

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

Writ Petition No. 9008 of 2021

IN THE MATTER OF:

An application under Article 102 of the
Constitution of the People's Republic of
Bangladesh.

AND

IN THE MATTER OF:

Mst. Dil Afroza

....Petitioner

Versus

The Government of Bangladesh and others

....Respondents

Mr. Md. Shameem Khaled with

Mr. M.A. Latif Prodhan, Advocate

....For the Petitioner.

Mr. Muhammad Rafiul Islam, Advocate

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

Present:

Mr. Justice Md. Jahangir Hossain

And

Mr. Justice S. M. Masud Hossain Dolon

Heard on: 22.02.2024, 25.02.2024.

Judgment on: 11.07.2024.

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.
57.00.0000.040.99.43.18-19 dated 15.07.2021 issued
under signature of the respondent No. 4 curtailing the
Government Portion (MPO) of the Salary of the petitioner
permanently (Annexure-K) and the inaction of the
respondents in providing the petitioner with the facilities
in pursuance of the provision under Article 19 of the
বেসরকারী শিক্ষা প্রতিষ্ঠান (মাদ্রাসা) জনবল কাঠামো ও এমপিও নীতিমালা-

২০১৮ (Annexure-M) should not be declared without lawful authority and is of no legal effect and as to why a direction should not be passed upon the respondents to reinstate the name of the petitioner in the list of the Monthly Pay Order (MPO) and be disbursed the Government Portion of the Salary infavour of the petitioner with arrears and other admissible benefits 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, Bhurarghat M.U. Bohomokhi Senior Madrasha, Sundorgonj, Gaibandha (thereafter in short, Madrasha) published recruitment advertisement on 10.05.2011, 16.06.2011 in the Daily Bhorer Dak, the Daily Dabanal, The Daily Bangladesh Shomoy but no fit candidate was applied for this job. Therefore the Madrasha published another appointment advertisement on 23.07.2011.

The petitioner had successfully appeared Secondary School Certificate in 1994 and Higher Secondary Certificate in 1998. She also achieved Bachelor of Social Science Degree in 2009. Thereafter the petitioner appeared in the 7th Teacher’s Registration Examination, 2011 and successfully obtained the Certificate.

The petitioner submitted an application for the post of Assistant Teacher (social science) on the basis of which written and viva examinations were held and the petitioner secured first place by means of which she became eligible to be appointed for the post of Assistant Teacher (social science) of the Madrasha. Accordingly, an

appointment letter was duly issued in the name of the petitioner by the authority of the Madrasha on 30.03.2012. After receiving the appointment letter the petitioner joined in the said Madrasha as an Assistant Teacher (social science) on 02.04.2012 which was duly accepted by the authority concerned of the Madrasha on the same day and since then she has been serving in the said Madrasha with full satisfaction of all concerned. Therefore the name of the petitioner was enlisted in the list of MPO and the Government Portion of the salary was started to disburse from November-2012.

Subsequently, an inquiry officer was appointed by the Director General, Directorate of Madrasha Education to see about the affairs of the Principal who held an inspection and prepared an inquiry report and forwarded the same to the Respondent No. 1 to take necessary steps against the principal's of the school. The Director General, Directorate of Madrasha Education without perused the records and without examined the appointment order of the Inquiry Officer as to why and what purpose the inquiry officer was appointed. Moreover the Director General, Directorate of Madrasha Education endorsed the opinion of the inquiry officer on 12.03.2018 which is illegal. Than Ministry of Education concerned permitted the Respondent No. 2 for stop the payment of the Government portion of money of the petitioner temporarily on 10.06.2018. The Respondent No. 2 stopped the payment of MPO to the petitioner since September, 2018.

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

Mr. Md. Shameem Khaled learned Advocate for the petitioner submits that the petitioner name was enlisted in the MPO and accordingly she had been granted Government portion of money since July, 2010 as such her right cannot be taken away or cancelled without giving her any chance of being heard but the respondents passed the impugned order without issued show cause notice and without provided an opportunity of being heard and as such the impugned order is liable to be declared to have been passed without lawful authority. He further submits that the Inquiry Officer had been appointed for holding an inspection against the principal of the Madrasha but he exercised his power beyond jurisdiction arbitrarily by prepared a report against the petitioner. The Respondent No. 2 without perused the records most illegally endorsed the opinion of the Inquiry Officer and accordingly the impugned order is not permissible in the eye of law. He further submits that the petitioner filed review application under Article 19(Ka) of the Nitimala but the same neither was considered nor was taken action in accordance with the Article 19(Kha) and 19(Ga) of the Nitimala as such the inaction of the respondents is providing the petitioner with the facility in pursuance of the Article 19 of the Nitimala is liable to be declared to have been done without lawful authority and is of no legal effect.

