

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

Writ Petition No. 5198 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:

Mohammad Aktaruzzaman
.....Petitioner

-Versus-

Present:

Mr. Justice Sashanka Shekhar Sarkar
And
Justice Urmee Rahman

The Government of Bangladesh,
represented by its Secretary, Ministry of
Power and Electricity and others

..... Respondents

Mr. Sabyasachi Mondal, Advocate
...For the petitioner

Mr. Sarwar Ahmed, Senior Advocate
... For the respondent No. 2

Heard on 12.05.2026, 19.05.2026

and 08.06.2026 Judgment on 18.06.2026

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 letter vide Memo No. 27.12.5557.551.02.012.20.2401 dated 12.08.2020 (Annexure-K) to the writ petition without considering the recalling letter dated 24.03.2020

accepting petitioners resignation letter dated 23.03.2020 and the impugned letter vide Memo No. 27.12.5557.551.02.012.20.28.69 dated 22.09.2020 (Annexure-L) to the writ petition issued by the respondent No. 6 to degrade the petitioner from his service and curtailing the petitioner's previous salary from his original scale and also dismissed him from his service should not be declared to be without any lawful authority and of no legal effect and why a direction should not be given upon the respondent No. 2 to reinstate the petitioner in his service in the post of Meter tester at the office of Magura Palli Bidyut Samity, Parnanduali, Magura and/or pass such other or further order or orders as to this Court may seem fit and proper."

Necessary facts for disposal of the instant Rule, in short, are that, the petitioner was appointed as a Lineman Grade-2 in the office of Magura Palli Bidyut Samity and thereafter he was promoted as a Meter Tester by an appointment letter dated 21.12.2000. While he was performing in the said post, on 25.11.2019 all on a sudden he was forcefully removed from the office without assigning any reason or issuing any show cause notice. After removing the petitioner from his service, he was suspended on the following day i.e. on 26.11.2019 and 50% of his salary was curtailed and a departmental proceeding was started

against him. An enquiry team of three members was formed on 19.12.2019 and a show cause notice was issued to him on 29.02.2020. Another office order was issued on 25.03.2020 withdrawing his temporary suspension and he was asked to join the Sreepur Sub-zonal Office. The petitioner was very sick as he was injured by an accident and that is why he made an application praying for leave along with a medical certificate on 27.10.2019 and 02.11.2019 respectively but leave was not granted to him for unknown reason. In the given situation the petitioner was very upset and became mentally distressed and as a result of emotional outburst, he submitted a resignation letter on 23.06.2020. However, on the following day i.e. on 24.06.2020 he realized the situation and filed another application for withdrawal of the resignation letter.

The respondent no. 6 did not dispose of the application dated 24.06.2020 made by the petitioner, on the contrary the respondent no. 2 made a recommendation on 24.08.2020 but the respondent no. 6 issued a letter dated 12.08.2020 stating that the withdrawal application dated 24.06.2020 had been rejected but no such rejection order was issued. On 22.09.2020 the respondent No. 6 issued another memo imposing major punishment upon the petitioner by degrading his salary to the lowest scale with effect from 23.06.2020 and his resignation letter was also accepted with a direction to deposit his 3 months' salary as fine as per the provision of Rule 55 of the Service Rules of PBS.

Being aggrieved thereby and there having no other alternative and equally efficacious remedy available, the petitioner has filed this writ petition and obtained the present Rule.

Learned Advocate Mr. Sabyasachi Mondal, appearing on behalf of the petitioner submits that, though the petitioner was released from service by the impugned letter dated 22.09.2020. The departmental inquiry initiated against him was not at all completed and the said proceeding is still pending till today.

He next submits that, the petitioner submitted a resignation letter dated 23.06.2020 at about 5.00 P.M. and on next day that i.e. on 24.06.2020 he made another application withdrawing the same. As per the PBS service rule the resignation letter cannot be accepted because a departmental proceeding was already pending against him. In the impugned letter dated 22.09.2020 it is stated that “তবে আপনার বিরুদ্ধে পরিচালিত তদন্ত ও শৃঙ্খলা জনিত কার্যধারা চলমান থাকিবে”. Thus the impugned memo dated 22.09.2020 cannot be sustained in law and the same is liable to be set aside.

It is the contention of the learned Advocate for the petitioner that, the acceptance of resignation letter dated 23.06.2020 during pendency of a departmental proceeding is contradictory to Section 55 (3) of the Palli Bidyut Samity Employees’ Service Rules 1992 (as amended in 2012). As such the impugned order is without any lawful basis and without jurisdiction and therefore the same may kindly be declared to have been made without any lawful authority.

Learned Advocate finally submits that, the petitioner on 24.06.2020 made an application before the Chairman of BREB stating that, due to mental distress and anxiousness he submitted the resignation letter, however, as soon as he could realize, he filed an application for withdrawal of the same. The Chairman of BREB forwarded this application to the Palli Bidyut Samity on 24.08.2020 but before that on 12.08.2020 Palli Bidyut Samity took action and therefore he could not prefer any appeal as per the provision of the Service Rule inasmuch as the stipulated time period has already expired by that time and therefore, he had no other option but to file the instant writ petition.

