

IN THE SUPREME COURT OF BANGLADESH  
APPELLATE DIVISION

**PRESENT:**

***Mr. Justice Hasan Foez Siddique, C.J.***

***Mr. Justice M. Enayetur Rahim***

***Mr. Justice Jahangir Hossain***

**CIVIL APPEAL NO.04 OF 2013**

**(Arising out of C.R.P. No.52 of 2010)**

(From the judgment and order dated the 17<sup>th</sup> March, 2009 passed by this Division in Civil Appeal No.249 of 2003).

University of Dhaka represented by : . . . Appellants  
the Vice-Chancellor and another

-Versus-

Hafez Mohammad Jalaluddin Chy. : . . . Respondents  
and others

For the Appellants : Mr. Momtazuddin Fakir, Senior  
Advocate with Mr. Amit Talukder,  
Advocate instructed by Ms.  
Madhumalti Chy. Barua, Advocate-  
on-Record

For the Respondent No.1 : Mr. Probir Neogi, Senior Advocate  
instructed by Ms. Sufia Khatun,  
Advocate-on-Record

For the Respondent Nos.2-5 : Not represented

**Date of Hearing** : **The 2<sup>nd</sup> day of May, 2023**

**Date of Judgment** : **The 3<sup>rd</sup> day of May, 2023**

**J U D G M E N T**

**M. Enayetur Rahim, J:** This civil appeal has arisen out of leave granting order dated 14.08.2012 passed in Civil Review Petition No.052 of 2010 preferred by the appellants who were the respondents in Writ Petition No.4786 of 1999 against the judgment and order dated 17.03.2009 passed by the Appellate Division in Civil Appeal No.249 of 2003 dismissing the same thereby

upholding the judgment and order dated 23.11.2000 passed by the High Court Division in Writ Petition No.4786 of 1999 making the Rule Absolute.

The relevant facts for disposal of the instant appeal, in brief, are that, Respondent No.1 as petitioner (hereinafter referred to as the writ petitioner) filed writ petition No.4786 of 1999 before the High Court Division challenging the letter dated 18.09.1999 issued under the signature of the Registrar (in charge), Dhaka University, writ-respondent No.2 (hereinafter referred to as writ-respondent No.2) terminating him from his service of Dhaka University.

In the writ petition, it was contended inter alia, that the writ-petitioner upon obtaining Master's Degree was appointed on 08.01.1994 as Lecturer of Dhaka City College, Dhaka in the Department of Islamic History. Subsequently, in response to an advertisement made by University of Dhaka, he applied for the post of Lecturer in the Department of Islamic History and Culture; out of 10 applicants, the relevant committee recommended the names of 03(three) applicants including the writ petitioner for appointment in the said post. At that time, one Dr. Ibrahim, an-associate Professor of the Department of Islamic History, made a frivolous objection against the appointment of the writ-petitioner. The Selection Committee on the basis of C and D Committee selected the writ-petitioner in the post of Lecturer and referred the matter to the Syndicate for taking final

decision as to his appointment in view of the complaint made by said Dr. Ibrahim. The Syndicate formed an inquiry committee, but failed to submit any report within the stipulated time. As a result, the Syndicate formed another committee which, after discussion, took the view that the allegation of adopting unfair means in the subsidiary examination against the writ petitioner would not be deemed to be a bar for his appointment and accordingly, recommended him for appointment and exonerated him from the complaint made by Dr. Ibrahim. Thereafter, the appointment letter was issued. On receipt of the appointment letter, the writ-petitioner resigned from the post of lecturer of Dhaka City College and submitted his joining letter with writ-respondent No.2 which was accepted. While the writ petitioner was serving as a Lecturer in the University, writ-respondent No.2, on the basis of news published in the newspaper, formed another committee for further inquiry. The writ-petitioner was served with a show cause notice to which he replied, then a new inquiry committee was formed by the Syndicate and the said committee served another show cause notice upon the writ-petitioner to which he also replied. The writ-petitioner was then asked not to participate in the departmental function till disposal of the inquiry. The inquiry committee gave a report and an opinion regarding the appointment of the writ-petitioner and forwarded the same to the Syndicate to take a final decision. The writ-petitioner then received the impugned

letter issued by respondent No.2 wherein it was stated that his service was no longer required, i.e. petitioner's service in the University was terminated.

