

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

Writ Petition 7923 of 2020.

In the matter of:

An application under article 102(2) of the
Constitution of the People's Republic of
Bangladesh.

-And-

In the matter of:

Md. Sabbir Hossain and another
..... Petitioners

-Versus-

Bangabandhu Sheikh Mujibur Rahman
Digital University, Bangladesh represented
by its Vice Chancellor and others.

..... Respondents

Mr. Md. Humaun Kabir, Advocate with
Mr. Anichur Rahman, Advocate

. . . . For the petitioners

Mr. M. Sayed Ahmed, Senior Advocate with
Mr. Mirza Sultan Alraza, Advocate

. . . For the respondent No. 3.

Mr. M. Mashiur Rahman, Advocate

. . . For the respondents No.6 and 7.

Present:

Mr. Justice J. B. M. Hassan
and
Mr. Justice Razik Al Jalil

Heard on 27.07.2023, 09.08.2023, 16.08.2023
and Judgment on 21.08.2023.

J.B.M. Hassan, J.

The petitioners, namely, Md. Sabbir Hossain and Md. Julhas Ahmed
obtained this Rule Nisi in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show
cause as to why the recruitment of respondents No. 6 and 7 in
the posts of lecturer of the Department of Education of the
Bangabandhu Sheikh Mujibur Rahman Digital University,
Bangladesh vide memo No. 37.01.4104.008.11.006.19-433

dated 10.12.2019 and memo No. 37.01.4101.008.11.006.19-432 dated 10.12.2019 both were issued by the respondent No. 3, the Registrar of the Bangabandhu Sheikh Mujibur Rahman Digital University, Bangladesh (Annexures- F and F1 to the writ petition respectively) should not be declared to be without lawful authority and of no legal effect And why the respondents No. 1-5 should not be directed to consider appointment of petitioners in the posts of Lecturer, Department of Education at Bangabandhu Sheikh Mujibur Rahman Digital University, Bangladesh as per the recruitment circular issued vide memo No. 37.01.4104.008.11.003.19-1020 dated 23.06.2019 published in the university website (Annexure-C to the writ petition) and/or pass such other or further order or orders as to this Court may seem fit and proper.”

Relevant facts leading to issuance of the Rule Nisi, precisely are that pursuant to a recruitment circular dated 23.06.2019 the petitioners participated in a competitive recruitment process for the post of Lecturer in the department of Education of the Bangabandhu Sheikh Mujibur Rahman Digital University, Bangladesh situated at Kaliakoir, Gazipur (the University). On observance of all required formalities regarding securitization of the candidates, the petitioners along with 26 others attended the preliminary and written examination held on 13.09.2019. Thereafter, the respondents concerned selected the petitioners along with 10 others for demonstration classes and viva-voce examination scheduled on 12.11.2019 and 26.11.2019 respectively. Finally, the respondents No. 6, 7 and one Syeda Zakia Nayem were selected as Lecturer, department of Education of the University.

It is further stated in the writ petition that the recruitment circular required requisite qualification for the candidates as “ স্বীকৃত বিশ্ববিদ্যালয় হতে শিক্ষা

অথবা শিক্ষা সংশ্লিষ্ট বিষয়ে সমমানের ৪(চার) বছর মেয়াদী স্নাতক (সম্মান) ডিগ্রী এবং স্নাতকোত্তর ডিগ্রী থাকতে হবে। ”

The petitioners have got requisite educational qualification and other extra curriculum activities but they have not been considered. On the other hand, the respondents 1-5 appointed the respondents No. 6 and 7 although they do not have requisite qualifications inasmuch as they have got their bachelor degree and masters degree in the subject of Information Technology (IT) from the Jahangir Nagar University.

The petitioners wrote application to the University raising objection to the recruitment process for not appointing the respondents No. 6 and 7 who do not have the requisite qualifications. There being no response the petitioners through their learned Advocate served notice demanding justice but to no effect. In the circumstances, the petitioners filed this writ petition and obtained the present Rule Nisi.

