District: Sylhet

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present

Mr. Justice Sardar Md. Rashed Jahangir

Civil Revision No. 230 of 2023

In the matter of :

Police Lines High School, Sylhet and another
… Petitioners

-Versus-

Rashidul Karim Chowdhury and others
…Opposite parties

Mr. Habib-Un-Nabi, Advocate with
Mr. Muminul Islam Chowdhury, Advocate
…For the petitioners

Mr. Sudipta Arjun, Advocate
…For the opposite party No. 1

Heard on: 04.12.2024 and 05.12.2024
Judgment on: 15.12.2024

Rule was issued on leave, calling upon the opposite party No. 1 to show cause as to why the judgment and order dated 19.10.2022 passed by the Additional District Judge, First Court, Sylhet in Civil Revision No. 36 of 2022, rejecting the revisional application affirming those of dated 06.02.2022 passed by the Assistant Judge, Companyganj, Sylhet in Title Execution Case

No. 01 of 2019 directing the judgment-debtors to pay in total an amount of Tk.51,55,633.50 in favour of the decree-holder-opposite party No. 1, the arrear of salary and other benefits should not be set aside and/or such other or further order or orders as to this Court may seem fit and proper.

The present opposite party No. 1 as plaintiff instituted Title Suit No. 164 of 1995 in the Court of Senior Assistant Judge, Companyganj, Sylhet sought for a declaration that the Memo No. PUSHI-95-13/32 dated 06.08.1995 issued under the signature of the defendant No. 2 is illegal, ineffective, liable to be cancelled and not binding upon the plaintiff and also for a direction to pay all salaries and other allowances from the date of suspension. In the said plaint, the plaintiff averts that he was removed from the post of Assistant Teacher illegally, without observing due process of law.

The defendant Nos. 1 and 2 contested the suit by filing a joint written statement denying all the material averments made in the plaint. On conclusion of hearing, learned Assistant Judge,

Companyganj, Sylhet by his judgment and decree dated 15.05.2002 decreed the suit.

Having been aggrieved by the aforesaid judgment and decree of the Assistant Judge, the defendant Nos. 1 and 2 took Title Appeal No. 112 of 2002 before the District Judge, Sylhet. On transfer the said appeal was heard by the Joint District Judge, First Court, Sylhet and by his judgment and decree dated 21.06.2004 allowed the appeal reversing the judgment and decree of the trial Court.

Being aggrieved by and dissatisfied with the judgment and decree dated 21.06.2004 passed by the Court of appeal below in Title Appeal No. 112 of 2002, the plaintiff preferred Civil Revision No. 4691 of 2004 before the High Court Division, wherein Rule was issued and ultimately, after hearing both the parties a Single Bench of the High Court Division on 03.12.2012 made the Rule absolute upon setting aside the judgment and decree dated 21.06.2004 passed by the Joint District Judge, First Court, Sylhet in Title Appeal No. 112 of 2004 and thereby

maintaining the judgment and decree dated 15.05.2002 passed by the Assistant Judge (in-charge), Companyganj, Sylhet in Title Suit No. 26 of 2001 (re-numbered).

Having been aggrieved by the aforesaid judgment and order of the High Court Division, the defendants filed Civil Petition for Leave to Appeal No. 66 of 2014 before the Hon'ble Appellate Division of the Supreme Court of Bangladesh, but ultimately the said Civil Petition for Leave was dismissed as being not pressed on 31.08.2015.

The plaintiff-opposite party No. 1 filed a contempt petition being Civil Rule No. 489 (contempt)(R) of 2016 before the High Court Division, wherein Rule was issued calling upon the judgment-debtor-petitioners to show cause as to why a proceeding for contempt of Court should not be drown up against them for violating the judgment and order dated 03.12.2012 passed by the High Court Division in Civil Revision No. 4591 of 2004. The said contempt petition was ultimately heard by a Division Bench of this Court together with an application for disposing of the Rule.

