

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)**

Single Bench:

Mr Justice Abdur Rahman

Civil Revision No. 4894 of 2024

In the matter of:

Mst. Nestara Begum

... Plaintiff-Appellant

Petitioner

-Versus-

Md. Tohirul Islam and others

... Defendants/Respondents

Opposite parties

No one appears

.....For the petitioner

Mr Md. Shaharier Afrad, Advocate

...for the opposite parties

Date of Hearing: 02.08.2026 and 03.08.2026 A.D.

Date of Judgment: 03.08.2026 A.D.,

Monday, 19 Shrabon 1433 B.S.

JUDGMENT:

Abdur Rahman, J:

This Rule was issued at the instance of the petitioner under the authority of Section 115(1) of the Code of Civil Procedure, 1908, in the following terms:

“Let a Rule be issued calling upon the opposite party Nos.1-6 to show cause as to why the impugned Judgment and decree dated 06.03.2024 (decree signed dated on Judge, 13.03.2024) passed by the learned Senior District Chapainawabgonj in Title Appeal No.92 of 2023 dismissing the appeal on contest and thereby affirming the dated on judgment and degree dated 14.09.2023 (decree signed on 24.09.2023) passed by the learned Senior Assistant Judge, Shipbonj, {Sic} Chapainawabgonj in Other Class Suit No. 80 of 2022 dismissing the suit by allowing the application for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper. ”

At the time of issuance of the Rule, this Court was also pleased to stay the operation of the impugned judgment and decree dated 6.3.2024 (decree signed on 13.3.2024) passed by the learned Senior District Judge, Chapainawabgonj, in Title Appeal No. 92 of 2023, till disposal of the Rule.

The material facts of the case, in brief, are that the petitioner, as plaintiff, instituted Other Class Suit No. 80 of 2022 seeking a decree of permanent injunction, together with a declaration that the appointments of defendant Nos. 3–6 to the respective posts in question had been made without publication of any lawful notification or recruitment circular as required under the applicable laws, rules and regulations. It was further alleged that the petitioner and pro forma defendant Nos. 7–11 were unlawfully deprived of their opportunity to apply for the respective posts and to participate in the recruitment process, as they could not submit applications to the competent authority or appointment board. According to the plaintiff, notwithstanding such illegality, defendant Nos. 3–6 were selected and appointed by the concerned authority in an

arbitrary, unlawful and mala fide manner. On such assertions, the plaintiff instituted the aforesaid suit seeking the reliefs as prayed for therein.

Upon entering appearance, defendant Nos. 1 and 2 filed their respective written statements along with an application under Order VII, Rule 11 of the Code of Civil Procedure, 1908, praying for rejection of the plaint. It was, inter alia, contended therein that the appointments of defendant Nos. 3–6 to the different posts of the concerned school had been made pursuant to duly published recruitment notices in both national and local daily newspapers and strictly in accordance with the provisions of the applicable laws and Rules. It was further asserted that, after their lawful appointment and joining, the said defendants had been discharging their respective duties in the institution to the satisfaction of the competent authority. Consequently, according to the defendants, the plaintiff had disclosed no enforceable cause of action for institution of the suit and, therefore, the plaint was liable to be rejected under Order VII, Rule 11 of the Code.

After hearing the parties on the said application, the learned trial Court was pleased to allow the same and, consequently, rejected the plaint by its judgment and order dated 13.09.2023, the decree having subsequently been drawn up and signed on 24.09.2023.

Being aggrieved by and dissatisfied with the aforesaid judgment and decree, the plaintiff preferred Title Appeal No. 92 of 2023 before the learned District Judge, Chapainawabganj. Hereinafter, the appeal was heard and disposed of by the said Court, which, upon consideration of the materials on record, was pleased to dismiss the appeal and affirm the judgment and decree of the learned trial Court by its judgment and order dated 06.03.2024, the decree having been drawn up and signed on 13.03.2024. Being further aggrieved by the concurrent decisions of the learned Subordinate Courts, the petitioner has invoked the revisional jurisdiction of this Court.

