

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

Writ Petition No. 9720 of 2020

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. Shirajul Hoque, Head Master (acting) of Mahigonj High School, son of late Yousuf Ali Miah, Village-Bagdokra, Police Station-Domar, District-Nilphamari

....Petitioner

Versus

Bangladesh, represented by the Secretary, Ministry of Education, Bangladesh Secretariat, Dhaka-1000, and others

....Respondents

Mr. Md. Amimul Ehsan, Advocate

....For the Petitioner

Mr. Md. Abid Chowdhury, DAG

Mr. M Mohiuddin Yousuf, DAG

Mr. Monjur Elahi Porag, AAG

Mr. Ariful Alam, AAG

Mr. Nazmul Hasan Chowdhury, AAG and

Mr. Md. Shahidul Islam, AAG

.... For the respondents

Present:

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice S M Saiful Islam

Judgment on 18.05.2026.

Md. Iqbal Kabir, J:

This Rule Nisi was issued calling upon the respondents to show cause as to why the arbitrary action of the respondent No. 4 by cutting up the petitioner's half salary and not allowing him to sign on the bill sheets as a Headmaster (acting) of Mahigonj High School without any reason should not be declared to have been made without lawful authority and is of no legal effect and/or to pass such other or further order or orders as to this Court may seem fit and proper.

The short fact narrated for the disposal of the Rule is that the petitioner was duly appointed as the Acting Head Master of Mahiganj High School and, since his appointment, has been discharging all administrative functions attached to the said post, including signing bills relating to salaries, allowances,

and remunerations of the teachers and employees of the institution. After taking charge as Acting Head Master, the petitioner prepared and submitted the bill sheets for payment of salaries and remunerations of all teachers and employees before the Upazila Nirbahi Officer concerned. However, all of a sudden and without any lawful authority, the Upazila Nirbahi Officer directed payment of the salaries and allowances of the teachers and employees on the basis of bill sheets submitted and countersigned by a junior teacher of Mahigonj High School, instead of the bill sheets lawfully submitted by the petitioner in his capacity as Acting Head Master. The petitioner has neither been suspended, removed, nor discharged from his position as Acting Head Master at any point in time. Furthermore, no allegation, warning, or departmental proceeding has ever been initiated against him by any competent authority during his service tenure. However, despite continuing in office as Acting Head Master, the petitioner has been subjected to gross discrimination, humiliation, and denial of justice since he has been paid only Tk. 12,400/- instead of his lawful salary of Tk. 23,334/- per month without assigning any reason whatsoever.

Being aggrieved, the petitioner, by a representation dated 26.08.2020, requested the respondents to pay his full salary and allowances as Acting Head Master of Mahigonj High School and to permit him to sign the relevant bill sheets in accordance with law.

However, subsequently, the petitioner filed an application for a supplementary Rule, and this Court, upon hearing, issued the Supplementary Rule Nisi in the following terms:

“Let a Supplementary Rule Nisi be issued calling upon the respondents to show cause as to why clause 18.5 of বেসরকারী শিক্ষা প্রতিষ্ঠানের (স্কুল ও কলেজ) জনবল কাঠামো ও এম.পি.ও নীতিমালা-২০২১ dated 28.03.2021 imposing condition not to pay the arrear Government portion of salary of the teachers and employees of the Non-Government Educational Institutions should not be declared ultra vires the Constitution and also as to why Memo No. 37. 02. 0000. 107. 31. 662. 2022/ 91 dated 05.01.2023 (Annexure-O) issued by respondent No. 2 should not be declared to have been issued without lawful authority and is of no legal effect, and further as to why the respondents should not be directed to pay the petitioner-applicant's arrears of salary Tk. 2,03,830/- (two lac three thousand eight hundred and thirty) only and/or to pass such other or further order or orders as to this Court may seem fit and proper.”

By the above application, petitioner brought all relevant facts. According to the petitioner, in February, 2020, the respondent No. 4, in a wholly arbitrary,

unlawful and malafide manner, directed payment of only Tk. 12,417/- to the petitioner-applicant as monthly salary instead of his admissible and regular salary amounting to Tk. 23,334/-, thereby, reducing nearly half of his salary without assigning any reason whatsoever and without communicating any decision or explanation to the petitioner-applicant. The said action of the respondent No. 4 was taken abruptly and in violation of the principles of natural justice, causing serious financial hardship and prejudice to the petitioner-applicant, who had been serving in the institution for a long period with sincerity and devotion. However, petitioner-applicant retired from service on 27.07.2021.

