

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

**Writ Petition No. 9364 of 2018**

In the matter of:

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

AND

In the matter of:

Md. Ismail Hossain and another

..... **Petitioners.**

**-Versus-**

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

... **Respondents.**

Mr. Md. Humayun Kabir, Advocate with  
Mr. Mohammad Safayet Zamil, Advocate  
Mr. Md. Al Amin, Advocate  
Mr. Md. Montasir Shaheen, Advocate

...For the **petitioners.**

Mr. Bepul Bagmar, D.A.G with  
Mr. Mohammad Rezaul Hoque, AAG

For the **respondent No.1.**

**Judgment on: 31.07.2024**

**Present:**

**Mr. Justice Md. Khasruzzaman  
and**

**Mr. Justice K M Zahid Sarwar**

**Md. Khasruzzaman, J:**

In an application under article 102(2)(a)(i) of the Constitution, on 08.10.2018 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 they should not be directed to take necessary steps for payment of the unpaid Government portion of the salary of the petitioners during their suspension period from July, 2014 to June, 2017 including festival bonus and other financial benefit from the Government fund and/or pass such other or further order or orders as to this Court may seem fit and proper”.*

Facts relevant for disposal of the *Rule Nisi*, in short, are as follows:

The petitioner Nos. 1 and 2 are the Assistant Professor and the Office Assistant respectively of Shahid M. Munsur Ali College, Pabna Sadar, Pabna (in short, the college). As per appointment letter vide Memo dated 07.09.1997 (**Annexure-A**) the petitioner No. 1, Md. Ismail Hossain, joined the post of Lecturer, Department of Accounting in the college on 09.09.1997 (**Annexure-A-1**). In pursuance to the appointment letter vide Memo dated 07.09.1997 (**Annexure-B**) the petitioner No. 2, Md. Fazlul Haque, joined the college as an Office Assistant on 10.09.1997 (**Annexure-B-1**). Since then they have been discharging their duties sincerely and with full satisfaction of the authority concerned. The names of the petitioners were enlisted in the monthly pay order (M.P.O) from May 1999 being Index No. 432650 and 432665 respectively (**Annexure-C**) and since then they have been receiving the government portion of their monthly salary and other financial

benefit upto May, 2014. Petitioner No. 1 was promoted to the post of Assistant Professor from the post of Lecturer in the college. It is stated in the writ petition that without complying the mandatory provisions of law, the governing body of the college suspended the petitioners from their service vide resolution dated 25.07.2014 **(Annexure-D)**. Afterwards, the government body of the college by its resolution dated 29.10.2017 withdrew the order of suspension and thereafter, on 26.11.2017 the petitioners rejoined their service and since then they have been discharging their duties with full satisfaction of the authority. It is stated that they were not paid rest 50% of the salary during suspension period though the government portion of salary of the petitioners was allocated and paid by the government. At the time of withdrawing the suspension order, the governing body decided to release the government portion of salary during suspension period. However, after rejoining the service, the petitioners exhausted their all efforts to get the arrears of salary during suspension period but the respondent No.1 refused to pay the same on the ground of the provision of clause 18(6) of the বেসরকারী শিক্ষা প্রতিষ্ঠান (স্কুল, কলেজ, মাদ্রাসা ও কারিগরী শিক্ষা প্রতিষ্ঠান সমূহ)- এর শিক্ষক ও কর্মচারীদের বেতন-ভাতাদির সরকারী অংশ প্রদান এবং জনবল কাঠামো সম্পর্কিত নির্দেশিকা- ২০১০ (মার্চ, ২০১৩ পর্যন্ত সংশোধিত) [in short, the Guidelines, 2010 (amended upto March, 2013)].

Under the aforesaid facts and circumstances, the petitioner filed the present writ petition seeking relief in the form of

mandamus and obtained the present *Rule Nisi* in the manner as quoted above.

However, the notices of the *Rule Nisi* having been served upon the respondents in accordance with law, the same has been made ready for hearing vide office report dated 19.10.2022. But no *affidavit-in-opposition* has been filed by the respondents controverting the material allegations made in the writ petition.

Mr. Md. Humayun Kabir, the learned Advocate appearing on behalf of the writ petitioners submits that admittedly, the petitioners are the Assistant Professor and the Office Assistant of the college and they were suspended and thereafter the governing body withdrew the order of suspension. Afterwards, the petitioners rejoined their service. The petitioners were not given arrears of salary from July, 2014 to June, 2017. In this respect Mr. Kabir, the learned Advocate further submits that when the petitioners had been rendering their service with utmost sincerity, their salaries i.e. monthly pay orders were stopped during the suspension period arbitrarily, without serving any notice upon them or without giving them any opportunity of personal hearing which violates the principle of natural justice and as such, the impugned refusal to pay the arrears of salary during the suspension period is liable to be declared to have been done without jurisdiction. Mr. Kabir, the learned Advocate also submits that it has been decided in so many cases that after withdrawal of the suspension order, the teachers/employees of private