The case of the opposite parties, as disclosed in the counter-affidavit, is, however, materially different. It has been stated that the post of Assistant Headmaster at the concerned

school has fallen vacant upon the incumbent's retirement. Having regard to the approved staff pattern of Kaliganj Ismail Memorial High School, a decision was taken by the Managing Committee of the institution in its meeting held on 03.02.2022 to make appointments against the newly created posts of Cleaner, Nanny and Office Assistant, and the Acting Headmaster was entrusted with the responsibility of issuing the requisite recruitment notice.

Pursuant to the said decision, a recruitment notice was issued inviting applications from eligible candidates for appointment to the aforesaid posts in accordance with the applicable governmental rules and was published on 06.02.2022 in the national daily newspaper *Manab Zamin* and the local newspaper *Sunshine*, published from Rajshahi. Subsequently, upon communication with the District Secondary Education Officer, the school authority was advised to publish the recruitment notice in both a national daily and a recognised local daily newspaper, following scrutiny of the relevant documents, particularly since *Sunshine* was not considered an appropriate local daily for the purpose.

In consequence thereof, the Managing Committee resolved to publish a fresh recruitment notice in revised form in both a national and a local daily newspaper on 02.03.2022 and again entrusted the Acting Headmaster with the responsibility of taking the necessary steps in that regard. Accordingly, applications were invited within fifteen days from the date of publication, and the revised recruitment notice was duly published on 03.03.2022 in the national daily *Dainik Manab Zamin* and the local daily *Gour Bangla*.

It has further been stated that, pursuant to the said recruitment notice, the authority conducted the recruitment process through written examination and viva voce before the duly constituted board and completed all requisite formalities in accordance with the applicable Rules. The entire process was conducted in the presence of a representative of the Director General of the Directorate of Secondary and Higher Education. Upon completion of all legal and procedural requirements, the selected candidates were appointed and subsequently joined their respective posts at Kaliganj Ismail Memorial High School, Shibganj, on 10.05.2022. Since then,

they have been continuously discharging their respective duties to the satisfaction of the competent authority.

It is, therefore, the categorical case of the opposite parties that the recruitment process was conducted transparently, lawfully and in accordance with the prescribed procedure; that the appointments of defendant Nos. 3–6 were neither arbitrary nor illegal; and that the plaintiff, having neither any enforceable legal right in respect of the posts nor any lawful entitlement to challenge the appointments, has no locus standi or subsisting cause of action to maintain the suit. On those premises, the opposite parties have prayed for discharge of the Rule.

Although no one appears on behalf of the petitioner at the time of hearing, upon perusal of the revisional application and the grounds taken therein, it appears that the petitioner has assailed the impugned judgments and decrees, principally, on the following grounds:

- i. That the learned trial Court, while allowing the application under Order VII, Rule 11 of the Code of Civil

Procedure, held that the plaintiff had no locus standi to institute the suit and that no cause of action had accrued in his favour, and accordingly rejected the plaint by judgment and decree dated 13.09.2023, the decree having been signed on 24.09.2023. It has been contended that such determination could not lawfully have been made conclusively without affording the plaintiff an opportunity to adduce evidence and without conducting a trial, particularly when the questions of locus standi and cause of action allegedly involved disputed questions of fact. According to the petitioner, the learned trial Court rejected the plaint in a summary and perfunctory manner, thereby committing an error of law, resulting in an erroneous decree and consequent failure of justice. It is further contended that the learned appellate Court, while disposing of the appeal, failed to properly appreciate the said legal and factual aspects and, in affirming the judgment and decree of the trial Court by its judgment and decree dated 06.03.2024, signed on 13.03.2024, likewise committed an error of law resulting in failure of justice.

ii. That the expression "cause of action" denotes the entire bundle of material facts which a plaintiff is required to establish in order to obtain the relief claimed in the suit and that the existence or otherwise of a cause of action must ordinarily be determined from the averments contained in the plaint. It has further been contended that, where the plaint discloses a bundle of facts constituting an arguable cause of action, the ultimate truth or falsity of those assertions can only be determined upon consideration of the evidence at trial and cannot be conclusively adjudicated at the threshold by rejecting the plaint. According to the petitioner, the learned Courts below failed to appreciate this settled principle of law and, without affording an opportunity for trial, erroneously concluded that no cause of action had arisen in favour of the plaintiff, thereby committing a serious error of law occasioning failure of justice.

iii. That by the impugned judgments and decrees, the lawful rights and interests of the plaintiff have allegedly

been infringed or placed under threat of infringement through an unlawful exercise of authority, without proper judicial consideration of the pleadings, facts and circumstances of the case. It has accordingly been urged that both the learned Courts below failed to apply their judicial mind to the materials on record and thereby committed serious errors of law in passing the impugned judgments and decrees, resulting in an error in the decrees occasioning failure of justice.

