

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

WRIT PETITION NO. 10143 OF 2021

IN THE MATTER OF:

An application under Article 102 of the
Constitution of the People's Republic of
Bangladesh.

IN THE MATTER OF:

Md. Abul Kalam Khandakar (Azad)

.... Petitioner

-Versus-

Government of Bangladesh and others

.... Respondents

Mr. Mohammad Shafiqul Islam, Advocate with

Mr. Mohammad Rezaul Karim, Advocate

..... For the petitioner

Mr. Hasan Tareq, Advocate

... For the Respondent No. 2

Judgment on 10th August, 2023

Present:

Mr. Justice Mahmudul Hoque

and

Mr. Justice Md. Mahmud Hassan Talukder

Mahmudul Hoque, J:

In this application under article 102 of the Constitution Rule Nisi was issued calling upon the respondents to show cause as to why the office order vide Memo No. রাজউক/প্রশাঃ/২/৯৩(অংশ)-১)/১৬৭৯ছা dated 17.09.2013 passed by the respondent No. 2, removing the petitioner from the post of Junior Assistant Account (Work Charge) of Rajdhani Unnayan Kartipakha (RAJUK) without giving the petitioner an opportunity of being heard (Annexure-‘A’) and office order vide Memo No. 25,39,0000.009.31.455.09-1323 dated on 09.09.2020 issued by the

respondent No. 4 refusing the petitioner to reinstate him in the service violating the decision of the Board meeting of RAJUK dated 30.01.2020 (Annexure-‘A-1’) should not be declared to have been done without lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

Facts of the case, in short, are that the petitioner joined in the service of Rajdhani Unnayan Kartipakha (“RAJUK”) on 14.02.2000 in the Master roll. Thereafter, on 09.07.2001 vide office order under Memo No. রাজউক/প্রশাঃ/২/৬৪(অংশ-২) he was appointed as Junior Assistant Accountant (Work Charged) under RAJUK, as per decision of the RAJUK Board Meeting No. 15/2001 dated 02.07.2001(Annexure-B) and he was performing his duties very sincerely with full satisfaction of the authority.

All on a sudden, the respondent No. 5 without giving any prior show cause notice suspended the petitioner on 27.02.2013 vide office order No. 04/2013 under Memo No. প্রঃপরিঃ/পূর্বাচল/৩৪/২০০৪/১২৯ on the allegations of misconduct for audacious misbehavior with the superior officer and unauthorized absent from the office. Thereafter, the respondent No. 2 removed the petitioner from his service on 17.09.2013 vide office order Memo No. রাজউক/প্রশাঃ/২/৯৩ (অংশ-১)/১৬৭৯ স্থা।

On 24.12.2015, 27.11.2016 and on 13.11.2018 the petitioner made applications to respondent No. 2 and on 22.08.2019 the petitioner submitted application to the Hon’ble Minister, Ministry of Housing and Public Works for reinstating him in service. On 30.01.2020 the said

application of the petitioner was discussed and considered in the Board Meeting No. 01 of 2020 of RAJUK and the meeting opined that the procedure provided in the service Rules has not been followed in conducting inquiry, but the authority did not accept the same on the ground of pendency of criminal cases against the petitioner.

It is stated that the Anti-corruption commission lodged an FIR against the petitioner and other employees of RAJUK under section 409/420/471/109 of the Penal Code and under section 5(2) of the Prevention of Corruption Act, 1947. Subsequently, after conclusion of trial the learned Special Judge, Adalat No. 1, Dhaka by judgment and order dated 15.10.2018 acquitted the petitioner from the charge levelled against him. In the given situation the petitioner on 22.07.2020 made an application to the respondent No. 2 for reinstating him in his service, but the respondent No. 4 passed the impugned office order vide Memo No. 25.39.0000.009.31.455.09-1323 dated 09.09.2020 (Annexure-A-1) refusing to reinstate the petitioner in his service.

Respondent No. 2 contested the rule by filing affidavit-in-opposition and supplementary affidavit denying the statements made by the petitioner, contending that the petitioner on 26.12.2012 forming an unlawful assembly entered in the office of the Deputy Director (Estate-3) and misbehaved him with loud voice creating scary situation and making all the employees and officers scared. Following the said incident he was placed under suspension and an Executive Magistrate, RAJUK was appointed as Inquiry Officer to enquire into the matter who conducted

enquiry, recorded evidences of the petitioner and employees of RAJUK. The petitioner admitted his guilt, other witnesses who deposed that the petitioner misbehaved his superior and ransacked the office. Finding the petitioner guilty of misconduct he was served with second show cause and then removed him from service. He was afforded sufficient opportunity to defend himself and there was no illegality. He preferred appeal which was also rejected.

