

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

**WRIT PETITION NO. 8751 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:**

Sheikh Mahbub Ikbal

.....Petitioner

-VERSUS-

Bangladesh, represented by the Secretary, Ministry  
of Home Affairs and others

..... Respondents

Mr. Md. Robiul Alam Budu, Senior Advocate, with  
Mr. Md. Shahin Ali, Advocate

..... For the Petitioner

Mr. Mohammad Waliul Islam Oli, D.A.G with  
Mr. Md. Rashadul Hassan, D.A.G with  
Ms. Nilufar Yesmin, A.A.G with  
Mr. Md. Moshir Rahman (Rahat), A.A.G with  
Mr. Md. Motasin Billah Parvez, A.A.G with  
Mr. Bishwanath Karmaker, A.A.G

.....For the Respondents

**Present:**

**Mr. Justice Sashanka Shekhar Sarkar**

**And**

**Justice Urmee Rahman**

**Heard on 03.03.2026 and 04.05.2026**

**Judgment on 05.05.2026**

**Urmee Rahman, J:**

In the instant matter a Rule Nisi was issued on an application under Article 102 of the Constitution of the People's Republic of Bangladesh in the following terms:

*“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the Order No. 762 dated 10.11.2020 passed by the respondent No.3 Deputy Inspector General (DIG) and Additional Inspector General of Police (In-Charge), Industrial Police dismissing the appeal vide Memo No. ইন্ডাঃপুলঃহেডকো./৪৬৮৭ (আসও) dated 10.11.2020 (As contained in Annexure-F1) affirming the final order dated 09.08.2020 passed by the respondent No.4 Police Super, Industrial Police-2, Gazipur in Departmental Case No.03 of 2014 dated 28.08.2014 discharging the petitioner from his service (as contained in the Annexure-E) should not be declared to have been made without lawful authority and is of no legal effect and/or such other or further order or orders passed as to this court may seem fit and proper.”*

Subsequently by an order dated 10.03.2026 a supplementary Rule was issued in the following terms:

*“ Let a supplementary Rule Nisi be issued calling upon the respondents to show cause as to why the letter vide Memo No. 769/(R.O) dated 13.05.2024 issued and signed by the respondent No. 4 refusing to consider the petitioner's application for reinstating him in his service in earlier post (Annexure-Q) should not be declared illegal and to have been passed without lawful authority and is of no legal effect and as to why a direction should not be given upon the respondents to reinstate the petitioner in his service with all arrear salary and other service benefits and/or pass such*

*other or further order or, orders as to this court may seem fit and proper.”*

Necessary facts for disposal of the instant Rule, in short, are that, in 2010 a number of trainee constables were recruited by Bangladesh Police. The petitioner and his brother applied for that post under freedom fighter quota submitting their father's provisional certificate as a freedom fighter. On 24.05.2010 after examining their physical fitness and scrutinizing all the documents, the appointment authority selected both the petitioner and his brother for the post of trainee constable in freedom fighter quota and they were sent for taking basic training for 6 (six) months. After completing the training from Police Training Centre, Khulna, the petitioner was posted to Industrial Police Range, Bangladesh Police, Uttara, Dhaka and thereafter he was transferred to Industrial Police-2, Gazipur.

The freedom fighter certificates submitted by the petitioner as well as others were sent for verification to the Ministry of Liberation War Affairs by the Police Headquarter vide memo dated 09.06.2010. The Ministry sent a report on 17.11.2013 to the Police Headquarter stating amongst others that the provisional certificate of petitioner's father could not be found in the register and it is not a genuine one. On the basis of the said allegation on 26.07.2012 a Police Case was filed in Jhenaidah Police Station under Sections 367/368/471/420 of the Penal Code against the petitioner, his brother and two others. Subsequently charge sheet was submitted in this case on 19.06.2014 and charge was framed against them

on 10.05.2016. In the meantime, on the self-same allegation a departmental proceeding was initiated against the petitioner on 28.08.2014 being Departmental Case No. 03 of 2014 and during pendency of the departmental case the petitioner was suspended from his service on 08.06.2020. After concluding the departmental proceeding the petitioner was discharged from his service by the Police Super, Industrial Police-2, Gazipur by the order dated 09.08.2020. Challenging the order, the petitioner on 05.09.2020 filed an appeal before the Inspector General of Police and after concluding the appeal the DIG and Additional IGP, in charge, of Industrial Police, dismissed the appeal by the order dated 10.11.2020.

