

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

WRIT PETITION NO.6122 of 2023

IN THE MATTER OF:

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

IN THE MATTER OF:

Taslima Khatun

.....Petitioner.

-Versus-

Bangladesh, represented by the Secretary, Ministry
of Education, Bangladesh Secretariat, Dhaka and
others

.....Respondents.

Ms. Amatul Karim with

Mr. Md. Shajibur Rahman Durjoy, Advocates

.....For the petitioner.

Mr. Nawroz Md. Rasel Chowdhury, D.A.G. with

Mrs. Afroza Nazneen Akther, A.A.G. with

Mrs. Anna Khanom(Koli), A.A.G. with

Mr. Prince-Al-Masud, A.A.G. with

Mr. Al Mamun, A.A.G

..... For the Respondents-government

Present:

Ms. Justice Md. Jahangir Hossain

And

Mr. Justice S M Masud Hossain Dolon

**Heard on: 30.11.2023, 10.12.2023,
02.01.2024, 03.01.2024 and 09.01.2024**

Judgment on:17.01.2024

Md. Jahangir Hossain, 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 impugned Office

order dated 10.03.2023 posted at website of Regional Deputy Director, Rajshahi on 13.03.2023 passed by the Respondent No. 4(Annexure-P), shall not be declared to have been issued without lawful authority and is of no legal effect and also, as to why the respondents shall not be directed for grant MPO (Monthly Payment Order) in favour of the petitioner as per “Janabal Kathamo-2018” and/or such other or further order or orders as to this Court may seem fit and proper.”

The facts relevant for disposal of this Rule, are that the petitioner was the candidate for the post of Assistant Librarian recruitment examination of the Chanchkoir Nazimuddin School and College, Upzilla-Gurudaspur, District-Natore. The petitioner along with other two candidates brought their related papers and submitted accordingly to the office of the School and later on after completing all formalities recruitment examination was held and thereafter published the result of recruitment examination on 25.10.2019. After getting result sheet, it was found that the petitioner was got the first position in the recruitment examination.

On 27.10.2019 respondent No. 8 was issued an appointment letter in favour of the petitioner for the post of Assistant Librarian, Chanchkoir

Nazimuddin School and College. On 29.10.2019 petitioner give joining report before the respondent No. 8. Thereafter on 07.10.2022 the respondent No. 8 principle/Headmaster Chanchkoir Nazimuddin School and College has forwarded all the documents of the petitioner to the respondent No. 4 District Education Officer, District-Natore for selecting the name of the petitioner in the Monthly Payment Order (MPO). On 07.10.2022 the respondent No. 8 has forwarded all certificates of the petitioner to the respondent No. 4 for necessary steps. The respondent No. 8 was received a letter from the respondent No. 4 on 26.05.2022 on which it was found that the school part of the Chanchkoir Nazimuddin School and College's appellation was extended till 30.12.2020. Thereafter the School and College's appellation was extended till 30.06.2023.

The petitioner filed an application with all related documents before the office of the respondent No. 4 through the respondent No. 8. Finally it was forwarded to the office of the respondent No. 4. Thereafter it was rejected by the respondent No. 4 with a comments that "advertisement date is 29.09.2019 and applicant joined in 29.10.2019 but obtained DLIS (Diploma in Library and information science) certificate from NU on 22.02.2022, So having lack of educational at the time of recruitment as AL. Attached a DLIS certificate from SIT foundation

which have no validity for this post. According to the MPO sheet, its school not College. Moreover in CS (candidate sheet) having no signature of DG represented (HM) (Head Master) and USEO (UPazilla School Education Officer) according to recruitment process in school. Applicant recruited by the processes of College section instead of school section. So its rejected. ” The respondent No. 4 without going through the facts and law concerned the matter rejected petitioner application for granting MPO vide Office order dated 10.03.2023 posted at website of Rajshahi Education Board on 13.03.2023 most illegally which is also misconceived one. The petitioner being aggrieved filed this writ petition.

The petitioner is appointed by maintain procedure and lawfully. According to the appointment letter it is clearly shows that the petitioner is appointed for the institution of school and college. The petitioner has carried out due compliance of the procedure set by the concerned law and rules.

The petitioner is appointed with due consideration taken by the School Managing committee. The petitioner obtained certificate from valid institution under National University. The respondent No. 4 treated the institution having no validity which is wrong conceptually. Hence the office order dated 13.03.2023 is liable to be declared unlawful and is no legal authority. Hence the case.

At the time of hearing learned Advocate, Mrs. Amatul Karim submits that the petitioner as per appointment letter joint in the said post which was held under the valid requirement process. And she stood first in the requirement examination. After joining the said post the petitioner has served out in Chanchkoir Nazim Uddin School and College more than 4(four) years. The petitioner received the salary amount and other facilities from the institution as per Rule. The Janabol Kathamo-2018 others relevant laws and Rules of the Country existing at the time of the recruitment process and her application for MPO filed on 07.10.2022 through proper channel. It is clearly shows in the Janabol Kathamo-2018 that the applicant has all the qualification to be joined and served in this post. He further submits the managing Committee as per the modification or the advertisement for the recruitment that the all the procedure and recruitment was on was on fair process under the law and Rules. Regarding the MPO the authority concerned unlawfully and out of Rules rejected the application with a filthy ground.

