

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. 5399 of 2019

In the matter of:

An application under Article
102(2)(a)(i) of the Constitution of the
People's Republic of Bangladesh.

-And-

In the matter of:

Muzahidul Islam Arif

..... Petitioner.

Vs.

Government of the People's Republic
of Bangladesh and others.

..... Respondents.

Mr. Humayun Kabir Sikder, Advocate with

Mr. Mahbub Ibne Ayub, Advocate Mr. Sk.

Shafique Mahmud, Advocate

.....for the petitioner

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

with Mr. Prahlad Debnath A.A.G

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

... for the respondents

Mr. Md. Bodrul Islam, Advocate

... for the respondent No. 4

Heard on: 02.08.2022, 08.08.2022, 11.08.2022,

27.10.2022, 30.10.2022 and judgment on:

02.11.2022.

Kashefa Hussain, J:

Rule nisi was issued calling upon the respondents to show cause as to why the inaction and failure of the respondents to issue appointment letter to the petitioner in spite of being selected and

nominated by Bangladesh Public Service Commission as Personal Officer in Legislative and Parliamentary Affairs Division under the Ministry of Law, Justice and Parliamentary Affairs, Bangladesh Secretariat, Dhaka in a discriminatory manner wherein all other incumbents being selected similarly with the petitioner has been issued appointment letter and working in their respective post should not be declared to have been done without lawful authority and of no legal effect and why the respondents should not be directed to issue appointment letter in favour of the petitioner to the post of Personal Officer in Legislative and Parliamentary Affairs Division under the Ministry of Law, Justice and Parliamentary Affairs, Bangladesh Secretariat, Dhaka as had been nominated and recommended for appointment by the Bangladesh Public Service Commission and/or such other or further order or orders passed as to this Court may seem fit and proper.

The petitioner Muzahidul Islam Arif son of Shah Ahmed Ali and Hosneara Begum, BPSC Registration No. 591148, Village-Dokkhin Chatol, P.S- Kotiadi, District- Kishoregonj is a citizen of Bangladesh.

The respondent No. 1 is the Secretary, Legislative and Parliamentary Affairs Division, Ministry of Law, Justice, Parliamentary Affairs, Bangladesh Secretariat, Dhaka 1000, the respondent No. 2 is the Deputy Inspector-General of Police, Special Branch, S.B. Office, Maligag, Dhaka, the respondent No. 3 is the Chairman, Bangladesh Public Service Commission Secretariat, The Secretary Bangladesh Public Service Commission Secretariat, Sher-E-

Bangla Nagar, Agargaon, Dhaka, the respondent No. 4 is the Deputy Secretary, Nirapotta-3, Security Services Division, Ministry of Home Affairs, Secretariat, Dhaka-1000, the respondent No. 5 is the Joint Secretary (Administration), Legislative and Parliamentary Affairs Division, Bangladesh Secretariat, Dhaka and the respondent No. 6 is the Assistant Secretary, Legislative and Parliamentary Affairs Division, Bangladesh Secretariat, Dhaka-1000.

The petitioners' case inter alia is that the petitioner had appeared in an examination in the keenly contested BCS Examination for the Post of Personal Officer in different Ministries vide an open circular. The petitioner had participated in that examination. That after participation as a candidate the examination under BPSC, for the post of Personal Officer under different Ministries he had successfully passed out in written examination, viva, and then was recommended for appointment as 'Personal Officer' vide a letter under Memo No. 80.00.0000.301 (Confidential), 17.001.18.-07 dated 18.02.2018 selecting him to the post of Personal Officer. Bangladesh Public Service Commission had declared the result of selection and the petitioner was provisionally selected and recommended for the post of Personal Officer in Legislative and Parliamentary Affairs Division under the Ministry of Law, Justice and Parliamentary Affairs. That thereafter the petitioner also succeeded in Medical examination as per law. Then the office started police verification. But on police verification it was clearly found that every record of the petitioner was transparent, unblemished and clear. No adverse record was found against him. But on the last occasion the Inquiry officer also

