

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Special Original Jurisdiction)**

WRIT PETITION NO. 2540 OF 2015

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. Sohrab Hossain

... Petitioner

-Versus-

The Government of Bangladesh, represented
by the Secretary, Ministry of Energy and
Mineral Resources and others.

... Respondents

Mr. Md. Abdul Aziz Sardar, Advocate

...For the petitioner

Mr. A.S.M. Mokter Kabir Khan, D.A.G. with
Mr. Mohammad Mohsin Kabir, D.A.G. with
Mr. Mostafizur Rahman (Tutul), A.A.G
Mr. Md. Moniruzzaman, A.A.G. and
Ms. Sonia Tamanna, A.A.G

... For the respondent no.1

Mr. Shaikh Mohammad Zakir Hossain,
Senior Advocate with
Ms. Raziah Sultana, Advocate

...For the respondent no.4

Heard on: 10.08.2025

Judgment delivered on: 11.08.2025.

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Bashir Ullah, J.

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh a Rule *Nisi* was issued calling upon the respondents to show cause as to why the impugned order of removal passed on 31.03.2014 (Annexure-Q) by the respondent No. 4, Senior General Manager of *Sirajgonj Palli Biddyut Samity* should not be declared to have been passed illegally, without any lawful authority and is of no legal effect and /or pass such other or further order or orders as to this Court may seem fit and proper.

The relevant facts leading to issuance of the Rule are that the petitioner was appointed on 06.11.1983 and joined the service as a cashier on the basis of the master roll on 13.11.1983. From the date of his appointment, the petitioner served diligently, efficiently, with honesty and sincerity to the satisfaction of all concerned. Subsequently, he was granted a time scale on 22.02.2007. However, Respondent No. 4, Senior General Manager, *Pally Biddyut Samity*, Sirajgonj, brought certain allegations of misappropriation of funds against the petitioner and served show cause notice on 06.11.2012 and suspended him. A three-member preliminary enquiry committee was formed to investigate the matter. The petitioner replied to the show cause notice on 06.11.2012. In pursuance of preliminary report by the Enquiry committee, Respondent No. 4 framed charge on 03.4.2013 against the petitioner for misappropriation of money and also sent the charge sheet on 03.4.2013 to the petitioner appointing 5 member Enquiry

Committee for showing cause within 10(ten) working days to the Enquiry Committee and also asked him to appear before the said committee for personal hearing. The petitioner submitted his reply on 17.4.2013 to the General Manager, *Sirajgonj Pally Biddyt Samity* and the convener, Enquiry Committee. Afterwards, the Enquiry Committee submitted an inquiry report on 15.5.2013. The Respondent No. 4, Senior General Manager, *Sirajgonj Pally Biddyt Samity*, sent a warning letter dated 12.06.2013 to the petitioner. The respondent No. 8, Deputy Director, sent a letter to the General Manager of the *Samity* to take Administrative action against the petitioner on 26.08.2013. Thereafter, Respondent No. 6, the Assistant General Manager (Finance) and Respondent No. 7, the Assistant General Manager (General Services), recommended that the misappropriated amount be recovered from the petitioner on 12.10.2013. The petitioner, in compliance, deposited Taka 1,55,197/= and got receipt thereof on 13.10.2013. Then the respondent No. 4 served a show cause notice upon the petitioner on 03.12.2013, and the petitioner replied to the said show cause notice. Nonetheless, respondent No. 4 removed the petitioner from service by the impugned letter dated 31.3.2014. Being aggrieved, the petitioner preferred an appeal before the President of the *Samity* Board, *Sirajgonj Pally Biddyt Samity* on 16.4.2014. The appeal was disposed of on 06.05.2014 recommending the Board to degrade the petitioner to the post of Assistant Cashier. However, the Respondent No. 3, Bangladesh Rural Electrification Board, refused to approve the said recommendation taken by the President of *Samity* on 08.07.2014 and

thereby the Senior General Manager, *Sirajgonj Pally Biddut Samity* informed the petitioner on 07.08.2014 that his appeal had been dismissed.

Having no other equally efficacious remedy, the petitioner then approached this Court by filing the instant writ petition under Article 102 of the Constitution of the People's Republic of Bangladesh, wherein the instant Rule was issued.

Respondent No. 4 contested the Rule by filing an affidavit-in-opposition, contending *inter alia* that the petitioner had collected late fees from the consumers but failed to deposit the same in *Samity's* account and he also did not affix adhesive revenue stamps to the electricity bills, thereby misappropriated funds. To unearth the said allegation a three-member enquiry committee was then formed to investigate the matter, and it found *prima facie* evidence of misconduct and a show cause notice was then served upon the petitioner. It was further stated that the petitioner did not refute the allegations; instead, he confessed to the allegations and sought for an unconditional apology in his reply on 11-12-2013. Thereafter, a final show cause notice was served and charges were duly framed in accordance with law. It has further been stated that since the petitioner confessed the involvement and returned the misappropriated money, so, the petitioner was wrongly removed from service under section 38(1) Ka, Ga and Gha of the Service Rule, 1992 and hence, the Rule is liable to be discharged.