Mr. Muhammad Rafiul Islam, the learned Advocate on behalf of the respondent No. 02 submits that the impugned order is a internal communication between the Ministry of Education and the Directorate of Madrasha Education and clause-19 of the বেসরকারী শিক্ষা প্রতিষ্ঠান (মাদ্রাসা) জনবল কাঠামোও এম,পি,ও নীতিমালা-২০১৮ which is neither Ultra virus with the constitution of the People's Republic of Bangladesh and nor made beyond the scope of the respondents as such the instant rule is liable to be discharged as not maintainable. He further submits that in the light of the judgment of the Hon'ble Appellate Division in Government of Bangladesh vs Md. Nazrul Islam, reported in 7LM(AD) 208 that the granting of MPO is the policy decision of the government. Therefore, the petitioner could not claim the same as of right unless infringement of legal right or violation of law.

The learned Advocate for the Respondent No. 2, Muhammad Rafiul Islam by filing an affidavit of opposite party submits that the present petitioner was finally dismissed by the principal of Madrasha on 03.06.2021 therefore the present writ petition is not maintainable and need to be discharged.

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 the

petitioner was applied for the post of an Assistant Teacher (Social Science) in accordance with the law. The concerned Madrasha authority considered all the formalities and declared her application valid as she had participated in the written and oral examinations and secured the first position. Accordingly, the concerned appointing authority appointed her as an Assistant Teacher (Social Science). Thereafter she was enlisted as M.P.O and accepted on government portion of money.

Later, the Directorate of Madrasha Education appointed an inquiry officer against the principal of the concerned Madrasha. The Inquiry officer investigated all the matters and submitted an inquiry report and asked the concerned principal to take action against the petitioner and also reported that Assistant Teacher Mst. Dil Afroza's certificate of NTRC was fake and she joined the service as an Assistant Teacher without participated in any recruitment test. On careful scrutiny of inquiry report we found that inquiry report submitted by one Hafizur Rahman, Assistant Director (PPP-cell), Secondary and Higher Secondary Directory on 31.01.2018 stated that মোছাঃ দিল আফরোজ, সমাজ বিজ্ঞান শিক্ষকের নিবন্ধন পত্র সঠিক না হওয়া তা সংশ্লিষ্ট দপ্তরের মাধ্যমে জরুরী ভিত্তিতে তদন্ত করা প্রয়োজন. Following the perfunctory inquiry report, the Madrasha Education stopped the MPO to the petitioner. Against which the instant writ petition was filed and on the ground that the

authorities violated the law regarding the closure of the MPO and did not give the petitioner an opportunity to defend herself.

We scrutinized provision 18.02 of the “বেসরকারি শিক্ষা প্রতিষ্ঠান (মাদ্রাসা) জনবল কাঠামো ও এমপিও নীতিমালা-২০১৮” stated that a Teacher/employees Government portion of money can only be temporarily suspended if there is prima facie evidence of any allegations of involvement in violation of the policy, breach of institutional discipline, misconduct or moral turpitude.

It appears that no prima-facie allegation against the petitioner to involve the violation of the Policy, breach of institutional discipline, misconduct or moral turpitude therefore petitioner’s MPO cannot be suspended as per the “বেসরকারি শিক্ষা প্রতিষ্ঠান (মাদ্রাসা) জনবল কাঠামো ও এমপিও নীতিমালা-২০১৮”. Moreover Clause 18.2 of the MPO Nitemala 2018 provided that a final decision will be taken after investigation within 60(sixty) working days of suspension of MPO. If the allegation is proved, the MPO may be permanently suspended or some other punishment may be imposed. If the allegations are not substantiated, the MPO will be upheld and the government share of the arrears of salary allowance will be paid. Even if the complainant is partially proved the MPO can be upheld and the government will taken a decision on the matter of the arrears of public sector council.

