

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

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 4906 of 2024

IN THE MATTER OF :

An application under section 115(1) of the Code of Civil Procedure

-And-

In the Matter of:

Md. Aynal Haque

... Plaintiff-Petitioner

Versus

Md. Sohel Rana and others

... Defendant-Opposite parties

Mr. S.M. Bazlur Rashid, Advocate

... For the petitioner

Mr. M. Abul Kashem Bhuiyan, Advocate

... For the Opposite Party No. 1

Judgment on: 30.07.2026

Md. Riaz Uddin Khan, J:

At the instance of the plaintiff Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 10.07.2024 (decree drawn on 16.07.2024) passed by the Joint District Judge, 3rd Court, Naogaon in Title Appeal No. 09 of 2024 dismissing the appeal and thereby affirming the judgment and decree dated 05.10.2023 (decree drawn on 10.10.2023) passed by the Senior Assistant Judge, Naogaon in Other Class Suit No. 230 of 2008 dismissing the suit should not be set aside and/or such other or further order or orders should not be passed as to this Court may deem fit and appropriate.

Succinct facts for disposal of this Rule are that the petitioner as plaintiff instituted Other Class Suit No. 230 of 2008 before the Court of Senior Assistant Judge, Manda, Naogaon praying for declaration that the order of dismissal

from his service as village police by the defendant nos.1 and 2 is illegal, unlawful, unjust and without jurisdiction and not binding upon the plaintiff with a further prayer for re-instatement in his post with arrear salaries. The plaint case in brief is that the defendant No.2 Chairman of Number 10 Nurullahbad Union Parishad published a circular/tender for appointment of a Chowkidar and subsequently five candidates including the plaintiff applied for that post and after scrutiny and verification of their documents and examination, the plaintiff came out as successful candidate who was appointed as Chowkidar of Ward No.6 of Nurullahbad Union Parishad. The plaintiff joined in the post on 20.03.2005 and after his joining he served sincerely and honestly and drawn his salary till July, 2008 and then all of a sudden he received a notice dated 18.08.2008 through Dofadar Abdur Razzak claiming that the defendant-opposite party No.2 dismissed him from his service without giving any prior notice asking him to deposit his dress including lathi, cap etc of village police to his office, hence the plaintiff filed the suit after giving notice under section 78 of the Local Government (Union Parishad) Ordinance, 1983. The defendant Nos. 1 and 2 i.e the Union Parishad and the Chairman contested the suit by filing joint written statement contending *inter alia* that the plaintiff filed the instant suit with false and fabricated claim of the plaintiff's appointment and joining in the post of Chowkidar on 20.03.2005 which was illegal and for that reason the plaintiff is not entitled to get any remedy as prayed for. The plaintiff had no legal character or status to maintain the suit against the notice dated 18.08.2008 hence the suit is liable to be dismissed. Defendants Nos.3-9 have also filed written statement supporting the claim of the plaintiff. The present opposite party No.1 being added as defendant No.14 filed a separate written statement

contending *inter alia* that the plaintiff's appointment as Chowkidar in Number 10 Nurullahbad Union Parishad was illegal and the plaintiff was engaged in unethical activities for which he was dismissed from his service by an unanimous resolution taken by the Union Parishad on 29.11.2007 and the Chairman of the Union Parishad (defendant No.2) following the procedure issued the impugned notice dated 18.08.2008. The further case of the defendant No.14 is that as per resolution dated 06.08.2008 of the defendant No.1 according to advertisement for the post, which was published on 13.09.2008, the defendant No.14 along with others applied for the post and ultimately he was selected as the Chowkidar of Ward No.6 of the Union Parishad and after verification through memo No.1244 dated 30.11.2008 the Upazilla Nirbahi Officer, Manda finally recommended his name and accordingly the Union Parishad appointed him through memo No. 258/8 dated 03.12.2008 and he joined in the post on 04.12.2008. The defendant No.14 further stated that after his appointment, the Upazilla Nirbahi Officer through Memo No.4-4/2009-77/1(1) dated 29.01.2009 sent a letter to the Deputy Commissioner for allocation of the government portion of his salary and also provided a copy thereof to the defendant No.2. The defendant No.14 further stated in his written statement that the defendant No.3, Chairman in-charge, illegally appointed the plaintiff on 19.03.2005 as Chowkidar despite the stay order passed by the High Court Division regarding the removal of defendant no.2 from the post of chairman. Since the plaintiff's appointed was given by the defendant No.3 who was in-charge of the Chairman despite a stay order passed by the High Court Division illegally appointed the plaintiff hence the suit is not maintainable. Moreover, the plaintiff without making party of the defendant No.14 instituted the suit without challenging his appointment as such the suit is not maintainable.

