

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

Writ Petition No. 1183 of 2018

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. Nurul Islam

..... **Petitioner.**

-Versus-

The Government of the People's
Republic of Bangladesh, represented by
the Secretary, Secondary and Higher
Secondary Education, Ministry of
Education, Secretariat Building,
Ramna, Dhaka and others,

... **Respondents.**

Mr. Md. Humayun Kabir, Advocate with
Mr. Haripada Barman, Advocate and
Ms. Taslima Yeasmin, Advocate

... For the **petitioner.**

Mr. Mujibur Rahman, DAG

.. **For Respondent No.1.**

Judgment on: 05.09.2024

Present:

Mr. Justice Md. Khasruzzaman

and

Mr. Justice K M Zahid Sarwar

Md. Khasruzzaman, J:

In the application under article 102 of the Constitution, on
11.02.2018 the *Rule Nisi* under adjudication was issued in the
following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the Memo No. 3/Gm/11/19 dated 25.02.2016 issued under the signature of the Inspector of Schools, Board of Intermediate and Secondary Education, Rajshahi (respondent No.5) communicating the resolution dated 04.03.2015 taken by the Disposal Committee of the Board of Intermediate and Secondary Education, Rajshahi rejecting the petitioner’s application dated 12.08.2013 (Annexures- M and M-1) 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.”

Facts necessary for disposal of the *Rule Nisi*, in short, are that on 19.01.2011 the petitioner was appointed in the post of Headmaster of Bagzana Bilateral High School, Panchbibi, Joypurhat (Annexure-A) and he joined the school on 20.01.2011 (Annexure-A-1). Since then he has been serving with full satisfaction of the authority. Thereafter, his name was enlisted in the monthly pay order (MPO) and he was receiving the same till 01.12.2011. It is stated that he was dismissed from his service on 01.12.2011 in violation of the mandatory provision of regulation 12 of the Recognized Non-Government Secondary School Teachers (Board of Intermediate and Secondary Education, Rajshahi) Terms and Conditions of Service Regulations, 1979 (in short, the Regulations, 1979) (Annexure-

B). Afterwards, on 05.12.2011 the petitioner filed an application before respondent No. 3, Chairman, Board of Intermediate and Secondary Education, Rajshahi for taking necessary actions against the dismissal order (Annexure-C), for which on 09.01.2012 respondent No. 5, the Inspector of Schools, Board of Intermediate and Secondary Education, Rajshahi issued a letter to the Upazila Nirbahi Officer, Panchbibi requesting him to enquire into the allegation against the petitioner and forwarded a report with specific opinion (Annexure-D). Respondent No. 5 again sent a copy of the allegation made against the petitioner through the letter dated 16.01.2012 since the copy of allegation was not sent with the earlier letter dated 10.01.2012 (Annexure-D-1).

Having received the letter from respondent No. 5, the Upazila Nirbahi Officer, Panchbibi, Joypurhat enquired into the allegation and submitted a report with his specific finding to respondent No. 5 vide Memo No. Dwba/cuvP/6-106/2012-1280 dated 09.10.2012 and in his report, the Upazila Nirbahi Officer recommended the petitioner to reinstate in his service (Annexure-E). When respondent No. 5 did not take any step as per the report of the Upazila Nirbahi Officer, on 22.10.2012 the petitioner filed an application to respondent Nos. 3 and 5 (the Chairman and the Inspector of Schools, Board of Intermediate and Secondary Education, Rajshahi) for taking necessary steps against the illegal order of dismissal from service (Annexure-F).