Upon consideration of the submission of the contemnor-respondent Nos. 1 and 2, together with the assertions made at paragraph Nos. 8, 9 and 10 of the application for discharging/dispose of the Rule and this Court on 12.04.2017 by it's judgment order discharged the Rule on being satisfied that the judgment and order of the High Court Division dated 03.12.2012 has been fully complied with upon reinstating the petitioner in the post of Assistant Teacher on 30.08.2014 and the judgment-debtors are willing to comply with the direction to pay the decree holder all the benefits including salary with arrear as specified in the judgment and order of the High Court Division dated 03.12.2012 in Civil Revision No. 4691 of 2004. Thereby exonerated the contemnor-respondents(defendants) from the charge of contempt of Court. Thereafter, the plaintiff-opposite party No. 1 on 01.08.2019 filed Title Execution Case No. 01 of 2019 before the Assistant Judge, Companyganj, Sylhet for executing the judgment and decree dated 15.05.2002 passed by Assistant Judge (in-charge), Companyganj, Sylhet in Title Suit No. 164 of 1995 (remembered as 26 of 2001).

Learned Judge of the Executing Court by his order No. 38 dated 06.02.2022 directed the judgment-debtor-petitioners to pay an amount of Tk.51,55,634/- (26,21,490.334+25,34,143.17) to the decree-holder-opposite party No. 1, as his arrear of salaries with all the arrear benefits.

Having been aggrieved, the judgment-debtors (petitioner) preferred Civil Revision No. 36 of 2022 before the District Judge, Sylhet. On transfer, the said revision was heard by the Additional District Judge, First Court, Sylhet and by his judgment and order dated 19.10.2022 rejected the revision affirming the order No. 38 dated 06.02.2022 of the executing Court.

On being aggrieved by and dissatisfied with the aforesaid judgment and order, the judgment-debtors-petitioners filed this revisional application and obtained the Rule.

Mr. Habib-Un-Nabi, learned Advocate appearing with Mr. Muminul Islam Chowdhury, learned Advocate for the petitioners submits that both the Courts below committed error of law in the decision occasioning failure of justice in failing to consider that

the Execution Case No. 01 of 2019 filed by the decree-holder-opposite party is barred by 177 days under article 182 of the First Schedule to the Limitation Act, 1908; wherein, it is provided that an application for execution of the decree has to be filed within 3(three) years from the date of the decree of the civil Court or from the date of the final order passed on an application made in accordance with law and under the case in hand, the execution case was to be filed within 3(three) years from the order of the Apex Court, since the legal battle between both the parties has been ended upto the Appellate Division on 31 August, 2015 and he continues to submit that it is an admitted fact that the execution case has been filed out of 177 days within the meaning of article 182 of the Limitation Act and it is settled by the Apex Court by consistent judgments that a execution case has to be filed mandatorily within 3(three) years and if the execution case is out of time then the same shall not be executable.

He next submits that learned Judge of the executing Court illegally determined the arrear of the calim in total Tk.51,55,634/-

to be paid to the decree-holder-opposite party No. 1, comparing with the benefit of 2(two) existing teachers, who are serving continuously to the school. The method adopted by the executing Court on the basis of the comparison with the aforesaid two teachers cannot be acceptable, because, both the teachers have their valid MPO Index and the salary scale of both the teachers were upgraded time to time upon taking approval of the concerned authority, considering their overall performance and promotion, but in the instant case, admittedly, the decree-holder opposite party No.1 is out of service since 1995 and his MPO Index number has been cancelled in the month of May, 1999. He further submits that under clause 19 of the "বেসরকারী শিক্ষা প্রতিষ্ঠান (বিদ্যালয় সমূহ)-এর শিক্ষক-কর্মচারীদের বেতন ভাতাদির সরকারী অংশ প্রদান এবং জনবল কাঠামো সম্পর্কিত নীতিমালা", if any school or teacher including other employees are being aggrieved by cancellation of the MPO, fully or in part, has/have to file an appeal before the Government, but in the instant case, the decree-holder-opposite party did not take any initiative to file an appeal in the aforesaid manner to restore his cancelled MPO index, thus, for the laches of the decree-holder-

opposite party No. 1, the defendant-judgment-debtors cannot be responsible in any manner. He next submits that in the case of the Government of Bangladesh and others Vs. Md. Nazrul Islam and others reported 7 LM(AD)(2019) 208 the Hon'ble Appellate Division held that "granting of MPO is the policy decision of the Government", therefore, the decree-holder-opposite party No. 1 cannot claim the same as a matter of right and both the Courts below committed error of law in the decision directing the defendant-judgment-debtors to pay the arrear of MPO, allegedly payable to the decree holder since 1995 and in view of the above, he prayed for making the Rule absolute.

