

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

Writ Petition No. 8561 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:

Nasir Uddin Ahmed, Associate Professor(now under removal), Department of English, Jaganath University, Dhaka

.....Petitioner.

-**Versus**-

Government of the People's Republic of Bangladesh, represented by the Secretary, Secondary and Higher Secondary Education Division, Ministry of Education, Floor Nos. 17, 18, Building No.06, Bangladesh Secretariat, Ramna, Dhaka and others,

..... Respondents.

Dr. Shahdeen Malik, Advocate with
Mr. Md. Monjurul Alam, Advocate and
Mr. Md. Tayeb-Ul-Islam Showrav, Advocate
.....For the petitioner.

Mr. Yusuf Hussain Humayun, Advocate, with
Tanjib-Ul Alam, Advocate, with
Mr. Nazmul Hassan Rakib, Advocate
....For respondent Nos.2 and 4.

Judgment on: 17.8.2023

Present:

Mr. Justice Md. Khasruzzaman

And

Mr. Justice Md. Khairul Alam

Md. Khasruzzaman, J:

On an application under article 102 of the Constitution,
Rule Nisi under adjudication was issued on 01.08.2019 in the
following terms:

“Let a Rule nisi be issued calling upon the respondents to show cause as to why the office order issued by the Jagannath University authority on 06 May 2018 vide memo No. জবি/প্রশা-১(১৬৪)/২০১০/৭৪৫ removing the petitioner from his service in the post of Associate Professor at the Department of English, Jagannath University (Annexure-M) should not be declared to be without lawful authority and is of no legal effect, and as to why the respondent should not be directed to reinstate the petitioner in his service with due seniority and all arrear salaries and benefits and as to why the respondent Nos. 2 to 4 should not be directed to pay damages and costs totaling at least 5(five) lac taka to the petitioner and/ or such other or further order or orders be passed as to this Court may seem fit and proper”.

Facts, necessary for disposal of the *Rule Nisi*, in short, are that the petitioner completed Bachelor of Arts with honors in English Literature from the University of Dhaka in 1991 and Masters of Arts in English Literature from the same university in 1992. Thereafter, he obtained Master of Philosophy (M.Phil.) on English Studies from the Institute of Humanities and Social Sciences under the National University of Bangladesh in 1999. After completion of his M.Phil. Degree, the petitioner joined the Bangladesh University of Engineering and Technology (BUET), Dhaka as a Lecturer in English under

the Department of Humanities and served there from 1999 to 2003 as a Lecturer and then moved to Prime Asia University, Dhaka as an Assistant Professor in the Department of English and taught there from October 2003 to June 2004. Thereafter, in July 2004 the petitioner joined Uttara University, Dhaka as an Assistant Professor in the Department of English and subsequently, he was promoted as Associate Professor in the same Department in 2006 and taught there till April, 2010.

Thereafter, as per vacancy advertisement, the petitioner applied for the post of Associate Professor in the Department of English of Jagannath University, and after completing all the requirements and formalities, the Syndicate of Jagannath University in its 30th meeting held on 28.04.2010 decided to issue a letter of appointment in favour of the petitioner, and accordingly, the Registrar by its Memo No. জবি/প্রশা-১৩(১)/২০০৮/১১৫৩ dated 29.04.2010 issued a letter of appointment to the petitioner and as such he joined there on 03.05.2010. After completing 02(two) years of probationary period the service of the petitioner as an Associate Professor in the Department of English was confirmed vide Memo dated 30.05.2012 (Annexure-B to the writ petition). It is stated that a part of his regular academic duties, the petitioner also discharged various duties and responsibilities as he was entrusted from time to time including the duties and responsibilities of the Chairman of the Department of English, Director of Student Welfare and

Director of Center of English Language. During his professional career, he wrote considerable numbers of research articles, published in some renowned journals, and also participated in a number of workshops.

