

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. 1307 of 2019

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. Saiful Islam and others
..... Petitioners.

Vs.

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

..... Respondents.

Mr. A.M. Mahbub Uddin Khokon, Senior Advocate

with Mr. Saqeb Mahbub, Advocate

with Mr. Shamjid Siddique, Advocate

with Mr. Aminul Haq, Advocate

with Md. Ariful Haque, Advocate

.....for the petitioners

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 respondent No. 2

Heard on: 22.08.2022, 25.08.2022, 29.08.2022,

27.10.2022, 23.11.2023 and judgment on:

28.11.2022.

Kashefa Hussain, J:

Supplementary affidavit do form of the main petition.

Rule nisi was issued calling upon the respondents to show
cause as to why the Respondents should not be directed to take

necessary steps to pay the MPO/salaries of the petitioners from the date of their appointment as shown in paragraph 3 of this application and/or such other or further order or orders passed as to this Court may seem fit and proper.

The petitioner No. 1, Md. Saiful Islam, son of Md. Azizul Haque, Lecturer, Computer Education, Principle-in-charge, Belpukuria Women's College, Upazilla- Puthia, District- Rajshahi, the petitioner No. 2, Momtaz Begum, Daughter of Md. Ashrafuzzaman, Lecturer, Social Welfare, Belpukuria Women's College, Upazilla- Puthia, District- Rajshahi, the petitioner No. 3, Md. Saddak Hossain, Son of Md. Abdul Mannan, Lecturer, Civics, Belpukuria Women's College, Upazilla- Puthia, District- Rajshahi, the petitioner No.4, Most. Nasima Khatun, Daughter of Md. Amzad Hossain, Lecturer, Islamic History and Cultural, Belpukuria Women's College, Upazilla- Puthia, District- Rajshahi, the petitioner No. 5, Md. Sanaullah Haque, Son of Md. Abdul Hamid Mia, Lecturer, Secretarial Science, Belpukuria Women's College, Upazilla- Puthia, District- Rajshahi, the petitioner No. 6, Most. Nazmin Nahar, Wife of Jasim Uddin, Lecturer, Logics, Belpukuria Women's College, Upazilla- Puthia, District- Rajshahi, the petitioner No. 7, Md. Aminul Islam, Son of Md. Shahadat Ali, Lecturer, Social Science, Belpukuria Women's College, Upazilla- Puthia, District- Rajshahi, the petitioner No. 8, Md. Badsha Alam, Son of Md. Kosimuddin, Lecturer, Mathematics, Belpukuria Women's College, Upazilla- Puthia, District- Rajshahi, the petitioner No. 9, Mohammad Makbul Hossain, Son of late Haran Mondal, Lecturer, Islamic Studies, Belpukuria Women's College, Upazilla-

Puthia, District- Rajshahi, the petitioner No. 10, M. Riad Mostafa, Son of Mostafa Md. Abdur Rab, Lecturer, Bengali, Belpukuria Women's College, Upazilla- Puthia, District- Rajshahi, the petitioner No. 11, Most. Merina Akter, Wife of Md. Zakaria, Lecturer, Economics, Belpukuria Women's College, Upazilla- Puthia, District- Rajshahi, the petitioner No. 12, Most. Shahina Khatun, daughter of Md. Abdur Razzaque Sheikh, Lecturer, Bengali, Belpukuria Women's College, Upazilla- Puthia, District- Rajshahi, the petitioner No. 13, Sherin Chowdhury, Daughter of Md. Abu Bakkar Siddiqu, Lecturer, Zoology, Belpukuria Women's College, Upazilla- Puthia, District- Rajshahi, the petitioner No. 14, Nahid Sharmin, wife of Md. Mozaffar Hossain, Lecturer, Psychology, Belpukuria Women's College, Upazilla- Puthia, District- Rajshahi, the petitioner No. 15, Mohiuddin Md. Monowar Hossain, Son of Md. Ansar Ali, Lecturer, Geography, Belpukuria Women's College, Upazilla- Puthia, District- Rajshahi, the petitioner No. 16, Md. Kamrul Islam, Son of Ahammad Ali, Lecturer, Chemistry, Belpukuria Women's College, Upazilla- Puthia, District- Rajshahi, the petitioner No. 17, Md. Ayen Uddin, Son of Md. Samir Uddin, Lecturer, Accounting , Belpukuria Women's College, Upazilla- Puthia, District- Rajshahi, the petitioner No. 18, Md. Shahin Akter, Son of Md. Jomsed Ali, Lecturer, English, Belpukuria Women's College, Upazilla- Puthia, District- Rajshahi, the petitioner No. 19, Amina Khatun, wife of Md. Rezaul Haque, Lecturer, Business Administration, Belpukuria Women's College, Upazilla- Puthia, District- Rajshahi, the petitioner No. 20, Most. Nasima Khatun, Daughter of Md. Nazrul Islam, Demonstrator, Science, Belpukuria

