

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

Writ Petition No. 7603 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:

Professor Dr. Md. Abdus Salam, Principal and Professor of Pharmacology in Abdul Malek Ukil Medical College, Noakhali.

..... Petitioner.

-Versus-

Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Public Administration, Bangladesh Secretariat, Secretariat Building, Abdul Goni Road, Ramna, Dhaka and others,

..... Respondents.

Mr. Md. Kamal Hossain, Advocate with

Mr. Md. Manir Hossain, Advocate

.....For the petitioner.

Mr. Purnindu Bikash Das, Advocate

.....For respondent No.3.

Judgment on: 12.03.2024

Present:

Mr. Justice Md. Khasruzzaman

And

Mr. Justice K M Zahid Sarwar

Md. Khasruzzaman, J:

In an application under article 102 of the Constitution, Rule Nisi was issued in the following term:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why Memo No. 05.00.0000.146.00.011.17-238 dated 07.06.2023 issued by respondent no. 6 cancelling the contractual appointment of the petitioner as Principal and Professor of Pharmacology in Abdul Malek Ukil Medical College, Noakhali by breaching of clause 7 of the above deed of agreement (Annexure-C) should not be declared to have been issued without lawful authority and of no legal effect and as to why the respondents should not be directed to re-instate the petitioner as Principal and Professor in Abdul Malek Ukil Medical College, Noakhali and/or pass such other or further order or orders as to this Court may seem fit and proper.”

Facts necessary for disposal of the Rule Nisi in short are as follows:

The petitioner having completed M.B.B.S. degree from Mymensing Medical College entered into the 7th Bangladesh Civil Service (BCS) (Health), and thereafter he was appointed as Assistant Surgeon in Mymensingh Medical College Hospital on 29.02.1984. During his service he got promotions from time to time. Lastly, he got promotion in the post of Professor of Pharmacology and was posted as Officer on Special Duty (OSD) and he joined in Abdul Malek Ukil Medical College on 29.09.2016 wherefrom he went on post retirement leave from 01.05.2019 to 30.04.2020. In the meantime, the Ministry of Public Administration vide Memo dated 18.04.2019 under the signature of respondent

No.6 appointed the petitioner as Principal and Professor of the said medical college for two years and executed the deed of agreement for such appointment on contractual basis on 02.05.2019. After expiry of the aforesaid period of two years the petitioner was again appointed for another period of three years vide Memo dated 06.05.2021 and deed of agreement was executed on 09.05.2021(Annexures- A, A-1 and A-2 to the writ petition). But before expiry of the period of three years, respondent No.6 vide his Memo No. 05.00.0000.146.00.011.17-238 dated 07.06.2023 cancelled the appointment of the petitioner as per clause 7 of the deed of agreement (Annexure-C to the writ petition). In such circumstances, the petitioner sent notice demanding justice through his lawyer on 10.06.2023 but the respondents did not pay any heed to the same.

Under such circumstances, the petitioner has challenged the Memo No. 05.00.0000.146.00.011.17-238 dated 07.06.2023 *issued by the respondent no. 6, as evidenced by Annexure-C*, in the present writ petition and obtained the Rule Nisi on 25.06.2023 and also obtained an ad-interim order of stay initially for a period of 01(one) month which was extended subsequently from time to time.

Mr. Md. Kamal Hossain, the learned Advocate appearing on behalf of the petitioner by referring to clause 7 of the deed of contract, submits that the appointing authority can terminate the contract with prior 01(one) month's notice or by giving 01(one) month's salary which has not been complied with in his case and

as such, the impugned order of revocation of the deed of contract of the service has violated the clause 7 of the deed of agreement/contract. He further submits that natural justice has not been done to the petitioner before revocation of the deed of contract of the service of the petitioner. In this respect he has relied on the decision in the case of **Bangladesh Small Industries Corporation, Dacca Vs. Mahbub Hossain Chowdhury, 29 DLR(SC) 41**. He also submits that, since there is no stigma in his service and since he has completed the tenure of the first contract, he had legitimate expectation that he will be allowed to complete the full tenure of the contract dated 02.05.2021 but the authority by issuing the impugned order of termination of the contract of his service has violated the principle of his legitimate expectation and as such the same is liable to be declared to have been passed without lawful authority. In this respect he has relied on the decision of **Rabia Bashri Irene and another Vs. Bangladesh Biman Corporation, represented by MD and another, 52 DLR 309**. Hence he has prayed for making the Rule Nisi absolute.

