

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Special Original Jurisdiction)**

WRIT PETITION NO. 13101 OF 2022

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Mohammad Rafiqul Islam

-----Petitioner

-Versus-

The Government of the People's Republic of
Bangladesh, represented by the Secretary,
Secondary and Higher Education Division,
Ministry of Education, Secretariat Building,
Ramna, Dhaka and others.

-----Respondents

Mr. Md. Humayun Kabir, Advocate with
Mr. Haripada Barman, Advocate and
Mrs. Taslima Yeasmin, Advocate

-----For the petitioner

Mr. Bepul Bagmar, DAG

Mr. Bahauddin Ahmed, AAG

-----For the respondent No.4

Judgment On: 09.05.2024

Present:

Mr. Justice Md. Khasruzzaman

And

Mr. Justice K M Zahid Sarwar

Md. Khasruzzaman , J:

In the application under article 102 of the Constitution, on
06.11.2022 the *Rule Nisi* under adjudication was issued in the
following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the office order dated 19.10.2022 contained in Memo No. 37. 00. 0000. 094. 99. 001. 2022. 46 issued under the signature of the respondent No.2 directing the respondent No.4 to take departmental action against the petitioner along with stopping his salary (Annexure-N) should not be declared to have been passed without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper”.

It is noted that during pendency of the instant writ petition, on 10.04.2023 the Assistant Director (Secondary-2), Directorate of Secondary and Higher Education, Shikkha Bhaban, Dhaka (respondent No.6) issued a letter stopping the monthly pay order (MPO) of the petitioner from March, 2023 contained in memo No. 37.02.0000.107.31.585.2022-851 dated 10.04.2023.

The learned Advocate for the petitioner submits that it is well settled that action taken by the government regarding the matter that is pending before a Court for adjudication in which the Government is a party, is an affront to a judicial proceeding and is an attempt to preempting a judgment which is not to be condoned and as such all steps so far have been taken by the parties concern during the pendency of the instant *Rule Nisi* causing prejudice to the interest of the petitioner.

Considering the submissions made by the learned Advocate for the petitioner, on 17.05.2023 a supplementary *Rule Nisi* was issued with the following terms:

“Let a supplementary Rule Nisi be issued calling upon the respondents to show cause as to why the Memo No. 37.02.0000. 107.31.585.2022-851 dated 10.04.2023 issued under the signature of the respondent No.6 (Annexure-V) stopping the monthly pay order (MPO) of the petitioner from March, 2023 should not be declared to have been issued without any lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.

Pending hearing of the Rule Nisi, let operation of the Memo No. 37.02.0000.107.31.585.2022-851 dated 10.04.2023 issued under the signature of the respondent No.6 (Annexure-V) be stayed for a period of 6 (six) months from date.”

That against the interim order dated 17.05.2023 in Writ Petition No.13101 of 2022, the respondents as the petitioners filed Civil Petition for Leave to Appeal No.2503 of 2023 before the Appellate Division and upon hearing of the parties, on 30.08.2023 the Judge-In-Chamber of the Appellate Division passed the order in the following terms:

“অত্র লীভ পিটিশনটি শুনানীর জন্য আগামী ২৯/১০/২০২৩ ইং তারিখে আদালতের কার্যতালিকায় অন্তর্ভুক্ত করা হোক এবং সেই সময়কাল পর্যন্ত তর্কিত আদেশটির কার্যকারিতা স্থগিত থাকবে।”

During pendency of the Civil Petition for Leave to Appeal No.2503 of 2023, the parties jointly mentioned the matter before us for disposal of the writ petition on merit.

The facts in short lead us to examine that the petitioner has successfully completed his academic career and he has obtained the Degree of Bachelor of Arts (B.A. Pass) from the National University, Gazipur.

The petitioner having required the requisite educational qualification applied for the post of Assistant Teacher in response to the advertisement published by the concerned authority and selection committee selected the petitioner to be appointed for the said post and consequently the petitioner joined in the Char Bandorkhola Senior (Fazil) Madrasha, Sadarpur, Faridpur on 02.12.1995 and since then he had been discharging his duties with honesty, sincerity and satisfaction of the authority upto 30.06.1998, and on 11.07.1998 the Principal of the Madrasha issued an experience certificate to that effect.

The name of the petitioner was enlisted in the monthly pay order (MPO) from December, 1995 being Index No. 340535 as the

Assistant Teacher and since then he had been receiving the government portion of salary against his service till June, 1998.

