

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

Writ Petition No. 8819 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. Nurul Haque Sarder

....Petitioner

Versus

The Government of Bangladesh and others

....Respondents

Mr. K.B Rummy, Advocate

....For the Petitioner

Mr. Prince Al Masud, A.A.G with

Mr. Zulfia Akhter, A.A.G with

Miss. Anna Khanom (Koli) A.A.G

..... For the Respondents

Present:

Mr. Justice Md. Jahangir Hossain

And

Mr. Justice S.M. Masud Hossain Dolon

Heard on: 04.01.2024, 13.02.2024,
18.02.2024, 28.02.2024, 29.02.2024.

Judgment on: 07.03.2024

S.M. Masud Hossain Dolon, J:

On an application under article 102 of the Constitution, the
Rule Nisi has been issued in the following terms:

"Let a Rule Nisi be issued calling upon the respondents
to show cause as to why the order contained in Memo
No. ৪জি/১৪৫৩-ম/২০১০/৪৮২০/৯ তারিখঃ ১০.০৭.২০১৬ signed by
the respondent No. 6 stopping the Monthly Payment
Order (MPO) of the petitioner (Annexure-G), 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 pay the petitioner's monthly salary with all benefits including arrears from July 2016 and /or pass such other or further order or orders as to this Court may seem fit and proper."

Facts relevant for disposal of the Rule in short, are that the petitioner was enlisted as an Assistant Teacher (science) in the Monthly Pay Order (MPO) being Index No. 210644. Subsequently he was appointed as the Headmaster of Sonal Bangla Maddhayamik Biddalaya on 01.08.2006 and since then he has been discharging his duties and responsibilities with sincerity and honesty and with full satisfaction of the authority concerned.

On 24.04.2016, an anonymous letter was sent to Bangladesh Mahila Parishod on the allegations of sexual harassment against the petitioner. After receiving the anonymous letter Bangladesh Mahila Parishod transferred the letter to School Inspector of Secondary and Higher Secondary Education, Barisal. Then Inspector of Schools, Board of Secondary and Higher Secondary Education, Barisal requested the Upazila Nirbahi Officer, Uzirpur, Barisal to investigate the matter and send a report. After receiving the letter, Upazila Nirbahi Officer, Uzirpur, Barisal submitted an inquiry report. Then the School Inspector by memo No. বশিবো/বিঅ/২৮৪(২)/২০১৬/৬৮০ তারিখ ২২/০৫/২০১৬ asked the President, Managing Committee of Sonar Bangla Secondary School, Barisal to inform the board within 7 (seven) days after taking action against the accused headmaster as

per rules. The President of Managing Committee did not take any action against the headmaster. Therefore, the School Inspector removed him from the post of president of the school managing committee by memo no. বশিবো/বিঅ/২৮৪(২)/২০১৬/১০৪৩ তারিখ ১৩ জুলাই, ২০১৬. Then without informing anything or issued any show cause notice upon the petitioner by an order contained in memo no. স্মারক নং ৪জি/১৪৫৩-ম/২০১০/৪৮২০/৯, তারিখ ১০/০৭/২০১৬ signed by the Assistant Director, Secondary Wing Directorate of Secondary and Higher Education, Dhaka stopped the MPO of the petitioner. Thereafter the petitioner requested the concerned authority on several times to withdraw the order of stopping his monthly payment and release his salary but the authority concerned did not take any step as yet.

Thereafter, having found no other equally efficacious remedy the petitioner filed the instant writ petition and obtained the Rule.

Mr. K.B. Romy learned Advocate for the petitioner submits that the MPO of the petitioner has been stopped since July 2016 till today though no proceedings has initiated against him or he has not been suspended or dismissed from his service or no inquiry has been done by the authority against him before or after stopping the MPO. Therefore, stopping the MPO of the petitioner is illegal, arbitrary, unreasonable and malafide, should be declared to have been made without lawful authority and is of no legal effect. He further submits that public functionaries must be vigilant, fair and duty bound in

exercising the statutory power with which they are vested in for the public interest, but in the instant case the respondents willfully and deliberately have not acted in accordance with law, which is highly arbitrary and malafide and as such the order of stopping the MPO of the petitioner is utmost illegal, arbitrary, ex facie malafide without lawful authority. Mr. K.B. Romy also submits that the petitioner need not to file Review Petition, in this regard he referred *Ataur Mridha alias Ataur vs State*, reported in 73 DLR(AD) 298. Mr. Romy lastly submits that the Rule may kindly be absolute for the ends of justice.