school/college/madrasha, who were getting government portion of their salary before suspension, are entitled to get arrears of salary. Mr. Kabir, the learned Advocate in support of his submissions relied on the decisions of this Division under the similar circumstances in the cases of **Quari Abdul Haleem Vs. Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of religious Affairs, Bangladesh Sachibalaya and others, 50 DLR (HCD) 472; Abu Jafor Vs. Bangladesh, 16 BLC (HCD) 601; Mrs. Shaheba Khatun and others Vs. Government of Bangladesh, 21 BLT (HCD) 541; Kazi Mahmudul Haque Vs. The Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Education, Secretariat Building, Ramna, Dhaka and 6 others, judgment and order dated 22.08.2016 in Writ Petition No. 5202 of 2014 (unreported); Shahjahan Mia (Md) Vs. Government of Bangladesh and others, 20 BLC (HCD) 539; Md. Mostafa Kamal Vs. The Government of the People's Republic of Bangladesh represented by the Secretary, Ministry of Education and others, 2 CLR (HCD) 153 and Md. Abdul Hatun Vs. The Government of Bangladesh, represented by the Ministry of Education, Bangladesh Secretariat, Dhaka and others, judgment and order dated 07.03.2011 in Writ Petition No. 409 of 2010 (unreported).**

Mr. Bepul Bagmar, the learned Deputy Attorney General appearing on behalf of the respondents submits that as per the Guidelines, 2010 (as amended upto March, 2013) the Government is not bound to pay the arrears of salary of the petitioners. Rather the governing body is the appointing authority of the petitioners and they are liable to pay the arrears of the petitioners and can consider the same. He further submits that the government disbursed the government portion of salary but the same was returned back by the governing body of the college and as such, under no way the government is involved in the matter. He also submits that the petitioner has no legal right and the law does not allow the petitioners to get the arrears of salary and as such the *Rule Nisi* may kindly be discharged.

We have heard the learned Advocate appearing on behalf of the petitioners and the learned Deputy Attorney General appearing on behalf of the respondents, perused the writ petition and other materials on record, and the decisions referred by the learned Advocate for the petitioner.

The only point involved in the *Rule Nisi* is whether the petitioners are entitled to get their arrears of salary during their suspension period.

It is admitted that the petitioners are the teacher and the employee of the college and their names were duly included in the monthly pay order (M.P.O.), and they were receiving the same till

stoppage of the payment i.e. on 01.07.2014 on the basis of their suspension order. However, on 29.10.2017 the governing body of the college withdrew the suspension order of the petitioners and thereby the petitioners rejoined the college. After rejoining, the petitioners have been receiving the government portion of salary from July, 2017 but they were not given their arrears of salary during suspension from July, 2014 to June, 2017.

The settled principle of law is that once teaching staff or employee of an educational institute has received the government portion of salary, the same cannot be stopped at the whims and caprice of the managing committee/governing body for no fault of such suspended teaching staff or employee of the school or college. As such, the petitioners are entitled to get salaries for the period of their suspension.

From the averments figured in the writ petition, it appears that the government portion of the salary of the petitioners during suspension were returned by the authority of the college through treasury challan. In the writ petition, the petitioners have alleged discrimination without giving the arrears of salary and other financial benefits during the period under suspension whereas the others on similar footings have been given with the arrears of salaries and other financial benefits during the period under suspension which is violation of articles 27 and 29 of the Constitution.

In an **unreported decision passed in Writ Petition No. 3572 of 2010**, one of the Benches of the High Court Division under similar facts and circumstances issued mandamus for releasing the arrears of salaries of the petitioners who were suspended from service.

During the course of hearing, the learned Advocate for the petitioner in support of his submissions has placed reliance on some decisions as quoted above. Now let us appreciate what has been held in those cited cases.

In the case of **Quari Abdul Haleem Vs. Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of religious Affairs, Bangladesh Sachibalaya and others, 50 DLR (HCD) 472=3 MLR 105**, it has been held:

*“It is settled principle of law that the salary is no more a bounty of the State. The petitioner is entitled to his back salary and other benefits. Accordingly, we also direct the respondents to pay all the arrear salaries and the other emoluments to the petitioner within a reasonable time.”*

In the case of **Abu Jafor Vs. Bangladesh, 16 BLC (HCD) 601**, it has been held:

*“As the competent Court has declared that the petitioner is still in service after setting aside the order of dismissal and hence the petitioner is also entitled to get the arrear salaries*



*and other benefits. The respondents are directed to pay the arrear salaries and other benefits to the petitioner from May, 1998 to June, 2008 within three months from the date of receipt of this judgment.”*

It appears that against the judgment and order passed in Writ Petition No. 5491 of 2009 (reported in 16 BLC 601) the respondent authority moved the Appellate Division in Civil Petition for Leave to Appeal No. 298 of 2011. The civil petition was dismissed affirming the judgment of the High Court Division in the writ petition.

