

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

Writ Petition No. 5360 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. Kholilur Rahman

....Petitioner

Versus

The Government of Bangladesh and
others

....Respondents

Ms. Shahina Tazrin, Advocate

....For the Petitioner

Mr. A.B. Siddique, Advocate

....For the Respondents

Present:

Mr. Justice Md. Jahangir Hossain

And

Mr. Justice S. M. Masud Hossain Dolon

Heard on: 02.01.2024, 10.01.2024

Judgment on: 29.01.2024

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
Memo No. 27.12.2672.571.02.009.2021.747 dated
27.02.2021 (Annexure-F) issued under the signature
of the respondent No. 4 removing from service to the
petitioner and Memo No. 27.12.2672.571.02.012. 21.
21.1520 dated 25.09.2021 (Annexure-H) issued by the

respondent No. 4 dismissing the service appeal of the petitioner by a non-speaking order should not be declared to have been passed without lawful authority and is of no legal effect and as to why a direction should not be given upon the respondents to reinstate the petitioner in his service 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 was appointed as apprentice Lineman to the Dhaka Polli Bidyut Samity -1 and subsequently promoted to the rank of Lineman Grade-1 and thereafter posted him in the office of the Polli Biduyt Samity-3, Genda, Saver, Dhaka. When the petitioner was performing his duties all on a sudden Respondent No. 2 Director, Directorate of Inquiry and Discipline, Bangladesh Rural Electrification Board, Dhaka served a show cause notice upon the petitioner, on 31.08.2020, alleging that the petitioner gave Tk. 10,000/- money to security guard Kamrul Hasan for transfer him from Dhaka Palli Vidut Samiti-3, Amin Bazar Zonal Office to Shimultali Zonal Office. The petitioner submitted his explanation and denied all the allegation brought against him. Thereafter, Respondent No. 2 issued formal charge against the petitioner and appointed an Inquiry Officer and the petitioner again denied all the allegation brought against him. The respondent No. 2 further served final show cause notice to the petitioner and there against

the petitioner submitted his reply and again denied all the allegation brought against him. After receiving the explanation of the petitioner, respondent No. 4 finally relieving him from his service against this order petitioner preferred appeal before the President, Samity Board, Dhaka Polli Biduyt Samity-3 who was dismissed the appeal by a non speaking order.

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

Ms. Shahina Tazrin learned Advocate for the petitioner submits that the charge brought against the petitioner is vage, false, fabricated and concocted consequently the petitioner was removed from service may kindly be declared to have been issued without lawful authority and is of no legal effect. She further submits that the authority concerned violated the provision of Rules 42 and 45 of the Polli Biduth Samity Employees Service Rule. That the petitioner was not call for cross examinations of the witnesses and the appeal was dismissed without assessment of the provision of law with arbitrary and malafide manner of the respondents thereafter the entire departmental proceedings and

impugned punishment may kindly be declared to have been passed without lawful authority and is of no legal effect.

Mr. A.B. Siddique, the learned Advocate for the respondent No. 4 submits that all legal formalities of the service Rules were followed by concerned authorities and imposed punishment against the petitioner and as such the Rule may be discharged for the ends of justice. He also submits that the petitioner admitted that he had been given bribe for his transfer consequently he was convicted for misconduct and corruption under section 38(1)(ka) and (Ga) of the Service Rules. He further submits that the charges of the departmental proceedings brought against the petitioner under Rule 40 of the Service Rule were Specific and at any stage there was no illegality, arbitrary and malafide done against the petitioner. Mr. Siddique lastly submits that at the time of inquiry the petitioner was appeared personally before the inquiry committee wherein all procedure under Rule 41 and 42 of the Service Rule were complied with and as such the writ petition is liable to be discharged.

We have perused the writ petition and all other relevant papers submitted by the petitioner in connection with the contents of this writ petition, supplementary affidavit and also

affidavit in opposition submitted by the Respondent No.4. It appears the petitioner was working as Lineman Grade-1 in Dhaka Polli Biduyt Samity and he admitted by his letter dated 14.09.2020 that he had given bribe to one of his colleague for favorable posting on 14.11.2018 Annexure-C(1). On perusal of the document we found that the petitioner in his reply of the show cause notice, Annexure E-2, admitted that he had given BDT 10,000/- to his colleague for his mother treatment.

