

In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)

Present

Madam Justice Kashefa Hussain

And

Madam Justice Kazi Zinat Hoque

Writ Petition No. 6202 of 2020

In the matter of:

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

-And-

In the matter of:

Manoj Kumar Mandol, son of late Debendranath Mandol and late Shushila Mandol of village – Krishi Bank Road, Post Office- Morelganj 9320, Morelganj Pourashava, Morelganj, District- Bagerhat.

..... Petitioner.

Vs.

Bangladesh, represented by the Secretary, Ministry of Law Justice and Parliamentary Affairs and others.

.....Respondents.

Ms. Tasmia Prodhan, Advocate

.....for the petitioner

Mr. Noor Us Sadik Chowdhury, D.A.G

with Ms. Sayeda Sabina Ahmed Moli A.A.G

with Ms. Farida Parvin Flora, A.A.G

... for the respondents No. 1-5

Heard on: 01.11.2022, 13.11.2022, 15.11.2022 and

judgment on: 20.11.2022.

Kashefa Hussain, J:

Rule nisi was issued calling upon the respondents to show cause as to why বিধি ৬(৬) of “সরকারিকৃত কলেজ শিক্ষক ও কর্মচারী আন্তীকরণ বিধিমালা, ২০১৮” (Annexure-C to the writ petition) as published in Bangladesh Gazette dated 31.07.2018 vide SRO No. 245 Ain/2018,

insofar as the same has created bar or block for the appointment of the petitioner and বিধি ৯, ১০, ১৪ of “সরকারিকৃত কলেজ শিক্ষক ও কর্মচারী আত্মীকরণ বিধিমালা, ২০১৮”, insofar as the same are depriving the teachers and employees of the Nationalized Colleges to count their full service of the present institution along with previous institution (if any), should not be declared to have been published without lawful authority and is of no legal effect and ultra vires the Constitution and why a direction should not be given upon the respondent No. 2 to create a scope to appoint the petitioner from the date of the nationalization of the college and count the full service, in the present institution along with the previous institution (if any), of the teachers and employees whose colleges have been nationalized under “সরকারিকৃত কলেজ শিক্ষক ও কর্মচারী আত্মীকরণ বিধিমালা, ২০১৮” by amending বিধি ৬(ঙ), ৯, ১০, ১৪ of “সরকারিকৃত কলেজ শিক্ষক ও কর্মচারী আত্মীকরণ বিধিমালা, ২০১৮” and/or such other or further order or orders passed as to this Court may seem fit and proper.

The petitioner Manoj Kumar Mandol, son of late Debendranath Mandol and late Shushila Mandol of village – Krishi Bank Road, Post Office- Morelganj 9320, Morelganj Pourashava, Morelganj, District-Bagerhat is a citizen of Bangladesh.

The respondent No. 1 is the Secretary, Ministry of law Justice and Parliamentary Affairs Bangladesh Secretariat, Shahbagh, Dhaka - 1000, the respondent No. 2 is the Secretary, Ministry of Public Administration, Bangladesh Secretariat, Shahbagh, Dhaka -1000, the respondent No. 3 is the Secretary, Ministry of Education, Bangladesh Secretariat, Shahbagh, Dhaka -1000, the respondent No. 4 is the Secretary, Secondary and Higher Secondary, Ministry of Education,

Bangladesh Secretariat, Shahbagh, Dhaka -1000, the respondent No. 5 is the Deputy Secretary, Secondary and Higher Secondary Department, Non-Government College Sub-section-6, Ministry of Education, Bangladesh Secretariat, Shahbagh, Dhaka -1000, the respondent No. 6 is the Director General, Directorate of Secondary and Higher Education, Sheikhkha Bhaban, Ramna, Dhaka, the respondent No. 7 is the Principal, Sharankhola Government College, Sharankhola, Bagerhat.