Mr Md. Shaharier Afrad, learned Advocate appearing for the opposite parties, submits that the learned trial Court, upon considering the pleadings and the entire factual and legal aspects of the case, rightly rejected the plaint under Order VII, Rule 11 of the Code of Civil Procedure.

He further submits that the learned appellate Court, upon independent consideration of the matter, concurred with the findings of the trial Court that the plaintiff had neither the requisite locus standi nor a legally sustainable cause of action to institute or maintain the suit and,

accordingly, rightly dismissed the appeal and affirmed the decision of the learned trial Court.

Learned Advocate further submits that the school authority had duly published the recruitment notices on more than one occasion in the national daily *Manab Zamin* and, thereafter, in the national daily *Dainik Manab Zamin* and the local daily *Gour Bangla*, in conformity with the applicable Rules and the directions of the competent authority. He submits that the recruitment process was conducted through the prescribed written examination and viva voce before the duly constituted appointment board and that a representative of the Director General of the Directorate of Secondary and Higher Education was present during the process. According to the learned Advocate, all statutory and procedural formalities were duly observed, the selected candidates were lawfully appointed and they joined their respective posts on 10.05.2022.

Learned Advocate lastly submits that the entire recruitment process was conducted openly, transparently and in accordance with law, in broad daylight and in the presence

of the competent authorities, leaving no scope whatsoever to characterize the appointments as clandestine, arbitrary or unlawful. He also contends that the petitioner, being neither an applicant for the posts nor a person possessing any vested or enforceable right thereto, has instituted the suit without any lawful basis and with an ulterior motive to harass the opposite parties.

He, therefore, posits that the concurrent findings of the learned Courts below suffer from no illegality or material irregularity warranting interference by this Court in its revisional jurisdiction and that the Rule is liable to be discharged.

Learned Advocate referred to a decision as contained in 22 BLC (HC) 138 in the case of Abdul Khaleque-Vs-Government of Bangladesh and another; where their Lordships were pleased to hold that:

“It is the settled principle of law that while the ultimate result of the suit is as clear as the daylight, such a suit should be buried at

its inception so that no further time is consumed in a fruitless litigation."

He also referred to another decision as reported in 57 DLR (AD) 18, in the case of Abdul Malek Sawdagar-Vs-Md. Mahbubey Alam, where their Lordships were pleased to declare law as follows:

"The question whether the plaint is liable to be rejected being barred by law must be apparent from the statement made in the plaint itself and not from the written statement or any other material other than that has been put in the plaint. ---(11)"

Upon a careful perusal of the application, documents appended thereto and counter affidavit as well as submissions of the learned Advocate for the opposite parties, it is apparently found that the plaintiff filed the instant suit for declaration and permanent injunction against appointment to the aforesaid vacant posts of Kaliganj Ismail Memorial High

School, where the plaintiff was not a candidate for any of the aforesaid vacant posts.

However, on sifting the judgment of the learned trial Court, it is found that the plaintiff had expected to participate in the impugned recruitment examination; however, as he did not learn of the recruitment notice, he could not submit an application. The plaintiff asserted that no notice inviting applications for the impugned recruitment was published. Thus, the defendants, by way of a list of documents, have produced copies of the recruitment notices published in the national daily newspapers, along with the original result of the impugned recruitment examination. In the circumstances, the plaintiff's assertion in the plaint that no recruitment notice was published in the newspapers is proved to be false. Furthermore, the mere expectation of the plaintiff that he would submit an application does not, by itself, confer upon him any *locus standi* to maintain the proceeding. Accordingly, the trial allowed the application filed by the defendants, and consequently rejected the plaint.