However, on 17.09.2017, while the petitioner was discharging his regular duties, he was served with Memo No.জবি/প্রশা-১(১৬৪)/২০১০/৪২৬৭ under the caption ‘অভিযোগনামা’ (charges) and ‘অভিযোগবিবরণী’ containing the allegations of plagiarism in some of his scholastic articles, submitted to the authority as required for the promotion of the post of Professor. In the said memo further allegations of misconduct, corruption and moral turpitude have been brought against the petitioner under section 44(6) of the Jagannath University Act, 2005 and rules 3(b) and 3(d) of the Government Servants (Discipline and Appeal) Rules, 1985 and thereby asked the petitioner to show cause within 10 days as to why he should not be removed from the service or any other appropriate penalty shall not be imposed upon him vide Annexure-D to the writ petition. On receiving the said memo dated 17.09.2017 the petitioner on 02.10.2017 submitted its reply to the Registrar of Jagannath University denying the allegations made against him stating *inter-alia* that he never submitted any plagiarized article to the university and that the university did not have any instrument and facility to detect plagiarism and thereby he requested the authority to acquit him from the allegations and assured the

authority of his willingness to appear physically and place his submissions before the enquiry committee, if any (Annexure-E to the writ petition). In the said reply dated 02.10.2017 the petitioner also stated that one of the two articles for which the allegations of plagiarism have been brought against him, has already been withdrawn and the other one being an article exclusively on works of a particular poet.

Thereafter, the Jagannath University authority formed a three member enquiry committee to inquire into the matter and the petitioner came to know of the same only when the committee issued a letter asking the petitioner to be present in person before them. The petitioner appeared before the committee and submitted his case. It is stated that the enquiry committee asked the petitioner to appear before them only once in the whole process of enquiry. Furthermore, the petitioner was not given any opportunity to know the names of the witnesses, or had he been allowed to cross examine any of the witnesses. Thereafter, on 22.02.2018 the petitioner was served with second show cause notice by the Jagannath University authority vide memo dated 22.02.2018 stating *inter alia* that the enquiry committee found the allegations of misconduct, corruption and moral turpitude brought under rules 3(b) and 3(d) of the Government Servants (Discipline and Appeal) Rules, 1985 and section 44(6) of the Jagannath University Act, 1985 to have been proved, and as such, he was

asked to show cause as to why appropriate penalty shall not be imposed upon him (Annexure-F to the writ petition). It is alleged that the second show cause notice was served upon the petitioner but it was without any report of the enquiry committee. As such, on 04.03.2018 the petitioner wrote to the Jagannath University authority requesting to provide him with some necessary documents, but the authority did not respond to the said letter sent by the petitioner (Annexure-G to the writ petition). In the meantime, on 25.03.2018 the University authority issued another letter stating that a complaint has been made before the University Grant Commission of Bangladesh against the Treasurer of the Jagannath University and the name of the petitioner has been typed on the complaint as the complainant and as such, he was asked to supply his statement regarding the matter within 03 days of the receipt of the letter (Annexure-H to the writ petition). Accordingly, the petitioner submitted reply stating *inter alia* that he did not write any such letter of complaint to the University authority against the Treasurer of Jagannath University. (Annexure-I to the writ petitioner). Thereafter, instead of supply of requested documents to the petitioner as asked for by his letter dated 04.03.2018, the authority published Public Notice dated 30.04.2018 attaching six pages of descriptions and purported allegations stating *inter alia* that the enquiry committee found the allegations to be proved

beyond reasonable doubt and the report was brought before the Syndicate of the University in its 77th meeting held on 26.04.2018 wherein it was decided to remove the petitioner from the service. This publication of the Public Notice has been made without issuing any office order informing the petitioner of his removal from the service of Jagannath University. However, the petitioner came to know for the first time through the said public notice that one Professor Fakhrul Alam of Dhaka University, who was a member of the selection Board of Jagannath University, had lodged a complaint on three counts to the Vice Chancellor of Jagannath University alleging plagiarism and thereafter, a fact finding committee was formed to enquire into the matter.