Subsequently, finding no other alternative, the petitioner-applicant, by a representation dated 24.07.2022, requested the Upazila Nirbahi Officer, Domar, Nilphamari, to take necessary steps for payment of his outstanding arrears of salary. Pursuant to the said representation, the Upazila Secondary Education Officer, Domar, after examining the records and relevant documents, by its letter dated 28.07.2022, recommended for its payment. Pursuant thereto, the concerned authority prepared and forwarded the arrear salary bill amounting to Tk. 2,03,830/- in favour of the petitioner-applicant to Sonali Bank Ltd., Domar Branch, Nilphamari, for disbursement. However, most unfortunately, on 02.08.2022, the said bill was returned by the bank authority without payment. Thereafter, the Upazila Nirbahi Officer, Domar, Nilphamari, once again, by recommendation dated 12.09.2022, strongly recommended payment of the petitioner-applicant's arrear salary bill amounting to Tk. 2,03,830/- and requested the concerned authorities to take necessary measures for releasing the same in favour of the petitioner-applicant without further delay.

Thereafter, the Acting Headmaster of Mahigonj High School, by a letter dated 08.11.2022, requested the Director General, Directorate of Secondary and Higher Education, Shikkha Bhaban, Dhaka, to take immediate and necessary steps for payment of the petitioner-applicant's arrear salary bill amounting to Tk. 2,03,830/-. On the very same date, the District Education Officer also forwarded all relevant papers, records and documents relating to the petitioner-applicant to the Director General, Directorate of Secondary and Higher Education, Dhaka, for taking appropriate measures regarding release of the arrears of salary. In the forwarding letter, it was specifically mentioned that, due to the retirement of the petitioner-applicant, his name had already been deleted from the MPO sheet and, as such, the claim relating to his arrear salary could no longer be processed through the online MPO system. Consequently,

considering the peculiar facts and circumstances of the case, all relevant documents were forwarded to the Director General with a request to take special and appropriate steps for release and disbursement of the petitioner-applicant's lawful arrears salary bill.

However, vide Memo No. 37.02.0000.107.31.662.2022/91 dated 05.01.2023, the office of the Director General refused to release the petitioner-applicant's arrear salary on the alleged ground that due to internal conflict between the Managing Committee and the teachers and staff of the school, the arrear salary could not be disbursed through MPO.

Mr. Md. Amimul Ehsan, learned Advocate for the petitioner submits that there existed no conflict whatsoever between the Managing Committee and the teachers and staff of the institution at the relevant time and, as such, the impugned memo dated 05.01.2023 was issued without lawful authority and is liable to be declared to be of no legal effect. He further submits that the petitioner-applicant discharged his duties with utmost sincerity and devotion throughout his service career, and unless a direction is issued upon the respondents to pay the arrears of salary bill, the petitioner shall suffer irreparable loss and injury.

He further submits that the petitioner has been subjected to discrimination, humiliation, and denial of justice by arbitrarily reducing almost half of his salary without assigning any reason and in clear violation of the relevant provisions of the Regulations, 2009. It is further contended that the salary of the petitioner was curtailed without any notice, explanation, or opportunity of hearing, thereby violating the fundamental principles of natural justice. Moreover, the Circular bearing Memo No. 37. 00. 0000. 072. 31. 007. 15. 694 dated 06.08.2017 specifically provides that salary curtailment for more than 60 (sixty) days are not permissible. Therefore, the impugned action of the respondents is wholly without lawful authority and is of no legal effect.

It is noted that the petitioner brought notice to this Court that he is not interested to press the first part of the Supplementary Rule i.e., so far it relates to challenging the provision of the Clause No. 18(6) of the “বেসরকারী শিক্ষা প্রতিষ্ঠান (স্কুল, কলেজ, মাদ্রাসা ও কারিগরী শিক্ষা প্রতিষ্ঠানসমূহ)-এর শিক্ষক ও কর্মচারীদের বেতন-ভাতাদির সরকারী অংশ প্রদান এবং জনবল কাঠামো সম্পর্কিত নির্দেশিকা-২০১০ (মার্চ ২০১৩ পর্যন্ত সংশোধিত) imposing condition not to pay the arrear Government portion of the salary of the teachers and employees of the Non-Government Educational Institutions i.e., the School, College &

Madrasha from the Government Fund (Annexure-1) should not be declared ultra virus the Constitution".