Concomitantly, on perusal of the judgment of the learned appellate Court, it is found that it appears from the record that the defendants produced before the Court copies of the two daily newspapers, namely, *The Daily Sunshine* and *Manab Zamin*, in which the aforesaid recruitment notice was published. The defendants also produced the relevant documents in support of the various steps taken to complete the recruitment process in accordance with the law. Thus, the assertion of the plaintiffs that the Managing Committee of the said High School did not publish any recruitment notice is devoid of substance and is not borne out by the materials on record. On the contrary, it appears that, despite publication of the recruitment notice, the plaintiff was neither an applicant nor a candidate for any of the advertised posts, nor did he submit any application or participate in the selection process or in any examination conducted pursuant thereto. In such circumstances, the learned Senior Assistant Judge, Shibganj, Chapainawabganj, rightly held that the plaintiff had no legal right to institute the instant suit and, consequently, lacked the requisite *locus standi* to maintain the same.

Upon a careful consideration of the observations, findings and conclusions recorded by the learned Subordinate Courts, and upon an independent examination of the materials available on record, it appears that both the Subordinate Courts concurrently found that the plaintiff instituted the instant suit on the basis of assertions which were factually incorrect and allegations relating to the appointment process which were unsupported by any cogent or legally admissible foundation. The plaintiff failed to demonstrate any legal right or enforceable interest which had been infringed by the appointment of defendant Nos. 3–6, nor could she establish any legally sustainable basis upon which the impugned appointments could be called into question.

It further appears from the record that the competent appointing authority duly published the requisite appointment notifications on two separate occasions and thereafter proceeded with the recruitment process in accordance with the applicable rules and procedure. Significantly, the appointment process was conducted in the presence of the Director General's representative of the Higher Secondary

Education Board. Thus, the recruitment process cannot, on the materials before the Court, be characterized as one undertaken clandestinely, arbitrarily, or in disregard of the prescribed legal procedure. Rather, the record demonstrates that the appointments had a lawful and procedural foundation.

It is also not disputed that defendant Nos. 3–6 have, pursuant to such appointments, been serving in the concerned institution and that their services have continued with the knowledge and satisfaction of the competent authority. No contemporaneous objection from any competent authority or other legally interested person has been brought on record so as to demonstrate that the appointments were *void ab initio* or otherwise incapable of legal recognition. It further appears that, owing to the pendency of the instant litigation, the said appointees have not been extended the benefit of MPO facilities, notwithstanding their continued service. Such circumstances, however, do not confer upon the plaintiff a cause of action where none otherwise exists.

The more fundamental question, therefore, is whether the plaintiff, who admittedly was not a candidate for the appointments under challenge, possessed the requisite *locus standi* to institute the suit and whether the plaint, on a meaningful and comprehensive reading, disclosed any subsisting cause of action against the defendants. In my considered view, the answer must be in the negative.

The plaintiff was neither an applicant nor a candidate in the impugned recruitment process. She has not demonstrated that she possessed any vested, accrued or legally enforceable right in respect of the posts in question. Equally, she has failed to establish that the appointments of defendant Nos. 3–6 caused any invasion of a corresponding legal right belonging to her. A person cannot ordinarily maintain an action merely by questioning an appointment unless he or she is able to demonstrate a legally recognizable interest affected by the impugned action. The existence of a mere grievance, suspicion or dissatisfaction, divorced from infringement of a legal right, does not by itself constitute a cause of action.

Now, in determining whether a plaint discloses a cause of action, the Court is required to look at the plaint as a whole and to ascertain whether the material facts pleaded therein, if taken at their face value, disclose a complete and enforceable cause of action. The Court cannot dissect the plaint into isolated sentences or examine individual averments detached from their context. At the same time, cleverly drafted or unnecessarily embellished pleadings cannot create a cause of action where the foundational facts necessary for maintaining the action are conspicuously absent.

A distinction, however, must be maintained between two entirely different situations. The first is a case where, upon reading the plaint itself, no cause of action is disclosed. In such a case, the defect goes to the root of the maintainability of the proceeding and the plaint may appropriately be rejected at the threshold in accordance with Order VII Rule 11 of the Code of Civil Procedure, 1908. The second is a case where the plaint does disclose a cause of action, but the plaintiff ultimately fails to establish that cause of action upon consideration of the evidence adduced at trial.

