

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

**Writ Petition No. 1278 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:

Dipu Rani Das being dead her heirs Moni  
Sanker Das.

....Petitioner

**Versus**

The Government of Bangladesh and others

....Respondents

Mr. Swapan Kumar Dutta, Advocate

....For the Petitioner

Mrs. Afroza Nazneen Akhter, AAG with

Miss. Anna Khanom (Koli), AAG

....For the Respondents

Present:

Mr. Justice Md. Jahangir Hossain

And

Mr. Justice S. M. Masud Hossain Dolon

Heard on: 03.01.2024, 10.01.2024,  
11.01.2024.

**Judgment on: 12.02.2024.**

S.M. Masud Hossain Dolon, J:

On an application under article 102 of the Constitution, the  
Rule Nisi has been issued calling upon the respondents to show  
cause as to why the petitioner should not be declared as the  
headmistress of the West Char Garabdi Talukder Para Government  
Primary School, Dumki, Patuakhali with effect from 01.01.2013 and

also for a direction to the respondents to update the corresponding records showing the petitioner as headmistress of the said school including the Serial No. 12 of page 55 of the Office Order issued under Memo No. ৩৮.০০৭.০১৫.০০০.১১.০০.২০১৩.৫৪৪ তারিখ ২৫ নভেম্বর ২০১৩ ইং (Annexure-D-2) and also to pay the petitioner all her unpaid legal dues as the headmistress of the said School 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 an Assistant Teacher of West Char Garabdi Talukder Para Non-government Primary School (in short as school) since 03.06.1982. Subsequently, concerned headmaster of the school, Chitta Ranjan Das resigned from the post. Thereafter on 15.12.1985, the school managing committee unanimously vide its resolution appointed petitioner as the new headmistress and since then she was performing her duties within the knowledge of all concern including the respondents. The petitioner had been enlisted in MPO on 01.07.1991.

On 08.04.2010 the Deputy Secretary, Ministry of Primary and Mass Education published a Circular provided a guideline regarding absorption of existing head master/mistress of all Registered Primary Schools. Further on September 29, 2013 vide an Official Gazette, the government circulated Rules namely অধিগ্রহণকৃত বেসরকারী প্রাথমিক বিদ্যালয়ের শিক্ষক (চাকুরী শর্তাদি নির্ধারণ) বিধিমালা, ২০১৩ as to the

absorption of all the existing teachers of the registered primary schools. Thereafter the government also published two consecutive Circular for absorbing all the existing teachers of the registered primary schools against their respective posts and position.

While the petitioner was performing her duties as the headmistress of the School, she sent up for PTI training in the year 1998 and after successful completion of the training she also sat on a Certification-in-Education Examination (C-In-Ed) in the year of 1999. To meet up the necessary pre-requisites qualification to be headmistress she also completed the Higher Secondary Certificate (HSC) Education from Bangladesh Open University and after taking necessary approval from the authority concern.

Though the petitioner was serving as the headmistress of the School since her appointment dated 15.12.1985, but on 15.01.2012 with a view to avoiding the technicality of the official decorum she again applied to the District Education Officer, Patuakhali for updating the corresponding records in the name of promotion. Md. Mizanur Rahman Sikder, the then president of the School Managing Committee, upon an endorsement, also forwarded the same to the District Education Officer, Patuakhali. The Managing Committee of the School also convened a meeting on 04.02.2012 resolving a decision in favour of the petitioner and in compliance thereof, the President of the school also issued a letter of appointment as

headmistress in favour of the petitioner on 05.02.2012. The petitioner also joined there again as headmistress vide a letter of joining dated 08.02.2012. It is very much pertinent to mention here that, actually, it was enough for the petitioner to file an application to the authority concern for updating the record regarding her subsequent achievement but she being ill advised by the then managing committee filed an application for promotion afresh which was quite unnecessary because, at that time, she was performing as the headmistress of the school and never was ousted from that post since 15.12.1985.

The appointment of the petitioner was also placed and discussed in the 19<sup>th</sup> meeting dated 08.02.2012 of the Upazilla Education Committee, Dumki, Patuakhali as Agenda No. 6 along with 3(three) others. All the recommendations of the School Managing Committee were approved including the petitioner's and resolved to forward the matter to the Director General of Compulsory Primary Education Implementation and Monitoring Unit for further action.

