District-Naogaon.

IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 2068 of 2021.

Koigram Govt. Primary School, represented by its Headmaster of village-Dhamirhat under Police-Station-Dhamirhat, District-Naogaon.

------ Defendant-Appellant-Petitioner.

-Versus-

Most. Jannatul Ferdous.

------ Plaintiff-Respondent-Opposite-Parties.

Mr. Ahmed Nowshed Jamil with
Mrs. Sayeda Shawkat Ara, Advocates

------ For the Defendant-Appellant-Petitioner.

Mr. Md. Rabiul Hasan, Advocate.

------ For the Plaintiff-Respondent-Opposite-Parties.

Mr. Kazi Rahman, A.A.G.

----- For the Defendant-Respondent-Opposite-Parties.

Heard and Judgment Delivered On: 22.07.2025.

Md. Toufiq Inam, J.

This Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned judgment and decree dated 08.03.2021 (decree signed on 15.03.2021) passed by the learned Joint District Judge, 2nd Court, Naogaon, in Other Class Appeal No. 16 of 2018 affirming the judgment and decree dated 11.10.2017 (decree signed on 17.10.2017) passed by the learned Assistant Judge, Dhamoirhat, Naogaon in Other Class Suit No. 197 of 2008 decreeing the suit, should not be set aside and/or why such other or further order or orders should not be passed as to this Court may seem fit and proper.

Opposite party No. 1, as plaintiff, instituted Other Class Suit No. 197 of 2008 in the Court of the learned Assistant Judge, Dhamoirhat, Naogaon seeking a declaration that the resignation letter dated 04.11.2004 and the impugned Memo dated 28.11.2004 are void, collusive, and not binding upon the plaintiff.

The case of the plaintiff, in brief and to the extent relevant for disposal of this Rule, is as follows:

(a) The managing committee of the school, by a resolution dated 01.01.1991, appointed the plaintiff as the headmaster of the school, and she duly joined the post on 22.01.1991, which was duly approved by the President of the managing committee. While discharging her duties, the plaintiff fell ill and, on medical advice, decided to take rest. Accordingly, she formally handed over charge of the headmaster's responsibilities to defendant No. 15 on 14.09.2004 in writing to avail leave on grounds of illness. Due to her illness and maternity-related issues, the plaintiff could not attend the school. Taking advantage of her absence, the defendants, in collusion with each other, allegedly fabricated a false resignation letter dated 04.11.2004 by forging the plaintiff's signature, and circulated the same to the District Primary Education Office and other relevant offices. Based on that, defendant No. 11 issued a letter dated 28.11.2004 addressed to the plaintiff. The plaintiff came to know about the so-called resignation through that letter. However, the resignation letter was never acted upon.

(b) On 28.04.2007, defendants Nos. 2 and 15 asked the plaintiff to hand over charge of the headmaster and threatened her by

saying that a new headmaster would be appointed soon. The plaintiff again fell ill with jaundice on 05.05.2007 and had to take further leave. In the meantime, defendant No. 2, in collusion with others, passed a resolution dated 09.11.2004 purporting to dismiss the plaintiff from the post of Headmaster, which the plaintiff contends was illegal and mala fide. She asserts that no show-cause notice was served, no inquiry committee was formed, and no opportunity of being heard was given prior to her dismissal.

(c) Consequently, the plaintiff filed the suit seeking a declaration that the dismissal order dated 01.11.2004 is illegal, void, and collusive, and claiming entitlement to arrear salaries. She also sought a mandatory injunction directing the defendants to nationalize her service.

Defendant Nos. 2 and 11–14 contested the suit by filing a written statement denying the material allegations and contending, among other things, that the suit is not maintainable in its present form, is barred by limitation, and suffers from defects of parties. They claimed that the plaintiff failed to perform her duties, was not on officially sanctioned leave, and voluntarily submitted her resignation on 04.11.2004 to the District Primary Education Officer. The managing committee discussed her absence in a resolution dated 19.05.2005. Prior to issuing the dismissal order, she was asked to rejoin within seven days. Furthermore, a newspaper notice was published on 17.11.2005 asking her to resume duty, failing which the post would be declared vacant. As the plaintiff did not comply, they argue, the dismissal was lawful and followed due process.

At trial, the plaintiff examined three witnesses and produced documentary evidence in support of her claim. The contesting defendants examined one witness and also produced documents in their favour. Upon hearing the parties and assessing the evidence, the learned trial Court decreed the suit in favour of the plaintiff.

