

Present
Justice Sk. Tahsin Ali

Criminal Appeal No. 8058 of 2024

Mohammad Obaidullah
Convict-Appellant

-Versus-
 The State and another
 ----- Respondents

Mr. Mohammad Ali, with
 Mr. Md. Mahbubur Rahman with
 Mr. Md. Amzad Hossain Riyad, Advocates
 for the convict-appellant

Mr. M. Sarwar Hossain, Advocate
 for the Anti Corruption Commission

Mr. Md. Mizanur Rahman, DAG with

Mr. Md. Ahidul Islam, AAG

Mr. Abdullahil Maruf Fahim, AAG

Ms. Nasima Khatun, AAG
 ----- For the State

**Heard on: 09.03.2026, 19.04.2026,
 26.04.2026, 11.06.2026, 05.07.2026,
 06.07.2026, 13.07.2026, 20.07.2026,
 27.07.2026, 28.07.2026, 17.08.2026 and
 Judgment on: 10.09.2026**

This appeal was directed against the judgment and order of conviction and sentence dated 25.03.2024 passed by the learned Divisional Special Judge, Dhaka in Special Case No. 48 of 2022 arising out of Joydebpur Model Police Station Case No. 96 dated 27.01.2024 under Sections 467/468/471/420 of the Penal Code convicting the appellant under Sections 467/468/471/420 of the

Penal Code and sentencing him to suffer rigorous imprisonment for 04 (four) years and to pay a fine of Tk. 20,000/- (twenty thousand) in default to suffer further 03 (three) months of simple imprisonment more and also convicted another co-accused of this instant case.

The prosecution case in brief is that one Mollah Mahfuz Al Hossain, Registrar (Additional Responsibilities), National University, Gazipur as informant lodged a First Information Report (FIR) with the Joydebpur Police Station, Gazipur against the convict-appellant and others under Sections 467/468/471/420 of the Penal Code alleging inter alia that the appellant is a lower assistant joined on 19.12.1999 in National University, Gazipur and took salary from 11 years. The committee, compromises with 5 members after concluded the inquiry found that his Degree (pass) Certificate was fake. After asking information regarding the certificate from the registrar of the National University, the hearing committee also confirmed that the alleged certificate was not issued in the name of this appellant rather only using similar name, the appellant somehow obtained alleged certificate from the certificate Section of the National University and the committee

also found allegation against other co-accused of this instant case and hence the case.

After investigation the investigating officer submitted charge sheet being No. 1381 dated 20.11.2016 against the appellant under Sections 467/468/471/420 of the Penal Code, 1860 with Sections 5(2) of the Anti-Corruption Prevention Act, 1947. Thereafter, the case has been transferred to the learned Divisional Special Judge, Dhaka for trial, which as renumbered as Special Case No. 48 of 2022. After hearing the learned trial court delivered judgment on 25.03.2024 and convicting the appellant under sections 467/468/471/420 of the Penal Code and sentencing him to suffer rigorous imprisonment for a period of 04(four) years and a fine of tk. 20,000/-(twenty thousand) in default of payment of fine to suffer further 03(three) months of simple imprisonment and also convicted another co-accused of this instant case.

Being aggrieved and dissatisfied with the judgment and order dated 25.03.2024 the convict-appellant preferred this appeal.

On 21.10.2024 the convict-appellant enlarged on bail by this Hon'ble court in Criminal Appeal No. 8058 of 2024 for a

period of 1(one) year. Lastly, the bail was extended for till disposal of this appeal on 21.10.2025. The Lower Court Records (L.C.R) was attached with this appeal on 26.08.2025.

The prosecution examined as many as 12(twelve) witnesses in support of their case but on behalf of the defense no one examined.

Mr. Mohammad Ali, learned Advocate with Mr. Md. Mahbubur Rahman with Mr. Md. Amzad Hossain Riyad, learned Advocates appearing on behalf of the convict-appellant while Mr. M. Sarwar Hossain, learned advocate appeared for the Anti Corruption Commission and Mr. Md. Mizanur Rahman, learned Deputy Attorney General with Mr. Md. Ahidul Islam, AAG, Mr. Abdullahil Maruf Fahim, AAG and Ms. Nasrin Khandaker, Assistant Attorney General appeared for the state.