When the respondents did not take any action on the application dated 22.10.2012, the petitioner filed Writ Petition No. 15863 of 2012 whereupon this Court by the order dated 03.12.2012 disposed of the writ petition directing the respondents to dispose of the application dated 22.10.2012 within a period of 30 days from the date of receipt of the order (Annexure-G). In compliance of the order dated 03.12.2012 passed in the writ petition respondent No. 5 (Inspector of Schools) issued a letter to the Chairman of the managing committee of the school directing him to reinstate the petitioner in the service as a Headmaster vide Memo No. 3/Gm/11/66 dated 21.03.2013 (Annexure-H). Again respondent No.5 by his Memo dated 10.04.2013 recalled and cancelled his earlier order dated 21.03.2013 regarding reinstatement of the petitioner in service (Annexure-I). However, respondent No. 5 again after receiving the order dated 03.12.2012 passed in Writ Petition No. 15863 of 2012 reconsidered the matter and thereby restored his earlier order vide Memo No. 3/Gm/11/66 dated 21.03.2013 by Memo No. 3/Gm/11/129 dated 21.04.2013 (Annexure-J). Despite such order of reinstatement passed by respondent Nos. 3 and 4, the Chairman of the managing committee of the school did not reinstate the petitioner in his service. In such circumstances, on 12.08.2013 the petitioner filed an application before respondent Nos. 3 and 5 for redress and thereby prayed for reinstatement in

service (Annexure-K). But the respondents did not pay any heed to the same. As such, the petitioner filed another Writ Petition No.7019 of 2014 and obtained the *Rule Nisi* and an order of direction upon the respondents to dispose of the application dated 12.08.2013 within 30 days from the date of receipt of the order (Annexure-L) and the order was communicated upon the respondents. But the respondents rejected the application on 04.03.2015 which was communicated to the petitioner on 25.02.2016 (Annexures-M and M-1 respectively).

Under such circumstances, the petitioner has challenged the memo dated 25.02.2016 issued under the signature of respondent No.5 communicating the resolution dated 04.03.2015 taken by the Disposal Committee of the Board of Intermediate and Secondary Education, Rajshahi rejecting the application dated 12.08.2013 and obtained the *Rule Nisi* in the manner as stated above.

The notices of the *Rule Nisi* were duly served upon the respondents and thereafter, the *Rule Nisi* has been made ready for hearing vide office report dated 27.01.2019. None of the respondents files any *affidavit-in-opposition* to contest the *Rule Nisi*.

Mr. Md. Humayun Kabir, appearing with Mr. Haripada Barman and Ms. Taslima Yeasmin, the learned Advocates on behalf of the petitioner submits that after completion of 12 (twelve) years service experience as an Assistant Teacher, he got

appointment as the Headmaster of Bagzana Bilateral High School, Panchbibi, Joypurhat on 19.01.2010 and the service of the petitioner has not been terminated on the ground of probationary, but the Appeal and Arbitration Committee of the Board refused to examine the dismissal order of the petitioner on the plea of probationary which is not sustainable in the eye of law and as such the impugned order and the resolution are required to be declared to have been passed without any lawful authority and are of no legal effect.

Mr. Kabir further submits that the post of Headmaster of a Non-Government Secondary School is an experience post and in case of appointment in an experience post, the question of probationary does not arise at all, hence the service of the petitioner can not be terminated on the ground of probationary and as such the impugned order and the resolution are required to be declared to have been passed without any lawful authority and are of no legal effect.

Mr. Kabir also submits that the order of dismissal from service is illegal and without lawful authority being violative of regulation 12 of the Regulations, 1979 and as such the respondents ought to have considered and allowed the application dated 12.08.2013. Without doing so, the respondents committed serious illegality in law by holding that the dismissal order passed by the managing committee is not required to be examined and approved by the Appeal and Arbitration Committee

of the Board and the Board respectively and thereby most erroneously rejected the application filed by the petitioner for reinstatement in service. Hence, he has prayed for making the *Rule Nisi* absolute. In support of his submissions, he has relied upon the case of *M. Shafiqul Islam Chowdhury Vs. Government of Bangladesh*, Writ Petition No. 11702 of 2021 (judgment delivered by one of us on 17.08.2022) and Writ Petition No. 7879 of 2017 (Judgment delivered on 10.08.2022).

Mr. Mujibur Rahman, the learned Deputy Attorney General submits that the appointment of the petitioner as a Headmaster of the School on 19.01.2010 is a fresh appointment and as such the petitioner is bound to face the probationary period under the provision of regulation 6 of the Regulation, 1979 and thus the *Rule Nisi* is liable to be discharged.

