

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

**WRIT PETITION NO. 7565 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. Selim and another

.....Petitioners

-VERSUS-

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

..... Respondents

Mr. S.M. Quamrul Hasan, Advocate

..... For the Petitioners

Ms. Sufia Ahamed, Advocate

.....For the Respondent Nos.2-5.

**Present:**

**Mr. Justice Sashanka Shekhar Sarkar**

**And**

**Justice Urmee Rahman**

**Heard on 08.01.2026, 13.01.2026,19.01.2026 and  
Judgment on 22.01.2026.**

**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 Provision of Rule 64(2) of the “ঢাকা দক্ষিণ সিটি করপোরেশনের কর্মচারী চাকুরী বিধিমালা, ২০১৯” shall not be declared void and ultra vires to the Constitution and as to why the Memo vide No. 46.207.000.03.01.4067.1996-683 dated 17.12.2020 issued under the signature of the respondent No.2 (Annexure-D) dismissing the petitioner’s from the post of License and Advertiser Supervisor of Dhaka South City Corporation shall not be declared to have been issued without any lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.”*

The relevant facts necessary for disposal of the instant Rule, in short, are that, the petitioner No. 1 was appointed as Lower Division Assistant Cum-Typist on 11.08.1988 and the petitioner No. 2 was appointed as Ledger Keeper in Taxation Zone on 09.05.1984 under Dhaka Municipal Corporation on ad-hoc basis for 6 (six) months. On receiving the appointment letters they joined their respective posts on 11.08.1988 and 12.05.1984 respectively. After joining, the petitioners had been doing their job sincerely and efficiently and after being satisfied about their service the authority promoted them as License and Advertisement Supervisors on 06.07.2010. After promotion, while the petitioners were doing their job with all satisfaction of every corner, all on a sudden the respondent No. 2 dismissed them from their service on 17.12.2020 without any show cause notice and without giving them any opportunity

of being heard. After receiving the letter of dismissal the petitioners preferred an appeal on 19.01.2021 before the Mayor, South City Corporation, Dhaka (the respondent No. 2) as per provision of Rule 58 of the 'Dhaka South City Corporation Employees Employment Rules, 2019'. After preferring the appeal, the petitioners made verbal requests on several occasions to the respondents to dispose of the appeal but the respondents did not pay any heed to their requests.

Being aggrieved, the petitioners preferred Writ Petition No. 4380 of 2021 before the High Court Division and after hearing on 27.04.2021 a Division Bench of this Division summarily disposed of the application by the following order:

*"Accordingly, Respondent No. 2, Mayor, Dhaka South City Corporation, Nagar Bhaban, Dhaka is directed to dispose of the representation/application dated 19.01.2021 Annexure- E to the writ petition submitted before him by the petitioners within a period of 60 (sixty) days from the date of receipt of this order, in accordance with law and communicate the decision to the petitioners.*

*With the above observations and directions the application is disposed of."*

Though the order of the High Court Division was received by the respondent no. 2 but the appeals were not disposed of as yet, which tantamount to rejection of the said appeals. Being aggrieved, the

petitioners have filed the instant writ petition and obtained the present Rule.

Learned Advocate Mr. S.M. Quamrul Hasan, appearing on behalf of the petitioners submits that, for appointment, transfer as well as to manage different service conditions of the staffs of Dhaka South City Corporation Government has promulgated “ঢাকা দক্ষিণ সিটি কর্পোরেশন কর্মচারী চাকুরী বিধিমালা, ২০১৯” and in Rule 53 of the said ‘বিধিমালা’, a detailed procedure has been described for imposing major punishment to a delinquent employer, which includes formation of charge, issuing show cause notice, holding inquiry by giving the employee an opportunity to defend himself etc. **On the other hand** Rule 64 of the said ‘বিধিমালা’, provides that, the authority may, for any reason, remove an employee from service by giving him 90 days’ notice or by paying 90 days’ salary in cash in lieu thereof. Referring these two Sections learned advocate submits that, these two Rules are totally inconsistent to each other as well as against the spirit of the Article 27, 31 and 135(2) of the Constitution of the Peoples’ Republic of Bangladesh.

He then argues that before removal of the petitioners from their service they were not given any chance of hearing and no show cause notice were issued to that effect and thereby the authority violated the principle of natural justice because it is a settled principle of law that without any prior show cause notice, no adverse decision can be taken against any person.

He further submits that the petitioners being permanent employees to the respondent No.2 for more than 30 years, their services are guided by the provisions of “ঢাকা দক্ষিণ সিটি কর্পোরেশন কর্মচারী চাকুরী বিধিমালা, ২০১৯” and the disciplinary action in case of major punishment (গুরুদণ্ড) shall be guided by Rule 53 of the said ‘বিধিমালা’ after giving them opportunity of being heard in respect of the charge brought against them but the respondent No.2 without complying the provision of the said rule most illegally dismissed the petitioners from their service under Rule 64 (2) which is arbitrary in nature and as such the impugned action taken by the respondent No.2 is liable to be declared without any lawful authority and not tenable in the eye of law.

