

**In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)**

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 1546 of 2011

IN THE MATTER OF :

An application under section 115(1) of the
Code of Civil Procedure

-And-

In the Matter of:

Latifa Akter Shiuli

.....Petitioner

Versus

Daulatpur College (day and night), Khulna
represented by the President of the Managing
Committee and others

.....Opposite parties

None

.... For the parties

Judgment on: 10.03.2024

Md. Riaz Uddin Khan, J:

Rule was issued calling upon the opposite party Nos. 1 and 2 to show cause as to why the order dated 26.09.2010 passed by the learned Joint District Judge, 2nd Court, Khulna in Miscellaneous Appeal No. 16 of 2010 dismissing the appeal and thereby affirming the order dated 12.01.2010 passed by the learned Assistant Judge, Daulatpur, Khulna in Title Suit No. 1814 of 2008 rejecting the application under Order 39 Rules 1 and 2 of the Code of Civil Procedure should not be set aside and or such other or further order or orders passed as to this court may deem fit and proper.

At the time of issuance of Rule the result of appointment of teachers of Daulatpur Collage (day and night), Daulatpur, Khulna declared by the defendant opposite party No. 2 on 15.09.2008 was stayed for a

period of 6 months from date. The order of stay was extended till disposal of the Rule by order dated 19.03.2012.

The petitioner being the plaintiff filed Title Suit No. 1814 of 2008 in the court of learned Assistant Judge, Daulatpur, Khulna against the defendant opposite parties for declaration that the result of appointment of teachers declared by the Principle of Daulatpur Collage (day and night), Khulna is illegal, void, collusive and inoperative with an prayer for stopping the appointment till fulfillment of 30% women quota. The plaintiff petitioner's case in short is that on 20.02.2008 an advertisement was made in the daily Purbanchal for appointment of teacher of Economics, Mathematics, Political Science, Social Science, Islamic Studies and Management. The plaintiff applied for appointment as teacher in Management Faculty having requisite qualification. As per circular 30% was reserved for women quota which are lacking in the college. Besides, if 30% quota for womenfolk is fulfilled then the plaintiff was sure to be appointed. That rules has not been followed as such the declaration of result for appointment was illegal, void, collusive and inoperative.

The plaintiff petitioner filed an application under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure for temporary injunction restraining the defendants from appointing the selected candidates. The injunction petition was objected by the defendant Nos. 1 and 2 jointly and separately by defendant No. 3 denying the material averments made in the application stating that the petitioner could not succeed in written examination and everything was done in accordance with law.

After hearing both the parties the learned Assistant Judge was pleased to reject the application for temporary injunction by her order dated 12.01.2010 on the ground that by participating in the written examination for appointment of teacher the plaintiff did not acquire any right to sue and the balance of convenience is against the plaintiff because if the injunction is allowed then education of the college may be hampered.

Challenging that order dated 12.01.2010 the plaintiff-petitioner preferred Miscellaneous Appeal No. 16 of 2010 before the District Judge, Khulna which was ultimately heard by the Joint District Judge, Court No. 2, Khulna who was also pleased to dismiss the appeal by his judgment and order dated 26.09.2010 on the finding that balance of convenience and inconvenience is against the appellant and in favour of the respondent college.

Being aggrieved by and dissatisfied with the impugned judgment and order dated 26.09.2010 the plaintiff-respondent preferred this revision before this Court and obtained the instant rule and interim order as stated at the very outset.

No one appears to support or oppose the Rule when the matter was taken up for hearing.

It appears from the plaint that the plaintiff-petitioner claimed that she applied as a candidate to be appointed as teacher (lecturer) of Management (Honors) in the Daulatpur Collage (day and night), Daulatpur, Khulna as per advertisement published on 20.02.2008 and participated in the written exam on 09.09.2008 but the authority of defendant college selected some candidates of their choice without

fulfilling the 30% quota for women and if it was followed she would have been selected. On the other hand the defendants claimed that the plaintiff failed in the written examination as she could not obtain 14 marks, the required marks to pass. The authority followed the procedure.

In the memo of appeal the plaintiff-appellant further claimed that since the disputed selection of teachers without following the guidelines of the governing body of the college by its resolution dated 31.07.2009 and 08.08.2009 cancelled their earlier disputed selection of teachers. If that is true, then the plaintiff-petitioner has no grievance as the disputed selection for appointment is cancelled.

It is apparent from the plaint case that the petitioner only appeared in interview for a post of teacher and as such the plaintiff having no legal character or right of office cannot file any suit, because the suit is hit by section 42 of the Specific Relief Act. (Reliance may be placed in the case of *Burma Eastern Ltd. Vs. Burma Eastern Employees Union & others* reported in 18 DLR 709 and the case of *Chowmuhani College and another Vs. Md. Ismail Hossain and others* reported in 26 DLR 10). It is held in the latter case that question of maintainability of a suit goes at the root of a matter in issue to be adjudicated upon. If on a mere reading of the plaint it is found that the suit is not maintainable the Court has to decide the said point even when it is called upon to consider the question of issuing a temporary injunction. The trial court rightly found that the plaintiff did not acquire any right just by appearing in the interview. Since the suit itself is not maintainable the question of granting injunction

in her favour does not at all arise. After going through the materials on record both the Courts below rightly found that there is no reason to stop the appointment of the teachers selected for the collage. The balance of convenience and inconvenience is heavily against the plaintiff-petitioner, rightly found by both the courts below. In the mean time, almost 16 years have elapsed. The dispute was regarding appointment of more than 20 teachers of a college in various departments.

In the facts and circumstances of this case and the point of law discussed above, I find no merit in the Rule hence it is destined to fail.

Therefore, in the result the Rule is discharged. The trial court is directed to dispose of the suit as early as possible, if it is still pending, keeping in mind that the suit is of in the year of 2008.

Communicate the judgment at once.

Ziaul Karim
Bench Officer