During trial the plaintiff adduced five witnesses and produced some documents which was exhibited and marked as exhibits 1-6. On the other hand the defendant no.14 have examined four witnesses and produced some documents which were exhibited and marked as exhibit Nos. Ka-Neo. The trial court after conclusion of trial dismissed the suit by his judgment and decree dated 05.10.2023.

Against the judgment and decree dated 05.10.2023 the plaintiff as appellant preferred Title Appeal No.09 of 2024 which was contested by the defendant No.14 only. However, after hearing both the parties the court of appeal below by his impugned judgment and decree dated 10.07.2024 dismissed the appeal and thereby affirmed the judgment and decree passed by the trial court.

Being aggrieved by and dissatisfied with the impugned judgment and decree dated 10.07.2024 the plaintiff filed the instant civil revision before this Court and obtained the Rule as stated at the very outset.

Mr. S.M. Bazlur Rashid, learned advocate appearing for the plaintiff-petitioner submits that the petitioner was appointed as village police (Chowkidar) through an advertisement following recruitment procedure by the appointment committee headed by the Chairman in-charge on 19.03.2005 and he joined in that post on 20.03.2005. The petitioner's appointment was approved by the authority concerned and the government accordingly allotted salary in his name and he withdrew salary till July, 2008 without any allegation whatsoever. The learned advocate then submits that without any cogent reason all of a sudden the impugned notice was issued by which the plaintiff was asked to deposit his dress, lathi and cap which is illegal and *mala fide* as without giving any show cause notice the plaintiff cannot be removed from his service and asked to deposit his dress.

The learned advocate further submits that it is the root of all law that when a person rightly or wrongly appointed and doing his duties and drawing salary without any allegation and without affording him any opportunity of being heard, no action can be taken against him. In the present case the so-called resolution taken by the defendants clearly shows that it was taken alleging that the plaintiff indulged himself in unethical activities and the removal order is not a termination *simpliciter* rather it is dismissal from service and hence the petitioner is entitled to have an opportunity of being heard. The learned advocate finally submits that both the courts below failed to understand the basic legal principle involved in this case and came to the conclusion which is not sustainable in law. In support of his contention the learned advocate referred the decisions reported in 56 DLR (AD) 24, 65 DLR (AD) 243 and 2005 BLD 5.

On the other hand Mr. Mohammed Abul Kashem Bhuiyan, the learned advocate appearing for the opposite party No. 1 (defendant no.14) submits that the plaintiff in the plaint as well as in his deposition did not mention who has appointed him in the post of Chowkidar but under Sub-Rule 2 of Rule 4 of The Union Council (Village Police Force) Rules, 1968 the Chairman of the Union Parishad shall by the resolution of the Union Parishad should invite application by issue of notice of the appointment but no such notice of appointment issued by the Chairman was produced by the plaintiff hence the so-called appointment of the plaintiff-petitioner was illegally done without following the recruitment procedure of the Union Parishad (Village Police Force) Rules, 1968 and the petitioner was dismissed from service by the unanimous resolution of the Union Parishad as he was not legally and lawfully appointed as such the petitioner has miserably failed to prove his case that his dismissal was illegal and as such both the courts below

rightly dismissed the suit hence the Rule is liable to be discharged.

