

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

Writ Petition No. 104 of 2023

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. Mizanur Rahman

....Petitioner

Versus

The Government of Bangladesh and others

....Respondents

Mr. Abid Hossain Sarker, Advocate

....For the Petitioner.

Mr. Humayun Kabir, Advocate

..... for the respondent No. 10.

Present:

Mr. Justice Md. Jahangir Hossain

And

Mr. Justice S. M. Masud Hossain Dolon

Heard on: 31.01.24, 13.02.24 & 27.02.24

Judgment on: 28.02.2024

S.M. Masud Hossain Dolon, J:

On an application under article 102 of the Constitution, the
Rule Nisi has been issued in the following terms:

"Let a Rule Nisi be issued calling upon the respondents
to show cause as to why the Memo No. 37.00.0000.
072.39.036.16.308 dated 28.11.2022 (Annexure-G)
issued under the signature of the respondent No. 4 to
stop Government portion of his salary MPO benefits for
his disobeying the order of the board 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."

Facts relevant for disposal of the Rule in short, are that the petitioner was an Assistant Teacher of Rajibpur High School, Krishnapur, Manikganj enlisted as a teacher in the Monthly Pay Order (MPO). Subsequently school managing committee appointed him as a headmaster of the school and since then he has been discharging his duties and responsibilities with sincerity and honesty with full satisfaction of the authority concerned. Thereafter on 04.01.2022 the Inspector of the School, Secondary and Higher Secondary Education Board issued show cause notice to the petitioner as to why his MPO should not be stopped vide memo No. ঢাশিবো/বি/৬৩২/মানিক/৯৫১ তারিখ- ০৪/০১/২০২২ that the appeal and arbitration committee had issued several letters to reinstate one Rahenur Islam as an assistant teacher and to pay all his arrear.

After receiving show cause notice the petitioner has reinstated the Assistant Teacher Md. Rahenur Islam and replied that the above activities done by the order of previous school managing committee and begs apology to the authorities notwithstanding his MPO has stopped.

Thereafter, having found no other equally efficacious remedy the petitioner filed the instant writ petition and obtained the Rule.

Mr. Abid Hossain Sarker learned Advocate for the petitioner submits that the petitioner has no authority to reinstate the said Rainur Islam and the previous school managing committee was not

reinstated him. When the new managing committee of the school assumed responsibility then the said Rainur Islam was immediately reinstated and also paid his arrears and he has been receiving government portion of money. The petitioner by several letters begs apology to the authorities nevertheless the authority concern stopped his MPO.

Mr. Humayun Kabir, the learned Advocate on behalf of the respondent No. 10 submits that the impugned order is a internal communication between the Ministry of Education and the Director General of Secondary and Higher Secondary Directorate and the said internal communication cannot be subject matter of writ jurisdiction. In support of his submission he referred Rokeya Begum and another vs Bangladesh and others reported in 69 DLR(AD) 185. Mr. Kabir further submits that the petitioner was not resort to filing review petition as such the instant writ petition is not maintainable. In support of his submission he referred unreported case Md. Abdul Karim and others vs Bangladesh and others in writ petition No. 7643 of 2022. Mr. Kabir further submits that without serving any notice for demanding justice the instant writ petition is also not maintainable. He finally submits that the petitioner is not entitled to get earlier salary and other benefits during the period of stopping the MPO. He lastly submits that Rule may be discharged for the ends of justice.

We have heard rival submission of both the parties and perused the writ petition and all other relevant papers, supplementary affidavit submitted by the petitioner in connection with the contents of this writ petition. We also considered the affidavit in opposite submitted by the Respondents and appended thereto. It appears that one Md. Rahenur Islam, Assistant Teacher (social science) of Rajibpur High School, Krishnapur, Manikganj filed writ petition being No. 1168 of 2019. The Hon'ble High Court Division after hearing the parties issued rule and also directed the Respondent No. 3 to consider and disposed of the application filed by the said Rahenur Islam on 15.05.2019 with a period of 40 days from the date of received copy of the order Annexure-ZF. After receiving the copy of judgment and order Secondary and Higher Secondary Education Board, Dhaka disposed of the application and issued memo no. 632/মানিক/৭৮৭ তারিখ ২৩/০৪/২০১৯ directed to the President of Managing Committee, Rajibpur High School, Krishnapur, Manikganj to reinstate the said Rahenur Islam as an Assistant Teacher (dismissal) on the ground that the allegation was discussed widely and the Appeal and Arbitration Committee found that allegation for final dismissal was not proved as regard directed to reinstate Rahenur Islam in his post of Assistant Teacher, Annexure-W.

