

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

**WRIT PETITION No. 6625 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**

Kamal Hossain and others

....**Petitioners.**

**-Versus-**

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

.....**Respondents.**

Mr. M. Mahbub Ali, Senior Advocate with  
Mr. Md. Sagir Anwar, Advocate with  
Mr. Muhammad Ali Murtaja, Advocate

.....**For Petitioners.**

Mr. Bepul Bagmar, D.A.G.

For respondent-government.

Mr. Masudur Rahman, Advocate

.. For respondent No.7.

**Judgment on: 12.06.2024**

**Present:**

**Mr. Justice Md. Khasruzzaman  
and**

**Mr. Justice K M Zahid Sarwar**

**Md. Khasruzzaman, J.**

On an application under article 102 of the Constitution, on  
04.05.2023 the *Rule Nisi* was issued in the following terms:

*“Let a Rule Nisi be issued calling upon the respondents to  
show cause as to why the decision of the Appeal and  
Arbitration Committee of the Board of Intermediate and*

*Secondary Education, Dhaka dated 25.09.2018 so far it relates to decision Nos. 12, 13, 14 and 15 (Annexure-G) giving approval of the decisions of the governing body of Birshrestha Munshi Abdur Rouf Public College, Pilkhana, Dhaka dated 04.03.2018 (Annexure-F) dismissing the petitioners from their job and in pursuance thereto the letters under Memo No. BMARPC/76/2019 dated 10.01.2019, BMARPC/77/2019 dated 10.01.2019, BMARPC/78/2019 dated 10.01.2019, BMARPC/79/2019 dated 10.01.2019 (Annexures-H, H-1, H-2 and H-3) issued under the signature of respondent No.7 dismissing the petitioners from their job permanently should not be declared to have been issued without lawful authority and is of no legal effect and why the respondents should not be directed to reinstate the petitioners in their respective posts in Birshrestha Munshi Abdur Rouf Public College, Pilkhana, Dhaka with full salaries and other benefits with arrears from the month of November, 2017 and/or pass such other or further order or orders as this Court may seem fit and proper.”*

Facts summarized from the writ petition and the papers annexed thereto are that the petitioner Nos. 1 and 2 are the Assistant Professors of Physics and Botany of Birshrestha Munshi Abdur Rouf Public College, Pilkhana, Dhaka; petitioner No.3 is an Assistant Teacher of Art and History of the said college; petitioner No.4 is a Physical Education Teacher of the same college. They are discharging their duties with sincerity, honesty and with

satisfaction of the authority. It is stated that some rival groups are always trying to cause harm to the petitioners. In this connection, someone made complaint before the Principal of Birshrestha Munshi Abdur Rouf Public College, Pilkhana (in short, the college) against the petitioners stating *inter-alia* that the petitioners are involved with land development business (Annexure-B). On 22.10.2017 the Principal of the college issued show cause notices to the petitioners and the petitioners duly replied to the show cause notices denying the allegations brought against them. Thereafter, the Principal of the college formed an enquiry committee of 3 members and the petitioners were suspended from their service. The enquiry committee duly enquired into the matter and submitted report on 11.02.2018 stating *inter-alia* that the allegations against the petitioners regarding their involvement in land development and other businesses are true. Thereafter, on 04.03.2018 the governing body of the college took a decision to dismiss the petitioners from their respective post stating that they were guilty of misconduct within the meaning of regulations 11(d), (e), (f) and (h) of the Recognized Non-Government Intermediate College Teachers (Board of Intermediate and Secondary Education, Dhaka) Terms and Conditions of Service Regulations, 1979 (in short, the Regulations, 1979) and rules 61(Ka), 61(Ga), 63(Gha) and 63(Ja) of the Protisthan Porichalona Bidhimala. Accordingly, the college authority sent the matter to the Appeal

and Arbitration Committee of the Dhaka Board for its approval (Annexures-F, F-1 to F-4).

