

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

Writ Petition No. 13204 of 2021

In the matter of :

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

-And-

In the matter of :

Md. Farid Uddin Akhtar

..... Petitioner

-Versus-

The Government of People's Republic of Bangladesh, represented by the Secretary, Ministry of Local Government, Rural Development and Co-operatives Bangladesh and others.

..... Respondents

Ms. Syeda Nasrin, Advocate with
Mr. Md. Razu Howlader, Advocate
Mr. ABM Imdadul Haque Khan, Advocate and
Mr. Bibek Chandra, Advocate

.... For the Petitioner

Mr. Mansur Habib, Advocate with
Ms. Shimul Sultana, Advocate

..... For Respondent No. 3

Present:

Mr. Justice Zubayer Rahman Chowdhury

And

Mr. Justice Kazi Ebadoth Hossain

Date of Hearing : 13.07.2023, 13.08.2023
& 19.10.2023

Date of Judgment : 05.11.2023

Zubayer Rahman Chowdhury, J :

The instant Rule was issued in the following terms :

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned action in not paying the retirement benefits, pension, arrear salaries and other service benefits to petitioner by the respondents against his service as the Head of Branch, General Branch (উচ্চমান সহকারী), Grade-14 under the Rangpur City Corporation, Rangpur shall not be declared illegal, without lawful authority and is of no legal effect and why the respondents shall not be directed to pay the retirement benefits, pension, arrear salaries and other service benefits to petitioner by the respondents against his service as the Head of Branch, General Branch (উচ্চমান সহকারী), Grade-14 under the Rangpur City Corporation, Rangpur in favor of the petitioner for ends of justice 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, the respondents were directed to dispose of the petitioner’s application dated 19.12.2021 within a period of 30 (thirty) days from the date of receipt of the order.

Briefly stated, facts relevant of disposal of the Rule are that the petitioner was appointed as Office Secretary of No. 1 Betgari Union in the District of Rangpur in November, 1991. He was subsequently transferred to No. 3 Uttam Union Parishad. In May 2011, the Government published a notification converting Rangpur Pourashava into Rangpur City Corporation and No. 3 Uttam Union Parishad merged into Rangpur City Corporation.

The petitioner filed a representation praying for absorption of his service under the newly constituted Rangpur City Corporation and accordingly, he was absorbed in service as an Upper Division Assistant (উচ্চমান সহকারী) under Rangpur City Corporation. In January, 2014, he was posted at the Bazar Branch as Upper Division Assistant (উচ্চমান সহকারী).

Subsequently, in March 2018 he was transferred to the General Branch as Head of the Branch.

During the course of his transfer from Bazar General Branch to General Branch, the petitioner submitted a list to the Mayor of Rangpur City Corporation detailing the unrealized revenue for the lease of different haat, bazaar, cycle stand, bus terminal etc. which was under his authority during his tenure at Bazar Branch. However, no step was taken in that regard.

Subsequently, respondent no. 3 issued as many as eight show cause notices upon the petitioner making allegation of misappropriation of fund, to which the petitioner replied and denied the charges levelled against him. In June, 2018, respondent no. 3 suspended the petitioner vide Memo of the same date. However, no formal copy of the suspension order was served upon the petitioner. The petitioner filed an application before respondent no. 3 for providing him with a copy of the suspension letter.

The petitioner retired from service on 12.09.2018 and he applied for his PRL to the Authority. However, there was no response from the Authority. Subsequent to his retirement, the petitioner filed several representations to the Authority praying for payment of his pension and other benefits, but to no effect. In the meantime, an enquiry was conducted by respondent no. 5 regarding the allegations brought against the petitioner. However, no notice was served with the petitioner nor was

he afforded any opportunity of personal hearing. The petitioner once again filed an application in December 2021 before the Authority seeking payment of his pension and other benefits, but to no effect. Being constrained, the petitioner moved this Court and obtained the instant Rule in the terms noted at the outset.

Dr. Syeda Nasrin, the learned Advocate appearing in support of the Rule submits that apart from the fact that the petitioner was kept in suspension for an indefinite period without conducting any inquiry, he was also deprived from getting his pension and other benefits. She submits that the inquiry was not conducted while the petitioner was in service, but it was conducted without any notice to the petitioner and he was not given any opportunity to present his case before the Inquiry Committee. According to Dr. Nasrin, the Authority conducted a one sided inquiry. Referring the Inquiry Report, as evidenced by Annexure F to the writ petition, the learned Advocate submits that it is apparent from the said report that no specific allegation could be proved against the petitioner. She submits that the petitioner is now being harassed for no fault of his own.

On the other hand, Mr. Mansur Habib, the learned Senior Advocate appearing on behalf of the City Corporation submits that the petitioner was suspended on account of certain allegation of misappropriation of fund. However, he submits that for various reasons, the inquiry could not

be completed within time. He acknowledges that there was no clear finding against the petitioner and therefore, the Corporation is now willing to settle the matter, subject to the outcome of the instant writ petition.

We have perused the application and heard the learned Advocate of the contending sides.

It appears from Annexure F, being the report of the Investigating Committee, that an Inquiry was conducted into the allegations brought against the petitioner by the Rangpur City Corporation on 4th March, 2019. It is also on record that the petitioner went on PRL on 12.09.2018. It is, therefore, apparent that the investigation was conducted after the petitioner had gone into retirement. Secondly, and more importantly, as forcefully argued by Dr. Nasrin, we do not find any document to show that the petitioner was notified about the proceedings and that he was asked to remain present during the inquiry. Therefore, for all practical purposes, the inquiry was conducted in the absence of the petitioner without affording him an opportunity to present his case. Last but not least, we have taken note of the finding which reads as under :

“ইহাতে স্পষ্টতঃই প্রতীয়মান হয় যে, সম্পাদিত চুক্তিপত্র গুলো বিবিধ মোতাবেক সম্পাদন হয় নাই।”

It is therefore evident that the Inquiry Committee came to conclusion that agreements executed between the parties had not been executed in accordance with the Rules. There was no finding with regard

to the issue of misappropriation of fund by the petitioner, as alleged by the City Corporation. That being the factual and legal position, we have no hesitation in holding that the instant Rule merits positive consideration.

In the result, the Rule is made absolute.

The City Corporation is hereby directed to calculate the pension and other benefits due to the petitioner and make payment of the same within a period of 60 (sixty) days from the date of receipt of the certified copy of the judgment passed today.

There will be no order as to cost.

Kazi Ebadoth Hossain, J :

I agree.