

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Md. Nuruzzaman
Mr. Justice Borhanuddin
Mr. Justice Md. Abu Zafor Siddique

CIVIL PETITION FOR LEAVE TO APPEAL NO.2413 OF 2022.

(From the judgment and order dated 08.09.2021 passed by the High Court Division in Writ Petition No.10952 of 2019).

Director General, Bangladesh Agricultural : ..Petitioner.
Research Institute (BARI), Joydebpur, Gazipur.

-Versus-

Md. Mustafizur Rahman, Joint Director : ..Respondents.
(Administration)(current charge), (Dismissed),
Bangladesh Agricultural Research Institute
(BARI), Joydebpur, Gazipur and attached to
Bangladesh Agricultural Research Council
(BARC), Farmgate, Dhaka and others.

For the Petitioner. : Mr. A. M. Amin Uddin, Senior Advocate
(with Mr. Foyej Ahmed, Advocate)
instructed by Mr. Syed Mahbubar
Rahman, Advocate-on-Record.

For Respondent No.1. : Mr. Md. Khurshid Alam Khan, Senior
Advocate instructed by Ms.
Madhumalati Chowdhury Barua,
Advocate-on-record.

For Respondent Nos.2-6. : Not represented.

Date of Hearing. : **The 21st May, 2023.**

Date of Judgment. : **The 21st May, 2023.**

J U D G M E N T

Borhanuddin, J: This civil petition for leave to appeal is directed against the judgment and order dated 08.09.2021 passed by the High Court Division in Writ Petition No.10952 of 2019 making the Rule absolute with direction.

Background of the civil petition is that the respondent no.1 herein as petitioner preferred Writ Petition No.10952 of 2019 impleading the petitioner and proforma respondents herein as writ-respondents impugning office order contained in স্মারক নং-২অ-৭৭৯/২০১৭/প্রশাসন/ডিপি নং-৩৪৫/১৩৮৫১ dated 28.06.2018 issued under the signature of the writ-respondent no.2 Director General, Bangladesh Agricultural Research Institute (BARI), Joydebpur, Gazipur dismissing the petitioner from the service of Bangladesh Agricultural Research Institute (BARI), Joydebpur, Gazipur as Joint Director (Administration) (current charge) according to the provisions of Regulation No.৩৮(১) এর (খ)(ঈ) of Bangladesh Agricultural Research Institute (Officer and Employee) Service Regulations, 2011 (hereinafter stated as 'the Service Regulations, 2011') for negligence of duty and misappropriation of money

And also

Office order contained in স্মারক নং-১২.০০.০০০০.০৬২.০৪.০০৬.১৯.৩৫২ dated 27.08.2019 issued by the respondent no.1 Secretary, Ministry of Agriculture rejecting application of the petitioner filed under Regulation 46 of the Service

Regulations, 2011 and thereby maintained the office order contained in Memo No.13851 dated 28.06.2018 issued by the writ-respondent no.2.

Brief facts are that the writ-petitioner was appointed as an Assistant Director and subsequently promoted to the post of Senior Assistant Director (Administration) and Deputy Director (Administration) and lastly as Joint Director (Administration) (current charge) of the BARI; Since 06.09.2015 the petitioner have been performing the function as Joint Director in Bangladesh Agricultural Research Council (BARC) but have been drawing his monthly salary and other allowances from BARI; After preparing draft of uniform Service Rules for National Agricultural Research System (NARS) under the Ministry of Agriculture and submitting the same to the Executive Chairman, BARC, by a forwarding letter dated 10.02.2016, the petitioner filed an application to the Secretary, Ministry of Agriculture with a prayer to return him back from BARC to his parent organization BARI as Joint Director (Administration) (current charge) by cancelling the office order dated 03.09.2015; Thereafter