The respondents No. 6 and 7 jointly and the University, both have filed two sets of affidavits in opposition contesting the Rule Nisi. Contentions of both the affidavits in opposition are being identical have been summarized below:

The requirement of B.Ed and M. Ed was not mentioned in the circular, rather the words “শিক্ষা ও শিক্ষা সংশ্লিষ্ট” was mentioned in the circular. B.Ed and M.Ed may come within the purview of the terms “শিক্ষা” but B. Sc in IT definitely comes within the purview of the terms “শিক্ষা সংশ্লিষ্ট” from the context of the degree of Bachelor of Science in ICT in Education offered by the University. Education related “শিক্ষা সংশ্লিষ্ট” subject necessarily means

IT/ICT subjects as in the case of respondents No.6-7. The University is the first specialized public digital University in Bangladesh. The University Grants Commission (UGC) has given approval to conduct educational activities under two faculties and an institute, namely, the Faculty of Engineering; the Faculty of Education and Research; And the Institute for Online and Distance Learning. Students are admitted at the undergraduate level in the Bachelor of Science in Internet of Things (IoT) under the Faculty of Engineering and that Bachelor of Science in Information and Communication Technology in Education (ICTE) under the Faculty of Education and Research.

Under the Department of Education there are two programs, namely, the ICT in Education Program and IoT. The ICT in Education program has been focusing on high quality teaching along with integrated practical experience so that students can acquire knowledge with an emphasis on pedagogy, social sciences, language learning, computer science, business education and innovation and entrepreneurial development. This program acts as a collaborator of students for the proper implementation of information and communication technology in educational institutions and for acquiring higher professional skills. The program being an specialized one based on digitalization, the course like (i) Blended online and Digital Education, (ii) Artificial Intelligence (Robotics) and 4th Industrial Revolution, (iii) Organization and E-management of Educational Institution, (iv) Introduction to Data Science and Learning Analytics, (v) Educational Web Design and Development, (vi) Data Structure and Algorithm, (vii)

Object Oriented Programming, (viii) Educational Cloud Networking and Management, (ix) Big Data and Analytic in Education (x) Mobile Learning Application Developments, (xi) Introduction to Computer and ICT, (xii) E-Commerce, Digital Marketing and Cyber Security (xiv) Software Engineering, Testing and Quality Assurance (xv) Cyber Security and Content Management etc. are being taught here alongwith general courses. Moreover, most of the courses include laboratory work where the practical aspect of those specialized courses are taught.

The University itself being a Digital one it's Departments, Programs and Courses are mostly digital and technology based along with general education. Therefore, mostly the teachers are also appointed from the academicians who have a digital knowledge i.e in other words, technology based academic background.

Upon approval by the proper authority of the University, a circular for recruitment was published vide memo No. 37.01.4104.008.11.003.19-1020 dated 23.06.2019 in 3 (three) national dailies to fill up permanent vacant posts of Lecturer and other posts of the Department of Education. In response to the said circular, 38 candidates including the instant petitioners and the respondents No. 6-7 applied for the posts of Lecturer of the Department of Education. A selection committee was formed for the recruitment in the said posts of Lecturer, comprising of four members including the Vice Chancellor, the Registrar of the University and two other external members were nominated by the Syndicate of the University as expert in the respective subject. As many as 12 candidates succeeded in the

preliminary and written exams, held on 13.09.2019 and they participated in the demonstration class and viva voce exam on 12.11.2019 and 26.11.2019 respectively. After considering their academic qualification, result of written examination, viva-voce and performance in demonstration classes, the committee recommended three top scorer i.e the respondent No. 7 Munira Aktar Lata, respondent No.6 Farhaha Islam and one Syeda Zakia Naym (whereas the instant petitioner No. 1-2 scored 7th and 9th respectively) for appointment temporarily in the permanent posts of Lecturer of the Department of Education of the University. Syndicate of the University in its meeting dated 07.12.2019 considered and approved the recommendation of the selection committee and thereby, the said candidates were finally appointed in their respective posts and till now they are continuing in the said post to the satisfaction of the authority.

Total four teachers (the Lecturers and one Assistant Professor) were appointed in the said department. Among them two teachers were appointed from persons having academic background in Education and other two teachers were appointed from the persons having academic background of Information Technology which is education related (শিক্ষা সংশ্লিষ্ট) subject as per the circular. The University has been established for promoting and to improve digital knowledge in various fields of Information and Communication Technology (ICT). Therefore, the Departments of the said University are specialized unlike the contemporary public Universities. Moreover, the course curriculum and syllabus of the Department of Education have been designed so as to make it compatible with digital significance.