However, the petitioner is willing to press the second part of the Supplementary Rule by which he sought direction from the respondents for his MPO and other benefits, as he is entitled to get.

Mr. M Mohiuddin Yousuf, learned DAG on behalf of the Respondent No. 4, without filing an affidavit-in-opposition, contending, *inter-alia*, that upon plain reading, it appears a conflict among the teacher Managing Committee of the School, which suspended the petitioner, thus School authority is duty-bound to pay the dues of the suspension period of the writ petitioner. It is further contended that under the impugned provision of the Jonobal Kathamo, 2010(amended up to 2013), the petitioner is not entitled to get any arrears for any previous period, and as such, the writ petition is not maintainable.

In reply, it has been alleged that part of the MPO portion of his salary was stopped arbitrarily without serving any notice upon him or without giving him any opportunity for a personal hearing, which violates the principle of natural justice, and as such, the impugned refusal to pay the arrears of salary during the period from February, 2020 to July, 2021 is voidable, illegal, and liable to be set aside.

He next submits that it has been decided in so many cases that after the withdrawal of the suspension order, the teachers and employees of private schools/colleges/madrasah, who were getting the Government portion of their salary before the suspension, are entitled to get the arrears of their salary.

We have heard the learned Advocate appearing on behalf of the petitioner as well as the learned DAG appearing on behalf of the respondent, perused the writ petition and other materials on record, and also the decisions as referred by the learned Advocate for the petitioner.

It is noted that, insofar as the first part of the supplementary Rule Nisi relates to the challenge to Clause 18(6) of the aforesaid Jonobal Kathamo, 2010 (as amended up to 2013), the learned Advocate for the petitioner has not pressed the said point at the time of hearing. In that view of the matter, the constitutional validity of the said provision does not call for adjudication in the present Rule. Accordingly, the following two questions fall for determination by this Court (i) whether, in the absence of any declaration that the aforesaid provision of the Guideline is ultra vires the Constitution, this Court is nevertheless competent to grant the substantive relief sought for by the

petitioner; and (ii) whether the petitioner, who was placed under temporary suspension and whose suspension was subsequently withdrawn, is entitled to arrear/back salaries and other admissible financial benefits for the period during which he remained under suspension.

In view of the discussions made hereinabove, the submissions advanced by the learned Advocates for the respective parties, the materials available on record, and the decisions referred to by the learned Advocate for the petitioner, we are inclined to hold that the petitioner has been able to make out a clear case in support of the Rule.

It is an admitted position that the petitioner was duly appointed as an Assistant Teacher of the concerned institution, and thereafter his name was incorporated in the Monthly Pay Order (M.P.O.) scheme. It further appears from the records that he had been receiving the Government portion of his salary regularly until the same was abruptly curtailed by the respondent authorities. The records also reveal that although the petitioner was drawing a salary amounting to Tk. 23,334/-, the respondent No. 4, without assigning any reason whatsoever, arbitrarily reduced the same to Tk. 12,417/- in February, 2020, thereby withholding a substantial portion of his lawful dues.

From the materials on record, it further appears that no show-cause notice was ever served upon the petitioner before curtailing his salary, nor was he afforded any opportunity of personal hearing. The respondents also failed to disclose any lawful basis for such reduction. Thus, the impugned action of the respondents was taken in complete violation of the principles of natural justice, which require that no adverse action affecting the civil rights of a person can be taken without giving him an opportunity to be heard.

It further transpires from the records that after retirement from service on 27.07.2021, the petitioner repeatedly approached the respondent-authorities for payment of his arrears of salary. In response thereto, the Upazila Secondary Education Officer, by recommendation dated 28.07.2022, recommended payment of the petitioner's arrears salary bill. Thereafter, the concerned authority forwarded the arrears salary bill amounting to Tk. 2,03,830/- to Sonali Bank Limited, Domar Branch, Nilphamari, for disbursement in favour of the petitioner. However, the said amount was returned by the bank on 02.08.2022. Subsequently, on 12.09.2022, the Upazila Nirbahi Officer, Domar, Nilphamari, again recommended payment of the said arrears salary bill in favour of the petitioner-applicant.

The records further disclose that the Acting Headmaster of the institution concerned, by letter dated 08.11.2022, requested the Director General, Directorate of Secondary and Higher Education, Dhaka, to take necessary steps for payment of the petitioner's arrears salary bill amounting to Tk. 2,03,830/-. On the very same date, the District Education Officer also forwarded all relevant documents to the Director General with a request to take necessary measures for the release of the arrears salary. It was specifically stated therein that due to the retirement of the petitioner, his name had already been deleted from the MPO sheet and, as such, the arrears claim could no longer be processed through the online MPO system.