We have carefully scrutinized that the direction was given to the President of Managing Committee of the School and the copy of said memo was given to the present petitioner as a headmaster of the school. The petitioner had no authority to reinstate the said Md. Rahenur Islam to his post. The Managing Committee of the school has sole authority to reinstate him but the president of the managing committee of the school failed to reinstate the said Rahenur Islam. Thereafter on 04.01.2022 the Inspector of the School, Secondary and Higher Secondary Education Board vide memo No. ঢাশিবো/বি/৬৩২/মানিক/৯৫১ তারিখ- ০৪/০১/২০২২ issued show cause notice to the petitioner as to why petitioner's MPO should not be stopped that the petitioner failed to obey the direction of the appeal and arbitration committee to reinstate Md. Rahenur Islam and paid his arrear.

Thereafter the Deputy Secretary vide memo No. 37.00.0000.072.39.036.16.308 dated November 28, 2022 Annexure-G, directed to the Director General, Secondary and Higher Secondary Education, Dhaka to stop the government portion of money to the petitioner as headmaster of the school on the ground to disobey the order of the Higher authority.

We have scrutinized the application Annexure-ZB made by the petitioner submits that he was not able to reinstate the said Rahenur Islam due to the order of previous managing committee of school

and was not willfully disobeyed the direction of the Appeal and Arbitration Authority. While the new managing committee of the school came into operation thus the said Rahenur Islam was reinstated in the school. The petitioner and the said Rahenur Islam were received government portion of money (MPO) in the month of November and December, 2022 as per MPO Sheet. However the petitioner was found that his government portion of money was stopped while the MPO sheet for the two months i.e January and February was appeared, Annexure B. Thereafter the petitioner filed representation for continuity of his government portion of money but the Respondents did not pay any heed of it. The new managing committee of the school also degraded the petitioner from the post of headmaster and his present post is an Assistant Teacher. As an Assistant Teacher he has been continuously receiving school portion of money. The respondents failed to contrast the humble position of the petitioner nor they can show any other reason to stop the government portion of money of the petitioner. It appears that the petitioner is a victim of circumstances and as such he is entitled to receive government portion of money.

The learned Advocate for the respondent No. 10 submitted Rokeya Begum case where the Hon'ble Appellate Division of the Supreme Court of Bangladesh observed that the impugned memo was annexed to the writ petition had not communicated to the writ

petitioner and it was a mere correspondence between the two government official. Internal correspondence unless communicated to the person concerned cannot be the basis of cause of action for moving the High Court Division under its power of judicial review and we hold that since the copy of the impugned memo was not communicated to the writ petitioner, no cause of action arose to seek any remedy challenging the said memo.

We have perused the Annexure-G of the present writ petition that the Deputy Secretary Ministry of Education vide memo No. 37.00.0000.072.39.036.16.308 dated 28.11.2022 directed to the Director General of the Secondary and Higher Secondary Education to stop the petitioner's government portion of money. We have also found that no letter was issued to the petitioner.

However, it appears that thereafter no government portion of money is allocated to the petitioner in the month of January and February, 2023 as appeared in annexure-B. In support of the Rokeya Begum case we are of the view that if any action is taken affecting the right of the petitioner in pursuance of the internal communication then the writ petition under Article 102 of the Constitution is maintainable.

Learned Advocate for the respondent No. 10 also submitted unreported Mostakina Ferdousi case where this Division did not

allow the previous portion of the salary and others benefits to petitioner because he was not complied the direction of the concerned authority. In the matter of the present writ petition the petitioner had had no authority to reinstate the Assistant Teacher Md. Rahenur Islam and he was not willfully disobeyed the order of higher authority so the Mostakina Ferdousi case did not applicable in the present petitioner.

In such a situation, we find substances in the submission of the learned Advocate for the petitioner.

Thus, we find merit in this Rule.

Accordingly, the Rule is made absolute. Hence, the impugned order vide Annexure-G is hereby declared to have been issued without any lawful authority.

Respondents are directed to pay government portion of money as an Assistant Teacher and to pay him all arrear salaries and benefits within 60(sixty) days from the date of the receipt of this judgment.

However, there would be no order as to costs.

Md. Jahangir Hossain, J:

I agree.