Mr. Rahman further submits that “Teacher” means including the Headmaster and there is no separate definition for “Headmaster” in the provision of the definitions clause of regulation 2 of ***“The Recognised Non-Government Secondary School Teachers (Board Of Intermediate And Secondary Education, Rajshahi) Terms And Conditions Of Service Regulations, 1979”*** and as such the *Rule Nisi* is liable to be discharged.

Mr. Rahman also submits that since the allegation of misappropriation was found to be proved and since he was probationer in service and since he was dismissed by the

managing committee of the school, question of approval by the Board does not arise at all and as such the impugned order was passed in accordance with law.

We have considered the submissions advanced by the learned Advocate for the petitioner and the learned Deputy Attorney General, perused the writ petition, all other connected papers annexed thereto, the Recognized Non-Government Secondary School Teachers Terms and Conditions of Service Regulations, 1979 and the decision relied upon by the learned Advocate for the writ petitioner.

Admittedly, the petitioner was appointed in the post of Headmaster of Bagzana Bilateral High School, Panchbibi, Joypurhat on 19.01.2011. He joined the service on 20.01.2011 (Annexure A-1). His name was included in the Monthly Pay Order (MPO) and he has been receiving his salary upto 01.12.2011 when he was dismissed from service by the managing committee of the school under regulation 11(e) of the Regulations, 1979.

It appears from the record that the petitioner applied for the post of Headmaster of the school with 12 (twelve) years experience, the selection committee selected the petitioner to be appointed for the post on 19.01.2011, and consequently, the petitioner joined the school on 20.01.2011 and since then he has been discharging his duties with honesty, sincerity and satisfaction of the authority. That the petitioner was sanctioned government portion of monthly salary by way of MPO and since

then he has been receiving government portion of his monthly salary and other financial benefit regularly without any interruption upto 01.12.2011. That without examining the proposal of dismissal of the petitioner by the Appeal and Arbitration Committee and without taking any prior approval by the Board under regulation 12 of the Regulations, 1979 on 01.12.2011 the managing committee of the school dismissed the petitioner from his service. That having enquired into the matter the Upazila Nirbahi Officer, Panchbibi, Joypurhat submitted a report with specific opinion before the Inspector of schools, Board of Intermediate and Secondary Education, Rajshahi (respondent No.5) contained in memo No. Dwba/cuvP/6-106/2012-1280 dated 09.10.2012. On 21.03.2013 respondent No. 5 issued a letter to the Chairman, Managing Committee, Bagzana High School, Panchbibi, Joypurhat directing him to reinstate the petitioner in the service as a Headmaster of the school contained in memo No. 3/Gm/11/66 dated 21.03.2013. On 10.04.2013 respondent No. 5 issued another letter to the Headmaster (In-Charge), Bagzana High School, Panchbibi, Joypurhat stating that the office order dated 21.03.2023 contained in memo No. 03/Gm/11/66 issued by the Board has been cancelled contained in memo No. 3/Gm/12/112 dated 10.04.2013. On 21.04.2013 respondent No. 5 issued a letter to the Chairman, Managing Committee, Bagzana High School, Panchbibi, Joypurhat directing him to reinstate the

petitioner in his service as a Headmaster of the school after canceling the memo No. 3/Gm/11/112 dated 10.04.2013 and thereby restored the memo No. 3/Gm-11/66 dated 21.03.2023 contained in memo No. 3/Gm/11/129 dated 21.04.2013. Under such circumstances, on 12.08.2013 the petitioner again filed an application to the respondents for reinstatement in the service (Annexure-K). Finding no result on the application, the petitioner filed another Writ Petition No. 7019 of 2014 and obtained *Rule Nisi* and a direction to dispose of the application dated 12.08.2013 within 30 days (Annexure-L). Subsequently, the petitioner did not press the *Rule Nisi* and as such it was discharged for non prosecution on 07.01.2018. However, the Intermediate and Secondary Education Board, Rajshahi dealt with the matter and ultimately by the impugned order rejected the application dated 12.08.2013 holding that dismissal order passed by the managing committee does not require for examination and approval by the Appeal and Arbitration Committee and the Board respectively (Annexure-M and M-1).

The instant writ petition has been filed relying upon two points, one is that whether the probationary period is applicable in an experience post or not and the other one is that if the probationary period is applicable in an experience post, the question of approval of dismissal by the Board is required or not.

