

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. 7223 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. Rafiqul Islam

..... Petitioner.

Vs.

The Government of Bangladesh
and others.

.....Respondents.

Mr. Md. Zahedul Haque, Advocate

.....for the petitioner.

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. 1-4.

Heard on: 05.04.2022, 07.04.2022,

12.04.2022 and judgment on:

13.04.2022.

Kashefa Hussain, J:

Supplementary affidavit filed by the petitioner do form part of
the writ petition.

Rule nisi was issued calling upon the respondents to show
cause as to why the impugned letter vide memo No.
37.02.0000.105.31.116.2018/28/2 dated 03.01.2019 issued under the

signature of the respondent No. 3 rejecting the application for absorption/adjustment of the petitioner in the post of Lecturer (Information and Communication Technology) should not be declared illegal and of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

The facts as stated by the petitioner inter alia is that the petitioner is a citizen of Bangladesh. Respondent No. 1 is the Secretary Ministry of Education, Bangladesh Secretariat, Dhaka, respondent No. 2 is the Director General, secondary and higher secondary Education Adidaptar, Bangladesh, respondent No. 3 is the Assistant Director (College-3) Secondary and Higher Secondary Education Adidaptor, Bangladesh, Dhaka, respondent No. 4 is the Deputy Director, Secondary and Higher Secondary Education, Rajshahi Zone, Rajshahi, respondent No. 5 is the District Education Officer, Sirajgonj, respondent No. 6 is the Upazala Education Officer Shahzadpur, Sirajgonj, respondent No. 7 is the Principal, Ghorashal Sahittik Barkatullah College, Shahjadpur, Sirajgonj and respondent No. 8 is the President, Governing body Ghorashal Sahittik Barkatullah College, Shahjadpur, Sirajgonj.

The petitioner case inter alia is that he was originally appointed as demonstrator (fÐcnÑL) in Physics in the respondent college in the year 1996. The Government granted him MPO benefit in the year 1997 as demonstrator in Physics. The petitioner claims that the subsequently upon obtaining the requisite qualifications he was appointed as a lecturer (Information and Communication Technology) in the respondent college. He was appointed as lecturer and also

joined as a lecturer on 8.2.2018. The principal of the college along with two other public authorities including the Upazila Education Officer Shahzadpur, Sirajganj and District Education Officer, Sirajgonj recommended the name of the petitioner for receiving MPO benefits to the Respondent No.3 Assistant Director (College-3). That the respondent No. 3 issued a letter dated 3.1.2019 refusing the adjustment (সমন্বয়) of the petitioner from demonstrator to lecturer. In the letter the assistant director (college-3) is the respondent No. 3 rejected the application for granting MPO as lecturer on the ground that there is no scope to otherwise adjust (সমন্বয়) any teacher from the post of demonstrator (প্রদর্শক) to the post of lecturer (প্রভাষক) . The petitioner's case is that according to Article No. 9(ii) of the পরিপত্র issued by the Ministry of Education dated 24.03.2013 there is no bar against a demonstrator being appointed as lecturer subject to his having the requisite qualifications. That therefore it is the petitioner's legal right to be granted MPO as a lecturer as per the relevant rules and the respondent No. 3 by rejecting the recommendation by the principal and two other public authorities violated the fundamental rights of the petitioner upon violating the provision of Article 9(ii) of the পরিপত্র issued by the Ministry of Education dated 24.03.2013 and consequently deprived the petitioner of his vested right to be transposed as a lecturer and granted MPO as per the rules of MPO benefit that may be availed by a lecturer. Hence the petitioner filed the instant writ petition.

Learned Advocate Mr. Md. Zahedul Haque appeared on behalf of the petitioner 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. 1-4.

Learned Advocate for the petitioner submits that although the petitioner is lawfully entitled to receive MPO benefits as per the post of lecturer (Information and Communication Technology) but however the respondents have deprived him of his legal right to avail the benefits of a lecturer and thereby the respondents are in violation of the provisions of the constitution including noncompliance of the Article 9(ii) of the পরিপত্র issued by the Ministry of Education dated 24.03.2013. He draws attention to Article 9(ii) allows of the পরিপত্র issued by the Ministry of Education dated 24.03.2013 and contends that Article 9(ii) of the পরিপত্র expressly allows the scope of being transposed/adjusted from demonstrator to lecturer and avail MPO benefit subject to requisite qualifications. He stresses on the terms “তবে এ সকল পদ শূন্য হলে উক্ত পদে নতুনভাবে আর নিয়োগ দেয়া যাবে না। তবে প্যাটার্নভুক্ত কোন কারণে শূন্য হলে বিষয়ভিত্তিক শিক্ষাগত যোগ্যতার ভিত্তিতে উদ্ভূত পদ হতে উক্ত পদে শিক্ষক-কর্মচারী সমন্বয় করতে হবে(প্রতিষ্ঠান প্রধান ও সহ-প্রধান ব্যতীত)।” He persuades that the petitioner has the requisite qualification “বিষয় ভিত্তিক যোগ্যতা ” and the principal of the College upon being satisfied of his requisite qualification appointed him as a lecturer. He continues that the principal and two other public authorities including the District Education Officer (জেলা শিক্ষা কর্মকর্তা) upon satisfaction regarding the requisite qualifications and the documents certificates submitted by the petitioner initially appointed him as lecturer and subsequently recommended him to the authorities in accordance the Rules to avail MPO benefits according to the post of a Lecturer. He draws attention