Women's College, Upazilla- Puthia, District- Rajshahi, the petitioner No. 21, Md. Zahid Sarowar, son of Md. Tozammel Haque, Demonstrator, Geography, Belpukuria Women's College, Upazilla- Puthia, District- Rajshahi, the petitioner No. 22, Md. Nazrul Islam, Son of Md. Naimuddin Sarker, Librarian, Belpukuria Women's College, Upazilla- Puthia, District- Rajshahi, the petitioner No. 23, Md. Rafiqul Islam, Son of late Yousuf Ali, Physical Instructor, Belpukuria Women's College, Upazilla- Puthia, District- Rajshahi, the petitioner No. 24, Md. Tamir Uddin, Son of Md. Abdul Mondal, Office Assistant, Belpukuria Women's College, Upazilla- Puthia, District- Rajshahi, the petitioner No. 25, Md. Rashidul Haque, Son of late Nozir Uddin Ahmed, Office Assistant, Belpukuria Women's College, Upazilla- Puthia, District- Rajshahi, the petitioner No. 26, Md. Abdul Mannan, Son of late Kobad Ali, M.L.L.S, Belpukuria Women's College, Upazilla- Puthia, District- Rajshahi, the petitioner No. 27, Md. Manzur Rahman, son of Md. Abdul Mannan, M.L.S.S, Belpukuria Women's College, Upazilla- Puthia, District- Rajshahi, the petitioner No. 28, Md. Tahazul Islam, Son of Md. Abdul Mannan, M.L.S.S, Belpukuria Women's College, Upazilla- Puthia, District- Rajshahi, the petitioner No. 29, Md. Rezaul Haque, Son of Md. Abul Hossain, M.L.S.S , Belpukuria Women's College, Upazilla- Puthia, District- Rajshahi and the petitioner No. 30, Most. Azmira Khatun, Daughter of late Abdus Sattar, Aya(4th Class), Belpukuria Women's College, Upazilla- Puthia, District- Rajshahi are the citizen of Bangladesh.

The respondent No. 1 is the Secretary, Ministry of Education, Bangladesh Secretariat, Shahbagh, Dhaka -1000, the respondent No. 2 is the Director General, Education Directorate, Secondary and Higher Secondary, Shikkha Bhaban, Abdul Gani Road, Dhaka, the respondent No. 3 is the Deputy Commissioner, Rajshahi, the respondent No. 4 is the District Education Officer, Rajshahi and the respondent No. 5 is the Governing Body, Belpukuria Women's College, Upazilla- Puthia, District- Rajshahi.

The petitioner's case inter alia is that the aforesaid college was established in the year 2000 and all the petitioners were appointed on different date and different posts including inter alia lecturer, Demonstrator and other staff with the requisite qualifications. That the aforesaid college was established in the year 2000 (since then till today continuing smoothly) and the Ministry of Education vide memo. No. ঈ/৮-২/২০০০(অ-১)/৫৭০ dated 14.07.2002 gave academic permission to the aforesaid college. That the Secondary and Higher Secondary Education Board, Rajshahi vide dated 10.08.2002 gave academic permission to the aforesaid college. That the Ministry of Education by a letter vide Memo No. Sha:4/1G-4/2004/250 dated 17.05.2004 informed the college authority that Government has decided to pay MPO to the teachers, staffs of the college from 2003-2004 financial year on certain conditions. That on the basis of letter dated 17.05.2004 of the Ministry of Education, for enlistment in the MPO the petitioners through Distrit Education Officer, Rajshahi sent the necessary papers to the Education Directorate and the name of the College was enlisted in the MPO in the year of 2004 vide Index No.

