

In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)
Present

Madam Justice Kashefa Hussain

And

Madam Justice Kazi Zinat Hoque

Writ Petition No. 4397 of 2020

In the matter of:

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

-And-

In the matter of:

Md. Faruk Hosen

..... Petitioner

Vs.

Govt. of Bangladesh and others

..... Respondents

Mr. Mithun Roy Chowdhury, Advocate

.....for the petitioner

Mr. A.K.M. Sirajul Islam, Advocate

.....for the Respondent No. 4

Mr. Noor Us Sadik Chowdhury, D.A.G

with Ms. Syeda Sabina Ahmed Moli, A.A.G

with Ms. Farida Parvin Flora, A.A.G.

..... for the respondents

Heard on: 30.11.2022 and

judgment on: 06.12.2022.

Kashefa Hussain, J:

Rule nisi was issued calling upon the respondents to show cause as to why the Ministry of Education for not including his name in the list of absorption of the employees of the said school should not be declared to have been made 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.

The petitioner's name is Md. Faruk Hosen son of late Md. Abdul Kader of Village- Debhata, Post Office- Debhata, Police Station- Debhata, District-Satkhira.

The respondent No. 1 is The Secretary, Ministry of Education, Secretariat Building, Ramna, Dhaka, respondent No. 2 is Director General of Secondary and Higher Secondary Education, Directorate of Secondary and Higher Secondary Education, Abdul Gani Road, Ramna, Dhaka, respondent No. 3 is President, Managing Committee, Debhata Government BBMP Institute, Police Station-Debhata, District, respondent No. 4 is Head Master, Debhata Government BBMP Institute, Police Station-Debhata, District-Satkhira.

The petitioner's case inter alia is that the petitioner had been appointed as Night Guard of Debhata Government BBMP Institute on 01.10.2015 and joined in the said post on 05.10.2015.

That the Petitioner after assuming the post of Night Guard has been performing his function as Night Guard to the satisfaction of all concerned and the petitioner has never been absent from functioning as Night Guard of said school. That the petitioner is a fourth class employee of the Government and has been performing his functions as Night Guard in the said school and the said post along with others were created by the Secondary and Higher Secondary Education Board on 10.02.1986.

That after starting his service as Night Guard in the said school when the question of absorption arose, the local Member of

Parliament by Memo No. 11.00.0000.128.04.001.18-145 dated 24.07.2018 requested the concerned Minister, Ministry of Education for absorption of the petitioner and similar application for the said absorption was made to the Ministry of Education by the School Committee.

That the Debhata Government BBMP Institute is a Government Institution where the petitioner enlisted in the serial No. 2 and accordingly he is being given monthly salary. That when the absorption list was made by the Ministry of Education, the petitioner did not find his name in the list but as per the rules and procedure of the appointment, he was appointed in the said post and performing his function as Nigh Guard to the satisfaction of all concerned and the petitioner has never been absent from functioning as Night Guard of said school.

That the petitioner has been performing as a Nigh Guard of the said school for about 6(six) years with clean work record and if he is not absorbed in the said post, his family and he would suffer irreparable loss as he is poor and the only earning member of the family. Therefore the petitioner's conduct in not absorbing him in the regular service is arbitrary and hence the petitioner being aggrieved filed the writ petition.

Learned Advocate Mr. Minthun Roy Chowdhury appeared on behalf of the petitioner while learned Deputy Attorney General Mr. Noor Us Sadik Chowdhury with Ms. Syeda Sabina Ahmed Moly, A.A.G. with Ms. Farida Parvin Flora, A.A.G. appeared for the respondent Nos. 1-2.

Learned Advocate for the petitioner submits that although the the petitioner has been duly serving in the school since several years but however the petitioner was not absorbed in the same post pursuant to regularization. He submits that although in his position others were absorbed but the petitioner was not absorbed as a regular employee and therefore the respondents are in violation of Article 29 of the Constitution committing discrimination. Upon a query from this bench regarding the issue of discrimination he however could not cite us any satisfactory specific example. He takes us to Annexure-A dated 03.10.2015 which is his initial appointment letter on (অস্থায়ী ভিত্তিতে) temporary basis. He next takes us to annexure-1 which is the joining letter dated 05.10.2015. He further points out to annexure-B which is a প্রত্যয়ন পত্র dated 09.09.2015 certified by the Headmaster respondent No. 4 certifying that there are no adverse allegations against him. He then points out to the Annexure-B(1) which is a resolution of the board of the school Debhata Government BBMP institution and points out that the resolution reflects his eligibility (যোগ্যতা). He next takes us to Annexure-D which is a letter dated 24.07.2018 by the Local Member of Parliament requesting the concerned Ministry to take steps to regularize the services of the petitioner. He submits that all these documents show that he is eligible to be appointed and duly serving since 2015 and there are evidently no adverse allegations against him. He submits that moreover it is evident that the Local Member of Parliament requested the concerned Minister to take steps in favour of the petitioner to be regularized and absorbed. He submits that the respondent's conduct in not regularizing and not absorbing the

services of the petitioner is beyond lawful authority and the Rule bears merits and ought to be made absolute for ends of justice.

On the other hand learned Deputy Attorney General for the respondent Nos. 1-2 opposes the Rule. He submits that although an institution is nationalized (আত্মীকরণ) however absorption of a particular teacher or teachers' services whatsoever depend on the criteria and particular Rules of the government and cannot be a routine matter. He submits that these are matter of facts which can only decided by the appropriate authority as to who is eligible to be regularized and the Rule bears no merits and ought to be discharged for ends of justice.

We have heard the learned counsels from both sides, perused the materials before us. We have perused the several documents by way of annexure-A, A1, B, B1 and also Annexure-D cited by the petitioner. From these documents it appears that there are no adverse allegations against the petitioner and which manifest that he has been serving in the school duly since 2015. It also appears from Annexure-D which is a written request by the local MP to regularize the services of the petitioner and which request was made to the concerned Minister of the said Ministry.

However truly enough the regularization of services of any employee teacher pursuant to আত্মীকরণ cannot be an automatic routine matter but shall be subject to the criteria as classified by the rules pertaining to services of employees in Government institutions. However there are no adverse allegations against him and from these documents placed before us by way of annexures manifest positively in favour of the petitioner. Therefore we are of the considered view

for ends of justice the respondents may consider the case of the petitioner in accordance with the relevant laws and Rules if the petitioner makes any application to the respondents. Therefore we are inclined to dispose of the Rule.

In the result, the Rule is disposed of with observations and directions. The petitioner if so advised is at liberty to file an application before the concerned authorities. If the petitioner makes an application, the concerned authorities are directed to consider such application in accordance with the relevant laws and Rules.

Communicate this judgment at once.

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(Kashefa Hussain, J)

I agree.

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(Kazi Zinat Hoque, j)

Shokat (B.O)