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

Present

Madam Justice Kashefa Hussain

And

Madam Justice Fatema Najib

Writ Petition No. 9003 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. Mesbaul Alam and others

……. Petitioners.

Vs.

The Government of People's Republic of Bangladesh represented by the Secretary, Ministry of Local Government, Co-operative Division, Bangladesh Secretariat, Police Station-Ramna, District-Dhaka-1000 and others.

……Respondents.

Mr. Md. Ashrafuzzaman, Advocate

…..for the petitioners.

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

with Mr. Md. Awlad Hossain, A.A.G

with Mr. Rashedul Islam, A.A.G

... for the respondents No. 1.

Mr. Molla Kismot Habib, Advocate

..... for the respondents No. 3.

Heard on: 06.06.2022, 07.06.2022, 08.06.2022 and judgment on: 09.06.2022.

Kashefa Hussain, J:

Supplementary affidavit do form part of the main petition.

Supplementary Rule nisi was issued calling upon the respondents to show cause as to why the impugned notification

purported to have been issued vides memo No. No. মিই/প্রশা-৩২/১২/২০১৬/২৩৯ (ANNEXURE-E), মিই/প্রশা-৩২/১২/২০১৬/২৪৬ (ANNEXURE-E1), মিই/প্রশা-৩২/১২/২০১৬/২৪৫ (ANNEXURE-E2), মিই/প্রশা-৩২/১২/২০১৬/২৪১ (ANNEXURE-E3), মিই/প্রশা-৩২/১২/২০১৬/২৪০ (ANNEXURE-E4) and মিই/প্রশা-৩২/১২/২০১৬/২৪৪ (ANNEXURE-E5), dated 23.02.2016 under the signature of the respondent No. 05 dismissing the petitioners from the service should not be declared to be without lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

The petitioner No. 1 is Md. Mesbaul Alam son of Md. Mokbul Hossain and Most. Rokeya Begum of Village – Chak Rada Kanai, pPolice Station- Fulbaria, District: Mymensingh, petitioner No. 2 is Md. Arifur Rahman son of late Abul Hossain Sardar and late Kahinur Begum of E/32, Road No. 7, Arambag Housing, Post Office – Mirpu, Pallabi, Dhaka, petitioner No. 3 is Md. Mujibor Rahman (Aslam) son of Md. Ataur Rahman and Most. Rozina Begum, Holding No. 991, Road No. 5, Section-7, Post Office-Mirpur, Pallabi, Dhaka, petitioner No. 4 is Md. Mohasin Gazi son of Abdul Jabbar and Begum Alea Holding No. 1067, Road-5, 7/5, Post Office- Mirpur, Pallabi, Dhaka, petitioner No. 5 is S.M Moshiur Rahman son of Golam Mowla Sharif and Fizroza Begum of Village- Baro Kasba, Ward No. 3 (part), post office- Tarki Bondor, Police Station – Gouranadi, Barisal and petitioner No.6 is Md. Rashed Khan son of Abdur Rashid and Nur Jahan Begum Holding No. 1216, Road No. 11, Post Office – Mirpur, Pallabi, Dhaka are the citizens of Bangladesh. The respondent No. 1 is

the Secretary, Ministry of Local Government, Co-operative Division, Bangladesh Secretariat, Dhaka, respondent No. 2 is the Chairman, Bangladesh Dugdo Utpadonkari Samabay Union Ltd. Head Office- Dugdo Bhaban, 139-140, Tejgaon Industrial Area, Dhaka-1208, the respondent No. 3 is the managing Director, Bangladesh Dugdo Utpadonkari Samabay Union Ltd, Head Office- Dugdo Bhaban, 139-140, Tejgaon Industrial Area, Dhaka-1208, the respondent No. 4 is the Additional Managing Director, Bangladesh Dugdo Utpadonkari Samabay Union Ltd, Head Office- Dugdo Bhaban, 139-140, Tejgaon Industrial Area, Dhaka-1208, the respondent No. 5 is the Additional Managing Director (Administration and Finance and Accounce), Bangladesh Dugdo Utpadonkari Samabay Union Ltd, Head Office- Dugdo Bhaban, 139-140, Tejgaon Industrial Area, Dhaka-1208, the respondent No. 6 is the Deputy Managing Director, Bangladesh Dugdo Utpadonkari Samabay Union Ltd, Head Office- Dugdo Bhaban, 139-140, Tejgaon Industrial Area, Dhaka-1208 and the respondent No. 7 is the Personal Officer of Chairman, Bangladesh Dugdo Utpadonkari Samabay Union Ltd, Head Office- Dugdo Bhaban, 139-140, Tejgaon Industrial Area, Dhaka-1208. .

