

In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)

Present

Madam Justice Kashefa Hussain

And

Madam Justice Kazi Zinat Hoque

Writ Petition No. 11820 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:

Gopal Mozumder, son of late Nalinil Mozumder of village – Barohkhain Padmo para, Upazilla-Anowara, District- Chittagong.

..... Petitioner.

Vs.

Bangladesh, represented by the Secretary, Ministry of Primary and Mass Education and others.

..... Respondents.

Mr. S.M Rezaul Karim, Advocate

.....for the petitioner

Mr. Noor Us Sadik Chowdhury, D.A.G

with Ms. Sayeda Sabina Ahmed Moli A.A.G

with Ms. Farida Parvin Flora, A.A.G

... for the respondents No. 1-6

Heard on: 01.11.2022, 03.11.2022, 14.11.2022 and

judgment on: 17.11.2022.

Kashefa Hussain, J:

Rule nisi was issued calling upon the respondents to show cause as to why holding examination in pursuance of appointment notice for the post of Daptry Cum-Night Guard of Barakhain Padma Para Government Primary School, issued under the signature of

respondent No. 6 vide memo No. উশিঅ/আনো/শিক্ষা/চউ/২৮৮(৮০) dated 21.06.2018 (Annexure-D), should not be declared to be without lawful authority and is of no legal effect and as to why a direction should not be given upon the respondents to appoint the petitioner in the post of Daptory Cum-Night Guard of Barakhain Padma Para Government Primary School, under Upazilla Anowara, Chittagong, on the basis of result published on 21.05.2015 (Annexure-C) as per written representation dated 10.09.2018 (Annexure-G) and/or such other or further order or orders passed as to this Court may seem fit and proper.

The petitioner Gopal Mozumder, son of late Nalinil Mozumder of village – Barohkhain Padmo para, Upazilla-Anowara, District-Chittagong is a citizen of Bangladesh.

The respondent No. 1 is the Secretary, Ministry of Primary and Mass Education Bangladesh Secretariat, Shahbagh, Dhaka -1000, the respondent No. 2 is the Director General, Directorate of Primary and Mass Education, Mirpur, Dhaka, the respondent No. 3 is the District Primary Education Officer, Nandan Kanon, Chittagong, the respondent No. 4 is the Chairman, Upzilla Parishad, Anowara, Chittagong, respondent No. 5 is the Upazilla Nirbahi Officer and Chairman, Daptari Cum-Night Guard Appointment Committee, Anowara, Chittagong, respondent No. 6 is the Upazilla Primary Education Officer, Upazilla Anowara, Chittagong, respondent No. 7 is the Chairman, Managing Committee, Barokhain Padmopara Government Primary School Anowara, Chittagong and respondent

No. 8 is the Head Master, Barokhain Padmopara Government Primary School, Anowara, Chittagong.

The petitioner's case inter alia is that the respondent No. 6 issued and published advertisement notice for appointment of Daptori Cum-Night Guard for 31, Government Primary Schools under the upazilla Anowara Chittagong vide memo No. উশিঅ/আনো/চট্ট/১৩৬/১ dated 19.03.2015. That thereafter on 31.03.2015 the petitioner being a qualified Candidate for the said post filed an application to the concerned authority annexing therewith relevant documents. That after holding Examination for appointment of the said post in 2015 published result sheets under signature of all members of the appointing committee dated 21.05.2015. That after long delay of 3(three) years, the concerned authority further published a fresh advertisement notice for appointment under memo No. উশিঅ/আনো/শিক্ষা/চট্ট/২৮৮(৮০) dated 21.06.2018. That the petitioner somehow came to know that the concerned authority has already fixed a date on 07.09.2018 for holding Examination in the post of appointment for Daptory Cum-Night Guard without any written notice to candidates and hence on 03.09.2018 the petitioner sent a legal notice to the concerned authority through appointed lawyer Mr. Md. Rezaul Karim with a request not to hold the aforesaid Examination which is illegal and without lawful authority. That after receiving the said legal notice the respondent No. 5-8 stopped the said examination and the respondent No. 7 informed the petitioner about the aforesaid decision vide letter dated 06.09.2018. That thereafter on 10.09.2018 the petitioner gave a written representation to the respondent No. 5

