

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

Writ Petition No. 7516 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:

Md. Rubel Ahammed

...Petitioner

-Versus-

Present:

Mr. Justice Sashanka Shekhar Sarkar
And
Justice Urmeem Rahman

Government of Bangladesh, represented
by the Secretary, Ministry of Primary and
Mass Education and others

..... Respondents

Mr. Md. Shahadat Tanveer Amin, Advocate

...For the petitioner

Mr. Ajit Sil, Advocate

... For the respondent No. 4

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

Mr. Mohammad Rashadul Hassan, 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. Bishwanath Karmaker, A.A.G

.... For the respondents

Heard on 11.03.2026 and 04.05.2026

Judgment on 10.05.2026

Urmeem Rahman, J:

In the instant writ petition Rule was issued in the following
terms:

*“Let a Rule Nisi be issued calling upon the
Respondents to show cause as to why terminating the*

petitioner from his service as Record Keeper cum Sentry vide office order issued by the Upazilla Education Officer, Gurudaspur, Natore, respondent No. 3 vide Memo No. উশিঅ/গুরু/নাট/শিক্ষা/২৩/৯২ dated 05.03.2023 upon cancelling the written contract for appointment of the petitioner through outsourcing project (Annexure-D), shall not be declared to have been issued without lawful authority and is of no legal effect and also, as to why the respondents concerned shall not be directed to reinstate the petitioner in his respective post in accordance with law, 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 Rule in brief are that, the petitioner was given contractual appointment vide memo dated 08.04.2015 issued by the Head Master of Chandrapur-2, Government Primary School, Gurudaspur, Natore in the post of ‘Record Keeper Cum Sentry’ (দপ্তরী কাম গ্রহরী) at the said school through outsourcing process for a period of one year. He duly joined on the same day and since then has been performing his duties sincerely and to the satisfaction of all concerned. The contract was later renewed up to 30.06.2018 by another agreement dated 21.05.2017.

By the office order dated 05.03.2023 issued by the Upazilla Education Officer, the petitioner was terminated from service

without issuing any show cause notice. Prior to the termination the petitioner was implicated in G.R. Case No. 35 of 2023 arising out of Gurudaspur Police Station Case No. 10 dated 13.02.2023 under Section 9(4)(kha) of the Nari O Shishu Nirjatan Daman Ain, 2000 and he was enlarged on bail from the Nari O Shishu Nirjaton Daman Tribunal, Natore on 10.04.2023. Due to this reason, he was absent in the school and did not have knowledge about the issuance of termination order at that time. After getting knowledge of the termination, the petitioner filed an application before the Upazilla Education Officer, Gurudaspur, Natore (respondent no. 3) on 07.05.2023 praying for reinstatement in his service but he did not make any response thereto. Finding no other alternative, the petitioner served a Notice Demanding Justice to the respondents through his lawyer by registered post on 24.05.2023. Only the respondent no. 3 replied to the said notice on 01.06.2023 but in negative.

There having no other alternative and equally efficacious remedy available, the petitioner has been constrained to file the instant writ petition and obtained the present Rule.

Mr. Md. Shahadat Tanveer Amin, learned Advocate appearing on behalf of the petitioner, at the very outset submits that, the petitioner has been terminated from his service under Rule 11 (kha) of the Nitimala, 2019 by office order dated 05.03.2023 without issuing any show cause notice and without holding any investigation, thereby violating the principle of natural justice as

well as violating the provisions of fundamental rights and as such the impugned memo dated 05.03.2023 is liable to be set aside and the respondents may be directed to reinstate the petitioner in his service as Record Keeper cum Sentry for ends of justice.

He further submits that, the petitioner has been falsely implicated in G.R. Case No. 35 of 2023 arising out of Gurudaspur Police Station Case No. 10 dated 13.02.2023 under Section 9(4)(kha) of the Nari O Shishu Nirjatan Daman Ain, 2000 and he was enlarged on bail from the Nari O Shishu Nirjaton Daman Tribunal, Natore on 10.04.2023. For this reason, he was absent in the said school and did not have knowledge about the issuance of termination order at that time. Hence the impugned order is liable to be set aside for ends of justice.

