

In the Supreme Court of Bangladesh
 High Court Division
 (Special Original Jurisdiction)
Present
Justice Md. Habibul Gani
And
Justice Sk. Tahsin Ali

Writ Petition No. 4334 of 2009

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:

Md. Muzammel Haque

..... Petitioner

Vs.

Govt. of Bangladesh represented by the Secretary, Ministry of Education and others

... Respondents

Mr. Md. Reza-e-Murshed Kamal, adv. With Mr. M. Ali Murtaja, Advocates

... for the petitioner

Mr. Md. Mohaddesh-Ul-Islam, DAG with

Mr. Mahfuz Bin Yusif, DAG and

Mr. Md. Alamgir Hossian, AAG and

Mr. Kamrul Islam, AAG and

Mr. Kamrunnahar Tamanna, AAG and

Mr. Ahmad Musanna Chowdhury, AAG

..... For the respondents

Judgment on: 10.07.2025

Sk. Tahsin Ali, J:

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh filed by the petitioner, a Rule Nisi was issued calling upon the respondents to show cause as to why the impugned order issued under Memo No. 83/4G/899-M/07/12439 dated 10.11.2008 under the signature of Assistant Director (MO-1), Ministry

of Education, Secondary and Higher Secondary Education Directorate, Bangladesh, Dhaka (Annexure-D) shall not be declared to have been issued without any lawful authority and is of no legal effect and/or pass such other or further order or orders as to this court may seem fit and proper.

The case of the petitioner, as set out in the Writ Petition, in short is as follows: The petitioner as Headmaster, Char Niamat Ideal High School under Upazila, Phulpur, District- Mymensingh, received a show cause notice under Memo No. Sha-13/Abhipari/3-10/2005 (Angsha-2)/764 dated 07.07.2008 containing allegation that the petitioner concealing the information in terms of relocated the school building which caused degraded the standard of the educational process of Char Niamat Ideal High School, Fulpur, Mymensingh and also asked the petitioner to reply the same within 07 days after receipt of the notice why M.P.O. of him should not be cancelled. The petitioner on receipt of the aforesaid show cause notice sent a reply under registered post dated 17.07.2008.

Despite the above facts and circumstances Memo No. 83/4G/899 Ma/37/12439 dated 10.11.2008 under the signature of Assistant Director (MO-U), Ministry of Education, Secondary and Higher Secondary Education, Directorate Bangladesh, Dhaka have been issued resulting

the cancellation of M.P.O. and suspension of salary and allowances of the petitioner without assigning any reason for which the petitioner is highly aggrieved and living in hardship and in the margin of subsistence as well. On report of impugned Memo No. 83/46/899-M/07/12439 dated 10.11.2008; the petitioner being highly aggrieved made a representation under Memo No. 93/2008 to respondent No. 2 (Director General, Secondary and Higher Education Directorate) praying withdrawal of the impugned order but got no response, hence the instant writ petition to which the petitioner obtained Rule.

Mr. Md. Raza-E-Murshed Kamal, filed a wakalatnama on 30.10.2002 with a No Objection Certificate from the filling lawyer on behalf of the petitioner and submitted a supplementary affidavit with additional grounds on 14.05.2025.

The learned advocate of the petitioner submits that the relocation of any school is governed under the rule of Managing Committee of the recognized Government Schools regulations 1977. He also submitted that in the existing location of the school there is no playground for the student and Mosque beside the school for which students of the school can't organize any cultural event in as much as, the school bhabon was partly situated in the area of the Government Primary School for which

the local peoples took a decision on 05.07.2000 to shift the school to other suitable place.

Considering the above condition, the Managing committee of the school by its resolution dated 11.07.2000 took a decision to shift the school in a suitable place. It is further submitted that the purpose to shift the school, some of the local persons interested in education donated 1.53 acres of land in favour of the school by registered deed dated 16.07.2000. Thereafter the petitioner being headmaster filed an application for relocating the school building before the Chairman of the Dhaka Board of Education on 19.07.2000. The inspector of school, Dhaka Board of Education by his letter Dated 23.03.2002 has given permission to shift the school in the new proposed place. To follow up his earlier letter the inspector of school of Dhaka Board of Education by letter dated 30.03.2002 issued another letter in terms of shifting the school in the new proposed place. After obtained permission pursuant to direction of the Ministry of Education the inspector of School, Dhaka board of Education by letter dated 06.10.2002 cancelled the earlier order dated 23.03.2002 and 30.03.2002 though the Ministry of Education has no function in the process of shifting any school from one place to another place. Learned advocate contended, the school was shifted to other place as permission accorded by the school and Government