On the other hand, Mr. Sudipta Arjun, learned Advocate appearing with Mr. Bidhayok Sarker, learned Advocate for the opposite-party No. 1 submits that the decree-holder-opposite party No. 1 after fighting in a long battle with the judgment-debtors-petitioners has been succeeded to get a final judgment on 03.12.2012 in his favour from the High Court Division in Civil Revision No. 4691 of 2004, wherein the High Court Division

upon making the Rule absolute, setting aside the judgment and decree of the appellate Court below and maintaining the judgment and decree of the trial Court, directing the judgment-debtor-petitioners to restore the decree holder to his job with all benefits including salary with arrears to be paid within 3(three) months from the date of receipt of the judgment. The judgment-debtors having been aggrieved filed Civil Petition for Leave to Appeal No. 66 of 2014 before the Hon'ble Appellate Division, which was ultimately dismissed on 31.08.2015 and thereby, the entitlement of the decree-holder-opposite party No. 1 has been finally established, despite the judgment-debtors with malafide intention taking many evasive pleas, trying to deprive the decree-holder from the fruit of his decree and thereby trying to frustrate the judgment and decree which has been upheld upto to the Apex Court.

He next submits that admittedly, the judgment-debtor-petitioners has reinstated the decree-holder in his post in the school on 30.08.2014, in part compliance of the judgment and

order of the High Court Division as well as the trial Court and thereafter, on several occasions decree-holder repeatedly claimed his arrear salary from the judgment-debtors, but in vain and thereafter the execution case has been filed during the continuation of his service in the school, claiming all salaries and other benefits along with arrears as he is entitled for under the decree, the judgment-debtors cannot deny such entitlement under any circumstances and as such, he submits that the cause of action of the execution case is a recurring one and thus, the provision of article 182 is not applicable in the execution proceeding.

He next submits that for sake of argument, if article 182 of the Limitation Act is taken to be applicable in the petitioner's case, even in such a scenario, the execution proceeding is not barred by limitation, because, the judgment-debtor-petitioners never denied or refused the legal entitlement of the decree-holder-opposite party, rather, by continuous acknowledgments through several written documents the judgment-debtors acknowledged the claim of the decree-holder. Section 19 of the Limitation Act,

1908 provides that before expiration of the prescribed period for filing the execution case, the aforesaid acknowledgment in writing as well as oral confers the decree-holder a right to claim his decree to be executed from afresh beginning of the period of limitation and which shall be computed from the time when the acknowledgement was made.

He continues to submit that admittedly, the judgment-debtors on 05.11.2017 through a letter addressing to the decree-holder-plaintiff acknowledged that they are willing to pay the decreetal amount. Thus, the written acknowledgement of the judgment-debtor has given the execution case a fresh cause of action and the computation of limitation shall start afresh from the aforesaid date of acknowledgment under the provision of section 19, and as such, the execution proceeding is very much within the prescribed time of limitation.

He further submits that under clause 18(6) of the Directives for payment of MPO to the teachers and others staffs of any non government educational institution, it is provided that if the

government portion of the salary and other allowances having not been drawn up for any dispute between the teachers, staffs and the managing committee as a result the MPO could not be disbursed or withdrawn, the arrear of such MPO cannot be withdrawn anymore or claimed from the Government and the respective institution shall bear all the liabilities of the aforesaid MPO, and in view of above, the judgment-debtors-petitioners cannot claim exoneration from their liabilities to pay the salaries with the arrear, the entitlement of the decree-holder including MPO under any circumstance.

He next submits that from the facts and circumstances and taking into consideration the case record, the judgment-debtor-petitioners never refused to comply the decree as a whole and upon reinstating the opposite party they took a cunning device, delaying the payment of decree-holder's salary and other benefits with arrear on various evasive pleas including miscalculation, which compelled the present opposite party to file the execution case and now the petitioner cannot be allowed to take advantage

of their own fraudulent activities claiming that the execution proceeding is barred by law.

