

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

**WRIT PETITION NO.1259 OF 2024.**

**In the matter of:**

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

And

**In the matter of:**

Mst. Anjuman Ara Begam, Daughter of Md. Abdul Gaffar and wife of Maniruzzaman (Tanu) of village-Langgal gram, Post Office- Notun Hat, Upazila- Boda, District-Panchagarh.

..... Petitioner.

-Versus-

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

.....Respondents.

Mr. Babul Akhter Chowdhury, Advocate,

..... For the Petitioner.

Mr. M. Masud Rana, D.A.G. with

Mrs. Ayasha Akhter, A.A.G,

Mr. Mir Moniruzzaman, A.A.G, and

Mr. Md. Tareq Rahman, A.A.G.

.... For the Respondents.

**Present:**

**Mr. Justice J.B.M. Hassan**

**And**

**Mr. Justice Md. Toufiq Inam**

**Heard on 24.02.2025, 05.03.2025 and**

**Judgment Delivered on 09.03.2025.**

**Md. Toufiq Inam, J:**

This Rule Nisi was issued on 13.02.2024 at the instance of the petitioner, directing the respondents to show cause as to:

*“why the action of the respondent No.3 stopping the Monthly Pay Order (MPO) of the petitioner as a Librarian of Amlahar Degree College, Police Station- Panchagarh, District- Panchgarh bearing MPO Index No. R3074125 as evident from monthly pay order July, 2023 (Annexure-H to the writ petition) without concluding the proceedings drawn vide memo No. 37.02.0000.105.31.019.18/3395/8 dated 09.07.2023 issued under the signature of the respondent No.5 (Annexure-E to the writ petition) should not be declared to be without lawful authority and of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.”*

At the time of issuing the Rule Nisi, this Court passed an interim order directing the respondent to continue the MPO benefits of the petitioner from July 2023. Simultaneously, the

respondents were granted liberty to proceed with departmental proceedings against the petitioner in accordance with the law.

Subsequently, respondent No.1, as the petitioner, moved the Appellate Division, by filing Civil Petition for Leave to Appeal No. 226 of 2025, challenging the interim order dated 13.02.2024 passed by this Division directing the continuation of MPO benefits to the petitioner. During hearing on 21.01.2025, instead of staying or vacating this Court's interim order, the Hon'ble Judge-in-Chamber of the Appellate Division has sent the matter to this Court for final disposal of the Rule Nisi on its merit.

Facts leading to the Writ Petition are that the petitioner has been serving as a Librarian (Lecturer) at Amlahar Degree College with utmost honesty and diligence, earning the full satisfaction of the College authorities. She was initially appointed by the College on 05.12.2004 and was subsequently enlisted in the MPO scheme by respondent No.2, receiving government salary benefits under MPO Index No. R3074125 from September 2005. While discharging her duties, the petitioner was served with a show-cause notice dated 09.07.2023 (Annexure-E) from the Directorate of Secondary and Higher Education ("the Directorate"), questioning why punitive actions, including the stoppage of MPO, should not be taken against her based on the allegation that her Library and Information Science certificate from the National University was fake. However, her MPO had already been stopped by the Ministry before she was given an opportunity to respond,

rendering the subsequent show-cause notice purposeless. Upon receiving the notice on 13.07.2023, the petitioner, through the Principal of the College (respondent No.6), replied, clarifying that she never submitted such a certificate from the National University. Instead, her appointment was based on a Diploma certificate in Library and Information Science issued by the University of Cumilla, Bangladesh. Despite her response, punitive action was taken against 678 teachers and staff of non-government educational institutions, including the petitioner, who was listed at serial No. 653. The petitioner obtained a copy of the Ministry's decision dated 18.05.2023 and found that her name had been mistakenly included among those possessing fake certificates.

Mr. Babul Akhter Chowdhury, the learned Advocate for the petitioner, argues that since the petitioner never obtained any certificate in Library Science from the National University, stopping her MPO on the allegation that such a certificate was fake is a whimsical and colourable exercise of authority. He further submits that the petitioner had been continuously receiving MPO benefits since 2005, based on her Diploma from the University of Cumilla, as confirmed by a letter from respondent No.6 dated 16.07.2023 (Annexure-F). Since there is no allegation questioning the authenticity of her Diploma from University of Cumilla, the respondents' action in stopping her MPO is illegal.

Mr. Chowdhury also emphasizes that the MPO benefits accrued over time as part of the petitioner's vested rights, and

halting them without issuing a formal memorandum or conducting a proper inquiry violates her legal entitlements. By filing a supplementary affidavit dated 27.02.2025, he further asserts that no departmental proceedings have been initiated against the petitioner, and as such, he prays for making the Rule absolute, directing the continuation of MPO benefits along with arrears.

Conversely, Mr. M. Masud Rana, the learned Deputy Attorney General, submits that according to memo dated 09.07.2023 (Annexure-E), the petitioner's Library and Information Science certificate from the National University was found to be fake. However, as the petitioner never obtained such a certificate, she should have approached the relevant authorities for a review under Clause-19 of the *Guidelines-2010 (Revised up to March 2013) on the Government Portion of Salaries and Allowances and the Manpower Structure for Teachers and Employees of Private Educational Institutions (Schools, Colleges, Madrasas, and Technical Institutions* (hereinafter referred to as "the Guidelines 2010"). Since she failed to exhaust the available review mechanism, Mr. Rana argues that the writ petition is not maintainable and prays for discharging the Rule.

We have heard the learned Advocates for both parties and have carefully perused the writ petition, annexures appended thereto, two supplementary affidavits filed by the petitioner, and other materials on record.