Despite such repeated recommendations made by the competent authorities and even though the arrears claim had already been verified and admitted by the concerned offices, the office of the Director General, Directorate of Secondary and Higher Education, by Memo No. 37.02.0000.107.31.662.2022/91 dated 05.01.2023, refused payment of the petitioner's arrears salary on the alleged ground of internal conflict between the Managing Committee and the teachers and staff of the institution.

It is at this juncture, we are unable to accept such contention advanced on behalf of the respondents. Nothing has been placed before this Court to substantiate the alleged existence of any such conflict which could legally disentitle the petitioner from receiving the Government portion of his salary. Even assuming for the sake of argument that there had been any dispute within the institution, the same could not lawfully operate to deprive the petitioner of his accrued financial benefits, particularly when his entitlement had already been recognized and recommended by the competent authorities.

It is also significant to note that the petitioner was not subjected to any departmental proceeding resulting in any punishment, withholding of his salary, or financial benefits. The respondents have also failed to show that any order was ever passed lawfully, forfeiting the petitioner's entitlement to the Government portion of his salary. Therefore, once the suspension order was withdrawn and the petitioner continued in service until retirement, there remained no legal impediment to releasing his arrears salary.

In this regard, the settled principle of law is that when an employee is reinstated in service or when the suspension order is withdrawn without culmination in any punishment affecting pay and allowances, the employee becomes entitled to receive arrears/back salaries unless specifically barred by

law. The respondents failed to point out any legal provision creating an absolute bar against payment of such admitted arrears salary in the facts and circumstances of the present case.

Further, as to the question that arises whether this Court can grant the substantive relief sought by the petitioner without striking down Clause No. 18(6) of the “জনবল কার্ঠামো-২০১০ (সংশোধিত ২০১৩ পর্যন্ত)” as ultra vires the Constitution, we are of the considered view that such relief can very much be granted. In this connection, reliance may profitably be placed on the decision of our Apex Court in the case of Dr. Nurul Islam vs. Bangladesh, reported in 33 DLR (AD) 201, wherein it has been held that where substantive relief can be granted without declaring a statutory provision ultra vires, the Court should adopt such a course. Applying the principle laid down in the aforesaid decision, we hold that although the petitioner has chosen not to press the first part of the Rule relating to the constitutional validity of Clause No. 18(6) of the Guideline, this Court is not precluded from granting the substantive relief claimed in the writ petition, particularly when the respondents’ action appears to have been taken arbitrarily and without lawful authority.

It is made clear that since the petitioner is not pressing the first part of the Rule Nisi relating to the constitutional validity of Clause No. 18(6) of the aforesaid Guideline, this Court expresses no opinion with regard to the vires of the said provision.

Having gone through the acts and decisions made in other cases, we have no room to differ, apart from the fact that one of us is a party to a decision passed in Writ Petition No. 9755 of 2017; we have a respectful agreement with the above decision. The relief sought by the petitioner can be granted without striking down the legal provision challenged in the writ petition. Though the petitioner is not pressing the first part of the Rule Nisi so far as it relates to challenging the legal provision of law.

We have also considered the Circular bearing Memo No. 37.00.0000.072.31.007.15.694 dated 06.08.2017, which specifically provides that salary curtailment for more than 60 (sixty) days is impermissible. The action of the respondents in withholding a substantial portion of the petitioner’s salary for a prolonged period is clearly inconsistent with the spirit and object of the said Circular.

Having considered the entirety of the facts and circumstances of the case, the documents on record, and the settled principles of law, we are

constrained to hold that the impugned Memo No. 37. 02. 0000. 107. 31. 662. 2022/ 91 dated 05.01.2023 issued by the office of the Director General, Directorate of Secondary and Higher Education, Dhaka, insofar as it refused payment of the petitioner's arrears salary, has been issued without lawful authority and is of no legal effect.

Accordingly, the Rule is made absolute in part.

The respondents are directed to release and pay the arrears/back salaries of the petitioner-applicant amounting to Tk. 2,03,830/- for the relevant period within a period of 90 (ninety) days from the date of receipt of a copy of this judgment and order.

However, there shall be no order as to costs.

Communicate the order.

S M Saiful Islam, J:

I agree.