The petitioners' case inter alia is that the petitioners were appointed on the basis of Daily Hajira on 30.11.2010 by the Bangladesh Dugdo Utpadonkari Samabay Union Ltd, Head Office- Dugdo Bhaban, 139-140, Tejgaon Industrial Area, Dhaka-1208. That the petitioners after appointment were performing their duty painstakingly and sincerely in the Bangladesh Dugdo Utpadonkari Samabay Union Ltd, Head Office- Dugdo Bhaban, 139-140, Tejgaon

Industrial Area, Dhaka-1208. That after joining in their respective posts the petitoners have been performing their duties sincerely, honestly and diligently with full satisfaction and the authority nobody raised any objection against the performance of the petitioners. That by Bangladesh Dugdo Utpadonkari Samabay Union Ltd, Head Office-Dugdo Bhaban, 139-140, Tejgaon Industrial Area, Dhaka-1208 being Memo No. মিই/প্রশা-২৫৭/২০১৫/২২৩৭ dated 05.11.2015 the petitioners including many workers were made permanent. That thereafter the petitioners on 02/01/2016 on the basis of Office order being Memo No. মিই/প্রশা-২৫৭/২০১৫/২২৩৭ dated 05.11.2015 joined as permanent employees as Production Super / Utpadon Tattabadayok (Employee Grade-2) and Grade – 4 in Bangladesh Dugdo Utpadonkari Samabay Union Ltd, Head Office- Dugdo Bhaban, 139-140, Tejgaon Industrial Area, Dhaka-1208. That the petitioners after joining in the said post have been performing their functions and duty painstakingly and sincerely in Bangladesh Dugdo Utpadonkari Samabay Union Ltd, Head Office- Dugdo Bhaban, 139-140, Tejgaon Industrial Area, Dhaka-1208. That between two groups of employees there was a clash and following said incident one Officer Md. Masiur Rahman Khan of Bangladesh Dugdo Utpadonkari Samabay Union Ltd, Head Office- Dugdo Bhaban, 139-140, Tejgaon Industrial Area, Dhaka-1208 as informant lodged FIR being Tejgaon Industrial Area Police Station Case No. 18(2)16 corresponding to G.R. No. 87 of 2016 under sections 143/323/325 of the Penal Code. That the said case after enquiry/ investigation submitted charge sheet and charged was framed and tried by the Chief Metropolitan Magistrate-02, Dhaka and the

court of CMM, Dhaka discharged the petitioners and acquainted the petitioner by order dated 13.02.2017 and others on 23.04.2019. That unfortunately on 23.02.2016 the Additional Managing Director, Bangladesh Dugdo Utpadonkari Samabay Union Ltd, Head Office-Dugdo Bhaban, 139-140, Tejgaon Industrial Area, Dhaka-1208 issued office order দপ্তর আদেশ (Daftor Adesh) for dismissal of the petitioners. That the petitioners filed representation on 27.04.2017 and lastly on 19.05.2019 for their further appointment but in vain. That the petitioners served a demand justice notice upon the respondents through their learned Advocate for their appointment/ reinstatement in their jobs but the respondents till today has not taken steps. Hence the writ petition.

Learned Advocate Mr. Md. Ashrafuzzaman appeared on behalf of the petitioners while learned D.A.G Mr. Noor Us Sadik Chowdhury with Mr. Md. Awlad Hossain, A.A.G along with Mr. Rashedul Islam, A.A.G appeared for the respondents No. 1 and learned Advocate Mr. Molla Kismot Habib appeared for the respondent No.3.

Learned Advocate for the petitioners submits that the respondents under the signature of the respondent No. 5 most unlawfully dismissed the employees from their service and such dismissal Order (Annexure-E) dated 23.02.2016 is without lawful authority. He points out to the materials on record before us and submits that the petitioners were initially on 30.11.2010 appointed as temporary employees on daily basis subject to some conditions which are marked as Annexure-A series. He continues that subsequently by way of Annexure B series and C series all the petitioners were made

permanent employees by way of Annexure B by office order dated 05.11.2015 under the signature of the respondent No. 3. He next points out that Annexure C series show that the 6(six) petitioners are all employees within the definition of the বিধিমালা and definition of the Co-operative Society Ain, 2001 and which is manifest from Annexure C series. He points out to Annexure C series and draws our attention to the fact that 4(four) of the petitioners were appointed as permanent employees in grade-2 and other two petitioners were appointed as permanent employees in grade-4.

There was a query from this bench arising out of the contention of the learned Advocate for the respondent No. 3 that the petitioners do not fall within the status of employees rather they are workers subject to the Bangladesh Labour Laws. The learned Advocate for the petitioners controverts the contention of the learned Advocate for the respondent No. 3 by drawing attention to Annexure C series and points out that Annexure- C series clearly manifest that the petitioners are not workers within the meaning of the labour laws of Bangladesh rather they are employees classified under specific grades for purpose of employment by the বাংলাদেশ দুগ্ধ উৎপাদনকারী সমবায় ইউনিয়ন লিমিটেড. Upon further query from this bench he contended that বাংলাদেশ দুগ্ধ উৎপাদনকারী সমবায় ইউনিয়ন লিমিটেড and Milk Vita is not a private body rather it is a public body and is owned by the Government of Bangladesh. In support he places before this court some materials from the Government website and draws our attention to the said materials. He agitates that these materials manifest that বাংলাদেশ দুগ্ধ উৎপাদনকারী সমবায় ইউনিয়ন লিমিটেড and Milk Vita limited is not a private company rather it

is owned by the Government. He also draws attention to a list of Government owned companies from the website and draws our attention to the fact that the Milk Vita also falls in the category.

On the issue of maintainability of writ petition, he agitates that since Milk Vita is a Government owned company and the petitioners were all dismissed from service under the signature of the respondent No. 5, Additional Managing Director(Administration and Finance and Accounce) who is the Deputy Secretary of the Government and is holding post is Additional Managing Director. He submits that the respondent No. 5 is not holding the position of Additional Managing Director in his private capacity. He continues that the Respondent No. 5 only holds as designated by the Government to supervise the company's inter alia function since it is a government owned company. He submits that therefore it is clear that the বাংলাদেশ দুগ্ধ উৎপাদনকারী সমবায় ইউনিয়ন লিমিটেড and Milk Vita is not a private company nor is it a body corporate in any manner and writ is maintainable.