The Appeal and Arbitration Committee vide order dated 25.09.2018 so far it relates to decision Nos. 12, 13, 14 and 15 approved the proposal of the college authority as to dismissal of the petitioners from their respective posts (Annexure-G). Thereafter, the college authority vide memo dated 10.01.2019 finally dismissed the petitioners from their service (Annexures-H, H-1 to H-3). Afterwards, the petitioners filed appeal before the Vice Chancellor of National University stating amongst other that since the college is an honours degree level college affiliated by the National University, the Appeal and Arbitration Committee of the Board of Intermediate and Secondary Education, Dhaka has no authority to approve the decision of dismissal taken by the governing body of the college. But the National University kept itself mum about disposal of the appeal. Hence, the petitioners filed Writ Petition No. 15814 of 2018 challenging the inaction of the National University and obtained the *Rule Nisi* on 17.12.2018 and also obtained a direction to dispose of the appeal. In compliance of the said order dated 17.12.2018 the Registrar of the National University vide its memo dated 25.02.2019 allowed the appeal and directed the Principal of the college to reinstate the petitioners in their respective post with salaries and arrear (Annexures- I, I-1 to I-3). But the college authority did not pay any heed to the said direction of the National University dated

25.02.2019. As such, the petitioners again filed Writ Petition No.3576 of 2019 challenging the inaction of the college authority to implement the order dated 25.02.2019 passed by the National University and thereby obtained *Rule Nisi*. Thereafter, the Principal of the college also filed Writ Petition No. 3769 of 2019 challenging the said order dated 25.02.2019 passed by the National University and obtained *Rule Nisi* and interim order of stay by order dated 23.04.2019. All the three writ petitions being Writ Petition Nos. 15814 of 2018, 3576 of 2019 and 3769 of 2019 were heard analogously and ultimately by judgment and order dated 12.12.2021 *Rule Nisi* issued in Writ Petition No. 3769 of 2019 was made absolute and two other *Rules Nisi* issued in Writ Petition No.15814 of 2018 and 3576 of 2019 were discharged.

Against the judgment and order dated 12.12.2021 the petitioners filed Civil Petitions for Leave to Appeal Nos. 902 of 2022, 903 of 2022 and 904 of 2022 but the civil petitions were dismissed for non prosecution vide order dated 12.03.2023 (Annexure-K).

After getting the civil petitions dismissed for non-prosecution, the petitioners filed the instant writ petition challenging the approval order of the Appeal and Arbitration Committee of the Board of Intermediate and Secondary Education, Dhaka and obtained the above *Rule Nisi* on 04.05.2023.

Respondent No.7, Principal of Birshrestha Munshi Abdur Rouf Public College, filed an *affidavit-in-opposition* denying

material allegations made in the writ petition and contending *inter-alia* that 32 (thirty two) individuals of different professions like, lawyer, engineer, government officials, businessmen made complaints alleging *inter-alia* that the petitioners had been doing real estate development business; they circulated a leaflet showing 07 (seven) projects of multi-storied apartment building and verbally offered to sell 10(ten) katha land at Road No.02, Mouza-Katashur, Shuchona Model Town, Basila, Mohammadpur, Dhaka in 48 (forty eight) shares valued at Taka 8,50,000/ (Taka Eight Lac Fifty Thousand) only each and they received an amount of Taka 8,50,000/ (Taka Eight Lac Fifty Thousand) only from each of the complainants. But at the time of registration of deed, they deceitfully registered the deed of sale No.2548 dated 02.04.2017 in 56 (fifty six) shares instead of 48(forty eight) shares and thereby cheated and deceived the complainants. As such, departmental proceeding was rightly initiated against them and the authority issued show cause notices to the petitioners and on the basis of report of the enquiry committee, the authority of the school took decision to dismiss them from service. And after taking approval from the Appeal and Arbitration Committee of the Board, the petitioners were dismissed finally by the governing body in accordance with law. Hence, the *Rule Nisi* is liable to be discharged.

Mr. M. Mahbub Ali, with Mr. Md. Sagir Anwar and Mr. Muhammad Ali Murtaja, the learned Advocates appearing on

behalf of the petitioners submits that the allegation against the petitioners is that they are involved in land development business and for the purpose of illegal gain, they have cheated with the complainants by registering the deed of sale in 56 shares instead of 48 shares. This allegation is completely a civil dispute between the petitioners and the complainants and is not in any way harmful to the interest of the college and moreover, the same cannot be treated as professional misconduct and as such, the dismissal order and the approval of the said dismissal by the Appeal and Arbitration Committee is liable to be declared to have been done without lawful authority. He further submits that the proposed dismissal order of the petitioner from their service was not approved by the Board as per regulation 12 of the Regulations, 1979. The learned Advocate also submits that none of the allegations come under the purview of rule 11 of the Regulations, 1979 and Nitimala 61(Ka), 61(ga), 63(Gha) and 63(ja) of the Management Nitimala of the Birshrestha Munshi Abdur Rouf Public College and as such the dismissal orders of the petitioners are illegal and without lawful authority. By referring to the supplementary affidavit, the learned Advocate contends that before awarding punishment of dismissal from service, the petitioners were not served with a second show cause notice along with the enquiry reports for giving them an opportunity to reply and giving them an opportunity of being heard and as such, the

respondents committed a gross violation of the well settled principle of natural justice.