Learned Advocate finally submits that, the petitioner has been working in the said post since 08.04.2015 with sincerity and to the satisfaction of all concerned for a period of almost eight years. Therefore the termination without issuing any show cause notice is liable to be declared to have been done without any lawful authority.

By referring to the supplementary affidavit sworn in on 05.05.2026 learned Advocate for the petitioner submits that, the above mentioned criminal case, in which the petitioner was implicated, has been finally disposed of and the petitioner has been acquitted from the case by the order dated 20.04.2026 passed by the Judge, Nari O Shishu Nirjatan Daman Tribunal, Natore in Nari O

Shishu Case No. 374 of 2023. Therefore the termination order on the basis of that criminal case is liable to be set aside and the Rule may be made absolute.

On the other hand, learned Advocate Mr. Ajit Sil entered appearance on behalf of Respondent no. 4 i.e. the District Primary Education Officer, Natore and contested the Rule by filing an affidavit in opposition.

Referring to the appointment letter annexed as Annexure-A to the writ petition learned Advocate forcefully submits that, the petitioner was given appointment on contractual basis for one year on 08.04.2015. In the contract agreement in clause 4 it has been clearly stated that, the authority shall be allowed to terminate the service without assigning any reason on giving one month notice. This contract agreement was further renewed till 30.06.2018 with the same condition as before. Therefore, no illegality has been committed by the authority in terminating the petitioner's service without issuing any show cause notice and for this reason the Rule is liable to be discharged.

Learned Advocate next submits that, Record Keeper Cum Sentry is a temporary and contractual post as per সরকারী প্রাথমিক বিদ্যালয়ে দপ্তরী কাম প্রহরী পদে আউট সোর্সিংয়ের মাধ্যমে জনবল নিয়োগের নীতিমালা- ২০১৯ and being well aware of the same the Petitioner applied for the said post and got appointment upon entering into a contract agreement with the school authority and due to unauthorized absent in the school for more than 15 working days, the appointment of the

Petitioner was terminated automatically as per Rule-12 (2) as well as Rule-11(Kha) of সরকারি প্রাথমিক বিদ্যালয়ে দপ্তরী কাম প্রহরী পদে আউট-সোর্সিংয়ের মাধ্যমে চুক্তিভিত্তিক জনবল সংগ্রহের নীতিমালা, ২০১২ and সংশোধিত নীতিমালা, ২০১৯ respectively. As such, the Petitioner cannot seek reinstatement in the said post as of right. As such the Rule issued in the Writ Petition may kindly be discharged at once.

Learned Advocate further submits that, admittedly, a heinous criminal case under Section 9(4) (Kha) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (amended in 2003) was filed against the Petitioner for the offence of sexual harassment and attempting to commit rape upon the informant, which is pending for adjudication and in the said case, the Police has already submitted Charge Sheet on 19.03.2023 against the Petitioner having found prima facie substance into the allegation and at present, the case is at the stage of trial. As such, there is no scope to reinstate the Petitioner in the post of Daptori-cum-Prohori in the said school. Therefore, the Rule having no merit is liable to be discharged.

Learned Advocate finally submits that, the Writ Petition is wholly misconceived and not maintainable in law or in facts as the Petitioner has no locus standi to challenge the impugned letter in writ jurisdiction inasmuch as long before issuance of the impugned letter the agreement and temporary appointment of the Petitioner was automatically cancelled upon expiry of the period of renewal agreement i.e. on 30.06.2018 and in such circumstances, there existed no subsisting legal right or enforceable interest in favour of

the Petitioner to be agitated before this Hon'ble Court. As such, challenging the impugned letter is untenable and devoid of any legal basis.

We have heard the learned Advocates for both the parties and perused the writ petition, supplementary affidavits thereto, the affidavit in opposition and all the documents annexed therewith.