The petitioner's case inter alia is that the petitioner is an assistant professor of accounting in the Sharonkhola Government College. He got appointment letter to join as a lecturer in the said college on 31.10.1988 and joined the said college on 01.11.1988. Thereafter he was promoted to the post of the assistant professor of the same subject on 01.11.2013 and since his joining he has been performing his duty with utmost sincerity and diligence. That the Sharonkhola College, where the petitioner is working was established in 1978. The said college was nationalized on 08.08.2018 vide circular No. 37.00.000.070.002.004.2018-83 dated 12.08.2018 pursuant to Bidhimala, 2018. That বিধি ৬(ঙ) of the “সরকারিকৃত কলেজ শিক্ষক ও কর্মচারী আন্তীকরণ বিধিমালা, ২০১৮” reads as follows:

৬) অস্থায়ীভাবে নিয়োগের ক্ষেত্রে বাধা-নিষেধ। কোনো ব্যক্তি অস্থায়ীভাবে নিয়োগ লাভের যোগ্য হইবে না, যদি-

ঙ) অস্থায়ীভাবে নিয়োগের তারিখে তাহার বয়স সরকারি কর্মচারীগণের অবসর গ্রহণের বয়স অপেক্ষা অধিক হয়।

That as per the date of nationalization of the college which is 08.08.2018, the petitioner is eligible for the adhoc appointment, but

his age would cross the threshold of the requisite 59 years if the date is counted from any date after 04.12.2018. Appointment process is an administrative work and the time involved varies from college to college. In case of one college the appointment process takes more time while in case of another college could take less time. There is no set time limit or fixed deadline for adhoc appointment after nationalization of a certain college. Thus finding its harshness, unreasonableness and arbitrariness, respondent No. 7 the Principal of the said college wrote a letter on 15.09.2018 to the respondent No. 4, Secretary, Secondary and Higher Secondary Education Department, Ministry of Education, to consider appointing the petitioner from the date of nationalization of the college stating inter alia that the petitioner would be deprived from all the benefits had he not got the appointment from the date of Nationalization. But till now the respondent No. 4 has not taken any steps regarding the matter. That government is also reconsidering the age limit due to the Covid-19 situation which is evident from the circular dated 17.09.2020 vide memo No. 05.00.0000.170.11.029-19-122 issued by respondent No. 3.

That বিধি ৯, ১০, ১৪ of the বিধিমালা ২০১৮ reads as follows:

৯) বেতন-ভাতাদি নির্ধারণ। অস্থায়ীভাবে নিয়োগপ্রাপ্ত শিক্ষক ও কর্মচারীগণ, সংশ্লিষ্ট কলেজ সরকারিকরণের তারিখ হইতে, বিদ্যমান জাতীয় বেতন স্কেলের সংশ্লিষ্ট গ্রেডের প্রারম্ভিক ধাপে স্ব স্ব পদের বেতন-ভাতাদি প্রাপ্য হইবেন।

১০) জ্যেষ্ঠতা নির্ধারণ। সরকারিকরণের অব্যবহিত পূর্বে সংশ্লিষ্ট বেসরকারি কলেজের শিক্ষক ও কর্মচারীগণের জ্যেষ্ঠতার ভিত্তিতে অস্থায়ীভাবে নিয়োগপ্রাপ্ত শিক্ষক ও কর্মচারীগণের জ্যেষ্ঠতা নির্ধারিত হইবে।

১৪) কার্যকর চাকরিকাল। (১) সরকারিকৃত কলেজে আন্তীকৃত কোনো শিক্ষক বা কর্মচারী সংশ্লিষ্ট কলেজ সরকারিকরণের অবস্যাবহিতর পূর্ব পর্যন্ত ধারাবাহিকভাবে উক্ত কলেজে সর্বমোট যে সময়কাল চাকরি করিবেন, উক্ত চাকরিকালের অর্ধেক সময় সংশ্লিষ্ট শিক্ষক বা কর্মচারীর কার্যকর চাকরিকাল হিসাবে গণ্য হইবে।

These 3 Rules thrust an unreasonable condition by imposing the word, “সংশ্লিষ্ট কলেজ” by depriving teachers and employees of their life long service since according to the said rules the service of the teachers and employees would be counted where he/she is presently working. Their service of the previous institution will not be counted even they have duly paid for the government portion for their retirement benefits. They are not getting back their portion of the money taken by the government when they join a new college, even though their index number remains the same. That as part of the community, the petitioner’s heart bleeds for this unreasonable condition imposed by the said Rules. Hence the petitioner is also challenging Rule 9, 10 and 14 in the form of Public Interest litigation. That as per the Bangladesh Civil Service (Age, qualification and examination for Direct Recruitment) Rules, 1982, age limit is counted from the first day of the month in which the commission invites applications for holding the examination. Two relevant provisions from the said Rules are read as follows:

“13. Age Limit- (1) Subject to the provisions of succeeding sub-rule, no person shall be eligible to appear at the examination if he / she is less than 21 years of age or has exceeded 25 years of age on the first day of the month in which

the commission invites applications for holding the examination.”