the petitioner also submitted many applications to the Secretary, Ministry of Agriculture, requesting to return him back but without any response; In the financial year 2014-2015 and 2015-2016, the BARI authority according to the decision of its Board of Management sanctioned money for development work of Breeder Seed Production Centre (BSPC), Debigonj, Panchagarh through Request for Quotation (RFQ) under BARI; Mr. Abid Hossain, Chief Scientific Officer was in-charge of BSPC, Debigonj, Panchagarh and the development works were performed under the management and supervision of said Abid Hossain; After completion of the development works through RFQ, the BARI authority brought the charge of allegations for misconduct, negligence of duty and misappropriation of money against Abid Hossain and the BARI authority made inquiry by constituting inquiry committee; After holding inquiry, the inquiry committee submitted a report to the Director General, BARI and on the basis of inquiry report BARI authority initiated departmental proceedings against Abid Hossain and finally dismissed him from the service of BARI as Chief Scientific Officer with a direction to

deposit defalcated amount of Tk.1,91,34,189/- in the Finance and Accounts Section of BARI; Against the dismissal order said Abid Hossain filed Writ Petition No.17332 of 2017 before the High Court Division and obtained Rule Nisi alongwith an order of stay and the writ petition is still pending for disposal; After a long lapse of time, BARI authority brought same allegations against the petitioner for misappropriation of money as regards the work performed through 13 RFQ in BSPC, Debigonj, Panchagarh; BARI authority by office order dated 06.02.2017 constituted an inquiry committee regarding the allegations of misappropriation of money but the committee without any notice, inquiry or hearing submitted a report to the Director General, BARI recommending that the petitioner was involved with the misappropriation of money at the development work; Writ-respondent no.2 Director General, BARI by notice dated 03.08.2017 asked the petitioner to submit reply within 10 working days and accordingly the petitioner submitted reply to the show cause notice on 24.08.2017 denying the allegations and stating that he had no involvement with

the misappropriation of money at the work performed in the financial year 2014-2015 and 2015-2016 because at that time he was not an officer of BSPC, Debigonj, Panchaghar and he only performed his functions as delegated by the Director General, BARI and the allegations are totally false and baseless; Thereafter, the BARI authority constituted another inquiry committee for further inquiry and the inquiry officer by notice dated 08.10.2017 asked the petitioner to appear before the inquiry officer at his office by 11 A.M. of 12.10.2017 to make statement and accordingly, the petitioner appeared and made his statement; Then the BARI authority issued a notice under memo dated 27.11.2017 asking the petitioner to submit satisfactory reply within 7(seven) working days; The petitioner submitted reply on 06.12.2017 but the BARI authority without considering the reply initiated departmental proceedings against him and issued a statement of allegation vide office order dated 21.12.2017 asking the petitioner to submit written reply within 10(ten) working days; The petitioner submitted reply on 04.02.2018 to the Director General, BARI denying

the allegations and prayed for discharging him from the allegations; The BARI authority by office order dated 11.02.2018 appointed Dr. Madan Gopal Saha, Chief Scientific Officer, Fruits Division, Horticulture Research Centre, BARI, Joydebpur, Gazipur as an inquiry officer who asked the petitioner to appear before him on 08.04.2018 and accordingly the petitioner appeared before the inquiry officer; The inquiry officer asked the question in writing regarding the allegations and the petitioner answered to the question in writing; The BARI authority issued second show cause notice on 25.04.2018 asking the petitioner to submit explanation within 7(seven) working days as to why major penalty should not be imposed on him; The petitioner submitted reply on 28.05.2018 denying the allegations and prayed for personal hearing and the BARI authority heard him personally; The BARI authority by office order dated 28.06.2018 under the signature of respondent no.2 Director General, BARI, dismissed the petitioner from the service of BARI, Joydebpur, Gazipur as Joint Director (Administration) (current charge) and presently attached to BARC,

Farmgate, Dhaka according to the provisions of Regulation ৩৮(১) এর (খ)(ঈ) of the Service Regulations, 2011 for negligence of duty and misappropriation of money which was served upon the petitioner on 04.07.2018.

