

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

Writ Petition No. 10646 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:

Mohammed Alamgir Hossain

....Petitioner

Versus

Bangabandhu Sheikh Mujib Medical
University (BSMMU), Shahbag, Dhaka 1000
represented by its Vice-Chancellor and
others.

....Respondents

Mr. Tanjibul Alam, Senior Advocate with
Mr. Kazi Ershadul Alam, Advocate

....For the Petitioner

Mr. Ahmed Ishtiaque, Advocate

....For the Respondent No. 3

Present:

Mr. Justice Md. Jahangir Hossain

And

Mr. Justice S. M. Masud Hossain Dolon

Heard on: 29.11.2023, 05.12.2023 &

Judgment on: 10.01.2024.

S.M. Masud Hossain Dolon, J:

On an application under article 102 of the Constitution, the
Rule Nisi has been issued in the following terms:

"Let a Rule Nisi be issued calling upon the respondents
to show cause as to why the impugned decision of
syndicate being agenda No. 82.4 dated 24.06.2021 and
the Office order bearing Memo No. BSMMU/2021/6976

dated 07.08.2021 (Annexure-A) issued under signature of the respondent No. 3 awarding punishment of forced retirement to the petitioner should not be declared to be without lawful authority and are of no legal effect and why respondents should not be directed to reinstate the petitioner in the service of the Bangabandhu Sheikh Mujib Medical University in the post of Administrative Officer cancelling the impugned syndicate decision being agenda No. 82.4 dated 24.06.2021 and the impugned letter dated 07.08.2021 and /or pass such other or further order or orders as to this Court may seem fit and proper.”

Facts relevant for disposal of the Rule in short, are that the petitioner is a diligent employee of the Bangabandhu Sheikh Mujib Medical University (in short, BSMMU) who joined in the service on 10.01.2011 and had been providing relentless service since then. The petitioner, in December 2019, joined as an Administrative Officer of BSMMU wherein he was posted executive duties for supervising the employees of 3rd and 4th class who engaged in a daily remuneration basis. The petitioner informed the concerned authority regarding a few employees were not attending for work but duly signatures were put in attendance sheet and counted as present for determining salaries.

In this situation pursuant to the verbal order by the Director, Brigadier General AK Mahbubul Hoque, the petitioner started marking the absentees in the attendance sheet with the alphabet “A”. However, the following day the alphabet “A” marked by the petitioner was erased and replaced by a signature, despite the

individuals not appearing for their shift. The Director, BSMMU, Brigadier General Dr. Zulfiqar Ahmed Amin upon realizing the severity of the situation issued a notice signed by the Additional Director in April 2020, instructing the employees of BSMMU not to overwrite, erase or correct by fluid the attendance sheets.

Despite the best efforts of the petitioner and the concerned authority, the problem of false attendance persisted resulting in the then Director, Mr. Amin was deliver the Petitioner responsibility regarding the preparation of the employees payroll starting from the month of August-September 2020. Wherein the petitioner only included wages for employees in the payroll who had been attended their shift. Accordingly, the petitioner prepared the employees payroll in rendering the true and un-tampered attendance sheet, as maintained by the petitioner.

However, the employees of BSMMU, who used to take advantage of the previous system and had the attendance sheet signed without appearing for work, were greatly disgruntled. The said disgruntled employees were conspired against the petitioner. Despite which, the petitioner continued his efforts to eradicate the discrepancies caused by the falsified signatures in the attendance sheet by requesting the Director, Brigadier General Dr. Zulfiqar Ahmed Amin to issue an order for the collection of sample signatures of all the 3rd and 4th class employees of BSMMU. The

director of BSMMU accordingly issued Notice dated 03.09.2020 and directing all the 4th class employees to submit a sample signature and a passport picture on or by 05.09.2020.

The payroll prepared by the petitioner starting from August-September-2020 to the next 5 (five) months, compared with the payroll prepared by the usual means. The petitioner actions against the discrepancies caused by the falsifying of the attendance sheet resulted in an average saving of BDT 3,15,518/- per month and the BSMMU was able to save BDT 15,77,570/-.