He submits that by the Government owned organization and the respondent No. 3 particularly under whose signature the order was passed are also representing the government as a person or authority performing functions in connection with the affairs of the republic within the meaning of Article 102 of the Constitution. In this context he agitates that therefore the order of dismissal by the respondent No. 3 may be challenged under Article 102 and writ is maintainable under Article 102 of the Constitution.

He next takes us to some factual aspects asserting that the petitioners as is evident from Annexure 'C' even were made

permanent employees of the বাংলাদেশ দুগ্ধ উৎপাদনকারী সমবায় ইউনিয়ন লিমিটেড, Milk Vita and have been classified in accordance with their gradation list in grade-2 and grade-4 respectively. He contends that however the respondent No. 5 arbitrarily dismissed the petitioners from their service without issuing any show cause notice upon them which evidently entails due process was not afforded to them. He submits that the respondents were removed by office order No. 3 on 23.02.2016. He next points out to Annexure D series and shows the date the criminal case was filed by some other members of the সমিতি against the petitioners that is on 23.02.2016. He shows us that the petitioners were dismissed on the same date on 23.02.2016. He next draws us to Annexure D1 and shows that however ultimately the Court of Chief Metropolitan Magistrate, Court No. 2, Dhaka acquitted them from the case by its order dated 23.04.2019. He argues that even for argument's sake it is presumed that even if the respondents raised the question of criminal case pending against the petitioners and which may have led them to their dismissal, nevertheless it is evident from annexure-D1 that all the petitioners were acquitted from the case after being proved innocent (নির্দোষ). He continues that however even if a criminal case was pending against the petitioners even in that case the respondents were bound to issue show cause notice upon the petitioners before dismissing them. To substantiate his argument he draws attention to clause 8.02 (Kha) of the চাকুরী বিধি ও নিয়োগ নীতিমালা ২০০৮ (সংশোধিত-২০০৯). He draws us to Clause 8.02 Kha(2) and points out that the dismissal from service of the petitioners falls within the provision under 'খ' Kha that is গুরুদন্ড. He next draws our attention to

clause 8.06 of the চাকুরী বিধি ও নিয়োগ নীতিমালা ২০০৮ (সংশোধিত-২০০৯) and shows that clause 8.06 has categorically laid out the procedure in the event of dismissal of service of any employees of the বাংলাদেশ দুগ্ধ উৎপাদনকারী সমবায় ইউনিয়ন লিমিটেড. He points out that clause 8.06 contemplates before dismissing from service imposing গুরুতর দন্ড by framing charge sheet followed by other procedures which is categorically laid out in clause-8.06 (Ka and Kha). He submits that it is admitted that the petitioners were not afforded due process under the mandates of the চাকুরী বিধি ও নিয়োগ নীতিমালা ২০০৮ (সংশোধিত-২০০৯) of the বাংলাদেশ দুগ্ধ উৎপাদনকারী সমবায় ইউনিয়ন লিমিটেড. He agitates that the respondent No. 3 representing the government and Milk Vita being a public body was bound to afford due process to the petitioners by way of the চাকুরী বিধি ও নিয়োগ নীতিমালা ২০০৮ (সংশোধিত-২০০৯ and also under the principles of natural justice. He agitates that by not affording due process to the petitioners the respondents infringed upon the fundamental rights of the petitioners which right is guaranteed under Article 27, 31 and also Article 40 of the Constitution.

On the issue of respondent No. 3's contention that it is an appealable order and falls within clause 8.12 of the চাকুরী বিধি ও নিয়োগ নীতিমালা ২০০৮ (সংশোধিত-২০০৯), he controverts upon assertion that writ is maintainable in the instant writ petition since due process was not afforded to the petitioners while dismissing them from their service and further is violative of the principles of natural justice. Regarding the respondents' contention that the petitioners are rather workers and not employees within the meaning of the বাংলাদেশ শ্রম আইন 2006, the

petitioner controverts such contention of the learned Advocate for the respondents. He takes us to Section 4 of the আইন wherefrom he points out to 4(ক) and submits that section 4(ক) contemplate that শ্রম আইন of 2006 will not be applicable for any institution owned by the government. He submits that Section 4(ক) which contemplates that সরকার বা সরকারের অধীনস্থ কোন অফিস that is government or any institution under the Government or owned by the government shall fall within the exception of 14 Ka and therefore the employees therein shall evidently also fall within that exception for all purposes related to their employment. He submits that section 4(ক) makes its clear that employees of a government or government owned organization are not workers within the definition of worker under the Bangladesh Labour Law, 2006.

He takes us to Section 2(65) of the Bangladesh Labour Law, 2006 and contends that in any case the instant petitioners' nature of employment also do not fall within the category of labour. He argues that Section 2(65) of আইন of 2006 contemplates that প্রশাসনিক বা ব্যবস্থাপনামূলক কাজে দায়িত্বপ্রাপ্ত কোন ব্যক্তি do not fall within the category of workers under any event. He agitates that it is clear from Annexure C series that the employees being হিসাব রক্ষক and বিপনন তত্বাবধায়ক the nature of their employment do not fall with the category of workers. He however reiterates that given that Milk Vita is a government owned company which otherwise falls within the exception of section 4 Ka of the Labour Laws of Bangladesh that none of the provisions of the আইন of 2006 is applicable in the petitioner's case.

