

**IN THE SUPREME COURT OF BANGLADESH**  
**APPELLATE DIVISION**

**PRESENT:**

Mr. Justice Md. Nuruzzaman  
Mr. Justice Borhanuddin  
Ms. Justice Krishna Debnath

**CIVIL APPEAL NO.166 OF 2008**

(From the judgment and order dated 30.03.2005 passed by the High Court Division in Writ Petition No.1268 of 2003)

The Thana Nirbahi Officer,  
Kaukhali Thana, Police ..... Appellants  
Station-Kaukhali, District-  
Pirojpur and others

=VERSUS=

Maulana A.B.M. Mahiuddin ..... Respondent

For the appellants :Mr. Md. Jahangir Alam,  
Deputy Attorney General,  
instructed by Mr.  
Haridas Paul, Advocate-  
on-Record

For the appellant :Mr. A.K.M. Fazlul Hoque,  
No.5 Advocate, instructed by  
Mrs. Shahanara Begum,  
Advocate-on-Record.

For the Respondent :Mr. Ruhul Quddus,  
Advocate, instructed by  
Mr. Mainul Hossain,  
Advocate-on-Record

Date of hearing and :The 16<sup>th</sup> February, 2022  
judgment on

## JUDGMENT

MD. NURUZZAMAN, J:

This Civil Appeal, by leave, has arisen out of the judgment and order dated 30.03.2005 passed by the High Court Division in Writ Petition No.1268 of 2003 making the Rule absolute.

Facts leading, to filing of this civil appeal, in short, are that the present respondent as the writ petitioner preferred the Writ Petition No.1268 of 2003 under Article 102(2)(a)(ii) of the Constitution of the People's Republic of Bangladesh before the High Court Division challenging the memo No.13(Shikkha)-1/10/2001/649 dated 06.11.2001 issued by writ respondent No.1, i.e. (at present, Upazilla), the Thana Nirbahi Officer

(in short, UNO), Kaukhali, District-Pirojpur illegally suspending the writ petitioner from his post as Superintendent of Kaukhali Nesaria Dhakil Madrasha, Police Station:Kaukhali, District:Pirojpur without issuing show cause notice and without statement of allegation against him; memo No.271/5/Special dated 17.01.2001 issued by the writ respondent No.2, i.e. the Director General, Directorate of the Secondary and Higher Education Board (in short, DSHEB), Dhaka stopping the Government grant towards the salary of the writ petitioner without assigning any reason and also G.R. Case No.334/2002 of the Court of Magistrate, First Class, Pirojpur arising out of Kaukhali Police Station Case No.3 dated 20.11.2002 which arose out of the First Information Report (in short,

F.I.R.) lodged by the writ respondent No.5, i.e. the District Anti Corruption Officer, Pirojpur with false, fabricated, concocted, collusive and unfounded allegations stating that the writ petitioner as respondent herein placed him under suspension from his post of Superintendent, Kaukhali, Nesaria Dakhil Madrasa. Therefore, the writ petitioner finding no other alternative efficacious remedy moved the above mentioned writ petition before the High Court Division and obtained the Rule Nisi.

The writ-respondent No.4 contested the Rule Nisi by filing affidavit-in-opposition.

A Division Bench of the High Court Division upon hearing the parties made the Rule Nisi absolute by the impugned judgment and order dated 30.03.2005.

Feeling aggrieved by the impugned judgment and order dated 30.03.2005 of the High Court Division, the appellants herein as writ respondents preferred the Civil Petition for Leave to Appeal No.52 of 2007 before this Division and obtained leave, which, gave rise to the instant appeal.

Mr. Md. Jahangir Alam, the learned Deputy Attorney General appearing on behalf of the appellants submits that the High Court Division on misconception of law made the Rule absolute directing to reinstate the writ petitioner and to pay all his emoluments from the date of the receipt of the judgment without considering the law, facts and circumstances of the case, and, as such, the impugned judgment and order is bad in law and the same is liable to be set aside.

He further submits that the UNO of Kaukhali informed the District Anti corruption Officer, Pirojpur under his Memo No.52 dated 19.01.2002 that the writ petitioner was the Superintendent of Kaukhali Nesaria Dakhil Madrasa and that there is no similarity of his Kamil pass certificate with the records of Madrasa Education Board and, as such, the UNO requested to take legal action against the writ petitioner-Superintendent. He next submits that the suspension order was passed by the UNO as Ex-Officio Chairman of the Madrasa and he does not come within the definition of the local authority and the writ petition is not maintainable. But the High Court Division erred in law made the Rule Nisi absolute. Hence, the impugned judgment and order of the High Court

Division is liable to be set aside. He also submits that the writ petitioner prayed in the writ petition that a direction may be given upon the writ respondents to pay his undisbursed salary and subsistence allowance to him but the High Court Division directed the writ respondents to reinstate the writ petitioner and, as such, the impugned judgment and order of the High Court Division is bad in law and the same is liable to be set aside. He finally submits that the writ petitioner was suspended by the authority and it is not a final order but the High Court Division passed the impugned judgment and order as like a final order and, as such, the impugned judgment and order of the High Court Division is bad in law

and the same is liable to be set aside. Hence, the instant appeal may kindly be allowed.

Mr. A.K.M. Fazlul Hoque, the learned Advocate appearing on behalf of the appellant No.5 made submissions in support of the learned Deputy Attorney General for the appellants.

Per contra, Mr. Ruhul Quddus, the learned Advocate appearing on behalf of the respondent made submissions in support of the impugned judgment and order of the High Court Division. He submits that because of his illness he could not be present in Madrasha from the period of 01.09.2001 to 14.12.2001 but he filed such applications for leave supported by medical certificates from time to time. He further submits that he was under suspension but without any specific allegation against him but

kept him hanging for all these years without any salary. Hence, the High Court Division made the Rule Nisi absolute and rightly passed the impugned judgment and order and, as such, the instant appeal may kindly be dismissed.

We, perusing the Annexure G, the impugned order, are inclined to approve the High Court Division's findings that the without any specific allegation the respondent-petitioner was not only suspended but also without subsistence allowance for such a longer period of time. Surprisingly enough, the Annexure G that is the impugned suspension order was passed by one Mr Sudhangsu Shekhar Bishwas as the UNO of Kawkhali, Pirojpur, not as Ex-officio Chairman of the Madrasa. Law does not confer adequate power to one or any UNO as

his/her original designation to issue such orders. Only Chairman of the Madrasa Managing Committee can do so. Moreover, it is on record through the Annexures C-D that the respondent-petitioner left no stone unturned in solving his service related problems in question. He prayed to Secretary of the concerned Madrasha once, then to the Chairman, the present appellant. Subsequently, he applied to the Director General of DSHE, then to the Hon'ble Minister for Education. Thereafter, finding no other efficacious alternative remedy he filed the instant writ petition. Hence, we find the impugned suspension order was passed by the incompetent authority and, as such, it is without lawful authority.

A service holder may suspend for alleged allegation, however, such order of suspension cannot continue for unlimited period. The concerned authority must conclude the inquiry within stipulated time as per the concerned law. The impugned letter was issued on 06.11.2001, now it is 2022, till now the inquiry is pending and writ petitioner-respondent before us is under suspension without concluding the inquiry.

Accordingly, we find no merit in submissions of the learned Deputy Attorney General for the appellants.

We find that the impugned judgment and order of the High Court Division does not call for any interference by this Division.

In the result, this Civil Appeal is dismissed, however, without any order as to cost.

J.

J.

J.

The 16<sup>th</sup> February, 2022  
Hamid/B.R/\*Words 1,293\*