Meanwhile, petitioner's father filed Writ Petition No. 9477 of 2016 before the High Court Division for inclusion of his name in the Bangladesh Gazette, in which Rule Nisi was issued and after hearing the parties the Rule was made absolute by the judgment and order dated 27.02.2020. Resultantly, his name as a freedom fighter was published in the Gazette notification dated 02.11.2021. Thereafter the petitioner's father filed an application before the Police Super, Industrial Police-2, Gazipur for withdrawal of the departmental case against his son stating inter alia that the allegation brought against his two sons has been found to be untrue as his name has been published in the official Gazette as a freedom fighter. No response was made to the application by the authority.

Besides challenging the Criminal Case mentioned hereinabove, the petitioner, his brother and another filed a Criminal Miscellaneous Case No. 23524 of 2020 under Section 561A of the Code of Criminal Procedure, 1898 before the High Court Division and obtained a Rule. After hearing, the Rule was made absolute by this Division by the judgment and order dated 30.05.2023 thereby quashing the criminal proceeding pending against the petitioner. As per the order of the High Court Division the learned Sessions Judge, Jhenaidah, discharged the petitioner, his brother and another from the charge on 28.02.2024.

After publication of the Gazette notification and quashing of the criminal proceeding, the petitioner on 21.03.2024 filed an application before the Police Super Industrial Police-2, Gazipur for reinstatement in his service, who was pleased to reject the application on 13.05.2024.

Being aggrieved thereby and there having no other alternative and equally efficacious remedy available, the petitioner has filed the instant writ petition and obtained the present Rule.

Subsequently an application was filed by the petitioner for issuance of a Supplementary Rule challenging the abovementioned letter dated 13.05.2024, which was not initially challenged at the time of filing the writ petition. Accordingly, the Supplementary Rule was issued on 10.03.2026.

Learned Senior Advocate Mr. Md. Robiul Alam Budu, appearing on behalf of the petitioner submits that, the respondent No. 3 and 4

without proper inquiry discharged the petitioner from his service, which is arbitrary in nature and was not in accordance with law and therefore the impugned order is liable to be declared to have been passed without any lawful authority.

Learned Advocate further submits that the allegation brought against the petitioner as to the genuineness of the freedom fighter certificate of petitioner's father was ultimately found to be untrue inasmuch as pursuant to the judgment in Writ Petition No. 9477 of 2016 a Gazette was published including the petitioner's father as a freedom fighter and the criminal proceeding was also quashed by the High Court Division. As such the respondents ought to have considered the petitioner's application for reinstatement in service but by rejecting the application the authority has acted mala fide and in an arbitrary and whimsical manner. Hence, the present Rule is liable to be made absolute.

By referring to the supplementary affidavit dated 15.02.2026 learned Advocate for the petitioner submits that, 2(two) other employees of Bangladesh Police of different department being on the similar footing as of the petitioner, were reinstated in their service by the authority, as evidenced from Annexure-L and M. In the given circumstance the respondents are under a lawful obligation to reinstate the petitioner in his service.

Lastly, he submits that, by the impugned memo dated 13.05.2024 the Police Super of Industrial Police-2, Gazipur opined that though the petitioner has been discharged from the allegation in a criminal

Proceeding, they are not in a position to consider the reinstatement of the petitioner due to the fact that the order passed in the departmental proceeding is still in force. This opinion is misconceived and without any lawful basis, hence the Rule is liable to be made absolute.