In course of serving as an Assistant Teacher in the Char Bandorkhola Senior (Fazil) Madrasha, Sadarpur, Faridpur, the petitioner applied for the post of Assistant Teacher of Matbarer Char R.M. High School, Shibchar, Madaripur in response to the advertisement published by the concerned authority and selection committee selected the petitioner to be appointed for the said post and consequently, the petitioner joined in the said school on 01.07.1998 and since then he had been discharging his duties with honesty, sincerity and satisfaction of the authority till 24.05.2003, and on 26.05.2003 the Headmaster of the school issued an experience certificate to that effect.

The name of the petitioner was enlisted in the monthly pay order (MPO) from October, 1998 with effect from July, 1998 being Index No. 340535 as an Assistant Teacher and since then he had been receiving the government portion of salary against his service till May, 2003.

In course of serving as an Assistant Teacher in the Matbarer Char R.M. High School, Shibchar, Madaripur, the petitioner applied for the post of Assistant Teacher of Kazir Pagla A.T. Institution, Louhajang, Munshigonj in response to the advertisement published by the concerned authority and selection committee selected the

petitioner to be appointed for the said post and consequently, the petitioner joined in the school on 24.05.2003 and since then he had been discharging his duties with honesty, sincerity and satisfaction of the authority till 01.12.2007 as an Assistant Teacher and from 03.12.2007 to 24.12.2009 as the Assistant Headmaster, and on 10.04.2010 the Headmaster of the said school issued an experience certificate to that effect.

The name of the petitioner was enlisted in the monthly pay order (MPO) from December, 2003 with effect from May, 2003 being Index No. 340535 as an Assistant Teacher and since then he had been receiving the government portion of salary against his service till December, 2009.

In course of serving as an Assistant Teacher in the Kazir Pagla A.T.Institution, Louhajang, Munshigonj, the petitioner applied for getting permission to complete B.Ed Course and having considered the said prayer of the petitioner, on 21.04.2005 the Headmaster of the said Institution issued a letter allowing the petitioner to complete the B.Ed degree with imposing some terms and conditions.

The petitioner obtained B.Ed degree from the National University, Gazipur in the year of 2006 and since then he is eligible to be appointed as the Headmaster or Assistant Headmaster of the Non-Government Secondary School of the Country.

In course of serving as an Assistant Headmaster in the Kazir Pagla A.T.Institution, Louhajang, Munshigonj, the petitioner applied for getting permission to study higher degree i.e M.A and having considered the said prayer of the petitioner, on 30.09.2008 the Headmaster of the Institution issued a letter allowing the petitioner to study higher degree i.e M.A degree.

Subsequently, the petitioner obtained a degree of Master of Arts (M.A) from the Darul Ihsan University, Dhaka in the year of 2010 though the said degree is not essential or required to be appointed as the Headmaster of the Non-Government Secondary School of the Country.

In course of serving as an Assistant Headmaster in the Kazir Pagla A.T.Institution, Louhajang, Munshigonj, the petitioner applied for the post of Headmaster of Surjonagar Mahfuza Nishat Girls' High School, Shibchar, Madaripur, in response to the advertisement published by the concerned authority and selection committee selected the petitioner to be appointed for the said post and consequently, the petitioner joined in the said school on 12.07.2010 and since then he had been discharging his duties with honesty, sincerity and satisfaction of the authority concerned till 29.11.2014 as the Headmaster of the school and on 03.12.2014 the Chairman of the Managing Committee of the said school issued an experience certificate to that effect.

The name of the petitioner was enlisted in the monthly pay order (MPO) from January, 2011 with effect from July, 2010 being Index No. 340535 as the Headmaster and since then he had been receiving the government portion of salary against his service till November, 2014.

In course of serving as Headmaster in the Surjonagar Mahfuza Nisat Girls' High School, Shibchar, Madaripur, the petitioner applied for the post of Headmaster of Sheikh Fazilatunnessa Pilot Girls' High School, Shibchar, Madaripur in response to the advertisement published by the concerned authority and the selection committee selected the petitioner to be appointed for the said post and consequently, the petitioner joined in the said school on 26.11.2014 in response to the appointment letter dated 22.11.2014 issued by the Chairman of the managing committee of the school and since then he has been discharging his duties with honesty, sincerity and satisfaction of the authority concerned.

The name of the petitioner was enlisted in the monthly pay order (MPO) from January, 2015 with effect from November, 2014 being Index No. 340535 as the Headmaster and since then he has been receiving the government portion of salary against his service.

