

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

WRIT PETITION NO. 13465 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:

Rafiqul Islam and another

....Petitioners

-Versus-

The Government of the People's Republic of Bangladesh,
represented by the Secretary, Ministry of Primary and
Mass Education, Bangladesh Secretariat, Ramna,
Dhaka-1000; and others

....Respondents

Mr. Nur Mohammad, Advocate with

Mr. A.K. Shamsuddin, Advocate

....For the petitioners

Mr. Ajit Sil, Advocate and

Mr. Md. Anichur Rahman Khan, D.A.G with

Mr. Sultan Mahmood Banna, D.A.G with

Mr. Mir Moniruzzaman, A.A.G with

Mr. Md. Sarwar Alam Khan, A.A.G

....For the Respondent No. 1

Mr. Dr. Mahiuddin, Advocate with

Mr. Mohammad Redwanul Karim, Advocate

....For the Respondent Nos. 9-10

Heard on 03.09.2025, 29.10.2025, 06.11.2025 and 12.11.2025

Judgment delivered on 09.07.2026

Present:

Mr. Justice Md. Shohrowardi

And

Mr. Justice Dihider Masum Kabir

Md. Shohrowardi, J.

On an application filed under Article 102 of the Constitution of the People's Republic of Bangladesh, Rule Nisi was issued calling upon the respondents to show cause as to why the impugned judgment and order dated 05.03.2019 passed in Miscellaneous Appeal No.07 of 2014 by the District Judge, Bandarban (Annexure-H) reversing the order No.18 dated 14.05.2014 passed by Subordinate Judge, Bandarban in Other Class Suit No.260 of 2012 rejecting the application for temporary injunction should not be declared to have been passed 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.

The relevant fact for disposal of the Rule, is that the opposite party Nos. 9 and 10 filed Other Class Suit No. 260 of 2012 in the Court of Subordinate Judge, Bandarban Hill District praying for a decree of declaration that all acts done regarding dismissal of the petitioners from their post without showing any cause is illegal and not binding upon the plaintiffs and also prayed for reinstate them in service directing to include their name in the MPO. During pendency of the said suit, the plaintiffs filed an application under Order 39 Rule 1, 2 read with section 151 of the Code of Civil Procedure, 1908 praying for injunction restraining the defendant Nos. 1, 2 and 3 from appointing in the post of the petitioners and for inclusion of their names in the MPO and also prayed for injunction restraining the defendants from discharging their duties in their respective posts. After filing the said application, the defendant Nos. 1, 2 and 3 filed written objection against the said application stating that the plaintiffs were suspended from the service and finally dismissed from the service after complying with the due process of law and the defendants were appointed in their posts in the M. Hossenpara Registered Primary School. After hearing both the parties, the trial Court by order dated 14.05.2014 rejected the application for injunction holding that no statement is made in the plaint that the plaintiff-petitioners were dismissed from the service and there is no cause of action for filing the suit and defendant Nos. 2 and 3 were appointed in their respective post and by suppressing the fact filed the application for injunction and vacated the order granting ad-interim injunction against which, the plaintiffs filed Miscellaneous Appeal No. 07 of 2014 in the Court of District Judge, Bandarban who after hearing allowed the appeal holding that the learned Advocate for the defendants did not dispute that the petitioners are not Headmaster and Assistant Headmaster of the school. Therefore, no one can restrain the plaintiffs from discharging their duty in their respective posts, and the plaintiffs are entitled to get their salary and other service benefits, against which the defendant-petitioners obtained the Rule and ad-interim order of status quo.

Learned Advocate Mr. Nur Mohammad appearing along with the learned Advocate Mr. A.K. Shamsuddin on behalf of the petitioners submits that the writ petitioners were appointed as Headmaster and Assistant Teacher of M. Hossenpara Registered Non-Government Primary School and their names were included in the MPO and subsequently, the said school was nationalized and the service of the petitioners were accepted by the government as Assistant Teacher and they are now serving as Assistant Teacher of Maluma Government Primary School and due to pendency of the suit, the petitioners are not getting the promotion to the higher post and the appellate Court below illegally passed an order directing to pay the salary and service benefits to the plaintiff-respondent Nos. 9 and 10 although admittedly they were dismissed from service and thereby committed an error of law resulting in an

error in the decision occasioning failure of justice. He prayed for making the Rule absolute.