The learned advocate then submits that under Rule-9(10) of the Union Council (Village Police Force) Rules, 1968 proceeding may be drawn up against a member of the village police, if in the opinion of the Chairman, he is guilty of gross neglect of his duty or is corrupt or is guilty of misconduct. In the instant case vide resolution of the Nurullahbad Union Parishad dated 29.11.2007 various allegations were brought against the plaintiff-petitioner for which he was dismissed from service which was rightly held by the trial court and the appellate court as well.

The learned advocate further submits that plaintiff-petitioner was served a notice by the Union Parishad on 18.08.2008 stating that his appointment was illegal for which he was dismissed from service but without giving reply to the said notice the petitioner has instituted the suit which was concurrently dismissed by the courts below. The learned advocate next submits that when the petitioner's appointment was illegal and he was found involved with corrupt practices and dereliction of duty he was dismissed from service by the unanimous resolution of the Union Parishad and he has got ample opportunity to challenge the said dismissal in the suit but failed to prove that the dismissal was illegal and hence the Rule is liable to be discharged. Mr. Bhuiyan finally submits that in the suit the plaintiff did not challenge the appointment of the defendant no.14 (present opposite party No.1) which is a consequential relief to his substantive relief for which his suit must fail under section 42 of the Specific Relief Act. In support of his submissions the learned advocate cited the decisions reported in 1993 BLD (AD) 177, (2005) 7 SCC 764 and AIR 2000 SC 2783.

I have heard the submissions made by the learned advocates for both the parties, perused the revisional

application and counter affidavit along with the annexures. I have perused the lower court records including the plaint, written statement, depositions and exhibited documents of both the parties. I have also carefully examined the judgments passed by the trial court as well as the court of appeal below.

The trial court dismissed the suit on the findings that the plaintiff did not submit the notice of appointment dated 12.08.2004 before the court though plaintiff submitted his letter of appointment dated 19.03.2005 (exhibit-2) and his letter of joining dated 20.03.2005 (exhibit-3) and also filed the copy of his presence-sheets in his duty (exhibit-6). The trial court found that the defendant No.2 was removed from the post of Chairman by a resolution on 19.02.2005 but against that order he filed Writ Petition No. 1399 of 2005 and on 12.03.2005 got an order of stay of his removal but the appointment was made on 19.03.2005 by the defendant no.3 during the operation of the stay order, hence the trial court came to the conclusion that the appointment was illegal. It appears from the judgment of the court of appeal below that the learned Judge observed that admittedly a notice of appointment was published on 12.08.2004 and accordingly the appointment committee was constituted but the appointment procedure could not be completed as meanwhile, the Chairman who was also the member of the appointment committee was removed by a resolution dated 19.02.2005 but in the meantime, the Chairman-in-charge (defendant no.3) without forming a new appointment committee appointed the plaintiff in a post of Chowkidar. The court of appeal below further observed that some allegations were made against the plaintiff but the plaintiff was not given any show cause notice which was imperative upon the authority but that has not been followed. However, the learned judge came to the conclusion that according to law there was no post in the

name of "Chowkidar", consequently the appointment of the petitioner in a non-existing post was not legal hence the plaintiff though was not afforded with a show cause notice which was mandatory but since he has been appointed in a non-existing post the suit was not maintainable and on that finding the learned judge dismissed the appeal.

On perusal of the evidence on record it appears that on 12.08.2004 an advertisement for appointment to the vacant post of Village Police was published and an appointment process was initiated as claimed by the plaintiff and has not been denied by the defendants. The controversy arose between the parties whether the appointment of the plaintiff in the post of Chowkidar was made by the competent authority or not and the appellate court found that the appointment was made in a *non est* post. A vital question has been raised from the very beginning in the suit, in appeal and in this Civil Revision that the petitioner was not afforded any opportunity of being heard by giving any show cause notice and was dismissed from service. Even no dismissal order/decision was served upon him.