(2) No Person shall be eligible to appear at an examination for a post in Bangladesh Civil Service (Education; General Education), Bangladesh Civil Service (Education: Technical Education), Bangladesh Civil Service (Health and Family Planning) Bangladesh Civil Service (Judicial), if he / she is less than 21 years of age or he has exceeded 30 years of age on the first day of the month in which the commission invites applications for holding examination.”

That those Rules do not provide the threshold for age limit after completion of the recruitment process rather it specifically mentioned that the age limit should be counted from the first day of the month in which the Commission invites applications for holding the examination. As such বিধি ৬(৬) of the বিধিমালা ২০১৮ is discriminatory, arbitrary, malafide and ultra vires to the constitution as it provides an unreasonable condition that the age limit for appointment shall be counted from the date of appointment. That the continuity of the service in case of transfer from one college to another has always been counted as per Rule 11(11), (12), Rule 12, Rule 13 which reads as follows:

১১। শিক্ষক ও কর্মচারীদের (স্কুল, কলেজ, মাদ্রাসা ও কারিগরি প্রতিষ্ঠানসমূহ)

বেতন-ভাতা নির্ধারণ:-

১২। ইনডেক্সধারী শিক্ষক/কর্মচারী এক ধরনের প্রতিষ্ঠান হতে অন্য ধরনের

প্রতিষ্ঠানে সমপদে/সমক্ষেলে চাকুরিতে যোগদান করলে পূর্ব অভিজ্ঞতা গণনাযোগ্য হবে।

২২। উচ্চ মাধ্যমিক বিদ্যালয়/উচ্চ মাধ্যমিক কলেজ/স্নাতক (পাস) কলেজ এর অধ্যক্ষ/উপাধ্যক্ষ নিয়োগের ক্ষেত্রে মাদ্রাসা /কারিগরি শিক্ষা প্রতিষ্ঠানের প্রভাষক (সাধারণ)/ সহকারী অধ্যাপক (সাধারণ) এর অভিজ্ঞতা গণনা করা হবে।

১২। শিক্ষা প্রতিষ্ঠান (স্কুল, কলেজ, মাদ্রাসা ও কারিগরি) পরিবর্তন:- বেতন ভাতাদির সরকারী অংশ প্রাপ্ত কোন শিক্ষা প্রতিষ্ঠানে চাকুরিরত অবস্থায় প্রতিষ্ঠান প্রধানকে অবহিতকরণের মাধ্যমে কোন শিক্ষক/কর্মচারী অন্য যে কোন এম.পি.ও ভুক্ত শিক্ষাপ্রতিষ্ঠানে সমপদে/উচ্চতর পদে নিয়োগের জন্য আবেদন করলে তাকে বিভাগীয় প্রার্থীরূপে গণ্য করা হবে। এরূপ প্রার্থী যে শিক্ষা প্রতিষ্ঠানে নিয়োজিত হবেন সে শিক্ষাপ্রতিষ্ঠান এমপিও ভুক্ত হলে পূর্বোক্ত প্রতিষ্ঠানের দায়মুক্তিপত্র গ্রহণ এবং অন্যান্য যোগ্যতা পূরণ সাপেক্ষে তিনি নতুন প্রতিষ্ঠানে যোগদানকালীন সময়ের ব্যবধান সর্বোচ্চ ২ (দুই) বৎসর পর্যন্ত তার ইনডেন্সি নম্বর বহাল থাকবে। তবে এর অধিক হলে চাকুরির বিরতি (Break of Service) বলে গণ্য হবে। এছাড়া এমপিওভুক্ত কোন শিক্ষক-কর্মচারী সমপদে আবেদন করিলে তাদের ক্ষেত্রে নিবন্ধন পরীক্ষার প্রয়োজন হবে না। সরকার এমপিও ভুক্ত শিক্ষক, কর্মচারীদের প্রয়োজনবোধে নীতিমালা প্রণয়নের মাধ্যমে এক প্রতিষ্ঠান থেকে অন্য প্রতিষ্ঠানে বদলি করতে পারবে।