He finally submits that after the unlawful termination in the year 1995, the petitioner has been compelled to live an inhuman life, depriving the opportunity to earn livelihood with dignity, which is essential component of right to life, thus, the salaries and other benefits as declared by the Court as well as High Court Division as entitlement of the opposite party is nothing but the fundamental right of the opposite party which cannot be curtailed in any manner by the judgment-debtors.

In support of the submission, he referred the case of Saifur Rahman and others Vs. Haider Shah and another reported in 19 DLR(SC) 433, the case of Quari Abdul Haleem Vs. Government of the People's Republic of Bangladesh and others reported in 50 DLR 472, the case of Saroj Kanta Sarker Vs. Seraj-ud-Dowla and others reported in 56 DLR 39, the case of Ali Hamza Mhalader(Md) Vs. Government of Bangladesh and others reported

66 DLR 575 and in view of above, he prayed for discharging the Rule.

In reply, learned Advocate for the petitioners submits that section 19 of the Limitation Act has no relevance in the instant case, because, after dismissal of the civil petition on 31.08.2015 by the Hon'ble Appellate Division, there remains nothing to acknowledge by the judgment-debtor-school and by reinstating the decree-holder, the judgment-debtor executed the vital portion of the decree and thereafter, by several letters the school authority asked the decree-holder-opposite party No. 1 from time to time to receive/draw his salary with arrear, which cannot be turmed as acknowledgment in any manner.

In further reply to the submission made by learned Advocate for the decree-holder-opposite party No. 1, relying upon clause 18(6) of the Directives, 2010, learned Advocate for the petitioners submits that in the instant case the decree-holder had no internal issue with the judgment-debtor-school as specified in the Directives, the fact remains that he left the school in the year,

1995 and joined 3(three) others school opening a separate index number. As a result, due to non-opening of bank account with the concerned bank the MPO index of the decree-holder was cancelled. He continues to submit that in order to rely upon the clause 18(6) of the Directives, 2010, the decree-holder must show that he could not collect the MPO portion due to have any internal dispute or issue with the judgment-debtor-school. Thus, the provision of clause 18(6) of the Directives, 2010 has no application in the instant case and the opposite party No. 1 is not entitled to claim his arrear MPO from the judgment-debtor-petitioners in any manner.

Heard learned Advocates of both the parties, perused the revisional application together with the annexures, the supplementary affidavit filed by the petitioners, the counter affidavit filed by the opposite party No. 1; having gone through the written submissions filed on behalf of both the parties as well as the cited judgments and the provisions of law.

It is an admitted fact that decree-holder-opposite party No. 1 obtained a decree, declaring that his removal/termination order vide memo dated 06.08.1995 is illegal, ineffective and having no legal implication and the said decree has been upheld upto the High Court Division, against which the judgment-debtors although preferred Civil Petition for Leave to Appeal No. 66 of 2014, but ultimately at their instance the Civil Petition for Leave to Appeal was dismissed. In the meantime, the decree-holder has been re-instated on 30.08.2014 in his post of the school. Since the judgment-debtors did not pay the petitioner all the salary and benefits with the arrears as per direction of the High Court Division in Civil Revision No. 4691 of 2004, as such, decree-holder filed a contempt petition before the High Court Division being Civil Rule No. 489(contempt)(R) of 2016. A Division Bench of the High Court Division on 12.04.2017 discharged the Rule upon consideration of the submissions of the contemnor-respondents together with the assertions made at paragraph Nos. 8, 9 and 10 of the application for discharging/dispose of the Rule filed by the contemnor-respondent Nos. 1 and 2 before this

Division asserting that the judgment and order passed by the High Court Division in Civil Revision No. 4691 of 2004 has been wholly implemented (as per statement of paragraph No. 8 of the application) upon reinstating the decree-holder in his job as assistant teacher on 30.08.2014. The decree-holder on 01.08.2019 filed Title Execution Case No. 01 of 2019 for executing the decree was obtained by the decree-holder. In the said proceeding, learned Judge of the executing Court by his order No. 38 dated 06.02.2022 directing the judgment-debtors to pay in total an amount of Tk.51,55,633.50 to the decree-holder in compliance of the decree, against which the judgment-debtors unsuccessfully moved before the District Judge under section 115(2) of the Code of Civil Procedure and thereafter filed this revisional application under section 115(4) of the Code of Civil Procedure.