From this end, in appointing teachers in the said department, academicians from both the general educational background and education related digital technology based background have been considered and appointed accordingly.

However, to ensure the quality education, the authority issued conditional appointment letter with the condition to attain a postgraduate degree of minimum one year in Education from any University within the country before making their employment permanent and the said respondents No. 6-7 obtained their Graduate and post graduate degree accordingly in education from the Prime University and disseminating education in the University to the satisfaction of the authority.

The petitioner No.1, Md. Sabbir Hossain was appointed as the section officer of the University on ad-hoc basis at the very beginning of commencing the activities of the University. Subsequently, he got regular appointment in the said post in response to a circular published by the authority vide memo No. 37.01.4104.008.11.003.19-1019 dated 23.06.2019 and continued in the said post until 18.09.2020 when he tendered his resignation voluntarily from the post before filing this writ petition.

Bachelor of Education (B.Ed.) is an undergraduate course offered for those interested in pursuing a career in teaching. The B.Ed. degree is mandatory for teaching at the secondary (classes VI to X) and higher secondary XII (classes XI and XII).

The minimum qualification required for entry into B.Ed. course is intermediate (10+2). While students from the Arts stream are trained to

teach subjects like History, Civics, Geography, and languages. The students from the science stream are trained to teach Mathematics, Physics, Chemistry, and Biology. Moreover, the degree offered by the respondent University is Bachelor of Science (B.Sc) in ICT in Education not Bachelor of Education (B.Ed) in ICT in Education. Thus, a course of Bachelor of Education (B.Ed.) and Bachelor of Science (B.Sc) in Information and Communication Technology could not be taught by the same teachers having expertise on subjects like History, Civics, Geography, Languages, Mathematics, Physics, Chemistry, Biology etc. Rather, teachers from purely Information and Communication Technology based background is mandatory and from the context of the degree of Bachelor of Science in ICT in Education offered by the University education related (শিক্ষা সংশ্লিষ্ট) subject necessarily means IT/ICT subject as in the case of respondents No. 6-7. The ICT in education program offered by the University under the Department of Education is a combination and blending of General Education and ICT and the academicians have been appointed accordingly from both General Education and IT/ICT background equally and the petitioners and respondents No. 6-7 do not in fact stand in any position of comparison of competition.

The respondents No. 6 and 7 further state that after establishing the University, the authority issued recruitment circulars on 23.06.2019 and 19.10.2019 for recruitment in various posts and in both circulars required qualification was mentioned as “শিক্ষা ও শিক্ষা সংশ্লিষ্ট” but not specified the required educational qualifications of B. Ed. and M.Ed. and /or B. Sc in

IT/ICT. The term “শিক্ষা সংশ্লিষ্ট” means education related subject i.e the degree of Bachelor of Science in IT/ICT which was the required qualification of the University. For avoiding unnecessary confusion, In the subsequent recruitment circular dated 01.12.2022 the University authority specified the post of Lecturer (ICT) and Lecturer (Education) mentioning the respective different required educational qualifications. The University has been established for promoting and to improve digital knowledge in various fields of Information and Communication Technology (ICT). Moreover, the course curriculum and syllabus of the Department of Education has been designed so as to make it compatible with digital significance. Further, two Lecturers were appointed in IT/ICT/CSE department and one lecturer was appointed from General Education Department. Thus, in appointing teachers in the said department academicians from both the general educational background and education related digital, technology-based background have been considered and appointed accordingly. However, to ensure the quality education, the University authority issued conditional appointment letter with the condition to attain a postgraduate degree of minimum one year in Education from any University within the country before making their employment permanent and accordingly the respondents No. 6 and 7 obtained their Graduate and Post Graduate Degree in Education from the Prime University and disseminating education to the University students to the satisfaction of the authority.

By filing supplementary affidavit the petitioners again state that they made a query by making application to the University Grants Commission

(UGC) regarding the degree provided by different University of Bangladesh on Education and education related subjects. Thus, the reply of UGC does not reflect that information technology comes within those departments.