Aggrieved, the contesting defendants filed Other Class Appeal No. 16 of 2018 before the District Judge, Naogaon. On transfer, the appeal was heard by the learned Joint District Judge, 2nd Court, Naogaon, who, upon re-appraisal of the evidence, dismissed the appeal and affirmed the judgment and decree of the trial Court. Thereafter, defendant No. 1, representing the school, as petitioner, invoked the revisional jurisdiction of this Court and obtained the present Rule.

Mr. Ahmed Nawshed Jamil, appearing with Mrs. Sayeda Shawkat Ara, the learned Advocates for the petitioner (defendant No. 1), submits that at the time of nationalization, only those teachers who fulfilled the criteria for becoming government employees were eligible, and therefore the Civil Court lacked jurisdiction to entertain and decree the suit. He submits that the present suit is not maintainable, as the plaintiff became a government servant upon nationalization and should have sought remedy before the appropriate Administrative Tribunal in respect of any service-related grievance.

Furthermore, he argues that the plaintiff's salary scale was never determined, and hence, the defendants cannot be legally directed to pay arrears. Since the plaintiff remained absent for years, the school authorities were compelled to issue a public notice directing her to

rejoin, failing which her post would be considered vacant. The plaintiff allegedly availed leave without prior approval from the managing committee, and therefore her removal from service was lawful.

He further contends that the Courts below committed a serious error in not sending the signature on the resignation letter for expert opinion, which has resulted in a failure of justice. He also argues that at the time of nationalization, teachers had to fulfill certain statutory criteria, and in the present case, without considering those legal requirements, the Courts below erroneously directed reinstatement of the plaintiff, thereby occasioning a failure of justice. He submits that at the time of filing the suit, the institution was a non-government school and, as such, the plaintiff, being governed by the master and servant rules, could at best claim damages rather than reinstatement. In the above circumstances, the learned Advocate prays for making the Rule absolute.

Mr. Md. Rabiul Hasan, the learned Advocate appearing for the plaintiff-respondent-opposite party, submits that the contentions advanced on behalf of the petitioner are entirely misconceived and untenable in law and on facts. He submits that the plaintiff's service did not fall within the purview of government service at the time of her appointment or dismissal. It is an undisputed fact that the school in question was a non-government educational institution until its subsequent nationalization. The plaintiff was appointed in 1991, and the alleged dismissal occurred in 2004, both well before the school was brought under government control. Accordingly, the cause of action arose prior to nationalization, and therefore the Civil Court had

clear jurisdiction to entertain the suit, and the suit was rightly instituted in 2008.

He further contends that the argument regarding maintainability before the Administrative Tribunal is wholly misplaced. Since the dispute pertains to a period when the plaintiff was a teacher in a non-government school and governed by the contract of service under the relevant managing committee, the Administrative Tribunal has no jurisdiction in this matter.

Addressing the allegation of long absence, learned Counsel submits that the plaintiff was compelled to take leave on medical grounds, which included maternity-related complications. The leave was not unauthorized, and the plaintiff formally handed over charge in writing to defendant No. 15 prior to going on leave. Her prolonged absence was neither willful nor unjustified, and the managing committee was fully aware of her situation. Instead of assisting a sick employee, the defendants collusively fabricated a false resignation letter dated 04.11.2004 and engineered a memo dated 28.11.2004, both of which bear forged signatures and were never acted upon.

He submits that defendant No. 2, the then President of the Managing Committee and also the plaintiff's estranged husband, acted out of personal vendetta and played a central role in procuring the forged resignation. The plaintiff categorically denied signing any such letter, and no credible evidence was produced by the defendants to prove otherwise. The Courts below, upon careful appreciation of both oral and documentary evidence, rightly held that the resignation and

subsequent memo were illegal, void, collusive, and not binding on the plaintiff.

Regarding the failure to send the signature for expert opinion, it is submitted that both the trial and appellate Courts found sufficient basis in the evidence adduced to determine the fraudulent nature of the resignation without requiring expert verification, particularly as the burden of proof lay with the defendants, who failed to discharge it. It is further submitted that the plaintiff had never voluntarily relinquished her position, and therefore, the question of issuing a newspaper notice or invoking vacancy rules does not arise. The Courts below, based on concurrent findings of fact, rightly ordered her reinstatement and directed payment of arrear salaries from 17.09.2004, the date she was unlawfully prevented from resuming her duties.

Finally, Mr. Hasan submits that the petitioner's arguments regarding salary scale and nationalization criteria are wholly irrelevant, as those issues pertain to a later period and do not affect the legality of the plaintiff's original appointment or her wrongful dismissal. The Courts below committed no legal error, and the decree was passed in accordance with law and justice.