Reinforcing his argument on the respondent No. 2 representing the বাংলাদেশ দুগ্ধ উৎপাদনকারী সমবায় ইউনিয়ন লিমিটেড not falling within the category of a public body within the meaning of Services (Reorganisation & Conditions) Act-1975, he particularly draws attention to section 2(c) of the Services (Reorganisation & Conditions) Act-1975. He agitates that sub-section 2(c) of Act of 1985 clearly contemplates that anybody, authority, corporation or institution constituted or established by or under any law and includes any other body, authority or institution owned, controlled, managed or set up by the Government. Relying upon 2(C) he contends that it is clear enough from the materials placed before this bench that the respondents' organization was established by the government. He assails that therefore it is clear that the respondents clearly being an institution owned, controlled, managed and set up by the government evidently falls within the definition of a public body. He assails that therefore writ being maintainable against all public bodies the instant writ petition is also maintainable. He concludes his submissions upon assertion that the Rule bears merits ought to be made absolute for ends of justice.

On the other hand learned Advocate for the respondent No. 3 vehemently opposes the Rule. At the onset of his arguments he contends that the present writ is not maintainable. Upon elaborating, he argues that the বাংলাদেশ দুগ্ধ উৎপাদনকারী সমবায় ইউনিয়ন লিমিটেড is a private body and not a public body and not owned by the Government. He argues that the government is not a share holder of Milk Vita nor is it owned by the Government. He contends that the

government's interest in the institution is limited and is in only so far as its equity and অনুদান is concerned. Upon a query from this bench regarding the order of dismissal being under the signature of respondent No. 5 who is the Additional Managing Director (Deputy Secretary of the Government), he argues that some officers are deputed to the institution in which the government have some interest and the functions of those persons is only to supervise the dealings of the company so far as the interest of the government is concerned. He however next argues that neither the respondent No. 5 nor the respondent No. 3 while they are serving in their post of Managing Director and Additional Managing Director so long as they are holding these posts they are holding the same in their private capacity and are not representing the public authority nor government. He submits that therefore the respondent No. 2 being a private body writ is not maintainable in the instant case.

He next argues that the petitioners if at all aggrieved could have availed the forum of appeal afforded under clause 8.12 of the চাকুরী বিধি ও নিয়োগ নীতিমালা ২০০৮ (সংশোধিত-২০০৯) to seek redress against order of dismissal. He reiterates that writ is particularly not maintainable in the instant case since the respondent No. 2 is the Chairman of বাংলাদেশ দুগ্ধ উৎপাদনকারী সমবায় ইউনিয়ন লিমিটেড which is not a public body or institution.

He next contends that the petitioners wrongly argued that the petitioners were dismissed from their service. He submits that in the petitioners case the petitioners were not dismissed from service rather they were terminated from their service. He submits that there is a

fundamental distinction before dismissal and termination. He draws attention to annexure E-E5 which are the 6(six) orders issued by the respondent No. 5 Additional Managing Director (Deputy Secretary of the Government). He draws attention to the language and heading of the office order dated 23.02.2016. He assails that in the petitioners case the service of all six petitioners were terminated and not dismissed. He particularly draws attention to the subject matter of the office order dated 23.02.2016 চাকুরী অবসান. He submits that it is clearly written that they were all terminated চাকুরী অবসান করা হইলে . He submits that under the principle of law and following a decision of our Appellate Division that in case of termination simpliciter no due process has to be given and principle of natural justice does not lie. In support of his case he cited a decision in the case of Biman Bangladesh Vs. Moniruzzaman reported in 17 BLC(AD)(2012) 56 and points out that in this decision our Appellate Division made it clear that- *"termination simpliciter without giving any stigma or making any accusation is not a punishment and in passing such order no reason is required to be assigned."* He submits that since no reason was given in termination of the petitioners therefore it was a termination simpliciter and the principles of natural are not applicable and the চাকুরী বিধি ও নিয়োগ নীতিমালা ২০০৮ (সংশোধিত-২০০৯) clause 8.06 is also not applicable in this case.

He next argues that since the said respondent organization is a private body and has its own নীতিমালা therefore writ is not maintainable. He asserts that the petitioners ought to have sought redress under Clause 8.12 of the নীতিমালা which provide for the forum

of appeal against any order passed by the respondents. He argues that the petitioners clearly did not resort before the appropriate forum which is contemplated under clause 8.12 of the নীতিমালা therefore they did not seek redress before the proper forum, however writ being not maintainable the writ petition is not sustainable.

He next argues on the nature of class of employment of the petitioners. He contends that the petitioners are not 'employees' rather they fall within the category of 'worker' within the meaning of the Bangladesh Labour Law, 2006. In this context, he asserts that the petitioners to seek redress ought to have resorted to the labour court against the order of dismissal and certainly not writ forum. To substantiate his submissions he draws attention to paragraph No. 4, and 7 of the writ petition and submits that in paragraph Nos. 4 and 7 of the writ petitions the petitioners have admitted that they are workers and therefore the petitioners case shall fall within the scheme of the relevant laws. He particularly draws attention to Paragraph No.4 of the writ petition and pursuades that it is the petitioners' admission that they were appointed on the basis of Daily Hajira on 30.11.2010 by the Bangladesh Dugdo Utpadonkari Samabay Union Ltd.

