

In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)

Present:-

Mr. Justice Md. Mansur Alam

Civil Revision No.3536 of 2024

Mohammad Ali and others

...petitioners

Md. Hafizul Mandal and others

... opposite parties

Mr.Habib-Un-Nabi, Advocate

...for the petitioners

Mr. M.G. Mahmud, Advocate

...for the opposite party Nos.1-3

Heard on:08.01.2026 & 14.01.2026

Judgment On 01.02.2026

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 07.07.2024 passed by the learned Joint District Judge, 1st Court Kurigram in Miscellaneous Appeal No.15 of 2023 dismissing the appeal and thereby affirming the judgment and order No.7 dated 15.01.2023 passed by the learned Senior Assistant Judge, Nageswari, Kurigram in Other Class Suit No.454 of 2022 dismissing the application of the plaintiffs-petitioners for temporary injunction under Order 39 Rule 1/2 read with section 151 of the Code of Civil Procedure should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The short contention of the Plaintiff revision petitioner is that these petitioner 1-6 have got appointed as lecturer and the petitioner 7 as Demonstrator in Kedar Women's College,

Nageswari, Kurigram citing in the appointment letter that the alleged appointment will be permanent once the petitioners been able to meet the conditions imposed by NTRC and no fresh appointment be held till the existing posts is not vacated. The names of the petitioners were enlisted in BANBEIS database in respect of the said College on 07.07.2022. But the defendant opposite party Nos.1-4 by means of conspiracy sent the database of others people to BANBEIS on 05.11.2022. The defendant opposite parties have appointed some other persons in place of the petitioner without following due process of law, and even without publishing any circular into the news paper. So administrative malafide intention is clearly apparent in this case and the balance of convenience and inconvenience is in favor of the plaintiff petitioner.

Defendant opposite party entered in the suit filing written objection denying all material allegations made in the petition under order 39 rule 1 of the Code of Civil procedure, contending inter alia that the plaintiff respondent has no right to bring the present application and the same is not maintainable in law. Defendant opposite party contended that the plaintiff petitioner have been appointed in Kedar Womens College on a condition that their appointment would be permanent once they pass the examination conducted by the NTRCA. But these plaintiff petitioners could not pass that exam even appearing several times.

Some of the Plaintiff petitioners have already joined in secondary high school. These petitioners were involved in teaching in the said college on the basis of oral appointment but they remain absent in the said College from the beginning of 2022. Thereafter the College authority recruited NTRCA registered teacher in the aforesaid college. The Plaintiff petitioners brought the petition under Order 39 Rule 1/2 with totally falsehood assertion and without any legal basis.

Learned Court below and the Court of appeal dismissed the impugned petition under Order 39 Rule 1 and 2 of the Code of Civil Procedure.

Being aggrieved by and dissatisfied with the impugned judgment and order by the Court of Joint District Judge, 1st Court, Kurigram in Miscellaneous Appeal No.15 of 2023, the plaintiff revision petitioners beg to move this present application before this Court.

Learned Advocate Mr. Md. Habib-Un-Nabi appearing for the Plaintiff revision petitioners argues that Learned Court below has committed an error in affirming the impugned order dated 15.01.2023 passed by the learned Assistant Judge. Learned Appellate Court has failed to take into consideration that without vacating the post of Plaintiff petitioners, the college authority violating the direction of the ministry dated 06.04.2023 has

illegally appointed the defendant opposite parties in their post. Also he argues that all information and data were in BANBEIS till 2021, so the appointment of these defendants opposite parties in the said college in 2015 is false and baseless and backdated. The Governing body of the aforesaid College following all the required procedure has appointed these Plaintiff petitioners. Learned Advocate added that their appointment is valid according to the circular issued by Education Ministry dated on 30.12.2015. Plaintiff petitioner's revision petition does not suffer from any defects for not impleading the Governing body and the newly appointed teachers in the original suit.

Learned Advocate Mr. M.G. Mahmud appearing for the opposite party Nos.1-3 argues that the appointment of the teacher in non-government educational institution is guided by the provisions of NTRCA Act 2005. The plaintiff revision petitioners admit that the alleged Kedar Women's college is established in 2012 and started functioning in 2015. Thereafter the said college was enlisted in MPO in 2022. According to the provision of section 10(2) of NTRCA these plaintiff petitioners are not registered, enlisted and certified by NTRCA, hence they are not qualified to be appointed as teacher of the aforesaid college. The proviso of the NTRCA Act discloses that this section 10(2) will not be applicable on the teachers those who are duly appointed before the enactment of this Act. These plaintiff petitioners claim

that they got appointed in the said college after 2012. So, the plaintiff-petitioners are not entitled to get any benefit under the provision of section 10(2) of NTRCA. More so the plaintiff revision petitioners have failed to produce any kind of process in support of their appointment. The plaintiff revision petitioner sought relief against the newly teacher of the said College but they are not made party in the present suit. It is noted that the plaintiff-petitioners admitted the fact that they are not enlisted in the NTRCA and that means they will not receive the government portion of salary i.e MPO. Plaintiff revision petitioners thus failed to show arguable case in favor of the plaintiffs and balance of convenience and inconvenience is against the plaintiffs and in favor of the defendant opposite party. So the plaintiff-petitioners are not entitled to get an order of injunction.