On the other hand, Mr. Waliul Islam Oli, the learned Deputy Attorney General entered appearance on behalf of the respondent no. 3 and contested the Rule by filing an affidavit in opposition.

Learned Deputy Attorney General submits that, the criminal proceeding and departmental proceeding are separate and independent of each other and do not co-exist. Since the discharge order against the petitioner passed by a competent authority in a departmental proceeding was not set aside by Administrative Tribunal nor did the departmental order was reviewed pursuant to regulation 884 of PRB, 1943, the Rule issued in the instant matter is devoid of any substance.

He further submits that, the petitioner was given reasonable opportunity of being heard and the departmental proceeding was held following due process of law. The competent authority rightly found him guilty of allegation for forging the freedom fighter certificate of his father and accordingly discharged him from service. The appellate authority on proper appreciation of the material evidence on record rejected the appeal. Hence the impugned order is very much lawful and therefore, the Rule is liable to be discharged.

Heard the learned Advocates for the respective parties and perused the writ petition, supplementary affidavits thereto, the affidavit in opposition and all the documents annexed therewith.

Facts need not be repeated for the purpose of brevity of the judgment. It is admitted that a criminal proceeding was initiated against the petitioner with the allegation of submitting forged freedom fighter certificate of his father in order to avail the freedom fighter quota and accordingly a departmental proceeding was initiated on the basis of the same allegation. The criminal proceeding was ultimately quashed by this Division by the judgment dated 30.05.2023, Annexure-J. The allegation that the petitioner's father is not a genuine Freedom fighter, was also proved to be untrue on publication of his name in the official Gazette notification dated 02.11.2021 as a genuine freedom fighter pursuant to the judgment passed by the High Court Division in Writ Petition No. 9477 of 2016, Annexure-G.

On meticulous perusal of Annexure-L and M, annexed to the supplementary affidavit, it transpires that, 2(two) other employees of Bangladesh Police, who were similarly convicted in a criminal case for submitting allegedly forged freedom fighter certificates, were subsequently reinstated in their services with the positive opinion from the Police Headquarters in this regard in a similar situation. In the office order dated 21.11.2023 (Annexure-M) it was stated that, “ডিএমপি, ঢাকার বরখাস্তকৃত প্রাক্তন কনস্টবল/৩০৩০১ মোঃ হারুন অর রশিদ, সরকারি চাকরি আইন ২০১৮ এর ধারা-৪২(৫)(ক) মোতাবেক চাকরিতে পুনর্বহাল হবেন এবং নির্দোষ গণ্য হওয়ায়, তার বরখাস্তের আদেশের তারিখ হতে

পুনর্বহালের তারিখ পর্যন্ত কর্মকাল গণ্যে Bangladesh Service Rules, Part-1 এর Rule – ৭৩ অনুযায়ী বকেয়া বেতন ভাতাদি প্রাপ্য হবেন”।

According to the provision of Section 41(2) of the Public Servants Act, 2018 the authority is empowered to initiate and dispose of a departmental proceeding against a delinquent employee on an allegation regarding which a criminal case is pending against him. However, this Section does not contain any provision as to the effect of the final outcome of the criminal case on the departmental proceeding. On the other hand, Section 42 (5) provides that, if any employee convicted in a criminal case, who has been removed from service by the employer on this ground, is subsequently acquitted on appeal, he shall be reinstated in service. It can thus be construed that, similar consequence as that of Section 42 (5) would follow in case of Section 41 (2).