১৩। জ্যেষ্ঠতা ও অভিজ্ঞতা নির্ধারণ:- শিক্ষক ও কর্মচারীদের পারস্পারিক জ্যেষ্ঠতা ও অভিজ্ঞতা তাদের প্রথম এমপিও ভুক্তির তারিখ থেকে গণনা করা হবে। তবে এমপিওভুক্তি একই তারিখে হলে জ্যেষ্ঠতা নির্ধারণের ক্ষেত্রে যোগদানের তারিখ বিবেচনা করা হবে। যোগদানও একই তারিখে হলে তাদের জন্ম তারিখের ভিত্তিতে জ্যেষ্ঠতা নির্ধারণ করা হবে। তবে কোন শিক্ষকের নিয়োগ নিয়মিতকরণ করা হলে নিয়মিতকরণের তারিখ যোগদানের তারিখ হিসেবে গণ্য হবে।

That said Rules of বিধি ৬(ঙ) of “সরকারিকৃত কলেজ শিক্ষক ও কর্মচারী আন্তীকরণ বিধিমালা, ২০১৮” in so far as the same created a bar on the petitioner and বিধি ৬(ঙ), ৯, ১০, ১৪ of the বিধিমালা ২০১৮ is depriving a teacher of the nationalized college of the present institution along with previous institution and any such rule is unlawful and without lawful authority

and ultra vires of the constitution. And the respondents are refraining from absorbing and appointing the petitioner from date of nationalist of the college counting the full service which inaction is without lawful effect. Hence the writ petition.

Learned Advocate Ms. Tasmia Prodhan appeared for the petitioner while learned D.A.G Mr. Noor Us Sadik Chowdhury along with Ms. Syeda Sabina Ahmed Moli, A.A.G along with Ms. Farida Parvin Flora, A.A.G appeared for the respondent Nos. 1-5.

Learned Advocate for the petitioner submits that the Rules impugned in the writ petition pertaining to the rules to “সরকারিকৃত কলেজ শিক্ষক ও কর্মচারী আন্তীকরণ বিধিমালা, ২০১৮” so far as it may deprive the petitioner of his lawful right to be absorbed, such Rule is ultra vires of the constitution and unlawful. He submits that বিধি ৬(ঙ) of the “সরকারিকৃত কলেজ শিক্ষক ও কর্মচারী আন্তীকরণ বিধিমালা, ২০১৮” is unlawful and vague given that it does not specify as to when exactly pursuant to nationalization of an educational institution a teacher may be appointed on temporary basis. She contends that such vagueness in the Rules of 2018 is being taken advantage of by the respondents and has consequently led to violation of the fundamental rights of the petitioner guaranteed under the constitution. She reiterates that বিধি ৬(ঙ) of the “সরকারিকৃত কলেজ শিক্ষক ও কর্মচারী আন্তীকরণ বিধিমালা, ২০১৮” does not specify the prescribed time of appointment as temporary teacher pursuant to regularization.

She next contends that the petitioner has been serving in the college from 1.11.1988 which is his initially joining date pursuant to appointment. She also draws attention to the document Annexure-2

and submits that it is also evident that pursuant to appointment as lecturer he was subsequently promoted as assistant professor of the college on 1.11.2013. She agitated that therefore it is clear that the petitioner has been serving in the college by way of being lecturer later followed by being assistant professor for long years. She argued that therefore such arbitrary conduct by way of enacting বিধি ৬(ঙ) of the “সরকারিকৃত কলেজ শিক্ষক ও কর্মচারী আন্তীকরণ বিধিমালা, ২০১৮” and some other Rules is totally ultra vires of the constitution and the arbitrary refraining of the respondents from absorbing the petitioner as a teacher in the nationalized college is without lawful authority.

Upon a query from this bench as to the petitioner having crossed the retirement age when the writ petition filed in 2013, Learned Advocate for the petitioner concedes that during the filing of the writ petition the petitioner had already crossed the retirement age. She however argued that it is nevertheless a fundamental right of the petitioner which have been violated given that it was the Respondents’ duty to absorb the petitioner in the nationalized college soon after the আন্তীকরণ (Annexure-B of the writ petition dated 08.08.2018).

