

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

Present

Madam Justice Kashefa Hussain

And

Madam Justice Kazi Zinat Hoque

Writ Petition No. 6344 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. Rokib Uddin Mondol alias Md. Raquib Uddin Mondol, Index No. 230238, Headmaster(Retired) Banglahili Pilot School and College Hakimpur, Dinajpur.
..... Petitioner.

Vs.

The Government of People's Republic of Bangladesh represented by the Secretary, Ministry of Education, Bangladesh Secretariat, Ramna, Dhaka and others.

.....Respondents.

Mr. Humayun Kabir, Advocate with

Mr. Majumder Saiful Islam, 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 and 6-9.

Heard on: 12.06.2022, 16.06.2022, 20.06.2022

and judgment on: 22.06.2022.

Kashefa Hussain, J:

Rule nisi was issued calling upon the respondents to show cause as to why the impugned Memo No.

37.02.0000.107.99.102.17/1588 dated 04.04.2019 (Annexure-I) issued by the respondent No. 8, Education Officer (Secondary-1) of the Directorate of Secondary and Higher Education, the government of the People's Republic of Bangladesh, refusing the petitioner's Monthly Payment Order (M.P.O) and arrears including other financial benefits for his service in the post of Headmaster of Banglahili Pilot School and College, Hakimpur Dinajpur, 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 Md. Rokib Uddin Mondol alias Md. Raquib Uddin Mondol, Index No. 230238, Headmaster (Retired) Banglahili Pilot School and College Hakimpur, Dinajpur, Present Address: Village: Chandipur, P.O: Banglahili, Upazila: Hakimpur, District: Dinajpur is the citizen of Bangladesh. The respondent No. 1 is the Secretary, Local Government Division, Ministry of Education, Bangladesh Secretariat, Ramna, Dhaka, respondent No. 2 Deputy Secretary, Secondary and Higher Secondary Division, Ministry of Education, Bangladesh Secretariat, Ramna, Dhaka, respondent No. 3 is the Director General, Directorate of Secondary and Higher Education, Shikkha Bhaban, Ramna, Dhaka, the respondent No. 4 is the Assistant Director (Ma-2), Directorate of Secondary and Higher Education Shikkha Bhaban, Ramna Dhaka, respondent No. 5 is the Member Secretary, Non-Government Educational Institution Teachers and Employees Retirement Benefits Board Palashi, Dhaka, respondent No. 6 is the Member Secretary, Non-Government Educational

Institution Teachers and Employees Welfare Trust, Palashi, Dhaka, respondent No. 7 is the District Education Officer, Dinajpur, District-Dinajpur, respondent No. 8 is the Education Officer (Secondary-I), directorate of Secondary and Higher Education, the Government of the People's Republic of Bangladesh, Shikka Bhaban, Ramna, Dhaka and respondent No. 9 is the Upazila Education Officer, Hakimpur Upazila, Banglahili, Hakimpur, Dinajpur.

The petitioner's case inter alia is that the petitioner served firstly as an Assistant Teacher and thereafter on selection and appointment in the post of Headmaster, he served in the said post as Headmaster of Banglahili Pilot school and college, Hakimpur, Dinajpur from 30.05.2002 to 19.10.2018. During tenure of petitioners' service the education institution was upgraded to higher secondary level named as a college. The petitioner alongside his Headmastership also served as principal-in-charge in the said college. In the selection examination for the post of Headmaster the petitioner successfully joined in the post with effect from 30.05.2002 as per appointment made by the Managing committee of Banglahili Pilot School, Hakimpur, Dinajpur. After the petitioner's joining one outsider contestant candidate of the said selection examination, namely Asiruddin challenged the marks and result of the selection examination given to the present petitioner, and he filed Other class suit No. 16 of 2002 in the court of learned Senior Assistant Judge, Hakimpur, Dinajpur. Upon hearing the lower court found the examination result correct but making a third case it raised question of eligibility with regard to petitioner's experience and decreed the suit