Upon a query from this bench the learned Advocate for the respondent No. 3 claims that however the petitioners are employed in managerial and administrative capacity but nevertheless as workers. He draws attention to Section 14 of the সমবায় সমিটি আইন ও সমবায় সমিতি বিধিমালা and submits that from Section 14 of the সমবায় সমিটি আইন ও সমবায় সমিতি বিধিমালা it clearly shows that সমবায় সমিটি আইন ও সমবায় সমিতি বিধিমালা

is a body corporate and a separate and independent entity not dependant on the Government. He submits that Section 14 makes its clear that the সমবায় সমিটি আইন ও সমবায় সমিতি বিধিমালা is a body corporate and it inter alia can sue and be sued and can own on its liability as an independent body corporate.

He next draws attention to Section 16 of the সমবায় সমিটি আইন ও সমবায় সমিতি বিধিমালা and points out that Section 16 of the Ain contemplate that any decision taken by the management of the co-operative society shall be final. He submits that although the petitioners were formally terminated from their service under the signature of the respondent No. 5 but however the respondent No. 5 is only working under the decision of the management committee and in accordance with section 16 of the বিধিমালা the order is final. On the issue of finality of decisions, orders etc of the co-operative society, he draws attention to a decision in the case of Nasim Ahmed Vs. Bangladesh and others reported in 32 DLD(HCD)2012 page 172 wherein he draws attention to the principle laid that an action taken by the executive committee of a co-operative society, which was neither performing the functions in connection with the affairs of the Republic nor of a local authority, is not amenable to writ jurisdiction. He reiterates that 32BLD(HCD)2012 case and this writ petition falls within similar category since the instant co-operative society is also a private entity and therefore writ is not maintainable. He concludes his submissions upon assertion that the Rule bears no merit ought to be discharged for ends of justice.

Learned Deputy Attorney General for the respondent No. 1 controverts the submissions of the learned Advocate for the respondent No. 3 regarding the nature and legal status of the respondent No. 2 who is the Chairman, Bangladesh Dugdo Utpadonkari Samabay Union Ltd. The learned D.A.G upon a query from this bench submits that the Bangladesh Dugdo Utpadonkari Samabay Union Ltd. Milk Vita is a public body and owned by the Government and certainly not a private entity. To substantiate his submissions regarding the nature of the entity he shows some materials from the government website and takes us to the history of Milk Vita which is a co-operative union Ltd. He draws us to the materials derived from the government website and also to other materials placed by the petitioners. He points out that the materials clearly show that the Bangladesh Dugdo Utpadonkari Samabay Union Ltd. is a government owned organization and the owners of the body is not the any private person but owned by the government. Upon a query from this bench he submits that regarding the nature and legal status the respondent No. 3 and the respondent No. 5's position as Additional Managing Director and Managing Director of Milk Vita he pursuades that by no stretch of imagination can it be contemplated that a government officer under the laws of the land can hold any position in private capacity till retirement nor in any other dual capacity.

We have heard the Advocates for both sides, also heard the learned Deputy Attorney General, perused the writ petition and the materials on records including the decisions cited by the learned

Advocates. The learned Advocate for the respondent No. 3 revolved around the issue of non maintainability of the writ petition. Therefore we are inclined to address the issue of maintainability first. On the issue of maintainability of the writ petition the respondent No. 3's contention is that Milk Vita is not a public body rather it is a private body. We have perused the documents before us derived from the materials that have been available from the government website. We have gone into the history of the organization. The history of the organization is that Milk Vita was established and initiated by the government and certainly not by any private person. The government is clearly the owner of the company and the objective of Milk Vita contemplates that it was established mainly for purpose of social welfare by way of producing milk products by the organization for sale to the public. Upon a query from this bench the learned Advocate for the respondents as to who the share holders of the Bangladesh Dugdo Utpadonkari Samabay Union Ltd. of Milk Vita are, the learned Advocate for the respondent No. 3 claims that "প্রান্তিক চাষী " are the share holders of the institution and not the government. The learned Advocate for the respondents' substantive claim appears to be that share holders are the (cultivators) প্রান্তিক চাষী of Milk Vita Limited and not the Government. Upon a query from this bench he however could not make out any substantive submission as to what is the basis of the share holding of প্রান্তিক চাষী (cultivators) in the company.

Our considered view upon examining all the materials on records before us which includes the documents derived from the government website which include the list of government owned

company, it clearly shows the inclusion of the respondent's organization inter alia other factors. We are of the considered finding that Milk Vita is a public body and not a private entity.