The petitioner was performing as the headmistress of the School, but in the Office Order issued under memo No. ৩৮.০০৭.০১৫.০০০.১১.০০.২০১৩.৫৪৪ তারিখঃ ২৫ নভেম্বর ২০১৩ ইং (Annexure-D2) she was designated as Assistant Teacher of the School. Soon after the publication of the Office Order the petitioner rushed to the Upazilla Primary Education Officer i.e. respondent No. 7 for

correction of the list. The then incumbent of the respondent No. 7 although assured her to resolve the issue as quickly as possible but for the reason very much known to him he kept the matter hanging for about 2(two) years. Ultimately, on 05.08.2015 he forwarded the matter to the District Primary Education Officer, Patuakhali who also forwarded the same to the respondent No. 3. In due course, the respondent No. 3 also forwarded the same to the respondent No. 1 but no result.

Thereafter the petitioner was finding no other alternative, on 16.08.2018, filed another application directly to the Secretary, Ministry of Primary and Mass Education, Respondent No. 1 for enlisting her name in the official gazette as the headmistress of the school. On receipt of the application, the respondent No. 1 requested the Director General, Directorate of Primary and Mass Education, the respondent No. 3 to do the necessary measures according to law and having been directed the office of the respondent No. 3 vide its letter issued and asked the District Primary Education Officer, Patuakhali, the respondent No. 6 to submit a complete report together with all the corresponding records.

In compliance thereof, the respondent No. 6 also directed the respondent No. 7, the Upazilla Education Officer, Dumki, Patuakhali who thereafter vide its detailed report issued memo No. 360 dated 13.11.2018 reiterating their earlier recommendation dated

08.02.2012 of the Upazilla Education Committee as to the absorption of petitioner as the Headmistress of the School. The respondent No. 6 also forwarded the same to the Respondent No. 3 along with his own recommendation in favour of the petitioner. The respondent No. 3 also forwarded the same to the respondent No. 1 but no result as yet.

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

Mr. Swapan Kumar Dutta learned Advocate for the petitioner submits that the petitioner was appointed as headmistress of the School by the competent authority in compliance with all the relevant provisions of law and she was performing as headmistress since the day of her joining on 15.12.1985 with full satisfaction of all concern but the respondents arbitrarily absorbed her in the government service as Assistant Teacher instead of headmistress by violation of the Provisions of section 2(Ja) of the অধিগ্রহণকৃত বেসরকারী প্রাথমিক বিদ্যালয়ের শিক্ষক (চাকুরীর শর্তাদি নির্ধারণ) বিধিমালা, ২০১৩ so the same is liable to be declared as without lawful authority and is of no legal effect and they are also liable to be directed to correct the corresponding records including the serial No. 12 of page 55 of the Office Order issued under memo No. ৩৮.০০৭.০১৫.০০০.১১.০০.২০১৩.৫৪ তারিখঃ ২৫ নভেম্বর ২০১৩ ইং (Annexure-D2) and will be designated the

petitioner as the headmistress of the school and to pay her all unpaid legal dues as the headmistress of the school.

He further submits that according to Article 27 and 29 of the Constitution of the People's Republic of Bangladesh, it is the unalienable fundamental right of the petitioner to be treated in accordance with law and equally with the person or persons with similarly placed or of similar category and footings but in the instant case the respondents violated the same by not enlisting her as headmistress of the school and as such respondents may kindly be directed to do the necessary measures to absorb the petitioner as the headmistress of the school and to pay her all legal dues as Headmistress of the school. In this regard he referred *Mohammad Ali vs Burma Estern* reported in 38 DLR(AD) 41, *Secretary, Ministry of Industries vs Saleh Ahmed* reported in 46 DLR(AD) 149 and *Mrs. Kazi Shamsunnahar & ors vs Commandant, R.R.R, Khulna & ors*, reported in 2 MLR(HC) 1997, 85.

Mrs. Afroza Nazneen Akhter, the learned Assistant Attorney General opposes the Rule and submits that concerned school is a government primary school, as such, the terms and conditions of Service of the teachers of the school are governed by the provisions of "The Government Primary School Teacher Recruitment Rules, 1991 and the same must be followed. The petitioner was not qualified according to law because her tenure as headmistress had

been 1 year 7 months but according to law it should be 3 (three) years. She further submits that according to the primary schools (Taking over) Act, 1974 Rule 3(b) all teacher of the primary school shall become employees of the Government and shall hold their service under the Government in such terms and conditions as the Government may determine and Rule 4 Management of the Primary School Taken over- After a primary school is taken over under section 3(1), the government shall manage and administer the affairs of that school in such manner as it may deem fit. After nationalization of the schools and its existing teachers including the writ petitioner was became a government service holder. The writ petitioner may approach her grievance before the Administrative tribunal but she failed to do so as such the Rule is liable to be discharged. In this regard she referred Bangladesh vs Santosh Kumar Saha reported in 21 BLC (AD) 94. Mrs. Afroza Nazneen Akhter the learned Assistant Attorney General further submits that her only son Monisankar Das who was added party No. 1(a) of the instant writ petitions, after death of his mother Dipu Rani Das, he is not an aggrieved party and has no right to contest the writ petition as such the present writ petition is not maintainable.