Mr. Md. Abdul Aziz Sardar, the learned Advocate appearing on behalf of the petitioner contends that respondent No. 4 issued warning

notice on 12.6.2013 (Annexure-K) and received Taka 1,55,197/= on 13-10-2013 yet the respondent removed the petitioner from his service arbitrarily by issuing the impugned order of removal dated 31.3.2014 (Annexure-Q) which is illegal and as such the impugned order is liable to be declared to have been passed without lawful authority and is of no legal effect.

He further submits that no proper or legal departmental enquiry was conducted and the petitioner was not heard properly and was not given any opportunity to cross-examine the concerned persons, following law and the so-called enquiry was held informally within the office premises where the petitioner was not given adequate opportunity to defend himself or to confront the enquiry officers.

The learned counsel next submits that the entire departmental proceedings against the petitioner have no legal value, given the provisions contained in Rule 43(3) of the Service Rules, 1992 (as amended in 2012) applicable to the employees of *Sirajgonj Pally Biddyut Samity*. Because, Rule 43(3) provides that the order of suspension shall remain effective for 60(sixty) working days and if the authority fails to bring a formal charge within that 60(sixty) days, the suspension order shall automatically become null and void. To assert the said legal proposition, the learned Advocate then contends that in the instant case, the petitioner was suspended on 06.11.2012 (Annexure-G), and a formal charge was submitted against the petitioner on 03.04.2013. Thus, the formal charge was brought after 98 days, not within 60 working days as prescribed and therefore, the suspension

order does not stand and therefore, further proceedings and awarding of punishment were rendered illegal and as such, the impugned order is liable to be declared to have been passed without lawful authority and is of no legal effect.

The learned counsel further submits that the Appellate authority decided to degrade the petitioner to one post lower, that is Assistant Cashier on humanitarian grounds and the said proposal was sent to the Bangladesh Rural Electrification Board, however, the Board rejected the proposal, refusing to approve the decision passed by the Appellate authority in an arbitrary and *malafide* manner, without considering the facts and circumstances of the case of the petitioner and procedural defects in the entire departmental proceedings. In support of his contention, the learned counsel for the petitioner referred to the cases of ***Abdur Razzaque Vs. Bangladesh Agricultural Development Corporation and others***, reported in 45 DLR(1993)613 and ***Abdul Hamid (Md.) Vs. Moulana Obaidul Hakim and others***, reported in 23 BLC(AD)(2018)102.

With these submissions, the learned counsel finally prays for making the Rule absolute.

Per contra, Mr. Shaikh Mohammad Zakir Hossain, the learned Senior Advocate appearing for respondent No.4, contends that the petitioner, after collecting the late fees from the consumers, did not deposit them in *Samity's* account. Apart from that, the petitioner did not affix adhesive revenue stamps to the electricity bills, and there are also allegations of misappropriation of funds. He next submits that a three-

member enquiry committee was formed to enquire into the matter openly and in the report of the committee prima facie guilty of the petitioner was proved and consequently, a show cause notice was issued by the authority in accordance with law.

He next submits that, upon considering all the facts and circumstances, the charge was framed when the petitioner failed to deny the allegations brought against him with proper reasons, rather, the petitioner admitted his guilt and thereby refunded the misappropriated funds and sought an unconditional apology in his reply dated 11.12.2013, so he has rightly been given punishment and is not entitled to any relief from this Hon'ble Court.

Mr. Hossain further submits that the petitioner was given the opportunity to defend himself, as he was allowed to cross-examine the concerned person, though he did not express any desire to cross-examine the complainant and thus, after considering all the materials, the authority issued a final show cause notice, asking him to reply by 11.12.2013.

He next submits that the authority duly removed the petitioner from the service, having maintained all the appropriate procedures according to the Service Rules, 1992 (as amended in 2012) which is liable to be sustained.

The learned counsel submits that if the petitioner were to be pardoned despite such misconduct, then other employees will be indulged to commit such offences, assuming that they will be

exonerated eventually. With these submissions, the learned Advocate prays for discharging the rule.

We have considered the submissions advanced by the learned counsels for both parties and perused the writ petition, the supplementary affidavit and affidavit-in-opposition carefully.