Mr. Mohammad Ali, learned advocate appeared on behalf of the convict-appellant and candidly submits that on perusal of the judgment passed by the learned Divisional special Judge, Dhaka, in Special Case No. 48 of 2022 arising out of joydebpur Model Police Station Case No. 96(1) /2014. It appears that the

original certificate in question regarding the degree (pass) examination of the convict appellant being Serial No. 15891 Roll No. 21905, Sessions 1991-1992 has not been produced before the trial Court. Then the trial Court inflict the conviction upon this appellant only based on the photocopy of this said certificate. In support of his submission learned advocate referred a case law rely on the section 62,63 and 65 of the Evidence Act, reported in 41DLR(AD)(1989)-97 Hazi Waziullah and Additional Deputy commissioner. Wherein it is revealed that:

“secondary evidence of a document is admissible in the case specially mentioned in section 65 of the evidence Act and if original is not available, reason for non availability must given”.

He further submits that the convict appellant on 29.12.1999 has joined as Lower Assistant as temporary basis for a period of 06 (six) months in the National University, Gazipur. It is admitted position of the case that as per notification of the University Service Rules for this post of Lower Assistant, requirement of educational qualification was Higher Secondary Examination

(H.S.C) certificate. There is no such requirement of Degree (pass) certificate whatsoever.

More so, it is revealed from the Service Book that the convict-appellant was promoted for the post of Higher Assistant after considering his performance evaluation on 16.03.2003. It is also found from the Service Rules of National University, 2002 being Serial No. 50 that being a department fellow the convict appellant was promoted considering his 4(four) years experience with H.S.C educational qualification. There was no such requirement for Degree (pass) certificate as well. The Service Rules of National University, 2002 being Serial No. 50 is reproduced below:

ক্রমিক নং	পদের নাম ও স্কেল	নিয়োগের পদ্ধতি	সরাসরি নিয়োগের ক্ষেত্রে যোগ্যতা	পদোন্নতির জন্য যোগ্যতা
৫০	উচ্চমান সহকারী /ক্যাশিয়ার/রেজিস্ট্রেশন সহকারী/ভান্ডার রক্ষক/বাজেট পরীক্ষক ২২৫০-৪৭৩৫	সরাসরি ২০% পদোন্নতি ৮০%	কমপক্ষে ২য় শ্রেণীর স্নাতক ডিগ্রী	(ক) ফিডার পদে ৩ বছরের অভিজ্ঞতা। এইচ এস সি ডিগ্রীধারীদের জন্য ৪ বছরের অভিজ্ঞতা থাকিতে হইবে। (খ) শিক্ষাগত যোগ্যতা চাকুরীকাল,

				গোপনীয় প্রতিবেদন ও বিভাগীয় পরীক্ষায় প্রাপ্ত গ্রেডপয়েন্ট। (গ) পদোন্নতি প্রদানের ক্ষেত্রে কর্মচারীদের মধ্যে মাস্টার্স ডিগ্রীধারীদেরকে মোট চাকুরীকালের জন্য এক বছরের অতিরিক্ত চাকুরী সুবিধা প্রদান করা হইবে এইরূপ সুবিধা চাকুরী জীবনে শুধু একবার বিবেচনা করা হইবে।
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It is needless to mention that the convict-appellant was dismissed from his service on 25.04.2013 while found guilty in a departmental proceeding conducted by the office of registrar of National University, Gazipur alleging self same allegation that the convict-appellant obtained illegal Government services and benefits by producing alleged fake Degree(pass) certificate.

At the time of hearing this appeal, a question was put before the learned advocate of Anti-Corruption Commission that it was revealed from the deposition of PW-3 Mr. Mollah Mahfuz Al Hossain that authority of National University has took decision in

their 139th Syndicate Meeting on 19.02.2013 that a Criminal case has to be lodged against this appellant then before considering result of this Criminal Case alleging the self same allegation, how the authority of National University would dismissed this appellant in departmental proceedings on 25.04.2013 without following the settled principal of law has laid down section 16 of the জাতীয় বিশ্ববিদ্যালয় কর্মচারী (শৃংখলা ও আপীল) সংবিধি-৮ the content of the said section 16 are runs as follows:

১৬ . আদালতে বিচারাধীন কার্যধারা:-

- (১) কোন কর্মচারীর বিরুদ্ধে কোন আদালতে একই বিষয়ের উপর কোন ফৌজদারী মামলা বা আইনগত কার্যধারা বিচারাধীন থাকিলে, তাহার বিরুদ্ধে বিভাগীয় কার্যধারা সমাপনের ব্যাপারে কোন বাধা থাকিবে না ।
- কিন্তু যদি কর্তৃপক্ষ বিভাগীয় কার্যধারায় উক্ত কর্মচারীর উপর কোন দণ্ড আরোপ করার সিদ্ধান্ত গ্রহণ করেন, তাহা হইলে উক্ত আইনগত কার্যধারা নিষ্পত্তি বা সম্পন্ন না হওয়া পর্যন্ত এই দণ্ডারোপ স্থগিত থাকিবে।

Mr. M. Sarwar Hossain, learned advocate for the Anti-Corruption Commission did not able to answer that question at all. Hence, the dismissed order from service of this convict-appellant dated 25.04.2013 is a clear violation of law.

He further submits that it is quite impossible for the convict-appellant that after completion of his H.S.C in the year 1986 to become regular student in Degree(pass) in the year 1991 after 5 years later but as per the registration card of the Degree (pass) the convict-appellant appeared in the Degree (pass) Exam in the year of 1993 as a private student capacity not a regular student capacity.

If for argument sake the certificate of Degree(pass) of this appellant is a fake one, but as per the service Rules of National University it was disclosed at time of hearing of the appeal that no such requirement is asking by the National University for the post of Lower Assistant or promotion for the post of Higher Assistant. Hence the Degree(pass) certificate in question of the convict appellant is not relevant of this case at all.

The authority of the National University lodged the instant case against his convict-appellant alleging that the appellant by submitting the fake Degree (pass) certificate obtained Government benefits illegally. Only using similar name called 'Obaidullah' therefore the father name of that submitted certificate is different.

Learned Divisional Special Judge during trial considering the prosecution witnesses though this appellant was fugitive relied upon the deposition of witnesses convict this appellant under sections 467/468/471/420 and sentencing him to rigorous imprisonment for a period of 4(four) years with fine 20,000/- (twenty thousand) tk. in default simple imprisonment for a period of 3 (three) months more without going into the merit of the case.

Learned advocate for the appellant draws the kind attention of this Court regarding the health condition of the convict-appellant that the appellant has suffering various diseases. While the case was initially lodged before the Joydebpur Police Station and after submission of the police reports, the case was transferred to the learned Chief Judicial Magistrate, Gazipur in the year of 2020. Meanwhile he relevant sections has been incorporated in the scheduled of দুর্নীতি দমন কমিশন আইন by amending of the above Act.

Under the above contention, the convict-appellant being a sick fellow could not able to face the long-standing trial procedure physically attained before the court of Divisional Special Judge, Dhaka.

Prosecution examined as many as 12 witnesses during trial but defense has no chance to cross-examine the same due to his absentia.

Upon perusal of the evidence of the witnesses examined on behalf of the prosecution, it appears that:

PW-1, Md. Nazmul Huda Khan is the first Investigating Officer of the case. After conducting part of the investigation, as the investigation of the case was entrusted to the CID, he handed over the case docket to the CID, Gazipur District.

PW-2, Md. Humayun Kabir, while serving as the Duty Officer at Joydebpur Police Station on 27.01.2014, lodged the case under the direction of the Officer-in-Charge.

PW-3, Mollah Mahfuz Al Hossen is the informant of the case. He deposed supporting the contents of the FIR.

PW-4, Md. Sha Alam Sheikh, on 03.02.2016, he was working as an Assistant Registrar at the National University, Gazipur, PW-5 is Md. Rafiqul Islam and PW-6, Neuton Haldar were witnesses to the seizure list and the zimmanamas. Upon

perusal of their evidence, it appears that the Investigating Officer of the case, Md. Mojahar Ali Sardar, Deputy Director of the Anti-Corruption Commission, he produced the articles mentioned at serial No. 5 of the seizure list. The said officer of the Anti-Corruption Commission seized the same under the seizure list and obtained his signature thereon. He identified his signature appearing on the seizure list, which was marked as Exhibit-7/2. He further stated that the seized articles were handed over to him for safe custody. He identified his signature appearing on the custody and produced the articles received in his custody before the Court, which were marked as Exhibit-8/2 and Exhibit-9 series.