On behalf of the writ respondents no affidavit-in-opposition was filed to contest the same; even no one appeared on behalf of the said respondent.

A Division Bench of the High Court Division after hearing the said writ petition made the Rule absolute by the judgment and order dated 23.11.2000.

Being aggrieved by and dissatisfied with the said judgment and order the writ-respondents, the appellants herein filed Civil Petition for Leave Appeal No.974 of 2001, before this Division and leave was granted which gave rise Civil Appeal No.249 of 2003.

On hearing the appeal, the same was dismissed by this Division by the judgment and order dated 17.03.2009. Then the appellant preferred Civil Review Petition No.052 of 2010 and leave has been granted.

Hence the present appeal.

Mr. Momtazuddin Fakir, learned Senior Advocate, appearing for the appellant reiterating the submissions on which leave was granted submits that the High Court Division as well as this Division in deposing of C.A. No.249 of 2003 failed to take into consideration that as per clause-2 of the appointment letter dated 11.05.1997 of the writ-petitioner the appointing authority, i.e. the University reserves the legal right to terminate his service; from the plain reading of the impugned order of

termination it was abundantly clear that the same was a simple order of termination without any stigma as such this Division committed error on the face of the record in treating the letter of termination as punishment and wrongly held that same has been issued with stigma and thus, impugned judgment is required to be reviewed.

Mr. Fakir further submits that this Division committed an error apparent on the face of record in holding that the writ petitioner acquired a legal right to work as a lecturer without considering that he was terminated during his probationary period and the letter of appointment has given power to the University Authority to terminate him within the probationary period, thus the judgment passed in Civil Appeal No.249 of 2003 is required to be reviewed.

Mr. Fakir also submits that this Division committed an error apparent on the face of the record in not taking into consideration the expulsion of the writ petitioner by a Disciplinary Committee on 03.01.1991 and approval by Syndicate on 09.01.1991, expelling for three years but the alleged reduction of the punishment by a disciplinary committee was not approved by the Syndicate and thus it cannot be said that his punishment was reduced and in this facts and circumstances, the writ petitioner cannot be allowed to continue as a teacher in the University of Dhaka, thus the judgment passed in Civil Appeal No.249 of 2003 is required to be reviewed.

On behalf of the writ-petitioner-respondent, Mr. Probir Neogi, learned Senior Advocate, submits that the writ petitioner was appointed as a lecturer of the University on the recommendation of a legally constituted enquiry committee and the subsequent enquiry committee being not a superior authority over the same had no jurisdiction to review the decision of the earlier committee; the very constitution of the subsequent committee and all its activities were ultravires and malafide and did not come within the purview of article 56(3) of the Order, 1973, an order of termination with stigma of misconduct or order of dismissal could only be made on the grounds as laid down in the said article of the Order and for that a Tribunal must have been constituted in accordance with section 45(4) of the first statute of the order, 1973, but in the instant case, the appellants have neither showed any ground nor constituted any Tribunal as per the relevant law; as per section 45(5) of the first statute of the Order, 1973 an appeal lies to the Chancellor against any order passed by the Syndicate on the recommendation of the Tribunal, but not against any order passed by the Syndicate on the recommendation of the so-called enquiry committee and as such, the ground taken by the writ-respondent-appellants with regard to the non exhaustion of the alternative forum of appeal was not tenable in the eye of law; in the facts and circumstances of the instant case, article 52 of the Order, 1973, had no manner of application and the

writ-petitioner having duly joined the post of Lecturer and performed his responsibilities accordingly, a legal right accrued to him could not be taken away in such an arbitrary manner; the order of termination was not a termination simpliciter but it was with a stigma of misconduct and therefore, the impugned termination order did not come within the ambit of condition No.2 of the appointment letter.