On the other hand, learned Senior Advocate Mr. Sarwar Ahmed entered appearance on behalf of respondent No.2 i.e. the Chairman of Bangladesh Rural Electrification Board (BREB). He contested the Rule by filing an affidavit in opposition.

At the very outset learned Advocate for the respondent no. 2 submitted that, the writ petition is not maintainable in its present form inasmuch as the petitioner did not avail the forum of appeal and review under sections 45 and 46 of the Palli Bidyut Samity Employees' Service Rules, 1992 (amended in 2012). The petitioner moved before this Hon'ble Court by filing this instant writ petition despite there having a proper alternative and efficacious forum to seek remedy. Hence, the instant writ petition is not maintainable and the Rule is liable to be discharged for ends of justice.

He next submitted that, the instant petitioner submitted a resignation letter, which was voluntary and unprovoked having warrant of inference that the petitioner had the mindset of presumption of being proved guilty of the allegations already brought against him and it is also evident from the records that he subsequently submitted an application for withdrawal of the said resignation letter, which prove the facts of involvement with the allegations brought against him.

He further submitted that, the petitioner admitted that he was absent from the service for thirty days soon after the departmental proceedings was initiated against him and he subsequently filed an application for leave accompanied with medical certificate, which was concocted and fabricated having attribution of facts as being disputed resulting the writ petition as not maintainable.

He finally argued that, a departmental proceeding was initiated against the petitioner on the allegation of misconduct as well as pecuniary loss to the Samity and charge was framed against him after giving him an opportunity of self-defense and ultimately the impugned order was issued imposing punishment upon him. No illegality having been committed by the authority, the instant Rule is liable to be discharged.

We have heard the learned advocates for the respective parties and perused the writ petition, supplementary affidavit, the affidavit in opposition and all the documents annexed therewith.

Since the learned Advocate for the respondent No. 2 at the very outset agitated the issue of maintainability of this writ petition, we thus feel it expedient to address that very point of maintainability first.

It appears from the impugned memo dated 22.09.2020 that the same was issued by the General Manager of the Magura Palli Bidyut Samity imposing major punishment upon the petitioner as well as accepting his resignation letter. Challenging this order, the petitioner has filed the instant writ petition.

On examination of the পল্লী বিদ্যুৎ সমিতি কর্মচারী চাকুরী বিধিমালা, ১৯৯২ we find that in Rule 45 of the service rule there is a provision for ‘Appeal’, which is quoted below:

“৪৫। আদেশের বিরুদ্ধে আপীল:

কোন কর্মচারী এই চাকুরী বিধির অধীন কর্তৃপক্ষ কর্তৃক প্রদত্ত কোন আদেশ দ্বারা সংশ্লিষ্ট হইলে ঐ আদেশ জারীর তারিখ হইতে ৩০ (ত্রিশ) টি কার্যদিবসের মধ্যে পবিস নীতি-নির্দেশিকা ৩০০-১৭ এর অন্তর্ভুক্ত কর্মচারীগণ যথাযথ কর্তৃপক্ষের মাধ্যমে পবিস বোর্ড এবং এজিএম, ডিজিএম, অতিরিক্ত জিএম এবং জিএম পদবীর কর্মকর্তাগণ যথাযথ কর্তৃপক্ষের মাধ্যমে চেয়ারম্যান, পবিবোর্ডের নিকট আপীল করিতে পারিবেন।”

The writ petition has been filed by the petitioner challenging the decision passed by the General Manager of the Palli Bidyut Samity despite there having a specific appellate forum in the Service Rules to challenge such decision before the higher authority. As per the aforesaid provision, the competent appellate authority against the order of General Manager, PBS is the Palli Bidyut Samity Board.

It is settled principle of law that where there is an effective, efficacious and alternative remedy available, the extraordinary jurisdiction under Article 102 is ordinarily not exercised. The relevant service rules provide for an efficacious remedy by way of appeal to the competent higher authority against an order passed by the PBS authority. The petitioner, without availing the said remedy and without assigning any satisfactory explanation for bypassing the alternative forum, has directly invoked the writ jurisdiction. Hence, we hold that the writ petition is not maintainable.

As we have found the writ petition not maintainable, we consider it indiscreet to discuss on the merit of the subject matter. If we do so, that may prejudice either party.

Since the time limit of 30 (thirty) days for preferring the appeal as per the PBS Service Rule has long been expired, we find that justice will be best served if the petitioner is given an opportunity to prefer appeal before the competent higher authority i.e the PBS Board within 30 (thirty) days of receiving this judgment. The respondent no. 3 i.e. the Executive Director, Bangladesh Palli Bidyut Board is hereby directed to admit the appeal, if any preferred by the petitioner, upon condoning the delay and dispose of the appeal on merit within 30 (thirty) days of filing the same.

With the direction mentioned hereinabove, the Rule is disposed of.

However, there is no order as to costs.

Communicate the judgment and order at once.

Justice Sashanka Shekhar Sarkar, J:

I agree.

Helal/ABO