For better understanding Section 42 of the Public Servants Act, 2018 is quoted below:

৪২। “ফৌজদারি মামলায় দণ্ডিত কর্মচারীর ক্ষেত্রে ব্যবস্থা।- (১) কোনো সরকারি কর্মচারি ফৌজদারি মামলায় আদালত কর্তৃক মৃত্যু দণ্ড বা ১(এক) বৎসর মেয়াদের অধিক মেয়াদের কারাদণ্ডে দণ্ডিত হইলে, উক্ত দণ্ড আরোপের রায় বা আদেশ প্রদানের তারিখ থেকে চাকরি হইতে তাৎক্ষণিকভাবে বরখাস্ত হইবেন।

(২) কোনো সরকারি কর্মচারি ফৌজদারি মামলায় আদালত কর্তৃক অনূর্ধ্ব ১ (এক) বৎসর মেয়াদের কোনো কারাদণ্ড বা অর্থদণ্ড বা উভয়দণ্ডে দণ্ডিত হইলে, নিয়োগকারী কর্তৃপক্ষ তাহাকে নিম্নবর্ণিত যে কোনো দণ্ড আরোপ করিতে পারিবে, যথা :-

(ক) তিরস্কার;

(খ) নির্দিষ্ট মেয়াদের জন্য পদোন্নতি বা বেতন বৃদ্ধি স্থগিতকরণ;

(গ) নিম্ন পদ বা নিম্নতর বেতন স্কেলে অবনমিতকরণ; অথবা

(ঘ)কোনো আইন বা সরকারি আদেশ অমান্যকরণ অথবা কর্তব্যে ইচ্ছাকৃত অবহেলার কারণে সরকারি অর্থ বা সম্পত্তির ক্ষতি সংঘটিত হইলে যথোপযুক্ত ক্ষতিপূরণ আদায়।

(৫) ফৌজদারি মামলায় আদালত কর্তৃক আরোপিত দণ্ডাদেশের পরিপ্রেক্ষিতে-

(ক) উপ-ধারা (১) এর অধীন বরখাস্তকৃত ব্যক্তি, পরবর্তীতে আপিল আদালত কর্তৃক খালাস প্রাপ্ত হইলে তাকে চাকরিতে পুনর্বহাল করিতে হইবে; এবং

(খ) উপ-ধারা (২) এর অধীন দণ্ডিত ব্যক্তি, পরবর্তীতে আপিল আদালত কর্তৃক খালাস প্রাপ্ত হইলে, তাহার উপর আরোপিত দণ্ডাদেশ প্রত্যাহার করিতে হইবে।

(৬) খালাস প্রাপ্ত কোনো কর্মচারী, অবসরে গমনের বয়সে উপনীত হইলে অথবা সংশ্লিষ্ট পদ বা চাকরির বিলুপ্তি ঘটিলে, তাকে চাকরিতে পুনর্বহাল করা যাইবে না, তবে তিনি সরকার কর্তৃক এতদুদ্দেশ্যে নির্ধারিত আর্থিক সুবিধা প্রাপ্য হইবেন”।

In the present case the petitioner was not convicted of the alleged offence rather before completion of the trial, the proceeding was quashed by the High Court Division and ultimately he was discharged from the allegations. We find that in the given situation, the underlying purpose of the departmental proceeding initiated by Bangladesh Police no longer survives. Once the criminal proceeding, which formed the foundation of the allegation brought against the petitioner and 3(three) others, has been terminated in favour of the petitioner and the factual aspect of the allegation has been negated, the continuation of the penalty of discharge from service in a departmental proceeding becomes wholly unsustainable in law.

Moreover, the refusal to reinstate the petitioner, despite reinstatement being granted to other similarly situated employees of different departments amounts to discriminatory treatment towards the petitioner, which cannot be sustained in the eye of law.

By the impugned memo dated 13.05.2024 (Annexure-Q/K-1) the respondent no. 4 rejected the petitioner's application for reinstatement stating that, the criminal proceeding and the departmental proceeding are separate and independent of each other; since the order of removal given in the departmental proceeding has not been set aside either by the Administrative Tribunal or in any review under Regulation 884 of Police Regulation of 1943, they do not have the jurisdiction to consider the petitioner's reinstatement application.