On the otherhand Mr. Prince Al Masud the learned Assistant Attorney General submits that the allegation brought against the petitioner was proved and then concerned authority rightly stopped the MPO of the petitioner. There were no violation of Rule and Law to stop the decision of MPO's facilities of the petitioners. Lastly he submits that petitioners wrongly and premature cause and stage filed this Writ Petition before this Court and prayed for discharged the Rule.

We have heard the rival submission of both the parties and also perused the writ petition and all other relevant papers submitted by the petitioner in connection with the contents of this writ petition and also considered affidavit in oppositions filed by the Respondent No. 2, Director General, Directorate of Secondary and Higher Secondary Education. It appears that following an anonymous

letter alleging sexual harassment of a female student against the headmaster, the Upazila Nirbahi Officer, Uzirpur made an inquiry report annexure-5(2) by memo No. 05.10.0694.007.01.003.16.299 dated 11.05.2016. On scrutiny of inquire report dated 11.05.2016 annexure-5(2), it appears that the Upazila Nirbahi Officer only considered an application for exemption from charge of the petitioner filed by managing committee, Teachers and employees and students of the school and he observed that the explanation given on behalf of the headmaster in the said application is not true at all. The petitioner on 10.07.2016 filed an application to the Director General of Secondary and Higher Secondary Education and denied any allegation against him is falsified by interest quarter and prayed for released his government portion of money. Against which instant writ petition was filed on the ground that no proceedings has been initiated against the petitioner and he has not been suspended or dismissed from his service or no inquiry has been done by the authority against him before or after stopping the MPO.

In this stage the learned Assistant Attorney General Mr. Prince Al Masud vehemently argued that the petitioner had challenged the order dated 10.07.2016, Annexure G, which had been required to issue show cause notice to the petitioner as to why his government portion of money should not be permanently stopped and also required investigation of the sexual harassment by the petitioner.

Mr. Prince Al Masud abundantly submits that the investigation has not been completed due to petitioner filed the instant writ petition. On scrutiny, we found the impugned order was issued on July 10, 2016 and the petitioner filed the writ petition on August 4, 2019, while the petitioner filed the instant writ petition after 3(three) years and 1(one) month was stopping his MPO. The Respondents could not investigate the offence of sexual harassment against the petitioner more than 3 years therefore Mr. Prince Al Masud, the learned Assistant Attorney General's submissions cannot be acceptable in this regard.

It is also required to adjudicate when the authority concern can stop MPO, we therefore considered the Regulation 18 of the বেসরকারী শিক্ষা প্রতিষ্ঠানের (স্কুল ও কলেজ) জনবলকাঠামো ও এম,পি,ও নীতিমালা- ২০২১ which runs as follows:-

১৮ বেতন-ভতাদির সরকারি অংশ স্থগিত, কর্তন, বাতিলকরণ ও পুনঃছাড়করণঃ

১৮.১ মাধ্যমিক ও উচ্চ শিক্ষা বিভাগ, শিক্ষা মন্ত্রণালয় নিম্নোক্ত কারণে কোন বেসরকারী শিক্ষা প্রতিষ্ঠানের শিক্ষক, কর্মকর্তা ও কর্মচারীদের বেতন-ভতাদির সরকারি অংশের বরাদ্দ সাময়িক বন্ধ, আংশিক ও সম্পূর্ণ কর্তন কিংবা বাতিল করতে পারবে,

(ক)

(খ)

(গ) মিথ্যা তথ্য প্রদান, অবৈধ শিক্ষক নিয়োগ, ভূয়া শাখা/মিথ্যা শিক্ষার্থী প্রদর্শন, পাবলিক পরীক্ষায় অসদুপায় অবলম্বন এবং মাধ্যমিক ও উচ্চ শিক্ষা বিভাগ, শিক্ষা মন্ত্রণালয়/অধিদপ্তর/বোর্ডের আপিল অ্যান্ড আরবিট্রেশন এর সিদ্ধান্ত

প্রতিপালন না করলে সংশ্লিষ্ট শিক্ষক-কর্মচারী এবং প্রতিষ্ঠান প্রধানের বেতন-ভাতাদি স্থগিত/বাতিল করা হবে।