It appears from Annexure-M to the Writ Petition that the Assistant General Manager (Finance-Accounts) recommended recovery of the misappropriated money from the petitioner and accordingly, the petitioner deposited an amount of Taka 1,55,197/= on 13.10.2013 (vide Annexure-N to the writ petition). This recovery of money indicates that even before framing charge, the authority in effect imposed a major penalty as contemplated under Rule 39 (Kha)(2) of the *Polly Bidyut Somity Kormochari Chakuri Bidhi, 1992* as the Rule provides:

“কর্মচারী কর্তৃক সংঘটিত সমিতির আর্থিক ক্ষতির অংশ বিশেষ বা সম্পূর্ণ অংশ তাহার বেতন বা অন্য কোন খাতের পাওনা হইতে আদায়করণ।”

Since the respondents have already recovered Taka 1,55,197/= from the petitioner, he ought not to have subjected to further punishment for the allegation. In this context, the imposition of another major penalty, such as removal from service is not sustainable in law.

It further appears that, the respondents issued a strong warning letter (Annexure-K to the writ petition) to the petitioner on 12.06.2013 as a form of punishment. Subsequently, they recovered Taka 1,55,197/= from him and eventually, by issuing the impugned letter, removed the petitioner from his service, which is unduly harsh and without legal effect.

The record shows that the petitioner was suspended on 06.11.2012, whereas the charge was framed on 03.04.2013 which is also a clear violation of Rule 43(3) of the *Polly Bidyut Somity Kormochari Chakuri Bidhi*, 1992. The respondents failed to submit a formal charge against the petitioner within 60 days as required under Rule 43(3) which provides:

“উপধারা (১) এর অধীনে প্রদত্ত সাময়িক বরখাস্তের আদেশ সর্বোচ্চ ৬০(ষাট) টি কার্য দিবস অতিবাহিত হওয়ার পর স্বয়ংক্রীয়ভাবে বাতিল হইয়া যাইবে এবং তাহাকে সাময়িকভাবে বরখাস্ত করার পূর্বে তিনি যে দপ্তরে কর্মরত ছিলেন উক্ত দপ্তরে কর্মরত বলিয়া গণ্য হইবেন, যদি উক্ত সময় সীমা অতিক্রান্ত হওয়ার পূর্বে তাহার বিরুদ্ধে আনুষ্ঠানিক অভিযোগ (formal charge) আনীত না হয় বা তাহাকে অবহিত না করা হয় তবে, স্বয়ংক্রীয়ভাবে সাময়িকভাবে বরখাস্ত আদেশ বাতিলের প্রেক্ষিতে পরবর্তীতে তাহার বিরুদ্ধে আনুষ্ঠানিক অভিযোগনামা দায়ের করার ক্ষেত্রে কোন প্রতিবন্ধকতা থাকিবে না।”

Since the respondents recovered the alleged amount of money from the petitioner, the order of removal is tantamount to a double whammy for the petitioner. Moreover, the proceedings initiated against the petitioner were flawed and thus the petitioner is entitled to the benefit of such irregularity and as such the order of removal cannot stand in law.

At that stage, the learned counsel appearing for the respondent no. 4, by taking us to the last two lines of sub-rule 3, submits that despite the failure to frame a formal charge within 60 days from the date of suspension, it will not *ipso facto* preclude filing of a formal

charge thereafter against the petitioner. However, we find no substance to the said submission, because the record clearly shows that after submitting the initial formal charge, the respondents did not initiate any fresh formal charge against the petitioner rather proceeded against the petitioner based on the basis of a defective charge and thus this contention is devoid of substance.

We further find that the President of the *samity* being the appellate authority had decided to demote the petitioner in his service as Assistant Cashier on humanitarian grounds but the Bangladesh Rural Electrification Board rejected the proposal forwarded by the *Polly Bidyut Somity Board* and refused to approve the proposal passed by the appellate authority in spite of the fact that the petitioner does not deserve any sort of punishment.

On top of that, as of major punishment so provided in Rule 39(Kha) of Regulation, in sub clause (Kha)(2) it has been specified that if any financial damages (আর্থিক ক্ষতি) is caused to the *Samity* by any official, the amount may be recovered from the salary or any other source (স্বত) from the delinquent official. Since, it is admitted that the petitioner repaid the amount as demanded by the respondent, removing the petitioner from service caused a double major penalty, which is totally arbitrary and whimsical one.

In light of the foregoing, it is evident that the petitioner was denied a fair opportunity to defend himself, and the suspension and removal orders were in violation of the applicable Rules.

Consequently, the impugned removal order cannot be sustained in law.

In view of the above discussion, we are of the considered opinion that there is merit in the Rule.

Hence, the Rule is made absolute. The impugned order of removal dated 31-03-2014(Annexure- Q) issued by the respondent no. 4, the Senior General Manager of the *Sirajgonj Pally Biddyut Samity*, Sirajgonj, and upholding the same vide letter dated 07.08.2024 (Annexure-J to the Writ Petition) is hereby declared to have been passed without lawful authority and to be of no legal effect.

The respondents are hereby directed to pay the petitioner all arrears and other service benefits he is entitled to from the date of his suspension dated 31.03.2014, within 60 days from the date of receipt of this judgment.

Let a copy of this judgment be communicated to the respondents forthwith.

Md. Mozibur Rahman Miah, J.

I agree.