Furthermore, by the memo dated 24.05.2025 (Annexure-O), the Police Super (Admin and Finance) Industrial Police Headquarters opined that, “এমতাবস্থায় ১। সাবেক কনস্টেবল/৪৬০ মোঃ রুবেল হোসাইন (বিপি-৯০১১১৪৩৪২৮), ২। সাবেক কনস্টেবল/৪৪৩ শেখ মাহবুব ইকবাল (বিপি-৮৮১১১৩৫২৭০) এবং ৩। সাবেক কনস্টেবল/৪৪২ শেখ ফিরোজ ইকবাল (বিপি-৮৭১১১৩৫৫০৭) গণদের বিরুদ্ধে দায়েরকৃত ৪৩ (০৭)১২ ফৌজদারী মামলার দায় থেকে অব্যাহতি পান। অন্যদিকে তাদেরকে বিভাগীয় মামলার চূড়ান্ত আদেশে চাকরিতে অপসারণ করা হয়। Police Regulations, 1943 এর Regulation 862 and 863 প্রবিধান মোতাবেক - ফৌজদারী মামলা ও বিভাগীয় মামলা একই ঘটনার প্রেক্ষিতে দায়ের হলেও একটির ফলাফল অন্যটির উপর কোন প্রভাব ফেলবে না।”

In this context Regulation 863 of the Police Regulations, 1943 is quoted below:

***“An order of discharge or acquittal of a Police officer by a court shall not be a bar to the award of departmental punishment to that officer in respect of the same cause or matter.”***

It appears from Annexure L and M, already discussed hereinabove, that while reinstating the employees in a similar case, the Police Head

Quarters relied on Section 42 (5) of the Public Servants Act, 2018 though there was an order of removal in a departmental proceeding. As per the provision of Section 42 of the Act, a government servant can be awarded punishment by the employer without initiating a departmental proceeding if he is convicted in a criminal proceeding. However, regulation 863 of Police Regulations, 1943 is applicable in awarding punishment in a departmental proceeding irrespective of the fate of the criminal proceeding. In the present case, there is a punishment awarded in a departmental proceeding, which was initiated due to the filing of the criminal case on the self-same allegation.

The basic provision of Section 42 (5) of the Public Servants Act is, if the employee is acquitted of the criminal conviction, the punishment awarded by the employer (without initiating departmental proceeding) shall be withdrawn. Considering the underlying reasoning of this provision we are of the view that, in a case where the basis of the departmental proceeding is merely filing of a criminal case, not the conviction, and punishment is awarded in the departmental proceeding prior to the final outcome of the criminal case, the result of the criminal case shall have effect on the punishment so awarded in the departmental proceeding. Because, the criminal proceeding, which formed the foundation of the departmental proceeding, has been terminated upon dismissing the factual aspect of the allegation. Hence the continuation of the punishment awarded in the departmental proceeding cannot subsists. The provision of regulation 863 of Police Regulations, 1943 thus appears

to be inconsistent with the underlying principle of the provision of Section 42 of the Public Servants Act of 2018. It is a well-established principle that in case of any inconsistency between an Act and a Regulation, the Act shall prevail.

With the foregoing discussions and findings we are inclined to hold that the respondents are under a lawful obligation to reinstate the petitioner in service.

In the given facts and circumstances, we find substance in the Rule and the supplementary Rule. In the result both the Rule and the supplementary Rule are made absolute.

The impugned order dated 09.08.2020 discharging the petitioner from service (Annexure-E), order dated 10.11.2020 dismissing the appeal (Annexure F-1) and the memo dated 13.05.2024 (Annexure-K-1/Q) rejecting the petitioner's application for reinstatement are hereby declared without any lawful effect and accordingly set aside.

The respondents are hereby directed to reinstate the petitioner in his service giving effect from the date of discharge from service, that is, from 09.08.2020 and to provide him all the arrear salaries and benefits in accordance with law within 30 (thirty) days from receipt of this order.

However, there is no order as to costs.

Let a copy of this judgment and order be communicated to the concerned authorities at once.

**Justice Sashanka Shekhar Sarkar, J:**

I agree.