The fact finding committee found substance in the complaint lodged by Professor Fakhrul Alam and it also found that another article submitted by the petitioner contained 81% plagiarized from a Chinese article. Thereafter, the fact finding committee submitted its report to the authority finding the allegation of such plagiarism to be proved and thereby recommended to take punitive action against the petitioner.

In this respect it is stated that before circulation of the Public Notice dated 30 April, 2018 the petitioner had no idea about who lodged the complaint against him, who were the witnesses, what documents did the enquiry committee analyzed and/or what method did the committee follow while

investigating and inquiring into the matter. He was also dark about the formation of the fact finding committee who never asked him to supply any document, nor did the committee require him to appear before them even for a single occasion. However, immediately after the circulation of the Public Notice, the general students of the Jagannath University started demonstration against the illegal and unlawful removal of the petitioner from the service, which was continued for days together, and they also boycotted their classes and examinations and also blocked the road in front of the University. Several daily national news papers covered and published news on the matter (Annexures-K, K-1 to K-4).

However, after coming to know of his removal from service through the Public Notice dated 30 April, 2018, the petitioner wrote to the Vice Chancellor on 06.05.2018 requesting him to withhold the decision of removal upon reviewing the same vide Annexure-L to the writ petition. But, without withholding and/or reviewing the decision of removal, the authority issued an Office Order vide Memo No. ଜବି/ଅନୁ-୧(୧୬୪)/୨୦୧୦/୧୫୪ dated 06.05.2018 to the petitioner informing him that he was removed from the service of the Jagannath University under the provisions of Jagannath University Act, 2005 and Government Servants (Discipline and Appeal) Rules, 2018 (Annexure-M to the writ petition). Thereafter, on 26.07.2018 the petitioner preferred an appeal before the

Honorable Chancellor of the University through the Vice Chancellor for redress. But instead of forwarding the appeal to the Honorable Chancellor, the University authority by memo dated 05.08.2018 informed that the appeal has not been filed properly and as such, it was not possible to forward the same to the Honorable Chancellor (Annexure-P to the writ petition). Thereafter, the petitioner directly sent the appeal to the Honorable Chancellor of the Jagannath University which was received by the office of the Chancellor who then referred the same to the Ministry of Education with direction to take necessary steps regarding the appeal in accordance with law (Annexure-R to the writ petition). But, ultimately neither the Ministry of Education nor the Jagannath University authority made any communication with the petitioner.

Under such circumstances, finding no other alternative, the petitioner moved this Court in Writ Petition No. 8561 of 2019 and obtained the present *Rule Nisi* in the manner as stated above.

The respondent Nos. 2 and 4 filed affidavit-in-opposition denying all material allegations made in the writ petition and contending *inter-alia* that the writ petition is not maintainable as it involves disputed question of facts which cannot be resolved under the summary procedure of this Court under article 102 of the Constitution and as such, the *Rule Nisi* is liable to be discharged. It is stated that pursuant to job

circular dated 19.02.2016 the petitioner submitted an application dated 15.03.2016 for promotion to the post of Professor from the post of Associate Professor along with enclosure of a list of his publication as an Associate Professor before the Jagannath University including two scholarly articles which are plagiarized. Thereafter, it was placed before the Selection Committee on 09.12.2016 and plagiarism was detected and as such, by syndicate meeting held on 15.12.2016 it was decided to form a fact finding committee headed by Professor Fakhrul Alam, Department of Economics, University of Dhaka to enquire into the matter, who in his report made some complaints against the petitioner regarding plagiarism and subsequently, the authority by exhausting all legal formalities removed the petitioner from the service. It is also stated that the appeal filed before the Honorable Chancellor is still pending and as such the writ petition is not maintainable in the eye of law. As such, there is no illegality in issuing the impugned memo and hence, it is prayed that the Rule *nisi* is liable to be discharged.