Per contra Mr. Nawroz Md. Rasel Chowdhury, learned Deputy Attorney General submits that petitioner did not follow the proper procedure. During her appointment no Upazilla Education Officer was present as well as no appointment letter from the D.G. was given. It is a mandatory provision of the MPO Nitimala 2018, that any candidate for

the instant post should have graduation in Library science or any other Graduation with a Diploma in Library science at the time of recruitment. But the petitioner does not have any such qualification at the time of her appointment. According to the MPO Nitimala 1995, 2010 & 2021, the criteria for Assistant Librarian is graduation in Library Science & Information Or graduation in another subject along with Diploma in Library Science & information. Moreover, in the MPO Nitimala for Madrasha 2018, the criteria for Assistant Library is graduation in another subject along with Diploma in Library Science. The criteria for the same post has School & college is also the same. Lastly he submits grounds of the writ petitioner are denied by the respondent in their entirety. On the above fact and circumstances lastly he submits that this involves disputed question of fact. As such this writ petition is not maintainable and he prayed for discharged the Rule.

We have elaborately examined the record and the annexure attached with the application for the petitioner. We have given our anxious thoughts upon the submissions of the both learned Advocates. It appears the petitioner appointed through a process of appointing as per rule and since then she was serving in the said post by recruiting of the concern authority and the appointment procedure will be maintained by the appointment authority not by the candidate. After appointment she

obtained the salaries from the said school and college. Petitioner filed an application with the relevant documents through appropriate authority for MPO which is submitted to the Regional Deputy Director, Office of the Regional Deputy Director, Secondary and Higher Secondary Education Directorate, Rajshahi, respondent No.4 herein. Headmaster/Principal (Incharge), Chanchkoir Nazim Uddin School and College, Gurudaspur, Natore herein the respondent No. 8 has forwarded her application on 07.10.2022.

The respondent No. 4 rejected the application of the petitioner with a note that “advertisement date is 29/09/2019 and applicant joined in 20.10.2019 but DLIS certificate from NU on 22/02/2022, so having lack of educational qualification at the time of recruitment as Al. Attached a DLIS certificate from SIT foundation which have no validity for this post. According to the MPO sheet it’s school not college. More Over in CH having no signature of DG representative (HM) and USEO according to recruitment process in school. Applicant recruited by the process of college section instead of school section. So it’s rejected” vide office order dated 10.03.2023.

It reveals having requisite qualification has appointed to the post of Assistant Librarian at the said School and College by following all legal procedure and finally appointed to the petitioner to the post of

Assistant Librarian. Further it transpires since the institution is School and College and the petitioner has appointed for the institution by the higher authority of that institution has covered the legal procedure. By following the same procedure the teacher and staff were appointed and granted MPO earlier which appears from the (Annexure-P1 and Q).

The recruitment process in the year 2019. The requisite qualification for the post of Assistant Librarian has been fixed by Besarkari Shikkha Protisthaner (School O College) Janabal Kathamo and M.P.O Neetimala-2018. As per Janabal Kathamo-2018, the qualification for the Assistant Librarian/Cataloper is (i) Bachelor Degree with Library Science and Information science from any recognized University /equivalent or Bachelor Degree from any recognized university/equivalent Diploma in Library Science. This qualification been mentioned in column No. 26 for school section and column No. 14 for college section of Janabal Kathamo-2018. The Bachelor Degree holder from recognized university is eligible or equivalent Diploma in Library Science is eligible for the post of Assistant Librarian.

It does not appear in the Janabal Kathamo-2018 from where the diploma in Library Science to be taken. Even no information with supporting documents regarding recognized institutions of Diploma in Library Science has given in the affidavit in opposition filed by the

Director General respondent no.3. Mere self-styled statement cannot deny any person's right to entitlement on MPO. By the order of rejection the authority violating the legal rights under the Janabal Kathamo-2018 and Fundamental rights provided Article 27,31 and 40 of the Constitution of the Peoples Republic of Bangladesh.

Upon meticulous examination it appears to us the petitioner obtained Bachelor Degree from National University by which she fulfill the qualification as per Janabal Kathamo -2018. Moreover, she obtained two Diploma in Library and information Science ; one from Science and Information Technology (SIT) Foundation in the year 2018 and another from National University in the year of 2020. Therefore, there is no scope for not down that the petitioner is lack of qualification. The petitioner is qualified and appointed in the Chanchkoir Nazim Uddin School and College, Gurudaspur, Natore by complying with the Sarkari Shikkha Protisthan Shikkhak O Karmachari Neog Bidhi, 1982 (Recruitment Rules of Teacher and Staff in Non Government Education Institutions, 1982) and the Besarkari Shikkha Protisthaner (School O College) Janabal Kathamo o M.P.O Neetimala-2018.

It clearly reveals the petitioner is entitled to have the Monthly Payment Order (MPO) as per Janabal Kathamo-2018.

Upon such we find merit in this Rule.

In the result, the Rule is made absolute.

The respondents are directed to grant M.P.O (monthly payment order) in favour of the petitioner within three months from the date of receipt of this judgment.

Communicate the order at once.

S M Masud Hossain Dolon, J:

I agree.

Md. Majibur Rahman

Bench Officer.