

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

**Writ Petition No. 10075 of 2020**

**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. Nizam Uddin and others**

..... Petitioners

-Versus-

Government of the People's Republic of Bangladesh,  
represented by the Secretary, Ministry of Primary and  
Mass Education, Ramna, Dhaka and others

.....Respondents

Mrs. Shahina Tazrin, with

Mr. Md. Abdullah Al-Mamun and

Mr. Md. Ismail Hossain, Advocates

.....for the petitioners

Mr. Amit Dus Gupta, DAG

.....for the respondents

*Heard on: 22.05.2023, 30.05.2023 & 01.06.2023*

**Judgment on : 11.06.2023**

**Present:**

**Ms. Justice Naima Haider**

**&**

**Ms. Justice Kazi Zinat Hoque**

**Naima Haider, J;**

In this application under Article 102 of the People's Republic of Bangladesh, a Rule Nisi was issued calling upon the respondents to show cause as to why the discriminatory action of the respondents concerned by violating the fundamental rights of the petitioners

guaranteed under Articles 27, 29 and 31 of the Constitution in respect of appointment of the petitioners in their respective post and nationalized government primary schools as per the decision of the government, published in Gazette notification dated 17.10.2013 (published on 20.01.2013) shall not be declared to be without lawful authority and is of no legal effect and also as to why the respondents shall not be directed to appoint/absorb the petitioners in their respective posts and schools in accordance with the decision contained in the Gazette notification dated 17.01.2013 (published on 20.01.2013) with all benefits with effect from 01.07.2013 and/or pass such other or further order or orders as to this Court may seem fit and proper.

Ms. Shahina Tazrin, learned Advocate submits that he has instructions from the petitioner Nos.2, 3, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23 and 33 not to proceed with the Rule. Accordingly, the Rule in respect of the said petitioner Nos. 2,3,8,9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23 and 33 are discharged for non-prosecution.

Short facts, relevant for the disposal of the Rule, are that, the petitioners are citizens of Bangladesh and have been serving as Assistant Teachers in different registered non-government primary school in Thakurgaon. They were appointed as Assistant Teachers in those schools on various dates through due process pursuant to the recommendation of the Managing Committees of the concerned schools. The names of the petitioners' schools and date of their appointment are as follows:

1. Md. Nizam Uddin  
Headmaster  
Bhoishagoj Ruheya Primary School  
Police Station-Haripur  
District-Thakurgaon, Joined on 03.01.2010.
2. Md. Sadekul Islam  
Headmaster  
Shitolput Reg. Non-Government Primary School  
Police Station-Haripur  
District-Thakurgaon, Joined on 01.01.2011.
3. Mst. Aysha Siddkia  
Headmaster  
Bongaon Kalitola Reg. Non-Government Primary School  
Police Station-Haripur  
District-Thakurgaon, Joined on 05.04.2014.
4. Md. Kamal Uddin  
Headmaster  
Pamol Betbari Reg. Non-Government Primary School  
Police Station-Ranishonkoil  
District-Thakurgaon, Joined on 02.01.2000
5. Mollika Akter  
Headmaster  
Ghono Shyampur Reg. Non-Government Primary School  
Police Station-Ranishonkoil  
District-Thakurgaon, Joined on 02.01.2000
6. Md. Robiul  
Assistant Teacher  
Meddinidighi Reg. Non-Government Primary School  
Police Station-Hairpur  
District-Thakurgaon, Joined on 01.01.2013
7. Mst. Aklima Parvin  
Assistant Teacher  
Baril Reg: Non Government Primary  
School, Police Station-Joypurhat  
Sadar, District-Joypuhat, Joined on 04.01.2009.
8. Shirajum Munira Suborna

- Assistant Teacher  
 Rahmatpur (Boro Dahogaon) Reg. Non-Government  
 Primary School  
 Police Station-Haripur  
 District-Thakurgaon, Joined on 01.01.2011
9. Mst. Hasina Khatun  
 Assistant Teacher  
 Ghono Shyampur Reg. Non-Government Primary School  
 Police Station-Ranishonkoil  
 District-Thakurgaon, Joined on 01.01.1998
10. Mst. Mahfuza  
 Assistant Teacher  
 C.S Reg. Non-Government Primary School  
 Police Station-Ranishonkoil  
 District-Thakurgaon, Joined on 04.01.2009.
11. Md. Shamsul Haque  
 Assistant Teacher  
 Jadebpur Reg. Non-Government Primary School  
 Police Station-Haripur  
 District-Thakurgaon, Joined on 20.01.2002.
12. Mst. Munsura Khatun  
 Assistant Teacher  
 Shitolpur Reg. Non-Government Primary School  
 Police Station-Haripur  
 District-Thakurgaon, Joined on 01.01.2014.
13. Md. Akmol Hossain  
 Assistant Teacher  
 Charvita Reg. Non-Government Primary School  
 Police Station-Haripur  
 District-Thakurgaon, Joined on 02.01.2007.
14. Mst. Jesmin Akter  
 Assistant Teacher  
 Omor Reg. Non-Government Primary School  
 Police Station-Ranishonkoil  
 District-Thakurgaon, Joined on 22.04.2013.

