

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

Writ Petition No. 2417 of 2022

IN THE MATTER OF :

An application under Article 102 read with Article 44 of
the Constitution of the People's Republic of Bangladesh
-And-

IN THE MATTER OF :

Muhammad Mustafa

..... Petitioner

-Versus-

The Government of the People's Republic of
Bangladesh, represented by its Secretary, Department of
Madrasha and Technical Education, Ministry of
Education, Bangladesh Secretariat, Shahbag, Dhaka
and others.

..... Respondents

Mr. Md. Shameem Khaled, Advocate

.....For the petitioner

Mr. Tushar Kanti Roy, D.A.G. with

Mr. Md. Salim Azad, A.A.G with

Ms. Anis-ul Mawa, A.A.G

.....For the Respondents

**Heard on : 17.01.2024, 18.01.2024,
23.01.2024, 24.01.2024 and
Judgment On : 07.03.2024.**

Present:

Mr. Justice Mustafa Zaman Islam

&

Mr. Justice Md. Atabullah

Mustafa Zaman Islam, J;

In this application under article 102 read with Article 44 of the
Constitution of People's Republic of Bangladesh, a Rule Nisi was issued
calling upon the respondents to show cause as to why the inaction of the
respondents in providing the petitioner with the facilities in pursuance of
the পরিশিষ্ট- 'ঘ' of the Serial No. 31 of the "বেসরকারী শিক্ষা প্রতিষ্ঠান (মাদ্রাসা) জনবল

কাঠামো ও এমপিও নীতিমালা, ২০১৮” treating the petitioner equitably from getting position, salary and other benefits in Grade 10 of the National Pay scale, 2015 should not be declared to have been done without lawful authority and is of no legal effect and why a direction should not be made upon the Respondents inaction of the Respondents in providing the petitioner with the facilities in pursuance of the পরিশিষ্ট-‘ঘ’ of the Serial No. 31 of the “বেসরকারী শিক্ষা প্রতিষ্ঠান (মাদ্রাসা) জনবল কাঠামো ও এমপিও নীতিমালা, ২০১৮” treating the petitioner equitably from getting position, salary and other benefits in Grade 10 of the National Pay Scale, 2015 and also why a further direction should not be passed upon the Respondents for giving arrears salaries and others service benefits from the effecting the “বেসরকারী শিক্ষা প্রতিষ্ঠান (মাদ্রাসা) জনবল কাঠামো ও এমপিও নীতিমালা, ২০১৮” dated 19.07.2018 and/or pass such other or further order or orders as to this Court may seem fit and proper.

The facts necessary for disposal of the Rule, in brief are that the petitioner is a law abiding and peace loving citizen of Bangladesh having engaged in teaching profession. He was asked to be joined in the Kaliya Rabbania Fazil Madrasha, Bauphal, Patuakhali (new referred to be as the said Madrasha) as Ebtadyee prodhans by issuance an appointment letter. In compliance with the appointment letter, the petitioner joined in the said Madrasha on 02.12.1981 and his named was enlisted in the Monthly payment order in short (MPO) as Ebtadayee Prodhan from 01.09.1985. The name of the petitioner was enlisted in Monthly Payment Order from 01.09.1985 and the petitioner withdrew the salary in the month of September, October and November, 1985 together. Therefore, the (MPO) was being disbursed regularly. During his service period the salary and

others benefit of the petitioner is never stopped. From securitizing the Monthly Payment Order in May, 1998, it appears that the petitioner withdrew the salary and others benefits in accordance with the Grade-14 of the National Pay Scale. After incorporating the National Pay Scale-2009 the petitioner was allowed to disburse the salary under the Grade-14 as Ebtadayee Prodhan. The National Pay Scale, 2015 has been promulgated and the same was published in the Gazette on 15.12.2015. From the National Pay Scale, 2015, it appears that the petitioner got the salary under the Grade-14 of the National Pay Scale-2015. The Respondent No. 1 i.e. the Secretary of the Department of Madrasha and Technical Education, Ministry of Education has incorporated a Nitimala under name and style “বেসরকারী শিক্ষা প্রতিষ্ঠান (মাদ্রাসা) জনবল কাঠামো ও এমপ্রি নীতিমালা, ২০১৮” (now referred to be as “the Nitimala”) and the same was amended upto 23.11.2020 wherein the salary scale of the Ebtadayee Prodhan has been shown as Grade-15 and by the পরিশিষ্ট উ“ঘ” of the Serial No. 31 of the said Nitimala, the Salary Status of the Ebtadayee Prodhan has been changed from the Grade-15 to 11. But the salary status of the petitioner kept unchanged. Since the petitioner was enjoying the salary status as Grade-14 thus his salary status ought to have been changed from the Grade-14 to 10 in the light of the Nitimala.

