

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

WRIT PETITION NO. 8889 OF 2021

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. Taib Hossain

.....Petitioner

-VERSUS-

Government of Bangladesh, represented by the
Secretary Ministry of Education and others

..... Respondents

Mr. Md. Humayun Kabir, Advocate

..... For the Petitioner

Mr. Mohammad Waliul Islam Oli, D.A.G with

Mr. Mohammad Rashadul Hassan, D.A.G,

Ms. Nilufar Yesmin, A.A.G,

Mr. Md. Moshir Rahman (Rahat), A.A.G,

Mr. Md. Motasin Billah Parvez, A.A.G and

Mr. Bishwanath Karmaker, A.A.G

.....For the Respondents

Present:

Mr. Justice Sashanka Shekhar Sarkar

And

Justice Urmee Rahman

Heard on 19.04.2026 and 08.06.2026

Judgment on 15.06.2026

Urmee Rahman, J:

In the instant matter a Rule Nisi was issued on an application under
Article 102 of the Constitution of the People's Republic of Bangladesh in
the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned Memo No. 73/Nao: dated 29.08.2021 (Annexure-D) issued by the respondent no. 3 debarring the petitioner to get M.P.O. as Headmaster of Jabai Somija Begum High School, Sapahar, Naogaon should not be declared to have been made without 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.”

At the time of issuance of the Rule Nisi it was further ordered that,

“Pending hearing of the Rule, the impugned Memo No. 73/Nao: dated 29.08.2021 (Annexure-D) issued by the respondent No. 3 be stayed for a period of 06 (six) months from date.”

The order of stay was extended from time to time and finally by the order dated 07.05.2023 it was extended till disposal of the Rule.

Necessary facts for disposal of the instant Rule, in short, are that, after having achieved the required educational qualifications, the petitioner joined the Shironti Moynakuree High School, Shapahar, Naogaon on 09.05.1999 as an Assistant Teacher of Mathematics and he was given M.P.O. as Assistant Teacher of the said school from 09.05.1999. While serving in the said capacity, he was appointed as Assistant Headmaster of the said school by resolution of the Managing Committee dated 02.12.2000. His service as Assistant Headmaster was regularized and validated by validation notice dated 18.07.2002. Accordingly, his salary scale was confirmed in the month of May, 2003. Thereafter his salary scale and post as an Assistant Headmaster was

confirmed in November, 2010. The petitioner served in the said post till 19.01.2020 to the satisfaction of all concerned until he joined the present school i.e. Jabai Samija Begum High School as a Headmaster.

Jabai Samija Begum High School situated in Sapahar, District Naogaon published an appointment circular for appointment of Headmaster by the circular dated 20.01.2020 and after following all the legal procedures, the petitioner was given appointment by the Managing Committee on 28.09.2020 as Headmaster of the said school. Thereafter, a memo was sent to the authority for enlisting his name in the M.P.O. as Headmaster. After receiving the said Memo, the respondent No. 3 by the impugned Memo dated 29.08.2021 informed the Managing Committee of the said school that there is no scope to enlist the name of the petitioner as Headmaster because his appointment as Assistant Headmaster was not made in accordance with law, thereby refused to enlist his name in the M.P.O. as Headmaster of the said school.

Being aggrieved by the said memo and there having no other alternative and equally efficacious remedy, the petitioner has filed the instant writ petition and obtained the Rule and order of stay.

Learned Advocate Mr. Md. Humayun Kabir appeared on behalf of the petitioner. At the very outset he submitted that, the impugned order is absolutely mala fide and arbitrary inasmuch as the appointment of the petitioner as Assistant Headmaster was given by the Managing Committee after complying with all legal formalities, which was duly accepted and approved by the competent authority in accordance with law

and as such the impugned order is without lawful authority and without any legal effect.

He next submitted that, the petitioner has accrued a vested and legal right to enjoy the M.P.O. as a Headmaster after his appointment by the competent authority and such right cannot be taken away and curtailed by the respondent No. 3 on the reason mentioned in the impugned order and as such the impugned order is liable to be set aside.

It is further submitted by the learned Advocate that the allegation made against the petitioner and the reasons mentioned in the impugned order as well as the inquiry report, do not disentitle the petitioner from his previous M.P.O as Assistant Headmaster and as such there is no legal impediment in granting M.P.O as Headmaster. Hence, a direction may be given upon the respondents to include the petitioner's name in the Monthly Pay Order.

