

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

Writ Petition No. 9500 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:

Dilip Das (Student Guardian)

.....Petitioner

Versus

The Government of Bangladesh and others

.....Respondents

Mr. Nihar Kanti Biswas, Advocate

....For the Petitioner

Mr. Pankaj Kumar Kundu, Senior Advocate

....For the Respondent No. 8

Present:

Mr. Justice Md. Jahangir Hossain

And

Mr. Justice S. M. Masud Hossain Dolon

Heard on: 03.03.2024 &

Judgment on: 11.07.2024

S.M. Masud Hossain Dolon, J:

On an application under Article 102 of the Constitution, the
Rule Nisi has been issued in the following terms:

"Let a Rule Nisi be issued calling upon the respondents
to show cause as to why the impugned Memo No. 1748
dated 26.11.2020 issued by the Inspector of Colleges,
Board of Intermediate and Secondary Education, Dhaka
with reference to “মাধ্যমিক ও উচ্চমাধ্যমিক শিক্ষা বোর্ড, ঢাকা এর
১৫/১১/২০২০ তারিখের আপিল এন্ড আরবিট্রেশন সভার ১৭ নং সিদ্ধান্ত
(Annexure-I) shall 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.”

Facts relevant for disposal of the Rule in short, are that the petitioner is a student guardian of Udayan Biddyapith Higher Secondary School, Gopalganj and the school has also been enlisted as MPO. On 2003 Higher Secondary part was started, but still the Higher Secondary part has not been enlisted in MPO.

The petitioner made a representation before the Secretary, Ministry of Education and asserted that the name of the principal has not yet been included in MPO scheme of the Government and he has no experience as requires বেসরকারী শিক্ষক প্রতিষ্ঠানের (স্কুল ও কলেজ) জনবলকাঠামো ও এম,পি,ও নীতিমালা-২০১৮।

After receiving such representation the Ministry of Education directed to the Chairman, Board of Intermediate and Secondary Education, Dhaka to verify the representation and take legal action. Then Inspector of Colleges, Board of Intermediate and Secondary Education directed to the Chairman of Governing Body of the school to appoint a headmaster who is a MPO holder in place of the non MPO principal.

Thereafter College Inspector Board of Secondary and Higher Secondary Education, Dhaka, by several letters requested to appoint a principal who is enlisted as MPO instead of present principal who is not enlisted in MPO. Finally on 05.02.2019 college inspector issued a

letter to the principal (Acting) of the school directed to explain the reason within 7(seven) working days for disobeying the instructions of the Board dated 11.07.2018 and 01.10.2018. Otherwise, strict action will be taken against the principal (Acting) as per the rules including cancellation of teaching of the college.

Despite the above directions, the principal did not respond against which the petitioner filed writ petition in this Division. This Division after hearing the parties directed to the Ministry of Education to dispose of the petitioner's representation within 60(sixty) days from the date of receipt of the copy of the order. Following the directions, Education Board formed an Ad-hoc committee thereafter the Ad-hoc Committee issued a show cause notice to the Principal of the college and subsequently removed him from the post of Principal and appointed Mr. Tapan Kumar Biswas, the senior most teachers as acting Headmaster unanimously. Subsequently, Principal Saroj Kanti Bain filed an appeal before the Chairman of the Secondary and Higher Secondary Education. The Chairman, Board of Secondary and Higher Secondary Education referred the application to the Appeals and Arbitration Committee for disposal. The Appeal and Arbitration Committee reviewed the complaint brought against the Principal Mr. Saroj Kanti Bain and decided to reinstate him in his post along with payment of dues and directed the President of the School to take necessary steps.

Pursuant to the above instructions, the President, of the School has reinstated Mr. Saroj Kanti Bain as the Principal of the School.

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

Mr. Nihar Kanti Biswas learned Advocate for the petitioner submits that all legal formalities followed by the ad-hoc committee duly dismissing the principal from his service. He further submits that the Intermediate and Secondary Education Board violated the section 11.2 and 11.15(Ka) of the বেসরকারী শিক্ষা প্রতিষ্ঠানের (স্কুল ও কলেজ) জনবলকাঠামো ও এম,পি,ও নীতিমালা-২০১৮. After resolution, the school has been turned in Headmaster administration system. Because there is no post of the principal in this institution and the most senior Teacher of the school was selected as Headmaster-in-charge. He further submits that the Higher Secondary Part of that school was enlisted in MPO on 17.10.2023 but the respondent No. 8 professed principal was not enlisted in MPO scheme of the Government and terms and condition of জনবল কাঠামো ও এম,পি,ও নীতিমালা-২০১৮ is still alive and terms and conditions of জনবল কাঠামো ও এম,পি,ও নীতিমালা-২০১৮ has not been relaxed and it is mentioned that the terms and condition of the netemala will be applicable. The learned Advocate for the petitioner submits that appeal and arbitration committee is illegally reinstated in his post of principal 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. He lastly submits that for the ends of justice the rule may be absolute.