In the case of **Mrs. Shaheba Khatun and others Vs. Government of Bangladesh, 21 BLT (HCD) 541**, it has been held:

*“Suspension from service is not a punishment and as such, because of putting the petitioners on suspension, which did not culminate to any order of dismissal, they cannot be deprived of their salary.”*

In the case of **Kazi Mahmudul Haque Vs. The Government of the People’s Republic of Bangladesh, represented by the Secretary, Ministry of Education, Secretariat Building, Ramna, Dhaka and 6 others, unreported judgment and order dated 22.08.2016 in Writ Petition No. 5202 of 2014**, it has been held:

*“It is revealed from the materials on record that the petitioner was appointed as the Assistant Teacher of the school and was subsequently given charge as the Acting Headmaster therein by the authority of the school. It is not disputed that the name of the petitioner was enlisted in the MPO system who withdrew the Government portion of his salary until stoppage of the same. At one stage of the service in the school, the petitioner was suspended but subsequently the suspension order was withdrawn at the instance of the authority of the school. Once the petitioner received the Government portion of salary, the same cannot be stopped at the whims and caprice of the Managing Committee for no fault of the petitioner.”*

In the case of **Shahjahan Mia (Md) Vs. Government of Bangladesh and others, 20 BLC (HCD) 539**, it has been held:

*“Since the suspension order had been withdrawn by the college authority and the authority itself kept the said amount in its account, though not lawfully the amount was subsequently deposited in favour of the Government by treasury challan with Sonali Bank Ltd. petitioner is entitled to receive the balance amount which was unduly kept in the College account and are now lying in the Government Treasury.”*

In the case of **Md. Mostafa Kamal Vs. The Government of the People's Republic of Bangladesh represented by the Secretary, Ministry of Education and others, 2 CLR (HCD) 153**, it has been held:

*“There is no dispute that the petitioner was duly appointed as Assistant Teacher of the said Madrasa and has been serving till the date of his dismissal. His name was enlisted in the monthly pay order and receiving government portion of monthly salary till stoppage of that. It appears from the decree that the learned Assistant Judge declared that the order of dismissal passed by the Managing Committee of the Madrasa was unlawful, ineffective and not binding upon the petitioner and also declared that the petitioner is in service on and from 01.10.2003 and the petitioner is continuously was in service and he is entitled to get all of his salary and other benefits. Since the petitioner has no fault, civil court declared his dismissal order illegal and then the Managing Committee reinstated him and the petitioner filed several representations to the respondent Nos. 1 and 2, it was the legal duty of respondent Nos. 1 and 2 to release his arrear MPO, they did nothing. As such the respondent Nos. 1 and 2 practically denied the right of the petitioner in this way the respondent Nos. 1 and 2 violated the principle of natural justice.”*

In the case of **Md. Abdul Haten Vs. The Government of Bangladesh, represented by the Ministry of Education, Bangladesh Secretariat, Dhaka and others, un reported judgment and order dated 07.03.2011 in Writ Petition No. 409 of 2010** it has been held:

*“ It appears from the guideline 1995 and office order dated 04.12.2000 passed by the respondent No.1 we find that there is no provision not to release M.P.O. if there is suit in between the Managing Committee and the teacher since he had no fault and was illegally suspended by the respondent. Therefore, the petitioner is entitled to receive M.P.O. for the suspension period.”*

It appears that against the judgment the respondent authority moved the Appellate Division in Civil Petition for Leave to Appeal No. 1949 of 2011 but the civil petition was dismissed by judgment and order dated 15.02.2016.

Lastly, in the case of **ABM Abdul Latif Howlader Vs. People’s Republic of Bangladesh, represented by the Secretary, Ministry of Education and others, 22 BLC (HCD) 372**, it has been held:

*“The absence of budget allocation for the returned portion of the M.P.O. does not absolve the Government from paying the arrears. The scheme of the three sets of laws and the responsibility as undertaken by the Government in terms of*

*“পরিপত্র” Require that the Government is under a further legal responsibility to make necessary budget allocation.”*

The learned Deputy Attorney General appearing on behalf of the respondents could not produce any decision contrary to the decisions as referred above by the learned Advocate for the writ petitioner.

Having gone through the aforesaid decisions, it appears that both the Divisions of the Supreme Court have consistently held that suspension from service is not a punishment. If suspension does not culminate into any order of dismissal, the suspended teacher/employee will not be deprived from getting the arrears of salary and other benefits. So, we want to subscribe with the same views expressed by the other Benches of this Division as quoted above and accordingly, we hold that the petitioners are entitled to get their arrears of salaries including other financial benefits during suspension period and the respondents are duty bound to pay the same.

From the facts and circumstances as stated above, we are of the view that the petitioners having on the same footing as those of the cases referred above are entitled to get same and similar relief as prayed for in the writ petition. Accordingly, we find merit in the Rule.

In the result, the *Rule Nisi* is made absolute.

Thus, the refusal to pay the arrears of salaries and other benefits during the suspension period of the petitioners is declared to have been done without lawful authority.

Hence the respondents are directed to pay the arrears of government portion of the salary of the petitioners during the suspension period from July, 2014 to June, 2017 including festival bonus and other financial benefits to the petitioners in accordance with law within 3 (three) months from the date of receipt of this judgment.

Communicate the judgment.

**K M Zahid Sarwar, J:**

I agree.