After placing the writ petition and other materials on records, Mr. Md. Humaun Kabir, learned Advocate appearing for the petitioners submits that the recruitment notice specifically required requisite qualification of four years Bachelor with Honours degree and also Masters degree both in education or education related subjects (শিক্ষা সংশ্লিষ্ট বিষয়). In response thereto, the petitioners submitted applications and became qualified up to viva-voce examination. On the other hand, the respondents No.6 and 7 did not have such qualification as they have got the Bachelor with Masters degree in the subject of Information Technology (IT). As such, the appointment of such disqualified persons is not tenable in the eye of law.

Mr. Kabir further submits that the respondents' intention aiming to appoint the respondents No. 6 and 7 without requisite qualification has also been reflected when in the appointment letter these two candidates were required to obtain one year masters degree in the subject of Education before confirmation of job. He also submits that admittedly the respondents No. 6 and 7 are the students of subject, Information Technology (IT) from Jahangirnagar University and the letter of the UGC clearly indicate that it is not the subject of Education or Education related subjects. Hence, the respondents No. 6 and 7 did not have requisite qualification as required under the recruitment notice. As such, their appointment on the face of it void, **ab initio**.

Drawing our attention to the Annexure-H to the affidavit in opposition i.e the final result sheets of the candidates, Mr. Humaun Kabir also submits that the respondents No. 6 and 7 are disqualified candidates and the petitioners are the next scorer having requisite qualifications. As such, they are entitled to have the appointment in the department.

He again submits that since the appointment of the respondents No. 6 and 7 was void ab-initio, it is immaterial as to how long they have served in the meantime. Inasmuch as the petitioners have challenged their appointment at the very beginning observing required formalities and making enquiry about their educational qualification and the appointment in question. In support of his submission learned Advocate refers to the case of Md. Rabiul Islam and others Vs Fazle Rabbi Mia, Advocate and others reported in XIV ADC 410. Citing a case of Indian jurisdiction, learned Advocate submits that although irregular appointment can be cured but this appointment being void, av-initio from the very beginning, there is no scope to make it cured.

Mr. M. Sayed Ahmed, learned Senior Advocate with Mr. Mirza Sultan Alraza, learned Advocate appears for the respondent No. 3 (the University). Mr. M. Mashiur Rahman, learned Advocate appears for the respondents No. 6 and 7 (appointed teachers). Submissions of both the University and the respondents No. 6 and 7 are being similar have been summarized below:

- (i) The University have been established in order to provide specialized digital education and so it is a specialized digital

University having its almost 17% curriculum are being Information Technology based.

- (ii) The respondents No. 6 and 7 having the requisite qualifications got online access in the recruitment process and received their admit card as selected candidates and thus, appeared in all the relevant examinations as qualified candidates.
- (iii) In the recruitment process 38 candidates participated having both Information Technology degree as well as degree in Education. The respondents No. 6 and 7 being the highest scorers were finally selected by the recruiting committee wherein the representatives of both the University of Dhaka and the present University were present.
- (iv) There is no dispute regarding conduct of recruitment process and as such, the respondents No.6 and 7, having appointed under this undisputed process, have been discharging their duties as Lecturers for last four years. They will be nowhere on any action against them having no fault on their part. Since in the recruitment process, their educational qualification in the subject of Information Technology was matched and accepted in the online recruitment system it was also treated as “শিক্ষা সংশ্লিষ্ট বিষয়” and thus they have met the requisite qualifications for the recruitment process.

We have gone through the writ petition, the affidavits in opposition separately filed by both the University and the respondents No. 6 and 7, supplementary affidavits filed by the parties and the cited cases.

The Bangabandhu Sheikh Mujibur Rahman Digital University (the University) has been established by the Bangabandhu Sheikh Mujibur Rahman Digital University Bangladesh Act, 2016 (the Act, 2016). Having the approval of the UGC, it has started its academic activities in the year 2019 with two faculties and an institute. One of the faculties, namely, the Faculty of Education and Research having the Department of Education has been providing the degree of Bachelor of Science (Hons) in ICT in

Education Program (ICTE). The other faculty is the Faculty of Engineering and the institute, namely, Institute of online and distance learning.