in part. Against the part decree the petitioner preferred Other Appeal No. 163 in which the learned Special District Judge, Dinajpur, affirmed the part decree. Thereafter the petitioner preferred Civil Revision No. 1275 of 2008 in the High Court Division and the said contestant Asisuddin also filed Civil Revision No. 592 of 2009 against the affirmation of part decree. The High Court Division issued Rules in both the cases and subsequently on final hearing of both the civil Revisions the Rule in Civil Revision No. 1275 of 2008 was made absolute vide judgment and order dated 26.11.2017 and consequently the present petitioner succeeded. The result of the civil revision No. 592 of 2009 of the opposite party Asiruddin was that the case had been abated. That with the passing of the judgment and order dated 26.11.2017 by the High Court Division in the above mentioned civil revision cases, the petitioner's appointment as Headmaster emerged to be without any flaw or illegality. That after joining in the post of Headmaster by the appointment of the Managing Committee of Banglahili Pilot school, the petitioner having contested the suits, appeal and Civil Revision cases, continued in the service of the School as Headmaster till his retirement and the managing committee could not forsake him because of the petitioner's essential services for the development of the school. That the petitioner during his service as Assistant Teacher was enlisted in M.P.O but due to pending case for which the judgment and order dated 26.11.2017 lastly was passed by the Hon'ble High Court Division, the petitioner remained enlisted in the M.P.O as Assistant Teacher without being enlisted as Headmaster while the petitioner continued to serve in the post of

Headmaster of the aforementioned school. That after obtaining the judgment from the High Court Division, in his favour, in Civil Revisions the petitioner sent an application dated 27.02.2018 addressing Secretary, Secondary and Higher Education Division, Ministry of Education, Bangladesh Secretariat. In the application the petitioner claimed his enlistment in M.P.O as Headmaster including the arrear financial benefits. That the Deputy Secretary, Secondary and Higher Education Division, Bangladesh Secretariat, Dhaka vide Memo No. 37.00.0000.074.029.001.2017 (part-4) 119 dated 4.03.2018 sent the petitioner's application to the Director General of the Directorate of Secondary and Higher Education, Shikkha Bhaban, Dhaka, for consideration. The Assistant Director of the said directorate vide Memo No. 37.02.0000.107.99.102.17/5412 dated 8.05.2018 requested the District Education officer, Dinajpur for on the spot inquiry and report in respect of the petitioner's claim. That the District Education Officer Dinajpur after on the spot inquiry sent his report vide memo No. জেশিঅ/দিনাজ/2018/3011 dated 22.05.2008 to the Director General of the Directorate of Secondary and Higher Education. Finding that against the petitioner no case was pending, the petitioner served as Assistant Teacher from 10.03.1983 to 29.05.2002 and had been serving as headmaster from 30.05.2002 till the date of report for which he recommended for payment of arrears to the petitioner for the post of Headmaster. That in view of the report of the District Education officer Dinajpur, the Director General vide his memo dated 28.06.2018 asked for direction of the authority for enlistment of the petitioner in the M.P.O for the post of Headmaster

and his arrear pay for that post. That a review committee of the Ministry of Education considered the case of the petitioner amongst others and recommended the petitioner's inclusion in the M.P.O list as Headmaster subject to verification if any other person worked in the post of Headmaster except the petitioner, and in that respect Nothi/Memo No. 37.00.0000.074.001.001.2018 (Part-2) 419 dated 02.10.2018 was issued under the signature of the Deputy Secretary Secondary and Higher Education Division, Ministry of Education. That the District Education Officer, Dinajpur in view of the required information issued memo No. জেশিঅ/দিনাজ/2018/3703 dated 23.10.2018 from which it is evident that no other person had been working in the post of Headmaster of Banglahili Pilot School and College except the present petitioner. That before his retirement on 19.10.2018 from the post of Headmaster, the petitioner had been claiming his inclusion in M.P.O as headmaster and the arrears payable by Government part for that post. The chairman of the governing body and the present Headmaster-in-charge of the school wrote memo No. বাহিণা এসসি/২০১৮/৩০ dated 4.12.2018 to the Director General earnestly requesting the authority to grant to the petitioner retirement benefits, arrear pay and financial benefits of welfare trust and other financial benefits in accordance with rules. That mentioning a reason of decision of M.P.O final committee the respondent issued the impugned memo No. 37.02.0000.107.99.102.17/1588 dated 4.4.2019 arbitrarily refusing the petitioner's enlistment in M.P.O. as Headmaster and payment of his arrear benefits for reason of Petitioner's attainment of 60 years retirement age although the

petitioner served in that post of that school validly for about 16 years. Hence the writ petition.