While the petitioner was discharging his duties with honesty, sincerity and satisfaction of the authority concerned, one Md. Zahirul Islam, the Office Assistant, Sheikh Fazilatunnessa Government Pilot

Girls' High School, Shibchar, Madaripur made an allegation against the petitioner by way of application before the Director General, Directorate of Secondary and Higher Education, Shikkha Bhaban, Dhaka (respondent No.4) under the subject of “এম.এ (পাশ) এম.এড এবং বি.এড সনদ জাল করে জাতীয়করণকৃত মাধ্যমিক বিদ্যালয়ে প্রধান শিক্ষক পদে বহাল থাকা প্রসঙ্গে”.

On the basis of the said allegation, an enquiry committee was formed consisting of 2 (two) members by the Directorate of Secondary and Higher Education, Shikkha Bhaban, Dhaka contained in memo No. 37.02.0000.106.27.002.20.1132 dated 07.12.2020.

In pursuance of the letter dated 07.12.2020, the enquiry committee submitted an enquiry report before the Secretary, Secondary and Higher Education Division, Ministry of Education, Dhaka (respondent No.1) contained in memo No. 37.02.0000.106.27.002.20.841 dated 06.07.2022, but no enquiry report was served upon the petitioner.

Having considered the enquiry report dated 06.07.2022 and without supplying the enquiry report and without issuing any show cause notice upon the petitioner, on 19.10.2022 the Deputy Secretary, Discipline Affairs Section, Secondary and Higher Education Division, Ministry of Education, Dhaka (respondent No.2) issued a letter directing the Director General, Directorate of Secondary and Higher Education, Shikkha Bhaban, Dhaka (respondent No.4) to take

departmental action against the petitioner along with stopping his salary contained in memo No. 37. 00. 0000. 094. 99. 001. 2022. 46 dated 19.10.2022.

By filing an application for issuance of an supplementary Rule Nisi, the petitioner stated that on 18.12.2022 the Assistant Director (Secondary -2), Directorate of Secondary and Higher Education, Shikkha Bhaban, Dhaka (respondent No.6) issued a show cause notice upon the petitioner in order to stop his MPO. Upon receipt of the show cause notice dated 18.12.2022, the petitioner furnished a reply wherein he denied the allegation brought against him.

On 12.01.2023 the Assistant Director (Secondary-2), Directorate of Secondary and Higher Education, Shikkha Bhaban, Dhaka (respondent No.6) issued a show cause notice upon the petitioner in order to stop his MPO.

On 10.04.2023 the Assistant Director (Secondary-2), Directorate of Secondary and Higher Education, Shikkha Bhaban, Dhaka (respondent No.6) issued a letter stopping the monthly pay order (MPO) of the petitioner from March, 2023 contained in memo No. 37.02.0000.107.31.585.2022-851 dated 10.04.2023.

Though the school of the petitioner is government, the status of the petitioner is not a government servant as the service of the petitioner has yet not been absorbed as government servant and as such the instant writ petition is maintainable.

Against that backdrop, the petitioner filed the instant writ petition and obtained the above *Rule Nisi* and supplementary *Rule Nisi*.

The respondent No.4 contested the Rule by filing an affidavit-in-opposition denying and controverting the statements as made in the writ petition.

By filing supplementary affidavit, the petitioner stated that in response to the advertisement published in “The Daily Ittefaq” dated 11th September, 2014, on 24th September, 2014 the petitioner applied for the post of Headmaster of Sheikh Fazilatunnessa Pilot Girls’ High School, Shibchar, Madaripur. On 15.11.2014 the selection committee selected the petitioner to be appointed for the said post and recommended him to be appointed as the Headmaster of Sheikh Fazilatunnessa Pilot Girls’ High School, Shibchar, Madaripur. On 24.10.2020 Mohammad Rafiqul Islam made a GD with the Fatullah Police Station, Narayangonj being entry No.1508 dated 24.10.2020 for using forged certificate and on 26.10.2020 the said person made a complaint before the Upazila Nirbahi Officer, Shibchar, Madaripur about the forged certificate. On 26.11.2020 Mohammad Rafiqul Islam made a GD entry with Fatullah Police Station, Narayangonj being GD entry No.1750 dated 30.11.2020 for withdrawing the earlier GD entry and on 26.11.2020 the said person filed two applications before the Upazila Nirbahi Officer, Shibchar, Madaripur and the Director

General, Directorate of Secondary and Higher Education, Dhaka for withdrawing the allegation of using forged M.A pass certificate.

Mr. Md. Humayun Kabir, the learned Advocate appeared on behalf of the petitioner and Mr. Mr. Bepul Bagmar, the learned Deputy Attorney General appeared on behalf of the respondent No.4.