Mr. Masudur Rahman, the learned Advocate appearing on behalf of the respondent No.7 i.e. the Principal of the College submits that the allegation against the petitioners having been enquired into and found to be proved and as such, after taking approval from the Appeal and Arbitration Committee of the Board, the petitioners were dismissed from their respective service. No illegality has been committed in this regard. He further submits that Birshrestha Munshi Abdur Rouf Public College has not been created by any statute, is not a statutory body and as such, the writ petition challenging dismissal order of the petitioners is not maintainable. In this respect, he has relied in the case of **Noor-e-Alam Jahangir (Md) English Teacher, Rifles Public School and College Vs. Government of Bangladesh, represented by the Secretary, Ministry of Education and others, 60 DLR(AD)12.** The learned Advocate also submits that since the petitioners are not in the service of the republic, second show cause notice is not applicable in case of the petitioners. In this respect he has relied on the case of **Jamuna Oil Company Limited and another Vs. SK.Dey and another, 44 DLR (AD) 194.** Accordingly, he submits that since there is no illegality in the dismissal order, the Rule Nisi should be discharged.

We have considered the submissions of the learned Advocates appearing on behalf of their respective party and



perused the writ petition and all papers annexed thereto as well as the decisions referred to by the parties.

The main allegation against the petitioners is that they are involved in land development business. They circulated a leaflet showing 07(seven) projects of multi-storied apartment building and they also verbally offered to sell 10 kathas of land at Road No.02, Katashur, Shuchona Model Town, Basila, Mohammadpur in 48 shares valued at Taka 8,50,000/- each and they have received the said amount from the complainants. But at the time of registration of deed of sale, they purposely and deceitfully registered deed of sale No. 2548 dated 02.04.2017 in 56 shares instead of 48 shares and thereby cheated and deceived the complainants. On these allegations the petitioners were brought in the departmental proceeding and finally they were dismissed from the service.

The points as found from the submissions of the learned Advocates appearing on behalf of their respective party, for determination are whether the writ petition is maintainable and whether the second show cause notice annexing enquiry report is applicable in case of the petitioners, and whether the dismissal order was approved by the Board as per rule 12 of the Rules, 2009.

Referring to the decision reported in 44 DLR (AD) 194 the respondent No.7 submitted that the writ petition is not maintainable since the college is not a statutory body and since

the order of dismissal was passed by the Principal of the said College. The submission of the respondent No.7 in this respect is misconceived because the petitioners challenged the decision of the Appeal and Arbitration Committee of the Board of Intermediate and Secondary Education, Dhaka in the instant writ petition. In the cited decision the order passed by the governing body of the college was challenged and as such, it was held in that decision that the writ petition was not maintainable. But in the present case, the impugned order was passed by the Appeal and Arbitration Committee of the Board of Intermediate and Secondary Education, Dhaka. So, the submission of the respondent in this respect is not applicable in the present case. Board of Intermediate and Secondary Education, Dhaka is a creature of a statute and is connected with the affairs of the Republic. Hence, the impugned order is very challengeable under writ jurisdiction. So, the writ petition is maintainable.

Next point is whether the petitioners are entitled to a second show cause notice along with a copy of the enquiry report. Admittedly, they were not served with any second show cause notice. It appears that initially the petitioners were suspended while the enquiry committee was making enquiry into the allegation made against them. Eventually they were dismissed from their service after taking approval from the Appeal and Arbitration Committee of the Board. Accordingly, as per Service Rules, severe punishment has been awarded with the petitioners

by dismissing them from service. Our Constitution in article 135 provides that in case of dismissal, removal or reduction in rank, the employee must be given an opportunity to show cause as to why such action/punishment would be taken against him. In that article, this opportunity of second show cause has been made applicable to the person in the service of the Republic. In part III of the Constitution, provisions relating to fundamental rights have been provided in articles 26 to 47A of the Constitution. In article 27 it has been spelt out that all citizens are equal before law and are entitled to equal protection of law. Article 31 provides that to enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law. In the case of **Bangladesh Agricultural Development Corporation Vs. Saidul Huq Bhuiyan, 8 BLC (AD) 49**, the applicability of second show cause notice was also extended and approved in the case of an employee of Corporation. It has been found that though the Service Regulations do not provide for supplying the enquiry report along with 2<sup>nd</sup> show cause notice, the authority is required to supply a copy of the enquiry report while the corporation has asked the respondent No.1 to reply to the 2<sup>nd</sup> show cause notice served on the basis of the finding of the enquiry report which was

made the basis for punishing the respondent No.1 and thereby the opportunity of giving effective representation has been denied. The concept of administrative fairness requires that an authority while taking a decision which affects a person's right prejudicially must act fairly and in accordance with law. We note that there has been gross violation of principle of natural justice. There has been a long line of decisions of our Apex Court that principle of natural justice must be complied with before taking any action/awarding punishment upon any person.