Dr. Shahdeen Malik, the learned Advocate along with Mr. Monjur Alam, the learned Advocate appearing on behalf of the petitioner, submits that the impugned order of removal from service is illegal and without lawful authority as the circulation of details of the purported allegations against the petitioner and the findings of the purported enquiry committee as well as

the penalty imposed by Public Notice dated 30 April, 2018 i.e. 06 days prior to the issuance of the impugned removal order clearly indicates complete malafide as well as clear attempt to humiliate the petitioner and as such, the impugned memo of removal is vitiated by the said malafide on the part of the authority.

Mr. Malik further submits that the authority did not supply the copy of the enquiry report to the petitioner, then the petitioner requested the authority to supply information and documents but they did not supply the same and as such, any disciplinary proceeding without furnishing the copy of the enquiry report and relevant documents to the petitioner is violative of both law and natural justice and hence the impugned order of removal is liable to be declared to have been issued without lawful authority. Referring to the provision of rule 7(8) of the Government Servants (Discipline and Appeal) Rules, 2018 he also submits that the University authority is legally bound to provide the petitioner with copy of the enquiry report at the time of serving second show cause notice which the authority did not comply and as such the impugned order of removal is out and out illegal and without lawful authority. In making the aforesaid submissions, the learned Advocate prays for making the *Rule Nisi* absolute.

In support of the aforesaid submissions, the learned Advocate for the petitioner relied in the cases of **Bangladesh**

Vs. Tariqul Islam, 25(2020) BLC(AD)131; Golam Mostafa Vs. BTMC 52(2000) DLR(HCD)299; Khulna Telecommunication Region Vs. Sheikh Nazrul Islam and another, 3 BLT(AD)91; Mallick Afzal Hossain Vs. BJMC, 5 BLC 62; Shafiqul Islam (Md) Vs. Intermediate & Secondary Education Board, Comilla and others, 15 MLR 345; Md. Syedul Abrar Vs. Government of Bangladesh, Civil Petition for Leave to Appeal No. 2844 of 2017(unreported decision); Chairman, Rural Electrification Board at present (Bangladesh Rural Electrification Board) Dhaka Vs. Maziruddin Ahmed Khan and others, 70 DLR(AD)151; Mostafa Miah Vs. Chairman, First Labour Court, Dhaka and others, 46 DLR 373; Bangladesh Muktijoddha Kalyan Trust & another Vs. Md. Arshad Ali and others, 14 BLC (AD) 180 and Md. Torab Ali Vs. Bangladesh Textile Mills Corporation and another, 1989 BLD 383.

Mr. Muhammad Yousuf Hossain Humayun, Senior Advocate along with Mr. Tanjib-ul Alam, learned Advocate and Mr. Nazmul Hassan Rakib, learned Advocate appearing on behalf of the respondent Nos. 2 and 4 submit that the petitioner has been removed from the service due to misconduct, corruption and moral turpitude having been found after due process of enquiry as per law and as such, the Rule is liable to be discharged. The learned Advocate then submits that for getting promotion to the post of Professor, the

petitioner plagiarized in submitting some scholarly articles and the allegation of plagiarism has been found to be proved in the enquiry held by the authority and as such, the petitioner is the accused of plagiarism in submitting his scholarly articles.

The learned Advocates for the respondent Nos. 2 and 4 submit that non-furnishing copy of the enquiry report alongwith the second show cause notice to the delinquent employee is not fatal and illegal because after hearing the parties if the Court or the tribunal comes to the conclusion that non-supply of the report would have no difference to ultimate findings then it should not interfere with the findings of the disciplinary authority and as such, there is no illegality in issuing the impugned order of removal and hence, the *Rule Nisi* is liable to be discharged. In this regard, the learned Advocate has relied in the case of **Managing Director, ECIL, Hyderabad and others Vs. Karunakar and others, AIR 1994 SC 1074.**

Heard the learned Advocates of both the sides, perused the writ petition, affidavit-in-opposition and the papers annexed thereto as well as the decisions as referred above and the relevant provisions of law.

