

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

**Writ Petition No. 1153 of 2022 with Writ
Petition No. 12388 of 2023.**

In the matter of:

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

-And-

In the matter of:

Md. Safiullah and 14 others.

..... Petitioners in both the writ petitions.

-Versus-

Government of Bangladesh represented by
the Secretary, Technical and Madrasha
Education Division, Ministry of Education
and others.

.. . . . Respondents in both the writ
petitions.

Ms. Syeda Nasrin, Advocate

. . . For the petitioners in
both the writ petitions.

Mr. Kazi Mynul Hassan, DAG

. . . For the respondent No.1 in
both the writ petitions.

Mr. Rafiul Islam, Advocate

. . . for the respondent No.2.

Present:

Mr. Justice J. B. M. Hassan

and

Mr. Justice Razik Al Jalil

Heard on 29.04.2024 and Judgment
on 09.05.2024.

J. B. M. Hassan, J.

These 02(two) writ petitions involve similar questions of facts and laws. Hence, both the writ petitions have been heard together and are being disposed of by this common judgment.

Relevant facts leading to issuance of both the Rules Nisi are that the petitioners No. 1-14 are the teachers and petitioner No. 15 is a staff of the

Nesarabad Mozaddidia Islamia Senior Madrasha, Nesarabad, Pirojpur (the Madrasha) and all of them got MPO enlistment (Monthly Payment Order) regarding payment of their monthly salary. There was no managing committee since 2018 due to which the then Superintendent of the Madrasha, namely, Nur Mohammad prepared salary bill of the teachers and staff. As per circular, in the absence of the Managing Committee, the concerned UNO was required to put his counter signature on the salary bill but due to his denial, putting counter signature, the petitioners filed writ petition and obtained the Rule Nisi in writ petition No. 1153 of 2022 challenging inaction of the concerned Upazila Nirbahi Officer (UNO) in putting his counter signature on the salary bill of the Teachers and staff of the Madrasha in accordance with clause 17.4 of the “বেসরকারী শিক্ষা প্রতিষ্ঠান (মাদ্রাসা) জনবল কাঠা-মা ও এমপিও নীতিমালা-২০১৮ (২৩ ন-ভঙ্গর ২০২০ পর্যন্ত সং-শাধিত)”. Subsequently, the same petitioners filed writ petition No. 12388 of 2023 challenging an office order dated 11.06.2023 of the Bangladesh Madrasha Education Board, Dhaka by which one Moulana Mansur Ahmed was assigned as Superintendent (in charge) of the Madrasha.

Ms. Syeda Nasrin, learned Advocate for the petitioners in both the writ petitions submits that the petitioners were duly appointed and got MPO enlistment as teachers and staff of the Madrasha. Since there was no regular Managing Committee or Ad-hoc Committee, the UNO of the concerned area was required to put his counter signature on the salary bill. But due to his denial, the teachers are not getting their salary. She further submits that although in the meantime the Superintendent, namely, Nur Mohammad died

the petitioner No. 1, namely, Md. Safiullah being Assistant Superintendent is entitled to prepare the salary bill and the concerned UNO is under legal obligation to put his signature on the salary bill and as such, the UNO may be directed to put the counter signature on the salary bill.

Regarding writ petition No. 12388 of 2023, Ms. Nasrin submits that Moulana Mansur Ahmed is no more in service and his MPO enlistment was also cancelled. She further submits that even Moulana Mansur Ahmed unsuccessfully filed writ petition No. 7974 of 2005 for restoring his MPO enlistment. Even then the Board on misconception of the facts allowed him to take charge of Superintendent of the Madrasha and as such, the impugned order is liable to be declared without lawful authority.

On the other hand, Mr. Kazi Mynul Hassan, learned Deputy Attorney General (DAG) by filing affidavit in opposition in writ petition No. 1153 of 2022 contends that there are series of writ petitions and civil suits regarding service of petitioners. Eventually, in writ petition No. 135 of 2006 the High Court Division in adjudicating the Rule Nisi observed that the Ad-hoc Committee by which the petitioner No.1 and others were appointed was in effective, nonest. This finding was also affirmed by the Appellate Division in Civil Petition for Leave to Appeal (CPLA) No. 802 of 2011 and Civil Review Petition No. 34 of 2016 holding that Nur Mohammad was no more a teacher of the Madrasha and Md. Safiullah (petitioner No. 1) being appointed by the said nonest committee considering all the facts, the Board issued the impugned order challenged under writ petition No. 12388 of 2023. He further contends that the Rule Nisi is liable to be discharged due to

suppression of material facts and that in view of finding of the earlier writ petition, the petitioners have no locus-standi to file this writ petition.

Mr. Rafiul Islam, learned Advocate for the respondent No.2 (Directorate of Madrasha Education) has adopted the submissions of the learned DAG.

We have gone through both the writ petitions, affidavits in opposition separately filed by the respondents No.2 and 3 and other materials on records.

It appears that writ petition No. 1153 of 2022 was filed challenging inaction of the UNO in putting his counter signature on the salary bill. The petitioners claim that by the letter dated 27.12.2021 as contained in Annexure-D to the writ petition they approached the UNO for putting his counter signature. But we do not find any salary bill on which UNO can put his signature. The salary bill has to be prepared by the Superintendent or Assistant Superintendent or any other teacher duly got the charge. But here the said position is under dispute due to which UNO can not put his signature. Although the earlier bills were prepared by one Nur Mohammad claiming himself as a Superintendent of the Madrasha but we find that in writ petition No. 8714 of 2010 the High Court Division held that the petitioner of the said writ petition, Nur Mohammad was not the Principal of the Madrasha. The finding of the said judgment are as follows:

“From the above, it is apparent that the petitioner obtained the Rule by suppressing the material fact that he was found twice by two Division Benches as not the principal of the Madrasa in

question, but he filed the instant writ petition claiming himself falsely as the Principal.”

Aforesaid finding was never changed although the petitioner Nur Mohammad subsequently filed CPLA before the Appellate Division. In view of the above, we do not find any merit in writ petition No. 1153 of 2022.

Regarding the Rule Nisi issued in writ petition No. 12388 of 2023 we have gone through the impugned order whereby one Moulana Mansur Ahmed was assigned to function as Superintendent (in charge) of the Madrasha. But the facts disclosed in the Board’s record that his MPO enlistment was cancelled by the Directorate and it was not interfered by the High Court Division, in writ petition No. 7974 of 2005 due to pendency of the civil suit pending before the competent Court and the said civil suit is still pending. In fact, at present there is no Managing Committee of the Madrasha. Further, appointment of some of the present petitioners are also in question and that at present, it is also not clear as to the competent teacher to become in charge of Superintendent in the absence of regular Superintendent.

In the circumstances, the Director General is directed to constitute a two member committee one from his Directorate not below the rank of Deputy Director alongwith a representative from the Board not below the rank of Deputy Registrar in order to conduct an enquiry in consideration of all the previous litigations and pending writ petitions, if any, to determine the regular teachers without any dispute and the Board shall also constitute an ad-hoc committee in order to conduct election for constituting regular managing committee and also to run the Madrasha for the interim period.

With these observations, the Rule Nisi issued in Writ Petition No. 1153 of 2022 is discharged and in Writ Petition No.12388 of 2023 is disposed of. However, there will be no order as to costs.

Communicate a copy of this judgment and order at once to the Director General, Secondary and Higher Secondary Education Directorate, Shikkha Bhaban, Abdul Gani Road, Raman, Dhaka and the Chairman, Bangladesh Madrasha Education Board, Bokshi Bazar, Dhaka for their information and necessary action.

Razik Al Jalil, J

I agree.