Admittedly, Birshreshtha Munshi Abdur Rouf Public College is a recognized non-government college. As such, the terms and conditions of the service of the teachers of the college are governed by the provisions of "*The Recognized Non-Government Secondary School Teachers (Board of Intermediate and Secondary Education, Dhaka) Terms and Conditions of Service Regulations 1979*" (in short, the Regulations). Regulation 14 provides for drawing proceedings against a teacher. Regulation 14 reads as follows:

**14. Procedure for drawing up proceedings:**

- (1) When a teacher is to be proceeded against for offences specified in regulation 11, he shall be called upon by a notice to submit a written explanation within seven days as to why the penalty or penalties specified in the notice should not be imposed on him for the alleged offences

and asking him if he desires to be heard in person.

- (2) On receipt of the explanation from the teacher and his desire to be heard in person, the authority competent to impose penalty shall constitute a three members enquiry committee with a Chairman:

Provided that at least one of the members of the committee shall be from teaching profession.

In the case of Kazi Farooque Ahmed Vs. National University and others, 13 BLT (HCD) 181, in which on consideration of a provision similar to above, the requirements of a disciplinary proceeding were formulated in the following manner:

- (I) A notice containing a brief statement of facts with specific charge(s), spelt out with sufficient clarity, giving date, time and manner of occurrence, enclosing relevant papers, if any, which will be considered by the enquiry committee or the concerned authority, with direction to show-cause within a reasonable period of time, such as, 10 (ten) working days, as provided in the Government Servants (Discipline and Appeal) Rules, 1985. The notice must also state the punishment proposed to be imposed, in case, the

delinquent employee is found guilty of the charge(s). A notice must satisfy the above noted all the requirements, even the proposed punishment has also to be stated, so that the concerned employee can understand the nature and the gravity of the charge(s) leveled against him in order to allow him to reply properly in his defence.

- (II) If the reply is not satisfactory to the concerned authorities, an enquiry officer or committee has to be formed in order to find out the truth or otherwise of the charge(s). In the instant case, this is provided for in sub-regulation Ka in regulation 16 of the Besharkari College Shikkhakder Chakurir Shartabali Regulations, 1994. An opportunity for being heard in person, is to be afforded, if so prayed for by the delinquent employee.
- (III) The enquiry has to be conducted in presence of the delinquent employee including examination of witness, if any, with the right to cross-examine them.
- (IV) If the enquiry committee finds the charge(s) as proved and the authority decides to impose a major penalty, a second notice, enclosing a copy

of the enquiry report, ought to be forwarded to the delinquent employee, to show-cause as to why such a major penalty should not be imposed upon him.

- (V) On receipt of the reply to the second notice to show-cause, the authority would then decide as to whether a penalty has to be imposed upon him and if so, what kind of penalty. The recommendations of the Public Service Commission may be required in case of Government servants while approval of the University will be required under regulation 18(3) of the Regulations in case of teachers in the non-government Degree College.

- (VI) The penalty must not be unduly harsh but should be proportionate to the proved charge (s).

In the case of Ms. Mina Biswas Vs. Secondary and Higher Secondary Education Board, Comilla and others, 13 BLT (HCD) 427, wherein their lordships observed that:

“This is not mere solipsism but we would repeat what was held there in this connection:

Adherence to and meticulous compliance of the above noted procedure would ensure the compliance of ideals of the principles of natural justice and a right to

a fair hearing. Any departure of any of the procedures mentioned above would surely curtail the rights of the delinquent teacher but compliance of these procedures would not prejudice the rights of a public body or authority including a University or an educational institution, in any manner, rather, ensure an overall sense of fairness in its dealing with its employees or teachers who are its the most valuable and precious assets in a modern welfare state.”

In the background of the above provisions and the principles stated above, let us now examine the legal position of the disciplinary proceedings drawn against the petitioners.