In order to appoint teachers in the Department of Education, the University published recruitment notice on 23.06.2019 (Annexure-C to the writ petition) relevant portions of the said notice are as follows:

“বঙ্গবন্ধু শেখ মুজিবুর রহমান ডিজিটাল ইউনিভার্সিটি, বাংলাদেশ

নিয়োগ বিজ্ঞপ্তি

স্মারক নং: ৩৭.০১.৪১০৪.০০৮.১১.০০৩.১৯-১০২০

তারিখ: ২৩/০৬/২০২৩

বঙ্গবন্ধু শেখ মুজিবুর রহমান ডিজিটাল ইউনিভার্সিটি, বাংলাদেশ এ নিম্নবর্ণিত স্থায়ী শূণ্য পদ সমূহে নিয়োগের লক্ষ্যে আগ্রহীদের নিকট হইতে Online-এ আবেদন আহ্বান করা যাচ্ছে।

ক্র. নং	পদের নাম, বেতন স্কেল, বয়স	পদ সংখ্যা	শিক্ষাগত যোগ্যতা ও অভিজ্ঞতা
শিক্ষা বিভাগ			
.....
৩.	প্রভাষক বেতন স্কেল: ২২০০০- ৫৩০৬০ (গ্রেড-৯) বয়স: ২১-৩০ বৎসর।	০৩	১. স্বীকৃত বিশ্ববিদ্যালয় হতে শিক্ষা অথবা শিক্ষা সংশ্লিষ্ট বিষয়ে সমমানের ৪ (চার) বছর মেয়াদি স্নাতক (সম্মান) ডিগ্রি এবং স্নাতকোত্তর ডিগ্রি থাকতে হবে। ২. এসএসসি/সমমান, এইচএসসি/সমমান পরীক্ষায় জিপিএ ৩.৫ এবং স্নাতক, স্নাতকোত্তর পরীক্ষায় সিজিপিএ ন্যূনতম ৩.০০ অথবা সকল ক্ষেত্রে প্রথম বিভাগ থাকতে হবে। ৩. আইসিটি এডুকেশন বা ই-লার্নিং, অনলাইন এডুকেশন, সংশ্লিষ্ট বিষয়ে ডিগ্রিধারী এবং লার্নিং ম্যানেজমেন্ট সিস্টেম ব্যবহার করে শ্রেণী কার্যক্রম পরিচালনায় অভিজ্ঞদের অগ্রাধিকার দেয়া হবে। ৪. প্রকাশনা অতিরিক্ত যোগ্যতা হিসাবে গণ্য হবে। ৫. Extra-curricular/co-curricular activities অতিরিক্ত যোগ্যতা হিসাবে গণ্য হবে।

”

On perusal of the aforesaid recruitment notice, it appears that the notice was for three posts of Lecturer in the Department of Education requiring basic educational qualification of the candidates, 04(four) years Bachelor with Honours degree and Masters Degree in the subject, Education or Education related subjects. The basic subjects were specifically

mentioned as “শিক্ষা অথবা শিক্ষা সংশ্লিষ্ট বিষয়”. Therefore, without having the above mentioned degree in Education or Education related subjects, there is no scope to get appointment by any candidate. However, in addition thereof, the candidates having ICT education or E-learning, online education etc. or learning management degree shall get preference. From the Annexure-K/I to the supplementary affidavit filed by the writ petitioners, we find that UGC has cleared the subjects “শিক্ষা অথবা শিক্ষা সংশ্লিষ্ট বিষয়” relating to which the Universities within the country are providing the degree. The information of the UGC are as follows:

“আপনার চাহিত তথ্যের প্রেক্ষিতে বাংলাদেশের বিশ্ববিদ্যালয়গুলোতে শিক্ষা ও শিক্ষা সংশ্লিষ্ট ডিগ্রী প্রদান বিষয়ক তথ্য নিম্নে উল্লেখ করা হলোঃ

