

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

Writ Petition No. 13307 of 2022

IN THE MATTER OF:

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

-AND-

IN THE MATTER OF:

Md. Mominul Islam

.....Petitioner

-Versus-

Present:

Mr. Justice Sashanka Shekhar Sarkar
And
Justice Urmeem Rahman

The Government of the People's Republic
of Bangladesh, represented by the
Secretary, Ministry of Education, and
others

..... Respondents

Mr. Md. Aserul Haque, Advocate

...For the petitioner

Mr. Mohammad Waliul Islam Oli, D.A.G with

Mr. Md. Ershadul Bari Khandakar, D.A.G,

Ms. Nilufar Yesmin, A.A.G,

Mr. Md. Moshir Rahman (Rahat), A.A.G,

Mr. Md. Motasin Billah Parvez, A.A.G and

Mr. Md. Faridul Islam, A.A.G

.... For the respondents

Heard on 08.01.2026, 19.01.2026, 10.02.2026

and Judgment on 18.02.2026

Urmeem Rahman, J:

In the instant matter a Rule Nisi was issued on an application
under Article 102 of the Constitution of the People's Republic of
Bangladesh in the following terms:

*“Let a Rule Nisi be issued calling upon
the respondent Nos. 1-5 to show cause as to why*

the impugned memo No. ১/৭৩/৫/৫২ dated 02.08.2018 issued by the respondent No. 3 approving the decision of dismissal of the writ petitioner from service in the 244th meeting of the Appeal and Arbitration Board, Rajshahi dated 06.06.2018 (Annexure-I) should not be declared to have been passed without lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.”

Relevant facts for disposal of the instant writ petition, in short, are that, the writ petitioner was appointed in the post of Lower Division Assistant Cum-Computer Operator of Mirgonj High School on 17.11.2016 and since then he had been working in the said post with honesty and satisfactorily and received monthly pay order (M.P.O.) regularly till dismissal from his service. The respondent no. 5 served a show cause notice upon the petitioner on 17.07.2017 with the allegation of being involved in unsocial activities, to which he replied on 25.07.2017 controverting the allegations made therein. Thereafter, the respondent no. 5 served a second show cause notice on 31.08.2017 upon him with the allegation of immoral conduct and the petitioner replied to the said show cause notice on 28.09.2017 denying the allegations. Meanwhile, the petitioner was temporarily suspended from his service from 24.10.2017 which was informed to him by the

respondent no. 5 vide a temporary suspension letter dated 11.11.2017. On 19.11.2017 the respondent no. 5 served final show cause notice upon the petitioner with as many as five allegations against him. A rectified temporary suspension letter was issued on 22.11.2017 stating that, since he has been made accused in C.R. Case No. 194 of 2017 and C.R. Case No. 236 of 2017 and was sent to the jail on 24.10.2017 by an order of the Court in one of the said cases, the temporary suspension order will remain effective till disposal of the said criminal cases. Later on the respondent no. 5 served a letter upon the petitioner on 24.12.2017 stating that as per decision of the Managing Committee dated 19.10.2017 and 07.12.2017, the proposal for dismissal of the petitioner has been sent to the Appeal and Arbitration Board, Rajshahi. Subsequently the respondent no. 3 informed the petitioner by a letter dated 12.08.2018 that in the 244th Board Meeting dated 06.06.2018 the Appeal and Arbitration Committee approved the proposal for dismissal. Thereafter the petitioner repeatedly requested the respondents verbally as well as in writing to reconsider the decision of final dismissal from service and to reinstate him in service by the letters dated 25.09.2018, 19.03.2020 and 13.09.2021 respectively but the respondents did not pay any heed to the said notices. Finally the petitioner served a notice demanding justice to the respondents on 24.10.2022 requesting to reinstate him in the post of Lower Division Assistant Cum-Computer Operator of Mirgonj High School with all arrear salaries by withdrawing the earlier letter

dated 02.08.2018 regarding the approval of dismissal of the writ petitioner dated 06.06.2018 within 7 (seven) days but without any result till date.

Being aggrieved by and dissatisfied with the order of dismissal passed by the respondents and there having no other equal, alternative and efficacious remedy, the petitioner has filed the instant writ petition and obtained the instant Rule.