Admittedly the petitioner was given appointment on contractual basis as a '*Doptori cum prohor*' in a government primary school on 08.04.2015 by executing a deed of contract for a period of one year as (Annexure-C). This contract was renewed on 08.04.2016 for the period till 30.06.2018 (Annexure C-1). After this date no further contractual agreement was entered into but the petitioner was allowed to continue his service in the said post by the school authority until he was terminated by the impugned memo dated 05.03.2023. From the language of the termination letter (Annexure-D) it transpires that, the authority is still considering the petitioner as an outsourced employee and due to his unauthorized absence in the workplace for a consecutive period of 15 days, his service was said to be terminated by operation of law as per the provision of Rule 11 (kha) of সরকারি প্রাথমিক বিদ্যালয়ে দপ্তরী কাম প্রহরী পদে আউট-সোর্সিংয়ের মাধ্যমে চুক্তিভিত্তিক জনবল সংগ্রহের নীতিমালা, ২০১২ and সংশোধিত নীতিমালা, ২০১৯ dated 16.09.2019.

It appears from Annexure-F that the Petitioner by the letter dated 07.05.2023 informed the Respondent no. 3 that he was implicated in a criminal case filed on 13.02.2023 and was in

custody until he was enlarged on bail on 10.04.2023 and for this reason he was absent in his workplace during that period.

From Annexure-L to the supplementary affidavit dated 21.08.2023, which is the First Information Report of that criminal case, it appears that, the place of occurrence of the alleged incident was the school premises where the petitioner works and one of the teachers of the school has been mentioned as a witness to the case.

Annexure-G to the writ petition is a testimonial issued by the Head Master of the said school on 28.03.2023 and it appears from this document that the Head Master is very much aware of the incident. Yet the impugned order was issued without referring to that incident or taking into consideration of the said circumstances.

For better understanding the impugned letter of termination is quoted below:

“উপর্যুক্ত বিষয় ও সূত্রের প্রেক্ষিতে জানানো যাচ্ছে যে, অত্র উপজেলার আউট সোর্সিংয়ে নিয়োগ প্রাপ্ত জনাব রুবেল আহম্মেদ পিতা-মোঃ আব্দুল জলিল খাঁন চন্দ্রপুর-২ সরকারী প্রাথমিক বিদ্যালয়, গুরুদাসপুর নাটোর, কর্তৃপক্ষের বিনা অনুমতিতে একাধিকক্রমে ১৫ পনেরো কার্যদিবসের বেশী কর্মে অনুপস্থিত থাকায় তাঁকে ১১ (খ) ধারা অনুযায়ী তাঁর আউট সোর্সিংয়ে নিয়োগের চুক্তি নামা বাতিল বলিয়া গণ্য হইল এবং স্বয়ংক্রিয়ভাবে কর্মের অবসান ঘটবে।”

On a careful reading of this letter as well as the provision of Rule 11 (kha) of the নীতিমালা, ২০১৯ it transpires that, there are two ingredients for termination under Rule 11 (kha), firstly, absence for more than 15 (fifteen) days in the work place and secondly, the absence is without approval from the authority. In order to avoid

the consequence under this Rule, an employee has to take prior approval before availing any leave.

We have seen from Annexure-F that, the petitioner has given an explanation with supporting documents for his absence. Therefore we are of the view that, the absence of the petitioner was not willful and he was not in a position to take prior approval from the school authority for his absence.

The manner in which the petitioner's service is terminated is not a termination simpliciter. In case of a termination simpliciter, the service of an employee comes to an end without giving any stigma or making any accusation and in such a case no show cause notice or personal hearing of the employee is required. In the instant case there is an allegation of unauthorized absence for a consecutive period of more than fifteen days but no show cause notice was issued upon him to give an explanation thereto. The doctrine of '*audi alteram partem*' i.e. 'no one should be condemned unheard' is one of the fundamental pillars of principle of natural justice. This principle requires that before any authority takes a decision adversely affecting a person's right, status, livelihood, or interest, that person must ordinarily be given an opportunity of being heard. In the present case the petitioner has not been given that opportunity by the authority although the authority was very much aware of that incident. Hence the issuance of the impugned order appears to be mala fide and arbitrary in nature.

In view of the fact and circumstance discussed hereinabove, we find merit in the Rule.

In the result the Rule is made absolute.

However, there is no order as to cost.

The impugned order dated 05.02.2023, as contained in Annexure-D to the writ petition, is hereby declared to have been issued without any lawful authority. The respondents are directed to reinstate the petitioner in his service within 30(thirty) days from the date of receipt of this judgment and order.

Communicate the judgment and order at once.

Sashanka Shekhar Sarkar, J:

I agree.