Mr. Mohammad Shafiqul Islam, learned Advocate appearing for the petitioner at the very outset submits that the respondent No. 2 RAJUK, before initiation of the proceeding and forming inquiry committee to enquire into the allegation brought against the petitioner, did not give any notice to show cause to the petitioner even a formal charge sheet was served upon the petitioner to defend himself by giving proper reply.

He further submits that the inquiry officer so have been appointed by the authority did not issue any notice to the petitioner fixing any date and time to appear before him with explanation and to depose and defend himself. It is also argued that the enquiry report shows that the inquiry officer recorded evidence of as many as 19 witness, but no evidence of any witness has been filed before the court or nothing reflect in the inquiry report that those evidences was recorded in presence of the petitioner affording him an opportunity to cross examine them.

He further submits that the petitioner was appointed by the RAJUK by letter dated 09.07.2001 under the signature of the Secretary, RAJUK, but the proceeding against him was initiated at the instance of the

Chairman of RAJUK and the petitioner was removed from the service under signature of the Chairman, consequently, the petitioner could not get any appellate forum under Rule 27 of the রাজধানী উন্নয়ন কর্তৃপক্ষ (কর্মকর্তা ও কর্মচারী চাকুরি বিধিমালা, ২০০৪). The proceeding so have been initiated against the petitioner is violative of Rule 22 and 23 of the Service Rules 2004.

He finally submits that when the petitioner filed a representation before the Chairman RAJUK on 24.12.2015 for reinstatement in the service and it was placed before the Board meeting of RAJUK held on 30.01.2020, wherein, the board observed that in removing the petitioner, the process and procedure as provided in the Service Rules has not been complied with, like issuance of notice to show cause, framing of charge, opportunity to defend himself giving personal hearing and opportunity to cross examine the witnesses and held that for the defect in the proceeding the removal order is not in accordance with law, but the authority most illegally by a letter dated 09.09.2020 rejected the prayer of the petitioner on the ground that the petitioner being removed from service under service Rules 2013, there is no scope for reinstatement of the petitioner, whereas, there is no such provision in the Service Rule rather Rule 19(2) of Service Rules 2004 provided that in the case of dismissal from service, there is no scope for reinstatement, not for the reason of removal from service. As such, the order under challenge is illegal, without lawful authority and is of no legal effect.

Mr. Hasan Tareq, learned Advocate appearing for the Respondent No. 2, RAJUK, submits that the conduct of the delinquent employee from

his very appointment in the post found dissatisfactory and his behaviour and conduct found highly detrimental to the interest of RAJUK for which he was dismissed from service in the year 2004. Subsequently, by a legal process he was reinstated in his service in the year 2009, but the petitioner did not maintain peace and tranquility in the office rather he involved himself with various corruptions in respect of allotment of plot, transfer of the same by the allottee for which there is another proceeding now pending for decision against the petitioner.

He next submits that there are series of criminal cases against him on the allegations of forgery, misappropriation and earning of money by illegal means. However, in an anti-corruption case he got him acquitted for want of evidence against him and in another criminal case the proceeding was stopped as no witness appeared before the court to depose in support of allegation against the petitioner. He further submits that the allegation against the petitioner is that he on the date of occurrence loudly misbehaves the superior officers and created a scary situation in the office among the officers and staff with dire consequences, resultantly, at the time of occurrence all those staffs and officers being scared went on hiding in the room to save themselves from the petitioner's attack.

He further submits that to enquire into the matter RAJUK authority appointed an inquiry officer having post of Executive Magistrate and Assistant Secretary who after affording sufficient opportunity to the petitioner as well as recording evidence of 19 witnesses found the petitioner guilty of misconduct. Moreover, the petitioner himself in

writing admitted that he on the date of occurrence loudly abused and misbehaved the senior officer regarding handing over of an allotment letter to the original allottee.

He argued that in conducting inquiry against the petitioner he was given sufficient opportunity to defend himself, but at no point of time he raised any objection against the inquiry officer, inquiry proceeding as well as no appeal was filed on the ground of depriving him from defending himself before the inquiry officer, as such, only raising ground in the instant writ petitioner about non-compliance of procedure, the Rule is not liable to be made absolute.

He finally submits that the process starting from initiation and its ending has to be taken into consideration in its entirety and in that case it would appear that the petitioner was given all the possible opportunity to defend himself before removal from service and there was no irregularity at all.