The learned Advocate for the respondents contended that Milk Vita limited is a 'body corporate' within the meaning of Section 14 of the Co-operative Society Act- 2001. He further contended that it is a private independent entity and carries all rights and liabilities attached to an independent entity. To address this issue we have examined other provisions of 2001 (সমবায় সমিতি আইন এবং বিধিমালা). Since it is a principle of law that to comprehend and properly appreciate the scheme of any law it must be read in whole and not in part with such principle in mind we have examined Sections 14 and 21 of the Co-operative Society Act- 2001. Sections 14 and 21 of the Co-operative Society Act-2001are reproduced hereunder:

> ''ধারা-১৪। প্রত্যেক সমবায় সমিতি একটি সংবিধিবদ্ধ সংস্থা।-(১) এই আইনের অধীনে নিবন্ধিত প্রত্যেক সমরায় সমিতি হইবে স্বতন্ত্র আইনগত সত্তাবিশিষ্ট একটি সংবিধিবদ্ধ সংস্থা (Body Corporate) যাহার স্থায়ী ধারাবাহিকতা থাকিবে, উহার উদ্দেশ্য পূরণকল্পে যেকোন ধরনের সম্পদ অর্জন, ধারণ, হস্তান্তর করার এবং চুক্তি করার অধিকার থাকিবে; সমিতির একটি সাধারণ সীলমোহর থাকিবে এবং সমিতি উহার নিজ নামে মামলা দায়ের করিতে পারিবে এবং উক্ত নামে উহার বিরুদ্ধেও মামলা দায়ের করা যাইবে।
>
> (২) নিবন্ধিত সমবায় সমিতির সাধারণ সীলমোহর কাহার তত্ত্বাবধানে থাকিবে, কোন কোন দলিলে ও কোন কর্তৃপক্ষের উপস্থিতিতে সীলমোহর দ্বারা সীল দিতে হইবে তাহা উপ-আইন দ্বারা নির্ধারিত হইবে।''

and

> ‘‘ধারা-২১। সমবায় সমিতির কার্যাবলী পরিচালনার জন্য সরকারি কর্মকর্তা এবং কর্মচারী প্রেষণে নিয়োগ। - (১) যে সকল সমিতিতে সরকারের শেয়ার, ঋণ বা উক্ত সমিতির গৃহীত ঋণের ব্যাপারে সরকারের গ্যারান্টি রহিয়াছে সে সকল সমিতিতে সরকার, নির্ধারিত শর্ত সাপেক্ষে, কোন প্রথম শ্রেনীর সরকারি কর্মকর্তাকে উহার নির্বাহের জন্য প্রেষণে নিয়োগ করিতে পারিবে।
>
> (২) কোন সমবায় সমিতির আবেদনক্রমে নিবন্ধক, তদকর্তৃক নির্ধারিত শর্ত সাপেক্ষে, অধিদপ্তরের কোন কর্মকর্তা বা কর্মচারীকে সমিতির কার্যাবলী নির্বাহের জন্য প্রেষণে নিয়োগ করিতে পারিবেন।’’

It is true that Section 14 of the Co-operative Society Act-2001 contemplates that all সমবায় সমিতি shall be independent body corporate with its inter alia own rights and liability.

However upon perusal of Section 21 it clearly shows that the provision of Section 21 contemplates the existence of some সমবায় সমিতি wherein the government of Bangladesh may be a share holder or a guarantor having share, loans or may be involved as guarantors regarding some loans by the government. In those cases section 21provides that the government may subject to pre conditions appoint a first class government officer on deputation to look after the affairs of the organization.

Our considered view upon perusal of the সমবায় সমিতি Ain is that although Section 14 contemplates that all সমবায় সমিতি shall be a body corporate having independent entity, however Section 21clearly contemplate that the class of সমবায় সমিতি may be distinguished.

Although section 14 is a general provision but however section 21 clearly contemplate a different class of সমবায় সমিতি (Co-operative

society). Section 14 provide a broad general legal status of সমবায় সমিতি (Co-operative society). On the other hand section 21 specifically presuppose the existence of a different class of সমবায় সমিতি . Such different class is expressly distinguishable under section 21 of the আইন। Section 21 envisages those entities wherein the government may have interest and in pursuance of which they may depute their representative from the government basically to monitor/ supervise the running / functions of the entity.

The class of সমবায় সমিতি envisaged under Section 21 therefore contemplate that the government shall appoint their first class officers on deputation in those organizations. It is clear that Section 14 of the Co-operative Society Act-2001 does not contemplate that all সমবায় সমিতিs shall be private bodies if the governments interest is involved in such সমিতি. Therefore by no stretch of imagination can it be assumed that Milk Vita Limited which is a limited company owned by the government can fall into the category of a 'private body'. We are of the considered opinion that the instant সমবায় সমিতি is a public body owned by the Government and does not fall within the category of a private entity.

We have perused section 2(c) of the Services (Reorganisation and Conditions) Act-1975. The said section 2(c) provides the definition of a public body which is reproduced hereunder:

> "(c) "Public body" means anybody, authority, corporation or institution constituted or established by or under any law and includes any other body, authority or

institution owned, controlled, managed or set up by the Government."

Form our findings and also upon perusal of Section 2(c) of the Services (Reorganisation and Conditions) Act-1975 it is clear that the respondents are a public body since it is owned, controlled and set up by the government.

Now our next contention is the class of employees the petitioners belong to. The learned Advocate for the respondents repeatedly contended that the petitioners falls within the category of 'workers'. The learned Advocate for the respondents pursuades that the petitioners in paragraph Nos. 4 and 7 of the writ petition 'admitted' that they are workers.

Our considered view is that whatever the language in the petition is not important rather the intention from the nature of the employment is to be considered. Pursuant to sifting through the materials and relevant laws, we have examined the office order dated 05.11.2022 marked as annexure-B which is the order of respondent No.6 making the petitioners permanent. Although the petitioners were appointed on temporary basis but it is admitted (Annexure B) that they were made permanent under the signature of the respondent No. 6. The office order clearly shows that they have not been termed as 'worker' but as employees and the petitioners' employees grades are 2 and 4 respectively.