Mr. Purnindu Bikash Das, the learned Advocate appearing on behalf of the respondent No.3, submits that after going retirement, the petitioner was appointed on contractual basis by executing deed of contract. Referring to clause 7 of the said deed of contract the authority has ample power to terminate the contract without giving any show cause notice and as such, the authority did not commit any illegality in cancelling the contract of the service of the

petitioner. However, he also submits that the subject matter of the writ petition falls within the jurisdiction of the administrative tribunal and if the petitioner is aggrieved then he has to move the tribunal not before the writ jurisdiction and hence the writ petition is not maintainable. In support of his contention he has relied on the case of **Bangladesh Vs. Sontosh Kumar Saha, 21 BLC(AD)94**. And as such, the *Rule Nisi* is liable to be discharged.

We have considered the submissions of the learned Advocates appearing on behalf of their respective parties, perused the writ petition and all annexures appended thereto along with the decision referred to above by the respondents.

Admittedly, the petitioner being in the service of the Republic went on retirement on and from 30.04.2019 from the service. Again he was appointed on contractual basis as Principal and Professor in the Abdul Malek Ukil Medical College, Noakhali twice and deed of contract was executed lastly on 02.05.2021 with effect from 09.05.2021 to 08.05.2024. In clause 7 of the contract dated 09.05.2021 it is provided that the contract can be terminated without giving any show cause notice. Reading clauses 7 and 9 of the said contract, it appears that the service of the petitioner is temporary and on contractual basis. However, one year before expiry of the said contract the authority cancelled/terminated the contract vide Memo dated 07.06.2023 (Annexure-C). It appears that his service is completely regulated by the contract, which will meet its natural death on 08.05.2024 if the same would not have been

cancelled by the impugned order. In clause 7 of the contract the power of termination of the contract has been given upon the appointing authority which reads as follows:

“৭। কোন কারণ না দর্শাইয়া যে কোন পক্ষ হইতে এক মাসের নোটিশ অথবা তৎপরিবর্তে এক মাসের বেতন প্রদান সাপেক্ষে এই চুক্তি বাতিল করা যাইবে।”

Since the service of the petitioner is completely temporary on contractual basis and since his service is regulated by the contract wherein provision of giving show cause notice has not been made mandatory in case of termination of the contract of service and as such, the authority did not commit any illegality in issuing the impugned order of termination of the contract of service of the petitioner. The contractual service is a premium given by the appointing authority to the writ petitioner because he has already gone to retirement on normal process. However, the relevant issue is whether the notice was served to him one month before the cancellation of the contract or one month's salary instead of notice was given to the petitioner. In the writ petition the petitioner stated that he was not given one month's notice or salary in lieu of notice. The respondent stated in the application for vacating the order of stay that complying with all formalities as required the contract was cancelled. Moreover, we do not find that the petitioner has ever made any application to the authority for getting one month's salary. In the meantime, the period of contract is going to be expired i.e. on 08.05.2024. The question of violation of natural justice will not come in the present case on the face of the contract

itself by which the petitioner's contractual service is regulated. And another question of legitimate expectation cannot be pleaded after the case of Bangladesh and others Vs. Nadia Begum and others, 72 DLR(AD)180 wherein the Appellate Division disapproved the principle of legitimate expectation in case of temporary/daily basis/contractual service holder.

Now, the petitioner has invoked the writ jurisdiction alleging that before revocation of the contract of his service, he was not provided with one month's notice or instead of salary for the above period of one month. It is vehemently argued from the side of the respondent authority that the subject matter of the writ petition is terms and condition of service in the Republic and the same cannot be maintained in the writ petition.

Be that as it may, since admittedly the petitioner herein is in the service of the Republic he is to be governed by the decision laid down in the case of **Bangladesh Vs. Sontosh Kumar Saha reported in 21 BLC(AD)94** wherein it has been held "*Except challenging the vires of law or violation of fundamental rights, judicial review of a decision of authority relating to the terms and conditions of service under article 102(1)(2) is not permissible*".

In the case in hand, it appears that the writ petitioner did not challenge the vires of any law. Under such circumstances it is clear that there is no scope to avail the forum of judicial review and as such, the writ petition is not maintainable.

Moreover, the petitioner alleged that he was not given any notice or salary as required in clause 7 of the contract. On the other hand, the respondent No.3 by filing application for vacating the order of stay stated that complying with due process of law as well as initiating proceeding, the impugned order of termination of the contract of service of the petitioner was issued and as such there was no illegality in the impugned order. In that circumstances, the claim of the petitioner becomes a disputed claim/question which cannot be adjudicated upon by this Division under article 102 of the Constitution. Furthermore, we do not find any averment in the writ petition that the petitioner has ever made any prayer for getting the one month salary as provided in clause 7 of the contract.

In view of the discussions made hereinabove and in view of the decisions as referred to above, we are constrained to hold that the writ petition is not maintainable and as such the Rule Nisi fails which is liable to be discharged.

Accordingly, the Rule Nisi is discharged without any order as to cost. Interim order granted earlier is hereby recalled and vacated.

K M Zahid Sarwar, J.

I agree.