Mr. Md. Aserul Hoque, learned Advocate appearing on behalf of the petitioner submitted that, the petitioner was dismissed from his service mainly on the allegations of pendency of two criminal cases against him i.e. C.R. Case No. 194 of 2017(Bagha) and C.R. Case No. 236 of 2017 (Bhaga). C. R. Case No. 194 of 2017 (Bagha) was filed on 02.07.2017 under Section 4 of the Dowry Prohibition Act, 1980 against the petitioner by his wife and C.R. Case No. 236 of 2017 (Bagha) was filed on 26.07.2017 under Sections 406, 420 of the Penal Code by one Babul Hossain. After conclusion of trial the petitioner was acquitted from both the said cases by the judgment and orders dated 27.08.2018 and 24.10.2018 respectively passed by the Senior Judicial Magistrate, Court No. 2; thereafter an appeal was filed against the judgment and order of C.R. Case No. 236 of 2017 (Bhaga) being Appeal No. 285 of 2018 before the Additional Sessions Judge, 3rd Court, Rajshahi, who after hearing disallowed the appeal and no appeal was filed against the judgment of acquittal passed in C.R. Case No. 194 of 2017 (Bagha). As such at present there are no cases pending against him

and the petitioner should be allowed to be reinstated in his service with back wages.

Mr. Hoque then submitted that writ petitioner earlier filed Writ Petition No. 12750 of 2018 before the High Court Division challenging the memo No.১/এব/৫/৫২ dated 02.08.2018 and after motion hearing the said writ petition was rejected as being not pressed on 07.01.2019 since one of the said C.R. cases i.e. C.R. Case No. 236 of 2017 (Bhaga) was pending against the writ petitioner at that time.

Learned Advocate for the petitioner next submitted that the respondents have arbitrarily refrained the petitioner from joining his post even though he has been acquitted from the cases by a competent Court of Law.

He further submitted that the petitioner was dismissed from his service without following due process of law. Though an inquiry report was submitted by the inquiry committee against the petitioner but in fact he was not given an opportunity to appear before the committee personally and as such, the impugned order of dismissal has been passed arbitrarily and in violation of the principle of natural justice.

The learned Advocate finally submitted that the petitioner was arrested on 24.10.2017 and remained in jail till 09.11.2017 as such he failed to attend his duty during that period and after being released from jail he attended his work place from 09.11.2017 to

11.11.2017 and signed the attendance register because he did not receive the temporary suspension letter at that time, which he received subsequently on 11.11.2017, as such the petitioner was not at all involved in any manner in the said allegations made against him. The learned Advocate for the petitioner prayed that in the given circumstances the Rule may be made absolute.

No one appeared on behalf of the respondents to oppose the Rule.

We have heard the learned Advocate for the petitioner and perused all the documents annexed as annexures therewith.

The first show cause notice was issued against the petitioner on 17.07.2017 ((Annexure-B). It appears from the said notice that, the allegations made therein are vague and unspecific. The second show cause notice was served on 31.08.2017 with as many as three allegations. The Final notice was served on 19.11.2017 to show cause as to why he should not be dismissed from service stating inter alia that a three-member inquiry committee was formed in order to inquire into the allegations made against him and upon inquiry the allegations were found to be proved. This notice is silent about under which provision of law the petitioner is being regulated in the departmental proceeding. From the content of the final show cause notice it transpires that there are specific allegations of pendency of some criminal cases pending against him.

Meanwhile by the memo dated 11.11.2017 (Annexure-F) the petitioner was placed on suspension and in that memo it has been specifically mentioned that:

“উপরোক্ত বিষয়ের আলোকে আপনাকে জানানো যাচ্ছে যে, রাজশাহী সিনিয়র জুডিশিয়াল ম্যাজিষ্ট্রেট আমলী আদালত-২ এ মামলা নং-১৯৪/২০১৭ এর আপনি আসামী হওয়াই গত ১২/০৯/২০১৭ ইং তারিখে আদালতের আদেশে জামিনে আছেন। মামলা চলমান রয়েছে এবং মামলা নং- ২৩৬/২০১৭ এর আসামী হওয়ায় আপনাকে গত ২৪/১০/২০১৭ ইং তারিখে আদালতের আদেশে আপনাকে জেল হাজতে (কারাগারে) প্রেরণ করায় গত ২৯/১০/২০১৭ ইং তারিখের ম্যানেজিং কমিটির সভার সিদ্ধান্ত মোতাবেক আপনাকে সরকারী বিধি মোতাবেক গত ২৪/১০/২০১৭ ইং তাং হতে মামলা নিষ্পত্তি বা পরিসমাপ্তি না হওয়া পর্যন্ত আপনাকে চাকুরী হতে সাময়িক ভাবে অব্যাহতি দেওয়া হয়েছে এবং সরকারী বিধি ও আদেশ অনুযায়ী অর্ধেক বেতন খোরপোষ ভাতা প্রদানের সিদ্ধান্ত হয়েছে।”

Another letter was issued by the Head Master of the School on 22.11.2017 temporarily dismissing the petitioner from service stating the similar grounds for suspension stated in the abovementioned letter dated 11.11.2017.

Ultimately by the memo dated 02.08.2018 it was communicated to the petitioner stating that the Appeal and Arbitration committee finally decided to dismiss him from service in its 244th Board meeting dated 06.06.2018.

With the writ petition the petitioner has annexed the judgments passed in the abovementioned criminal cases and it transpires that the judgment in C.R. Case No. 194 of 2017 was delivered on 27.08.2018 acquitting the petitioner from the charges

brought against him and the judgment of C.R. Case No. 236 of 2017 was delivered on 24.10.2018 acquitting the petitioner from the charges against which an appeal was preferred being No. 285 of 2018 and that appeal was disallowed by the Additional Sessions Judge, 3rd Court, Rajshahi by the judgment dated 12.01.2021 affirming the order of acquittal passed by the trial court.

It is thus apparent on the face of the record that when the decision of the Managing Committee was taken on 07.12.2017 proposing the petitioner's dismissal from service, the criminal cases were still pending for disposal.

In this context the learned Advocate for the petitioner has referred to বেসরকারী শিক্ষা প্রতিষ্ঠান (স্কুল, কলেজ ও মাদ্রাসা)-এর তৃতীয় ও চতুর্থ শ্রেণীর কর্মচারীদের চাকুরী বিধিমালা-২০১২।

In Rule 4 of this 'বিধিমালা' provides that:

“৪। বেসরকারী শিক্ষা প্রতিষ্ঠান (স্কুল, কলেজ ও মাদ্রাসা)- এর কোন কর্মচারীর বিরুদ্ধে আদালতের একই বিষয়ের ওপর ফৌজদারী মামলা বা আইনগত কার্যধারা বিচারাধীন থাকিলে, তাহার বিরুদ্ধে বিভাগীয় মামলা নিষ্পত্তিতে কোন বাধা থাকিবে না: কিন্তু কর্তৃপক্ষ বিভাগীয় মামলায় তাহার বিরুদ্ধে কোন দণ্ড আরোপের সিদ্ধান্ত গ্রহণ করিলে উক্ত ফৌজদারী মামলা বা আইনগত কার্যধারা নিষ্পত্তি না হওয়া পর্যন্ত প্রস্তাবিত দণ্ড আরোপ স্থগিত রাখিতে হইবে।”

Therefore, it is very much clear from this provision that even if the decision to impose any punishment is arrived at by the authority, that has to be kept pending until the final disposal of the

criminal cases against that alleged delinquent employee. In the instant case it is evident from the document on record that the impugned decision has been taken in clear violation of this provision of law.

Since the petitioner was acquitted from both the charges, the order of dismissal from service has no lawful basis.

In the given fact and circumstances, we find substance in the Rule.

The order of dismissal dated 06.06.2018, which has been communicated to the petitioner by the memo dated 02.08.2018 is hereby declared to have been issued without any lawful authority.

In the result, the Rule is made absolute.

However, without any order as to costs.

The respondents are directed to reinstate the petitioner in his post within 30 days from the date of receiving this order.

Let a copy of this judgment and order be communicated to the concerned authorities at once.

Justice Sashanka Shekhar Sarkar, J:

I agree.