It is admitted position that The Union Council (Village Police Force) Rules, 1968 is the service law applicable to the plaintiff. Let us at first see the recruitment and disciplinary procedure as provided in the said Rules of 1968. Rule 4 provides as under-

Rule-4. Recruitment procedure- (1) Subject to the proviso to sub-rule (1) of rule 3, appointment to vacancies in the posts of dafadar and Mahalladar shall be made in the manner hereinafter specified, namely,-

- (i) a dafadar shall ordinarily be appointed by promotion from amongst the mahalladars in the union on the basis of their efficiency and seniority; and

- (ii) a candidate for the post of mahalladar shall be an inhabitant of the Union concerned, preferably a resident of the particular ward, shall be of the age of between 20 and 30 years and must be of sound health and free from any mental and physical defect, with measurements as follows:

Minimum height- 5'-3"

Minimum chest- 32" (normal)

Minimum weight- 100 lb.

(2) Whenever a new post of dafadar or mahalladar is created or any vacancy occurs in either of the post, the Chairman of the Union Council shall announce the same and invite applications by issue of notice, a copy of which shall be hung up in the Union Council office and any other conspicuous places in the Union as well as beat drum in the hats and bazars in the Union:

Provided that if the Council decides to fill up a vacancy in the post of dafadar by promotion no such notice or beat of drum shall be necessary.

(3) (a) In the case of an appointment to any post of Mahalladar or direct appointment to the post of Dafadar the Union Council shall constitute a Selection Committee with at least three members including the Chairman and the member representing the particular ward. The Committee shall make selection after interviewing the candidates and place its recommendation at the next meeting of the Union Council for consideration.

(b) The list of candidates selected by the Union Council shall be referred to the Thana Council for approval, with the following particulars, namely-

- (1) Name of Union Council

- (2) Number of vacancies-Dafadar/Mahalladar-
 - (3) Number of applications received
 - (4) Number recommended-
 - (5) Particulars of nominees-
 - (a) Name
 - (b) Father's name
 - (c) Caste
 - (d) Age
 - (e) Residence
 - (f) Physical condition
 - (g) Not employed since attaining majority
 - (h) Character.....
 - (i) Can he read and write
- (c) On receipt of the nominations and before placing them in the Thana Council meeting, the Circle Officer shall get verified through the Officer-in-Charge the character and antecedents of such nominees.
- (4) In the case of appointment of a Dafadar by promotion, the Union Council in a meeting shall make selection out of eligible mahalladars in the Union on the basis of seniority and efficiency (service record) and forward its recommendation to the Thana Council.
- (5) The Thana Council shall consider the nominations at the next monthly meeting and forward the list of approved nominees to the Chairman, Union Council soon thereafter. On receipt of the list, the appointment shall be made by the Chairman who shall issue to the person appointed as Dafadar or Mahalladar a sanad in the appended Form 'A' along with an acquittance roll in appended Form 'B' which shall be bound up together. The appointment of a Mahalladar shall be subject to his successful completion of the prescribed training. At that

time, the appointee shall also be supplied with prescribed equipments which shall be renewed periodically as provided in these rules and his signature or thumb impression obtained in the Issue Register of Equipments to be maintained by the Union Council for the purpose.

It is not the case against the present plaintiff-petitioner that the above mentioned procedure was not followed or the plaintiff got appointment by practicing fraud or he was not eligible for the post. Rather it is alleged that the petitioner indulged himself with unethical activities and guilty of negligence in duty. In such case to remove or dismiss him from service what is to be followed is mentioned in Rule-9 (10) of his service Rules.

