

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CIVIL REVISIONAL JURISDICTION)

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO.2849 OF 2018**

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

And

Md. Rahidul Islam and others

... Petitioners

-Versus-

Md. Ashraful Alam and others

... Opposite parties

None appears

... For the petitioners.

Mr. Md. Hafizur Rahman, Advocate

.... For the opposite party No.1.

**Heard on 23.10.2024.**

**Judgment on 03.11.2024.**

This Rule was issued calling upon the opposite party No.1 to show cause as to why judgment and decree dated 25.04.2018 passed by the learned Additional District Judge, Meherpur in Title Appeal No.15 of 2016 affirming the judgment and decree dated 08.09.2016 passed by the learned Senior Assistant Judge, Gangni, Meherpur in Title Suit

No.173 of 2010 dismissing the appeal and affirming the judgment and decree in part passed by the learned Senior Assistant Judge, Gangni, Meherpur should not be set aside and or pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the opposite party as plaintiff instituted about suit for declaration that order dated 14.06.2008 passed by the defendant dismissing the plaintiff from the post of Sports Teacher of Hariadaha Mohisha Khola Junior Girls High School is unlawful and not binding upon the plaintiff and for further declaration that the plaintiff is still in the service of above school.

It was alleged that the plaintiff joined in the service of above school for the post of Sports Teacher on 01.01.2000. Defendants obtained from him Taka 74,500/- as speed money to enlist him in the Monthly Pay Order (MPO) but the defendants could not enlist the plaintiff nor they returned above money. Since the plaintiff wanted to be updated about his MPO enlistment the defendants asked him not to come to the school and they obstructed the plaintiff in putting signature in the attendance book. It is not true that he was absent from work without authorization since 05.02.2008. He did not receive the show cause notice dated 11.02.2008 asking him to explain about his absence. He was suspended by order dated 02.02.2008 but he was not notified about above order. He was not served with any notice of the Enquiry Committee or the order of his dismissal from service dated 22.06.2008.

Defendant No.1 and 5 contested the suit by filling a joint written statement alleging that the plaintiff remained absent from work willfully during the period from 05.02.2008 to 12.02.2008 without authorization. Defendant No.1 issued a show cause notice upon the plaintiff but he did not give any reply to the notice. A three Member Enquiry Committee was constituted on 22.02.2008 to enquire into above allegation of absence of the plaintiff from work and above Enquiry Committee submitted a report on 08.06.2008. It was alleged that besides unauthorized absence of 8 days the quality of teaching of the plaintiff was unsatisfactory and he used to ill treat the students. On the basis of above report the plaintiff was given notice to show cause but the plaintiff did not give any reply so the plaintiff was lawfully dismissed from service.

At trial plaintiff examined 3 witnesses and defendant examined 2. Documents produced and proved by the plaintiff were marked as Exhibit Nos.1-3 and those of the defendants were marked as Exhibit Nos.Ka, Kha, Ga, Gha, Uma and Moddanno series.

On consideration of facts and circumstances of the case and evidence on record the learned Senior Assistant Judge decreed the suit in part and declared that the dismissal of the plaintiff from the post of Sports Teacher of Hariadaha Mohisha Khola Junior Girls High School was illegal and not binding upon the plaintiff.

Being aggrieved by and dissatisfied with above Judgment and decree defendants preferred Title Appeal Nos.15 of 2016 to the District Judge, Meherpur which was heard by the learned Additional District Judge who dismissed the appeal and affirmed the judgment and decree of the trial court.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above appellant as petitioner moved to this court and obtained the Rule.

No one appears on behalf of the petitioners when the Rule was taken up for hearing although this matter appeared in the list for hearing on several dates.