She argued that on 08.08.2018 when the college was nationalized (আন্তীকরণ) at that time the petitioner was in service and therefore not appointing and absorbing him soon after the আন্তীকরণ is a violation of the fundamental rights of the petitioner.

She next contends that although the petitioner has not been appointed and absorbed to the post as a teacher in the nationalized college but however teachers from other colleges in the same footing as the petitioner were however absorbed. She agitated that therefore

the respondents are also in violation of article 29 of the Constitution upon committing discrimination between same class of persons. Upon a query from this bench regarding the issue of discrimination the learned Advocate for the petitioner however could not cite any specific example of discrimination against the petitioner. She persuaded that বিধি ৬(ঙ) of the “সরকারিকৃত কলেজ শিক্ষক ও কর্মচারী আত্মীকরণ বিধিমালা, ২০১৮” bears a vague and unclear language and has consequently created much uncertainty in the law. She contends that moreover such vagueness is being taken advantage of by the respondent. He continues that upon taking advantage of the vagueness of the Rules the respondents are unlawfully and arbitrarily depriving the petitioner and his fundamental rights are thus violated. She further contends that therefore such a vague Rule being ultra vires of the constitution having lacking clarity are not sustainable. She concludes her submission upon assertion that the Rule bears merit ought to be made absolute for ends of justice.

On the other hand learned D.A.G appearing on behalf of the respondent Nos. 1-5 vehemently opposes the rule. He submits that the petitioner has no reason to feel aggrieved since on the date of filing of the writ petition the petitioner was already retired from service. He next draws our attention to বিধি ৬(ঙ) of the “সরকারিকৃত কলেজ শিক্ষক ও কর্মচারী আত্মীকরণ বিধিমালা, ২০১৮” and contends that there is no apparent vagueness whatsoever noticed in বিধি ৬(ঙ) the “সরকারিকৃত কলেজ শিক্ষক ও কর্মচারী আত্মীকরণ বিধিমালা, ২০১৮”. He further submits that even if for sake of academic discussion had the petitioner filed the writ petition before his retirement age in that event also the petitioner did not have any

fundamental right to be absorbed. He submits that no fundamental or statutory right is created by বিধি ৬(ঙ) of the “সরকারিকৃত কলেজ শিক্ষক ও কর্মচারী আত্তীকরণ বিধিমালা, ২০১৮”. He submits that the government has its own Rules and criteria as to who they will and who they will not appoint or absorb whatsoever. He asserts that therefore it is not a vested right of the petitioner to be absorbed ipso facto pursuant to বিধি ৬(ঙ) of the “সরকারিকৃত কলেজ শিক্ষক ও কর্মচারী আত্তীকরণ বিধিমালা, ২০১৮”.

Regarding the petitioner’s claim of alleged discrimination by the respondents the learned D.A.G submits that although the petitioner made such claims but however the petitioner could not show anything from the records that any discrimination has occurred among persons placed on similar footing. He asserts that no fundamental right has been found to be violated. He concludes his submission upon assertion that the Rule bears no merits ought to be discharged for ends of justice.

We have heard the learned counsels for both sides, perused the application, materials on records. Admittedly the petitioner crossed his retirement age before the filing of the writ petition. However since the petitioner raised an issue on the vires of some Rules including বিধি ৬(ঙ) of the “সরকারিকৃত কলেজ শিক্ষক ও কর্মচারী আত্তীকরণ বিধিমালা, ২০১৮”, therefore it is our duty to examine as to whether at all such rule is ultra vires of the Constitution. বিধি ৬(ঙ) of the “সরকারিকৃত কলেজ শিক্ষক ও কর্মচারী আত্তীকরণ বিধিমালা, ২০১৮” is reproduced below:

“৬) অস্থায়ীভাবে নিয়োগের ক্ষেত্রে বাধা-নিষেধ। কোনো ব্যক্তি অস্থায়ীভাবে নিয়োগ লাভের যোগ্য হইবে না, যদি-

ঙ) অস্থায়ীভাবে নিয়োগের তারিখে তাহার বয়স সরকারি কর্মচারীগণের অবসর গ্রহণের বয়স অপেক্ষা অধিক হয়।”

