given that for securing pension benefit the full period of the government service of the petitioner would be counted and such condition is not in conflict with Rule 78(3)(b) of the statute-6 of the National University and Rule 300 of the BSR Part-1 and as such inaction of the respondents in giving pension benefit of the government service of the petitioner after his retirement from National University is nothing but arbitrary exercise of power and infringement of the fundamental rights guaranteed in our Constitution.

7. He next submits that non-consideration of the length of the petitioner's service as BCS (General Education) cadre by the respondents has deprived of all benefits of government service holder and such reluctant attitude to the petitioner's claim through representation without any basis and since the petitioner has no efficacious alternative remedy, he has every right to invoke Writ of Mandamus under Article 102 of the Constitution of Bangladesh and in view of the above, he has prayed for direction to the respondents to enforce fundamental rights and thereby make the Rule absolute.

8. In support of his contention, he has submitted relevant provision of statute 6 of the National University Rules.

9. No one appeared to contest the Rule on behalf of the National University though the Writ Petition with the name of the learned Advocate was posted in the daily cause list.

10. Mr. Asique Rubaiat, the learned Assistant Attorney General appearing on behalf of the respondents in his submission has opposed the Rule and contends that the claim of the petitioner is not supported by law as well as the writ petition is not maintainable and has prayed for discharging the Rule.

11. We have heard the learned advocate for the petitioner and learned Assistant Attorney General and paid our anxious consideration to the submissions of the learned advocate for the petitioner and learned Assistant Attorney General and also have gone through the writ petition, all annexures, affidavit in opposition and the documents annexed thereto and relevant provisions of law.

12. On perusal the above, it appears to us that in this writ petition only two points are to be determined and adjudicated whether the petitioner's claim is lawful and inaction of the respondents in addressing the claim of the petitioner is gross violation of the fundamental rights of the petitioner?

13. On perusal of the writ petition, it is evident by Annexure- B, B1-B2 that the petitioner tendered resignation from the post of Associate Professor (English) which was made effective from 31.05.2004 by an order of Ministry of Education dated 09.06.2016. It appears from Annexure-A that the petitioner was appointed as Inspector of College with the National University by an order of the National University, Gazipur dated 13.07.2004 which was made effective from his



joining. In the said order as a condition of service, guarantees has been given to the petitioner that total period of government service of the petitioner would be counted at the time of calculating pension benefit of the petitioner.

14. It appears further from the material on record that on the basis of condition made in the appointment letter issued by the respondent No.3 the petitioner joined with the National University as Inspector of College on 31.05.2004. The petitioner retired as the Director, Curriculum Development and Evaluation Centre on 30.06.2016.

15. It next reveals from the record that before retirement the petitioner submitted two representations dated 30.03.2016 and 20.06.2016 to the Respondent No.5 for considering the length of service of the petitioner (19 years, 8 months and 1 day) as BCS (General Education) cadre to be taken into account for calculating pension and other benefits. It is evident from the annexures appended to the writ petition that the petitioner after retirement made representation to the respondents Nos. 4 and 5 for taking into account the length of the service of the petitioner as BCS (General Education) cadre and resolving the complexities in respect of one- off encashment of 18 months leave (Lump Grant) and payment of provident fund. Record further reveals that respondent No.5 vide memo No. 02 (1926) Jati: B1:/ prosha:/ Bakti/2004/1/249 dated 31.07.2017 intimated to the petitioner that Post Retirement Leave (PRL) of 252 days

had been approved starting from the date of 30.06.2016. The petitioner again sent another representation to the respondent No.4 for addressing his grievances but got no response.

16.In order to address the points raised before us, we think that it would be profitable to reproduce Rule 78 (3) (b) of the Statute-6 of the National University Service Rules which runs as under:

### পেনশনযোগ্য চাকুরীর শর্তাবলী

“৭৮। ৩(খ) তবে আরো শর্ত থাকে যে, বিশ্ববিদ্যালয় কর্তৃপক্ষ বিশ্ববিদ্যালয়ের প্রশাসনিক দক্ষতা ও গতিশীলতা বৃদ্ধির জন্য সরকারী, আধা-সরকারী স্বায়ত্তশাসিত প্রতিষ্ঠানে কর্মরত (ক্যাডার ও নন-ক্যাডার পদে কর্মরত) অভিজ্ঞতা সম্পন্ন কর্মকর্তাদের, বিশ্ববিদ্যালয়ে নিয়োগের পূর্বে যাহাদের পেনশনযোগ্য পূর্ণ সার্ভিস গণনা করা হইবে মর্মে নির্বাচনী বোর্ড সুপারিশ করিয়াছে ও সিডিকেট কর্তৃক যাহা অনুমোদিত হইয়াছে, শুধু তাহাদের ক্ষেত্রে পেনশন যোগ্য পূর্ণচাকুরী গণনা করা হইবে এবং তাহারা সকল আর্থিক সুযোগ সুবিধাও প্রাপ্য হইবেন। এই ক্যাটাগরির কোন কর্মকর্তা যদি পূর্বের চাকুরী হইতে স্বেচ্ছায় অবসর গ্রহণ করিয়া অবসরজনিত সুবিধাদি গ্রহণ করিয়া থাকেন তবে সেই আহারিত সমুদয় অর্থ এককালীন অথবা তিনটি সমান কিস্তিতে জাতীয় বিশ্ববিদ্যালয়ে সমর্পণ করিবেন। এইরূপ সমর্পণের ক্ষেত্রে জাতীয় বিশ্ববিদ্যালয় হইতে অবসরের সমস্ত সুবিধাদি প্রাপ্য হইবেন। তবে দক্ষকর্মকর্তা/কর্মচারীদের অনুরূপ আর্থিক সুবিধা শুধুমাত্র ৩০ জুন ২০০৫ সাল পর্যন্ত নিয়োগের ক্ষেত্রে প্রযোজ্য হইবে। এই ক্ষেত্রে উপ-ধারা ' ক 'প্রযোজ্য হইবেন।

। পরবর্তীতে ইহাকে দৃষ্টান্ত হিসাবে গণ্য করা যাইবেন।

17. From plain reading of Rule 78(3)(b), of the Statute 6, it appears that only those persons pensionable service would be counted and all benefits be given whose computation of prior pensionable service has been recommended by the selection

Board and approved by the Syndicate of the National University. This type of financial benefit for the employees will be applicable only to those employees, who have been appointed within 30<sup>th</sup> June, 2005. The above provision does not say that only those persons prior service will be counted who resigns from service with a view to join another service.

18. It reveals from annexure-‘A’ that the following conditions have been laid down in appointment letter of the petitioner:

১. চাকুরীর ধারাবাহিকতা রক্ষা করে বর্তমান পদে প্রথম যোগদানের তারিখ হতে এই নিয়োগ কার্যকর হবে।
২. জাতীয় বিশ্ববিদ্যালয়ের পেনশন প্রাপ্তির ক্ষেত্রে তাঁর সরকারী চাকুরীর পূর্ণ কাল গণনা করা হবে।
৩. তিনি গাড়ীর সুবিধা এবং অন্যান্য বিভাগীয় প্রধানের ন্যায় বাড়ী ভাড়া বাবদ ১৫০০০/- (পনের হাজার ) টাকা সিলিং পাবেন।
৪. তাঁর চাকুরী জাতীয় বিশ্ববিদ্যালয় আইন ১৯৯২ এবং জাতীয় বিশ্ববিদ্যালয় চাকুরী সংবিধি (সংবিধি-৬) দ্বারা নিয়ন্ত্রিত ও পরিচালিত হবে। জাতীয় বিশ্ববিদ্যালয় ভবিষ্যতে চাকুরী সংক্রান্ত যে সকল বিধি প্রণয়ন করবে সে সকল বিধি বিধানও তাঁর চাকুরী ক্ষেত্রে প্রযোজ্য হবে।”

19. In the instant case on the basis of the recommendation of Selection Board the Syndicate of the National University approved the appointment letter of the petitioner and for that reason, he is entitled to have the benefit of the condition 2 of the appointment letter i.e. total period in the government service shall be taken into account in case of getting pension of the National University. In Rule 78(3)(b) of the Statute 6 further condition imposes that if any such official

receives any retirement benefits in that case, he must surrender those benefits to the National University after retirement from the prior service.