Mr. Neogi further submits that there could be no ground for review once the case was disposed of on fact and law as well. Review of a judgment can be made where there is an error apparent on the face of the record or that the courts attention was not drawn to any particular statutory provision of law for which an error has crept in the judgment (43 DLR, AD-2). In the present case the High Court Division as well as this Division have elaborate and meticulously dealt with relevant provision of law and was pleased to dismiss the appeal.

Mr. Neogi also submits that, to terminate the writ petitioner, the writ respondent followed a procedure. In that procedure they tried to establish the moral turpitude of the writ petitioner and they conferred a stigma upon him. Both the Divisions in writ petition and civil Appeal after considering the facts, circumstances and provisions of law elaborately, delivered judgments disposing the said issue.

Because, after considering the facts, circumstances and provisions of law the Hon'ble High Court Division

(Writ Petition No.4786 of 1999) and Hon'ble Appellate Division in Civil Appeal No.249 of 2003, Hold decisions that the writ petitioner acquired a legal right to work as a lecturer. In the appointment letter no time/duration was mentioned as probationary period. The writ petitioner had been serving as lecturer for more than two years with satisfactory of the authority. No allegation was brought during the service tenure. In condition no.04 of the appointment letter it was stated that: "৪। আপনার চাকুরী ১৯৭৩ সনের ঢাকা বিশ্ববিদ্যালয় অর্ডার ও ইহার স্ট্যাটিউটস এবং বিশ্ববিদ্যালয়ের অর্ডিন্যান্স ও রেগুলেশনের শর্তাবলী দ্বারা নিয়ন্ত্রিত হইবে এবং আপনি চাকুরীতে বহাল থাকাকালে বিশ্ববিদ্যালয় চাকুরী সংক্রান্ত যে সমস্ত অর্ডিন্যান্স ও রেগুলেশন অথবা নিয়মাবলী প্রনয়ন করিবে সে সমস্তও আপনার ক্ষেত্রে প্রযোজ্য হইবে।" Under order 45(3) of The Dhaka University Order it is stated as follows: "3. No teacher or officer shall be penalized or dismissed except on the ground of moral turpitude or inefficiency or conduct prejudicial to service discipline or unbecoming of a University employee and no action will be taken on such grounds without an enquiry by an Inquiry Committee to be set up by the Syndicate in which opportunity shall be provided to the teacher and officer concerned to represent his case. At the time of selection of the writ-petitioner one Dr. Ibrahim made an allegation against the writ-petitioner and accordingly an inquiry committee was constituted by the then Vice Chancellor but that inquiry committee failed to submit report. Subsequently another enquiry committee was formed comprising Mr. Mainul Hossain, Bar-at-Law, Mr. Shawkat Ali Khan, Bar-at-Law and others and they having discussed



the matter and gave an opinion that the allegation cannot be deemed to be a bar for his appointment and accordingly recommended for his appointment. After a news item being published in the news paper regarding the appointment of the writ-petitioner the University authority on the selfsame subject again took up the matter and another inquiry committee was formed and the High Court Division as well as the Appellate Division having considered the same rightly passed the impugned judgment.

Heard the learned Advocates for the respective parties, perused the impugned judgement and other materials available on record.

In the instant appeal the moot question is whether the termination of the writ petition is a simple termination or with a stigma and in deciding the said issue this Division has committed error of law on the face of the record. The learned Advocate for the appellant having referred to the letter of appointment has tried to convince us that in view of clause-2 of the letter of appointment the University Authority has taken step and as such the impugned termination is a termination simplicitor not with a stigma.

We have perused the appointment letter which is as under;

রেজিষ্টার অফিস

ঢাকা বিশ্ববিদ্যালয়

ঢাকা-১০০০

তারিখঃ ১১/০৫/১৯৯৭ইং

জনাব হাফেজ মুহাম্মদ জালাল চৌধুরী

প্রভাষক

ইসলামের ইতিহাস বিভাগ

ঢাকা সিটি কলেজ, ঢাকা।

প্রিয় মহোদয়,

আপনার ২৪/৪/৯৬ইং তারিখের দরখাস্তের বরাতে এবং ১০/৫/৯৭ইং তারিখে অনুষ্ঠিত সিডিকেট সভার সিদ্ধান্ত অনুযায়ী জানানো যাইতেছে যে, আপনাকে নিম্ন লিখিত শর্তাবলীতে ঢাকা বিশ্ববিদ্যালয়ের ইসলামের ইতিহাস ও সংস্কৃতি বিভাগের অস্থায়ী লেকচারার নিয়োগ করা হইয়াছেঃ-