On our query the learned Advocate for the Respondent No. 10 Muhammad Rafiul Islam failed to produce any further investigation report against the petitioner whether her certificate is false and fabricated (Annexure-2). On scrutiny of Memo No. ভূফামা/সু/গাঃ/১৮/২০২১(১৭) dated 03.06.2021 issued by the principal (incharge) of the Madrasha (Annexure-2) stated that the “আরও উল্লেখ্য যে, এনটিআরসিএ এর স্মারক নং- বেশিনিক/প.মু.প্র/সনদ যাচাই/৭৪৪ (অংশ-১ ৪-১৬০/২০১৭/৫২৯ তারিখ ২৯ ১০/২০১৮ খ্রীঃ মূলে বর্ণিত (১) সহকারী মৌলভী মোবাস্বেরা মাহমুদা,(২) সহকারী শিক্ষক মোছাঃ নাজম জমা বেগম, (৩) মোঃ আতিকুর রহমান এর নিবন্ধন সনদ ভূয়া ও জাল বলে প্রমানিত হওয়ায় এবং (৪) সহকারী শিক্ষক দিল আফরোজ এর বিরুদ্ধে নিয়োগকালীন সময়ে কাম্য যোগ্যতা না থাকায় এবং জাল-জালিয়াতির মাধ্যমে তাঁর নিয়োগের সকল কাগজ নিয়োগকালীন ভারপ্রাপ্ত অধ্যক্ষ জনাব মোঃ সাখাওয়াত হোসেন (যিনি দিল আফরোজার স্বামী) কর্তৃক সৃজনকৃত মর্মে তৎকালীন সভাপতি জনাব মোঃ আব্দুল হান্নান সরকার (ভূয়া ও বহিষ্কৃত শিক্ষক মোঃ সাখাওয়াত হোসেনের বড় শ্যালক ও দিল আফরোজার বড় ভাই) এর বক্তব্যে ও সার্বিক তদন্তে তার বিরুদ্ধে অবৈধ প্রমানিত হয়।” Therefore aforementioned verification of certificate it is proved that certificate of the petitioner is not a fake document. The allegation against the petitioner that she had no requisite qualification to be appointed as Assistant Teacher and another allegation against the petitioner that recruitment papers are generated by the acting principal who is husband of the petitioner. Finally on 03.06.2021 the Headmaster was dismissed the petitioner along other as per decision of the Governing body and respectfully requested to take necessary measures to permanently deduct the temporarily suspended MPO. It appears that no dismissal order was issued to the petitioner as per Annexure-2.

It appears that the suspension of Government portion of money (MPO) of the petitioner vide memo No. 14/অভিঃ২/২০০৮(অংশ-৩)/১৬৮ dated June 10,2018 signed by Assistant Secretary (Madrasha-1) Ministry of Education issued to the Director General, Directorate of Madrasha Education which is an inter ministerial communication . But it appears that pursuant to the inter Ministerial correspondent the petitioner's government portion of the money is stopped and the petitioner has not get her MPO therefore even if it is an inter Ministerial Communication but the petitioner can file writ petition as in Rokeya Begum and another vs Bangladesh and others reported in 69 DLR(AD) 185.

We have carefully perused the record that the petitioner had applied through the notification published in the daily newspaper and the appointing authority appointed her in accordance with the relevant rules in the relevant post and she was availed the government facilities as a regular MPO teacher. We found that the certificate of the petition is not a fake document but the Headmaster of the school dismissed her permanently from her Job though she is not received any dismissal order but if she is dismissed from Job she can challenge against the said dismissal order in appropriate court.

The authority concerned can conduct an inquiry against a teacher at any time in accordance with laws. Here the investigation

conducting against the principal of the Madrasha while she was not given any opportunity to defend herself.

In such a situation, we find substances in the submission of the learned Advocate for the petitioner. But the petitioner was not challenged her permanent dismissal order in the instant writ petitioner and the learned Advocate of the petitioner submitted that the petitioner has not received any permanent dismissal order therefore the petitioner could not challenger her dismissal order.

Thus, we find merit in this Rule.

Accordingly, the Rule is made absolute. Hence, the impugned order vide Annexure-K is hereby declared to have been issued without any lawful authority. Respondents are directed to pay government portion of money as an Assistant Teacher during the period of her suspension and to pay her all arrear salaries and benefits from the date of the receipt of this judgment.

However, there would be no order as to costs.

Md. Jahangir Hossain, J:

I agree.