

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

**WRIT PETITION NO. 882 of 2024**

**IN THE MATTER OF:**

An application under Article 102 read with Article 44 of the Constitution of the People's Republic of Bangladesh.

And

**IN THE MATTER OF:**

Professor Dr. Md. Nurul Islam.

..... Petitioner

versus

Government of Bangladesh and others

.....Respondents.

And

Mr. Raju Ahmed Razib, Advocate

..... for the Petitioner.

Mr. Amit Talukder, Advocate

..... For the Respondent No. 1-5

*Heard on: 02.06.2024,04.07.2024*

**Judgment on 25.07.2024.**

**Present:**

Mr. Justice Mustafa Zaman Islam

and

Mr. Justice S.M. Masud Hossain Dolon

**S.M. Masud Hossain Dolon, J:**

In this application under Article 102 of the Constitution of the People's Republic of Bangladesh, Rule Nisi has been issued calling upon the respondents to show cause as to why the office letter vide memo No. □□□□□ □□□□□- □/□□□□□ dated 11.01.2024 issued under signature of the respondent No. 04, releasing the petitioner from all kinds of academic and administrative duties of the University, and to frame charge against the petitioner in pursuant to the decision taken by

the Syndicate in its meeting dated 02.01.2024 (Annexure-E and E-1) and decision taken by the syndicate of the University of Dhaka, in its meeting dated 30.11.2023 forming a facts-finding committee for holding an enquiry against the petitioner on the basis of a false and fabricated complaint dated 28.11.2023 (Annexure-D) are illegal, without lawful authority and are of no legal effect and as to why direction shall not be given upon the respondents to withdraw the office letter vide memo No. □□□□□ □□□□□- □/□□□□□ dated 11.01.2024 issued under the signature of respondent No. 04. releasing the petitioner from all kinds of academic and administrative duties of the University, and to frame charge against the petitioner in pursuant to the decision taken by the Syndicate dated 02.01.2023 taken by the Syndicate forming a facts-finding committee, for holding an enquiry against the petitioner on the basis of a false and fabricated complaint dated 28.11.2023 and /or pass such other or further order or orders as to this court may seem fit and proper.

Facts relevant for disposal of the Rule are that the petitioner was the Professor and former Director of the Institute of Social Welfare and Research Institute, University of Dhaka and he has been working more than 33 years in the same Department, University of Dhaka and since then he has been performing his duties with full satisfaction of the authority concerned.

On November 11, 2023 one Most. Sumaiya Sarower, 1<sup>st</sup> year student of same department submitted a petition of complain to Vice Chancellor, University of Dhaka alleging *inter alia* that as a new student she went to petitioner's room to talk about how to get allotment of the seat in residential halls. The petitioner after telling her a few necessary words then he started talking irrelevant things. When she found his manner of speaking and gestures unusual, she immediately stood up and then he himself left his seat and came up to the complainant and sexually assaulted (-kĩ~e øef£se) her and he touched the complainant's private parts of the body.

On the basis of complaint the University authority was formed a Sexual Harassment Grievance Committee consists of three members headed by Professor Dr. Sema Zaman. Then the sexual harassment committee through the description or statement of various witnesses including the petitioner and after verifying all the information and data, the committee found that the delinquent professor was committed an offense punishable under the provision of section 45(3) of the Enquiry Committee and Tribunal (Teachers and Officers) Regulations, 1980 and recommended temporary exemption from all the academic and administrative duties of University of Dhaka. Then as per the decision of Syndicate meeting on 30.11.2023, the petitioner was temporarily exempted from all the academic and administrative duties of University

of Dhaka. Against which the petitioner filed the instant writ petition and obtained Rule.