15. Md. Nur Alam  
 Assistant Teacher  
 Momrejpur Reg. Non-Government Primary School  
 Police Station-Ranishonkoil  
 District-Thakurgaon, Joined on 01.01.2003.

The petitioners obtained the required qualifications (competitive and qualitative) and were, accordingly, recruited through different advertisements published in national dailies. In addition to imparting education in the said primary schools, the petitioners undertake several public duties such as making voter list, birth registration, sensors, polling activities, EPA Program, board exam duties etc. The petitioners also participated in various training programs to improve their skills as teachers. It is stated that, along with all teachers of non-government primary schools in Bangladesh, the petitioners also participated in several movements placing demand for nationalization of the primary schools on several occasions and news of such movements and demonstrations have been published in various news papers which culminated into a powerful movement participated by millions of teachers wherein the Hon'ble Prime Minister of Bangladesh, on 09.01.2013, gave declaration and promise at a congress of the teachers held at National Parade Ground to nationalize 26000 non-registered primary schools and the said declaration was widely published in different news papers including the Daily Ittefaq on 10.01.2013.

Pursuant to such declaration and promise, the government, through the Primary and Mass Education Ministry, published a notification dated 17.01.2013 in the gazette on 20.01.2013 declaring the decision of the government to nationalize different types of non-government Primary schools, which were established and permitted to impart education before 27.05.2012, along with their teachers. Accordingly, frame work of different committees were provided in the said gazette notification for scrutiny of the schools and teachers for such nationalization and absorption. As regards absorption of teachers in those primary schools, it is stated in the said gazette notification dated 17.01.2013 that, while the MPO teachers would be absorbed automatically, non-MPO teachers would be absorbed through scrutiny process through those committees and recommendation by those committees. The Ministry of Primary and Mass Education, through its Deputy Director (respondent no.2), issued memo dated 23.06.2013 to send the report of such scrutiny as regards teachers and schools within 25.07.2013 in accordance with the directions given in the aforesaid gazette dated 17.01.2013. In such process, the government, in exercise of its power under Section 3(1) of the Primary Schools (Taking Over) Act, 1974, took control of MPO listed 4,825, schools vide gazelle dated 01.07.2013 as published on 10.07.2013. Accordingly, by such acquisition process; the schools, wherein the petitioners had been working, were taken under the control of the government. It is stated

that, though the schools of the petitioners were acquired and taken control by the government, the fate of the petitioners remained uncertain as they were not absorbed or no scrutiny process was undertaken pursuant to the gazette notification dated 17.01.2013 in respect of them. It is further stated that, vide order dated 06.11.2013, only the MPO listed teachers of the said schools were absorbed though it was the declaration and intention of the government to absorb the teachers of the said primary schools through scrutiny process in accordance with the directions given in the said gazette notifications dated 17.01.2013. This being so, it is stated that, the petitioners have been discriminated and deprived of their legitimate expectation of being absorbed as regular government teachers of those primary schools. By annexing some certificates issued by the concerned Head Masters of those schools, the petitioners have stated that, they are still serving as teachers in these schools and that there are adequate vacant positions in those schools for absorbing the petitioners even though the government has in the meantime initiated process of fresh appointments through advertisements in spite of the fact that the fate of the petitioners was yet to be decided. Under such circumstances, the petitioners moved this Court after serving, various representations and demand justice notice and obtained the aforesaid Rule.

No affidavit in opposition has been filed by the Respondents, controverting the statements made in the writ petition.

Ms. Shahina Tazrin, learned Advocate appearing with learned Advocates Mr. Abdullah Al-Mamun and Mr. Md. Ismail Hossain on behalf of the petitioners submits that on similar facts and circumstances, this Court by judgment dated 8<sup>th</sup> June, 2017 passed in Writ Petition No. 575 of 2014 made this Rule absolute directing to absorb the petitioners after scrutiny in accordance with the directions contained in the gazette notification dated 17.01.2013 (published on 20.10.2013). Once absorbed, their service benefits will be given effect to from 01.01.2013, as that is the mandate of the said Gazette dated 01.07.2013 as published on 10.07.2013, in view of the entitlement of the petitioners under Section 3(2)(b) of the said Act. The government was also directed to issue necessary order in this regard in view of Rule 4(ka) of the said Rules. The respondents were further directed to complete the said absorption process within 3 (three) months from the dated of receipt of the copy of this judgment and not to recruit any other teacher until recruitment of the petitioners were complete as aforesaid. He finally submits that this matter being similar, the Rule may be disposed of in the light of the said judgment.

