

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

**Writ Petition No. 7320 of 2022**

**IN THE MATTER OF :**

An application under Article 102 of the Constitution of  
the People's Republic of Bangladesh

-And-

**IN THE MATTER OF :**

**Debendra Chandra Baishnob**

..... Petitioner

-Versus-

Government of People's Republic of Bangladesh  
Represented by the Secretary, Ministry of Education,  
Bangladesh Secretariat, Ramna, Dhaka

..... Respondents

Mr. ABM Altaf Hossain, Senior Advocate with  
Mr. Meah Muhammad Abdullah Zahid, Advocates

.....For the petitioner

Md. Tusharf Kanti Roy, D. A. G. with

Mr. Md. Salim Azad, A.A.G and

Mr. Anis ul Mawa, AAG

.....For respondents

**Heard on : 15.11.2023 and  
Judgment On : 23.11.2023.**

**Present:**

**Mr. Justice Mustafa Zaman Islam**

**&**

**Mr. Justice Md. Atabullah**

**Mustafa Zaman Islam, J;**

In this application under article 102 of the Constitution of People's  
Republic of Bangladesh, a Rule Nisi was issued calling upon the  
respondents to show cause as to why the approval of the petitioner's  
dismissal from service as Headmaster vide office order bearing Memo No.

আইন/শিব/১৯১/২০১৯-২০২১/১৬৭(৩) তারিখঃ ২৪.০২.২০২১ খ্রিঃ of Chargoali K.Na. A. Multilateral High School, Police Station- Daudkandi, District-Cumilla (Annexure-L) should not be declared to have been without lawful authority and is of no legal effect and why the respondents should not be directed to reinstate the petitioner in the post of Headmaster and/or pass such other or further order or orders as to this Court may seem fit and proper.

The facts necessary for disposal of the Rule, in brief are: The petitioner is a peace loving and law abiding citizen of Bangladesh and he was the Headmaster of Chargoali K.Na. A. Multilateral High school, Police Station-Daudkandi, District-Cumilla. The petitioner passed S.S.C examination in the year of 1983; passed H.S.C Examination in the year of 1985; subsequently the petitioner passed B.Com Examination-1990. He passed B.Ed Examination and also passed Bachelor in English Language Teaching (BELT) Examination from the Bangladesh Open University. The petitioner applied for the post of Headmaster, in response to the advertisement published by the concerned authority and they duly constituted selection committee selected the petitioner to be appointed for the post of Headmaster. Subsequently, on 13.12.2010 the respondent no. 10, Chairman, Managing Committee of the said school issued an appointment letter. Pursuant to that letter the petitioner joined the said school on 01.01.2011 and since then he has been discharging his duties honestly, sincerely and with full satisfaction of the authority concerned.

The petitioner was enlisted in the monthly pay order (MPO) being index No. 137588 and since then he has been receiving Government portion of his monthly salary and other financial benefit regularly without

any interruption till temporary suspension. Mentioned here that the petitioner, earlier filed a writ petition which was pending for as in-re motion hearing and in the meantime, on 23.08.2020 the Respondent No. 10 submitted an application to the Respondent No. 8, Upazila Nirbahi Officer, Daudkandi, Cumilla to handover the key or Almeria and necessary documents of the schools and also for constituting an inquiry committee and the Respondent No. 8 after receiving the application directed to the Respondent No. 9, the Upazila Secondary Education Officer for taking necessary steps.

It is stated that on 03.09.2020 the Headmaster-in-Charge of Chargoali K.Na. A. Multilateral High school also submitted an application to the Respondent No. 9 for recovering the key of the office room and necessary document from the Headmaster. The Respondent No. 9, after receiving the application issued a letter vide Memo No. উমাশিকা/দাউদ/কুম/২০২০/১৭২ তারিখ ০৬/০৮/২০২২ খ্রিঃ by which directed the petitioner to handover the key of the office room and necessary paper to the Headmaster (in charge) of Chargoali K.Na.A. Multilateral High School but surprisingly suspended him on 23.08.2020. Be that, the Respondent No. 10 by misusing his power illegally reduced the MPO salary for 4 days of the petitioner in the month of August-2020. The Respondent No. 10 is illegally stopping to payment the allowance which is paid by the petitioner submitted an application to the Respondent No. 10 for payment of all arrear allowance but till date, he did not pay heed any. Thereafter, the petitioner on 30.08.2020 submitted an application to the Respondents thereby, requesting them to withdraw the order of suspension and reinstate him but

the respondents has not receipt any reply till date. In the mean time, the Respondent No. 9, issued a letter vide memo dated 26.07.2020 to the Janata Bank Ltd. Daudkandi, Cumilla for inquiry into the fake signature of the President of the said School and on 28.07.2020 submitted a report vide memo dated 27.07.2020 wherein clearly stated that there is no involvement of the petitioner regarding tempering of the fake signature by which withdrawn the salary and bill voucher from the Janata Bank.