We have heard oral submission of both the parties and perused the writ petition and all other relevant papers, supplementary affidavit, affidavit in opposition submitted by the



parties in connection with the contents of this writ petition. It appears that the West Char Garabdi Talukder Para Primary School was a Non-Government Primary school and the school has nationalized as a Government School. On 29.09.2013, vide an Official Gazette, the government circulated a Rules namely অধিগ্রহণকৃত বেসরকারী প্রাথমিক বিদ্যালয়ের শিক্ষক (চাকুরীর শর্তাদি নির্ধারণ) বিধিমালা, ২০১৩ and the Rule 2(Ja) defined teacher means a person appointed to the post of head teacher or assistant teacher of any taking over school who has been appointed by the government or appropriate authority and is continuously working in that school. Though the petitioner had all qualifications to be headmistress but when notification was published then the petitioner's name appeared as an Assistant Teacher and the petitioner brought it to the attention of the authorities but the authority concerned did not take any action yet in this regard, the petitioner filed the instant writ petition.

It appears that the petitioner was Joined the service as an Assistant Teacher in the non Government Primary school on 01.07.1982 and had been worked without salary. Subsequently, due to the resign of headmaster Chitta Ranjan Das, the petitioner was promoted to the post of headmistress on 15.12.1985, which was duly approved by the Managing Committee of the School as per law. On 15.09.1988 the grant of all the teachers including the petitioner was fixed by managing committee of the school and the petitioner

as headmistress was received 50 taka more than other teachers and she got Tk. 350 only as her salary. Later the school was received government grants as M.P.O and the petitioner also received Tk. 50 more than other teachers as headmistress as appeared in MPO sheet, annexure-C. On 08.04.2010, the Government notified through a revised circular that among the teachers who were serving as headmaster in non government school prior to 14.07.2008 or are currently serving will continue in their respective posts.

On 14.08.2018, the petitioner filed an application to the Secretary, Ministry of Primary and Mass Education for enlisting her name in the official gazette as headmistress of the school and the said application was forwarded to the Director General, Director of Primary and Mass Education to take necessary arrangements according to law thereafter the application also forwarded to the District Primary Education officer, Patuakhali to submit a complete report together with all corresponding records and the said application also forwarded to the Upazilla Education Officer, Dumki, Patuakhali for inquire and who after inquire submitted a detailed report, Annexure-J.

On scrutiny of the inquire report, Annexure-J it appears that the petitioner was duly promoted to the post of headmistress on 15.12.1985 by the school managing committee complied with circular, memo No. প্রাগম/বিদ্যা/১/৮জি-৭(অংশ)/২৫৩ dated 14.07.2008

issued by the Ministry of Mass Education. The inquire officer also confirmed the necessary documents were submitted to get pay scale as headmistress and the same was sent to the Director General, monitoring unit for implementation of compulsory Primary Education. The inquire report also clearly affirmed the petitioner was absorbed as headmistress after nationalization of the school however why the petitioner's name was not get the post of headmistress after nationalization of school no record was found in the office. The Director General of Primary Education Directorate by memo No. 38.01.0000.140.15.007.2008-355/1(ka) dated 15.05.2019 endorsed the inquire report and sent the same to the secretary Ministry of Primary and Mass Education to take necessary measures regarding Gazette entry of the petitioner as headmistress but no real progress has been made as yet.