For our purpose we have also addressed Annexure C which describes the nature of the employment of the petitioners. The petitioners belong to Grade 4 and 2 respectively in post of হিসাব রক্ষক

and বিপনন তত্বাবধায়ক. Therefore it is clear that they are not 'workers' within the meaning of the labour law, rather they are employees and have been accorded Grades belonging to Grade 2 and Grade 4 respectively.

We have next drawn our attention to Section 1(4)(ka) of the বাংলাদেশ শ্রম আইন-২০০৬. Section 1(4)(ক) contemplates organizations which shall fall within the exception of Section 1(4)(ক) and shall not fall within the meaning of বাংলাদেশ শ্রম আইন-২০০৬. We have particularly drawn attention to Section 1(4)(ক) and which is reproduced hereunder: "সরকার বা সরকারের অধীনস্থ কোন অফিস" which means Government office or institutions owned by the government. Since we are of the considered finding and opinion that the বাংলাদেশ দুগ্ধ উৎপাদনকারী সমবায় ইউনিয়ন লিমিটেড is a public body and is owned by the government therefore it is needless to state that the organizations owned by the government falls within the exception of Section 1(4)(ক) . Consequently the provisions of বাংলাদেশ শ্রম আইন-২০০৬ shall not be applicable in the petitioners case. Such being the position, we are also of the considered view that the petitioners' are not workers rather they are permanent employees under a particular selection grade.

Next we are inclined to address the issue of the nature of the relief from duties of the petitioners. The learned Advocates for the Respondents pursuaded that the petitioners' were "terminated" from their service which is apparent from the office order dated 23.02.2016 which is annexure E. The learned Advocate for the respondents also argued that therefore the petitioner's case does not fall within the

definition of dismissal or removal. In pressing their argument, they relied on a decision in the case of Biman Bangladesh Vs. Moniruzzaman reported in 17 BLC(AD)(2012)56 wherein our Apex court held:

> *"The principle of natural justice has got no manner of application in case of termination simpliciter, An order of termination simpliciter is a valid order and cannot be interfered within in judicial review provided that the intended action is not taken with a view to victimize the employer/worker for trade union activities."*

The learned Advocate for the respondent No. 3 also tried to pursuade that in the 17 BLD (AD) 2012 case also Bangladesh Biman Corporation is a corporation owned by the government.

Keeping these in mind however we have perused the terms of the চাকুরী বিধি ও নিয়োগ নতিমালা ২০০৮ (সংশোধিত-২০০৯) of Milk Vita. We have perused clause No. 9.02 of the চাকুরী বিধি ও নিয়োগ নতিমালা ২০০৮ (সংশোধিত-২০০৯) which contemplates a situation of termination of employees and which clause 9.02 is reproduced hereunder:

> "৯.০২ বাধ্যতামূলক অবসরদান/ চাকুরীর অবসান ঘটান (Termination of Employment) :
>
> (১)এ বিধিমালার অন্যত্র বর্নিত কোন বিধান মোতাবেক না হলে কর্তৃপক্ষ কর্তৃক স্থায়ী কর্মচারীদের চাকুরীর মেয়াদ ২৫ বৎসর পূর্ন হলে বাধ্যতামূলক অবসরদান/অবসান ঘটাতে পারবে। সে ক্ষেত্রে সংশ্লিষ্ট কর্মচারীকে অবশ্যই ১২০ (একশত বিশ) দিনের লিখিত নোটিশ দিতে হবে। তবে শর্ত থাকে যে, একজন কর্মচারীর চাকুরী এরুপ বাধ্যতামূলক অবসরদান/অবসান ঘটাবার ক্ষেত্রে এ ধরনের

নোটিশের পরিবর্তে ১২০(একশত বিশ) দিনের বেতন প্রদান করা যাবে।

আরো শর্ত থাকে যে, একজন কর্মচারীর চাকুরী এরুপে বাধ্যতামূলক অবসরদান/অবসান ঘটাবার ক্ষেত্রে তাকে চাকুরীকালের সমাপ্ত প্রত্যেক বৎসর অথবা যে কোন অংশ বিশেষের জন্য (কমপক্ষে ১২০ দিন) মিল্ক ইউনিয়ন কর্তৃক ০২ (দুই) মাসের মূলবেতন হারে আনুতোষিক (গ্র্যাচ্যুইটি) এবং অর্জিত ছুটির নগদায়নকৃত অর্থ প্রদান করতে হবে।

(২) অসদাচরন, অদক্ষতা অথবা অন্য কোন কারনে চাকুরী হতে বরখাস্ত বা অপসারিত হলে আনুতোষিক (গ্র্যাচ্যুইটি) প্রাপ্য হবেন না, তবে প্রতিষ্ঠানের আর্থিক কোন ক্ষতি সাধিত না হলে অথবা আর্থিক ক্ষতি হলে, উক্ত আর্থিক ক্ষতি সমন্বয় সাপেক্ষে চাকুরীকালের সমাপ্ত প্রত্যেক বৎসর অথবা যে কোন অংশ বিশেষের জন্য(কমপক্ষে ১২০ দিন) মিল্ক ইউনিয়ন কর্তৃক ০২ (দুই) মাসের মূলবেতন হারে আনুতোষিক (গ্র্যাচ্যুইটি) এবং অর্জিত ছুটির নগদায়নকৃত অর্থ প্রদান করতে হবে।