Against the order, the petitioner preferred Writ Petition No.8898 of 2018 and obtained Rule Nisi but the BARI being a corporate body having its own Regulation, some of the well wishers advised the petitioner to prefer appeal to the Secretary, Ministry of Agriculture as appellate authority under Regulation 46 of the Service Regulations, 2011 and upon the prayer of the petitioner the Rule was discharged for non-prosecution vide order dated 04.09.2018. The appeal filed by the petitioner was returned back with endorsement "প্রাপক গ্রহণ না করায় পত্র ফেরত"; Under the compelling situation the petitioner again filed Writ Petition No.15267 of 2018 before the High Court Division challenging the order of dismissal and a Division Bench of the High Court Division without issuing any Rule disposed of the writ petition directing the respondent no.1 Secretary, Ministry of Agriculture to dispose of the appeal filed by the petitioner within 60(sixty) days from

the date of receipt of the order dated 26.02.2019; After obtaining the certified copy of the order passed in the writ petition the petitioner submitted the same to the writ-respondent no.1 but the respondent no.1 did not take any step to dispose of the appeal filed by the petitioner within the time prescribed by the High Court Division; However, vide letter dated 25.07.2019 the writ-respondent no.1 asked the petitioner to appear before him for disposal of the appeal being numbered as Departmental Appeal No.02 of 2019 and accordingly the petitioner appeared by submitting written statement alongwith related papers but the respondent no.1 rejected the appeal by maintaining the order of dismissal.

Having aggrieved by and dissatisfied with the order, the writ-petitioner filed instant writ petition and obtained a Rule Nisi issued upon the writ-respondents to show cause.

Writ-respondent no.2 Director General, BARI contested the Rule by filing affidavit-in-opposition, stating interalia, that after observing all the legal formalities the petitioner was dismissed from service and after due

consideration his appeal has been rejected maintaining the order of dismissal as such the Rule is liable to be discharged.

After contested hearing, a Division Bench of the High Court Division on perusal of the relevant papers/documents and applicable laws made the Rule absolute vide judgment and order dated 08.09.2021, holding that:

"It also appears from Section 7 of the Act that there are 11 members other than the directors of the institute but the impugned decision of the dismissal order was taken by 4 directors of the institute. It also appears that under Section 9(3) of the Act the quorum of the Board is at least 50% of the board members.

Therefore, the decision taken by the Board of Directors cannot be treated as board decision due to quorum non-judice. Hence, we are of the view that the impugned order of dismissal was not issued by the appointing authority.

It appears from the inquiry report that the inquiry officer stated in his report that he took some evidence of some officers of the institute but nowhere in that report it was mentioned that the examination of those persons was held in presence of the petitioner or the petitioner was given any opportunity to cross-examine them. It is a

settled principle of law that if any witness is examined against the accused persons, it must be held in presence of the delinquent person and he has to be given the chance to cross-examine those witnesses.

Therefore, the inquiry report cannot be said to be an impartial inquiry report and since the order of dismissal of the petitioner was issued on the basis of that inquiry report, it cannot be said to be a legal order of dismissal.

Since the order of dismissal was not issued after observing all legal formalities, the order of the appellate authority's decision also cannot be sustained in the eye of law.

Considering the facts and circumstances of the case, we find merit in the Rule."

(Sic)

After above findings and observations, the High Court Division directed the respondents in the following manner:

"The respondents are directed to reinstate the petitioner to his original post as the Deputy Director (Administration) in the Bangladesh Agricultural Research Institute, Joydebpur, Gazipur with continuity of service and arrear salary and allowances."

Having aggrieved, the writ-respondent no.2 as petitioner preferred instant civil petition for leave to appeal invoking Article 103 of the Constitution.

Mr. A. M. Amin Uddin, learned Advocate submits that the High Court Division erred in law in making a 3rd case by holding that the writ-petitioner was not given chance to cross-examine the witnesses during inquiry without considering the fact that the writ-petitioner never asked for cross-examine the witnesses and hence the judgment and order is liable to be set-aside. He also submits that the High Court Division erred in law as well as in facts in not considering that allegations brought against the writ-petitioner having been proved and as such he was dismissed from service. He lastly submits that the direction of the High Court Division to reinstate the petitioner to his original post with continuity of service and arrear salary and allowances as Deputy Director (Administration) of BARI is against the principle settled by this Division in various cases.

