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

Present:

Mr. Justice Md. Badruzzaman

And

Mr. Justice Sk. Tahsin Ali

WRIT PETITION NO. 7238 OF 2018.

IN THE MATTER OF:

An application under Article 102 read with Article 44(1) of the Constitution of the People's Republic of Bangladesh.

-AND-

IN THE MATTER OF :

Md. Tayab Uddin

…….. Petitioner

-Versus-

Government of Bangladesh represented by the Secretary Ministry of Secondary and Higher Education, Bangladesh Secretariat, Ramna, Dhaka and others.

... Respondents.

Mr. Md. Shafe Ullah, Advocate

... For the Petitioner.

Mr. Mohammad Imam Hossen Tareq, D.A.G
with Mr. Mohammad Rashedul Hasan, D.A.G
with Mr. Shakir Uddin Ahmed Bappy, D.A.G
with Mr. Mohammad Anowar Hossain, A.A.G
with Mr. Md. Shahidul Islam, A.A.G with
Mr. Kamrunnahar Lipi, A.A.G

…For the Respondents.

Heard on: 01.11.2026.
Judgment on: 02.11.2026.

Md. Badruzzaman, J:

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh, this Rule *Nisi* was issued calling upon the respondents to show cause as to why they should not be directed

to include the name of the petitioner in the Monthly Payment Order (MPO) and pay his arrear salary and allowances from the date of his joining and as to why the rejection of the petitioner's online application, dated 09.06.2017, seeking inclusion of his name in the MPO sheet, as evidenced by Annexure-G, should not be declared to have been made without lawful authority and to be of no legal effect, and/or pass such other or further order or orders as to this Court may seem fit and proper.

The facts relevant for the disposal of this Rule Nisi, in brief, are that the petitioner was appointed as an Assistant Teacher in the School Branch of Momenshahi Islamia Academy and College on 02.05.1995 and joined the said post on 06.05.1995. The petitioner was initially appointed as an Assistant Teacher in English and had been serving in that capacity. Subsequently, one A.K.M. Yahia, an Assistant Teacher in Islamiat, bearing MPO Index No. 276333, retired from service on 01.01.2016, thereby creating a vacancy in the said subject. The petitioner, having fulfilled the requisite qualifications and eligibility criteria for appointment as an Assistant Teacher in Islamiat, was selected by the Governing Body of the institution for appointment against the said vacant post by a resolution dated 14.12.2016, in accordance with Rule 24 of the MPO Rules, as amended in 2012. Accordingly, the Principal of the Academy and College issued an appointment letter in his favour on 15.12.2016. Pursuant thereto, the petitioner joined the said post on 17.12.2016, and the Governing Body subsequently approved his joining by a resolution dated 01.04.2017.

The said Islamia Academy and College obtained affiliation from the Board of Intermediate and Secondary Education, Dhaka, on 26.02.1995, with respect to different subjects on different dates. The affiliation was renewed from time to time, the latest renewal being

granted on 17.07.2016. Following the petitioner's appointment, the concerned authorities of the institution made several representations to respondent No. 3, seeking approval of the petitioner's appointment and inclusion of his name in the Monthly Payment Order (MPO) sheet for payment of the government portion of his salary. However, despite repeated representations, neither the petitioner nor the appointing authorities received any response from respondent No. 3.

Pursuant to an inquiry, the District Secondary Education Officer, Mymensingh Sadar Upazila, submitted an inquiry report dated 31.03.2008, wherein it was observed that the petitioner was entitled to receive MPO benefits.

Thereafter, on 09.06.2017, the petitioner submitted an online application to the Director of Secondary and Higher Secondary Education seeking inclusion of his name in the MPO sheet. However, the said application was rejected on 19.07.2017 without assigning any lawful or cogent reason. It is further stated that the petitioner has been discharging his duties as an Assistant Teacher in Islamiat Subject with utmost sincerity and regularity since the date of his appointment.

Being aggrieved by the aforesaid rejection and having no other equally efficacious alternative remedy, the petitioner invoked the writ jurisdiction of this Court under Article 102 of the Constitution of the People's Republic of Bangladesh and obtained the instant Rule Nisi.

Despite service of notice, the concerned respondents neither entered appearance nor filed any affidavit-in-opposition controverting the statements made in the writ petition or opposing the Rule Nisi.

