

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Hasan Foez Siddique

Mr. Justice M. Enayetur Rahim

Ms. Justice Jahangir Hossain

CIVIL APPEAL NO.336 OF 2019

(Arising out of C.P.NO.1351 of 2018)

(From the judgment and order dated the 27th July, 2017 passed by a Division Bench of the High Court Division in Writ Petition No.12927 of 2016)

Bangladesh represented by the : . . . Appellants
Secretary, Ministry of Education,
Bangladesh Secretariat, Dhaka and
others

-Versus-

Char Elisha Junior High School and : . . . Respondents
others

For the Appellants : Mr. Samarandra Nath Biswas, Deputy
Attorney General, instructed by Mrs.
Sufia Khatun, Advocate-on-Record

For the Respondents : Mr. Mohammad Yusuf Hossain
Humayun, Senior Advocate with
Mohammad Hossain, Advocate
instructed by Mr. Zainul Abedin,
Advocate-on-Record

Date of Hearing and Judgment : **The 1st day of February, 2023**

J U D G M E N T

M. Enayetur Rahim, J: This appeal, by leave, is directed against the judgment and order dated 27.07.2017 passed by the High Court Division in Writ Petition No.12927 of 2016 disposing the Rule with direction.

The relevant facts for disposal of the present appeal, in brief, are that the present Respondent Nos.1-9 as writ petitioners filed writ petition No.12927 of 2015 before the High Court Division for a direction upon the writ-respondents, the present appellants to enlist their

respective institution for Monthly Payment Order (MPO) for giving Government portion of salary.

The writ-petitioners, 9 in numbers, are various educational institutions under Upazila Bhola Sadar, District Bhola. The said institutions have got permission for teaching the students from the concerned authority and have been affiliated with the Bangladesh Madrasa Education Board and their respective affiliation is still existed.

The writ-petitioners have good reputation and success in teaching since their establishment and therefore, applied for Monthly Payment Order (M.P.O). The positions of the writ petitioner's institution in their locality are amongst the best institutions in respect of result and other criteria. The pass rate in the public examination of the writ petitioner's institutions under the respective Boards are very much satisfactory and are best amongst the institutions in the locality, even though, those have not been enlisted for Monthly Payment Order (M.P.O.) for giving Government portion of salary without any known cause. The writ petitioners made several correspondence with the writ respondent No.1 and requested him to enlist the writ petitioners for Monthly Payment Order (M.P.O) for giving Government portion of salary but the writ respondents remained silent over the applications and did not dispose of the same without any known cause and there was no positive response from the side of the writ respondents. Therefore, the writ petitioners served legal notice upon the writ respondents but those went in vain. The writ petitioners finding no other alternative

efficacious remedy filed Writ Petition No.12927 of 2016 before the High Court Division and obtained the Rule Nisi seeking a direction upon the writ respondents to enlist the writ petitioners for Monthly Payment Order (M.P.O.) for giving government portion of salary and further direction to dispose of the applications filed by them for enlisting their names in the Monthly Payment Order (M.P.O).

The writ respondents did not file any affidavit-in-opposition.

A Division Bench of the High Court Division upon hearing the parties made the Rule absolute by the impugned judgment and order dated 27.07.2017.

Felling aggrieved, the Government of Bangladesh and others as leave-petitioners filed the civil petition for leave to appeal No.135 of 2018 before this Division and accordingly leave was granted.

Hence the present Appeal.

Mr. Samarandra Nath Biswas, learned Deputy Attorney General appearing on behalf of the leave-petitioners submits that the High Court Division committed error of law in making the Rule absolute and thereby, directing the writ respondents to enlist the writ petitioner's institution for Monthly Payment Order instead of directing the writ respondents to dispose of the writ petitioners applications for enlistment in the Monthly Payment Order (M.P.O) and thus the impugned judgment and order is not sustainable in the eye of law.

On the other hand Mr. Muhammad Yusuf Hossain Humayun, learned Senior Advocate with Mr. Mohammad Hossain, learned Advocate appearing on behalf of the respondents has made submissions in support of the impugned judgment and order of the High Court Division.

We have considered the submissions of the learned Advocates for the respective parties, perused the impugned judgment and order of the High Court Division and connecting papers on record.

Only issue in this appeal is whether the High Court Division in exercising the power under Article 102 of the Constitution can direct the Government to enlist the writ-petitioners' institutions in MPO list.

This Division in several cases has decided the above issue, in particular in the case of **Secretary Ministry of Education and others Vs. Md. Saidur Rahman in civil petition for leave to appeal No.2485 of 2018 and Government of Bangladesh and others Vs. Md. Nazrul Islam and others, reported in 27 BLT (AD), page-167.**

In the above case this Division has held to the effect:

"In the Case in hand, the petitioners did not allege that the writ-respondents have violated any legal right of them. The granting of MPO is the policy decision of the Government. Therefore, the petitioners could not claim the same as of right. This Division is of the view that teachers and staffs of the Non-Government School and College could not claim the MPO as a matter of right and as such, direction could not be given unless infringement of legal right or violation of law."

Similar view has been expressed by this Division in the Case of Government represented by the **Secretary, Ministry of Education and others Vs. Md. Saidur Rahman** in Civil petition for Leave Appeal No.2584 of 2018;

In the above case it has been held that:

"Here, in this case the High court Division in fact, passed the impugned order to compel the executive to pay Government portion of salaries inasmuch as the Government did not decide as yet to pay salaries to them or even did not assure them that the Government would pay the same. In absence of the statutory obligation, the High Court Division under Article 102 of the Constitution is not justified in issuing mandamus for payment of salary since a mandamus cannot lie in the absence of a legal right based on the existence of statutory duty. The mere fact that recognition and institution have been granted to an institution or, for that matter, for conducting new course or subject a financial sanction. A financial liability cannot be foisted on the Government to reimburse the salary payable to the teachers and staffs of such presumption. No mandamus can be issued for payment of salary by the Government in the absence of the prior sanction of the Government."

"Accordingly to "Dicey", Judges are not allowed to decide a case on the basis of whatever they consider just and fair. They are constrained by definite principles of law and by binding precedent."

Recently, **in civil petition for leave to appeal No.4549 of 2018** the above views of this Division have been re-iterated.

In view of the above, it is now well settled MPO benefit depends upon the financial capacity of the Government as well as its policy and thus, no mandamus can be issued upon the Government in regard to the policy

matter or decision. Further, since no vested and legal right have been created in favour of the writ petitioners, thus there is no scope to hold that the petitioners have legitimate expectation to be enlisted in MPO. The petitioners can approach and pursue with the Government.

In view of the facts and circumstances of the present case as well as the settled propositions of law, we are of the view that the High Court Division committed serious error in giving direction upon the writ-respondents, present appellants to enlist the writ petitioners' institutions for Monthly Payment Order (MPO) for the Government portion of salary within 60(sixty) days from the date of receipt of the copy of the judgment and order. The impugned judgment and order suffers from gross illegality and infirmity.

Thus, this appeal is allowed without any order as to cost.

The impugned judgment and order dated 27.07.2017 passed by the High Court Division is hereby set aside.

However, this judgment and order will not be a bar for the writ petitioners to approach before the concerned authority for enlisting their names in the Monthly Pay Order (MPO).

C.J.

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