On scrutiny, the Regulation 18.1 of the বেসরকারী শিক্ষা প্রতিষ্ঠানের (স্কুল ও কলেজ) জনবলকাঠামো ও এম,পি,ও নীতিমালা-২০২১, it appears that the MPO of a teacher can be withdraw/stopped, curtailed, cancelled when furnishing of false information, recruitment of illegal teachers, display of fake branch/false studentship, malpractice in public examination and the decision of the Appeal and Arbitration Committee of Secondary and Higher Education, Ministry of Education/ Department/Board has not complied with, then only the authority may suspend/cancel the MPO of the teacher concerned. But it is crystal clear that none of the events mentioned in the nethimala has taken place in the present case.

The learned Assistant Attorney General Mr. Prince Al Masud raised another question that the petitioner wrongly and premature cause and stage filed this Writ Petition before this Division. In this case the petitioner had filed representation on 10.06.2016 to the Director General for released his MPO before he filed this writ petition, it is tantamount to be filed review petition.

It is also required to adjudicate when the teacher/employee of the non-government school can suspend them, in this circumstance we considered clause 19 of the বেসরকারী শিক্ষা প্রতিষ্ঠানের (স্কুল ও কলেজ) জনবলকাঠামো ও এম,পি,ও নীতিমালা-২০২১ “কোনো ফৌজদারী/নেতিক স্থলন/দুর্নীতির মামলায় কোনো শিক্ষক-কর্মচারী অভিযুক্ত হয়ে আদালত কর্তৃক অভিযোগপত্র গৃহীত হলে

নিয়োগকারী কর্তৃপক্ষ সংশ্লিষ্ট শিক্ষক/কর্মচারীকে সাময়িক বরখাস্ত করতে পারবে। সাময়িক বরখাস্তকালীন সময়ে সংশ্লিষ্ট শিক্ষক-কর্মচারী বেতন-ভাতার অর্ধেক খোরপোষ ভাতা প্রাপ্য হবেন। এম.পি.ও এর সাথে সংশ্লিষ্ট নয় এমন ব্যক্তিগত মামলায় কোনো শিক্ষক-কর্মচারী আদালত কর্তৃক নির্দোষ প্রমাণিত হলে মাধ্যমিক ও উচ্চ শিক্ষা বিভাগ, শিক্ষা মন্ত্রণালয় সিদ্ধান্তে র বিষয়টি আইনানুগভাবে বিবেচনা করবে।”

In the present case, it appears that one Md. Aminul Islam, Additional Chief Judicial Magistrate filed Miscellaneous Case No. 1 of 2020 (Uzirpur) before Chief Judicial Magistrate, Barishal. Thereafter the case was transferred to the learned Senior Judicial Magistrate, 3rd Court, Barishal for hearing. The learned Court framed Charge against the petitioner under section 354 of the Penal Code. The learned Senior Judicial Magistrate by Judgment and Order dated 19.07.2023 acquitted the petitioner from charge. On scrutiny of clause 19 of the বেসরকারী শিক্ষা প্রতিষ্ঠানের (স্কুল ও কলেজ) জনবলকাঠামো ও এম,পি,ও নীতিমালা-২০২১ it appears that in private cases not related to MPO, if a teacher is found innocent by court of law, the Department of Secondary and Higher Education, Ministry of Education will consider the matter legally. Therefore, it appears that no impediment to pay the government portion of money to the petitioner.

So, In view of the above discussion the petitioner filed representation to the Director General, Secondary and Higher Secondary Education, Dhaka as such the present writ petition is maintainable. Since the Respondents were not investigated sexual

harassment to a female student by the petitioner within 03(three) years of the alleged sexual harassment and no departmental proceeding was taken place against the petitioner and the petitioner was acquitted the offence under section 354 of the Penal Code before a competent court and respondent did not duly comply with all requirement of law therefore stopped the MPO of the petitioner, annexure-G is without lawful authority and is of no legal effect.

In view of the above facts and circumstances and the provision of law quoted above, we find substances in the submission of the learned Advocate for the petitioner.

Thus, we find merit in this Rule.

Accordingly, the Rule is made absolute. The Respondents are directed to pay the MPO of the petitioner and also pay his all arrear salaries within 60(sixty) days from the date of the receipt of this judgment.

However, there would be no order as to costs.

Md. Jahangir Hossain, J:

I agree.