It is contended by the learned Advocate for the petitioners that the execution proceeding is barred under article 182 of the First Schedule to the Limitation Act, 1908, because, the decree-holder on 03.02.2016 obtained the certified copy of the order of

the Hon'ble Appellate Division passed in the Civil Petition for Leave to appeal, and there after the application for executing the decree has been filed, which is beyond 177 days of the limitation, meaning thereby, under the provision of article 182, the execution proceeding is barred by 177 days and as such, the executing Court has no authority to execute the decree or to direct the judgment-debtors to pay Tk.51,55,633.50 in favour of the decree-holder-opposite party No. 1.

In reply, Mr. Arjun, learned Advocate for the opposite party No. 1 submits that section 19 of the Limitation Act, 1908 provides that if any acknowledgment is made by the judgment-debtors acknowledging the entitlement or right to claim of the decree-holder during the period of limitation as prescribed under article 182, then the limitation shall start afresh from the date of said acknowledgment; his further contention is that from the letters dated 26.08.2015 and 05.11.2017 issued under the signature of petitioner No. 2, addressing the decree-holder-opposite party No. 1, acknowledging to execute the decree obtained by the

decree-holder, which has been upheld upto the Appellate Division in favour of the decree-holder-opposite party No. 1 and thus, the limitation shall start afresh from the date of aforesaid last acknowledgment dated 05.11.2017.

It is evident that after finishing the battle upto the Appellate Division between both the parties, the certified copy of the order of Appellate Division was obtained on 03.02.2016 and thus, the counting of the period of limitation was naturally started from 03.02.2016 and after calculation, it was found that the application for execution was out of time by 177 days, under article 182 of the First Schedule to the Limitation Act, 1908.

Section 19 of the Limitation Act, 1908 provides a special provision stating that “if any acknowledgment is given by the judgment-debtor during the period of limitation before expiry of the said period, then the counting of the period shall start afresh from the said date of acknowledgment. For better understanding, the provision of section 19 is reproduced herein below:

"Effect of acknowledgment in writing.-(1) Where, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but, subject to the provisions of the Evidence Act 1872 (I of 1872), oral evidence of its contents shall not be received.

Explanation I. For the purposes of this section an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to a set-

off, or is addressed to a person other than the person entitled to the property or right.

Explanation II. For the purposes of this section, "signed" means signed either personally or by an agent duly authorised in this behalf.

Explanation III. For the purposes of this section an application for the execution of a decree or order is an application in respect of a right."

The explanation (II) and (III) appended to the said section provides that "for the purpose of this section 'signed' means signed either personally or by an agent duly authorized in this behalf and for the purposes of this section an application for the execution of a decree or order shall be treated as an application in respect of any right as specified in the section.

It is to be mentioned here that the acknowledgment may be contained in an affidavit or through a written instrument duly signed by the judgment-debtor or his authorized agent. Provided further that the aforesaid acknowledgment must be made and signed before the ending of the period of limitation. In the case in

hand, the petitioner No. 2, headmaster of the school through a letter dated 05.11.2017, addressing the decree-holder-opposite party No. 1, acknowledged his entitlement, finally declared by the judgment and decree dated 15.05.2002 passed by the Assistant Judge, Companyganj, Sylhet, which subsequently was upheld by the High Court Division as well as the Appellate Division, acknowledging that they are ready to comply with the said decree and as part compliance of the decree as good gesture they have reinstated the decree-holder-opposite party in the school at his job on 30.08.2014. Moreover, in the contempt proceeding before the High Court Division in Civil Rule No. 489(contempt)(R) of 2016, the present petitioners as contemnors filed an application informing this Division that, "the applicants with due respect fully complied with the judgment and order dated 03.12.2012 passed by the High Court Division in Civil Revision No. 4691 of 2004" and the High Court Division upon accepting the offered explanation exonerated them from the liability of contempt and thereby discharging the Rule on 12.04.2017.

Upon examination of the provision of section 19 of the Limitation Act, it appears to this Court that 'Acknowledgment' under the said provision means, willingness to comply, acknowledge the entitlement or liability, which includes refusal to pay, deliver or perform or permit to enjoy a right or entitlement.