mentioned that his father was a High School B.Sc. Teacher in Katiadi Pilot High School, Kishoregonj. Subsequently it was mentioned in the report that the father of the petitioner was previously involved in the politics of an organization which is an untrue statement. The verification officer also mentioned that he is very sick and inactive. That after wandering to the Ministry of Law, Justice and Parliamentary Affairs, Legislative and parliamentary Affairs Division and in the office of Bangladesh Public Service Commission and the Ministry of Home Affairs, Security Service Division to know when his appointment letter be issued. The other colleagues who had been selected similarly are serving for a long time upon getting appointment letter but the petitioner was not issued any appointment letter stating that his police verification report did not come. No information was given about his appointment or posting. However, in the meantime the petitioner was given letter for medical test and the petitioner was also selected without any defect. That the malicious act of the verification officer is fishy since mentioning about his father involved with a particular political party is a fake, untrue and a concocted statement and baseless contention. It is also very clear that during service tenure of the father of the petitioner or any other person, it can be mentioned that there is no scope to be involved in politics of any political party during his service period. No other statement was found against him which can prove anything that his father was an activist of another organization. So, in such view of the fact, it is clear that nothing illegal was found against either the petitioner or his father. There is no indication that the petitioner had been holding any

post in any organization. The petitioner is unblemished and clean which is also admitted by the verification officer. In such view of the fact, the entire process initiated against him should be stopped and as per the recommendation of the BPSC the petitioner is entitled to get the appointment letter as recognition of his meritorious performance in the examination. So, the inaction and failure of the respondents to issue appointment letter to him is liable to be declared to have been passed without any lawful authority and is of no legal affect. That as per the recommendation of the BPSC the petitioner is entitled to get the appointment letter as recognition of his meritorious performance in the examination. So, the inaction and failure of the respondents to issue appointment letter to him is liable to be declared to have been passed without any lawful authority and to be of no legal affect. That the authority neither issued any letter making cancellation of appointment nor issued any appointment letter which keeps him in stagnation in choosing his profession. Upon waiting for the job for the last 3 / 4 years, in the meantime his age for entering government job has exceeded. Thus the inaction and failure of the respondents to issue appointment letter to the petitioner in spite of being selected and nominated by Bangladesh Public Service Commission as “Personal Officer” and in Legislative and Parliamentary Affairs Division under the Ministry of Law, Justice and Parliamentary Affairs, Bangladesh Secretariat, Dhaka in a discriminatory manner wherein all other incumbents selected along with the petitioner had been issued appointment letter and working in their respective posts of Administrative Officer and Personal Officer under different

Ministries. Hence pursuant to serving a demand of justice notice petitioner filed the writ petition.

Learned Advocate Mr. Humayun Kabir Sikder along with Mr. Mahbub Ibne Ayub, Advocate along with Mr. Sk. Shafique Mahmud learned Advocate appeared for the petitioner while learned D.A.G Mr. Noor Us Sadik Chowdhury along with Mr. Prahlad Debnath A.A.G along with Ms. Farida Parvin Flora, A.A.G appeared for the respondents and learned Advocate Mr. Md. Badrul Islam, Advocate represented the respondent No. 4.

Learned Advocate Mr. Humayun Kabir Sikder for the petitioner submits that the respondents' conduct in refraining from allowing the petitioner to join in the concerned post as Personal Officer and refraining from issuing appointment letter is totally without lawful authority and such action of the respondents is not sustainable. He agitates that the respondents on a flimsy ground refused the petitioner to the designated post and such flimsy grounds are not acceptable. He agitated that although it is clear from the police verification report (Annexure-D) that the petitioner's reputation and past record is absolutely clean without any adverse hint anywhere, but the respondents took a flimsy ground of his father being involved with a particular political party at one stage of his life. He takes us to Annexure-D which is the police verification report dated 05.09.2018. He takes us to the remarks column wherefrom he shows that except a causal, off hand remark on the petitioner's father having been involved at one time with a particular political party there are no other adverse allegations against the petitioner or the petitioner's father. He

submits that it is also clear from the report itself that his father who was a retired teacher is presently unwell due to old age.