In deciding these two points, we have examined regulation 2 (m) of **The Recognised Non-Government Secondary School Teachers (Board of Intermediate and Secondary Education, Rajshahi) Terms and Conditions of Service Regulation, 1979** which has been defined the word “**teacher**” means a teacher, whether permanent or temporary of a school under the Board.

The schedule of regulation 4 of **The Recognised Non-Government Secondary School Teachers (Board of Intermediate and Secondary Education, Rajshahi) Terms and Conditions of Service Regulation, 1979** deals with the qualification and experience of the Headmaster of a Non-Government Secondary School. Schedule of regulation 4 reads as follows:

SCHEDULE

Name of the post	Qualification and experience
(a) Headmaster	<p>Second Class Master's degree with B.Ed or its equivalent degree from a recognised University and 10 years' experience in teaching or educational administration.</p> <p style="text-align: center;">Or</p> <p>Second Class Bachelor degree with second class B.Ed or its equivalent degree from a recognised University and <u>12 years' experience in teaching or educational administration.</u></p> <p style="text-align: center;">Or</p>

	Bachelor degree with B.Ed or its equivalent degree from a recognised University and <u>15 years' experience in teaching or educational administration.</u>
(b) Assistant Headmaster	<p>Second class Bachelor degree with B.Ed or its equivalent degree from a recognised University and <u>8 years' experience in teaching or educational administration.</u></p> <p>Or</p> <p>Bachelor degree with B.Ed or its equivalent degree from a recognised University and <u>12 years' experience in teaching or educational administration.</u></p>
(c) Senior Teacher	Bachelor degree with B.Ed or its equivalent from a recognised University or Kamil degree from a recognised Madrasha.
(d) Assistant Teacher	Bachelor degree from a recognised University or Fazil degree from a recognised Madrasha.
(e) Junior Teacher	H.S.C or S.S.C from a recognised Board with training from an institute recognised by the Board or Alim certificate from a recognised Madrasha.

(Bold and underline for emphasis)

On plain reading of the schedule of regulation 4 of the Regulations, 1979, it appears that the post of the Headmaster and the Assistant Headmaster are an experience post. On the

other hand, the post of the Senior Teacher, Assistant Teacher and Junior Teacher are not an experience post.

Regulation 6 of the Regulations, 1979 deals with the probation of a teacher. Regulation 6 reads as follows:

6. Probation:

(1) **All teachers** on appointment shall be on probation for a period of two years and on satisfactory completion of the period of probation, a probationer shall be confirmed in service.

(2) Where a probationer fails to show satisfactory progress during his period of probation and the appointing authority is of the opinion that his work or conduct **as a teacher** is not satisfactory and he is not likely to improve, the appointing authority may discharge him or extend his probation by a further period not exceeding one year.

(Bold and underline for emphasis)

On a plain reading of regulation 6 of the Regulations, 1979, it appears that the two words have been used in regulation 6 as **“All teachers”** and **“as a teacher”**.

It is easily presumed that **“Teacher”** and **“Chief of the Institution”** are not same and similar though there is no specific

definition about the “Chief of the Institution” in the definitions clause of regulation 2 of the Regulations, 1979.

Subsequently the Board has realized that **“Teacher”** and **“Chief of the Institution”** are not same and similar and the Board has made separate definitions about the words òwkÿKÓ and òwkÿv cÖwZôvb cÖavbÓ in the Regulations namely Ògva``wgK I D``P gva``wgK wkÿv tevW©, ivRkvnX (gva``wgK I D``P gva``wgK ˆÍii temiKvix wkÿv cÖwZôvþbi MfwY©s ewW I g``vþbwRs KwgwU) cÖweavbgvjv, 2009Ó

Regulation 2 (V) of the Regulations, 2009 deals with the definition of a **òwkÿKÓ**. Regulation 2 (V) reads as follows:

òwkÿKÓ A_© gva``wgK ev D``P gva``wgK ˆÍii þKvb temiKvix wkÿv cÖwZôvþbi c~Y©Kvjxb wkÿv`vþbi Rb`` wbþqvMcÖvß þKvb e``w³, Ges cÖ`k©K I kixiPP©v wkÿKI Bnvi AšÍfz³© nBþeb |