The BSMMU formed an investigation committee to investigate the false signature by 3rd and 4th class employees in the daily attendance sheets and the immoral claiming of wages despite not attending their service on 05.10.2020 vide Memo No. BSMMU/20202/8845.

Subsequently, the First Investigation Committee via memo No. BSMMU/investigation/2020/378(1-12) dated 07.12.2020 instructed the petitioner to appear before the committee and present a written statement on 10.10.2020. The petitioner duly appeared before the committee and gave an oral representation and submitted his written statement to the committee on 10.12.2020. Thereafter on 25.02.2021 to the utter dismay of the petitioner, Register and the Secretary of the Syndicate, BSMMU issued an office order being

Memo No. BSMMU/2021/1584 suspended the petitioner from his service as Administrative Officer on the ground that the petitioner was found guilty, beyond reasonable doubt, of (1) Corruption, (2) Insubordination, (3) Moral Turpitude and misconduct and as such was in breach of section ২(চ), (ছ),(জ),(ঝ),(ঞ) and ৫(জ),(ঝ),(ট) of the “দক্ষতা ও শৃঙ্খলা অধ্যাদেশ” of the BSMMU pursuant to the investigation report by the First Investigation Committee. Such letter clearly shows premeditation of the Respondents in targeting the petitioner as the scapegoat for serving vested interest of an unscrupulous quarters who are involved in looting money from the BSMMU. Following his temporary suspension, the petitioner requested for exemption from temporary suspension pursuant to memo dated 25.02.2021. Upon receiving no reply from the Respondents, the petitioner further issued two more letters wherein the petitioner sought a copy of the investigation report by the first investigation committee, whereby allegations were made against him. Wherein the petitioner also requested for a re-investigation stating that Brigadier General Dr. Zulfiqar Ahmed Amin, the Ex-Director of BSMMU, under whose instruction the petitioner prepared the payrolls, was required to give a statement in front of the investigation committee. That the petitioner in the meantime aware of some video recording which the First Investigation Committee based its decision on as well as some false witness statements by the

disgruntled employees of BSMMU who had conspired against the petitioner. However, the petitioner was not shown the video recording or given any opportunity to verify and examine the video recording nor given the opportunity to cross-examine the witnesses whose false information led to the temporary suspension of the petitioner.

On 22.05.2021, a second investigation committee was formed to investigate the matter relating to the allegations against the petitioner. That instead of replying to the petitioner's letter, the respondent No. 3 issued a show cause notice being memo no. BSMMU/2021/5281 and stating that the petitioner had been alleged to be guilty of (1) Corruption, (2) Insubordination, (3) Moral Turpitude and misconduct in breach of the “দক্ষতা ও শৃঙ্খলা অধ্যাদেশ”.

On 14.06.2021, the Respondent No. 3 issued another notice being memo No. BSMMU/2021/5480 summoning the petitioner to attend the investigation committee meeting on 17.06.2021 at 9.30 am in the Shahid Dr. Milton Hall. On that day petitioner duly appeared before the second investigation committee and was scathed in front of the Committee when they called for examination of 44 witnesses on that day. However the meeting was concluded to deposition of 13(thirteen) witnesses and 10(ten) witnesses individuals were denied all allegations against the petitioners. But 3(three) employees gave false evidence against the petitioner.

Accordingly, the petitioner at once filed an application for invoking his right to cross-examine the 3(three) witnesses but his application was not granted by the authority concerned. Subsequently, on 07.08.2021 the Respondent No. 3 issued a letter being Memo No. BSMMU/2021/6976 passing a forced retirement order under section 6 (এ) of “দক্ষতা ও শৃঙ্খলা অধ্যাদেশ”

Thereafter, having found no other equally efficacious remedy the petitioner filed the instant writ petition and obtained the Rule.

Mr. Tanjibul Alam, learned Advocate for the petitioner submits that the Respondents BSMMU did not provide the investigation reports to the petitioner despite repeated requests. Similarly, the Respondents did not provide the petitioner any evidence to substantiate their allegations against the petitioner. The Respondents vaguely referred to a video footage which they refused to provide the petitioner to examine or allowed the petitioner to challenge the content of the so-called video footage. Similarly, three witnesses who gave false statements and further did not allow the petitioner to cross-examine them. Learned Advocate further submits that the respondents failed to present any charge sheet against the petitioner during his trial whereby the petitioner could understand the case against him and defend himself properly.