He assails that no person can be denied his fundamental right to be appointed to any post whatsoever if he is otherwise qualified unless there are any adverse allegation against him which may implicate him under the relevant law. He submits that the petitioners father's involvement with a particular political party also is not all sustainable given that the police verification report has only by a flimsy and sweeping remark “শিক্ষকতা করাকালীন তিনি জামায়াত শিবির করতেন।” He reiterates that such sweeping remark is certainly not sustainable nor credible in the eye of law. He next submits that although the police verification report by one sweeping remark implies the petitioner's father's involvement with a particular political party but however it is clear from Annexure-J, K, L, M of the supplementary affidavit filed by the petitioner that the sweeping remark in the police verification report has no factual basis. He agitates that one sweeping remark of the father's involvement can not be conclusive proof of any allegation. He draws attention to Annexure- J which is the certificate issued by the local chairman of Bangladesh Awami League, Kotiadi, Kishoregonj, Annexure-K which is the certificate issued by the local chairman of Bangladesh Awami League, 5 No. Mumurdia Union Unit, Kotiadi, Kishoregonj and also draws us to which Annexure-L is the certificate issued by the Acting Commander, Bangladesh Muktijudda Songshad, Kotiadi, Kishoregonj. He submits that by all these three certificates which manifest absolutely positive report of the father of the petitioner, it is clear that the one line sweeping

remark in the police verification report hinting at the involvement of the petitioner's father with a particular political party is not true. He continues that the sweeping remark was evidently for malafide purpose reasons best known to the respondents to deprive the petitioner of his lawful right to be appointed to the post.

He takes us to Annexure- M and submits that Annexure M is further proof that the father was never involved with Jamat Sibir (জামাত শিবির) at any stage of his life. He draws attention to annexure-M and shows us that the two full brothers sons of the same father are already employed in government service. He submits that such inconsistent conduct glaringly shows the malafide intention of the respondents and also clearly show that the petitioner's father was never involved in any such activities. He submits that since the two full brothers of the petitioner all sons of the same father are already holding government jobs therefore there is no reason to exclude the petitioner who is otherwise qualified for joining in government service. He concludes his submissions upon assertion that the conduct of the respondents are not sustainable and the Rule bears merit ought to be made absolute.

On the other hand Learned D.A.G Mr. Nood Us Sadik by way of filing affidavit in opposition vehemently opposes the rule. He submits that since it is implied from the police verification report that in Annexure-D there is an adverse remark regarding his father being involved with Jamat Sibir therefore it is risky to appoint the petitioner to the designated post. By way of the affidavit in opposition he submits that the police verification report is the final and confidential

report and therefore the police verification report cannot be derogated from and the respondents not issuing appointment letter to the petitioner on the basis of police verification report is correct and needs no interference with in writ jurisdiction. He continues that the police verification report does not show a clear and positive impression of his family back ground and origin rather contains adverse remarks having affinity with anti-liberation forces of 1971, which forces are still showing disobedience and disregard to our hard earned Constitution achieved through the sacrifice of lives of the martyrs of liberation war. He continues that further it is a policy of the present government to protect the government institutions from the member of any family who participated in anti liberation movement and are members of any banned organization. He submits that on the face of the police verification report by way of Annexure D implies involvement of his father with a particular political party as Jamat Sibir. From the supplementary affidavit he shows that by way of recommendation letter issued by the BPSC it is stated that an appointment letter is to be given to any qualified candidate only after verification of his past record (জীবন বৃত্তান্ত). He concludes his submission upon assertion that the Rule bears no merits ought to be discharged for ends of justice.