It appears that the governing body of the said college has failed to perform its duties to take departmental proceedings against the petitioner on the following reasons-

- (i) That before dismissing the petitioners from their service, enquiry was not held as per law.
- (ii) That enquiry report was not served upon the petitioners before dismissing the petitioners from their service.
- (iii) That on perusal of the meeting of the Appeal and Arbitration Committee of the Board dated 25.09.2018 (Annexure-G) and the dismissal order dated 10.01.2019 (Annexures-H, H1, H2 and H3), it appears



that without approval of the Board, the governing body of the college has no power and jurisdiction to take any decision to dismiss the petitioners from their service.

It further appears that the Appeal and Arbitration Committee of the Board has failed to perform its duties to examine the entire departmental proceedings against the petitioner under regulation 12 of the Regulations, 1979 and under regulation 41 (2) (Gha)(2) of the “মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড, ঢাকা (মাধ্যমিক ও উচ্চ মাধ্যমিক স্তরের বেসরকারী শিক্ষা প্রতিষ্ঠানের গভর্নিং বডি ও ম্যানেজিং কমিটি) প্রবিধানমালা, ২০০৯”. And only the Board has power to approve the decision of the governing body of the college.

Regulation 12 reads as follows:

## **12. Power to impose penalty:**

The power to impose penalty upon a teacher under Regulation 11 shall vest in the authority competent to make appointment:

Provided that the penalties of dismissal or removal from service shall be not be imposed unless the proposal for such penalty is examined by the Appeal and Arbitration Committee and approved by the Board.

Moreover, it appears that the Appeal and Arbitration Committee has approved the penalty proposed to be imposed upon the petitioners, whereas the law provides that the

Appeal and Arbitration Committee shall examine the same, but shall not approve the penalty, which is apparent from the regulation 12 quoted above. The power of approval has been given only to the Board under the regulation 12 as referred to above.

Since the Appeal and Arbitration Committee gave its opinion overstepping the power of the Board by approving the proposal instead of examining the proposal, the decision of the Appeal and Arbitration Committee vide Annexure-G, appears to have taken beyond its jurisdiction.

It further appears that the Board has failed to perform its statutory duties under regulation 12 of the Regulations, 1979 in respect of approving the order of dismissal order of the petitioners from their service.

Thus it appears from 12 of the Regulations, 1979 that when the governing body/managing committee takes any decision to dismiss a teacher from service, the said decision has to be sent to the Board for examination by the Appeal and Arbitration Committee of the Board and also approval by the Board. After the approval by the Board, the decision becomes final and then it will be communicated to the concerned authority and the concerned person.

It is noted here that until or unless the said decision becomes final, the status of the said teacher will remain under suspension and he will get subsistence allowance.

As per provision of the regulation 12 of the Regulations, 1979, the “Appeal and Arbitration Committee” is the only authority to examine the proposal for penalty sent by the managing committee/governing body of a school/college, and the “Board” is the exclusive authority to approve or non-approve the said proposal.

But in the instant case, it transpires that the governing body of the college took decision for dismissing the petitioners from their service on 04.03.2018 (Annexure-F) and sent the proposal for penalty to the Board as per provision of regulation 12 of the Regulations, 1979. Thereafter, the **“Appeal and Arbitration Committee”** of the Board beyond its jurisdiction approved the proposal for dismissal order vide its meeting dated 25.09.2018 **(Annexure-G).**

Considering the facts and circumstances of the case and discussions made above, we are inclined to make the *Rule Nisi* absolute.

In the result, the *Rule Nisi* is made absolute.

Thus the decision of the Appeal and Arbitration Committee of the Board of Intermediate and Secondary Education, Dhaka dated 25.09.2018 so far it relates to decision Nos. 12, 13, 14 and 15 (Annexure-G) giving approval of the decisions of the Governing Body of Birshrestha Munshi Abdur Rouf Public College, Pilkhana, Dhaka dated 04.03.2018 (Annexure-F) dismissing the petitioners

from their service and in pursuance thereto the letters under Memo No. BMARPC/76/2019 dated 10.01.2019, BMARPC/77/2019 dated 10.01.2019, BMARPC/78/2019 dated 10.01.2019, BMARPC/79/2019 dated 10.01.2019 (Annexures-H, H-1, H-2 and H-3) issued under the signature of respondent No.7 dismissing the petitioners from their service permanently are hereby declared to have been issued without lawful authority and are of no legal effect and set aside.

The respondents are directed to reinstate the petitioners in their respective posts in Birshrestha Munshi Abdur Rouf Public College, Pilkhana, Dhaka with full salaries and other benefits with arrears from the month of November, 2017 and onwards.

There will be no order as to costs.

Communicate the order.

**K M Zahid Sarwar, J:**

I agree.