Meaning thereby, if the judgment debtors admitted the entitlement of the decree-holder, showing willingness to comply the direction, then it is sufficient to be an acknowledgment within the meaning of section 19. Another essential element to be construed as acknowledgment under section 19 is that the such acknowledgment must be in writing and is to be made and signed before expiry of the period of limitation.

Under the case in hand, the judgment-debtor No. 2 by a letter dated 05.11.2017 admitted and thereby acknowledged the entitlement of the petitioner, declared through a judgment and decree of the Court of law and was upheld upto the Appellate Division pursuant to a valid proceeding. Moreover, before the High Court Division in a contempt proceeding being Civil Rule

No. 489(contempt)(R) of 2016, the present petitioners by filing an application asserted that they have fully complied with the judgment and decree of the Court of law, upheld upto the High Court Division and this Court on 12.04.2017 accepted the said assertion. Meaning thereby, the judgment-debtor-petitioners acknowledged the entitlement of the decree-holder afresh in writing before the High Court Division claiming that the judgment and decree has been fully complied with, but the fact remains that the part of the decree was remained unexecuted even on the date of judgment of the contempt proceeding dated 12.04.2017, which compelled the decree-holder to come before the Court again to execute his obtained judgment and decree by filing an application on 01.08.2019. Since this Court already found that by written acknowledgment before the Court, on 12.04.2017 the judgment-debtors afresh acknowledged that they complied with the judgment and decree or are willing to comply the decree, thus, under section 19 read with article 182 of the Limitation Act, the counting of the limitation shall start a fresh from 12.04.2017. The execution case has been filed on 31.07.2019, which is very much

within 3(three) years from the date of acknowledgment. The revisional Court below on misconception of law wrongly found that the execution case has been barred by 177 days.

In the case of Bangladesh Parjatan Corporation vs. Mafizur Rahman, reported in 46 DLR(AD) 46, our Apex Court held as follows:

> *"a party litigant cannot be permitted to assume inconsistent positions in court, to play fast and loose, to blow hot and cold, to approbate and reprobate to the detriment of his opponent." Referring to a judgment of the Privy Council, the Apex Court further held that "A person cannot at the same time blow hot and cold. He cannot say at one time that the transaction is valid and thereby obtain some advantage to which he could only be entitled on the footing that it is valid, and at another say it is void for the purpose of securing some further advantage."*

Under the case in hand, the present petitioners before the High Court Division in the aforementioned contempt proceeding asserted that they have fully complied with the decree and thereby obtained a favourable order exonerating themselves from the liability of contempt of Court and now, they are not allowed to have an inconsistent stand of their earlier one, claiming that the execution proceeding so far it relates to the unexecuted portion is barred by law.

It is asserted by the petitioners that they are willing to pay the school portion of the claim as has been directed by the executing Court, thus, that portion is an admitted one. The controversy between the parties remains, so far it relates to the portion of the arrear of MPO is concerned. Learned Advocate for the decree-holder-opposite party No. 1 referring to clause 18(6) of the Directives, namely, "বেসরকারি শিক্ষা প্রতিষ্ঠান (স্কুল কলেজ, মাদ্রাসা ও কারিগরি শিক্ষা প্রতিষ্ঠানসমূহ) এর শিক্ষক ও কর্মচারীদের বেতন-ভাতাদির সরকারি অংশ প্রদান এবং জনবল কাঠামো সম্পর্কিত নির্দেশিকা" contended that if the MPO holder teacher failed to draw or could not withdraw his MPO due

to the internal dispute or for any suit or case between the school authority and him, then the arrear of MPO cannot be claimed from the Government, but the institution concerned shall bear the financial liabilities of the aforesaid arrear MPO.

For ready reference, the provision of clause 18(6) is reproduced herein below:

> "১৮(৬) প্রতিষ্ঠানের শিক্ষক/কর্মচারী ব্যবস্থাপনা কমিটির মধ্যকার অভ্যন্তরীণ বিরোধের কারণে বা তাদের মধ্যে সৃষ্ট মামলার বা অন্য কোন কারণে বেতন ভাতাদির সরকারী অংশ উত্তোলন সম্ভব না হলে পরবর্তীতে বকেয়া হিসাবে তা উত্তোলন করা যাবে না। সংশ্লিষ্ট প্রতিষ্ঠান এর আর্থিক দায়-দায়িত্ব বহন করবে।"