Regulation 2 (X) of the Regulations, 2009 deals with the definition of a **òwkÿv cÖwZôvb cÖavbÓ**. Regulation 2 (X) reads as follows:

òwkÿv cÖwZôvb cÖavbÓ A_© gva``wgK ev D``P gva``wgK ˆÍii þKvb temiKvix wkÿv cÖwZôvþbi cÖavb wnmvþe `vwqZjcÖvß þKvb wkÿK, wZwb þh c`exþZB AwfwnZ nDK bv þKb |

Amended regulation 2 () of the Regulations, 2009 deals with the definition of a **ÒmvaviY wkÿKÓ**. Regulation 2 () reads as follows:

ÒmvaviY wkÿKÓ ej‡Z cÖavb wkÿK/mnKvix cÖavb wkÿK/ Aa"ÿ/

Dcva"ÿ e"ZxZ Acivci wkÿKMY‡K †evSvB‡e|

On a plain reading of regulations 2 (V), 2 (X) and 2 () of the Regulations, 2009, it is clear that the **"teachers"** means all the teachers excluding the Headmaster/ Assistant Headmaster/ Principal/Vice-Principal.

The word probation period means a process of testing or observing the character or ability of a person who is new to a role or job.

The main purpose of the probation is that a person is on trial regarding his suitability for regular appointment and is liable to be discharged when proved unsuitable.

The suitability of a person for regular appointment is only applicable in a case of initial appointment, not subsequent appointment for an experience post. The suitability of the petitioner has already been tested earlier when he discharged his duties as an Assistant Teacher.

In the case in hands, the petitioner joined as a Headmaster of the school in question with required experience after resigning his earlier post as an Assistant Teacher, but in the grab of probationary period, the life of the petitioner can not be thrown

in the dark or disaster and in view of the above, the probationary period is not applicable in the case of the petitioner.

It is noted that an employer cannot put his employee twice in probationary period after being full-fledged employee. So, after completion more than 12 years as a teacher, probation period for the petitioner is illogical and not proper.

It is also noted that an employer cannot take away the valuable time of the life of a person keeping him as probationer in the service for many years. Human life is short and there is specific age for having a job. So, if any person is kept as probationer for many years or if any person is kept as probationer for 2nd time in his service, it would be injustice to that person.

In the above discussions, we are of the view that the probationary period under regulation 6 of the Regulations, 1979 is not applicable in an experience post.

Moreover, on perusal of the appointment letter dated 19.01.2011 (Annexure-A), it appears that the managing committee of the school i.e. the appointing authority did not mention any probationary period. On perusal of the letter dated 01.12.2011 (Annexure-B), it appears that the managing committee of the school dismissed the petitioner from his service under regulation 11(e) of the Regulation, 1979.

If the managing committee of the school discharged the petitioner from his service on the ground of unsuitability under

regulation 6 of the Regulations, 1979, it must be an order of discharged and there is no scope of colorable exercise of power as to stigma in nature.

In the instant case, since the managing committee of the school dismissed the petitioner from his service with stigma under regulation 11 (e) of the Regulations, 1979, it must be an order of dismissal and in case of dismissal from service, an examination of the Appeal and Arbitration of the Board and approval of the Board is mandatory requirement under regulation 12 of the Regulations, 1979.

So, the issue raised in the *Rule Nisi* for determination as to whether the order of dismissal from service of the petitioner requires examination by Appeal and Arbitration Committee and approval by the Board. It appears that the impugned order of dismissal has been passed under regulation 11(e) of the Regulations, 1979.