Mr. Raju Ahmed Razib, the learned Advocate for the petitioner submits that there is no provision of law under the University Statute, order or Regulation by which syndicate is authorized for constituting a facts finding committee. Moreover, the facts finding committee did not consider that complainant miserably failed to show any oral or documentary evidence in favor of her allegation and all the statements and circumstantial evidences taken by them are ambiguous and mere statements before the committee. However, they also did not take the statements of the 15th and 12th Batch students who saw the complainant at the office of the petitioner and arrived their decision on the basis of a false and fabricated complaint and as such the impugned office letter vide memo No. ████████ ████████-█/ ████████ dated 11.01.2024 issued under the Registrar, University of Dhaka, releasing the petitioner from all kinds of academic and administrative duties of the University, and framing charge against the petitioner in pursuant to the decision of the syndicate dated 02.01.2024 are illegal, without lawful authority and is of no legal effect. He further submits that syndicate has no power/authority to release the petitioner from all academic and administrative duties of University as because, as per Article 56 (3) of the Dhaka University Order, 1973 a teacher of the University may be dismissed subject to an enquiry regarding any

allegation held by the enquiry committee and under clause 55 (4) of the First Schedule of the University, if a *prima-facie* case is established as a result of enquiry, a tribunal shall consider the case and recommend to the syndicate for the action. But, in this instant case no such procedure and legal provisions has been followed and syndicate took their decision without following the due process of law. Learned Advocate further submits that as per Regulation 7(c) of the Enquiry Committee and Tribunal (Teachers and Officers) Regulations, 1980 the accused shall be entitled to cross examine the witnesses against him, to give evidence in person and to have such witnesses called for the defence but the delinquent professor did not get any opportunity to cross examine the witnesses against him or to give evidence in person.

Mr. Amit Talukder the learned Advocate for respondent No. 1 to 6 contested the Rule by filing an affidavit in opposition and submits that writ Petition are incorrect, misconceived, motivated and hence denied. In this regard, it is stated that the Sexual Harassment Complaint Committee was formed properly and it conducted the investigation fairly and impartially. The Sexual Harassment Complaint Committee was formed and conducted its inquiry as per the guidelines framed by the High Court Division in the case of BNWLA vs. Bangladesh as reported in 14 BLC(2009)694. The Sexual Harassment Complaint Committee during the investigation examined the victim, the petitioner and other witnesses thoroughly in order to find out the truth. The

proper investigation gave the petitioner personal hearing and assessing all the evidences, including circumstantial evidence. Thereafter, the Sexual Harassment Complaint Committee concluded the investigation with findings and recommendations in a fair, impartial and unbiased manner and as such the Rule is liable to be discharged.

We have perused the writ petition and all other relevant papers submitted by the parties in connection with the contents of this writ petition along with supplementary affidavit, affidavit in opposition appended thereto. It appears from the record that one Mst. Sumaya Sarwar a first year student of Social Welfare and Research Institute of University of Dhaka filed a complaint against the delinquent professor Dr. Nurul Islam, with the Honorable Vice-Chancellor to the effect that the said professor called her to his room and sexually assaulted her by touching various private parts of her body. Regarding the said complaint, a fact finding committee was formed under the head of Dr. Seema Zaman, Dean, faculty of Law. Later, the committee found delinquent Professor Dr. Md. Nurul Islam sent messages, voice calls to various students and analyzed the information based on circumstantial evidence and the fact finding committee believes that it is truth. Then the Syndicate has released the petitioner temporarily (পূর্ণকালীন ছুটি) from all academic and administrative duties of the University.

We have perused the deposition of witnesses and investigation report and found that the complainant has stated that the delinquent Professor Dr. Md. Nurul Islam sexually assaulted her and repeatedly said "I like you" and touched her private parts of her body, Annexure-C. While testifying as a complainant before the inquiry committee she said that the delinquent Professor Md. Nurul Islam tried to touch her sensitive parts of the body including both cheeks, Annexure-2. The Inquiry Committee inquired from the complainant why she was complain after two and a half months the incident occurred to which the complainant replied that she had been made up her mind long ago to report the complaint and written the petition. But could not reach the Vice Chancellor. Later, she heard from some other girls in the class that delinquent Professor Md. Nurul Islam also sent messages and called them at different times. She felt that if she will not protest, many girls may face such incidents in the future. So, she made a written complaint for trial of this incident. On 6.12.2023 the complainant's statement to the inquiry committee that she told her classmate Mashroor Arman and the lecturer of the department Mr. Md. Roni Mridha about the sexual harassment that happened to her. On the advice of lecturer Mr. Md. Roni Mridha, the complainant told the details of the incident to her female teacher Professor Tahmina Akhtar of the same department. In the investigation report, it can be seen from the statement of the student Masroor Arman that the complainant said