On perusal of the order of both the Ld. Court below it appears that the plaintiff revision petitioners have been appointed temporarily in the said college and the condition was imposed that on the fulfillment of the same issued by NTRCA, their appointment will be made final. That requirement was such that they must have enlisted in MPO and must have certified by the NTRCA. The petitioners admitted that they are not yet enlisted in NTRCA. The said College was established in 2015 and the NTRCA act came into force in 2005. The respondents-opposite party has been recruited in the said college in 2022. The plaintiff

revision petitioners did not pass the examination conducted by the NTRCA till date which is a mandatory criteria for being appointed in the aforesaid post. They have failed to obtain the registration of NTRCA. The provision of section 10(2) of NTRCA discloses that a person will not be qualified to be appointed as teacher in Non government education institutions if his name is not enlisted, registered and certified by NTRCA. So the Governing body of the aforesaid College appointed the plaintiff petitioners violating the provisions of section 10(2) of NTRCA. In this context it is contended that their appointment was not permanent, it was a temporary. But the Plaintiff could not pass the required examination held by NTCRA and not been able to enlisted and registered by NTCRA though a long period has expired. So the Plaintiff petitioners have no locus standi to lodge this petition for a prayer of temporary injunction.

Learned Trial court rightly found that “এটা স্বীকৃত যে, বাদীপক্ষ এখন পর্যন্ত বেসরকারী শিক্ষক নিবন্ধন (কলেজ পর্যায়) পরীক্ষায় উত্তীর্ণ হতে ব্যর্থ হয়েছেন। এমতাবস্থায় বাদীগণ আদৌ নিবন্ধন পরীক্ষায় উত্তীর্ণ হতে পারবেন কিনা এমন অনিশ্চিত ভাবিষ্যতের দিকে তাকিয়ে প্রত্যন্ত অঞ্চলের একটি মহাবিদ্যালয় এর শিক্ষার পরিবেশ বিঘ্নিত করা কখনোই আইনসিদ্ধ বা সুবিবেচনা প্রসূত সিদ্ধান্ত হতে পারে না। এছাড়াও শিক্ষকগণের নাম এমপিওভুক্তির ক্ষেত্রে ১-৪ নং বিবাদীর পক্ষে ইতিবাচক বা নেতিবাচক কোন কাজ করার সুযোগ নেই। নালিশী মহাবিদ্যালয়ের প্রধান শিক্ষকের পক্ষে এখন (মহাবিদ্যালয় এমপিওভুক্তির পর) ব্যানবেইসে নিবন্ধিত ব্যতীত অন্য কারো নাম শিক্ষক হিসাবে প্রেরণ করার কোন সুযোগ নাই।”

উপরিউক্ত আলোচনা থেকে স্পষ্টভাবেই এটা প্রতীয়মান হয় যে, বাদীপক্ষ তাদের দাবির স্বপক্ষে নূন্যতম কাগজাদি দাখিল করতে ব্যর্থ হয়েছেন। এছাড়া অস্থায়ী নিষেধাজ্ঞা দরখাস্ত মঞ্জুর হলে নালিশী মহাবিদ্যালয়ের চলমান শিক্ষা কার্যক্রমের অপূরণীয় ক্ষতি হওয়ার সম্ভবনা রয়েছে। ফলে সুবিধা-অসুবিধার ভারসাম্য বাদীপক্ষের প্রতিকূলে এবং বিবাদীপক্ষের অনুকূলে।

That it is stated that the court of appeal below found that

“নথি ও সার্বিক বিষয় পর্যালোচনায় লক্ষ্য করা যায়, প্রার্থী- আপীলকারীপক্ষ কর্তৃক বিশ্বাসযোগ্য কোন কাগজপত্র দাখিল করেন নি, যাতে প্রাইমাফেসি কেসের অস্তিত্ব পরিলক্ষিত। “সৃষ্ট পদ শূন্য না হওয়া পর্যন্ত নতুন কোন প্রভাষক উক্ত পদে নিয়োগ করা যাবে না।” নিয়োগপত্রে গভর্নিং বডির এরূপ বাস্তবতা বিবর্জিত শর্তাবলী জন্য অনিশ্চিত ভবিষ্যত পর্যন্ত নালিশী কেদার মহিলা মহাবিদ্যালয়ের প্রধান শিক্ষাদান কার্যক্রম বন্ধ থাকতে পারে না। বিজ্ঞ বিচারিক আদালত বিস্তারিত আলোচনা করে অস্থায়ী নিষেধাজ্ঞার দরখাস্ত নামমঞ্জুর করে যে সিদ্ধান্ত প্রদান করেছেন, তা আইনানুগ, ন্যায়সঙ্গত ও যথাযথ হয়েছে। বিজ্ঞ বিচার আদালত কোন আইনগত বা তথ্যগত ভুল করেন নি। তাই, বিজ্ঞ বিচার আদালতের নামঞ্জুরাদেশ হস্তক্ষেপযোগ্য নয়। ফলে, আপীলটি নামঞ্জুরযোগ্য।”

On the face of the petition under Order 39 Rule 1 and 2 and on appreciation of the impugned orders of the learned court below this court is of the view that there is no prima facie and arguable case in favor of the plaintiffs. The balance of convenience and inconvenience is against the plaintiffs’ petitioner. The educational activities of the said college shall be seriously hampered and the same shall be against the public interest. The grievances raised by

the plaintiff petitioners are obtainable on taking evidence at the time of trial.

In view of the above this Court is inclined to uphold the impugned order of the Appellate Court.

In the result the Rule is discharged without any order as to cost.

The impugned judgment and order of Learned Appellate Court dated 07.07.2024 in Miscellaneous Appeal No.15 of 2023 is hereby upheld.

The order of stay granted earlier, at the time of issuance of Rule, is hereby vacated.

Let a copy of this judgment be communicated to the Court concerned at once.

Hasan .

A.B.O