Learned Advocate further submits that First Investigation Committee included 6 (six) members and 3(three) of whom were members of the Administrator (Hospital) office. That the First Investigation Committee was required to investigate discrepancies in their own department and acted as a scope to cover up the ongoing discrepancies that the false signatures by the employees of BSMMU who immorally claim salary for the whole month despite absence in their service. Learned Advocate further submits that the impugned decision of the syndicate and the order of forced retirement are without lawful authority and is of no legal effect inasmuch that the Respondents had failed to comply with procedural requirements as illustrated under Bangladesh Service Rules and the “দক্ষতা ও শৃঙ্খলা অধ্যাদেশ” of BSMMU by failing to adduce a charge sheet before taking the petitioners trial and witness statement under section 9 of the “দক্ষতা ও শৃঙ্খলা অধ্যাদেশ” of BSMMU. He further submits that the Respondents failed to provide any evidence or specific allegation against the petitioner in their Notices or allowed the petitioner to verify and evidence or examine any witnesses or any alleged video recording of the petitioner as required by section 9(8) of the “দক্ষতা ও শৃঙ্খলা অধ্যাদেশ” of BSMMU. Hence, the proper procedures regarding the investigation and judicial procedure against the petitioner had not been followed by the Respondents and as such the impugned

office order of forced retirement is without lawful authority and is of no legal effect.

In this regard he referred to the case of Md. Abdul Mazid, Monir Ahmed vs The Secretary Ministry of Energy and Mineral Resources, Bangladesh Secretrate, Dhaka and others 1 ADC(2004) 409, Md. Nazrul Islam vs Government of Bangladesh, XIX ADC(2022) 680, Government of Bangladesh and others vs Md. Tariqul Islam, 8LM(AD) 40, National University and ors vs Begum Sultana Razia, 17 BLT(AD)191 and GM, Rangpur Palli Bidyut Samity vs Md. Ali, 12 BLC(AD) (2007),7.

Mr. Ahmed Ishtiaque, the learned Advocate on behalf of the BSMMU filed an affidavit in opposition and submits that the grounds taken by the writ petitioner in the instant writ petition are without any legal basis, not tenable in the eye of law and as such the Rule is liable to be discharged. Learned Advocate further submits that according to section 23(1) of the Bangabandhu Sheikh Mujib Medical University Act, 1998, the syndicate having been the highest executive body of the university, approved the punishment of forced retirement of the petitioner and as such the Rule issued in the instant writ petition is liable to be discharged.

We have heard the learned Advocate for both the sides and perused the writ petition, supplementary affidavit, affidavit in

opposition filed by the respondent No. 3 and all other relevant papers in connection with the contents of this writ petition. It appears that the petitioner was the Administrative officer (Hospital) of the BSMMU and he had been supervised the employees of 3rd and 4th class who were engaged on a daily wage basis for 5(five) months only. The petitioner was found the employees who were absence in their Job but their signature in attendance sheet are properly be put in. He duly informed the authority concern of BSMMU. The petitioner started marking the absents in the attendance sheet and his marking for absence were erased and replaced by signature of the delinquent employees. In this circumstances the authority concern issued notice for the employees and intrusted them not to overwrite, erase or correct the attendance sheet by fluid.

Despite such instructions, the issue of discrepancies and tampering the attendance sheet of the 3rd and 4th class daily workers of BSMMU was not resolved and hence, the petitioner was given the responsibility for preparing the employee payroll from the month of August-September, 2020. The payroll prepared by the petitioner from August-September 2020 to the next 05(five) months, BSMMU was saving an average amount of BDT 3,15,518 (Taka Three Lac Fifteen Thousand Five Hundred and Eighteen only) per month to its employees who were not present during their shifts. On 05.10.2020 BSMMU formed first investigation committee to investigate the false

signatures by the 3rd and 4th class daily basis employees in the daily attendance sheets and claiming of wages despite not attending their service. Thereafter, the Petitioner appeared before the First Investigation Committee on 10.10.2020 and submitted his written statement along with an oral account of his observations.