Mr. Shafe Ullah, learned Advocate appearing for the petitioner, taking us through the writ petition, the annexures appended thereto and other relevant documents on record, submits that the petitioner was duly appointed by the Managing Committee of the Academy

against the vacant post of Assistant Teacher in Islamiat, created upon the retirement of A.K.M. Yahia, and that the appointment was made with the approval of the competent authority in accordance with law. He further submits that the petitioner joined the said post on 17.12.2016 and has been discharging his duties regularly and satisfactorily. Since A.K.M. Yahia was enlisted in the MPO sheet under Index No. 276333 and enjoyed MPO benefits against the said post, the petitioner, having been duly appointed in his place, is entitled to be enlisted in the MPO sheet against the same post and to receive the admissible government portion of his salary.

The learned Advocate further submits that the respondents, without properly considering the petitioner's appointment, eligibility and supporting documents, rejected his online application by the impugned decision dated 19.07.2017, without assigning any lawful or cogent reason. Such rejection, according to him, is arbitrary, mala fide and without lawful authority. He, therefore, prays for a direction upon the respondents to include the petitioner's name in the MPO sheet against Index No. 276333 with effect from the date of his joining, that is, 17.12.2016, together with the admissible arrear salary and allowances.

On the other hand, Mr. Mohammad Imam Hossen Tareq, learned Deputy Attorney General appearing for the Government, opposes the Rule and submits that the grant of MPO benefits is a matter of government policy and depends upon the satisfaction of the prescribed criteria and approval of the competent authority. He further submits that the petitioner cannot claim inclusion in the MPO sheet as a matter of right and that this Court should not issue a direction upon the respondents to include his name in the MPO sheet. He, therefore, prays for discharge of the Rule.

We have heard the learned Advocates for the respective parties, perused the writ petition, the annexures appended thereto, the relevant documents available on record and considered the submissions advanced on behalf of the parties.

The principal question that falls for our consideration is whether the petitioner, having been appointed against the vacant post of Assistant Teacher in Islamic Studies, following the retirement of the previous incumbent, namely A.K.M. Yahia, who was receiving MPO benefits, is entitled to inclusion of his name in the Monthly Payment Order (MPO) sheet against the said post with effect from the date of his joining.

It appears from the materials on record that the petitioner was initially appointed as an Assistant Teacher in English on 02.05.1995 and joined the institution on 06.05.1995. Subsequently, upon the retirement of A.K.M. Yahia, an Assistant Teacher in Islamic Studies, on 01.01.2016, a vacancy arose in the said subject. The petitioner, having fulfilled the requisite qualifications for appointment as an Assistant Teacher in Islamic Studies, was selected by the Governing Body of the institution by a resolution dated 14.12.2016. Accordingly, the Principal issued an appointment letter in his favour on 15.12.2016, pursuant to which the petitioner joined the said post on 17.12.2016. His joining was subsequently approved by the Governing Body on 01.04.2017.

It further appears that the previous incumbent, A.K.M. Yahia, was receiving the government portion of his salary under MPO Index No. 276333. The petitioner, therefore, claims that, having been appointed against the said vacant post in accordance with Rule 24 of the MPO Rules, as amended in 2012, he is entitled to be included in the MPO sheet against the said post.

We are conscious of the settled principle of law that the grant of MPO benefits is a matter of Government policy and that an employee of a non-government educational institution cannot claim such benefits as a matter of absolute right. In this regard, the Appellate Division, in Government of Bangladesh and others v. Md. Nazrul Islam and others, reported in 27 BLT (AD) 167, observed that MPO benefits are granted in accordance with Government policy and that such benefits cannot be claimed as a matter of right in the absence of infringement of any legally enforceable right or violation of law.

The aforesaid principle has also been reiterated by the Appellate Division in Government of the People's Republic of Bangladesh and others v. Ismat Ara Jahan and others, reported in 12 LM (AD) 290; Government and others v. Md. Mainul Haq and others, reported in 12 LM (AD) 345; and Government of Bangladesh and others v. Md. Musabbir Mamun and others, reported in 15 LM (AD) 98.

The ratio emerging from the aforesaid decisions is that mere appointment in a non-government educational institution or fulfilment of the requisite qualifications and formalities does not, by itself, confer an enforceable right to receive MPO benefits. The petitioner must establish his entitlement under the applicable MPO policy and demonstrate that the competent authority is under a corresponding legal obligation to extend such benefits.