ক্রমিক নং	বিশ্ববিদ্যালয়ের নাম ও ঠিকানা	সংশ্লিষ্ট অনুষদ/বিভাগ/ইনস্টিটিউট	স্নাতক (সম্মান)	স্নাতকোত্তর
১।	ঢাকা বিশ্ববিদ্যালয়, ঢাকা	শিক্ষা ও গবেষণা ইনস্টিটিউট	Bachelor of Education	Masters of Education
২।	রাজশাহী বিশ্ববিদ্যালয়, রাজশাহী	শিক্ষা ও গবেষণা ইনস্টিটিউট	Bachelor of Education	Masters of Education
৩।	চট্টগ্রাম বিশ্ববিদ্যালয়, চট্টগ্রাম	ইনস্টিটিউট অব এডুকেশন এন্ড রিসার্চ	B.Ed (Honours)	M. ED.
৪।	খুলনা বিশ্ববিদ্যালয়, খুলনা	শিক্ষা স্কুল, শিক্ষা ডিসিপ্লিন	Bachelor of Education	বর্তমানে চলমান নাই। পরবর্তী শিক্ষাবর্ষে চালু করা হবে।
৫।	নোয়াখালী বিজ্ঞান ও প্রযুক্তি বিশ্ববিদ্যালয়, নোয়াখালী	১। এডুকেশন বিভাগ ২। শিক্ষা প্রশাসন বিভাগ	Bachelor of Education	Masters of Education
৬।	জগন্নাথ বিশ্ববিদ্যালয়, ঢাকা	শিক্ষা ও গবেষণা ইনস্টিটিউট	Bachelor of Education	Masters of Education
৭।	বাংলাদেশ উন্মুক্ত বিশ্ববিদ্যালয়, গাজীপুর	-	Bachelor of Education (1 year)	Masters of Education (1 year)
৮।	বঙ্গবন্ধু শেখমুজিবুর রহমান	ব্যাচেলর অব সায়েন্স	ব্যাচেলর অব	বর্তমানে

ডিজিটাল বাংলাদেশ, গাজীপুর	ইউভার্সিটি, কালিয়াকৈর,	ইন এডুকেশনাল টেকনোলজি	সায়েন্স ইন এডুকেশনাল টেকনোলজি	চলমান নাই।
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Although, the respondents No. 6 and 7 claim that having their required educational qualification with identical subject they got access in the online recruitment system and participated in the recruitment process. But it is crystal clear that admittedly they obtained the degree in the subject of Information Technology (IT) from the Jahangirnagar University which is obviously not “শিক্ষা অথবা শিক্ষা সংশ্লিষ্ট বিষয় ” as per information supplied by the UGC (Annexure-K/I). We fail to understand as to how the respondents No. 6 and 7 submitted application for appointment of Lecturer in the Department of Education where by the clear language the recruitment notice specifically required qualification only in “শিক্ষা অথবা শিক্ষা সংশ্লিষ্ট বিষয় ”.

Learned Advocate for the University has drawn our attention submitting that it is a department of blending subjects and there are also subjects of Information and Communication Technology (ICT) and that maximum subjects of curriculum are ICT related. Hence, the respondents No. 6 and 7 were recruited for their Information.

Of course, this Department of Education is providing the degree of Bachelor of Science (Hons) in ICT in Education program (ICTE) which is an IT related subject. But we find that in the affidavit in opposition the University states as follows:

“Under the Department of Education there are two programs, namely, the ICT in Education Program and IoT. The ICT in Education program has been focusing on high quality teaching

along with integrated practical experience so that students can acquire knowledge with an emphasis on pedagogy, social sciences, language learning, computer science, business education and innovation and entrepreneurial development.”

(Underlined)

From the above, we find that although the provided degree is IT related but at the sametime it is providing the students a degree on teaching relating to IT. Due to above position, there remains teachers both IT related subject degree holder and also Education related subject degree holder. But at the relevant time the authority deliberately and specifically required only the teachers having the degree in the subjects “শিক্ষা অথবা শিক্ষা সংশ্লিষ্ট বিষয়”. From paragraph-14 of the affidavit in opposition of the University, we also find that there are two other teachers from the subject of Education without any degree in IT related subject.

Although the respondents are claiming that IT is education related subject but the report of UGC as annexed by the petitioners (Annexure-K/I to the supplementary affidavit) does not support this claim. Further, had it been so, the University would not require the respondents No. 6/7 to obtain further degree in Education by imposing condition in the appointment letter. Moreover, it was not the omission or irregularity of the authority inasmuch as in the appointment letter of the respondents No. 6 and 7 we find that the authority required them to obtain the degree of “শিক্ষা অথবা শিক্ষা সংশ্লিষ্ট বিষয়” after appointment which is quite irrational and also malafide intention of the University authority in order to justify the appointment of the candidates who did not have requisite qualification at the time of appointment as per recruitment notice. But to acquire the educational qualification required in

the recruitment notice, the candidates were asked subsequently by the appointment letter.