- ১। কাজে যোগদানের তারিখ হইতে আপনার এই নিয়োগ অস্থায়ী ভিত্তিতে কার্যকর হইবে।
- ২। যে কোন পক্ষ বিশ্ববিদ্যালয় কিংবা আপনি ৩০(ত্রিশ) দিনের নোটিশে অথবা নোটিশের পরিবর্তন করিয়া এক মাসের বেতন প্রদানে এই নিয়োগের পরিসমাপ্তি ঘটাইতে পরিবেন।
- ৩। ২৮৫০-১২৫-৩৭২৫-ইবি-১৩০-৫১৫৫/- টাকা ক্ষেলে আপনার মাসিক বেতন হইবে ৩২২৫/- (তিন হাজার দুইশত পাঁচিশ) টাকা এবং তৎসহ আপনি বিশ্ববিদ্যালয়ের নিয়ম অনুসারে অন্যান্য ভাতাদিও পাইবেন।
- ৪। আপনার চাকুরী ১৯৭৩ সনে ঢাকা বিশ্ববিদ্যালয় অর্ডার ও ইহার স্ট্যাটিউটস এবং বিশ্ববিদ্যালয়ের অর্ডিন্যান্স ও রেগুলেশনের শর্তাবলী দ্বারা নিয়ন্ত্রিত হইবে এবং আপনি চাকুরীকর্ত বহাল থাকাকালে বিশ্ববিদ্যালয় চাকুরী সংক্রান্ত যে সমস্ত অর্ডিন্যান্স ও রেগুলেশন অথবা নিয়মাবলী প্রণয়ন করিবে সে সমস্ত ও আপনার ক্ষেত্রে প্রযোজ্য হইবে।

(Under line supplied)

- ৫। আপনাকে বাধ্যতামূলক ভাবে বিশ্ববিদ্যালয়ের গোষ্ঠী বীমায় অংশ গ্রহণ করিতে হইবে।
- ৬। আপনাকে ঢাকা বিশ্ববিদ্যালয়ের প্রধান চিকিৎসক দ্বারা আপনার স্বাস্থ্য পরীক্ষা করাইতে হইবে এবং আপনার শারীরিক ও মানসিক সুস্থতা সম্পর্কে সার্টিফিকেট অত্র দফতরে দাখিল করিতে হইবে।

আপনাকে আপনার প্রবেশিকা বা মাধ্যমিক স্কুল সার্টিফিকেট পরীক্ষা পাশের সার্টিফিকেটসহ অন্যান্য সমস্ত মূল সার্টিফিকেট এবং আপনার বর্তমান নিয়োগ কর্তা হইতে প্রাপ্ত ছাড়পত্র বিভাগীয় চেয়ারম্যানের মাধ্যমে অত্র দফতরে প্রেরণ করার জন্য অনুরোধ করা যাইতেছে।

উপরিউক্ত শর্ত মোতাবেক আপনি এই নিয়োগ গ্রহণ করিতে সম্মত আছেন কিনা তাহা জানাইতে এবং সম্মত থাকিলে যোগদানপত্র উপরিউল্লিখিত সমস্ত দলিল পত্রাদিসহ বিভাগীয় চেয়ারম্যানের মাধ্যমে অত্র দফতরে প্রেরণ করার জন্য আপনাকে অনুরোধ করা যাইতেছে।