The petitioner submitted an online application dated 08.06.2019 for getting the salary in accordance with the Grade 10 and the same was forwarded to the Respondent No. 6 and accordingly the same was rejected. Felling aggrieved, the petitioner filed a recommendation of the Respondent No. 2.(Director General, Madrasha Shikkaha Adidaptor) therefore, the

latter send the same to the Respondent No. 1 for taking necessary steps. From scrutinize the Monthly Payment Order of the Saria Lokhmikola Dakhil Madrasha and the MR Dakhil Madrasha under the Raiganj Upazilla, Sirajganj, it appears that Ebtadayee Prodhans of the said Madrashes are being enjoyed the salary under the Grade-11 from January, 2019 in accordance with the Nitimala. The Ministry concerned issued a Memo dated 02.01.2020 requesting the Respondent No. 02 for taking appropriate step regarding the higher scale of the teachers and staffs. Moreover the Ministry issued another letter dated 24.02.2021 requesting him for taking step in accordance with the Article 119.9 পরিশিষ্ট-“ঘ” of the Serial No. 31 of the Nitimala. It is stated in the writ petition that the petitioner retired from the service on 01.03.2021 and during the service period he tried his level best for the getting the salary in accordance with the Grade-10 and though the Respondent No. 02 assured that the grievance of the petitioner would be considered but all his hopes and aspiration was shattered in not getting the salary under the Grade-10. Since, he is entitled to be got the Grade-10 but the Respondents did not do so and accordingly the petitioner submitted an application on 05.04.2021 and the same was received by the Principal on 07.04.2021 and the latter forwarded the same to the Respondent No. 2 with recommendation.

The petitioner's application dated 05.04.2021 kept pending and repeatedly contacted with the office of the Respondent No. 2 but the official concerned did not get any satisfactory reply. Though the President of the Government Institution Committee and Local Member of the Parliament issued a letter dated 03.06.2021 to the Respondent No. 02

requesting him to take appropriate step allowing the petitioner for getting salary and other benefits including the arrears salary in accordance with the Grade 10. It is stated that the petitioner keep connection with the Respondents and when he was asked to be appeared and the petitioner complied with their direction but no fruitful action was taken accordingly.

In supplementary affidavit dated 27.11.2023 by the petitioner stating that the National Pay Scale, 1991 shows that the petitioner used to receive at tk. 80% of the scale and after getting time scale his grade was upgraded. It is stated that the petitioner joined in Madrasha on 02.12.1981 and his name was enlisted in the MPO on 01.09.1985 the Ministry of Education of Education issued a circular on 09.02.1995 informing the concerned that the Government consented to give time scale on completion of the 8(eight) years service. The order is effected from on 01.07.1994. In the National pay scale, 1997 shows that the petitioner received salary under the Grade-14. From the Monthly Salary of May and October, 1998 shows that the petitioner used to receive the salary under the Grade-14. Noted that the petitioner received at Tk. 4160/- at the Grade-14 as 80% of salary of the National Pay scale. From the October, 2009 that the petitioner received at tk. 4250/- as monthly salary with the medical and house rent allowance. From MPO of January and February, 2021 shows that the petitioner received the salary under the Grade-14.

Having no other equally and efficacious remedy the petitioner has moved before this court and obtained the instant Rule Nisi.

The respondents did not enter appearance by filing affidavit –in-opposition, controverting the statements made in the writ petition.