Learned Advocate for the respondent No. 4 by way of affidavit in opposition supports the submissions of the learned D.A.G. He submits that the police verification report manifest the records of a particular candidate and therefore the police verification report giving adverse remarks of the petitioner's father which has been relied upon

by the respondents and the non issuance of the appointment letter has been rightly done. He concludes his submission upon assertion that the Rule bears no merit ought to be discharged for ends of justice.

We have heard the learned counsels, perused the application and materials on records before us. We have particularly examined the police verification report and compared it with Annexure- J, K, L and M of the supplementary affidavit. We have drawn our attention particularly upon these annexures. The remark column in Annexure-D is reproduced below:

উপর্যুক্ত	স্মারক নং- ১৩৫৩/ভিআর, তাং ০১/০৮/১৮ খ্রি:
নিম্নোক্ত কারণের জন্য	তদন্তে প্রার্থীর নাম ঠিকানা সঠিক ও স্বভাব-চরিত্র ভাল
অনুপযুক্ত:	এবং জন্মসূত্রে বাংলাদেশী নাগরিক। তিনি কোন রাজনৈতিক
স্থান- ডি,এম,বি, কিশোরগঞ্জ	দলের সাথে জড়িত নন বলে জানা যায়। সংশ্লিষ্ট থানা ও অত্র
তারিখ-০১/০৮/২০১৮ খ্রি:	জেলা ও বিশেষ শাখায় তার বিরুদ্ধে বিরূপ কোন তথ্য পাওয়া
	যায়নি। তবে তার পিতা কটিয়াদি পাইলট উচ্চ বিদ্যালয়ে
	বিএসসি শিক্ষক ছিলেন। বর্তমানে অবসর গ্রহণ করেছেন।
	শিক্ষকতা করাকালীন তিনি জামায়াত শিবির করতেন।
	বর্তমানে বার্ধক্য জনিত কারণে অসুস্থ ও নিষ্কর।

স্বাঃ/-অস্পষ্ট

০১/০৮/২০১৮

পুলিশ সুপারিনটেনডেন্ট, জেলা

স্পেশাল ব্রাঞ্চ/ ডেপুটি ইন্সপেক্টর

জেনারেল অব পুলিশ, স্পেশাল

ব্রাঞ্চ, বাংলাদেশ।

প্রত্যয়নে সংশ্লিষ্ট প্রার্থীর বিরুদ্ধে কোন কিছু না পাওয়া গেলে জেলা স্পেশাল ব্রাঞ্চ পুলিশ সুপারিনটেনডেন্ট, বাংলাদেশ স্পেশাল ব্রাঞ্চের ডেপুটি ইন্সপেক্টর জেনারেল অব পুলিশ জবাবসহ এই ফরমটি কর্তৃপক্ষের নিকট সরাসরি ফেরত পাঠাইবেন।

কিন্তু যদি সংশ্লিষ্ট প্রার্থীর বিরুদ্ধে কোন তথ্য পাওয়া যায় তাহা হইলে জেলা স্পেশাল ব্রাঞ্চের পুলিশ সুপারিনটেনডেন্ট বাংলাদেশ স্পেশাল ব্রাঞ্চের ডেপুটি ইন্সপেক্টর জেনারেল অব পুলিশের মাধ্যমে জবাবসহ এই পরমটি প্রেরণকারী কর্তৃপক্ষের নিকট পাঠাইবেন।