আপনার বিশ্বস্ত

স্বাঃ অস্পস্ট

রেজিস্ট্রার

ঢাকা বিশ্ববিদ্যালয়।

From the said appointment letter it transpires that though in clause-2 it has been stated that the University Authority may terminate the service of the writ

petitioner giving 30 days notice or paying one month salary. However, in clause-4 it is stated that the service of the writ petitioner will be governed as per the order of University of Dhaka, 1973 and the Relevant Ordinance and Regulation of the University. If we read and consider the above two provisions together then we have no hesitation to hold that the University Authority terminated the writ-petitioner on 18.09.1999 who has joined in the University on 11.05.1997 without following the Rules and Regulation applicable for the writ petitioner as mentioned in clause-4 of the letter of appointment. From the record it transpires that earlier the University Authority initiated a departmental proceeding and in the said proceeding a show cause notice was issued on 25.05.1997 in which the respondent replied to the said notice. The inquiry committee on 07.08.1997 forwarded it's reports to the syndicate of the University for taking conclusive decision. At this stage the impugned order of termination has been passed. These facts have not been denied by the writ-respondent i.e. the present appellants.

This Division in deciding the merit of C.A. No.249 of 2003 has observed as under:

"It appears that subsequent committee has no authority to review the earlier decision. It appears that the order of termination is not a termination simpliciter but it is with stigma. From the argument of the learned Counsel it appears that the order of termination is a malafide in view of the

attending facts and circumstances of the case. It appears that once a person is appointed as Lecturer on being recommended by a legally constituted committee and the subsequent committee being not a superior authority cannot sit over and review the same. As the respondent No.1 had already joined the post and worked as lecturer, a legal right has been accrued to him and this right cannot be taken away in such an arbitrary manner. The decision reported in 44 DLR (AD) 305 has no manner of application in the attending facts and circumstances of the case."

In the case of **Md. Shamsul Islam Vs. Bangladesh Jute Mills Corporation and others 1LM(AD)206** this Division has held to the effect that the real test of ascertaining whether an order of terminating the service of an employee is one of dismissal or removal is to ascertain whether it involves any loss of benefit previously earned. This does not appear in the impugned order.

In the above case this division also held that the appellant failed to establish that the establishment terminated his service in the garb of dismissal by adducing sufficient materials.

In the case of **Ashuganj Fertilizer and Chemical Company Limited and others Vs. Md. Abu Sufian Bhuiyan and 15 another reported in 71 DLR (AD)35** this Division has held that;

"There was an inquiry about the appointment of the writ-petitioner-respondents and pursuant to the said inquiry, the writ-petitioner-respondents were terminated from service. Therefore, it cannot be said that the writ-petitioner-

respondents were terminated from service and in fact, they were dismissed from service in the garb of termination.”

In the case of **Bangladesh Parjatan Corporation Vs. Md. Ali Hossain**, reported in 65 DLR(AD), 158 this Division on elaborate discussion observed as under;

“59. For the discussions made hereinbefore as well as for the reasons as assigned in Civil Appeal No.243 of 2009, we hold that the impugned letter of termination passed against the petitioner of this case though appears to be a termination simpliciter, but in fact, it is not; the petitioner was dismissed from his service in the garb of termination by resorting to bidhi 50(2) of the Probidhanmala,1990. In the facts and circumstances of the instant case the principles of law enunciated by this Division in the case of Bangladesh Parjatan Corporatin Vs. Shahid Hossain Bhuiyan (supra) have got no manner of application.

60.-----.

61. We also do not find any substance in the second submission on which leave has been granted. When the High Court Division found that the petitioner was terminated from the service of the Corporation for a co-lateral purpose under the colourable exercise of power under the provision of bidhi 50(2) of the Probidhanmala, 1990, it rightly gave the direction upon the writ-respondent-appellants herein to reinstate him in his post with all his due back wages and benefit.”

If we consider the facts and circumstances of the present case in the light of the above proposition of law then, we have no hesitation to come into a definite finding that the writ-petitioner, in fact, has been

terminated from the service in the garb of clause-2 of the appointment letter.

We do not find any error in the impugned judgment apparent on the face of the record or that the courts attention was not drawn to any particular statutory provision of law for which an error has crept in the impugned judgment. Thus, there is no scope to review the impugned judgment.

Accordingly, the appeal is dismissed.

However, there is no order as to costs. However, since the respondent No.1 is out of service he will not get any previous financial benefit and promotion for the period of which he was out of service. The Authority of University of Dhaka is directed to re-instate him to his former post.

No order as to cost.

C.J.

J.

J.