Applying the aforesaid principles to the facts of the present case, we find that the petitioner's claim is not founded merely upon his appointment as an Assistant Teacher or upon the assertion that he has fulfilled the requisite formalities. Rather, his claim is founded upon the existence of a vacancy created by the retirement of an MPO-enlisted Assistant Teacher in Islamic Studies, his subsequent appointment against that vacancy by the Governing Body, his joining the post on

17.12.2016 and the subsequent approval of his joining by the Governing Body.

It further appears that the institution had obtained affiliation from the Board of Intermediate and Secondary Education, Dhaka, and that such affiliation was renewed from time to time, the latest renewal being dated 17.07.2016. Moreover, pursuant to an inquiry, the District Secondary Education Officer, Mymensingh Sadar Upazila, submitted a report observing that the petitioner was entitled to receive MPO benefits. Although such an inquiry report cannot, by itself, create an entitlement to MPO benefits, it constitutes a relevant material requiring consideration by the competent authority.

We also find that, following his appointment, the concerned authorities of the institution made several representations to respondents seeking inclusion of the petitioner's name in the MPO sheet. The petitioner himself submitted an online application on 09.06.2017. However, the same was rejected by the impugned decision dated 19.07.2017 without assigning any specific or cogent reason. Despite service of notice, the respondents neither entered appearance nor filed any affidavit-in-opposition to controvert the statements made in the writ petition or to explain the legal basis of such rejection.

In this regard, we are of the view that although the grant of MPO benefits is undoubtedly a matter of Government policy, such policy must be applied fairly, consistently and in accordance with the applicable rules. The competent authority cannot arbitrarily reject a claim without examining the relevant documents, the nature of the vacancy, the eligibility of the incumbent and compliance with the prescribed conditions.

Mr. Mohammad Imam Hossen Tareq, learned Deputy Attorney General, submits that this Court should not issue any direction for

inclusion of the petitioner's name in the MPO sheet, as the grant of MPO benefits is a policy decision of the Government. We have considered the said submission. There is no dispute regarding the general proposition of law advanced by the learned Deputy Attorney General. However, the principle that MPO benefits are governed by Government policy does not confer upon the competent authority an unfettered discretion to act arbitrarily or disregard the applicable rules and the relevant materials placed before it.

In the present case, the materials on record indicate that the petitioner was appointed against a vacancy arising from the retirement of an MPO-enlisted teacher, that his appointment and joining were approved by the Governing Body and that the institution repeatedly approached the competent authority for inclusion of his name in the MPO sheet. The respondents have not placed any material before this Court to demonstrate that the petitioner's appointment was contrary to the applicable MPO policy or that he failed to fulfil any prescribed condition.

In such circumstances, we are inclined to hold that the petitioner's claim deserved due consideration in accordance with Rule 24 of the MPO Rules, as amended in 2012, and the applicable Government policy. The rejection of his application without disclosing any lawful or cogent reason is not sustainable in law. We are, therefore, unable to accept the contention of the learned Deputy Attorney General that the petitioner's claim should be rejected merely on the ground that the grant of MPO benefits is a matter of Government policy.

Having considered the facts and circumstances of the case, the materials available on record, the submissions advanced by the learned Advocates for the respective parties and the principles laid down by the

Appellate Division in the aforesaid decisions, we are of the considered view that the petitioner has established a legally sustainable claim for the relief sought in the writ petition.

Accordingly, we find merit in the Rule.

In the result, the Rule is made absolute. The impugned rejection of the petitioner's online application dated 09.06.2017, communicated on 19.07.2017, as evidenced by Annexure-G, is hereby declared to have been made without lawful authority and to be of no legal effect.

The respondents are directed to include the name of the petitioner in the Monthly Payment Order (MPO) sheet against the vacant post previously held by A.K.M. Yahia, bearing MPO Index No. 276333, with effect from the date of his joining, i.e. 17.12.2016, and to release his admissible arrear salary and allowances in accordance with the applicable rules and Government policy, within 60 (sixty) days from the date of receipt of the copy of this judgment.

There shall, however, be no order as to costs.

The Office is directed to communicate a copy of this judgment to the respondents forthwith.

(Justice Md. Badruzzaman)

I agree,

(Justice Sk. Tahsin Ali)