That being so, the respondent no. 4, issued a letter vide memo dated 24.02.2021 as evident as annexure L to the writ petition approved the proposal of the Managing Committee and also rejecting the application of the petitioner dated 28.09.2020 and thereby approved the dismissal of the petitioner from the service as Headmaster.

In the premises stated here in above, the petitioner having no other alternative and efficacious remedy filed the instant writ petition and obtained the Rule.

Mr. ABM Altab Hossain, the Senior Advocate appearing for the petitioner having placed the petition along with documents annexed hereto, and first up all submits that the petitioner was the Headmaster of the Chargoali K. Na. A. Multilateral High School, Daudkandi, Cumilla, he was appointed in the said post after compliance of all formalities and procedure as required by the Rules and regulations. He submits that he has been receiving the Government portion of salary and other financial benefits regularly, without any interruption, till temporary suspension. But without compliance with the provisions of Rules and regulations and terms and condition of service regulation 1979, the petitioner was suspended by the

Managing Committee on 23.08.2020 with a malafide intention. But they have not initiated any departmental proceeding against the petitioner by way of any show case notice, although the petitioner has been kept under suspension till dismissing from the service as Headmaster without apprising him as to what was his fault and without bringing any allegation against him by issuing show cause notice, as required by regulations 11 and 12 of the above mentioned Regulations. He submits that the petitioner on 30.08.2020 submitted an application to the respondents and thereby requesting them to withdraw the order by illegal suspension and reinstate him but without disposing the petitioner's representation, the Respondent No. 4 issued a letter vide memo dated 24.02.2021 approved the proposal of the Managing Committee and also rejecting the application by the petitioner and thereby approved the dismissal from the service as Headmaster.

He further submits that the petitioner has been penalized its utter violation of the said regulation 13 and 14 মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ডের বেসরকারী স্কুল শিক্ষকদের চাকুরীর অবস্থা ও শর্তাবলী, ১৯৭৯ but the Appeal and Arbitration Committee did not scrutinize the matter and as such the decision of the Appeal and Arbitration Committee is illegal, arbitrary, unlawful, and has been done without lawful authority and as such the rule is made absolute.

Mr. Tushar Kanti Roy, the learned Deputy Attorney General and Md. Md. Salim Azad, the learned Assistant Attorney General on behalf of respondents, has found it difficult to show that there is an approval by the Board as per law.

We have considered the submissions of the learned Advocates both the side and perused the application with annexure, supplementary affidavit and other materials on record.

Before dealing with the rival contentions of the parties, (Board of Intermediate and secondary) as the action as impugned is under Regulations 11, 12 13 and 14 of Terms and Condition of service Regulation, 1979 with Probidhanmala of Managing Committee Probidhanmala- 2009, it would be appropriate to set out the said Regulations which reads as under-

Regulation 11. Punishment- A teacher who commits a breach of the provisions of these regulations or who is guilty of negligence of duty, inefficiency or corruption or who knowingly does anything detrimental to the interest of the school or is guilty of professional misconduct shall liable to all or any of following penalties namely-

- (a) Censure,
- (b) Withholding of increment for specified period
- (c) Recovery from pay of the whole or part of any pecuniary loss caused to the school by negligence of duty.
- (d) Removal from service and
- (e) Dismissal from service.

Explanation:- .....

12. Power to empower penalty:- .....

13. Suspension:-

(i) A teacher may be placed under suspension pending inquiry. The power of suspending a teacher pending inquiry shall vest in the appointing authority.

(ii) During suspension, a teacher shall be entitled to a subsistence allowance at the rate of one half of his pay. While under suspension the employee shall not leave the place where he ordinarily resides to perform his duties on teacher without prior permission of the authority competent to suspend him.

#### 14. Procedure for drawing proceedings- .....

It appears from the above Regulations that the Respondent No. 4, under the Regulations 11, 12, 13 and 14 of the Service Regulations-1979 the Respondent. Appeal and Arbitration Committee approved the dismissal order of the petitioner by colorable exercise of the power, violation of the petitioner's fundamental right. The provision of regulations 11, 12, 13 and 14 of Regulation-1979 relates to the punishment, power to impose penalty and suspension of the teachers, we have meticulously gone through each and every relevant Rules and Regulations as it has been mentioned above in this respect. In consideration of the submissions of the learned Advocate for the petitioner and relevant Rules and Regulations, it appears that section 13 of the said Regulation in the suspension of the teacher. As could be seen that proceeding regarding temporary suspension and dismissal of Head Master Mr. Debendra Chandra Baishnob have not been completed as per teachers employment Rules-1979. It appears that in the Board's the Appeal and Arbitration committee's meeting held on 21.01.2021, the dismissal of the Headmaster of the said School was approved, but the board was not

approved by the same as required by law. The appeal and Arbitration Committee had no jurisdiction or power to dismissal of the petitioner from the service as Headmaster without approval of the Board. No personal hearing of the petitioner was conducted by the inquiry committee, most illegally approved the resolution of the Managing Committee of the School under the signature of the Secretary, Secondary and Higher Secondary Education Board, Cumilla by order of the Chairman, which is arbitrary, which and mechanical one.