On scrutiny of inquiry report that one Rafia Hasan Taheri who was the then AGM (HR) and responsible for internal transfer of employees of the Polli Biduyt Samity-3 and he transferred one Md. Khalilur Rahman, security guard and others vide memo No. 27.12.2672.518.01.09.17.4724 dated 13.11.2017. The interoffice transfers of employees were carried out under Mr. Taheri is supervision as directed by superior and he affirmed that no one had recommended him to transfer the petitioner and no one had any interfere in it. In his written statement he also stated that by official order the petitioner was transferred to the Shimulthali Zonal office from Amin Bazar Zonal office but transfer of Lineman Grade-1, Mr. Md. Khalilur Rahman had not been made any recommendation to him by anyone.

It appears from aforesaid discussion the petitioner gave bribe for his transfer after one year he had transferred and he was admitted the same after 3(three) years of his transfer which is absurd. On our query, we asked the Advocate of the Respondent No. 4, whether the petitioner gave bribe after one year he had been transferred in Shimulthali Zonal Office and admitted the same after 3(three) years and he cannot give answer the perplex facts of this case and also he was unable to deny but he strongly argued petitioner is liable for corruption and misconduct.

It appears that the petitioner was removed from his service vide order dated 27.02.2021 (Annexure-F to the writ petition). On perusal of the same it appears that the petitioner was condemned under section 38(1) (Ka) and (Ga) of the Service Rules and removal from his service was passed under Rules ৩৯(১)(খ)(৩) of the পল্লী বিদ্যুৎ সমিতি কর্মচারী চাকুরী বিধি, ১৯৯২ সংশোধিতঃ ২০১২ইং. Admittedly, the petitioner had been served of the Polli Biduyt Samity-3 for more than 8 years. Before making such type of allegation he was not held liable in any sought of activities in his service rather he had been discharged his duties with satisfactions of the authority concerned. The petitioner was condemned for misconduct (অসদাচারণ). The misconduct was

defined under section 2(k) of the পল্লী বিদ্যুৎ সমিতি কর্মচারী চাকুরী বিধি, ১৯৯২ সংশোধিতঃ ২০১২ইং and same has not attracted in the instant case because the petitioner gave bribe for his transferred where he had transferred 1(one) year ago.

The petitioner was also condemned under section 38(1) of the Service Rules. The learned Advocate for the petitioner argued that allegation against the petitioner has not proved because he was not suborned (উৎকোচ গ্রহণ) anyway but the learned Advocate for the Respondent No. 4 submitted that he is convicted for corruption (দূর্নীতি). The Service Rules of the Polli Biduyt Samity does not describe the meaning of corruption but section 38(2) of the said Rule described corrupt (দূর্নীতি পরায়ণ) and same is not attracted against the petitioner neither the misconduct is proved against him. Corruption is defined in Black's law dictionary as-

Corruption. 1. Depravity, perversion, or taint; an impairment of integrity, virtue, or moral principle; esp, the impairment of a public official's duties by bribery.

"The word 'corruption' indicates impurity or debasement and when found in the criminal law it means depravity or gross impropriety" Rollin M. Perkins & Ronald N. Boyce, Criminal Law 855 (3d ed. 1982)."

Corruption is also defined in schedule of Anti-corruption Commissioner Act, 2004, as

“Schedule

[See section 17 (a)]

- (a) Offences under this Act;
- (b) Offences under the following sections of Penal Code, 1860 (Act No. XLV of 1860)-
 - (i) Sections 161,162, 163, 164, 165, 165A, 165B, 166, 167,168,169,217,218 and 409;
 - (ii) Sections 420.467.468,471 and 477A, where the offences are related only with public property or committed by any Public Servant or officers and employees of a Bank or a Financial Institution during discharging official duty;
- (c) Offences under the Prevention of Corruption Act, 1947 (Act No. II of 1947); and schedule for corruption is also not attracted in the instant case.”

In view of the above facts and circumstances memo No. 27.12.2672.571.02.009.2021.747 dated 27.02.2021 convicted the petitioner Annexure-F and memo No. 27.12.2672.571.02.012.21.1520 dated 25.09.2021, Annexure-H dismissed the appeal by non speaking order are without lawful authority and is of no legal effect are hereby set-aside.

Thus, we find merit in this Rule.

Accordingly, the Rule is made absolute. The Respondents are directed to re-instate the petitioner in his Job within 60(sixty) days from the date of the receipt of this judgment.

However, there would be no order as to costs.

Md. Jahangir Hossain, J:

I agree.