8609053102. That on 05.07.2004 the inspector of College submitted his report. As the academic recognition was stopped, the institution could not obtain the academic permission. Thereafter the Ministry of Education vide Memo dated 09.03.2010 accorded academic permission and on the basis of the said Memo. the Secondary and Higher Secondary Education Board, Rajshahi vide Memo dated 21.03.2010 gave academic permission for 2(two) years from 01.07.2010 to 30.06.2012. Thereafter the Secondary and Higher Secondary Education Board, Rajshahi vide Memo dated 18.07.2016 gave academic permission for 4(four) years. The name of the college has been enlisted in the MPO vide Index No. 8609053102 in the year of 2004, but till date the respondents did not pay the MPO to the teachers of the employees of the college in question. Finding no other alternative the petitioner No. 1 Principal-in-charge with the counter signature of the President of the Governing Body sent a representation on 10.01.2019 requesting the respondents to take steps to pay their government portion of the salaries (MPO) of the petitioners but to no effect. Hence the petitioners being aggrieved by the inaction of the respondent filed the instant writ petition.

Learned Advocate Mr. A.M. Mahbub Uddin Khokon, Senior Advocate with Mr. Saqeb Mahbub, Advocate with Mr. Shamjid Siddique, Advocate with Mr. Aminul Haq, Advocate with Md. Ariful Haque, Advocate appeared for the petitioners 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 No. 2.

Learned Advocate for the petitioner submits that although in the year 2004 the concerned authorities through its own policy already decided to grant M.P.O to the college but however till date they have not implemented the policy that they themselves took steps upon in 2004. He submits that the petitioners institution was enlisted for granting M.P.O on May 2004 vide Index No. 8609053102 by the Ministry of Education. Upon a query from this bench the learned Advocate for the petitioner submits that the institution which is already enlisted for M.P.O originally since May 2004, nevertheless the academic recognition of the institution was suspended for some time. He continues that however by the respondent's own action the academic recognition was again resumed in the year 2010. He submits that therefore pursuant to the resuming of the academic recognition of the institution and since the institution was already enlisted in the MPO list in May 2004 by an Index No. 8609053102 therefore the inaction of the respondents in implementing their own policy is in violation of the fundamental rights of the petitioners. In pursuance of his argument he takes us to the supplementary affidavit in opposition filed by the respondent No. 2 wherefrom he draws our attention to Annexure-3. He draws specific attention to the “অন্যান্য তথ্য-উপাত্তঃ” wherefrom he shows us that it is evident from the Respondents own remarks that the Ministry of Education on 17.05.2014 already issued an order that the said teachers and other staffs of the said institution be granted MPO. He also shows us that however it is clear and admitted from their remarks that till date the salary and other benefits by way of MPO has not been released. He contends that it is

admitted that the order to grant MPO was passed in 2004. He concludes his submission upon assertion that since the government is failing to implement its own policy therefore he prays for direction to release the MPO as per their policy and the Rule bears merit ought to be made absolute for ends of justice.

On the other hand learned Advocate for the learned D.A.G appearing for the respondent No. 2 by way of affidavit in opposition opposes the Rule. Upon a query from this bench regarding annexure-3 of the supplementary affidavit which was filed by the responded No. 2 he however concedes that since it is a policy matter of the government itself therefore not abiding by its own policy is inappropriate.