It has come in facts as stated in the writ petition that on 29.04.2010 the petitioner was appointed as Associate Professor in the Department of English, Jagannath University

as per decision taken in its 30th meeting of the Syndicate held on 28.04.2010. Accordingly, on 03.05.2010 the petitioner joined in the said post of Associate Professor. Thereafter, on 27.07.2011 the petitioner was also appointed as Director of Centre for English Language, Jagannath University and then, on 17.02.2013 he was appointed as Chairman in the Department of English as per section 24(3) of the Jagannath University Act, 2005.

In the meantime, on 19.02.2016 the Jagannath University published job advertisement for the post of Professor, Department of English pursuant to which the petitioner submitted an application dated 15.03.2016 along with research publication of the articles as asked for in the job advertisement. Thereafter, at the time of scrutinizing the selection committee raised allegation about plagiarism against the petitioner for which the Syndicate in its 73rd meeting held on 15.12.2016 decided to form fact finding committee and ultimately, on 23.01.2017 the fact finding committee was formed to enquire into the matter. After holding enquiry the fact finding committee submitted its report on 16.05.2017 opining that the petitioner has plagiarized the publication of the articles of others and submitted the same for getting appointment and thereby recommended to take punitive action against him. Subsequently, on 17.09.2017 the University authority issued charges cum-show cause notice

along with allegations asking the petitioner to reply as to why he should not be removed from the service on the allegation of misconduct, corruptions and moral turpitude under rules 3(b) and 3(d) of the Government Servants (Discipline and Appeal) Rules, 1985. The allegation against the petitioner is that he has plagiarized the publication of others without obtaining prior permission and submitted the same along with the application for getting appointment in the post of Professor, Department of English, Jagannath University as appearing in the allegations furnished along with the charges vide Annexure-D to the writ petition. Then on 02.10.2017 the petitioner replied to the show cause notice admitting his bona fide mistakes and unmindful in using reference and publication of the articles vide Annexure-E to the writ petition. But, without considering the reply the authority issued second show cause notice on 22.02.2018 vide Annexure-F to the writ petition. It appears that on 04.03.2018 the petitioner filed an application for supplying the report of the enquiry committee along with all documents to facilitate him to submit reply to the second show cause notice. But they did not supply the same. Rather the authority published Public Notice stating that the allegation of plagiarism against the petitioner was found to be proved by the inquiry committee vide Annexure-J dated 30.04.2018. Ultimately, by the impugned order dated 06.05.2018 the petitioner was removed from the service.

The point for determination as raised in this writ petition as well as in the submissions advanced by the learned Advocate for the petitioner is that whether non furnishing report of the enquiry committee together with the second show cause notice is lawful or not?

Admittedly, the report of the enquiry officer was not furnished along with the second show cause notice. In this respect, the provision of sub-rule 7(5) of the Rules 1985 is very clear which reads as follows:

“Rule 7(5). On receipt of the report of the findings of the inquiry officer or the Board of Inquiry, the authority shall consider the report and record its decision on the charge and communicate the same together with a copy of the report to the accused within ten working days from the date of receipt of the report.”

So, the aforesaid law is clear on this subject that the second show cause notice requires together with a copy of a report to be sent to the delinquent employee like the petitioner in the instant case.

In this respect it would be benefited if we rely on the decisions passed by the Appellate Division and High Court Division of the Supreme Court of Bangladesh.

In the case of **Government of Bangladesh and others Vs. Md. Tariqul Islam, 25 BLC (AD) 131** it has been held as under:

“Cardinal principle of natural justice requires supply of enquiry report to the person against whom departmental action is being taken although section 6 of the Police Officers (Special Provisions) Ordinance, 1976 is salient about it. But Tariqul was not supplied with a copy of the inquiry report at the time of issuing show cause notice before his dismissal in clear violation of this principle of natural justice.”