allotted fund construct school building and accordingly, 3 (three) storied building was established in the new place. While the school was running in the new place in the new building some interested persons somehow managed the Board of Education, Dhaka and accordingly the inspector of school of Dhaka Board of Education without giving any opportunity of being heard and without holding any inquiry by its letter dated 26.05.2008 cancelled the previous permission vide orders dated 23.03.2002 and 30.03.2002 and asked the president of the Managing Committee to restore the school in its previous place. Therefore, the inspector of school by his letter under Memo dated 22.07.2009 directed to the headmaster to shift the school from new place to previous place within 60(sixty) days without showing any reason whatsoever and without giving any opportunity of being heard. Petitioner is still confirming his service in the school as headmaster without any salary of Government portion M.P.O. Learned Advocate contended that as per the impugned order dated 10.11.2008 vide memo No. স্মারক নং ৮৩/৪জি/৮৯৯-৳/০৭ regarding stopping the wages and salary of the petitioner, the allegations brought against the petitioner that he did not inform the Director General, Secondary and Higher Secondary School as well as Ministry of Education but from the annexures as annexed to the writ petition and the supplementary affidavit it is clear that in many occasions

the petitioner being headmaster of the said school forwarded the status of the school in writing to the Board and Ministry of Education respectively and after a many correspondence the Ministry of Education and Board issued so many letters regarding the establishment of the school building, hence the allegations to establish against the petitioner in terms of suppression of the information of the status of the said school cannot be sustained and as such allegations made in the impugned order are not true at all.

Mr. Md. Mohaddesh-Ul-Islam the learned Deputy Attorney General appearing for the respondents objectively opposes the Rule but supported the submission of the petitioner considering the merit of the Writ Petition.

We have heard the learned Advocates from both sides, perusal the application and the materials. The learned advocate for the petitioner filed a supplementary affidavit and annexed the regulation of Managing Committee of the recognized Non-Government Secondary Schools, 1977 promulgated by the Board of Intermediate and Secondary Education, Dhaka wherefrom he has drawn our attention to the Section 18 of Sub-section 2; Note-I to the effect that “No decision regarding shifting of the school and changing the name of the school shall be given effect to without the prior approval of the Board.”

Considering the above Rule of the Regulation, 1977 it is pertinent question of this Writ Petition whether the petitioner being the Headmaster of Char Niamat Ideal School have any authority to shift the school building without the prior approval of the board. Hence the impugned decision has already been taken by the Assistant Secretary, Ministry of Education to held up the M.P.O. of the petitioner is colorable exercise of the power of the respondents and as such the impugned order is not sustainable in the eye of law against this petitioner. Moreover the present petitioner being headmaster of the school is not at all empowered to shift the school from one place to another place without approval of the Board from correspondence as annexed to the writ petition. We find group and counter group in the locality are interested to shift the school from one place to another place by influencing the board administration by the influential political persons and the headmaster being the key person of the school is always under pressure to act as per desire of the political influential person. From the correspondences as annexed to the writ petition and supplementary affidavits it appears that the headmaster (petitioner) duly informed regarding shifting of schools to the concern person of the Ministry of Education as well as to concern persons of Board who duly time to time approved the shifting of school from one place to another place and cancelled the order of shifting school. From

the correspondence it appears that now ultimately the school is running in its original place where the school was established, so, the allegation as made in the impugned memo to the effect that the petitioner suppressed the relocation of school and did not answer the query of the respondent No. 2 cannot be sustained.

Under the facts and circumstances and relying on the relevant laws and observations made above we are of the considered opinion that the Rule bears merit.

In the result, the Rule is made absolute. Thereby the impugned letter under memo No. ୮୭/୫୫/୮୯୯-ସ/୦୧/୧୨୫୭୯ dated 10.11.2008 is hereby declared to have been issued without lawful authority and is of no legal effect and the respondents are directed to pay all the wages and benefits to the petitioner up to his service tenure.

Communicate this judgment at once.

Md. Habibul Gani, J

I agree.