Mr. Md. Humayun Kabir, the learned Advocate appearing for the petitioner submits that the Government has no supervisory, recommendatory or controlling authority over the affairs and activities of any school, college and Madrasha, and it is the function of the Board. The government clearly overstepped its boundaries in issuing the direction in question and it can not be justified on any account and as such the impugned order dated 19.10.2022 (Annexure-N) is required to be declared to have been issued without any lawful authority and is of no legal effect.

Mr. Md. Humayun Kabir, the learned Advocate further submits that the impugned order has been passed on the basis of an enquiry report, but the said enquiry report was not served upon the petitioner and non-service of the copy of the enquiry report to the petitioner along with a show cause notice had seriously prejudiced the petitioner in representing his case which infringed the rules of natural justice and as such the impugned order dated 10.04.2023 (Annexure-V) is required to be declared to have been issued without lawful authority and is of no legal effect.

Mr. Kabir also submits that under the provision of clause-18(1) of the “বেসরকারী শিক্ষা প্রতিষ্ঠানের (স্কুল ও কলেজ) জনবল কাঠামো ও এম.পি.ও নীতিমালা-২০২১”, the Ministry of Education is the only authority to stop/cancel the MPO of the petitioner or omit/exclude the name of the petitioner from the MPO list, but in the instant case, the Assistant Director (Secondary-2), Directorate of Secondary and Higher Education, Shikkha Bhaban, Dhaka (respondent No.6) stopped the monthly pay order (MPO) of the petitioner which is illegal and without jurisdiction as he has no power and jurisdiction to stop the monthly pay order (MPO) of the petitioner under the said provision of clause-18(1) of the “Guidelines-2021” and as such the impugned order dated 10.04.2023 (Annexure-V) is required to be declared to have been issued without any lawful authority and is of no legal effect.

So, he prays for making the *Rule Nisi* absolute.

To substantiate his submissions the learned Advocate for the petitioner cited the decisions in the case of-

- (i) Mahmudul Hasan (Md) Vs. Government of Bangladesh & others, 19 BLC (2014) 464.
- (ii) Board of Intermediate and Secondary Education, Dhaka, represented by its Chairman and others Vs. Md. Faizur Rahman & others, 51 DLR (AD) 59.

- (iii) Shaikh Rezaul Karim Vs. Government of the People's Republic of Bangladesh and others, 3 CLR (HCD) 216.
- (iv) Md. Fazlul Haque and others Vs. Government of Bangladesh & others, 3 ALR (HCD)-53.
- (v) Md. Torab Ali Vs. Bangladesh Textile Mills Corporation & another, 41 DLR 138.
- (vi) Sayeedul Huq Bhuiyan (Md) Vs. Chairman, BADC and others, 8 BLC (2003) 47.
- (vii) Bangladesh Agricultural Development Corporation Vs. Saidul Huq Bhuiyan, 8 BLC (AD) (2003) 49.

Mr. Bepul Bagmar, the learned Deputy Attorney General appearing on behalf of the respondent No.4 submits that on the basis of an enquiry report dated 28.03.2022 (Annexure-2), the monthly pay order (MPO) of the petitioner has been stopped and as such the *Rule Nisi* is liable to be discharged.

Mr. Bepul Bagmar further submits that the petitioner was enlisted in MPO by using forged documents on that ground the MPO was stopped following the due process of law and allowing the procedural safeguards and as such the *Rule Nisi* is liable to be discharged.

We have considered the submissions of the learned Advocate for both the parties and perused the petition along with other materials on record in order to adjudicate the matter.

For the sake of our expedient, we have gone through Annexures-A, A-1 and A-2 that were the academic certificates of the petitioner and it revealed that the petitioner has successfully completed his academic career and he has obtained the Degree of Bachelor of Arts (B.A. Pass) from the National University, Gazipur and with the required educational qualifications to be appointed as an Assistant Teacher of a Non-Government School of the Country and the petitioner was appointed as an Assistant Teacher.