20. In this regard we need to see whether the petitioner received any retirement benefits from the government service. In the affidavit in reply dated 26.07.2023 in para 10, it is stated that the petitioner did not receive any retirement benefits from his Government Service and that the said claim of the petitioner has not been controverted by the respondents by filing affidavit in opposition and in such premises the above claim of non receiving of any retirement benefit from prior employment is deemed to be correct on the principle of non traverse and consequently the question of surrender of all benefits from government service of the petitioner to the National University does not arise. It has been already been observed that the petitioner joined in the National University on 31.05.2004 and it is before 30.06.2005. So, all conditions laid down in Rule 78(3)(b) of the statute- 6 has been fulfilled and accordingly the petitioner is entitled to have benefits of provision of Rule 78 3(b) of the Statute-6 of the National University Service Rules.

**All underlines are supplied for emphasis.**

21. Affidavit in Opposition filed by the respondent No.3 wherein it has been stated that the petitioner resigned from his

government service on personal ground and he was released by the Ministry of Education vide memo শাঃড/সেঅব্যাহতি-৭/২০০৯/৭০০-শিক্ষা মন্ত্রণালয় 09.06.2016 (Annexure-B-2 to the Substantive Application, page-22) Rule 300 B of the BSR-Part 1 clearly states that the period of service of the previous post shall be computable with the service of the subsequent post (pensionable) only if the employee resigns for the purpose of joining in another pensionable job. We observe that in the instant case since the petitioner resigned on personal ground and Rule 300 (B) of the BSR-Part-1 has got no manner of application as because he is protected by Rule 78(3)(b) of the Statute-6 of the National University as well as annexure A wherein guarantees given by the University before joining in the university and the said guarantee has been approved by the syndicate meeting of the University which is not denied by the respondent No. 3. In annexure-A in condition no. 4, it has been stated that “৪. তাঁর চাকুরী জাতীয় বিশ্ববিদ্যালয় আইন ১৯৯২ এবং জাতীয় বিশ্ববিদ্যালয় চাকুরী সংবিধি (সংবিধি-৬) দ্বারা নিয়ন্ত্রিত ও পরিচালিত হবে। জাতীয় বিশ্ববিদ্যালয় ভবিষ্যতে চাকুরী সংক্রান্ত যে সকল বিধি প্রণয়ন করবে সে সকল বিধি বিধানও তাঁর চাকুরী ক্ষেত্রে প্রযোজ্য হবে।”

22. As per relevant Rules of the National University and by annexure-A which was issued by National University the petitioner’s service will be governed by National University Act,1992 and Statute -6 of the National University and legal rights to have the benefits of total Government service along with the service in the National University accrued in favour of

the petitioner and it is the legitimate expectation of the petitioner that the National University in all circumstances will abide by its Rules and conditions given to the petitioner before joining in the Notational University which was duly recommended by selection Board meeting on 24.06.2004 and approved by the 68<sup>th</sup> meeting of Syndicate of the National University. If the National University is allowed to take “U” turn with the matter of conditions mentioned in appointment letter of the petitioner approved by the syndicate, in future the approval of any decisions of the syndicate would be amounted to like banana leaf and importance of the approval of the syndicate in taking decisions on any matter would be cracked and the confidence of the people to the decisions of the syndicate of the National University will be shaken and the dignity of the University would be highly tarnished. The legal right which has been accrued in favour of the petitioner, inaction/denial of that right by the respondents palpably be amounted to be infringement of the fundamental rights of the petitioner by the respondents which do not contemplate by our Constitution. There is a catena of case laws of our Hon’ble Apex Court that where there is a breach of fundamental right, the victim will have the right to redress his grievances by invoking writ jurisdiction. So, it is patently clear from the discussion made above, the claim of the petitioner is lawful and inaction of the respondents in redressing the claim of the

petitioner is gross violation of the fundamental rights of the petitioner. Thus, the above two points raised in the Writ Petition are decided in the affirmative.

23. Having considered all aspects of the case and the discussions made above, we find merit in the Rule.

24. In the result, the Rule is disposed of with directions however, without any order as to costs. The National university is directed to pay all the retirement benefits and entitlements of the petitioner upon computing his total length of service taking into account his government service in the BCS (General Education Cadre) in compliance with his letter of appointment dated 13.07.2004 Annexure-A read with Rule 78 (3) (b) of the statute-6 of the National University service Rules and Rule 300(b) of BSR, part-1 within 60 (sixty) days from the date of the receipt of this judgment and order.

25. Communicate this judgment and order to the concerned authority at once.

K. M. Kamrul Kader, J

I agree.