Let us require to go through the provision of regulation 12 of the Regulations, 1979 for determination of the issue raised herein which reads as follows:

12. **Power to impose penalty.-** The Power to impose penalty upon a teacher under regulation 11 shall vest in the authority **competent to make appointment:**
Provided that the penalties of **dismissal** or **removal** from service shall not be imposed unless the proposal

for such penalty is **examined by the Appeal and Arbitration Committee and approved by the Board.**

(Bold and underline for emphasis)

As per regulation 12 it is specifically provided that managing committee shall have power to impose penalty upon a teacher which is mentioned in regulation 11. But the order of dismissal or removal of a teacher cannot be made without examination by the Appeal and Arbitration Committee and approval by the Board. As per definition given in regulation 2(m), *“teacher” means a teacher, whether permanent or temporary, of a school under the Board.* Teacher includes Headmaster, Assistant Headmaster, Senior teacher, Assistant teacher and Junior teacher as evident from regulation 3 of the Regulations, 1979. So, that being the position in law, the decision made by the respondents stating that “.....†gv: byiæj Bmjvg†K Zvnvi cÖavb wkÿK c†` 02 ermi wkÿvbexk mgqKvj DËxY© nIqvi cy†e© 01/12/2010 Bs Zwi†L wb†qvMKvix KZ...©cÿ g`v†bwRs KwgwU KZ...©K eiLv`Í Kwievi Kvi†b Avcxj G`vÛ Aviwe†Uk†bi Aby†gv†bi weavb Zvnvi tÿ†Î cÖ†hvR” bv nIqvq †gv: byiyj Bmjv†gi cÖ`Ë cÖavb wkÿK `^c†` cyb:env†ji MZ 12/08/2013 Bs Zwi†Li cÖ`Ë Av†e`b Lwwb Dc†iv³ ch©v†jvPbvi Av†jv†K me© m†šwZµ†g bv gÄyi Kiv nBj|Ó is violated regulation 12 of the Regulations, 1979.

Admittedly, the order of dismissal from service was neither examined by the Appeal and Arbitration Committee of the Board

nor approved by the Board. But no matter whether a teacher is probationer, temporary or permanent in nature, examination of the Appeal and Arbitration Committee and approval of the proposal of dismissal or removal from service of a teacher by the Board is a precondition as per regulation 12 of the Regulations, 1979.

It should be noted here that in case of **“dismissal”** or **“removal”** from service of a teacher, the examination of the **“Appeal and Arbitration Committee of the Board”** and the approval of the **“Board”** are required. But in case of **“discharge”** from service of a teacher, the examination of the **“Appeal and Arbitration Committee of the Board”** and the approval of the **“Board”** is not required as the **“discharge from service”** is not a punishment.

It should be noted here that the **“Appeal and Arbitration Committee”** and the **“Board”** are different body and it is defined separately in regulation 2 of the Regulations, 1979 which is quoted below:

2(b) **“Appeal and Arbitration Committee”** means the Appeal and Arbitration Committee appointed under section 19 of the Ordinance;

2(c) **“Board”** means the Board of Intermediate and Secondary Education, Rajshahi.

In the above discussions, we are of the view that before imposing any penalty of dismissal or removal the matter must be examined by the Appeal and Arbitration Committee of the Board and approved by the Board. Admittedly, the order of dismissal of the petitioner was not examined by the Appeal and Arbitration Committee of the Board and it was not approved by the Board. In such view of the matter, we hold that the refusal of the Appeal and Arbitration Committee of the Board in examining the dismissal order of the petitioner is *ex-facie* illegal and beyond the scope of law which is required to be interfered by this Court.

In the foregoing discussions, we find merit in the *Rule Nisi* which is liable to be made absolute.

Hence, the Rule succeeds.

In the result, the *Rule Nisi* is made absolute without any order as to cost.

Accordingly, the Memo No. 3/Gm/11/19 dated 25.02.2016 issued under the signature of the Inspector of Schools, Board of Intermediate and Secondary Education, Rajshahi (respondent No. 5) communicating the resolution dated 04.03.2015 taken by the Disposal Committee of the Board of Intermediate and Secondary Education, Rajshahi rejecting the application filed by the petitioner 12.08.2013 (Annexure-M and M-1) are hereby declared to have been issued without any lawful authority and are of no legal effect.

Thus, the respondents are hereby directed to reinstate the petitioner in his service as the Headmaster of Bagzana Bilateral High School, Police Station- Panchbibi, District-Joypurhat with arrears of salary, allowances and other financial benefits within 3 (three) months from the date of receipt of this judgment.

Communicate the judgment.

K M Zahid Sarwar, J:

I agree.