We have heard the learned counsels, perused the application and materials on record. Admittedly the institution was enlisted under the Government's MPO scheme in the year 2004. However for some time the academic recognition of the institution itself was suspended. It is also admitted that the academic recognition again resumed in the year 2010. There is nothing on record to show that the government took any other decision regarding the original enlistment for MPO which was granted to the institution in the year 2004 by way of index No. 8609053102. We are of the considered opinion that since the institution was already enlisted in the MPO by way of an Index No. 8609053102 in the year 2004, therefore subsequent to resuming academic recognition of the institution, for ends of justice it is imperative that the concerned authorities respondents ought to implement its own policy. Non implementation of its own policy is evident by the remarks (annexure-3 of the supplementary affidavit)

which is an admission of non implementation of its own policy. Such mindless non-implementation of the Government's own policy is not acceptable and unlawful. Since the government by its own policy decided to grant MPO to the institution therefore after resuming the academic recognition of the institution, it is the fundamental right of the petitioners that the MPO ought to be released by the respondents. We have particularly drawn attention to Annexure-3 of the supplementary affidavit in opposition filed by the respondent No. 2. The relevant portion is reproduced hereunder:

“অন্যান্য তথ্য উপাত্ত:

১। শিক্ষা মন্ত্রণালয় কর্তৃক শিক্ষক কর্মচারীদের এমপিও ভুক্তির আদেশ প্রদান করা হয় ১৭/০৫/২০০৪ সালে। কিন্তু তাদের বেতন/ভাতা অধ্যাবধি ছাড় করা হয় নি।

২। প্রতিষ্ঠানকে এমপিও ইনডেক্স প্রদান করা হয় এপ্রিল ২০০৫ তারিখে। ইনডেক্স নম্বরটি- ৮৬০৯০৫৩১০২।

৩। বেলপুকুরিয়া মহিলা কলেজের অধ্যক্ষসহ ৩০ জন শিক্ষক/কর্মচারী মহামান্য সুপ্রীম কোর্টের হাইকোর্ট ডিভিশনে এমপিও ভুক্তির আদেশের লক্ষ্যে রিট পিটিশন নং-১৩০৭/২০১৯ করেন। সংযুক্ত এফিডেভিডে ২৯ জনের স্বাক্ষর পাওয়া যায়।

পর্যবেক্ষন: ২০০৩-২০০৪ অর্থ বছরে শিক্ষা মন্ত্রণালয় কর্তৃক প্রদত্ত আদেশে প্রতিষ্ঠানটিকে এমপিও ভুক্ত করে ইনডেক্স নম্বর প্রদান করে যা এখনও বহাল রয়েছে।”

We have also examined the said statement made by the respondents. We have further perused Annexure-D of the writ petition which is memo dated 10.05.2004 issued by the respondent No. 1 under the signature of deputy secretary in the respondent No. 2's office.

Therefore it is clear that the respondents by their own policy decided to enlist the institution to grant MPO benefits. We are of the considered view that it is the respondent's duty to implement their own policy and non implementation of their own policy is a continuous violation of the fundamental rights of the petitioners particularly the institution.

The learned D.A.G at one stage of his argument cited Civil Petition for Leave to Appeal No. 3991 of 2017. We have drawn our attention to this judgment of our Apex court and which is binding on us. Upon perusal of the judgment it appears that in this judgment the cardinal principle was held by our Apex court to the effect that this court cannot interfere in policy matters of the government as to whom MPO will be granted or not. That decision also held that it is the government's discretion being a policy matter.

Our considered view is that the Apex Court case may be distinguished with the case before us. In this case before us the basic distinction is that the Government by its own policy decided to enlist the institution in the MPO list in 2004 by way of index number etc. Therefore a direction only is sought here basically to direct the government to implement its own policy.

We are therefore inclined to dispose of the Rule with directions.

In the result, the Rule is disposed of. The respondents are hereby directed to necessary steps to pay the MPO salary of the petitioners institution and the respondents are also hereby directed to release the MPO of the petitioners institution and to the respective

teachers and employees subject to them having the requisite qualifications following the MPO pattern and the relevant Rules and laws within a period of 2(two) months of receiving of this judgment.

Communicate this judgment at once.

I agree.

Kazi Zinat Hoque, J:

Arif(B.O)