

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

Writ Petition No. 2278 of 2021

IN THE MATTER OF:

An application under Article 102 of the
Constitution of the People's Republic of
Bangladesh.

AND

IN THE MATTER OF:

Sajal Chandra Sarker

....Petitioner

Versus

The Government of Bangladesh and others

....Respondents

Mr. Abu Hasnat Md. Mofijur Rahman,
Advocate

....For the Petitioner

Mrs. Afroza Nazneen Akther, A.A.G.

....For the Respondents

Present:

Mr. Justice Md. Jahangir Hossain

And

Mr. Justice S M Masud Hossain Dolon

Heard on: 15.11.2023, 16.11.2023

Judgment on: 23.11.2023

S.M. Masud Hossain Dolon, J:

On an application under article 102 of the Constitution, the
Rule Nisi was issued in the following terms:

"Let a Rule Nisi be issued calling upon the respondents
No. 1-7 to show cause as to why their subsequent
proceedings and the letters being Memo No.
ঢাশিবো/বি/অ/১৪৬/নরসিংদী/২৯৩৪ dated 04.10.2020 and Memo
No. ঢাশিবো/বি/অ/১৪৬/নরসিংদী/২৯৩৪ dated 20.12.2020 issued
by the respondent No. 3 (Annexure-Q and R) after
reinstating the petitioner in his post of headmaster of

Madhabdi S P Institution, Narshingdi and requesting to pay his arrear salaries vide Memo No. ঢাশিবো/বি/অ/১৪৬/নরসিংদী/২৯৩৪ dated 01.10.2020 (Annexure-p) should not be declared to have been issued without lawful authority and is of no legal effect and /or pass such other or further order or orders as to this Court may seem fit and proper.”

Facts relevant for disposal of the Rule in short, are that the petitioner was enlisted as a teacher in the Monthly Pay Order (MPO) being Index No. 282203 and he was appointed as the Headmaster of Madhabdi S.P Institution, Narshingdi, on 12.09.2014 and he joined the school on 14.09.2014 and since then he has been discharging his duties and responsibilities with sincerity and honesty and with full satisfaction of the authority concerned.

On 17.09.2016 the petitioner received a show cause letter signed by one Alhaj Md. Safiuddin, Convener, Investigation Sub-Committee, Madhabdi S.P Institution, Madhabdi, Narshingdi stating a number of allegations against the petitioner and sought reply from him. The petitioner replied all the allegations respectively brought against him on 21.09.2016. Four members of the Investigation Sub-committee submitted their investigation report and 2(two) of the members opined to discharge the petitioner from false allegations and other 2(two) members incriminated him to the allegations as stated in the show cause letter. On 10.04.2017 the Chairman of the managing committee who was also the State Minister of the

Ministry of Water Resources, Government of the People's Republic of Bangladesh, issued a letter vide memo no. 42.00.0000.005.18,001.87.66 in a letter head paper of Ministry of Water Resources to direct the Upazilla Nirbahi Officer (UNO) of Narshingdi Sadar to form a 3(Three) members investigation committee headed by Upazilla Education Officer for further investigation of the allegations brought against the petitioner. The Upazilla Nirbahi Officer vide a memo No. 05.30.6860.000.02.032.2017.331 formed a Committee of 4(four) members for investigation and the investigating Committee after investigation submitted their investigation report vide Memo No. 12.17.6860.039.08.047.2017-658 and condemned the petitioner for several allegations. On 05.08.2017 the Chairman of the managing committee dismissed the petitioner from his service. Thereafter the petitioner filed a number of applications to the Chairman of the Board of Intermediate and Secondary Education stating that the said dismissal was arbitrary, illegal and malafide in nature and requested the Chairman to take necessary steps to re-instate him as the Headmaster of the School.