Learned Advocate Mr. Ajit Sil, appearing on behalf of the respondent No. 1, submits that the plaintiff-respondent Nos. 9 and 10 were dismissed from service and the suit is still pending. Therefore, a direction should be given to the trial Court to dispose of the suit expeditiously.

Learned Advocate Mr. Dr. Mahiuddin appearing along with the learned Advocate Mr. Mohammad Redwanul Karim on behalf of the respondent Nos. 9 to 10 submits that without formal order of dismissal following the law, the petitioners were restrained from discharging their duty by the Managing Committee of M. Hossenpara Registered Non-Government Primary School and if any appointment is given in the vacant post, the suit filed by the petitioners will be infructuous. He further submits that since the plaintiffs-respondents were dismissed from service without following due process of law, they are entitled to service benefits and the appellate Court below, on consideration of the statement made by the petitioners in the application for injunction, legally passed the impugned judgment and order. He prayed for discharging the Rule.

We have considered the submissions of the learned Advocate Mr. Nur Mohammad, who appeared along with the learned Advocate Mr. A.K. Shamsuddin on behalf of the petitioners, the learned Advocate Mr. Ajit Sil, who appeared on behalf of the respondent No. 1 and the learned Advocate Mr. Dr. Mahiuddin who appeared along with the learned Advocate Mr. Mohammad Redwanul Karim on behalf of the respondent Nos. 9 to 10, perused the writ petition, affidavit-in-opposition filed by the respondent Nos. 9 to 10 and the records.

On perusal of the records, it reveals that the respondent Nos. 9 and 10 were appointed as Headmaster and Assistant Headmaster of M. Hossenpara Registered Non-Government Primary School, Lama, Bandarban and they joined in their service on 15.05.2006 and 19.02.2008 respectively. It has been asserted in the written objection that before filing the suit, the plaintiffs were dismissed from service and defendant Nos. 2 and 3 were appointed, and they joined in service on 27.08.2012, and after that, the case was filed on 10.10.2012. Nothing has been stated in the application for injunction filed under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 that the plaintiffs-respondent Nos. 9 and 10 were discharging their duty in their respective posts of the said school. Rather, they filed the suit for declaration that all acts regarding the dismissal of the plaintiffs from service are illegal and not binding upon the plaintiffs, which clearly proved that the plaintiff-respondent Nos. 9 and 10 were not serving at the time of filing the said suit. Therefore, they are not entitled to get the service benefit at this stage.

Admittedly, the plaintiff-respondent Nos. 9 and 10 were the Headmaster and Assistant Headmaster of the M. Hossenpara Registered Non-Government Primary

School and the plaintiff-respondents prayed for their reinstatement. If any appointment is given in the posts of Headmaster and Assistant Headmaster of M. Hossenpara Registered Non-Government Primary School in which the plaintiffs discharged their duty, the suit filed by the plaintiff-respondents will be infructuous. Therefore, the respondent Nos. 1 to 8 should be restrained by an order of injunction restraining them from appointing any other person in the posts of Headmaster and Assistant Headmaster of M. Hossenpara Registered Non-Government Primary School, Lama, Bandarban.

In view of the above findings and observations, the Rule is disposed of.

The respondent Nos. 1 to 8 are restrained by an order of injunction not to appoint anyone in the posts of Headmaster and Assistant Headmaster of M. Hossenpara Registered Non-Government Primary School, Lama, Bandarban till disposal of the Other Class Suit No. 260 of 2012 now pending in the Court of Joint District Judge, Bandarban Hill District.

The trial Court is directed to dispose of the suit expeditiously, preferably within 6(six) months.

Dihider Masum Kabir, J.

I agree.