From the records (Annexures-B, C, D, F, I, W, W-1, X, J, J-1, K, N and V), it is evident and proved that the petitioner was the Assistant Teacher of Char Bandokhola Senior (Fazil) Madrasha, Sadarpur, Faridpur from 02.12.1995 to 30.06.1998 and subsequently, the petitioner was the Assistant Teacher of Matbarer Char R.M. High School, Shibchar, Madaripur from 01.07.1998 to 24.05.2003. The petitioner was the Assistant Teacher of Kazir Pagla A.T. Institution, Louhajang, Munshiganj from 24.05.2003 to 02.12.2007 and he was the Assistant Headmaster of the said Institution from 03.12.2007 to 24.12.2009. The petitioner obtained B.Ed degree from the National University, Gazipur in the year of 2006. The petitioner was the Headmaster of Surjonagar Mahfuza Nishat Girls' High School,

Shibchar, Madaripur from 12.07.2010 to 29.11.2014. The petitioner applied for the post of Headmaster of Sheikh Fazilatunnessa Pilot Girls' High School, Shibchar, Madaripur enclosing a Bio-Data, where the petitioner did not mention his M.A degree in that Bio-Data. The selection board recommended the petitioner for the post of Headmaster of Sheikh Fazilatunnessa Pilot Girls' High School, Shibchar, Madaripur. The petitioner got appointment letter as the Headmaster of Sheikh Fazilatunnessa Pilot Girls' High School, Shibchar, Madaripur and the petitioner joined the said school on 26.11.2014 as the Headmaster. The name of the petitioner was enlisted in the monthly pay order (MPO) from January, 2015 as the Headmaster of Sheikh Fazilatunnessa Pilot Girls' High School, Shibchar, Madaripur. On 19.10.2022 the Deputy Secretary, Discipline Affairs Section, Secondary and Higher Education Division, Ministry of Education, Dhaka (respondent No.2) issued a letter directing the Director General, Directorate of Secondary and Higher Education, Shikkha Bhaban, Dhaka (respondent No.4) to take departmental action against the petitioner along with stopping his salary contained in memo No. 37. 00. 0000. 094. 99. 001. 2022. 46 dated 19.10.2022. On 10.04.2023 the Assistant Director (Secondary-2), Directorate of Secondary and Higher Education, Shikkha Bhaban, Dhaka (respondent No.6) issued a letter stopping the monthly pay order

(MPO) of the petitioner from March, 2023 contained in memo No. 37.02.0000.107.31.585.2022-851 dated 10.04.2023.

Now the following questions are required to be decided:

- (I) Whether the Master's degree is required to be appointed as the Headmaster of any secondary school or not.
- (II) Whether the office order dated 19.10.2022 contained in Memo No. 37. 00. 0000. 094. 99. 001. 2022. 46 issued under the signature of the Deputy Secretary, Discipline Affairs Section, Secondary and Higher Education Division, Ministry of Education, Dhaka (respondent No.2) (Annexure-N) is lawful or not.
- (III) Whether the office order dated 10.04.2023 contained in Memo No. 37.02.0000. 107.31.585.2022-851 issued under the signature of the Assistant Director (Secondary-2), Directorate of Secondary and Higher Education, Shikkha Bhaban, Dhaka (respondent No.6) stopping the monthly pay order (MPO) of the petitioner from March, 2023 (Annexure-V) is lawful or not.

We are inclined to pass observation and decision about the above three issues.

It is admitted that the petitioner joined as the Headmaster of the Sheikh Fazilatunnessa Pilot Girls' High School, Shibchar, Madaripur

on 26.11.2014 at the time of appointment as the Headmaster of the said School, the terms and conditions of the service of the petitioner is governed by the “The Recognised Non-Government Secondary School Teachers (Board of Intermediate and Secondary Education, Dhaka) Terms and Conditions of Service Regulation, 1979”.

The SCHEDULE of regulation 4 of “THE RECOGNISED NON-GOVERNMENT SECONDARY SCHOOL TEACHERS (BOARD OF INTERMEDIATE AND SECONDARY EDUCATION, DHAKA) TERMS AND CONDITIONS OF SERVICE REGULATION, 1979” deals with the qualification and experience of the Headmaster of a Non-Government Secondary School. Schedule of the regulation 4 read as follows:

SCHEDULE

Name of post	Qualification and experience
Headmaster	<p>Second Class Master’s degree with B.Ed or its equivalent degree from a recognized University and 10 years’ experience in teaching or educational administration.</p> <p style="text-align: center;">Or</p> <p>Second Class Bachelor degree with Second class B.Ed. or its equivalent</p>

	<p>degree from a recognized University and 12 years' experience in teaching or educational administration.</p> <p style="text-align: center;">Or</p> <p>Bachelor degree with B.Ed. or its equivalent degree from a recognized University and 15 years' experience in teaching or educational administration.</p>
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On plain reading of the said schedule of the regulation 4 of the Regulations, 1979, it appears that Master's degree is not the only criterion for appointment as the Headmaster of a Non-Government Secondary School. Moreover, Bachelor degree holder is eligible to be appointed as the Headmaster and as such question of using forged certificate of Master's degree does not arise at all. In this regard, in the case of Mahmudul Hasan (Md) Vs. Government of Bangladesh & others, 19 BLC (2014) 464, the High Court Division observed that:

“18. It is evident that within the frame work of the Rules, 2009 DO letter being issued by the respective Member of Parliament of the respective constituency has no role to play towards issuance of license of a Nikah Registrar. In that view of the matter, question of revocation of license will come into play only on

the allegation of misconduct as defined in rule 11 of the Rules, 2009. However, one of the misconducts is “যে কোন ধরনের তথ্যের মিথ্যা বর্ণনা”. In this regard, the word “তথ্য” correspond to the information as provided under rule 8 of the Rules, 2009. Since the respondent-government has not alleged violation of rule 8 of the Rules, 2009 and as such, on the allegation of submitting forged DO letter, which does not regulate the appointment of a Nikah Registrar can not be cancelled within the framework of Rules, 2009, the license of the petitioner as a Nikah Registrar can not be knocked down on that count only.”

On perusal of the result sheet prepared by the Selection Committee on 15.11.2014 (Annexure-X), it appears that the petitioner did not mention his educational qualification as Master’s degree.

We are of the view that Master’s degree is not only criterion for appointment as the Headmaster of the Non-Government Secondary School.

It is also admitted that on 19.10.2022 the Deputy Secretary, Discipline Affairs Section, Secondary and Higher Education Division, Ministry of Education, Dhaka (respondent No.2) issued a letter directing the Director General, Directorate of Secondary and Higher

Education, Shikkha Bhaban, Dhaka (respondent No.4) to take departmental action against the petitioner along with stopping his salary contained in memo No. 37. 00. 0000. 094. 99. 001. 2022. 46 dated 19.10.2022 (Annexure-N). But the said direction is not sustainable in the eye of law on the ground that the Government has no authority to direct the Director General (DG) to initiate any departmental proceeding against the petitioner and also the government has no supervisory, recommendatory or controlling authority over the affairs and activities of any school, college and Madrasha, and it is the function of the Board. The government clearly overstepped its boundaries in issuing the direction in question and it can not be justified on any account. Our view finds support from the case of Board of Intermediate and Secondary Education, Dhaka, represented by its Chairman and others Vs. Md. Faizur Rahman and others, 51 DLR (AD) 59.

Now question remains, the Assistant Director (Secondary-2), Directorate of Secondary and Higher Education, Shikkha Bhaban, Dhaka (respondent No.6) is legally authorized to stop the monthly pay order (MPO) of the petitioner from March, 2023 (Annexure -V).

Under clause 18.1 of the “বেসরকারি শিক্ষা প্রতিষ্ঠানের (স্কুল ও কলেজ) জনবল কাঠামো ও এমপিও নীতিমালা, ২০২১”, the Secondary and Higher Education Division, Ministry of Education is authorized to stop the MPO of the

teachers and employees of the institution temporarily or curtail the said benefit partially or wholly.

In the case of Md. Fazlul Haque Vs. Government of Bangladesh & others, 3 ALR (2014) 53, it was held that:

“12. The Rules is clear that the only authorized person can stop the Government portion of salaries for the teachers and employees of the Non-Government Registered Primary School. Despite very much clear provision of law that the D.G (CPE) in only authorized person to stop the Government portion of salaries of Non-Government Registered Primary School. In absence of any provision of sub delegation, the DG, CPE can not delegate his power to others. It is indispensable that a discretion conferred by a Statute should be exercised by the authority upon whom it is conferred and by no body else. The power given to the Director General, Compulsory Primary Education can not exercised by the Director. We stress that the Director has been initiated the second inquiry by a telephonic direction (ANNEXURE-B) which is a malafide and colourable exercise of power. Discretion conferred by Statute has to be exercised honestly and fairly having regards to the purpose of the statute conferring it and not

according to personal whims or humor of the person clothed with the discretion.

13. The Latin principle *delegate potestas non potest delegari* states that ‘no delegated powers can be further delegated.’ Alternatively, it can be stated *delegatus non potest delegare*, ‘one to whom power is delegated can not himself further delegate that power.’ (Mullan, D.J. (2001) *Essentials of Canadian Law: Administrative Law*. Toronto: Irwin Law. P.368).

14. In the case of *Barium Chemicals Vs. C.L. Board*, AIR 1967 SC 295, we can ascertain that discretion vested in a particular body or authority can not sub delegate to some other authority unless statute permits such sub delegation.