of this bench to the supplementary affidavit filed by the petitioner. He takes us to several annexures including Annexure Nos. K, N and O pointing out to the these annexures he shows Annexure ‘K’ which is the certificate of his Degree of Master of Science in Mathematics, Annexure ‘N’ which is the certificate issued by National Academy for Computer Training and Research (NACTAR) which certified that he has completed the computer application course and which is the pre-requisite of as a lecturer (Information and Communication Technology). He next draws attention to Annexure ‘O’ which is the certificate issued by the NTRCA dated 21.08.2014. He draws attention to the certificates and contends that in these certificates it is clearly stated that the petitioner is eligible to be appointed as lecturer in any Higher Secondary School/College/Madrasha. Upon a query from this bench as to whether the post of a demonstrator falls within the definition of শিক্ষক, he draws this bench’s attention to বেসরকারী শিক্ষা প্রতিষ্ঠানের শিক্ষকগণের চাকুরী বিধি and points out that the বেসরকারী শিক্ষা প্রতিষ্ঠানের শিক্ষকগণের চাকুরী বিধি clearly contemplates that a demonstrator also falls within the definition of a শিক্ষক . He contends that the petitioner well equipped with the pre –requisite qualifications designated by the government and by way of the NTRCA certifying the eligibility to be appointed a teacher in Non-government Educational Institution. He continues that nevertheless the respondent No. 3 by letter dated 03.01.2019 most arbitrarily rejected the recommendation of the principal, the District Education Officer and another person. He submits that therefore by refusing to grant MPO to the petitioner in accordance with the MPO benefits availed in the

post of a lecturer the basic fundamental right of the petitioner has been violated. He next draws attention to a circular dated 24.02.2016 issued by the NTRCA. He draws attention to column 16 of the circular and shows that column 16 expressly contemplates the requisite qualifications that is necessary for eligibility of appointment as lecturer in Information and Communication Technology. He draws attention to these certificates and asserts that upon comparison of column 16 with Annexure 'K', 'N' and 'O' it is clearly seen that the petitioner is eligible to be appointed as lecturer in any Higher Secondary School/College/Madrasha. Summing up his submissions he concludes that therefore his vested right to be granted MPO as lecturer being refused by the Respondents by way of Annexure 1, such refusal is arbitrary and in direct violation of his fundamental rights and therefore the impugned letter issued by the respondent No. 3 dated 03.01.2019 being annexure-1 declared illegal and of no legal effect and that the Rule bears merit ought to be made absolute for ends of justice.

On the other hand the learned D.A.G appearing for the respondents No. 1-4 vehemently opposes the Rule. He submits that it is beyond the scope of the law to transpose or otherwise adjust সমন্বয় a demonstrator to the post of lecturer and therefore the impugned letter was correctly issued. He further submits that the petitioner did not have the requisite qualifications to be appointed as a lecturer. He next contends that a demonstrator does not come within the definition of teacher শিক্ষক since a demonstrator is only a staff of the concerned institution and not a teacher and assails that other staff cannot be

transposed/adjusted as a teacher eventually. He contends that there is no scope in the relevant Rules which may allow other (staff) to be transposed into post of a teacher. He concludes his submission upon assertion that therefore since a demonstrator (petitioner) does not have the scope to be transposed into the post of a lecturer consequently the letter dated 03.01.2019 was lawfully issued by the respondent No. 3. He asserts that the fundamental right of the petitioner has been infringed and the Rule bears no merit ought to be discharged for ends of justice.

We have heard the learned Advocate for the petitioners and also heard the learned D.A.G, perused the writ petition including the supplementary affidavit and the annexures thereto including the related laws. We have examined Article 9(ii) of the পরিপত্র issued by the Ministry of Education dated 24.03.2013. Article 9(ii) is reproduced hereunder:

“এ জনবল কাঠামো অনুযায়ী শিক্ষক-কর্মচারীর প্রাপ্যতা নির্ধারণের পর কোন প্রতিষ্ঠানে বেতন-ভাতাদির সরকারি অংশ প্রাপ্ত শিক্ষক-কর্মচারীর সংখ্যা যদি প্রাপ্যতার অতিরিক্ত হয় তবে অতিরিক্ত পদসমূহ উদ্বৃত্ত পদ বলে বিবেচিত হবে। এরূপ উদ্বৃত্ত পদে বিধিমোতাবেক নিয়োগপ্রাপ্ত এমপিও ভুক্ত অতিরিক্ত জনবল থাকলে তারা বেতন-ভাতাদির সরকারি অংশ পেতে থাকবেন। তবে এ সকল পদ মুণ্য হলে উক্ত পদে নতুনভাবে আর নিয়োগ দেয়া যাবে না। তবে প্যাটার্নভুক্ত পদ কোন কারণে শূন্য হলে বিষয়ভিত্তিক শিক্ষাগত যোগ্যতার ভিত্তিতে উদ্বৃত্ত পদ হতে উক্ত পদে শিক্ষক-কর্মচারী সমন্বয় করতে হবে (প্রতিষ্ঠান প্রধান ও সহ-প্রধান পদ ব্যতিত)। উদ্বৃত্ত পদের শিক্ষক-কর্মচারীদের সমন্বয় করা সম্ভব না হলে জনবলকাঠামো নির্দেশিকা-৪ ফেব্রুয়ারি, ২০১০

মোতাবেক প্যাটার্নভুক্ত শূন্য পদে শিক্ষক-কর্মচারী নিয়োগ দেয়া যাবে এবং তারা এমপিও ভুক্ত হতে পারবেন।”

Upon perusal of the said clause we have particularly drawn our attention to “তবে প্যাটার্নভুক্ত পদ কোন কারণে শূন্য হলে বিষয়ভিত্তিক শিক্ষাগত যোগ্যতার ভিত্তিতে উদ্বৃত্ত পদ হতে উক্ত পদে শিক্ষক-কর্মচারী সমন্বয় করতে হবে (প্রতিষ্ঠান প্রধান ও সহ-প্রধান পদ ব্যতিত)।” Upon perusal of the Article 9(ii) of the পরিপত্র issued by the Ministry of Education dated 24.03.2013 it appears that Article 9(ii) has proactively provided that subject to an employee or teacher of an educational institution having the requisite qualifications, pertaining a teacher or other staff may be to be transposed to any other post and avail MPO benefits as per the rules pertaining to transposition or adjustment. We are of the considered finding that there is no bar in the Rules as to having any person / teacher being transposed from demonstrator to lecturer. Such being the position taken by the relevant law, it is primarily necessary to examine at this stage whether the petitioner has the requisite qualifications to be eligible for adjustment .

In support of his contention the petitioner filed a supplementary affidavit. We have particularly perused Annexure K, N and O. Upon scrutiny it appears that Annexure ‘K’ is the Masters Degree certificate of the petitioner in Mathematics. Annexure-N is the certificate issued by National Academy for Computer Training and Research (NACTAR) which certifies that he obtained the requisite qualifications in computer application course. Annexure-O is the certificate issued by the NTRCA which is the authorized institution to recommend eligibility of an applicant to be appointed to be a teacher.

Upon going through the documents it appears that the petitioner has the requisite qualifications to be appointed as a lecturer. Upon comparison of Article 9(ii) read together with the annexures mainly that is the pre-requisite certificates which has been annexured in the supplementary affidavit, it is clear that neither the law creates any bar and further the petitioner also has the requisite qualification to avail MPO benefits as a lecturer.

The learned D.A.G argued that a demonstrator does not come within the definition of a teacher. We have examined the relevant rules in the বেসরকারী শিক্ষা প্রতিষ্ঠানের শিক্ষকগণের চাকুরী বিধি wherein under the definition of a teacher it has been expressly stated as: “শিক্ষকের শ্রেণী বিন্যাস: অধ্যক্ষ, উপাধ্যক্ষ, সহকারী অধ্যাপক, প্রভাষক, গ্রন্থাগারিক, প্রদর্শক, শারীরিক শিক্ষা শিক্ষক। ” The definition clearly defines a demonstrator also within the meaning as a teacher শিক্ষক’. Therefore relying on the provisions of Article-9(ii) and also relying on the annexures filed by the petitioner particularly Annexure K, N and O of the supplementary affidavit we are of the considered view that the petitioner has the lawful right to avail MPO benefits as a lecturer and the Principal, Ghorashal Sahittik Barkatullah College, Shahjadpur, Sirajganj, Upazala Education Officer, Shahzadpur, Sirajganj, District Education Officer, Sirajganj and Deputy Director, Secondary and Higher Secondary Education, Rajshahi Zone, Rajshahi rightly and lawfully sent the recommendation to the respondents.

Under the facts and circumstances and upon hearing the learned counsels of both sides and examining submitted the documents hereto before us we find merit in this Rule.

In the result, the Rule is made absolute and letter vide memo No. 37.02.0000.105.31.116.2018/28/2 dated 03.01.2019 issued under the signature of the respondent No. 3 rejecting the application for absorption/adjustment of the petitioner in the post of Lecturer (Information and Communication Technology) is hereby declared illegal and of no legal effect .

Communicate this judgment at once.

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(Kashefa Hussain, J)

I agree.

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(Fatema Najib, j)

Arif(B.O)