In view of the submissions as advanced by the learned Advocates for the petitioners as well as learned Deputy Attorney General for the respondents, it is not necessary to discuss the details about the case, the grounds, etc. in this writ petition.



However, we have examined the writ petition, the connected materials on record, the judgment dated 8<sup>th</sup> June, 2014 passed in Writ Petition No. 575 of 2014 **(Md. Salim Reza and others vs. Government of the People's Republic of Bangladesh)**. This Court made the Rule Absolute with the following observations and directions:-

**“Deliberations of the Court:**

*It appears from the material on record, in particular the provisions under the Primary Schools (Taking Over) Act, 1974 (Act No. VIII of 1974) (“the said Act”) that; in exercise of power under Section 3(1) of the said Act, the government can take over private schools and make them government schools under its control. Clause (b) of sub-section (2) of Section 3 is very much relevant in the facts and circumstances of the present case, accordingly, the same is quoted below:*

**3:(2)(b) all teachers of the primary school shall become employee of the Government and shall hold their service under the Government such terms and conditions as the Government may determine: and**

***(Underlines supplied).***

*Therefore, it appears from the above quoted provisions that, once the concerned schools are taken over by the government in exercise of power under Section 3(1) of the said Act, the teachers of those schools shall automatically become government employees and shall hold services under the government on such terms and conditions as the government may determine. However,*

*when the Act of parliament has given the entitlement in favour of the petitioners to be absorbed automatically as government teachers once their schools are taken over by the government, the delegated legislation, namely Rule 4(1)(ka) of the অধিগ্রহণকৃত বেসরকারি প্রাথমিক বিদ্যালয়ের শিক্ষক (চাকুরীর শর্তাদি নির্ধারণ) বিধিমালা, ২০১৩ ("the said Rules"), has made a peculiar provision, which is apparently contrary to the parent law, in that, for such absorption an order has to be issued by the government.*

*Be that as it may, since these provision in the said Rules is not covered by the terms of the Rule in our writ petition, we do not need to discuss the same any longer except that, issuance of an order by the government as regards such teachers absorption or recruitment as government employees is a mere formality inasmuch as that the Act of parliament has given them entitlement to become automatically absorbed as employees of the government and to hold their services under the government on such terms and conditions as the government may determine.*

*It now appears that, admittedly, the schools of the petitioners have been taken over by the government vide gazette notification dated 01.07.2013 (published on 10.07.2013) in exercise of power of the government under Section 3(1) of the said Act. Which means, by operation of law, the petitioners have in the meantime become employees of the government and shall hold the services under the government on such terms and conditions as the government may determine with effect from 10.07.2013. The only thing remained to be done is to issue a formal order as regards such absorption, which the government, for the*

*reasons best known to it, has failed to do and thereby as created more chaos.*

*When the Act of parliament has made provisions for automatic absorption of those teachers as government employees, we fail to understand as to why the government has not yet initiated the process of such recruitment through scrutiny by the committees constituted vide gazette notification dated 17.01.2013 (Annexure-E to the supplementary affidavit of the petitioner dated 02.03.2014). We also fail to understand as to why only the MPO listed teachers of those schools have been given the discriminatory privilege when the petitioners being teachers of the schools were standing on the same footing in so far as the provisions of the said Act and Rules are concerned. Therefore, this Court is of the view that, the petitioners have not only been prejudiced by such pick and choose policy of the government, they have also been discriminated against in violation of their fundamental rights guaranteed under Articles 27, 29 and 31 of the Constitution. We also fail to understand as to why the concerned District Education Officers have not yet taken initiative pursuant to the specific direction of the concerned Ministry dated 23.06.2013 (Annexure-F) to submit report of such scrutiny within 25.07.2013.*

*In view of above admitted position as well facts and circumstances of the case, this Court is of the view that, the petitioners have been successful before this court to establish their case on the point of legitimate expectation as well as their legal entitlement under the said Act and Rules as made thereunder. Therefore, we find merit in the rule and as such the same should be made absolute.*

*In the result, the Rule is made absolute.”*

In view of the admitted facts and circumstances of the case, the views taken by this Court in the aforesaid cases are applicable in the instant case.

As no affidavit in opposition has been filed controverting the statements made in the writ petition, the assertions so made are deemed to be correct.

Accordingly, we are of the view that the instant Rule be disposed of in the light of the observations and directions as made in the judgment passed in the aforesaid writ petition.

The respondents are directed to complete the regularization process of the petitioners in their respective schools within 3(three) months from the date of the receipt of a copy of this judgment and order, if they are not otherwise disqualified.

With the above observations and directions, the Rule is disposed of.

However, there is no order as to costs.

Communicating the judgment and order at once.

**Kazi Zinat Hoque, J:**

***I agree.***