15. We are of the view that since the initiation of proceeding against the petitioners is against the rule of sub delegation, the decision of the respondents is void *ab initio* and malafide.”

In the case of *Shaikh Rezaul Karim Vs. Government of the People’s Republic of Bangladesh*, represented by the Secretary, Ministry of Education and others, 3 CLR (HCD) (2015) 216, it was held that:

“23. However, nowhere within the four corners of the said “Janabol Kathamo”, the power to suspend or curtail MPO of the respective teachers and staffs by the said Ministry appears to have been delegated to the Directorate concern. In that view of the matter stopping MPO of the petitioner by the respondent No.4 vide Memo No. ৪জি-৬৭৬-ম/১১/৮৭৭/০৩ dated 11.02.2014 (Annexure-D) is without jurisdiction.

24. Since it is our concerned view that the impugned order has been passed by the respondent No.4 without jurisdiction so far the case of the petitioner is concerned as such, on the account of having alternative forum under clause 19 of the “Janabal Kathamo,2010’ the petitioner can not be barred from invoking equitable relief as provided under Article 102 of the Constitution in other words, this Rule is maintainable.”

In the case of Md. Torab Ali Vs. Bangladesh Textile Mills Corporation & another, 41 DLR 138 where it was argued by the learned Council for the respondent corporation that the law does not provide for supplying of a copy of the report of the enquiry officer along with the second show cause notice. But their Lordships held:

“ A second show cause notice is, in fact, the accused employee’s last opportunity to place his side of the case before the appointing authority who is about to take the last decision against the accused employee armed with the report of the enquiry officer. The accused employee has the burden of disabusing the mind of the appointing authority from the impression created by the report of the enquiry officer. If he does not get a copy of the report, he has no means of knowing what finding or findings of the enquiry officer have gone against him and what have weighed with the appointing authority in coming to a decision as to the punishment proposed to be inflicted upon him. He does not know on what point or points he should address himself to the appointing authority. Without the report he is groping in the dark. The second show cause notice, no doubt, requires him only to show cause why the proposed punishment shall not be inflicted upon him. But upon perusal of his reply, the appointing authority may still take any view of his guilt. The second show cause notice, therefore is not an idle formality. In order to be meaningful, it has to be accompanied or followed by the report of the enquiry officer. So, whether or not rules or regulations provided for a copy of the report

to be given to the accused employee, the rules of natural justice require that along with the second show cause notice that accused employee should be furnished with the same. Failure to do so will be a failure to comply with the principles of natural justice which will be read into the Rules or Regulations.”

In the case of Sayeedul Huq Bhuiyan (Md) Vs. Chairman, BADC and others, 8 BLC (2003) 42, it was held that:

“Non service of a copy of the inquiry report upon the petitioner either along with the second show cause notice or thereafter, being the admitted position, the petitioner was seriously prejudiced in representing his side of the case and this infringement of the rules of natural justice has rendered the dismissal illegal.”

The said decision was affirmed by the Appellate Division of the Supreme Court in the case of Bangladesh Agricultural Development Corporation Vs. Saidul Huq Bhuiyan, 8 BLC (AD) (2003) 49 observing that there is no provision in the Service Regulations of the Bangladesh Agricultural Development Corporation to supply a copy of the enquiry report along with the second show cause notice but the respondent No.1 was served with the second show cause notice asking him for giving reply in the light of the enquiry report without serving the enquiry report which was also made the basis for awarding

punishment and thereby the opportunity of giving effective representation has been denied.

Considering the facts and circumstances of the case, we are of the view that the Assistant Director (Secondary-2), Directorate of Secondary and Higher Education, Shikkha Bhaban, Dhaka (respondent No.6) traveled far beyond his jurisdiction in issuing the impugned order Memo No. 37.02.0000. 107.31.585.2022-851 dated 10.04.2023 (Annexure -V) stopping the monthly pay order (MPO) of the petitioner from March, 2023.

It is to be noted here that withholding of the payment of government portion of salaries once by way of punishment and such punishment may not be legally imposed upon him by the concerned authority without sanction of law for the purpose. Before imposing such punishment authority must be issued a notice giving sufficient opportunity to controvert the allegations brought against him.

It is further to be noted here that the right to salary is a fundamental rights because it is directly linked with his or her livelihood and the livelihood of his / her dependents.