Rule-9(10). Discipline of village police-(1)

Grounds for Proceeding- Proceeding may be drawn up against a member of the Village Police if, in the opinion of the Chairman, he is guilty of gross neglect of his duty or is corrupt or is guilty of misconduct within the meaning of misconduct defined in the Local Council Servants (Efficiency and Discipline) Rules, 1967. A member of the Village Police may also be proceeded against on the report of the Officer-in-Charge of the Police Station concerned for dereliction or neglect of duty in respect of arrest, prevention and detection of crime and maintenance of law and order in the rural area. In either case, the Chairman shall draw up the proceedings stating the charges against the delinquent and call upon him to explain the same.

(2) (a) **Enquiry-** When proceeding has been intimated by the Chairman, enquiry into charges against the delinquent shall be held by any member of the Union Council other than that of his ward. But in case of proceeding initiated by the Officer-in-Charge, the

Chairman may himself hold the enquiry or entrust it to any member of the Union Council not being a co-resident in the ward of the member of the Village Police concerned.

(b) On receipt of the explanation from the delinquent under sub-rule (1) the enquiring Member/Chairman shall enquire into each charge, record the evidence of the prosecution and defence- both oral and documentary, if adduced, and submit his report with his finding regarding the guilt or otherwise of the delinquent, to the Union Council when one month from the date of his having been appointed to hold the enquiry.

(3) **Penalties-** The Union Council considering the proceeding in a meeting may impose on the delinquent member of the Village Police the following forms of penalties, namely:

(A) Censure

(b) withdrawal of good conduct badges or stripes;

(c) withholding of increment or promotion;

(d) fine not exceeding 10 per cent of pay,

(e) demotion in rank,

(f) dismissal from service.

Penalties listed as (a), (b) and (c) are to be treated as minor while the rest as major.

(4) Cause to be shown against a penalty or penalties proposed- When the Union Council considers to impose a penalty or penalties the delinquent shall be given an opportunity to show cause against the same within a fortnight from the date of his having been so asked for.

(5) (a) Reference to Thana Council- On consideration of the cause shown by the delinquent if the Union Council decides to impose a penalty or penalties it shall record the proceedings in form

'G' and forward it to the Thana Council within one month from the date of receipt of the delinquent's show-cause statement.

(b) If the Chairman holds a different view in respect of the recommendation of the Union Council regarding imposition of penalties, views of the Union Council and the views of the Chairman together with the record of proceedings in form 'G' shall be referred to the Thana Council for decision, within the same time.

(6) In case the Officer-in-Charge is not satisfied with the action taken by the Union Council on his report, he may refer his view point to the Thana Council for decision.

(7) Decision of Thana Council- Within thirty days of the date of receipt of the proceedings from the Union Council, the Thana Council shall consider it in a meeting and may either approve of the penalty recommended by the Union Council or pass such other order, as provided in these rules, as it may consider expedient. The decision of the Thana Council shall be communicated to the Union Council immediately afterwards.

(8) Final Order- In accordance with the decision of the Thana Council, the Union Council shall pass orders supported by a resolution of the Council and communicate the same to the person concerned.”

From reading the above provisions it is crystal clear that the delinquent is entitled to get a notice of show cause regarding the allegation and if after completion of departmental proceeding the delinquent is found guilty and authority concerned decided to impose penalty/penalties then the delinquent is entitled to get another notice regarding the proposed penalty. This opportunity of being heard is the principle of natural justice which is

ingrained in the legal systems of all civilized nations. It has been also settled by a catena of decisions from the Higher Courts of this subcontinent that without following the principle of natural justice, no action can be taken against anyone. In the case of *Ridge Vs. Baldwin* 1964 AC 40 Mr. Ridge was dismissed as chief constable by the watch committee under the relevant provisions of law which provides 'the watch committee may at any time dismiss, any borough constable whom they think negligent in the discharge of his duty, or otherwise unfit for the same' and this dismissal was affirmed by the Home Secretary. Lord Reid in the House of Lords, held: *the power of dismissal in the Act of 1882 could not then have been exercised and cannot now be exercised until the watch committee have informed the constable of the grounds on which they propose to proceed and have given him a proper opportunity to present his case in defence*. Our Supreme Court in the case of *Bangladesh Small Industries Corporation Vs. Mahbub Hossain* reported in 29 DLR (SC) 41 upheld that decision and observed:

- (a) If an employee is dismissed or his service is terminated in contravention of a mandatory statutory provision, the employee has a right of action either in a superior Court in its writ jurisdiction or a Civil Court.
- (b) If the service of its employee is terminated in violation of the principle of natural justice, the employee has a similar right of action as in (a).
- (c) If the office is a statutory one, the holder of the office has similar right of action as in (a) in case of termination of the said office not in accordance with the law, under which the said office has been created.

- (d) In spite of the office being a statutory one or of public character, terms and conditions of the office may be regulated by contract, and termination of service in contravention of such contract, but otherwise than in the manner mentioned in (a) and (b) is not actionable for the purpose of reinstatement in the office.
- (e) Terms and conditions of service prescribed by rules, regulations or any other form of delegated legislation made by a body under statutory powers are not contractual, but have statutory force and the dismissal or termination of service in substantial disregard of them will entitle the employee to a right of action as in (a).

In that case our apex Court further observed that *an employee of a statutory Corporation of public character, who does not hold any statutory post or status can nevertheless maintain an action in a Court of law, on a limited ground, that of violation of any mandatory statutory provision as to the kind of contract or the statutory ground of dismissal, or on the doctrine of ultra vires or the violation of the rule of natural justice.* In the case reported in 56 DLR (AD) 24 it is held that even where provisions for show cause notice and opportunity of personal hearing are not available, the principle of natural justice shall be applied unless it is specifically barred. Similar view has been taken in the case reported in 65 DLR (AD) 243.

It is true that there is some exception in applying this principle of natural justice: if the appointment is void *ab initio* or the appointment is obtained by practicing fraud or by submitting false document or the appointee had no eligibility to be appointed in the post, then in a very

exceptional case the authority can take action against him if it is so urgent that if a show cause notice is served then the purpose may be frustrated. Even in that case, the Indian Supreme Court and our Supreme Court held that the delinquent is entitled to get an opportunity after the action has been taken. In the case reported in (2005) 7 SCC 764 the Indian Supreme Court took a view that dismissal without show cause may be permissible where exigencies of situation require that prompt action and not taking prompt action might result in the trouble spreading and situation worsening and at times becoming uncontrollable. In the case reported in AIR 2000 SC 2783 the Indian Supreme Court observed that the absence of a notice to show cause does not make any difference for the employee has already been told that if his further overstay is for continuing in the job with foreign University, it is bound to be refused. The case of the delinquent thus falls, on the admitted or indisputable facts, only one view is possible. In that event no prejudice can be said to have been caused to the delinquent though notice has not been issued. Thus in India, the Supreme Court has distinguished between: A voidable or irregular appointment (e.g, some procedural defect, but the person was otherwise eligible). A void or non est appointment (e.g, appointment obtained by clear fraud or forged documents). In the first case principle of natural justice applied while in the latter case (such as the person never possessed a mandatory qualification and the authority had no jurisdiction to relax it, or the appointment was secured by proven forgery), courts sometimes say that no enforceable right ever accrued and the person can be removed without full departmental proceedings, but even then many decisions insist on at least a minimal hearing to verify the facts before branding the appointment 'void'. Our Supreme Court, both High Court Division and Appellate Division, has taken firm view that

removal on the ground of illegal or irregular appointment will normally attract the principle of natural justice which is the general rule and only when the appointment is a clear nullity in law, and statute or Constitution itself dispenses with hearing, can the authority justify omitting a prior opportunity of being heard.