Mr. Pankaj Kumar Kundu, the learned Senior Advocate on behalf of the respondent No. 8 submits that as per decision of the then managing committee, he joined the school on 08.09.2003 as Principal. So, there is no illegal order passed by the Appeal and Arbitration committee. Accordingly, the respondent No. 8 joined his post and has been performing his functions. He has prepared salary bills of the teachers and staff of the institution for the months November, 2023 and December, 2023 and Mr. Tapan Kumar Biswas, an Assistant Teacher, who was in charge of the head of the institute for time being, accepted the bill without any objection. Therefore the reinstatement of the respondent No. 8 has been acted upon. The Board of Intermediate and Secondary Education, Dhaka issued a letter to the respondent No. 8 on 03.12.2023 to send a list of Members in order to form an ad-hoc committee. He further submits that the writ petition is not maintainable because petitioner filed writ petition twice earlier on the same cause of action, which were rejected being not pressed. The Petitioner filed this writ petition challenging a memo dated 26.11.2020 issued by the Board of Intermediate and Secondary Education, Dhaka and moved on 16.01.2022 and by that time the Board issued another memo dated

24.08.2021, but he did not challenge the later memo which renders the writ petition infructuous. Lastly he submits that the Rule may kindly be discharged for the ends of justice.

We have 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 Udayan Biddyapith Higher Secondary School, Gopalganj has converted into a college with the approval of the authorities during the tenure of the Headmaster. The managing committee appointed the respondent No. 8 as the principal. Then a parent representative of the school filed an application to the Board of Education against the appointment of a principal who is not enlisted in MPO in MPO enlistment institution and stated in the application that the Managing Committee violated section 11.15 (Ka) of the বেসরকারী শিক্ষা প্রতিষ্ঠানের (স্কুল ও কলেজ) জনবলকাঠামো ও এম,পি,ও নীতিমালা-২০১৮. After receiving the said letter the board constituted an ad-hoc committee. The ad-hoc committee first issued a show cause notice to the concerned principal and later permanently dismissed him from service and appointed a senior assistant teacher of the school as a substitute headmaster. Challenging this decision of the ad-hoc committee, the principal of the institution filed an application to the Board of Secondary and Higher Secondary Education. The Board referred the application to the Appeals and Arbitration Committee

for disposal. The Appellate and Arbitration Committee decided to reinstate him from the post and to pay him all arrear salaries and benefits and directed the President of the School to take necessary steps. Pursuant to the above instructions, the President, of the School has reinstated Mr. Saroj Kanti Bain as the Principal of the college. Against which petitioner filed the instant writ petition.

It appears that the learned Advocate for the petitioner vehemently submits that by issuing impugned order, Intermediate and Secondary Education Board violated the section 11.15(Ka) of the বেসরকারী শিক্ষা প্রতিষ্ঠানের (স্কুল ও কলেজ) জনবলকাঠামো ও এম,পি,ও নীতিমালা-২০১৮ clause 11.15 (Ka) quoted below:

“মাধ্যমিক বিদ্যালয় উচ্চ মাধ্যমিক বিদ্যালয়ে উন্নীত হলে কর্মরত প্রধান শিক্ষক স্ববেতনে স্বপদে নিয়োজিত থাকবেন। প্রধান শিক্ষক কর্মরত থাকাবস্থায় অধ্যক্ষ নিয়োগ দেয়া যাবে না। বিদ্যালয়টির উচ্চ মাধ্যমিক স্তর এম,পি,ও ভুক্ত না হলে এবং প্রধান শিক্ষক পদটি শূন্য হলে উক্ত পদে প্রধান শিক্ষক নিয়োগ দেয়া যাবে। তবে মাধ্যমিক বিদ্যালয়টির উচ্চ মাধ্যমিক স্তর এম,পি,ও ভুক্ত না হলেও প্রধান শিক্ষক পদটি শূন্য হলে উক্ত পদটি অধ্যক্ষ পদে উন্নীত হবে এবং অধ্যক্ষ নিয়োগ দিতে হবে।”

On plain reading of the section 11.15(Ka) of the বেসরকারী শিক্ষা প্রতিষ্ঠানের (স্কুল ও কলেজ) জনবলকাঠামো ও এম,পি,ও নীতিমালা-২০১৮ it appears that when the secondary school is upgraded to a higher secondary school, the working head teacher will be employed on his own salary. The principal cannot be appointed while the headmaster is working. If the higher secondary level of the school is not included in MPO and the post of headmaster is vacant, then the headmaster

should be appointed to that position. However, if the post of headmaster is vacant even if the secondary school is not included in the higher secondary level, the post will be promoted to the post of principal and the principal will be appointed.