All on a sudden, the Respondent No.3 by its Office Order dated 25.02.2021 (Annexure F), without giving any reasoning, informed the petitioner that he was found guilty, beyond reasonable doubt, of (1) corruption, (2) insubordination, (3) moral turpitude and (4) misconduct and as such he was in breach of “দক্ষতা ও শৃঙ্খলা অধ্যাদেশ” (Disciplinary Ordinance of BSMMU). The petitioner was suspended. Thereafter, the petitioner by its letter dated 21.04.2021 requested to be provided with the investigation report prepared by the First Investigation Committee against him. Furthermore, upon receiving information against the Petitioner was derived by the First Investigation Committee on the basis of some video recording and false witness statements of disgruntled 3rd and 4th class daily basis employees. The petitioner by its letter dated 24.04.2021 requested to verify and examine such video recording and further requested to provide with an opportunity to cross-examine such video recording and further requested to provide with an opportunity to cross-examine the witnesses. However, such legitimate requests of the petitioner were never answered by the respondent No.3.

Subsequently, on 22.05.2021 a second investigation committee was formed to investigate the allegations against the petitioner. Thereafter, the Respondent No.3 issued a show cause notice to the petitioner on 07.06.2021 alleging the petitioner to be guilty of (1) corruption, (2) insubordination, (3) moral turpitude and (4) misconduct under the Disciplinary Ordinance of BSMMU. The Petitioner replied to such show cause notice with a written statement on 08.06.2021. However, the petitioner was never furnished a copy of the inquiry report on the basis of which such charges were brought against him nor he was provided with the alleged video recordings or an opportunity to cross-examine the witness purportedly testifying against him.

Thereafter on 09.06.2021, the petitioner attended his interview before the Second Investigation Committee wherein 44(Forty Four) individual employees of BSMMU were summoned. Such individuals were interviewed separately and the entire interview was concluded within 25 minutes. Therefore, each employee was interviewed less than a minute and was required to sign a pre-prepared statement. Thereafter, the Petitioner issued 02 letters to the Respondents on 13.06.2021 to take statements from the witnesses in support of his innocence and further requested to be provided with the alleged video recordings. However, such requests of the Petitioner also went unheard. Moreover, instead of

replying to the representations made by the petitioner, the Respondent No.3, on 14.06.2021, summoned the petitioner to attend the investigation committee meeting on 17.06.2021. The said meeting was briefly concluded after the appearance of 13(thirteen) witnesses, out of the 44(Forty Four) individuals who were present on 09.06.2021. Among the 13 witnesses, only 3 witnesses testified against the petitioner against which the petitioner was not given the opportunity to cross-examine. Thereafter, the Petitioner by his letter dated 17.06.2021 requested for an opportunity to cross-examine the three witnesses testifying against him. However, the petitioner was never provided with such opportunity.

Thereafter, syndicate of the Respondent No.1, by its decision taken under agenda on 82.4 dated 24.06.2021 in the 82nd Syndicate meeting sanctioned the punishment of forced retirement of the petitioner which was reflected by the respondent No.3 by its Office Order bearing Memo No. BSMMU/2021/6976 dated 07.08.2021(“Impugned Order”) under section 6 (এ৩) of “দক্ষতা ও শৃঙ্খলা অধ্যাদেশ”

Thereafter, the petitioner by its letter dated 26.08.2021 requested the respondent No.3 to be provided the copies of the investigation of both the First and Second Investigation Committee. Thereafter, on 28.08.2021, the petitioner filed another application before the respondent No.3 for appeal or retrial against the

sanctioned imposed upon him. However, till this date, the petitioner has not received any reply. Thereafter, being aggrieved and dissatisfied with the impugned order, the petitioner has preferred this instant Writ Petition before the Hon'ble High Court Division of the Supreme Court of Bangladesh on the main ground that by issuing impugned order, the respondent no. 3 violated the section 9(8) of the “দক্ষতা ও শৃঙ্খলা অধ্যাদেশ” of BSMMU which runs as follows:-