Now, in the settled principle as stated above let us consider the present case. In the present case we have already noticed that the plaintiff claimed that there was an advertisement for appointment which has not been denied by the defendants and the plaintiff was appointed in a post called 'Chowkidar'. The prevailing law provides the name of the post as 'Mahalladar' though previously it was 'Chowkidar'. The plaintiff had no hand in the appointment letter whether it is written Moholladar or Chowkidar. For all practical purpose this post is known as Chowkidar to everyone from pre-partition period to even today. Hence, it comes under the doctrine of *factum valet quod fiery non debuit* (what ought not to be done becomes valid once done). In other words, the deed is valid though it ought not to have been done. The doctrine stands for the principle that where a fact is accomplished, i.e where an act is done and finally accomplished, though it may be in contraventions of texts, the fact will stand and the act will be deemed to be legal and binding provided there is no fraud, coercion, or violation of mandatory provision. The idea that once a certain act has been completed and accepted, minor irregularities or procedural defects in how it was done will not automatically render it invalid and undoing it would cause greater harm or injustice, the law may treat it as valid. In the present case the appointment letter of the plaintiff should have been issued in the name of the post as Mahalladar but the authority mentioned it as Chowkidar and for that reason it cannot be said that the plaintiff was appointed in a non est or non-existent post. It appears

from the resolution dated 29.11.2007, though it was not served upon the plaintiff-petitioner, that the Union Parishad under the Chairmanship of the defendant No.2 took a resolution that the plaintiff indulged himself in unethical activities and liable for negligence in his duty. These are serious nature of allegations and stigma against the plaintiff and the authority was bound to issue show cause notice upon the plaintiff as per his service law, i.e The Union Council (Village Police Force) Rules, 1968 to explain his position.

From going through the service rules applicable for the plaintiff-petitioner as mentioned above it is crystal clear and admitted position that the procedure for taking action against the plaintiff has not been followed by the authority on the plea that the appointment of the plaintiff petitioner by the defendant no.3 was not legal as by order of stay the defendant no.2 resumed his office of Chairman and the defendant no.3 was not Chairman-in-charge. It is surprising that the defendant No.2 claimed that he resumed office on 14.03.2005 but the plaintiff who was appointed on 19.03.2005 continued his service till August, 2008 and drew his government portion of salaries till July, 2008 and after resuming his office the defendant No.2 or the defendant No.1 did not feel that the appointment of the plaintiff was illegal and did not take any action but long after more than 03(three) years all of a sudden the defendant No.2 decided that the appointment of the plaintiff was illegal which create serious doubt and it cannot be ruled out that the act of the defendant nos.1 and 2 was done *malafide*. On the other hand as per claim of the defendant no.14 (the present opposite party no.1), he was appointed in the post on 03.12.2008 and joined on 04.12.2008, clearly during pendency of the suit and as such there was no requirement of law to challenge his appointment as an consequential relief by the plaintiff-

petitioner in the present suit. The suit was maintainable in its present form. I have already observed that the procedure as mentioned above has not been followed hence the dismissal order and the impugned notice was illegally issued upon the plaintiff. As such the plaintiff is entitled to get the decree as prayed for. Both the judgments and decrees passed by the courts below are liable to be set aside as such I have no option but to interfere with the impugned judgments and decrees passed by the courts below.

In the result the Rule is made **absolute**. There will be no order as to cost.

Accordingly, the impugned judgment and decree dated 10.07.2024 (decree drawn on 16.07.2024) passed by the Joint District Judge, 3rd Court, Naogaon in Title Appeal No. 09 of 2024 dismissing the appeal and thereby affirming the judgment and decree dated 05.10.2023 (decree drawn on 10.10.2023) passed by the Senior Assistant Judge, Naogaon in Other Class Suit No. 230 of 2008 dismissing the suit is hereby set aside and the impugned order passed by the defendants is declared illegal and not binding upon the plaintiff. The plaintiff is entitled to get full relief and as such the suit is decreed accordingly. The authority concerned is directed to reinstate the plaintiff in his post with all his arrear salaries.

Send down the lower court records along with this judgment at once.