In the latter situation, the appropriate consequence is ordinarily dismissal of the suit after adjudication and not rejection of the plaint at the threshold.

The principle is equally applicable where the plaintiff seeks declaratory relief. A plaintiff seeking a declaration must establish a legal character, status, title or right recognized by law, the denial or infringement of which gives rise to the necessity for declaratory relief. Where the plaint itself fails to disclose the legal character or enforceable right upon which the declaratory claim is founded, the proceeding cannot be sustained merely because a declaration has been formally prayed for.

Likewise, in a claim founded upon an alleged wrongful act affecting the plaintiff, the plaint must disclose the material facts demonstrating the existence of the plaintiff's legal entitlement and the corresponding infringement or threatened infringement thereof. A plaint which contains allegations in the abstract, but fails to connect those allegations with any legally enforceable right of the plaintiff,

does not acquire a cause of action merely by reason of the inclusion of formal prayers.

In the present case, the deficiency is more fundamental. The plaintiff was not a candidate in the recruitment process, and the pleadings, as considered in their entirety, do not disclose any legal right of hers which was affected by the appointments of defendant Nos. 3–6. The allegations regarding the absence of notification or circular were also found by both the learned Courts below to be contrary to the materials on record. The record, on the contrary, demonstrates that the competent authority had duly initiated the recruitment process by publishing notifications and had proceeded with the appointments in the presence of the authorized representative of the concerned higher authority.

However, it is well settled that *locus standi* and cause of action, though conceptually distinct, may converge in their practical effect upon the maintainability of a suit. A plaintiff must show that he or she has a legal interest capable of protection by the Court and that such interest has been invaded or is under a legally cognizable threat. Where the

plaint, even if read in its entirety and taken at face value, fails to disclose such an interest or its infringement, the Court is not required to embark upon a full-fledged trial merely to determine an issue which is apparent from the pleadings themselves.

Order VII Rule 11 of the Code is intended to prevent precisely such legally untenable proceedings from consuming judicial time and subjecting the opposite parties to unnecessary litigation. The provision is not merely procedural in character; it embodies the principle that a person should not be compelled to undergo the expense, delay and burden of a trial when the pleading itself does not disclose a legally enforceable cause of action.

It is also necessary to emphasize that the Court, while considering an application under Order VII Rule 11, is primarily concerned with the statements contained in the plaint and the reliefs claimed therein, read as a whole. The defence of the defendant or disputed questions requiring evidence ordinarily cannot be imported into such consideration.

Nevertheless, where the plaint itself, upon a meaningful reading, demonstrates the absence of a legally enforceable right or cause of action, the Court is justified in terminating the proceeding at its inception.

There may, moreover, be exceptional circumstances in which the Court may exercise its inherent jurisdiction under section 151 of the Code to prevent abuse of the process of the Court and to secure the ends of justice. The inherent power is not intended to supplant or circumvent the express provisions of the Code; rather, it operates in aid of justice where the circumstances warrant its exercise and where continuation of the proceeding would itself amount to an abuse of the judicial process.

However, where a suit is expressly barred by law, the appropriate provision of Order VII Rule 11 may directly apply. An implied or necessary bar may also be recognized where the statutory scheme, upon a plain reading, leaves no legally permissible avenue for maintaining the suit. Ordinarily, however, an issue concerning an implied bar which depends upon disputed facts should be determined upon appropriate

adjudication. But where the facts pleaded in the plaint themselves unmistakably demonstrate that the suit is not maintainable, the Court need not permit an otherwise futile litigation to proceed merely for the sake of form.

Therefore, the underlying rationale is that judicial process is not an end in itself. Courts exist to adjudicate genuine legal controversies, not to facilitate litigation which is demonstrably incapable of yielding any legally sustainable relief. Where the ultimate result of the proceeding is apparent from the plaint itself, and continuation of the suit would serve no legitimate adjudicatory purpose, the Court is justified in bringing the proceeding to an end at the earliest possible stage. In such circumstances, the maxim that a futile litigation should not be allowed to consume judicial time assumes considerable significance.