In support of his submission learned Advocate placed reliance on a reported decision in a case of *Helal Uddin (Md) Vs. Government of Peoples Republic of Bangladesh and others* reported in **55 DLR (2003) 506**, wherein it was held that,

“The petitioner having worked or performed his duties as an Assistant Professor and received salary as an Assistant Professor for about 23 months his right to the post of Assistant Professor and the pay he received were vested and it does not now fit the mouth of respondent no. 4, who is an Acting Principal to say that the

petitioner was not duly promoted to the post of Assistant Professor and/or entitled to get pay in the scale of Taka 7200-260 X 14-10840.”

Therefore he prays that the Rule may be made absolute.

On the other hand, Mr. Bishwanath Karmaker, the learned Assistant Attorney General contested the Rule by filing an affidavit in opposition on behalf of the respondent No. 2, i.e. Director General of Secondary and Higher Education Directorate.

He strongly opposed the Rule and submitted that, the petitioner's appointment as Assistant Headmaster on 02.12.2000 was given by the Managing Committee without publishing any appointment circular or by taking any competitive examination. As per the Staff Pattern-1995 (জনবল কাঠামো-১৯৯৫), the post of Assistant Headmaster required 12 (twelve) years of teaching experience as a teacher, which the petitioner did not possess at the time of his appointment in 2000. That the so called ‘validation notice’ dated 18.07.2002 and the subsequent confirmation of salary scale do not cure the fundamental illegality of the initial appointment, which was made in violation of the mandatory recruitment rules. Validation cannot convert a void appointment into a valid one.

He next submitted that, the respondent No. 3 acted with lawful authority and upon a proper inquiry. The impugned memo clearly states that the appointment was made without competitive examination and in violation of the Staff Pattern of 1995. Furthermore, the petitioner

appeared before the Inquiry Officer and submitted relevant documents in his support. Therefore, the principle of natural justice was fully complied with. The inquiry report dated 21.03.2021 was based on documentary evidence and clearly found the initial appointment to be illegal. Hence, the Rule issued in the instant writ petition is liable to be discharged.

He candidly submitted that, a benefit obtained on the basis of an illegal appointment does not create the vested right, the doctrine of *factum valet* does not apply to statutory or mandatory recruitment rules. If the foundational appointment as Assistant Headmaster is void *ab initio*, no right can flow from it, including the right to be considered for MPO as Headmaster. A vested right can only be accrued from a valid and legal appointment. Therefore, the action of the respondent No. 3 is a lawful exercise of administrative and supervisory power over MPO enlistment to safeguard public funds. Hence, he prayed that the Rule having no merit is liable to be discharged.

We have heard the learned Advocate for the petitioner as well as the learned Assistant Attorney General and perused the writ petition, affidavit in opposition and all the documents annexed therewith.

On examination of the annexures, particularly Annexure-A to A(7), we find that the petitioner was appointed as an Assistant Teacher on 09.05.1999 and the next year on 02.12.2000 he was given appointment as temporary Assistant Headmaster by the Managing Committee. Subsequently, his service was regularized by the Managing Committee in the year 2002 and his service was validated by publishing a notification in

the Daily Newspaper on 18.07.2002. After consulting the relevant provision of law we find that, due process for appointment was not followed by the Managing Committee while giving appointment to the petitioner as an Assistant Headmaster inasmuch as no appointment circular was published, no competitive examination was held and the petitioner did not have the required experience. There is no legal provision to publish ‘validation notice’ in order to validate an irregular appointment. However, he was granted MPO in the year 2000 as an Assistant Headmaster and has been receiving the same till 2021 until he was given appointment as Headmaster. No objection or allegation as to the irregularity in giving appointment as an Assistant Headmaster was ever raised from any vested quarter. After having been appointed as the Headmaster, when he made an application to be enlisted in the MPO as Headmaster, only then the issue of the irregularity in appointment as Assistant Headmaster was raised after a long period of 20 (twenty) years.

In the impugned memo dated 29.08.2021 (Annexure-D) it has been stated that:

“..... তদন্ত প্রতিবেদনে সার্বিক মন্তব্য “শিরন্ডি ময়নাকুড়ি উচ্চ বিদ্যালয়, সাপাহার, নওগাঁয় একজন উদ্বৃত্ত শিক্ষক থাকায় (পদ সমন্বয়) জনাব তৈয়ব হোসেনকে ম্যানেজিং কমিটির গত ০২.১২.২০০০ইং তারিখের সিদ্ধান্ত মোতাবেক সহকারী প্রধান পদে নিয়োগ প্রধান করা হয়, যাযথাযথ নিয়োগ বিজ্ঞপ্তি প্রকাশ করে প্রতিযোগিতামূলক পরিষ্কার মাধ্যমে সম্পন্ন হয়নি। জনবল কাঠামো-১৯৯৫ অনুসারে ‘সহকারী প্রধান শিক্ষক’ পদে ১২ (বার) বছরের শিক্ষকতার অভিজ্ঞতার বিষয়টি উল্লেখ থাকলেও তা নিয়েগেকালীন সময়ে অনুসরণ করা হয়নি। উক্ত সহকারী প্রধান শিক্ষক নিয়োগ প্রক্রিয়াটি প্রতিযোগিতামূলক পরিষ্কার পরিবর্তে নিয়োগ বৈধ করণ প্রক্রিয়ার মাধ্যমে সম্পন্ন করা হয়েছে, যা বিধি সম্মত ছিল না।.....”