The dismissal of the petitioner was never placed before the Board to be constituted pursuant to section 12 of the “১৯৬১ সালের ঢাকা মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ডের বেসরকারী স্কুল শিক্ষকদের চাকুরীর অবস্থা ও শর্তাবলী (Ordinance 33 of 1961)”. It is apt to here that on the face of the impugned memo dated 24.02.2021, it is evident that there is no mentioned of the Board meeting held pursuant to section 12 of the ordinance 1961 for the purpose of dismissal of the petitioner which is mandatory required of the said ordinance. As such the dismissal order of the instant petitioner is ex-facie, malafide and without lawful authority.

Now, we deal with the impugned order dated 24.02.2021, we would like to reproduce the relevant portion of the impugned order which records as follows:-

“উপর্যুক্ত বিষয় ও সূত্রের পরিপ্রেক্ষিতে জানানো যাচ্ছে যে, সুত্রোক্ত আবেদনের ব্যাপারে গত ২১-০১-২০২১ তারিখে অনুষ্ঠিত বোর্ডের আপিল এন্ড আরবিট্রেশন কমিটির সভায় চর গোয়ালী খন্দকার নাজির আহমেদ উচ্চ বিদ্যালয়ের ম্যানেজিং কমিটি ও প্রধান শিক্ষক দেবেন্দ্র চন্দ্র বৈষ্ণবের বক্তব্য এবং তাদের দাখিলকৃত কাগজপত্রাদি পর্যালোচনায় দেখা গিয়েছে যে, প্রধান শিক্ষক জনাব দেবেন্দ্র



বৈষ্ণবের সাময়িক বরখাস্ত ও বরখাস্তের প্রস্তাব গ্রহণ সংক্রান্ত কার্যক্রম শিক্ষক চাকুরিবিধি, ১৯৭৯ মোতাবেক সম্পন্ন করা হয়েছে। সাময়িক বরখাস্তকরণ ও বরখাস্তের প্রস্তাব গ্রহণ সংক্রান্ত কার্যক্রমে কোন ত্রুটি পরিলক্ষিত হয় নি।

এমতাবস্থায়, আপিল এন্ড আরবিট্রেশন কমিটির সিদ্ধান্ত মোতাবেক চর গোয়ালী খন্দকার নাজির আহমেদ উচ্চ বিদ্যালয়ের প্রধান শিক্ষক জনাব দেবেন্দ্র চন্দ্র বৈষ্ণবের সাময়িক বরখাস্তের বিরুদ্ধে জনাব দেবেন্দ্র চন্দ্র বৈষ্ণবের দায়েরকৃত ২৮-০৯-২০২০ তারিখের আবেদন না মঞ্জুর করা হলো এবং উক্ত প্রধান শিক্ষকের বরখাস্তের বিষয়ে ম্যানেজিং কমিটির প্রস্তাব অনুমোদন দেয়া গেলো।”

From the above impugned order, it appears that the Respondents without following the Rules and Regulations and without holding proper inquiry temporary suspended the petitioner and thereafter the petitioner has been dismissal from the service as Headmaster its utter violation by the said Regulations 13 and 14 of the ordinance 1979. At the case in hand, the appeal and Arbitration Committee did scrutinize the matter as well as approved the regulation of the Managing Committee which is illegal and arbitrary.

In view of the aforesaid observations and discussions made hereinabove, we are constrained to hold that the Rule has substance and is bound to succeed.

In the result, the Rule is made absolute.

The impugned memo dated 24.02.2021, the approval of the petitioner's dismissal from service as Headmaster vide Memo No. আইন/শিব/১৯১/২০১৯-২০২১/১৬৭(৩) তারিখঃ ২৪.০২.২০২১ খ্রিঃ of Chargoali K.Na. A. Multilateral High School, Police Station- Daudkandi, District-Cumilla

(Annexure-L) is declared to have been without lawful authority and is of no legal effect.

The Respondents are directed to reinstate the petitioner in his service and give him all service benefits from the date of his suspension dated 23.08.2020 within 60 days from the date of receipt of the copy of this judgment in accordance with law.

However, there is no order as to costs.

Communicate the Judgment and Order at once.

**Md. Atabullah, J:**

I agree.