৮) আত্মপক্ষ সমর্থনের সুযোগঃ

চাকুরি হইতে অপসারণ অথবা পদচ্যুতি করিবার জন্য অভিযুক্ত শিক্ষক/ কর্মকর্তা/ কর্মচারীকে ব্যক্তিগতভাবে অথবা তাঁহার কোনো প্রতিনিধির মাধ্যমে আত্মপক্ষ সমর্থনের নিমিত্ত তদন্ত কমিটি কর্তৃক নির্ধারিত তারিখে তদন্ত কমিটির সামনে উপস্থিত হইয়া আনীত অভিযোগের ব্যাপারে বক্তব্য উপস্থাপনের সুযোগ দিতে হইবে।

শর্ত থাকে যে যদি তদন্ত কমিটি কর্তৃক নির্ধারিত সময়সীমার মধ্যে সংশ্লিষ্ট শিক্ষক/ কর্মকর্তা/ কর্মচারী তাঁহার প্রতিনিধি মনোনীত করিতে এবং/ অথবা নির্ধারিত তারিখ সংশ্লিষ্ট শিক্ষক/ কর্মকর্তা/ কর্মচারী নিজে/ তাঁহার মনোনীত ব্যক্তি তদন্ত কমিটির সামনে উপস্থিত হইতে ব্যর্থ হন, তাহা হইলে ব্যক্তিগতভাবে অথবা মনোনীত প্রতিনিধির মাধ্যমে সংশ্লিষ্ট ব্যক্তির বক্তব্য উপস্থাপন ব্যতিরেকেই তদন্ত কমিটি তদন্ত কার্য সম্পাদন করিয়া সুপারিশ পেশ করিতে পারিবে, এবং উক্ত সুপারিশ অনুযায়ী পরবর্তী সিদ্ধান্ত গ্রহণ করা যাইবে।

৯) যে সকল তদন্তের ক্ষেত্রে অভিযুক্ত শিক্ষক/ কর্মকর্তা/ কর্মচারীকে ব্যক্তিগতভাবে/ প্রতিনিধির মাধ্যমে বক্তব্য উপস্থাপনের সুযোগ দেওয়া হইবে, ঐসকল ক্ষেত্রে আনীত অভিযোগনামার উত্তরে যেই সকল অভিযোগ সংশ্লিষ্ট অভিযুক্ত ব্যক্তি কর্তৃক স্বীকার করা হয় নাই, ঐ সকল অভিযোগ সুনির্দিষ্টভাবে উক্ত শিক্ষক/ কর্মকর্তা/ কর্মচারীর নিকট অথবা তাঁহার প্রতিনিধির নিকট (যেমন প্রয়োজ্য) উপস্থাপন ও ব্যাখ্যা করিতে হইবে। সাধারণভাবে অভিযোগের সমর্থনে সাক্ষ্য বা প্রমাণ এবং অভিযোগের বিপক্ষে সংশ্লিষ্ট শিক্ষক/ কর্মকর্তা/ কর্মচারীর আত্মপক্ষ সমর্থনের বক্তব্য অভিযুক্ত ব্যক্তি/ প্রতিনিধির উপস্থিতিতেই লিপিবদ্ধ করিতে হইবে।

শর্ত থাকে যে, বিশেষ কোনো কারণে (যাহা লিপিবদ্ধ থাকিবে) তদন্ত কমিটি যেকোনো সাক্ষীকে অভিযুক্ত শিক্ষক/ কর্মকর্তা/ কর্মচারীর উপস্থিতিতে তদন্ত কমিটির সামনে হাজির না করিবার এবং প্রয়োজনবোধে অন্য কোনো উপযুক্ত পদ্ধতিতে উক্ত সাক্ষীর সাক্ষ্য গ্রহণ এবং লিপিবদ্ধ করিবার সিদ্ধান্ত গ্রহণ করিতে পারিবে।

On plain reading of the Regulation 9(8) of the “দক্ষতা ও শৃঙ্খলা অধ্যাদেশ” of BSMMU” it appears that the respondents did not present any evidence or specific allegation against the petitioner in

their notices or also not allowed the petitioner to verify or cross examine any witnesses or any alleged video recording of the petitioner as required by section 9(8) of the “দক্ষতা ও শৃঙ্খলা অধ্যাদেশ” of BSMMU. The respondents had failed to comply with procedural requirement by failing to adduce a charge sheet before taking the petitioner’s interview and witness statement under section 9 of the “দক্ষতা ও শৃঙ্খলা অধ্যাদেশ” of BSMMU. Hence, the proper procedures regarding the investigation against the petitioner has not been followed by the respondents.