Mr. Md. Hafizur Rahman, learned Advocate for opposite party No.1 submits that undisputedly petitioner was a Sports Teacher of Hariadaha Mohisha Khola Junior Girls High School since 01.01.2000 and he was dismissed from above service vide impugned order dated 14.06.2008 for alleged absence from work for only 8 days. The plaintiff did not receive any show cause notice before initiation of above proceedings nor he was given any notice of suspension or dismissal from the service. The plaintiff also did not get any notice from the Chairman of the Enquiry Committee and he could not defend himself in the above enquiry. All above enquiry, suspension and dismissal from service were done collusively due to personal grudge and enmity with

defendant No.1 and all above documents were created behind the back of the plaintiff in order to appoint defendant No.5 in the vacant post of the plaintiff.

I have considered the submissions of the learned advocate for the opposite party and carefully examined all materials on record.

It is admitted that the plaintiff was appointed as a Sports Teacher of above Junior Girls High School on 01.01.2000 and he was suspended from service on 22.02.2008 and finally dismissed from above post on 14.06.2008.

The sole allegation against the plaintiff was that he was absent from work for 8 days during the period from 05.02.2008 to 12.02.2008. Plaintiff himself gave evidence as PW1 and reiterated all claims and allegations as set out in the plaint and stated that he was present in his work but he was not allowed to give signature in the attendance Book and he did not receive any show cause notice issued by defendant No.1 for his alleged absence. He did not receive any notice from the Enquire Committee and he could not defend himself in the above enquiry and the impugned order of dismissal from service was also made behind his back without giving him an opportunity for being heard.

Defendant No.1 while giving evidence as DW1 stated that the plaintiff remained absent from work since 05.02.2008 and he was asked to show cause for above absence on 11.02.2008. The plaintiff received

above show cause notice but he did not give any signature in the peon book. The plaintiff was suspended from service on 22.02.2008 and he was notified above order on 23.02.2008. The plaintiff received above notice but he did not give any signature on the peon book. In cross examination DW1 stated that the plaintiff was present in the school during 02.02.2008 but he did not give signature in the attendance book. He sought explanation from the plaintiff orally. As far as service of notice upon the plaintiff is concerned PW1 stated in his cross examination that he did not hand over any letter to the plaintiff. Peon Abbas Ali gave notices to the plaintiff.

Above Abbas Ali, peon of above School, gave evidence as PW2 and contradicted above evidence of DW1 by stating in a cross examination that DW1 served the notice and President of the Enquiry Committee served the notice for enquiry. He does not know who wrote the notice of enquiry. The president of the Enquiry Committee was not examined by the defendants at trial.

The plaintiff worked in above school for continuous 8 years without any allegation what so ever. It is admitted that the plaintiff could not appear before the Enquire Committee and above enquiry was held in his absence. All impugned orders of enquiry, suspension and dismissal from service were passed in the absence of the plaintiff and there is nothing on record to show that petitioner was informed about above enquiry or above orders against him.

The plaintiff could not defend himself in above enquiry and provide an explanation for his alleged unauthorized absence for eight days from work. More importantly DW1 has admitted that no second show cause notice was issued upon the plaintiff before dismissing him from service which makes the impugned order of dismissal from service unlawfully. Dismissal from service is the highest sentence available in a departmental proceeding and inflicting above sentence for mere absence from work for 8 days appears to be highly unusual and disproportional and not tenable in law.

On consideration of above facts and circumstances of the case and materials on record I hold that the concurrent findings of facts arrived at by the learned Judges of the Courts below that the plaintiff was dismissed from service without observing due process and giving him an opportunity to defend himself is based on evidence on record and in the absence of an allegation on non consideration or misreading of any evidence on record this Court can not in its revisional jurisdiction interfere with above concurrent findings of facts.

In above view of the materials of the record I am unable to find any infirmity or illegality in the impugned judgment and decree of the learned Judge of the Court of Appeal below nor I find any substance in this revisional application under Section 115(1) of the Code of Criminal Procedure.

In the result, the Rule is hereby discharged.

However, there is no order as to costs.

Send down the lower Courts records immediately.

*MD. MASUDUR RAHMAN*  
*BENCH OFFICER*