We have heard the learned Advocates for the parties, have gone through the writ petition and the ground setforth therein, statement made by the respondent No. 2 by filing an affidavit-in-opposition, supplementary affidavits filed by both the parties and the impugned order of removal from service along with other annexures relating to the departmental proceeding.

Admittedly, the petitioner was appointed in the master roll as Assistant Accountant (work charged) basis on 09.07.2001 and while he was serving the authority, on the allegation of abusing the superior officer

of the authority and creating unrest in the office premises, he was suspended on 27.02.2013 and for the allegation of misconduct a proceeding was initiated by appointing an inquiry officer named Md. Shariful Islam Bhuiyan, Executive Magistrate, RAJUK to inquiry into the matter who as inquiry officer conducted the inquiry and in course of inquiry he examined as many as 19 employees out of which 12 only said that they heard about the incident, but remaining seven witnesses told that they witnessed the occurrence and examined one carpenter who had repaired the damaged door. All those seven witnesses in corroborating each other stated that the petitioner along with two others suddenly entered in the office room of an officer and misbehaved him loudly with slang words and also kicked on door damaging the same. The behaviour and conduct of the petitioner made them scared and consequently, they took shelter in the room by locking the door for their safety. After recording evidences the inquiry officer found the petitioner guilty of misconduct and submitted report to the authority for necessary action. After receipt of the report, the Chairman, respondent No. 2 by the impugned order No. 104/2013 dated 17.09.2013 removed the petitioner from service under Rule 22(9) of the Service Rules 2004. Thereafter, the petitioner filed a representation before the Chairman, RAJUK, for reinstatement in the service, on the ground that two criminal cases were initiated against him in which he has been acquitted by the court after trial in one case and discharged in another case for want of witness by stopping proceeding of the said case. The representation was placed

before the board for consideration and the board found that the process by which he was removed from service was not in accordance with Service Rules 2004 and also observed that unless the petitioner was acquitted from the criminal cases there is no scope for reinstatement in the service. Thereafter, the petitioner submitted another representation on 22.07.2020 praying for reinstatement in the service. Director, Administration, RAJUK by letter dated 09.09.2020 informed the petitioner that since the petitioner was removed from service under Service Rules 2013, there is no scope for reinstatement; challenging the order of removal, the petitioner moved this Court and obtained the present Rule Nisi.

To appreciate submission of both the learned Advocates for the parties, we have gone through the inquiry report submitted by inquiry officer, finding the petitioner guilty of misconduct. It appears from the report that he examined as many as 19 witnesses and also a carpenter. Out of 19 witnesses 7(seven) stated that they witnessed the occurrence and deposed that the petitioner on the date of occurrence in an unpleasant manner suddenly entered in the office room and loudly abused the Senior Officer with various slang words and at a point of time he kicked the door damaging the same. His conduct created a panic and scary situation and then they left the place within 10 minutes, consequently, none of them could be caught by the security.

It is not denied by the petitioner that on the date of occurrence he entered in the office of the Superior Officer and at a point of time regarding handing over of an allotment letter to the allottee without his

consent, he loudly engaged in an altercation with his superior and after sometime he left the office and he did not kick the door and the allegation so have been levelled against him is not misconduct calling for removal from service. Admittedly, the petitioner is a Junior Account (work charged). Any employee under the authority on work charged basis may be terminated by a simple letter of termination giving three months salary in lieu of notice, but when an employee is levelled with allegation of his misconduct, a disciplinary proceeding is required to be initiated against him under the service Rules of the authority. In the service rules, there is procedure to be followed in case of simple punishment and major punishment. For imposing major penalty Service Rules 2004 in its Rule 22 provided the procedure for conducting inquiry and Rule 23 provided the procedure to be followed by the inquiry officer, in conducting inquiry, but the authority did not follow the procedure as provided in Rule 22 and the inquiry officer also required to comply with the procedure as contained in Rule 23 of the Service Rule 2004. On query learned Advocate for the respondent could not satisfy the court whether there is a proceeding initiated by the authority and enquired by the inquiry officer issuing any notice to show cause to the petitioner asking explanation or any notice to appear before the inquiry officer asking him to depose or cross examine the witnesses deposed in support of allegation levelled against the petitioner. In imposing major penalty on an employee, the procedure as provided in Service Rules to be followed strictly, but in the present case the authority conducted the inquiry proceeding against the

petitioner in lump without issuing any notice to show cause asking any explanation and affording him any opportunity to cross examine other witnesses.