In the case of **Golam Mostafa(Md) and others Vs. Bangladesh Jute Mills Corporation and others, 52 DLR,299** it has been held as under:

“The supply of enquiry report along with the second show cause notice is not an idle formality but the requirement of law which is also in consonance with the provision of principle of natural justice.”

In the case of **Khulna Telecommunication Region Vs. Sheikh Nazrul Islam and another, 90 BLT(AD)91** it has been held as under:

“Administrative Appellate Tribunal allowed the appeal on the ground that with the second show cause notice that was served on respondent No.1 a copy of the enquiry report was not annexed depriving respondent No.1 of giving a reasonable opportunity to show cause against the proposed penalty, the mandatory requirement of law having not been complied with, the Administrative

Appellate Tribunal rightly set aside the order of removal and reinstated respondent no.1 to his service.”

In the case of **Nazma Akhtar Vs. GM. Rural Electrification Board, 10 BLC669** it has been held as under:

“In the light of the above, this Court holds that the entire proceedings of inquiry and investigation as initiated against the petitioner in the result been vitiated for want of supply of a copy of the inquiry report along with the second show cause notice dated 19.06.1997(Annexure-G). This Court holds further that the petitioner being seriously prejudiced by such inquiry report not being furnished her, the punishment meted out in the form of removal from service (Annexure-K) and order for refund of Taka 6,14,084.20(Annexure-I) cannot be deemed to have been passed legally in the facts and circumstances of the case and therefore, the impugned orders as hereby declared to have been passed without any legal authority and to be of no legal effect.”

In the case of **Mostafa Miah Vs. Chairman, First Labour Court, Dhaka and others, 46 DLR 373** it has been held as under:

“Enquiry report of the enquiry officer having not been furnished along with the second show cause notice to the petitioner and his previous record of service having not been taken into consideration before awarding the

punishment of dismissal from service, the punishment is illegal.”

In the case of **Bangladesh Muktijoddha Kalyan Trust and another Vs.Md. Arshad Ali and others, 14 BLC(AD)181**

it has been held as under:

“Since the respondent No.1 was removed from the service without serving second show cause notice accompanying the inquiry report, the High Court Division was not in error in considering that fact while making the Rule absolute and thereupon in setting aside the order of removal passed in respect of the respondent no.1.”

From the reading of the aforesaid decisions it is clear on the subject matter of the writ petition that, along with the second show cause notice, report of the enquiry officer has to be furnished while serving the same to the delinquent employee.

In rule 26 of the Government Servants (Discipline and Appeal) Rules, 1985 it has been provided that nothing in this rules shall deprive any person of any right or privilege to which he is entitled under any law. So, where sub-rule 7(5) of the Rules, 1985 provides for furnishing copy of the report along with the second show cause notice and since we find support from the decisions quoted above and since article 111 of the Constitution provides for binding effect of the Supreme Court Judgment on the High Court Division, we have no

option but to hold that since the disciplinary proceedings are not conducted in accordance with the rules of procedure and principles of natural justice, the order of removal passed in the instant case is not sustainable in law.

In view of the facts and circumstances as stated hereinabove, we find force in the submissions of the learned Advocate for the petitioner as well as merit in the Rule Nisi and as such, the Rule Nisi is liable to be made absolute.

In the result, the Rule Nisi is made absolute and hence, the impugned order of removal of service is hereby declared to have been passed without lawful authority and is of no legal effect.

However, the respondents are at liberty to proceed against the petitioner from the stage of second show cause notice in accordance with law as per the observations made in the body of the judgment for arriving at a fair and just decision on the matter.

There will be no order as to costs.

Md. Khairul Alam, J.

I agree.