Being aggrieved by and dissatisfied with the inaction of the Chairman of the Board of Intermediate and Secondary Education, Dhaka, the petitioner filed Writ Petition No. 636 of 2018 and after hearing of the parties the Hon'ble High Court Division passed an

order directing the Chairman to dispose of the application filed by petitioner dated 17.01.2018. Thereafter the Inspector of Schools, Board of Intermediate and Secondary Education, Dhaka sent a letter to the petitioner for attend the meeting before the Appeal and Arbitration Committee and the meeting was held on 25.09.2018 where it was decided that the matter will be sent for another investigation. On 18.04.2019, Md. Alamgir Hasan, Education Inspector, Directorate of Inspection and Audit, Ministry of Education investigated and submitted report that no documentary evidence was found about the financial misappropriation against the petitioner and the inspector also commented that Rule 14(1) and (2) Chakri Bidhimamala 1979 was not followed during final dismissal of the petitioner from his office. On 06.11.2019 the Inspector of Schools, Board of Intermediate and Secondary Education, Dhaka sent a letter to the petitioner to attend in the meeting of the Appeal and Arbitration Committee of the Board held on 20.11.2019 and on 29.12.2019 the Chairman issued a letter to the District Education Officer, Narshingdi seeking his report with clear suggestion about the dismissal of the petitioner. Aggrieved by lack of effective action and delay to take necessary step the petitioner on 01.01.2020 filed another application to the Chairman of the Board to take necessary step to reinstate him as the Headmaster of the School but the petitioner's effort was in vain. On 16.01.2020 the petitioner through

his learned Advocate sent a Demand of Justice Notice for non-compliance of the direction dated 13.03.2018 passed by the Hon'ble High Court Division in Writ Petition No. 636 of 2018 and being not replied of the notice the Contempt Petition No. 57 of 2020 was filed by the petitioner and after hearing the Hon'ble High Court Division issued a Rule Nisi upon the contemnor-respondent, the Chairman of the Board of Secondary and Higher Education, Dhaka. Thereafter on 01.10.2020 the Chairman of the Board issued a letter being memo No. ঢাশিবো/বি/অ/১৪৬/নরসিংদী/2934 directing the Chairman of the managing committee to re-instate the petitioner in his own post of Headmaster and to pay him all arrear salaries and benefits. Keeping the same memo no another letter was issued by the Chairman of the Board on 04.10.2020 by changing the content of the previous letter which said that subject to the approval of the Appeal and Arbitration Committee the petitioner would re-instated as the Headmaster of the said School. On 15.11.2020 a meeting of the Appeal and Arbitration Committee of the Board was held and the petitioner was present in the meeting and thereafter the Chairman of the Board issued a letter vide memo No. ঢাশিবো/বি/অ/১৪৬/নরসিংদী/৪১২৫(১১) dated 20.12.2020 stating that the petitioner could not be re-instated as he was employed in another School. On 20.12.2020 the Chairman of the Board also issued another letter being memo No. ঢাশিবো/বি/অ/১৪৬/নরসিংদী/৪১২৫(৮) requesting the District Commissioner

(DC), Narshingdi to investigate the irregularities in financial management resulted in final dismissal by the managing committee brought against the petitioner and overall matter related to the said dismissal. The Assistant Commissioner and Executive Magistrate, Education and Child Welfare Section and vide memo no. 05.30.6800.114.07.001.20-80/1(2) dated 06.01.2021 sent letter to the petitioner and Headmaster of the school stated that the investigation will again restart against the petitioner including the financial irregularities and the whole matter.

Thereafter, having found no other equally efficacious remedy the petitioner filed the instant writ petition and obtained the Rule.