On the other hand, learned Advocate for the petitioners contended that the MPO was cancelled in the month of May, 1999, referring to the MPO sheet submitted that it was stopped due to non-opening the bank account. Moreover his contention is that it is admitted fact that the opposite party No. 1 joined in another school in the year, 1998 and wherefrom he withdrawn 4(four) months of MPO under index No. 368133 with SILAM

P.L. MUL. High School and thus, the MPO has been cancelled due to the wrong of the decree-holder. He further contended that clause 19 of the aforesaid Directives also provides a forum for filing appeal/review against the cancelation/stopping of the MPO, but admittedly decree-holder-opposite party did not take any such recourse. Thus, non-withdrawal of the arrear of MPO of the decree-holder-opposite party No. 1 shall not create any liability upon the judgment-debtor-petitioners.

Having considered the contentions of learned Advocates for both the parties, admittedly, the petitioner was removed from the school on 06.08.1995 and thereafter, the plaintiff filed Title Suit No. 164 of 1995, which was renumbered as Title Suit No. 26 of 2001 and due to removal of the decree-holder from the post of Assistant Teacher of the school in question, he was not allowed to get any salary or benefit including MPO. There is no proof or evidence that after 06.08.1995, the decree-holder ever received or withdrawn any MPO through the school in question, because the disbursement of MPO is required counter signatures of the

concerned Headmaster and the Chairman of the Managing Committee of the school-in-question. The decree-holder-opposite party was compelled to live in an inhuman life fighting with starvation and thereby, he was compelled to join in a school temporarily to save him and his family members life and from where he only received 4(four) months salary with MPO thereafter, upon realization of the legal implication of his suit he resigned from the new school. Thereafter, the suit was decreed. In the meantime, the MPO index of the decree-holder-opposite party No. 1 has been cancelled for non-opening of a bank account.

It is contended by the petitioners that for non-opening the bank account in the year 1999 or for cancellation of his MPO, the school has no responsibility or liability at all. The judgment-debtor-petitioners cannot claim the benefit of their own wrong i.e. they removed the opposite party No. 1 illegally in the year 1995 and now they are not entitled to get any benefit for the consequence of the removal, which has been declared illegal by the Court of law. So far their submission regarding the forum

provided under clause 19 is misconceived, because provision of clause 18(6) clearly stated that if any person failed to withdraw his MPO portion due to the internal dispute or for any suit or case or for any other grounds, the concerned institution shall bear the financial liability of the aforesaid MPO.

From the order No. 38 dated 06.02.2022 passed by the Assistant Judge, Companyganj, Sylhet it appears that taking into consideration the aforesaid provision of 18(6) of the Directives, the Court justly and legally directed the institution to pay MPO portion of Tk.25,34,143.17. It is found by this Court earlier in this judgment that the opposite party No. 1 has withdrawn 4(four) months MPO, in total an amount of Tk.8,489.22 from another school which has been given ultimately by the Government. A person cannot claim any amount from the Government twice, having even a legal entitlement. Thus, this Court is of the view that from the amount of Tk.25,34,143.17, the arrear of MPO portion, an amount of Tk.8,489.22 shall be deducted. For the rest amount of the judgment and orders of both the Courts below, this

Court finds no infirmity, since the execution proceeding has been filed very much within the prescribed period.

So far the judgment referred by learned Advocate for the petitioners reported in 7LM(AD) 208, the fact of the case was that an institution filed an application for granting MPO, but due to some formalities or difficulties the MPO has been refused to grant in favour of the school and thereafter, the teachers and employees of that institution filed a writ of mandamus before this Court sought for a direction upon the Government to grant MPO in favour of the teachers and employees, and in that backdrop, the Apex Court held that granting of MPO in question in favour of any institution is a policy matter.

The facts and circumstances of the present case is quit distinguishable from that one and the other judgments cited by the petitioners, which bears no assistance for improving their case.

Accordingly, the Rule is discharged without any order as to cost.

The judgment-debtor-petitioners are hereby directed to pay the decree-holder-opposite party No. 1 the arrear of the amount as has been mentioned in the body of the judgment within 3(three) months from the date of receipt of this judgment and order.

Communicate the judgment and order at once.

Obaidul Hasan/B.O.