We find that in the subsequent recruitment notice, the University authority specifically mentioned Lecturer (ICT) and Lecturer (Education) for appointment of teachers in the Department of Education (Annexure-1B to the affidavit in opposition filed on behalf of the respondents No. 6 and 7). Here, for the Lecturer (ICT) the required subjects were ICT related and for the Lecturer (Education) the relevant required subjects were education related. This circular also makes it clear that at the time of recruitment process in question, the authority deliberately required education related subjects for appointing teachers having the degree in Education alone. Thus, by the said circular the University did not seek to appoint any teacher having IT degree although Department of Education also needs the teacher having IT degree. Therefore, it is apparent that the respondents No. 6 and 7 did not have requisite qualifications to get appointment on the basis of recruitment notice dated 23.06.2019. As such, their appointment under the said recruitment notice was nullity and void ab initio.

However, having appointment in question the respondents No. 6 and 7 have been functioning till now as Lecturers of the University. Now question arises as to whether under the above circumstances at this stage they can continue despite they did not have any qualification in the recruitment process. To reply on this question, Mr. Humaun Kabir has drawn our attention to a case of Appellate Division reported in XIV ADC 410 (supra) wherein their Lordships of the Apex Court held as follows:

“12. Mr. A.F. Hasan Ariff, learned Senior Advocate, appearing on behalf the leave-petitioners of Civil Petition No. 1472 of 2012, submits that the leave-petitioners applied for job in good-faith pursuant to the newspaper advertisement dated 04.01.2004 and that they have requisite qualification for employment and they were within the accepted age limit and were selected by the Selection Boards constituted in accordance with the service statute and they joined their respective posts pursuant to letters of appointment and that meanwhile the petitioners were confirmed in their respective posts after completion of probationary period and as such, their appointments cannot be set at naught on the plea of illegality or irregularity allegedly committed by the appointing authority.

18. Having gone through the impugned judgment, we find that the High Court Division was justified in interfering with the appointments made by the National University Violating the law relating to the appointments.

19. Having considered all aspects of the case, we are of the view that the National University shall start a fresh selection process for recruitment in the vacant/newly created posts as per an approved organogram to be prepared in the light of the Act and statutes of the University. The University Authority shall relax the age limit for the leave-petitioners only so that they can participate in the selection process. The University shall take into consideration the service rendered by the leave-petitioners to the University during the period, for which, their appointments were in force.”

(Underlined)

In the above referred decision, the High Court Division made the Rule Nisi absolute interfering with the impugned appointment made by the National University exercising authority beyond statutory procedure and publishing recruitment notice deviating from the required Rules. The Appellate Division also did not accept the submission of Mr. A. F. Hassan Ariff, learned Senior Advocate and eventually, affirmed the decision of the High Court Division declining to allow the employees to continue in service which was found unlawful.

Here in this matter, since the appointment of the respondents No.6 and 7 were absolutely beyond the recruitment notice, we are of the view that their appointments were void av-initio from very beginning and as such, they can not continue with this post any more. However, since they received salary and benefits in lieu of rendering service, the authority should not claim any refund from them.

Although the petitioners are claiming appointment on the basis of recruitment process result but the University is the absolute authority as to whether they will appoint them on the basis of that result and so, we refrain ourselves from giving any direction relating to their appointment. To fill up the vacancy, if any, the authority shall publish recruitment notice in accordance with law. In that case, at the time of appointment in the Department of Education for the post of Lecturers (Education) and Lecturer (ICT), the respondents shall consider age bar regarding the petitioners and the respondents No. 6 and 7 respectively.

Regard being had to the above, we find merit in this Rule Nisi in part.

In the result, the Rule is made absolute in part with the above observations.

The appointment of respondent No. 6 and 7 as Lecturers in the Department of Education under the memo bearing No. 37.01.4104.008.11.006.19-433 dated 10.12.2019 and memo No. 37.01.4101.008.11.006.19-432 dated 10.12.2019 both were issued by the respondent No. 3, the Registrar of the Bangabandhu Sheikh Mujibur Rahman Digital University, Bangladesh (Annexures- F and F1 to the writ

petition respectively) are hereby declared to have been issued without lawful authority and of no legal effect.

Communicate a copy of this judgment and order to the respondents at once for information and necessary action.

Razik Al Jalil, J

I agree.