We have particularly examined বিধি ৬(ঙ) of the “সরকারিকৃত কলেজ শিক্ষক ও কর্মচারী আত্মীকরণ বিধিমালা, ২০১৮” which the petitioner claims to be ultra vires of the Constitution. After perusal of বিধি ৬(ঙ) of the “সরকারিকৃত কলেজ শিক্ষক ও কর্মচারী আত্মীকরণ বিধিমালা, ২০১৮” we are of the considered view that apparently we do not find any vagueness in বিধি ৬(ঙ) of the “সরকারিকৃত কলেজ শিক্ষক ও কর্মচারী আত্মীকরণ বিধিমালা, ২০১৮”. In our understanding Rule ৬(ঙ) contemplates that in case of temporary appointment as a teacher if the age of the teacher is to be found to be beyond the retirement age of any government employees, in that case such person will not be considered for appointment for temporary appointment whatsoever.

The learned Advocate for the petitioner also contended that the petitioner is an assistant professor of accounting in the Sharonkhola Government College. He received appointment letter to join as a lecturer in the said college on 31.10.1988 and joined the said college on 01.11.1988. Thereafter he was promoted to the post of assistant professor of the same subject on 01.11.2013 and since his joining he has been performing his duty with utmost sincerity and diligence. She also contends that the Sharonkhala College where the petitioner is working was established in 1978. The said college was nationalized on 08.08.2018 vide circular No. 37.00.000.070.002.004.2018-83 dated 12.08.2018 pursuant to Bidhimala, 2018. She further contended that due to the ‘vague’ language used in Rule ৬(ঙ) including some other

Rules, the Respondents have taken undue advantage of such vagueness. She further contended that consequently by taking such undue advantage of the vague expression, used in the Rules, the Respondents are depriving the petitioner of his fundamental rights to be absorbed and regularized pursuant to nationalization.

Against such argument we are of the view that upon examination we however do not find any vagueness in বিধি ৬(ঙ) of the “সরকারিকৃত কলেজ শিক্ষক ও কর্মচারী আন্তীকরণ বিধিমালা, ২০১৮”. The learned Advocate for the petitioner argued that since there is no specification in বিধি ৬(ঙ) of the “সরকারিকৃত কলেজ শিক্ষক ও কর্মচারী আন্তীকরণ বিধিমালা, ২০১৮” as to pursuant to nationalization when a person may be considered temporary appointment, therefore such vagueness has deprived the petitioner of his rights to be appointed and absorbed pursuant to আন্তীকরণ. She further contended that the petitioner crossed the retirement age pursuant to আন্তীকরণ বিধিমালা, ২০১৮ is not due to any fault or any laches of the petitioner but due to the arbitrary conduct of the respondents upon misusing the vague language of বিধি ৬(ঙ) of the “সরকারিকৃত কলেজ শিক্ষক ও কর্মচারী আন্তীকরণ বিধিমালা, ২০১৮” . Our considered view is as mentioned above we do not find any vagueness in বিধি ৬(ঙ) of the “সরকারিকৃত কলেজ শিক্ষক ও কর্মচারী আন্তীকরণ বিধিমালা, ২০১৮” and therefore consequently we are of the opinion that বিধি ৬(ঙ) of the “সরকারিকৃত কলেজ শিক্ষক ও কর্মচারী আন্তীকরণ বিধিমালা, ২০১৮” is not ultra vires of the constitution.

The petitioner also contended that to be appointed and absorbed as teacher is a basic fundamental right of the petitioner given that he

has served in the institution long years as a lecturer and subsequently as Assistant Professor. We are in agreement with the argument of the learned D.A.G. Truly enough the government has its own criteria and policy regarding appointment of a person a teacher following nationalization of any institution. Whether at all a teacher or other persons fill such criterias are disputed matters of fact which cannot be entertained in writ jurisdiction. As to who they will appoint following the criteria, is essentially a matter of policy which we are not in a position to examine.

The petitioner raised an issue of discrimination upon assertion of violation of Article 29 of the Constitution. However, although the petitioner claimed discrimination between the petitioner and others but she could not cite any specific example of any such discrimination. Consequently we do not find any discrimination between the petitioner or /and any person in the same footing.

Under the fact and circumstances and foregoing discussion made above, we do not find any merit in this Rule.

In the result, the Rule is discharged without any order as to costs.

Communicate this judgment at once.

I agree.

Kazi Zinat Hoque, J:

Arif(B.O)