On scrutiny of amended circular and replacement memo No. প্রাগম/১/চজি-৭/৯৮(অংশ)-৬৩৩ dated 08.04.2010, Annexure-D provides that among the working teachers of the schools who served or are currently serving as head teacher prior to 14 July, 2008 shall remain in office. However, article 4 provides the process has to be followed for obtaining the scale prescribed for the headmaster. The petitioner was only achieved Secondary School Certificate (SSC) but circular memo No. প্রসঙ্গ/বিদ্যা-১/চজি-৭/৯৮(অংশ)/২৫৩ dated 14.07.2008 also required education qualification of Higher Secondary Certificate

(HSC) and one of it at least second division for the headmaster to be absorbed in the Government School and the petitioner obtained HSC on 25.08.2011 with gradation of GPA 2.25. Thereafter she filed joining letter dated 04.02.2012 as headmistress and school managing committee allowed the same and granted her 5500 taka scale as headmistress. The Upazilla Primary School Committee in its 19<sup>th</sup> meeting dated 08.02.2012, agenda No. 6 approved her promotion and abundantly clarified the petitioner submitted necessary documents to get pay scale of headmistress as in the light of government circular vide memo No. প্রাগমা/বিদ্যা/১/৮জি-৭/৯৮(অংশ)/২৫৩ dated 14.07.2008. The petitioner was written as joining letter, Annexure-F2 was not a fresh joining letter as headmistress rather it was a bonafide mistake as she had already been joined as headmistress on 15.12.1985 and after she achieved HSC, the petitioner would have been applied to grant the scale prescribed for the headmistress.

It appears that though the petitioner had been working in Non-Government school thereafter the said primary school was nationalized further when the petitioner filed the writ petition she was government employee. It appears that the learned Advocate for the petitioner Mr. Swapon Kumar Dutta has strongly argued that she joined as a headmistress on 15.12.1985 and since then she had been drawn all the salary as headmistress as she was entitled. On the

otherhand, Mrs. Afroza Nazneen Akhter, the learned Assistant Attorney General has contravened and vehemently submits that the petitioner joined as headmistress on 04.02.2012 as the petitioner in his writ petition presented appointment letter as Annexure F-2 and as such Government Primary School Teacher appointment Rules 1991 will applicable as Rule 2(Uma) of the অধিগ্রহণকৃত বেসরকারী প্রাথমিক বিদ্যালয়ের শিক্ষক চাকুরীর শর্তাদি নির্ধারণ বিধিমালা ২০১৩. The learned Advocate for the petitioner submits that the petitioner was performing her service as headmistress of the school while she filed writ petition and the learned Assistant Attorney General, Nazneen Akter has not contrasted that the petitioner was performing her duties as a headmistress after nationalization of the primary school. The petitioner was challenged that her name had not been enlisted as headmistress but her name appeared in list as an Assistant teacher though she was headmistress since 1985 and she obtained pre-requisite education qualification to be granted scale payment as headmistress as per provision of law. The Director General also endorsed the recommendation of the inquire report and requested the Secretary, Ministry of Primary and Mass Education to take necessary steps but the Secretary, Ministry of Primary and Mass Education has not taken any steps to enlist her name as headmistress of the school. Moreover the petitioner challenged her appointment as Assistant Teacher instead of headmistress before

the school was nationalized. Therefore, the involved in rule is not related to the terms and condition of service of the petitioner rather it is violated the law and she deserved her arrears of the government portion of money therefore it is utmost necessary, though she was died, to enlist the petitioner name as headmistress in the list and pay her all dues since the school was nationalized and also pay 50% before taking over the school as per clause 2(Ga) of the অধিগ্রহণকৃত বেসরকারী প্রাথমিক বিদ্যালয়ের শিক্ষক চাকুরীর শর্তাদি নির্ধারণ বিধিমালা ২০১৩.

The next moot question needs to be adjudicated whether writ petition is maintainable after death of the writ petitioner. The only son of the deceased petitioner is not a government employee so he cannot be filed an application before Administrative Tribunal as under section 4(1)(2) of the Administrative Tribunal Act, 1980 which provides only government employee can file case before Administrative Tribunal Act. That the present petitioner has no other alternative remedy and is entitled to get benefits of his mother and he also substituted by this Division on 16.11.2021 as necessary party and as such the writ petition is maintainable under Article 102 of the Constitution in support of the case in Mrs. Kazi Shamsunnahar & others vs commandant, R.R.F, Khulna and others reported in 2 MLR(HC) 1997, 83.

In the fact and circumstances we find that the petitioner had been performing her duties as headmistress since 15.12.1985 which

was approved by the concerned authority. So her service period had been counted as a headmistress from 15.12.1985. Which is duly complied with all requirement of Rule 4.2(kha) of The Government Primary School Teacher Recruitment Rules, 1991”.

In view of the above and the provision of law quoted above, 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. The respondents are directed to update the corresponding records showing the petitioner as the Headmistress and pay the present petitioner all her unpaid legal dues as the Headmistress of West Char Garabdi Government Primary School, Dumki, Patuakhali 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.