

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

Writ Petition No. 7073 of 2020.

In the matter of:

An application under article 102 (2) of the
Constitution of the People's Republic of
Bangladesh.

-And-

In the matter of:

Asma Akter

..... Petitioner

-Versus-

The Chairman, Children Welfare Trustee
Board, Ministry of Primary and Mass
Education and others.

. . . Respondents.

Mr. Md. Abdun Nur Dulal, Advocate

. . . For the petitioner.

Mr. Md. Abu Hanif, Advocate

. . . For the respondent No.3.

Present:

Mr. Justice J. B. M. Hassan

and

Mr. Justice Razik Al Jalil

Heard on 18.02.2024, 19.02.2024,
20.02.2024 and Judgment on
25.02.2024.

J. B. M. Hassan, J.

The petitioner, namely, Ms. Asma Akter obtained the Rule Nisi in the
following terms:

“Let a Rule Nisi be issued calling upon the respondents to show
cause as to why the respondents should not be directed to
include the petitioner's name as 5th teacher in the teachers' list
of Syeda Sajeda Chowhdury Shishu Kollayan Primary School,
Nagarkanda, Faridpur and to pay all due salaries and
allowances of the petitioner And why the recruitment
advertisement so far as it relates to the Assistant Teacher, Syeda

Sajeda Chowhdury Shishu Kollayan Primary School, Nagarkanda, Faridpur published in the Bangladesh Protidin on 07.10.2020 should not be declared to be without lawful authority and of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.”

Relevant facts leading to issuance of the Rule Nisi are that pursuant to a recruitment notice dated 29.11.2015 the petitioner participated in the recruitment process for appointment in the post of Assistant Teacher of the Syeda Sajeda Chowhdury Shishu Kollayan Primary School, Nagarkanda, Faridpur (the School). After successful completion of written examination as well as viva voce examination, the petitioner got appointment on 15.12.2015 and accordingly, joined the School on 04.01.2016. Since then the petitioner has been discharging her duty attending the School regularly. The School authority did not pay her any salary. The petitioner repeatedly approached the School authority to pay the salary but to no response. Managing Committee of the School took resolution on 12.01.2017 for taking step to pay the petitioner and the Chairman of the Managing Committee of the School (respondent No.7) also wrote a letter to the Director (Additional Secretary), Children Welfare Trust, Ministry of Primary and Mass Education (respondent No.5) recommending the petitioner to pay salaries.

On 21.05.2017 the concerned Upazila Education Officer wrote a letter to the Upazila Nirbahi Officer (UNO), Nagarkanda, Faridpur to supply the name of the teachers of the School and accordingly, a report was submitted but it was excluding the name of the petitioner as teacher. In the circumstances, the petitioner made a representation to the Director

(Additional Secretary), Children Welfare Trust, Ministry of Primary and Mass Education (respondent No. 5) on 13.05.2017 and 25.06.2017 pursuant to which the respondent No.5 issued letter dated 22.04.2018 declining to accept the petitioner as 5th teacher of the School. Thereafter, the petitioner approached different authorities including the Secretary, Ministry of Primary and Mass Education (respondent No.2) and the Children welfare Trustee Board for considering her prayer providing salaries and allowances. But there being no response the petitioner filed this writ petition and obtained the present Rule Nisi.

On the other hand, the Director (Additional Secretary), Children Welfare Trust, Ministry of Primary and Mass Education as respondent No.5 has filed an affidavit in opposition contending, *inter alia*, are that the then Chairman of the Managing Committee of the School applied to the Hon'ble State Minister, Ministry of Primary and Mass Education on 14.03. 2013 for inclusion of the said School under the Shishu Kallayan Trust. According to said application, the total number of students of the said School was 150 and total number of teachers were four (04) including the Headmaster and three (03) other Assistant Teachers and (one) 01 office Shahayak i.e MLSS. After maintaining the normal procedure, the Board of Trustee of Shishu Kallayan Trust on its 63rd meeting held on 06.01.2016 decided to include the said School to the Shishu Kallyan Trust (SKT) after being proper scrutiny and verification.

Accordingly, Assistant Director (Education) of SKT and the then Accounts Officer of SKT physically visited the said School on 03.02.2016

and submitted report. According to that report, there were 04 teachers acting in the said School including the Headmaster. But the petitioner was not among them and the total number of students were 80 and the number of present students on the visiting day was 63. Before approval of the teachers' list by the SKT, a list dated 30.12.2015 containing the names of the acting teachers (4 teachers including the Headmaster) of that School was sent to SKT jointly signed by the then Chairman of the Managing Committee and the Headmaster of the said School, where the names of the petitioner was not included. After verifying the papers submitted by the then Chairman of the Managing Committee and the Headmaster of the said School and the departmental Inspection report, SKT approved inclusion of the School under the Shishu Kallyan Trust on 02.03.2016 and accordingly approved the list of four teachers and one MLSS where the name of the petitioner was not included. So, the question of getting the salaries of the petitioner does not arise.

Mr. Md. Abdun Nur Dulal, learned Advocate for the petitioner submits that the petitioner was appointed in the School on observance of due process of law and after joining, she has been discharging her duties since 2015. Despite the respondents did not pay her salary on malafide intention. He further submits that inspite of petitioner's appointment as teacher of the School, the respondents published the recruitment notice on 07.10.2020 on the plea that 208 students were available at the relevant time for appointment of 5th teacher of the School. Thus, with an ulterior motive

the respondents ignored the petitioner's appointment as 5th teacher of the School.

Mr. Md. Abu Hanif, learned Advocate for the respondent No.5 has drawn our attention to the letter/correspondences and inspection report in respect of the School and he contends that in all those papers it was found that there were only four teaches. He further contends that even the correspondences of the School made before this respondent did not disclose the petitioner's name as teacher of the School. But all of a sudden, in 2018 for the 1st time the petitioner claims herself as a teacher of the School and approached the respondents for salary.

We have gone through the writ petition, affidavit in opposition and other materials on record.

From the correspondences made by the Managing Committee of the School, Thana Education Officer, Nagarkanda, Faridpur, Upazila Nirbahi Officer, Nagarkanda, Faridpur and the respondents' inspection report, it appears that there were only four teachers in the School and the petitioner's name was never reflected as teacher in those communications and even in the communication of the School. It is also surprising that the petitioner claims herself as teacher since 2015. But she was never paid a single farthing as salary in lieu of her alleged service. Now only showing a recruitment notice written on a School letter head and an appointment letter alleged to have been given to the petitioner, the petitioner is claiming the teacher. Since there is no materials as to petitioner's service in all official correspondences of the School and other relevant authorities, there is no

justification in the petitioner's claim and all those are disputed questions of facts.

Regard being had to the above, we do not find any merit in this Rule Nisi.

In the result, the Rule Nisi is discharged without any order as to cost.

Communicate a copy of this judgment and order to the respondents at once.

Razik Al Jalil, J

I agree.