Learned Advocate Mr. Humayun Kabir, Advocate with Mr. Majumder Saiful Islam, Advocate 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 and 6-9 and learned Advocate Mr. Mohammad Zahirul Islam appeared for the respondent No. 5.

Learned Advocate for the petitioner submits that the impugned Memo which is Annexure-I issued by the respondent No. 8 refusing the petitioner's M.P.O. as Headmaster and arrears including other benefits is completely without lawful authority. He submits that the petitioner was lawfully appointed as headmaster on 30.05.2002 from his erstwhile position as Assistant Teacher. He submits that the respondents refusal to pay his arrear benefits for having attained of 60 years of age is completely unlawful given that the petitioner served as Headmaster in the School from 30.05.2002 till his retirement on 19.10.2018. Upon a query from this bench he draws attention to the respondents' own admission that the suit pending filed by a rival candidate involving his eligibility to be appointed his Headmaster although was decreed in part and against the part decree the petitioner preferred Other Appeal which was dismissed. However he continues that the petitioner filed Civil Revision in this Division against those decrees and Rules was made absolute in the Civil Revision. He submits that it is the respondent's own admission on record that there is no case against the petitioner. He draws us to Annexure-F column 6

and shows that from the comments in column 6 it is clear that presently there is no case pending against the petitioner. He draws further attention to column 6 of Annexure-F which is a recommendation issued by the Ministry of Education and shows that column 6 also reflect the inconsistent conduct of the respondent No. 7, District Education Officer. He points out that it is categorically stated in column 6 of Annexure F that the District Education Officer made an observation that from 30.05.2002 till present the petitioner has been performing his duty as Headmaster in the school and therefore M.P.O including arrears may also be given to him accordingly. He next draws attention to Annexure I which is the Memo issued by the respondent No. 8. He draws attention to the impugned Memo and agitates that the respondent No. 8's observation and remark made in the memo is totally unlawful and his excuse for not paying arrears to the petitioner on the plea of the petitioner having attained 60 years retirement age are not sustainable. He further agitated that the respondents' excuse of the petitioner having attain 60 years age in the meanwhile has no basis since the petitioner only demanded as per law to obtain his lawful M.P.O as headmaster in the school from the year 2002 till his retirement in the year 2018. He submits that even in Annexure I respondent No. 8 acknowledged him as headmaster of the school with an index number. He contends that from Annexure F and other materials the respondents clearly admit that the petitioner served in his service in the school till his retirement. He argues that since it is admitted that there is no case pending against him and since it is also admitted by the respondents that the petitioner served as

headmaster since 2002 till 2018 therefore he is entitled to get financial benefits including arrears. Upon a query from this bench arising out of the respondents contention that the petitioner from 2002 till 2018 till his retirement drew his M.P.O as Assistant Teacher, the petitioner conceded that he received his M.P.O as Assistant Teacher but he did not receive his M.P.O as Headmaster. He submits that his claim is to avail the benefit of M.P.O as headmaster from 30.05.2002 till 2018 and not as Assistant Teacher. He concludes his submissions upon assertion that the Rule bears merit ought to be made absolute for ends of justice.

On the other hand learned Deputy Attorney General appeared for the respondent Nos. 1-4 and 6-9 and vehemently opposes that Rule. He submits that since the petitioner has retired and drawing support from Annexure I issued by the respondent No. 8 he argues that the respondent No. 8 by his Memo correctly observed that since the petitioner meanwhile attained 60 years of age therefore there is no scope to give him M.P.O benefit anymore. He also agitated that the petitioner admittedly was appointed as headmaster from 2002 to 2018 but yet the petitioner received his M.P.O as Assistant Teacher. He submits that after his appointment the petitioner ought to have obtained a new index number as headmaster. He contends that consequently since the petitioner had already attained 60 years of age and admittedly he obtained salary as Assistant Teacher therefore there is no more scope to give his financial benefits by way of arrears since he is already retired and cannot be freshly enlisted for MPO benefit

any more. He concludes his submission upon assertion that the Rule bears no merit ought to be discharged for ends of justice.

We have heard the learned Advocates for both sides perused the application and materials on record. Admittedly the petitioner who was originally appointed as Assistant Teacher in 1983 pursuant to an examination was appointed as headmaster in the year 2002. It is a fact that a rival candidate filed suit against him. However the fate of the suit was decided in a Civil Revision by this division in which Rule was made absolute.