On the other hand, Ms. Sufia Ahamed, learned Advocate appeared on behalf of the respondent Nos.2-5 by filing an affidavit in opposition and opposed the Rule.

At the very outset of her submission she states that, since the allegations against the petitioners were proved, the notice was rightly issued under Rule 64(2) of the Dhaka South City Corporation Employees Service Rules, 2019 and they were rightly removed from service in accordance with law upon making payment of 90 days’ salary.

She submits that earlier the petitioners filed Writ Petition No.4380 of 2021 before the High Court Division challenging their order of removal and upon hearing this Division passed an order to dispose of the appeals

which were pending before the authority; the instant writ petition has been filed regarding the self-same subject matter. Learned advocate argues that, since this matter was raised before this Hon'ble Court in a different writ petition and an order was passed therein, the same matter cannot be agitated by filing a new writ petition as it is barred by *res judicata*. Finally, she prays that the Rule may be discharged.

An affidavit in reply has been filed on behalf of the petitioners in reply to the affidavit in opposition filed by the respondents. Upon placing the affidavit in reply the learned advocate submits that, the allegations brought against the petitioners are unspecific, untrue and baseless and they were not given any opportunity to defend themselves. As a result the impugned decision suffers from mala fide of the respondents. Learned advocate refers to two examples, where in a similar situation two employees of Dhaka South City Corporation were removed from service under Rule 64(2) and on appeal, after hearing them, the appeals were allowed upon setting aside the removal orders and they were reinstated in their services (Annexure G, G-1, G-2 and G-3). In the instant case the appeals preferred by the petitioners were not disposed of by the respondents despite an order of the High Court Division. As a result, they have been discriminated by their employers in an unlawful manner. He, therefore, prays that the Rule may be made absolute.

We have heard the learned advocates for the petitioners as well as for the respondents and perused the writ petition, the affidavit in opposition, the affidavit in reply and the documents annexed therewith.

It appears from the record that, the impugned order, as contained in Annexure-D, was issued by the Respondent No.2, i.e. the Mayor, Dhaka South City Corporation, which is quoted below:

স্মারক নং-৪৬.২০৭.০০০.০৩.০১.৪০৬৭.১৯৯৬-৬৮৩

তারিখঃ ০২ পৌষ ১৪২৭ বঙ্গাব্দ  
১৭ ডিসেম্বর ২০২০ খ্রিস্টাব্দ

অফিস আদেশ

“ঢাকা দক্ষিণ সিটি কর্পোরেশন অঞ্চল-২ এর রাজস্ব বিভাগের লাইসেন্স ও বিজ্ঞাপন সুপারভাইজার (১) জনাব মোঃ সেলিম ও (২) জনাব দৌলত হোসেন এর অফিস কক্ষে ১৪.১২.২০২০ তারিখ দুপুর ১২.৩০ মি. দুদকের অভিযানে ঘুষের অর্থ এবং ঘুষ লেনদেনের ডাইরীসহ দুই জন দালাল গ্রহণতার হয়। এই ঘুষ লেনদেনের সাথে (১) জনাব মোঃ সেলিম ও (২) জনাব দৌলত হোসেন সরাসরি জড়িত মর্মে নিশ্চিত হওয়ায় ঢাকা দক্ষিণ সিটি কর্পোরেশন কর্মচারী চাকুরি বিধিমালা, ২০১৯ এর ৬৪(২) বিধি মোতাবেক জনস্বার্থে এবং ঢাকা দক্ষিণ সিটি কর্পোরেশন এর স্বার্থ রক্ষার্থে রাজস্ব বিভাগ অঞ্চল-২ এ সংযুক্ত লাইসেন্স ও বিজ্ঞাপন সুপারভাইজার (১) জনাব মোঃ সেলিম ও (২) জনাব দৌলত হোসেনকে চাকুরি হতে অপসারণ করা হলো।”

In this manner, the petitioner Nos.1 and 2 were removed from their services by a single order dated 17.12.2020 as per the provision of Rule 64 (2) of the Dhaka South City Corporation Employees Service Rules, 2019 on the basis of some allegations brought against them.

In this context Rule 64(2) of the “বিধিমালা, ২০১৯ is quoted below:

“৬৪। চাকুরি অবসান, চাকুরি হইতে অপসারণ, ইত্যাদি।-

(২) এই বিধিমালায় ভিন্নরূপ যাহা কিছুই থাকুক না কেন, উপযুক্ত কর্তৃপক্ষ কোনো কারণ দর্শাইয়া কোনো কর্মচারীকে ৯০(নব্বই) দিনের নোটিশ প্রদান করিয়া অথবা ৯০(নব্বই) দিনের বেতন নগদ পরিশোধ করিয়া তাহাকে চাকুরি হইতে অপসারণ করিতে পারিবে।”

It is apparent that this particular provision does not give an employee any opportunity to defend himself against the allegation brought against him rather it gives the employer an unfettered power to remove an employee from service showing any reason.