Mr. Abu Hasnat Md. Mofijul Rahaman learned Advocate for the petitioner submitted that long and repeated investigation proceedings concluded against the petitioner and finally the petitioner was reinstated in his position of Headmaster of the school and also a direction was given to pay the arrear salaries and benefits there has been no new cause of action arisen against the petitioner. The respondents have clear violation of section 14(1), (2) of the Recognized Non-Government Intermediate College Teachers (Board of Intermediate and Secondary Education, Dhaka) Terms and condition of service Regulations, 1979. He further submitted that by restarting the investigation proceeding against the petitioner after taking decision to reinstate him as the Headmaster the respondents

blatantly abused the power conferred upon them and have acted in excess of their jurisdiction. Learned Advocate further submitted that the petitioner did not join in any post of any institution after being dismissed illegally from his service. The learned Advocate for the petitioner submits that petitioner is legally entitled to re-instate in his post of Headmaster of the school as per recommendation forwarded by the Chairman of the Board of Secondary and Higher Education, Dhaka. Hence the impugned order may be declared illegal and without lawful authority.

None appears on behalf of the respondent no. 1-7.

We have perused the writ petition and all other relevant papers submitted by the petitioner in connection with the contents of this writ petition. It appears that Education Inspector, Directorate of Inspection and Audit, Ministry of Education investigated the matter of dismissal of the petitioner and submitted report that no documentary proof was found about the allegation against the petitioner. Thereafter the school inspector of the Board of Secondary and Higher Education, Dhaka issued a letter directing the Chairman of Managing Committee of the School to re-instate the petitioner in his post of Headmaster and to pay him all arrear salaries and benefits Annexure-P.

Thereafter before joining as a Headmaster the Inspector of School, Board of Intermediate and Secondary of Dhaka without issuing any show cause notice or any cogent reason again dismissed the petitioner on the ground that before taking the final decision regarding dismissal he has been serving as teacher in another school. Further a new investigation has started against him for financial irregularities which have already been investigated and submitted report by Md. Alamgir Hasan, Education Inspector, Directorate of Inspection and Audit, Ministry of Education that no documentary proof was found about the allegation against the petitioner and self same allegation for misappropriation of School money a investigation has started without lawful authority and is of no legal effect.

We found that the earlier allegation against the petitioner was misappropriation of money was not proved and the board rightly directed the Managing Committee of that school to re-instate the petitioner in his service.

In view of the above facts and circumstances, we find substances in the submission of the learned Advocate for the petitioner.

Thus, we find merit in this Rule.

Accordingly, the Rule is made absolute. Hence, the impugned order vides Annexure-Q & R are hereby declared to have been issued without any lawful authority.

Respondents are directed to re-instate the petitioner in his own post of Headmaster and to pay him all arrear salaries and benefits within 60(sixty) days from the date of the receipt of this judgment.

However, there would be no order as to costs.

Md. Jahangir Hossain, J:

I agree.

We have carefully scrutinized the memo no. ঢাশিবো/বি/অ/১৪৬/নরসিংদী/৪১২৫ তারিখ-২০/১২/২০২০ and memo no. ০৫.৩০.৬৮০০.১১৪.০৭.০০১.২০-০৮/১(২) তারিখ ০৬/০১/২০২১ and found that they restart to investigate the financial irregularities of the petitioner which was earlier investigated and submitted report by Md. Alamgir Hasan, Education Inspector, Directorate of Inspection and Audit, Ministry of Education. The School Inspector, Secondary and Higher Secondary Education Board with the approval of the Chairman directed the president of Managing Committee that according to the inquiry report, the dismissal of the Head teacher of the school did not follow the service rules and also vehemently stated that no allegation was proved against the petitioner, annexure-P. Though the school

As per law the board is the final authority regarding punitive action as has been taken in the present case and as such the Managing Committee is under obligation to comply with the said direction despite of such direction the Inspector of Schools, Board of Intermediate and Secondary again dismissed the earlier letter being memo no. 2934 dated 01/10/2020 on the ground that before taking the final decision regarding dismissal he is still serving as teacher in another school.

The school Inspector, Secondary and Higher Secondary Education Board cancelled the earlier decision to re-instate the petitioner to his post as Headmaster and to pay the outstanding arrears on the ground that the petitioner is still serving in another school as a teacher. We found that the earlier allegation against the petitioner was misappropriation of money was not proved and the