In our case we find that even if the petitioner's employment were "terminated" it appears from Annexure E that however no notice was served upon them nor was any মূল বেতন basic salary given to them only. Upon perusal of Clause 9.02 it appears that in whatever terms the office order dated 23.02.2016(Annexure E) may have been issued, but for practical purposes it is not 'termination' within the meaning of the বিধিমালা since the respondents neither gave them notice under clause 9.02 nor did they give them pay of 120 days in lieu of. We are of the considered view that clause No. 9.02 of the চাকুরী বিধি ও নিয়োগ নতিমালা ২০০৮ (সংশোধিত-২০০৯) which provides for termination,

however in the instant case since they were neither given any notice nor were they given their salary their being relieved of their services does not fall with termination. Therefore the appellate Division decision in the case of Biman Bangladesh Vs. Moniruzzaman reported in 17 BLC(AD)(2012)56 is not applicable in the instant case. We are of the considered view that since it is not substantively a termination, consequently the petitioners being relieved from duty may fall within the other categories. In accordance with the petitioner's nature of service, being relieved of their service may fall within the other categories in the চাকুরী বিধি ও নিয়োগ নতিমালা ২০০৮ (সংশোধিত-২০০৯) of Milk Vita Ltd. Particularly Clause 8.02(1)(Kha) is reproduced hereunder:

৮.০২(১)(খ) গুরুদন্ড:

১. চাকুরী হতে অপসারণ (removal from service)

২. চাকুরী হতে বরখাস্ত (Dismissal from service)

৩. চাকুরী হতে অপসারনের ক্ষেত্রে নহে বরং চাকুরী হতে বরখাস্ত হওয়ার পর কোন কর্মচারী ভবিষ্যতে মিল্ক ইউনিয়নে চাকুরী প্রাপ্তির অযোগ্য বলে গন্য হবেন।

৪. বাধ্যতামূলক অবসরদান (Compulsory retirement)

We are inclined to opine that the petitioner's dismissal from their service falls with clause 8.02 of the নীতিমালা। Therefore we are also of the considered view that 'গুরুদন্ড' was imposed upon the petitioners.

We have also perused the other related clauses particular clause 8.06 which sets out an enquiry procedure imposition of গুরুদন্ড(Serious punishment) if found guilty. Clause 8.06(ক) contemplate a charge

sheet and further states that the accused employee will be informed "কর্মচারীকে অবহিত করবে ". Clause 8.06 presupposes a written statement লিখিত বিবৃতি, and also ব্যক্তিগত শুনানী(personal hearing).

Upon overall perusal clause of 8.06 it clearly reflects the Rule of affording due process of defence to the employee prior to imposing গুরুদন্ড of the নীতিমালা। Nevertheless, even if the নীতিমালা was silent on the issue of due process, even then the principle of natural justice would be applicable and the employees must be afforded due process before seizing him of his employment. In not affording due process is a direct infringement into the employee's fundamental rights guaranteed under the constitution.

Moreover, the Respondent organization being a public body not affording the petitioner due process is in direct violation of the petitioners fundamental rights and therefore writ is maintainable in the instant case.

The learned Advocate for the respondent No. 3 contended that the petitioners ought to have resorted to the appellate forum contemplated under clause 8.12 of the the চাকুরী বিধি ও নিয়োগ নতিমালা ২০০৮ (সংশোধিত-২০০৯) and further contended that writ is not maintainable since there is other efficacious remedy.

Here we must pause to observe that some of the submissions of the learned Advocate for the respondent No. 3 are inconsistent. On one hand learned Advocate for the respondent No. 3 contends that the petitioners could have availed the appellate forum under clause 8.12 while in the same breath he contended that the petitioners do not fall within the category of employees rather they fall within the category

of 'worker' within the meaning of labour law and ought to have resorted to the labour court to seek redress.

Be that as it may however we are of the considered opinion that the petitioner's fundamental rights have been violated and the respondents represents a public body, the petitioners ought to have been afforded due process which is their constitutional right and also has right under clause 8.06 of the চাকুরী বিধি ও নিয়োগ নতিমালা ২০০৮ (সংশোধিত-২০০৯) . Such being our opinion, we are inclined to dispose of the matter.

In the result, the Rule is disposed of with directions and observations made above.

The impugned notification purported to have been issued vides memo No. No. মিই/প্রশা-৩২/১২/২০১৬/২৩৯ (ANNEXURE-E), মিই/প্রশা-৩২/১২/২০১৬/২৪৬ (ANNEXURE-E1), মিই/প্রশা-৩২/১২/২০১৬/২৪৫ (ANNEXURE-E2), মিই/প্রশা-৩২/১২/২০১৬/২৪১ (ANNEXURE-E3), মিই/প্রশা-৩২/১২/২০১৬/২৪০ (ANNEXURE-E4) and মিই/প্রশা-৩২/১২/২০১৬/২৪৪ (ANNEXURE-E5), dated 23.02.2016 under the signature of the respondent No. 05 dismissing the petitioners from the service is declared to be without lawful authority and is of no legal effect. The respondents are hereby directed to proceed against the petitioners under clause 8.06 of the the চাকুরী বিধি ও নিয়োগ নতিমালা ২০০৮ (সংশোধিত-২০০৯) and dispose of the matter in accordance with law.

Communicate this judgment at once.

Fatema Najib, J:

I agree.

Arif(B.O)