The quintessence of applying the aforesaid principles to the facts of the present case, I find that the plaintiff has failed to establish the most fundamental prerequisite for maintaining the suit. She was not a candidate for the posts in question and, therefore, has not demonstrated any personal

or legally enforceable right arising out of the impugned recruitment process. Her allegations concerning the absence of notification or circular have also been found, upon examination of the record, to be without factual foundation. On the contrary, the evidence establishes that notifications were duly published and that the recruitment process was conducted in the presence of the representative of the competent higher authority.

Thereby, the concurrent findings of the learned Subordinate Courts, therefore, cannot be said to have been arrived at upon a misreading or non-consideration of the material evidence. Rather, those findings appear to have been reached upon a proper appreciation of the pleadings, documents and surrounding circumstances. The plaintiff has failed to demonstrate that the appointment of defendant Nos. 3–6 infringed any legal right belonging to her or that she suffered any legally cognizable injury by reason of their appointment.

It is also significant that the plaintiff sought to challenge the appointments while having no direct participation in the

recruitment process. A person who was not an applicant for the posts ordinarily cannot convert a generalized objection to the recruitment process into a personal cause of action unless he or she can demonstrate a specific legal right or interest affected by the impugned appointments. No such right has been established in the present case.

In these circumstances, I find no legally sustainable basis upon which the plaintiff could invoke the jurisdiction of the Civil Court for the reliefs claimed. The learned Subordinate Courts were, therefore, justified in concluding that the plaintiff lacked the requisite *locus standi* and that the plaint did not disclose a legally enforceable cause of action.

It is trite that in exercising revisional jurisdiction under section 115 of the Code of Civil Procedure, this Court does not ordinarily sit as a Court of appeal for the purpose of re-appraising evidence or substituting its own view merely because another view may also be possible. Interference is warranted where the subordinate Court has acted in the exercise of a jurisdiction not vested in it by law, failed to exercise a jurisdiction so vested, or acted in the exercise of its

jurisdiction illegally or with material irregularity, resulting in an error of law occasioning failure of justice.

In the present case, no such jurisdictional infirmity has been demonstrated. The learned Subordinate Courts concurrently considered the relevant materials and reached substantially identical conclusions regarding the plaintiff's lack of *locus standi*, the absence of a sustainable cause of action, and the legal consequence flowing therefrom. I find no perversity, patent illegality, material irregularity or error of law occasioning failure of justice which would justify interference in revisional jurisdiction.

On the contrary, the impugned decisions reflect a proper appreciation of the pleadings and evidence and a correct application of the governing principles of law. This Court, in the exercise of its limited revisional jurisdiction, finds no compelling reason to disturb such concurrent findings.

For the reasons stated above, and upon consideration of the pleadings, evidence, concurrent findings of the learned Subordinate Courts and the applicable principles of law, I find

no merit in the Rule. The Rule is accordingly **discharged without any order as to costs.**

I find no lawful or assignable ground warranting interference with the impugned judgments and Decrees in the exercise of the revisional jurisdiction of this Court. The concurrent conclusions of the learned Courts below are neither shown to be perverse nor vitiated by any error of law occasioning failure of justice.

Accordingly, the judgment and order dated 06.03.2024, the decree having been drawn up thereunder and signed on 13.03.2024, passed by the learned Senior District Judge, Chapainawabganj, in Title Appeal No. 92 of 2023, whereby the appeal was dismissed on contest and the judgment and order dated 14.09.2023, the decree having been drawn up thereunder and signed on 24.09.2023, passed by the learned Senior Assistant Judge, Shibganj, Chapainawabganj, in Other Class Suit No. 80 of 2022, whereby the plaint was rejected upon allowing the application under Order VII Rule 11 of the Code of Civil Procedure, 1908, are hereby **affirmed and upheld.**

The order of stay, if any, granted earlier by this Court in the instant proceeding, is hereby **recalled and vacated**.

Let the records of the Subordinate Courts (SCR), together with a copy of this judgment, be sent down forthwith.

Order accordingly.

(Abdur Rahman, J)