From Annexure E which is the recommendation of the respondent No. 3 it is admitted that there is no case pending presently against the petitioner, It is also admitted in Annexure F issued by the Ministry of Education respondent No. 1. From Annexure E it shows that the D.A.T has also acknowledged that the petitioner is a headmaster of the school. Particularly from Annexure-F it is clear that that the petitioner admittedly served as Headmaster of the school from 30.05.2002 till his retirement on 19.10.2018.

The respondents while refusing the petitioner his arrears and M.P.O benefit as headmaster respondent No. 8 has stated the reason which is (Annexure I) that that petitioner in the meanwhile having attained 60 years age of retirement age therefore no fresh M.P.O benefit can be given to him by enlistment of his name in M.P.O. The relevant portion of Annexure-I is reproduced hereunder:

“সূত্রোক্ত (ঘ) আলোকে এমপিও চূড়ান্ত কমিটির সিদ্ধান্তে প্রধান শিক্ষক

জনাব মো: রকিব উদ্দিন মন্ডল মামলা মোকদ্দমার কারণে এমপিওভুক্ত হননি।

ইতোমধ্যে তার বয়স ৬০ বছর পূর্তি হয়েছে। বিদ্যমান নীতিমালা অনুযায়ী ৬০

বছর পূর্তির এমপিওভুক্তির সুযোগ না থাকায় এসব বিষয়াদি বিবেচনায় প্রধান শিক্ষক পদে যোগদানের পূর্ববর্তী চাকরিকালীন সময়ের বিধি মতে প্রাপ্য আর্থিক সুবিধাদি প্রধানের সিদ্ধান্ত গৃহীত হয়।

এমতাবস্থায়, প্রধান শিক্ষক জনাব মোঃ রকিব উদ্দিন মন্ডল মামলা মোকদ্দমার কারণে এমপিও ভুক্ত হতে না পারায় ইতোমধ্যে তার বয়স ৬০ বছর পূর্তি হয়েছে। বিদ্যমান নীতিমালা অনুযায়ী ৬০ বছর পূর্তির এমপিওভুক্তির সুযোগ না থাকায় প্রধান শিক্ষক পদে যোগদানের পূর্ববর্তী চাকরিকালীন সময়ের বিধি মতে প্রাপ্য আর্থিক সুবিধাদি প্রদানের প্রয়োজনীয় ব্যবস্থা গ্রহণের জন্য নির্দেশক্রমে অনুরোধ করা হলো।”

It is clear that the respondents admitted that the petitioner could not be enlisted in M.P.O because of the case that was priorly pending between the petitioner and the rival candidate and that is the reason of the respondent's refusal of enlistment of M.P.O benefit since he already attained his retirement age. Our considered view is that whatever case was pending between the petitioner and the rival candidate however presently there is no case pending against the petitioner which entails that the petitioner has been absolved of any allegation raised against him. Therefore we are of the considered view that non enlistment in M.P.O as headmaster was not due to any laches nor any fault of the petitioner. It is true that he meanwhile attained 60 years of age and it is also true that he received his M.P.O as Assistant Teacher's salary while serving as headmaster.

Summing these facts we are of the view that ends of justice would be best served if the differential amount (balance of the petitioner's salary) between the salary of headmaster and that of

Assistant Teacher since 30.05.2002 till his admitted retirement on 19.10.32018 ought to be granted to the petitioner.

Under the facts and circumstances we are inclined to dispose of the Rule with observations and directions.

In the result, the Rule is disposed of. The impugned Memo No. 37.02.0000.107.99.102.17/1588 dated 04.04.2019 (Annexure-I) issued by the respondent No. 8, Education Officer (Secondary-1) of the Directorate of Secondary and Higher Education, the government of the People's Republic of Bangladesh, refusing the petitioner's Monthly Payment Order (M.P.O) and arrears including other financial benefits for his service in the post of Headmaster of Banglahili Pilot School and College, Hakimpur Dinajpur is hereby cancelled. The respondents are hereby directed to pay to the petitioner the differential amount between the salary of Headmaster and Assistant Teacher from 30.05.2002 till his admitted retirement date on 19.11.2018 with arrears and other financial benefits positively within a period of 60(sixty) days of receiving this judgment.

Communicate this judgment at once.

Kazi Zinat Hoque, J:

I agree.

Arif(B.O)