And thus refused to grant M.P.O to the petitioner.

It is admitted and also evident from the documents annexed with the writ petition that, the petitioner continued in the post of Assistant Headmaster uninterruptedly for a long period of 20 (twenty) years and his service was all along recognized by the concerned authorities during this long period, no objection whatsoever was ever raised regarding his eligibility or the legality of his appointment process. His name was included in the M.P.O. as an Assistant Headmaster as per law. By the impugned memo his M.P.O as a Headmaster was refused only on the ground that his appointment as an Assistant Headmaster had not been made in conformity with the law.

Now the question that falls for determination is whether the respondents after having accepted and recognized the petitioner's service for about 20 (twenty) years, are legally entitled to reopen the issue and deny M.P.O to the petitioner as a Headmaster.

It is well settled that there is a distinction between an appointment which is void *ab initio* for lack of authority and an appointment suffering from procedural irregularities. In the present case there is nothing on record to show that the appointing authority lacked jurisdiction to appoint an Assistant Headmaster or that the petitioner obtained the appointment by practicing fraud, suppression or misrepresentation. The infirmity alleged by the respondents relates to non-fulfillment of the prescribed experience required at the time of appointment.

The petitioner discharged the function of Assistant Headmaster for about 20 (twenty) years to the satisfaction of all and by this time acquired experience as required under the “বেসরকারী শিক্ষা প্রতিষ্ঠান (বিদ্যালয়সমূহ)-এর শিক্ষক কর্মচারীদের বেতন ভাতাদির সরকারী অংশ প্রদান এবং জনবল কাঠামো সম্পর্কিত নীতিমালা, ১৯৯৫।” Throughout this period the respondents treated him as a duly appointed Assistant Headmaster and extended M.P.O benefits to him. Having acquiesced in the matter for such a long period and having accepted the benefit of his service, the respondents cannot now question the validity of the appointment. Had the irregularities been raised at the earliest opportunity, it could have been cured by the concerned authority. In that case the petitioner would not have to be in the current situation, which he is going through as a result of the respondents acquiescence. He has served for all these years to the prejudice of himself as a result of the inaction of the authority.

No person should suffer for the omissions or lapses attributed to the authorities themselves, particularly when the petitioner is not alleged to have committed any fraud or deceit. The doctrine of acquiescence, coupled with the principle that the administrative authorities must act fairly and reasonably, prevents the respondents from unsettling a position which has already been acquired over time.

The impugned action thus appear to be arbitrary in nature and the respondents are estopped from denying the petitioner’s status after having consistently recognized him as an Assistant Headmaster for about 20

(twenty) years. Accordingly, they are lawfully bound to enlist the petitioner's name in the M.P.O as Headmaster.

Although granting M.P.O is a decision of the government to be made; however, it has been held in the case of *Government of Bangladesh and others Vs. Md. Nazrul Islam and others* reported in 27 BLT (AD) 167 that,

“The granting of M.P.O is the policy decision of Government. Therefore, the petitioners could not claim the same as of right. This Division is of the view that teachers and staffs of the Non-Government School and College could not claim the M.P.O as a matter of right and as such direction could not be given unless infringement of legal right or violation of law.”

We already have discussed that, in the present case petitioner's lawful right has been violated by the impugned memo refusing to enlist his name in the M.P.O in an arbitrary manner.

In view of the facts and circumstances stated hereinabove, we are of the opinion that there is substance in the Rule issued in the instant matter.

In the result, the Rule is made absolute.

The respondents are hereby directed to include the name of the petitioner in the MPO as Headmaster of Jabai Samija Begum High School, Sapahar, District- Naogaon within 60 (sixty) days from the date of receipt of this judgment and order.

The order of stay granted at the time of issuance of the supplementary Rule is hereby vacated.

However, there is no order as to costs.

Let a copy of this judgment and order be communicated to the concerned authorities at once.

Justice Sashanka Shekhar Sarkar, J:

I agree.

Helal/ABO