Every service related rules, regulation or Act contains a ‘termination simpliciter’ clause. According to this clause the employer always have right to terminate an employee without showing any reason by giving prior notice or otherwise. Likewise this clause gives option to an employee to leave or discontinue his service by giving prior notice to the employer. Such termination is, in the ordinary language, known as ‘termination simpliciter’, which is used to get rid of an employee without entailing any stigma or punishment on him.

In the case of *Bangladesh Parjatan Coporation Vs. Shahid Hossain Bhuiyan reported in 43 DLR (AD) 154* Appellate Division held that an employee thus terminated cannot have any grievance; it is the payment of this and other service benefits which put a check upon arbitrary exercise of the power to terminate. But a Court cannot declare a law invalid on the ground that it is harsh or unjust. If the termination is

found to be within the four corners of the law the Court cannot nullify it on the ground that it is harsh or cruel.

In the case of *Bangladesh Bank and others Vs. Mohammad Abdul Mannan* reported in *46 DLR (AD) 1* his Lordship the then Hon'ble Chief Justice Mr. Shahabuddin Ahmed held that: "if the order of termination on the face of it does not entail any stigma or does not refer to any obligation, that should be valid in the eye of law."

We have meticulously considered the statutory provisions of different statutory bodies as well as corporations in our legal system and found that each and every enactment contains the provision regarding termination simpliciter, where an employer has the authority to terminate an employee without showing any reason. However, in the instant case, it is apparent from the impugned order (Annexure-D) that the petitioners were terminated from the service stating that their involvements in taking bribes were found to be true. As a result they were removed from service at once by the authority.

On perusal of the Dhaka South City Corporation Employees Service Rules, 2019 it appears that in Rule 53 there is a specific provision on bringing a departmental proceeding against any employee who has been found to be involved with a corruption or misconduct. For better understanding the provision is quoted below:

‘৫৩। গুরু দন্ডের ক্ষেত্রে তদন্তের কার্যপ্রণালি। (১) যেক্ষেত্রে কোনো কর্মচারীর বিরুদ্ধে এই বিধিমালার অধীন কোনো কার্যধারা সূচনা করিতে হইবে এবং কর্তৃপক্ষ অভিমত পোষণ করে যে অভিযোগ প্রমাণিত হইলে গুরু দন্ড আরোপ করা প্রয়োজন হইবে সেইক্ষেত্রে কর্তৃপক্ষ-

(ক) অভিযোগনামা প্রণয়ন করিবে এবং প্রস্তাবিত দন্ডের বিষয় উহাতে উল্লেখ করিবে, এবং যেসকল অভিযোগের ভিত্তিতে অভিযোগনামাটি প্রণীত হইয়াছে, উহার বিবরণ এবং কর্তৃপক্ষ আদেশ প্রদানের সময়ে অন্য যেসকল ঘটনা বিবেচনা করিবার ইচ্ছা পোষণ করে তাহাও কর্মচারীকে অবহিত করিবে;

(খ) অভিযুক্ত ব্যক্তিকে অভিযোগনামা অবহিত করিবার পর ১০ (দশ) কার্যদিবসের মধ্যে তিনি তাহার আত্মপক্ষ সমর্থনে লিখিত বিবৃতি পেশ করিবেন এবং প্রস্তাবিত দন্ড কেন তাহার উপর আরোপ করা হইবে না তদসম্পর্কে কারণ দর্শাইতে বলিবে এবং তিনি ব্যক্তিগতভাবে শুনানীর ইচ্ছা পোষণ করেন কিনা তাহাও উল্লেখ করিবে;’

Since in the impugned letter allegations of corruption were brought against the petitioners, the authority were under a legal obligation to draw a departmental proceeding as described in Rule 53 of Rules of 2019. However, violating that prevailing provision the respondent No.2 has taken recourse to section 64(2), which gives the authority power to remove any employee at any time showing any cause.

From the discussions made hereinabove, it is evident that these two rules of 'ঢাকা দক্ষিণ সিটি কর্পোরেশন কর্মচারী চাকুরী বিধিমালা, ২০১৯' are totally inconsistent to each other as well as to all other service related laws.

We find that this particular provision i.e Rule 64(2) of ‘ঢাকা দক্ষিণ সিটি কর্পোরেশন কর্মচারী চাকুরী বিধিমালা, ২০১৯’ is erroneous being inconsistent with the stipulated legal provisions in this regard and against the spirit of principle of natural justice, as well as against the provision of Article 27, 31 and 135(2) of the Constitution.

With the above findings and observations, we are of the opinion that there is substance in the Rule.

In the result, the Rule is made absolute.

However, without any order as to costs.

The impugned orders of removal of the petitioners from their services are hereby declared to have been issued without any lawful authority and is set aside.

The respondents are directed to reinstate the petitioners to their respective posts within 15 (fifteen) days from receiving this order. The petitioners shall be entitled to get their previous salary and all other service benefits in accordance with law.

Communicate the judgment and order at once.

**Justice Sashanka Shekhar Sarkar, J:**

I agree.