PW-7 is Md. Abu Hanif, PW-8 is Joyanto Bhattacharja, PW-9 is Md. Shafiq Ullah and PW-10 Md. Kamrul Islam were the Chairman/Member of the five-member committee constituted by the National University for verification/scrutiny of the certificates submitted by the concerned officers/employees. After verifying and scrutinizing the certificates of the accused persons, they submitted a report under their joint signatures stating that accused Obaidullah, taking advantage of the similarity of his name with

that of another person, had submitted another person's certificate, and that the certificate of accused Sajjad Hossain was forged.

PW-11, Dr. Ali Jafor Chowdhury was a member of the three-member Hearing Committee constituted by the National University with Dr. Mobashshera Khanam as its Chairperson. The committee conducted the hearing and obtained written statements from the concerned persons. As their statements were not found satisfactory, the committee submitted a report under their joint signatures.

PW-12 Md. Mojahar Ali Sarder is the last Investigating Officer of the case. He deposed regarding the investigation of the case. Upon perusal of his evidence, it appears that accused Md. Obaidullah, son of Md. Belal Uddin, stated in his handwritten application for employment that he had passed the B.A. (Pass) examination from the National University in 1993 in the Second Division. He submitted a photocopy of the certificate and, having obtained employment on that basis, joined the National University on 29.12.1999 as a Lower Assistant. Taking advantage of the similarity of names, accused Md. Obaidullah, with dishonest

intention and by means of cheating and forgery, submitted the Degree (Pass) examination certificate of one Md. Obaidullah, son of Md. Amzad Ali, as his own. He thereby obtained employment as a Lower Assistant and subsequently got promotion to the post of Higher Assistant.

The learned advocate for the appellant further submits that mere found guilty in the departmental proceeding are not enough to passed conviction against this appellant until the prosecution has failed to prove his case beyond all reasonable doubt.

Though the convict-appellant was found guilty in the departmental proceeding for submitting the forged degree (pass) certificate at the time of joining the service but the result of the departmental proceeding cannot be taken into consideration in the criminal proceeding. Until and unless the alleged act constitutes a criminal offence, the finding in the departmental proceeding cannot establish criminal liability. In the instant cases, as per the service Rules of the National University there was no requirement to submit a Degree(pass) certificate for the post of Lower Assistant and as well as promotion to the post of Higher Assistant. There is no such requirement to submit the alleged degree (pass)

certificate. Hence, convicting the convict appellant under the impugned provision of law on the basis of the alleged degree pass certificate is unjustified and without having proper jurisdiction.

In support of his submission he relied on a case law from the Supreme Court of India in Civil Appeal No. 5848 of 2021, Union of India and others Vs. Duldiv Singh the relevant point of this case are:

“the approach and the objective in the criminal proceeding and disciplinary proceeding is all together distinct and different.”

On the other hand, learned advocate Mr. M. Sarwar Hossain for the Anti-Corruption Commission forcefully and repeatedly submitted that it apparent that while the appellant earlier applied for correction of his father's name in the registration card hence the appellants has to guilty mind to make such fake certificate which is similar with the deposition of PW's of this case but if I gone through the L.C.R and material on record specially regarding the service Rules of National University, Gazipur at the relevant

time when this appellant was appointed or promoted in his respective post then there was no such requirement of Degree (pass) in the service Rule even therefore in the Degree (pass) certificate which was found in the personal file of this appellant, is reproduced below:

Serial No. ND 15891

National University

Roll No. 8674
Regn No. 21905
Session: 1991-92

PROVISIONAL CERTIFICATE
BA(Pass) Examination -1993

This is to certify that Mohd. Obaidullah of Abdul Karim Sarker College, Tanore passed the examination for the Degree of Bachelor of Arts from this University held in the month of Decem 93- Feb 1994 and that he/she was place in the Second division.

National University Gazipur, Bangladesh	Written by: Checked by	CONTROLLER OF EXAMINATIONS
Date: 10-06-1999		

There is no option to insert father’s name of the examinee in the Degree (Pass) certificate then the authority of the National University how could obtained the father’s name of this appellant is different with the original certificate until the original certificate

has not been procedure before the Learned Divisional Special Judge, which is evident from the seizer list of the case.

Considering the above facts and circumstances of the case, upon perusal of the documents on record, I am of the view that the appeal bears merit.

In the result, the appeal is allowed and the judgment and conviction dated 25.03.2024 passed by the learned Divisional Special Judge, Dhaka in Special Case No. 48 of 2022 is hereby set-aside.

Send down the Lower Court Records at once.

Communicate the judgment and order at once.

Shokat (B.O.)