and also sent a copy to inform other members of the appointing authority for their consideration with a prayer for appointment of the petitioner in the post of Daptory Cum-Night Guard as per result published previously on 21.05.2015. That the petitioner is qualified for the post of Daptory-cum-night guard in Barakhain Padmapara Government Primary School wherein he obtained first position in Examination and hence the concerned authorities who are engaged in the management of the said school orally permitted the petitioner to perform his duty as night guard in the aforesaid school and as such the petitioner is performing the same duty for long 3(three) years. That the petitioners father donated 10 Gonda land at the time of foundation of school Building and the school building is situated not less than 20 yards distance from the residence of the petitioner and as such the petitioner is a competent person to get appointment for the said post. That the concerned authority is trying to take further examination for the same posts without any prior notice as per impugned advertisement dated 21.06.2018. Therefore the petitioner being aggrieved by the conduct of the respondents in not appointing the petitioner to the designated post inspite of being recommended and selected as per the procedures, the petitioner filed the instant writ petition.

Learned Advocate Mr. S.M Rezaul Karim appeared for the petitioner while learned D.A.G Mr. Noor Us Sadik Chowdhury along with Ms. Syeda Sabina Ahmed Moli, A.A.G along with Ms. Farida Parvin Flora, A.A.G appeared for the respondent Nos. 1-6.

Learned Advocate for the petitioner submits that it is evident and admitted by the respondents that the inaction and conduct of the respondents in not appointing the petitioner to the designated post inspite of admitted eligibility such conduct is arbitrary and without lawful authority. He submits that admittedly the petitioner was recommended and selected following the prescribed procedures and relevant rules for being appointed to the post of Daptry Cum-Night Guard. He submits that the respondents upon citing a lame excuse are not appointing the petitioner to the said post. He submits that the respondents are relying on a flimsy ground that the Nitimala under which the বিজ্ঞপ্তি was issued relying on which the petitioner had made the application such বিজ্ঞপ্তি itself was later cancelled in pursuance of the judgment in writ petition No. 3458 of 2015. He submits that the petitioner had no laches at any stage and he was selected as per their recommendation and as such the ground of refusing the petitioner is blatant violation of Article-31 of the constitution including other provisions. He submits that therefore it is the respondent's lawful duty to appoint the petitioner as soon as possible and the Rule bears merit ought to be made absolute for ends of justice.

On the other hand learned D.A.G by way of filing affidavit in opposition opposes the rule. The crux of his submission is that since the বিজ্ঞপ্তি following which the present petitioner applied for the said post and was ultimately selected such বিজ্ঞপ্তি has been cancelled therefore the petitioner lost his right to be appointed to the said post. He concludes his submission upon assertion that the Rule bears no merit ought to be discharged for ends of justice.

We have heard the learned counsels for both sides, perused the application and materials on records. Before going to the facts of this case it may be pertinent to cite another decision passed by this division in Writ Petition No. 856 of 2019. We are of the considered view that the facts of writ petition No. 856 of 2019 and the fact of the present writ petition are more or less same except for the fact that the বিজ্ঞপ্তি following which the present petitioner applied for the post of Daptori cum-Night Guard such বিজ্ঞপ্তি was later cancelled due to the judgment by another Bench of this court in writ petition No. 3458 of 2015. The learned D.A.G in his submissions and also in his affidavit in opposition attempted to rely on this argument. Our considered view is that inspite of the circumstances, the basic principle of the issue matters more than the factual details. It is admitted that the petitioner was selected and recommended as per the prevalent rule, and laws for the post of the Daptori Cum-Night Guard. The primary ground taken by the respondents is that the বিজ্ঞপ্তি under which he made application and subsequently appeared for the examination/interview whatsoever such বিজ্ঞপ্তি was cancelled later including stopping the appointment process. We are of the considered view that it is a flimsy ground and not at all acceptable. Since the petitioner was selected and recommended as per the Rules prevalent than, therefore if there are no laches on his part, it is the fundamental right of the petitioner to be appointed as Daptori Cum-Night Guard. We are inclined to dispose of the rule.

In the result, the Rule is disposed of. The respondent No.5, Upazilla Nirbahi Officer and Chairman, Daptori cum Night Guard

Appointment Committee, Anowara, Chittagong and the respondent No. 6, Upazilla Primary Education Officer, Anowara, Chittagong are hereby directed to dispose of the written representation dated 10.09.2018 (Annexure-G) within 2(two) months of receiving of this judgment and order in accordance with law.

The order of stay granted earlier by this court is hereby vacated.

Communicate this judgment at once.

I agree.

Kazi Zinat Hoque, J:

Arif(B.O)