Mr. Kazi Rahman, the learned Assistant-Attorney-General appearing on behalf of the Defendants-Respondents-Opposite Party Nos.11-18 adopts the submissions advanced by Mr. Ahmed Nowshed Jamil.

Upon hearing the learned Advocates for both parties and perusing the materials on record, this Court finds that the core issue revolves around the legality of the plaintiff's alleged resignation and her subsequent dismissal from service. It is not disputed that the plaintiff was appointed as Headmaster of the school on 22.01.1991 by a resolution of the managing committee dated 01.01.1991. It is also not in dispute that at the time of both her appointment and alleged dismissal in 2004, the school was a non-government educational institution.

The petitioner has argued that the suit is barred by jurisdiction, as the plaintiff, being a government servant, ought to have approached the Administrative Tribunal. This argument is fallacious and not sustainable in law. It is manifest from the record that the dispute arose in 2004, long before the nationalization of the school. The plaintiff's relationship with the institution was that of an employee governed by the rules of the managing committee, not government service rules. Hence, the Civil Court had ample jurisdiction to entertain and adjudicate the suit, and the question of approaching the Administrative Tribunal does not arise.

Regarding the allegation of long unauthorised absence, the evidence on record establishes that the plaintiff had been suffering from illness and had availed maternity leave. She had formally handed over charge of her duties to defendant No. 15 on 14.09.2004 before proceeding on leave. There is no cogent evidence to show that her absence was willful, prolonged beyond medical necessity, or without notice to the managing committee. The Courts below rightly found that the managing committee acted in undue haste and without due process by treating her absence as abandonment.

The petitioner's contention that the resignation letter dated 04.11.2004 and the subsequent memo dated 28.11.2004 were voluntarily issued by the plaintiff has been convincingly rebutted by the plaintiff's testimony and the surrounding circumstances. The evidence indicates that defendant No. 2, the then President of the managing committee and also the plaintiff's estranged husband, acted with bias and exerted influence over the school's management. Both Courts below, upon detailed analysis of the evidence, rightly concluded that the resignation letter was forged, collusive, and not acted upon.

As to the petitioner's grievance that the resignation letter should have been sent to an expert for verification of the signature, this Court finds no merit. The trial Court, having had the opportunity to examine the demeanor of witnesses and assess the credibility of evidence, was under no legal compulsion to seek expert opinion when other reliable evidence, both oral and documentary, sufficiently disproved the authenticity of the resignation. Moreover, the burden of proving the genuineness of the resignation lay with the defendants, which they failed to discharge.

The petitioner's further contention that the plaintiff's salary scale was never fixed and hence no direction could be given to pay arrears is also misplaced. The Courts below granted relief based on the finding that the plaintiff was unlawfully removed and never ceased to be in service. The obligation to pay salary arises not from fixation of scale but from continuity of employment. Therefore, the direction to pay arrear salaries from 17.09.2004 is legally justified and supported by the evidence.

This Court also finds no merit in the argument that the plaintiff, being a teacher of a non-government institution, could at best claim damages under the master-servant relationship. While ordinarily a contract of personal service is not specifically enforceable, exceptions apply where dismissal is in breach of statutory obligation or vitiated by fraud or mala fide, as in the present case. Both Courts below rightly held that the plaintiff's removal was illegal, void, and actuated by mala fide intention.

It is well-settled that where the first appellate Court affirms the findings of the trial Court, the revisional Court must exercise great caution and may interfere only where there is a manifest error of law, a clear misreading or non-reading of material evidence, a lack of jurisdiction, or a gross failure or miscarriage of justice.

Upon hearing both parties and examining the materials on record, this Court finds that both the trial Court and the appellate Court have delivered well-reasoned judgments decreeing the suit. The findings are supported by the evidence on record, and no instance of misreading or non-reading of evidence has been demonstrated. In essence, the defendant-petitioner seeks a re-appreciation of evidence, which is impermissible within the limited scope of revision under section 115 of the Code of Civil Procedure. No jurisdictional error, illegality, or material irregularity in the proceedings has been shown. The concurrent findings of fact do not disclose any miscarriage of justice warranting interference by this Court.

Accordingly, **the Rule is discharged**. The impugned judgment and decree passed by the learned Courts below are hereby upheld.

The interim order of stay granted earlier by this Court is hereby recalled and stands vacated.

The office is directed to send down the lower Court's record together with a copy of this judgment at once.

(**Justice Md. Toufiq Inam)**

Sayed. B.O.