On the other hand Mr. Md. Khurshid Alam Khan, learned Advocate supports the impugned judgment and order. Regarding direction of the High Court Division, learned Advocate submits that the writ-petitioner had already retired from his service and as such there is no scope to

reinstate him in the service. Under the present circumstances he prays to modify the direction of the High Court Division in the impugned judgment and order.

Heard the learned Advocate for the respective parties. Perused the impugned judgment and order as well as papers/documents contained in the paper book.

It appears that the service of the petitioner is regulated by the বাংলাদেশ কৃষি গবেষণা ইনস্টিটিউট (বারি) আইন, ২০১৭ and বাংলাদেশ কৃষি গবেষণা ইনস্টিটিউট (কর্মকর্তা ও কর্মচারী) চাকুরি প্রবিধানমালা, ২০১১. As per section 12 of the Act, 2017 the provision for employment of BARI is stated as under:

“১২। কর্মচারী নিয়োগ।- (১) ইনস্টিটিউট উহার দায়িত্ব সুষ্ঠুভাবে সম্পাদনের জন্য, সরকার কর্তৃক অনুমোদিত সাংগঠনিক কাঠামো সাপেক্ষে, প্রয়োজনীয় সংখ্যক কর্মচারী নিয়োগ করিতে পারিবে।

(২) কর্মচারীদের নিয়োগ এবং চাকরির শর্তাবলী প্রবিধান দ্বারা নির্ধারিত হইবে।”

Under Regulation 2(10) of বাংলাদেশ কৃষি গবেষণা ইনস্টিটিউট (কর্মকর্তা ও কর্মচারী) চাকুরি প্রবিধানমালা, ২০১১ appointing authority means 'Board' or the persons empowered by the 'Board' to appoint any person to certain post. Section 7 of the Act, 2017 stipulates constitution of the 'Board' with total 11 members. But the decision of the dismissal order of the

petitioner was taken by 4(four) members of the 'Board' though Section 9(3) of the Act, 2017 provides:

"৯(৩)। বোর্ডের সভার কোরামের জন্য উহার মোট সদস্য সংখ্যার অন্ত্যন অর্ধেক সদস্যের উপস্থিতির প্রয়োজন হইবে, তবে মূলতবি সভার ক্ষেত্রে কোন কোরামের প্রয়োজন হইবে না।"

So, we are in agreement with the findings of the High Court Division that the impugned order of dismissal cannot be treated as 'Board' decision due to quorum non-judice.

The High Court Division also found from record that the inquiry officer stated in his report that he took some evidence of some officers of the institute but nowhere in that report it was mentioned that the examination of those persons was held in presence of the petitioner or the petitioner was given any opportunity to cross-examine them.

However in view of the present circumstances i.e. the writ-petitioner had already retired from service, we find rationality in the prayer of the learned Advocate for the respondent no.1 regarding modification of the direction in the impugned judgment and order.

Accordingly, direction given by the High Court Division vide impugned judgment and order dated 08.09.2021 is modified by deleting the following sentences:

"The respondents are directed to reinstate the petitioner to his original post as the Deputy Director (Administration) in the Bangladesh Agricultural Research Institute, Joydebpur, Gazipur with continuity of service and arrear salary and allowances."

And replacing the same by inserting sentences quoted hereinunder:

"The respondents are directed to pay the petitioner's arrear salary and allowances as the Deputy Director (Administration) in the Bangladesh Agricultural Research Institute, Joydebpur, Gazipur in accordance with the service Rule of the Bangladesh Agricultural Research Institute (Officer and Employee) Service Regulations, 2011 within 3(three) months from the date of receipt a copy of this judgment and order."

All other portions of the impugned judgment and order dated 08.09.2021 passed by the High Court Division in Writ Petition No.10952 of 2019 shall remain as it is except the above modification.

Accordingly, the civil petition for leave to appeal
is disposed of.

No order as to costs.

J.

J.

J.

The 21st May, 2023.
Jamal/B.R./Words-*2644*