that she went to Professor Md. Nurul Islam regarding the seat in the hall. Some of teachers words and behavior were bad, she felt pain. Later, on 7.12.2023 the complainant in her statement to the Inquiry Committee said that she told Mr. Roni Mridha that she wanted to share a personal matter. On 12.12.2023, Professor Dr. Md. Golam Rabbani, Social Welfare and Research Institute, in his statement to the inquiry committee, said that in his presence, Professor Ms. Tahmina Akhtar informed the director about the matter. But director Professor Dr. Md Golam Azam in his deposition testified that Professor Ms. Tahmian Akhtar did not tell him anything about this allegation. Director Mr. Md. Golam Azam also stated in his deposition that he has asked many times to meet the complainant and her husband and cheeks mobile and other evidence. But the complainant did not come to meet him by showing various excuses. Professor Dr. Md. Golam Azam also doubts that this phenomenon is true because many people do a lot to take advantage mentions intense conflicts, factions, disagreements within the Institute. He testified that it could be a conspiracy.

It appears the deposition of the witnesses and the opinion of the inquiry committee and found that complainant stated in her complaint that the delinquent professor Dr. Nurul Islam called her to the room and sexually assaulted her and repeatedly said "I like you" and touched her objectionable parts of her body but the complainant in her deposition before the inquiry committee stated that the delinquent



professor tried to touch her sensitive parts of the body. In this situation, the investigation committee has also given the opinion on the basis of circumstantial evidence initially believed that the fact of the incident was true, but no evidence was found of the sexual harassment alleged by the complainant.

We have also perused the inquiry report that the report states that last September 11, 2023, Professor Nurul Islam tried to touch on the sensitive parts of the complainant body. The complainant immediately left the room when he tried to touch her and sexually harassed her the victim girl went to the cafeteria. Then the delinquent professor called the complainant to have lunch with her. Then the girl rejected it, taking herself out of the suddenness of the event to do this, the girl stays in the cafeteria for a long time and the petitioner phoned her and sent message at various times after 11 p.m.

It also appears that the Assistant Manager of Social Welfare and Research Institute Canteen said that on September 11, 2023, the entire institute campus including the canteen was submerged in water due to torrential rain since morning. That is why the canteen of Social Welfare and Research Institute was closed on that day Annexure-F. In query by the inquiry committee the complainant admitted that water accumulates in the canteen when it rains. Moreover, there is no evidence that complainant was in the cafeteria because according to the report of the assistant manager of the research institute canteen,

the cafeteria was closed due to rain that day. It is evident from the report of the inquire committee that Professor Dr. Nurul Islam tried to touch the complainant in various sensitive parts of her body which was not proved by any eyewitness or any surrounding witness.

In the instant case, the moot question needs to be adjudicated whether the Syndicate has the power to release the petitioner temporarily (পূর্ণকালীন ছুটি) from all academic and administrative duties of the University and in view of the stand taken by the University whether a formal department proceedings have been initiated against the petitioner.

Under Article 56(3) of the Dhaka University Order, 1973 (in short, the 'Order, 1973') a teacher of the University may be dismissed on the grounds mentioned therein subject to an enquiry into the charges held by the Enquiry Committee. Under clause 45(4) of the First Statutes of the University if a *prima facie* case is established as a result of the enquiry, a Tribunal shall consider the case and recommend to the Syndicate such action as it deems fit. The procedures to be followed by the Enquiry Committee and the Tribunal have been laid down in the Enquiry Committee and Tribunal (Teachers and Officers) Regulations, 1980.

The impugned decision of the Syndicate dated 02.01.2024 it is clear that the Syndicate did not frame any formal charge against the petitioner under Article 56(3) of the Order, 1973. The committee

formed by the Syndicate cannot be termed as a statutory Enquiry Committee. It can be termed as a fact finding committee.