Moreover, no such evidence, recorded by the inquiry officer in course of inquiry has been filed before this court. In the absence of any proceeding against the petitioner in accordance with Service Rules, it cannot be said that the petitioner was removed from service by following the procedure of law.

From the Board Resolution dated 30.01.2020 we find that the petitioner earlier was charged with another allegation in which he was dismissed from service, but through a legal process he was again reinstated in the year 2009. Subsequently, the petitioner not only involved in the present incident, but apart from present incident he involved in other illegal activities in respect of allotment of plot and transfer of plot of various allottees, for which there is another proceeding pending before the authority, but because of removal of the petitioner from service in the particular incident that proceeding kept in abeyance.

From record, it appears that the petitioner once again involved in various activities constituting misconduct for dismissal or removal from service, but the authority for the reason best known to them again initiated departmental proceeding against the petitioner without following procedure of law giving an opportunity to the petitioner to get the service back by way of reinstatement. In the present case, the authority ought to have initiated a departmental proceeding by issuing a notice to show

cause to the petitioner first asking reply and in the event of finding the reply unsatisfactory the authority could have initiated a formal departmental proceeding in accordance with the procedure provided in Service Rules of the authority, giving sufficient opportunity to the petitioner to defend himself and after thorough inquiry the authority could have taken decision either to remove from service or dismiss from service or by imposing any other penalty as provided in law, but in the instant case we find only an inquiry report, finding the petitioner liable for misconduct and a letter of removal from service under Rule 22 (f) of the Service Rules 2004, which provided the procedure for appointment of inquiry committee. We find in Rule 19(f) of the Service Rules 2004 providing penalty. The authority dealt the matter very whimsically giving a complete go by to the procedure provided in Service Rules, 2004. Resultantly, though this Court finds the very conduct of the petitioner is not satisfactory and highly detrimental to the smooth working of the respondent No. 2, but for the failure of the authority in conducting departmental proceeding against the petitioner, the action whatever taken by the authority has become futile in law calling reinstatement of the petitioner in service.

At the time of argument learned Advocate for the respondent No. 2 apprised the Court that after removal of the petitioner from service, he enrolled as an Advocate under the Bar Council and now practicing in the Court. Consequently, the petitioner accepted his removal from service by securing alternative profession and he also submits that since the very

conduct of the petitioner is highly detrimental to the respondent No. 2, his reinstatement in the service will create further unrest in the office and for the interest of smooth functioning of the authority the Rule is liable to be discharged.

To appreciate the submissions of the learned Advocate for the respondent No. 2, we have closely examined the procedure adopted by the respondent No. 2 in removing the petitioner from service and find that the authority did not follow any of the procedure provided in law, in conducting inquiry against the petitioner though the petitioner himself admitted that on the date of occurrence there was an altercation with his superior in a loud voice. Mere admission of the petitioner do not call for imposition of major penalty upon him. If the authority want to take action against the petitioner-employee imposing major penalty, the authority must follow the procedure of law, but in the instant case they ignored all the procedure provided in service rules rather taking the entire occurrence in a compact consideration, removed the petitioner from service.

In view of the above situations and observations, we find that in conducting inquiry and taking action against the petitioner, the authority violated the procedure of law as well as ignored the principle of natural justice and did not afford any opportunity to the petitioner to defend himself.

However, since it has come to the notice of this Court that the petitioner is an enrolled Advocate under the Bangladesh Bar Council, in the event of joining his service again, he cannot hold the sanad. In this

situation, the Bar Council is hereby directed to withheld his sanad because of going back to service under respondent No. 2. In the alternative if the petitioner wants to practice he may resign from the service.

Taking into consideration the above, we find merit in the Rule as well as in the submission of the learned Advocate for the petitioner.

In the result, the Rule is made absolute, however, without any order as to costs.

The order of removal of the petitioner from service and refusing the petitioner's reinstatement in the service is hereby declared illegal and is of no legal effect.

However, if the authority finds the petitioner guilty of misconduct in any other departmental proceeding or the petitioner repeat the same in future, the authority shall be at liberty to initiate further proceeding against him in accordance with law and can take legal action against the petitioner for his such misconduct. If there is any pending proceeding for other incident constituting misconduct there will be no bar for the authority to proceed with the pending proceeding and conclude the same in accordance with law.

Communicate a copy of this judgment to the parties concerned.

To, the secretary, Bangladesh Bar Council and the Secretary, Dhaka District Bar Association for necessary action.

Md. Mahmud Hassan Talukder, J:

I agree.