It reveals that the Guidelines 2010 sets out a “review forum” for the affected persons under clause-19 against the Education Ministry’s stoppage, curtailment and cancellation of government portion of salaries and allowances. It is a settled proposition that where a statutory appeal or review forum is available, judicial review is generally not maintainable. However, this principle is not absolute. Judicial review remains available in cases where the alternative remedy is not efficacious or where the impugned action suffers from a jurisdictional defect or violates fundamental rights or principles of justice.

In the instant case, the stoppage of MPO benefits was not communicated through any formal order or memorandum articulating the specific reasons for such action. The absence of a formal order deprives the affected person of the ability to invoke the statutory appellate or review mechanism meaningfully. An appeal or review presupposes the existence of a decision that is duly recorded, reasoned, and communicated. Without such a decision, the remedy becomes illusory.

A review or appeal is an effective remedy only when the aggrieved person has clear knowledge of the grounds on which the action was taken. In the absence of a written order, where deprivation of benefits occurs solely through executive action or inaction without disclosure of reasons, the affected party is left in a state of uncertainty. In such cases, the review forum

provided in the Guidelines 2010 cannot be considered an efficacious remedy.

Moreover, a review forum under the same authority is neither an appellate nor an alternative forum; rather, it serves as an 'optional forum'. Similarly, when no tangible decision or written order/memorandum exists to disclose the reasons behind the action, the affected person is left without meaningful recourse. This lack of transparency prevents the aggrieved party from effectively challenging the decision before the designated forum. Consequently, the mere existence of an 'appellate forum' under a specific rule or guideline does not necessarily constitute an alternative or efficacious remedy within the meaning of Article 102 of the Constitution.

Given that the deprivation of MPO benefits to the Petitioner was done through executive action without a formal order, the affected person has no meaningful recourse through the review forum provided in the Guidelines 2010. The present writ petition is therefore maintainable, as the petitioner is left without an effective legal avenue to challenge the action. This court has the jurisdiction to intervene where an administrative action is taken in an arbitrary, non-transparent, and unfair manner, depriving a person of his legal rights without due process and fairness.

It appears that the Directorate issued a show-cause notice on 09.07.2023 (Annexure-E), requiring the petitioner to explain why punitive action, including the stoppage of her MPO,

should not be taken against her on allegations of using a fake certificate. This notice referred to a directive from the Ministry of Education dated 18.05.2023, which had already stopped the petitioner's MPO (as evident from Annexure-G). In these circumstances, the Directorate, being a subordinate authority to the Ministry of Education, lacked the power to revoke or alter the Ministry's decision, even if the petitioner's response to the show-cause notice was deemed satisfactory. Moreover, the Ministry itself did not issue any prior notice affording the petitioner an opportunity to respond before making the decision to stop her MPO.

The fundamental principle of natural justice, *audi alteram partem* (the right to be heard), mandates that an affected party must be given a fair opportunity to explain his position before an adverse action is taken. A show cause notice is meant to provide an individual with an opportunity to present a defence before any punitive action is taken. In this case, the Petitioner's MPO was already stopped by the Ministry before she was given a chance to respond to the allegations, thus the subsequent show cause notice issued by the Directorate lacks any real purpose. Thus, the notice by the Directorate becomes procedurally flawed and legally untenable.

The issuance of a show cause notice after the punitive measure (stopping MPO) had already been implemented suggests a mere attempt to justify a predetermined decision of the Ministry, taken without affording the Petitioner an opportunity to respond. Such a process is arbitrary, malafide, and a blatant



violation of natural justice, rendering the entire proceeding a mockery.

The stoppage of MPO is based on the allegation that the petitioner's Library and Information Science certificate from the National University is fake. However, the Principal of her College (respondent No. 6) clarified in a letter to respondent No. 3 (Annexure-F) that the petitioner never submitted such a certificate from the National University. Instead, her appointment as a Librarian was based on a Diploma in Library and Information Science issued by the University of Cumilla, Bangladesh. Therefore, the allegation regarding a fake certificate from the National University is entirely misplaced and appears to be the result of an administrative error or mistaken identity.

Any adverse action against an individual affecting his/her rights or livelihood must be preceded by proper notice and a chance to be heard. Stopping her MPO benefits without verifying her actual certificate is arbitrary and without lawful justification. The onus of proving the wrongdoing lies with the authority who makes the claim. Since no certificate on Library and information Science from National University was ever submitted by the Petitioner, there is no basis for penalizing her on the grounds of it being a fake one.

The Petitioner has been receiving MPO benefits since September 2005, meaning she has a vested right to those benefits. After nearly 18 years of uninterrupted service, such a

drastic action based on an unverified and incorrect assumption is a violation of her legitimate expectation that her service benefits will not be taken away arbitrarily.

In light of the foregoing discussions, we find merit in the Rule.

Accordingly, the Rule is made absolute.

The impugned action of respondent No. 3 in stopping the Monthly Pay Order (MPO) of the petitioner, who serves as a Librarian at Amlahar Degree College, Police Station - Panchagarh, District - Panchagarh, under MPO Index No. R3074125 (as evident from the MPO of July 2023, Annexure-H to the writ petition), is hereby declared illegal and without lawful authority.

The respondents are directed to continue the petitioner's MPO benefits under Index No. R3074125 and ensure the payment of arrears to the Petitioner from July 2023 under the MPO within sixty (60) days on receipt of this judgment.

Communicate this judgment immediately.

No order as to costs.

**(Justice Md. Toufiq Inam)**

**J.B.M. Hassan, J:**

I agree.

**(Justice J.B.M. Hassan)**