The petitioner was temporarily released from his duties which the University in its affidavit-in-opposition termed as suspension. It is true that the power to 'appoint' includes the power to 'suspend'. It is well settled that an order of interim suspension can be passed while a departmental enquiry is pending against the delinquent teacher even though there is no such term in the service rules. In *Subramaniam vs State of Kerala*, (1973) KLR 47- (1973) KLJ 31, it was held that before ordering the suspension, the appointing authority must come to a conclusion that the allegations are such that in the interests of maintenance of the purity of administrative or the upkeep of proper standard, discipline and morale in the service, it would not be proper associate the delinquent teacher with the day to day work until he is cleared of the charges. In the instant case, the Syndicate did not deliberately use the term 'suspension' (സസ്പെൻഷൻ), rather it used the term 'temporarily released' (താൽക്കാലികമായി വിട്ടുവിട്ടത്) (temporary release) which is not synonymous to 'suspension' for the reason that the syndicate did not take any decision to initiate any formal departmental proceedings against the petitioner by framing formal charge. The Syndicate formed a committee which seems to be merely a fact finding committee. In our view, there was no exigency or circumstances envisaged by law to release the petitioner temporarily

from his duties. Moreover, the term 'temporary release from duties' is uncommon in service jurisprudence. The University Order, Statutes and Service Regulations do not recognize such action. Therefore, we have no hesitation to hold that the Syndicate's decision to release the petitioner temporarily from his duties is beyond the purview of law and the said decision was taken without lawful authority and without jurisdiction.

The petitioner was also not getting chance to cross examination the witnesses before the investigation committee. The adjudication order to temporarily (পূর্ণকালীন ছুটি) from all academic and administrative duties of the University without giving chance to cross examination the petitioner is violation of natural justice as M A. Hai vs Trading Corporation of Bangladesh, Dacca, 32 DLR(AD)(1980)46, The National University and others vs Begum Sultana Razia 17 BLT(AD)190 and GM, Rangpur Palli Bidyut Samity-1 vs Md. Ali Reza 12 BLC(AD)6.

Since admittedly the petitioner was not getting any chance to cross examination of the witnesses. So, it is crystal clear that the respondent's decision to temporarily (পূর্ণকালীন ছুটি) from all academic and administrative duties of the University is without lawful authority and is of no legal effect. It appears that the impugned decision of the Syndicate is vitiated by bias and malafide inasmuch as while postponed the promotion the petitioner was major punishment with the stigma.

The learned Advocate for the respondent University of Dhaka raised another question that the petitioner filed the instant writ petition prior to disposal of the appeal and as such, the instant writ petition is premature and the same is not maintainable. Article 52 of the Order, 1973 provides provisions for appeal to the Chancellor. Challenging the Syndicate's decision and the office order temporarily releasing the petitioner from duties, he preferred an appeal to the Chancellor. Clause 45(5) of the First Statutes states that appeal to the Chancellor can be made against any order passed by the Syndicate on the recommendation of the Tribunal. In this case, the Syndicate's decision was taken without any recommendation of the Tribunal. Therefore, the decision and subsequent office order in question are not appealable under Article 52 of the Order, 1973. Authority for this proposition of law is the case of Samia Rahman vs Government of Bangladesh and others, 75 DLR 88. The appeal in question was misconceived and not being a statutory appeal, the instant writ petition is maintainable.

In view of the discussion made above we find substances submission of the learned Advocate for the petitioner.

Thus, we find merit in this Rule.

In the result, the Rule is made absolute in part without any order as to cost. The office letter vide memo No. □□□□□ □□□□□-□/□□□□□ dated 11.01.2024 issued under signature of the

respondent No. 04, releasing the petitioner from all kinds of academic and administrative duties of the university, and to frame charge against the petitioner in pursuant to the decision taken by the Syndicate in its meeting dated 02.01.2024 (Annexure-E-1) is illegal, without lawful authority and is of no legal effect. The Respondents also directed to continue inquire as per framing of charge and Tribunal shall take decision as per law.

Communicate the order at once.

Mustafa Zaman Islam, J:

I agree