In view of the above recorded deliberation, we are of the view that the Secondary and Higher Education Division, Ministry of Education and the Directorate of Secondary and Higher Education, Dhaka (respondent Nos.1 & 4) committed similar mistake again and

again about the application or implication of the clause No.18 of the “বেসরকারি শিক্ষা প্রতিষ্ঠানের (স্কুল ও কলেজ) জনবল কাঠামো ও এমপিও নীতিমালা, ২০২১”, (in short, the Nitimala, 2021) and as such number of writ petitions have been filed before this Division only on the procedural defect(s).

However, we take this opportunity to make some guidelines only in order to avoid further complications in such matters.

Be that as it may, having regard to the somewhat unusual facts and circumstances of the case and having considered the submissions together the decisions referred to by the contending sides, we are inclined to formulate some guidelines in respect of stopping monthly pay order (MPO) of the teachers and employees of the Non-Government Educational Institutions. The guidelines are:

1. On an allegation or suo moto, as the case may be, the Secondary and Higher Education Division, Ministry of Education can initiate a regular proceeding against any teacher or employee of a Non-Government Educational Institutions by issuing show cause notice stating the specific allegation(s) thereon for the purpose of stopping monthly pay order (MPO).
2. Upon receipt of the reply (if any) furnished by the teacher(s) or the employee(s), the Secondary and Higher Education Division, Ministry of Education, if being not satisfied, constituted an enquiry committee consisting of 3

(three) members. In case of conflicting opinion of the members of the enquiry committee, the majority will prevail.

3. Upon receipt of the enquiry report, the Secondary and Higher Education Division, Ministry of Education, if found sufficient reason to be proceeded, issued a 2nd show cause notice along with the enquiry report.
4. Upon receipt of the reply (if any) furnished by the teacher(s) or the employee(s), the Secondary and Higher Education Division, Ministry of Education, if being not satisfied, took a final decision about the stoppage of the monthly pay order (MPO) of the teacher(s) or employee(s) of the Non-Government Educational Institutions.
5. Before passing final decision about the stoppage of the monthly pay order (MPO), the monthly pay order (MPO) of the teacher(s) or employee(s) of the Non-Government Educational Institutions can not be stopped temporarily by the Secondary and Higher Education Division, Ministry of Education.

Regard to the facts and circumstances of the case, the materials on record and in view of the discussions made above and for the foregoing reasons, we have no hesitation to hold that the office order vide Memo No. 37. 00. 0000. 094. 99. 001. 2022.46 dated 19.10.2022

issued under the signature of the Deputy Secretary, Discipline Affairs Section, Secondary and Higher Education Division, Ministry of Education, Dhaka (respondent No.2) directing the Director General, Directorate of Secondary and Higher Education, Shikkha Bhaban, Dhaka (respondent No.4) to take departmental action against the petitioner along with stopping his salary (Annexure-N) and also the office order vide Memo No. 37.02.0000. 107.31.585.2022-851 dated 10.04.2023 issued under the signature of the Assistant Director (Secondary-2), Directorate of Secondary and Higher Education, Shikkha Bhaban, Dhaka (respondent No.6) stopping the monthly pay order (MPO) of the petitioner from March, 2023 (Annexure-V) were issued without lawful authority and are of no legal effect.

Both the *Rule Nisi* and the supplementary *Rule Nisi* merit consideration which should be made absolute with consequential relief.

In the result, both the *Rule Nisi* and the supplementary *Rule Nisi* are made absolute.

The office order contained in Memo No. 37. 00. 0000. 094. 99. 001. 2022.46 dated 19.10.2022 issued under the signature of the Deputy Secretary, Discipline Affairs Section, Secondary and Higher Education Division, Ministry of Education, Dhaka (respondent No.2) directing the Director General, Directorate of Secondary and Higher Education, Shikkha Bhaban, Dhaka (respondent No.4) to take

departmental action against the petitioner along with stopping his salary (Annexure-N) and also the office order vide Memo No. 37.02.0000. 107.31.585.2022-851 dated 10.04.2023 issued under the signature of the Assistant Director (Secondary-2), Directorate of Secondary and Higher Education, Shikkha Bhaban, Dhaka (respondent No.6) stopping the monthly pay order (MPO) of the petitioner from March, 2023 (Annexure-V) are declared to have been issued without lawful authority and are of no legal effect.

Consequently, the petitioner is entitled to get his arrear salaries. Accordingly, the respondents are hereby directed to pay the government portion of salary of the petitioner from March, 2023 and onwards within 1 (one) month from the date of receipt of this judgment.

There will be no order as to costs.

Communicate the order.

K M Zahid Sarwar, J:

I agree.