That the respondent No. 3 BSMMU by filing affidavit in opposition dated 10.12.2023 admitted that no inquiry report was transmitted to the petitioner and also admitted that the petitioner was not giving chance to cross examine of witnesses. In this regard the Supreme Court of India observed in the case of T. Takano vs Securities and Exchange Board of India and Ors reported in AIR 2002 SC 1153, Para-52 & 53 that “The Board shall be duty-bound to provide copies of such parts of the report which concern the specific allegations which have been levelled against the Appellant in the notice to show cause” “ after a due disclosure is made to the Appellant in terms as noted above, a reasonable opportunity shall be granted to the Appellant of being heard with reference to the matters of disclosure in compliance with the principles of natural justice before a final decision is arrived at.”

In line with the aforesaid decision the Hon'ble Appellate Division also held in the case of Government of Bangladesh and Ors. vs Md. Tariqul Islam reported in 8LM(AD) 40 para-16 &19 that, "..... Therefore, we are of the considered view that before imposing major penalty the cardinal principle of natural justice requires that copy of the enquiry report has to be supplied to the concerned employee Be that as it may, it appears that cardinal principal of natural justice require supply of enquiry report to the person against whom departmental action is being taken although section 6 of the Police Officer (Special Provisions) Ordinance, 1976 is silent about it. But Tariqul was not supplied with a copy of the inquiry report at the time of issuing show cause notice before his dismissal is clear violation of the principle of natural justice.

In the case of Md. Abdul Mazid, Monir Ahmed vs The secretary Ministry of Energy and Mineral Resoruces reported in 1 ADC(AD) 409 held that -

"we find that there has been violation of service Rules, 1982. The findings and observations of the High Court Division are factually not correct inasmuch as the said Division failed to take into consideration that the copies of the inquiry reports were not furnish along with the second show cause notice as provided under Rule 143 of the Service Rules, 1982, and the appellants were seriously prejudiced as they did not get reasonable opportunity to defend themselves for lack of copies of the inquiry reports."

The petitioner was also not getting chance to cross examination the witnesses before the second investigation

committee and the petitioner instantly filed an application for cross examination of the witnesses but the authority was not given him the chance to cross examination of the witnesses. The respondents referred to video footage which they refused to provide the petitioner. The adjudication order to forced retirement without giving chance to cross examination the petitioner and not to provide video footage is violation of natural justice as M A. Hai vs Trading Corporation of Bangladesh, Dacca, 32 DLR(AD)(1980)46, The National University and others vs Begum Sultana Razia 17 BLT(AD)190 and GM, Rangpur Palli Bidyut Samity-1 vs Md. Ali Reza 12 BLC(AD)6.

Since admittedly the copy of the enquire report was not forwarded along with the second show cause notice to the petitioner and the petitioner was seriously prejudiced as he did not get reasonable opportunity to defend himself for lac of copy of the inquire report. Further the decision of Md. Torab Ali vs Bangladesh Textiles Mills Corporation reported in 41 DLR 138 clearly demonstrate that it is mandatory that the copy of the inquire report must be furnished along with second show cause notice enable the incumbent to place his side of the case. Further the petitioner was not getting any chance to cross examination of the witnesses. Moreover the petitioner was not informed what charge brought

against him. So, it is crystal clear that the respondents forced retirement is without lawful authority and is of no legal effect.

In view of the above facts and circumstances and the provision of law quoted above, we find substances in the submission of the learned Advocate for the petitioner.

Thus, we find merit in this Rule.

Accordingly, the Rule is made absolute. Hence, the impugned Memo No. BSMMU/2021/6976 dated 07.08.2021 (Annexure-A) is hereby declared to have been issued without any lawful authority.

However, there would be no order as to costs.

Md. Jahangir Hossain, J:

I agree.