It appears that section 11.15(Ka) of the বেসরকারী শিক্ষা প্রতিষ্ঠানের (স্কুল ও কলেজ) জনবলকাঠামো ও এম,পি,ও নীতিমালা-২০১৮, in the present case, even though the school has been converted into a college, the college section has not yet become an MPO or the post of headmaster of the concerned school has not become vacant, so appointing a principal in the college is clearly violated of the section 11.15(Ka) of the বেসরকারী শিক্ষা প্রতিষ্ঠানের (স্কুল ও কলেজ) জনবলকাঠামো ও এম,পি,ও নীতিমালা-২০১৮.

It also appears for the section 11.2 of the বেসরকারী শিক্ষা প্রতিষ্ঠানের (স্কুল ও কলেজ) জনবলকাঠামো ও এম,পি,ও নীতিমালা-২০১৮ which runs as follows:-

১১.২ এম,পি,ও বিহীন কোন শিক্ষাপ্রতিষ্ঠানে এ নীতিমালা জারির পূর্বে বিধিমোতাবেক (অভিজ্ঞতা ব্যতীত) নিয়োজিত নিয়োগকালীন কাম্য শিক্ষাগত যোগ্যতা সম্পন্ন নিবন্ধনধারী প্রতিষ্ঠান প্রধান বা সহ-প্রধানগণ প্রতিষ্ঠান এম,পি,ও ভুক্তির সময়ে পরিশিষ্ট ঘ অনুযায়ী কাম্য অভিজ্ঞতা না থাকলে বর্ণিত স্কেলের এক ধাপ নিচের বেতন-স্কেলে বেতন-ভাতাদি পাবেন। তবে অভিজ্ঞতা পূর্ণ হলে পরিশিষ্ট ঘ তে বর্ণিত শিক্ষাগত যোগ্যতা ও অভিজ্ঞতা ব্যতীত কাউকে নিয়োগ দেওয়া যাবে না।

On plain reading of the section it appears that the Principals or Co-Principals of Institutions having the requisite educational qualification at the time of appointment (excluding experience) employed as per rules (without experience) in any educational institution without MPO, if they do not have the requisite experience

as per appendix 'Gha' at the time of joining MPO of the prescribed scale. He will get pay and allowances in one step below the pay scale. However, no one shall be appointed without the educational qualifications and experience mentioned in appendix 'Gha' if the experience is complete.

According to appendix "Gha" to the appended a principal must have 03 years of experience in the post of Vice-Principal/Assistant Professor with 12 years of teaching experience in the post of Lecturer/Assistant Professor. We also found that the respondent No. 8 was Joined the school on 08.09.2003 without any experience therefore জনবল কাঠামো সম্পর্কিত নীতিমালা-১৯৯৫ should apply in জনবল কাঠামো সম্পর্কিত নীতিমালা-১৯৯৫ also required to be appointed principal must have five years experience as Assistant Professor with twelve years teaching experience. But the Saroj Kanti Bain, Respondent No. 08 does not have 12 years of teaching experience in the post of Lecturer/Assistant Professor with 03 years of experience in the above post of Vice-Principal/Assistant Professor. Moreover he is not receiving Government portion of money MPO therefore he is not qualified to be appointed as principal in Udayan Bidyapith Higher Secondary School, Gopalganj. The appeal and Arbitration Committee most illegally and arbitrarily re-instated the respondent No. 8 as Principle of the school.

In view of the above facts and circumstances, we find merit in this Rule.

Accordingly, the Rule is made absolute. The impugned Memo No. 1748 dated 26.11.2020 issued by the Inspector of Colleges, Board of Intermediate and Secondary Education, Dhaka with reference to “মাধ্যমিক ও উচ্চমাধ্যমিক শিক্ষা বোর্ড, ঢাকা এর ১৫/১১/২০২০ তারিখের আপিল এন্ড আরবিট্রেশন সভার ১৭ নং সিদ্ধান্ত (Annexure-I) is without lawful authority and is of no legal effect.

However, there would be no order as to costs.

Md. Jahangir Hossain, J:

I agree.