স্বাঃ/-অস্পষ্ট

০৫/০৯/২০১৮

ডেপুটি ইন্সপেক্টর জেনারেল অব পুলিশ

স্পেশাল ব্রাঞ্চ, বাংলাদেশ, ঢাকা।

১৩। প্রার্থীর চরিত্র ও পূর্ব পরিচয় সম্পর্কে সাক্ষ্য দিতে পারেন কিন্ত প্রার্থীর সহিত আত্মীয়সূত্রে আবদ্ধ নহেন এমন দুই ব্যক্তির ঠিকানা সহ নাম (সংসদ সদস্য, প্রথম শ্রেণীর গেজেটেড অফিসার, বিশ্ববিদ্যালয়ের অধ্যাপক, রিডার সিনিয়র লেকচারার ও বেসরকারী মহাবিদ্যালয়ের অধ্যক্ষ):

নাম	ঠিকানা
প্রফেসর মোঃ সিরাজুল ইসলাম	উপাধ্যক্ষ, নেত্রকোনা, সরকারী কলেজ নেত্রকোনা, মোবাইল-০১৭১১০৭২৪৫৭
প্রফেসর ড. এটিএম আতিকুর রহমান	ইতিহাস বিভাগ, জাহাঙ্গীর নগর বিশ্ববিদ্যালয়, সাভার, ঢাকা। মোবাইল-০১৮২৯৩৬৯১৬৪

১৪। বিবাহিত বা অবিবাহিত (বিবাহিত হইলে বা বিবাহের প্রস্তাব থাকিলে যাহাকে বিবাহ করা

হইয়াছে বা বিবাহ করার প্রস্তাব রহিয়াছে তাহার আত্মীয়তা উল্লেখ করিতে হইবে): অবিবাহিত।

আমি শপথপূর্বক বলিতেছি যে, উপরে প্রদত্ত বিবরণসমূহ আমার জানামতে সঠিক।

স্বাঃ/-অস্পষ্ট

০৭/০৪/২০১৮খি:

প্রার্থীর স্বাক্ষর

স্বাঃ/- অস্পষ্ট

০৮/০৪/২০১৮

প্রেরণকারী অফিসারের স্বাক্ষর ও পদবী
এবং পুরা ঠিকানাসহ অফিসের নাম ও তারিখ।

From the police verification report which is annexure-D it is clear that there is nothing negative whatsoever revealed against the petitioner regarding his past record or otherwise. It transpires from Annexure-D that he has a clean record with no involvement whatsoever in any adverse activities at any stage of his student life or subsequently. The only remarks that the respondents are trying to fall back are “তবে তার পিতা কটিয়াদি পাইলট উচ্চ বিদ্যালয়ে বিএসসি শিক্ষক ছিলেন। বর্তমানে অবসর গ্রহণ করেছেন। শিক্ষকতা করাকালীন তিনি জামাত শিবির করতেন। বর্তমানে বার্ষিক্য জনিত কারণে অসুস্থ ও নিষ্কৃয়া”.

It is clear that there is only a vague remark hinting the father being involvement with Jamat Sibir politics during his career as a teacher. But however it is also evident that apart from a vague hint there is no proof indicated in the police verification report which may show that his father was ever involved with a particular political party. It appears that the police verification report made an omnibus sweeping remark, on the fathers alleged involvement with Jamat Sibir.

It may be pertinent to note that Jamat জামাত implies a particular political party and Sibir শিবির implies the student unit of the same party. The term Jamat Sibir জামাত শিবির in the police report is most uncertain and does not specifically state as to whether he was involved with jamat জামাত or Sibir শিবির. It is absurd to hold and defies all reasoning that any person would be involved with two entities of a political outfit simultaneously.

Further it is our considered view, that a police verification report is not a sacrosanct piece of document. Sitting in writ jurisdiction it is our duty to examine the other factors for example absence of proof of the allegation against the father of the petitioner. Evidently, except one sweeping remark hinting at the petitioners father's involvement with a particular political party at an uncertain time in the past, such claim has not been manifested by way of any other document.

