

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

Writ Petition No. 4147 of 2020.

In the matter of:

An application under article 102 (2) of the
Constitution of the People's Republic of
Bangladesh.

-And-

In the matter of:

Ahmad Ali Halali

..... Petitioner

-Versus-

The Secretary, Ministry of Education and
others.

Mr. Dider Alam Kollol, Advocate

. . . For the petitioner.

Mr. M. G. Mahmud (Shaheen), Advocate

. . . For the respondents No. 6-7.

Present:

Mr. Justice J. B. M. Hassan

and

Mr. Justice Razik Al Jalil

Heard on 04.01.2024 and Judgment
on 17.01.2024.

J. B. M. Hassan, J.

The petitioner obtained the Rule Nisi in the following terms:

“ Let a Rule Nisi be issued calling upon the respondents to show
cause as to why the inaction of the Islamic Arabic University in
taking action against the Governing Body of Sheikh Fozilatun Nessa
Fazil Madrasha situated at Muktarpur, Osmaninagar, Sylhet in
reinstating the petitioner in his service as Lecturer of the Madrasha
And why the order dated 15.02.2020 dismissing the petitioner from
service (Annexure-H to the writ petition) should not be declared to
be without lawful authority and of no legal effect and/or pass such

other or further order or orders as to this Court may seem fit and proper.”

Relevant facts leading to issuance of the Rule Nisi are that the petitioner was a Lecturer of Arabic in the Sheikh Fozilatun Nessa Fazil Madrasha, Muktarpur, Osmaninagar, Sylhet (the Madrasha) being appointed on 26.06.1999. He got enlistment under the Monthly Payment Order (MPO) scheme on 15.05.2000. One Dilbahar Talukder Lipi lodged a First Information Report (FIR) with the Osmaninagar Police Station, Sylhet alleging that her husband, namely, Moulana Saikhul Islam was Killed by one Lutfar Rahman and 5/6 unknown persons. Accordingly, Osmaninagar Police Station Case No. 13 dated 18.02.2019 was initiated under sections 302/34 of the Penal Code. The petitioner was arrested in connection with the said case and ultimately got bail in that particular case. Subsequently, the Governing Body of the Madrasha issued the memo dated 27.05.2019 suspending the petitioner temporarily from service due to the fact that he was arrested in connection with the aforementioned criminal case.

Thereafter, the Governing Body of the Madrasha issued the memo dated 15.02.2020 dismissing the petitioner from service referring to a purported enquiry report. The petitioner made representation to the Islamic Arabic University to cancel the said dismissal order and also sought direction from the University to reinstate the petitioner in his previous service. But there being no response from the University, he sent justice demand notice on 20.03.2020 and having no response filed this writ petition and obtained the present Rule Nisi.

The respondents No. 6 and 7 i.e President of the Governing Body and the Principal in Charge of the Madrasha appearing in the Rule Nisi have filed an affidavit in opposition contending, *inter alia*, are that the principal accused of the criminal case made confession disclosing petitioner's involvement. Yet he was not

included in the charge sheet and eventually he did not face the trial although there was materials against him. Further the petitioner was dismissed from service on 15.02.2020 and thereafter the Governing Body of the Madrasha by their memo dated 06.09.2020 cancelled the memo dated 15.02.2020 dismissing the petitioner from service. However, due to pendency of the said criminal case the petitioner was kept suspended temporarily allowing to pay the subsistence allowance. Ultimately, the University heard both the parties and directed the Governing Body to take decision in accordance with law and so to pay the subsistence allowance.

Mr. Dider Alam Kollol, learned Advocate for the petitioner submits that the petitioner's name was not in the FIR and that even considering materials on record, the investigating authority did not include the petitioner in the charge sheet. Despite, the informant (deceased's wife) did not take any step against the petitioner after submission of final report against him. He further submits that the Governing Body without taking any approval from the University dismissed the petitioner and ousted him from the institution which is not permissible in the eye of law. Despite the University was silent in taking any action against the Governing Body or to reinstate the petitioner. He also submits that the final dismissal order was withdrawn and that there can't be any suspension order since it was passed due to pendency of the criminal case which has been ended in the meantime.

Mr. M. G. Mahmud (Shaheen), learned Advocate for the respondents No. 6 and 7 contends that since the final order of dismissal was rescinded, the Rule Nisi has become infructuous. He further contends that the petitioner has been suspended temporarily in accordance with law and he is getting subsistence allowance. As such, he can not have any grievance at the

moment. He again contends that although the criminal case was disposed of, yet the institution has got the scope to initiate departmental proceedings against the petitioner which could not be done due to pendency of the present writ petition.

We have gone through the writ petition, affidavit in opposition filed by the respondents No. 6 and 7, supplementary affidavit filed by the petitioner and other materials on records.

The petitioner was a Lecturer of Arabic of the Madrasha. Unfortunately, the Principal of the Madrasha was killed due to which his wife lodged the FIR mentioning name of accused, Md. Lutfar Rahman and 5/6 unknown persons. Although the petitioner was arrested in connection with this particular case but ultimately police did not send him in the charge sheet and the informant did not take any step against the petitioner.

On the other hand, the petitioner was suspended on 27.05.2019 temporarily from service on the ground that he was sent to jail hazat in connection with the criminal case and by the said order his suspension order was passed until conclusion of criminal case. It appears that the charge sheet was submitted on 14.01.2020 wherein the petitioner was not sent up and the said charge sheet was accepted by the Trial Court and that no step was taken against charge sheet on the part of the informant. Thus, after submission of charge sheet and being accepted by the Trial Court, there is no proceedings against the petitioner as yet and even the Madrasha did not initiate any departmental proceedings so far. Despite the petitioner was kept suspended instead of allowing him to join the service. We also find that in the

meantime, the said criminal case was concluded by the judgment and order dated 30.10.2023.

Further, the Madrasha did not take any disciplinary action so far and the petitioner has been kept suspended only on plea of pendency of a criminal case although he was not a accused during trial being not sent up in the charge sheet. In the circumstances, the Governing Body's action keeping him out from service was intentional and malafide. Despite the University kept itself in silence in taking any action against the Governing Body by directing to reinstate the petitioner. In such circumstances, the action of the University is liable to be declared without lawful authority and they should be directed to reinstate the petitioner.

Regard being had to the above, we find merit in this Rule Nisi.

In the result, the Rule Nisi is made absolute. The inaction of the Islamic Arabic University in taking action against the Governing Body of Sheikh Fozilatun Nessa Fazil Madrasha situated at Muktarpur, Osmaninagar, Sylhet in reinstating the petitioner in his service as Lecturer of the Madrasha And the order dated 15.02.2020 dismissing the petitioner from service (Annexure-H to the writ petition) are hereby declared to be without lawful authority and of no legal effect.

The University and the Governing of the Madrasha are directed to reinstate the petitioner with all back arrear salary and service benefits within 01(one) month from the date of receipt of a copy of this judgment and order.

Communicate a copy of this judgment and order to the respondents at once.

Razik Al Jalil, J

I agree.