Mr. Md. Sahmeem Khaled, the learned Advocate for the petitioner submits that by incorporating the provision under পরিশিষ্ট-“ঘ” of the Serial No. 31 of the Nitimala 2018, the Ebtadayee Prodhan who remained under Grade-15 were upgraded to Grade 11 but the petitioner as Senior Ebtadayee Prodhan was not treated in getting equal protection of law though he is entitled to equal protection of law under Article 27 of Constitution. The particular groups have been given favour but the petitioner being a senior to them has been discriminated from getting equal opportunity in respect of the employment and thus the fundamental rights under Article 29 of the Constitution has been violated. He submits that the petitioner joined in the Madrasha on 02.12.1981 and his name was enlisted in the Monthly Payment Order (MPO) on 01.09.1985, the Ministry of Education issued a circular on 09.02.1995 informing the concerned that the Government consented to give time scale on completion of the 8(eight) years service which effected on 01.07.1994. He further submits that the Respondent have given advantage who remained under the Grade 15 but does not consider the matter of the petitioner and the said action is a clear discrimination and accordingly the Respondents may be directed to upgrade the salary status of the petitioner from Grade 14 to Grade 10 considering of the provision পরিশিষ্ট-“ঘ” of the Serial No. 31 of the Nitimala 2018. He next submits that the Ebtadayee Prodhan of the different Madrashes are getting the salary under the Grade 11 but the application of the petitioner was not considered and thereby the fundamental right of the petitioner has been violated.

Mr. Tushar Kanti Roy, the learned Deputy Attorney General appearing for the respondents opposes the Rule. No affidavit in opposition has been filed on behalf of the respondents. He submits that the respondents after complying all the procedure laid down in law and which requires no interference by this court and, Rule as such the rule should be discharged.

We have heard the learned Advocates both sides at length and considered their submissions carefully.

We have also perused the petition, supplementary-affidavit and all the documents, Annexures and other materials on record meticulously.

Here only one issue has to be addressed whether the petitioner has been subjected to any discrimination.

It is apt here that the Article 27 of the Constitution refers to equality before law and equal protection of law. This idea is a combination of two concepts, one is English concept and another is American concept. This concept of equality is one of the most difficult concept to apply actual position. Our apex court have laid down certain principle regarding this article regarding discrimination. Mainly, the concept of equal protection of law is founded is that persons in similar circumstances must be governed by the same law.

Article 29 of the constitution refers to equality of opportunity in public employment the main object of this Article is to create a constitutional right to equality of opportunity and employment in public offices.

In the case in hand, one Md. Shah Alam, Head of Ebtadayee Prodhans of Bauphal Swahia Senior Fazil Madrasha and other giving arrear salaries and other service benefit and denying the petitioner under the same Nitimala, it is not only illegal but also gross violation of fundamental rights under Article 27 and 29 of the Constitution. In guaranteeing equality of opportunity to all members of Republic. Mr. Shameem Khaled, the learned Advocate referred to a decision in the Case Of Mohammad Faizullah Vs. Government of Bangladesh and others reported in 1981 BLD 1 wherein held that: –

“ Article 29 of the Constitution is not confined to the initial matters prior to the act of employment but includes other matters relating to employment such as provisions about the salary and periodical increments therein, terms as to leave, gratuity and pension and as to the age superannuation. It is also includes promotion to selection posts.

It appears from the record that by incorporating the provision under পরিশিষ্ট-“ঘ” of the Serial No. 31 of the Nitimala 2018, the Ebtadayee Prodhans who remained under Grade-15 were upgraded to Grade 11 but the petitioner as Senior Ebtadayee Prodhans was not treated in getting equal protection of law though he is entitled to equal protection of law under Article 27 of Constitution. A particular groups have been given favour but the petitioner being a Senior to them has been discriminated from getting equal opportunity in respect of the employment and the Ebtadayee Prodhans of the different Madrasahs are getting the salary under the Grade 11 but the application of the petitioner was not considered. The Respondent

have given advantages who remained under Grade 15 but does not consider the matter of the petitioner and the said action is a clear discrimination and upgrade the salary status of the petitioner from Grade 14 to Grade 10 considering of the Provision under পরিশিষ্ট-“ঘ” of the Serial No. 31 of the Nitimala 2018 and thus the fundamental rights under Article 29 of the Constitution has been violated. In such view of the matter, we find merit in the Rule.

In view of the aforesaid observations and discussions made hereinabove, we are constrained to hold that the Rule has substance.

In the result, the Rule is made absolute in part and the respondent Nos. 2-6 are directed to allow the petitioner equitably from getting position, salary and other benefits in Grade 10 of the National Pay Scale, 2015 in accordance with law at the earliest preferably within 30 days on the receipt of the judgment and order.

However, there is no order as to costs.

Communicate the Judgment and Order at once.

Md. Atabullah, J:

I agree.