We have next examined annexure J, K and L of the supplementary affidavit filed by the petitioner. We have particularly perused Annexure- J, K and L which are some প্রত্যয়ন পত্র issued by two local Awami League leaders being Chairpersons of the party and also by way of local বাংলাদেশ মুক্তিযোদ্ধা সংসদ, কটিয়াদী উপজেলা কমান্ড under their official heading. All these annexures signed by three persons by dint of their position issued the প্রত্যয়ন পত্র on the same terms which is reproduced below:

“প্রত্যয়ন পত্র

এই মর্মে প্রত্যয়ন করা যাচ্ছে যে, জনাব শাহ আহমদ আলী (বি.এস.সি), গ্রাম-দক্ষিণ চাতল, ডাকঘর-চাতল, উপজেলা- কটিয়াদী, জেলা-কিশোরগঞ্জ, কটিয়াদী পাইলট বালক উচ্চ বিদ্যালয় বর্তমানে কটিয়াদী সরকারি উচ্চ বিদ্যালয়ের সিনিয়র সহকারী শিক্ষক হিসেবে সুনামের সাথে দীর্ঘদিন চাকুরী করেছেন। তার বিরুদ্ধে যুদ্ধাপরাধের ন্যূনতম কোন অভিযোগ নেই এবং রাষ্ট্র বিরোধী কোন কর্মকাণ্ডের সাথেও জড়িত নন এবং তার বিরুদ্ধে এ সংক্রান্ত কোন মামলাও নেই। শিক্ষকতা করা কালীন বা পরবর্তীতে তিনি কোন রাজনৈতিক দলের সাথে সরাসরি যুক্ত ছিলেন না।

আমি তার জীবনের সর্বাঙ্গীণ উন্নতি ও মঙ্গল কামনা করি।”

Therefore upon a plain reading it is clear from Annexures J, K and L that the certificates issued by the two leaders of Bangladesh Awami League and by the বাংলাদেশ মুক্তিযোদ্ধা সংসদ, কটিয়াদী উপজেলা কমান্ড made clearly positive remarks about the father of the petitioner. Upon comparison with Annexure-D with Annexure J,K and L we are of the considered view that the police verification report which made only a one line omnibus and sweeping comment hinting at the father's involvement with Jamat Sibir is not correct. Moreover we do not find any other proof neither in the police verification report nor otherwise any details as to when, where or in what manner and capacity the petitioner's father was involved with Jamat Sibir.

Next we have examined Annexures 'M' of the supplementary affidavit filed by the petitioner. From Annexure M it shows that two full brothers who are sons of the same father are already in government job, one is Administrative Officer, Ministry of Primary and Mass Education, Bangladesh Secretariat, Dhaka and another is a primary teacher in the Boaliya Government Primary School, Kotiadi, Kishoregonj. Therefore on the face of the record it is evident that the sweeping remark implying than the father of the petitioner was involved with any political outfit or party are devoid of any factual basis in absence of any credible evidences.

Moreover nowhere in the records do we find any adverse remarks about the petitioner and the petitioner's clean record which is also clearly admitted in the police verification report.

Upon summing up the submissions of the learned Advocates and upon perusal of the application, we find merits in this Rule.

In the result, the Rule is made absolute. The inaction and failure of the respondents to issue appointment letter to the petitioner in spite of being selected and nominated by Bangladesh Public Service Commission as 'Personal Officer' in Legislative and Parliamentary Affairs Division under the Ministry of Law, Justice and Parliamentary Affairs, Bangladesh Secretariat, Dhaka in a discriminatory manner wherein all other incumbents being selected similarly with the petitioner has been issued appointment letter and working in their respective post is declared to be without lawful authority and of no legal effect.

In the absence of any other allegations against the petitioner himself, the respondents are hereby directed to issue appointment letter of the petitioner to the post of 'Personal Officer' in Legislative and Parliamentary Affairs Division under the Ministry of Law, Justice and Parliamentary Affairs, Bangladesh Secretariat, Dhaka.

Communicate this judgment at once.

I agree.

Kazi Zinat Hoque, J:

Arif(B.O)