

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

Writ Petition No. 13501 of 2025

IN THE MATTER OF:

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

-AND-

IN THE MATTER OF:

Md. Mahbub Kabir

...Petitioner

-Versus-

Present:

Mr. Justice Sashanka Shekhar Sarkar
And
Justice Urmee Rahman

Government of the People's Republic of
Bangladesh, represented by the Secretary
(Power Division), Ministry of Power,
Energy and Mineral Resources and others

..... Respondents

Mr. Md. Bodruddoza, Senior Advocate with
Mr. A.B.M. Siddiqur Rahman Khan, Senior Advocate,
Mr. Istiak Ahmed, Advocate,
Mr. Nirupam Pundit, Advocate,
Mr. Monirul Islam, Advocate and
Mr. Jawad Hassan, Advocate

...For the petitioner

Mr. K. S. Salah Uddin Ahmed, Senior Advocate

.... For the respondent No. 3

Heard on 11.05.2026, 10.06.2026, 16.07.2026,
21.07.2026 and 29.07.2026

Judgment on 15.09.2026

Urmee Rahman, J:

In the instant writ petition Rule was issued in the following
terms:

*“Let a Rule nisi be issued calling upon the
Respondents to show cause as to why the impugned*

Memo being No. 27.31.0000.500.09.001.18.222 dated 23.06.2020 (Annexure-P) issued by the respondent No. 3 under the signature of respondent No. 4 illegally removing the petitioner from service with effect from 23.06.2020 on account of alleged negligence, inefficiency and misconduct in performing his duties should not be declared to have done 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 service with immediate effect in pursuant to his application dated 18.09.2024 (Annexure-R) along with all dues benefits and/or such other or further order or orders passed as to this Court may seem fit and proper.”

Thereafter on 04.05.2026 a supplementary Rule was issued in the following terms:

“Let a Rule be issued calling upon the respondents to show cause as to why the Office Letter/Memo dated 05.08.2020 bearing the decision of the respondent No. 3 rejecting the appeal of the petitioner (Annexure-Y) and the Office Letter/Memo dated 10.08.2025 issued by the respondent No. 3 containing their refusal decision in the 198th Board Meeting (should have been ‘189th Board Meeting’) regarding the petitioner’s application (Annexure-BB) in the relation to the petitioner shall 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.”

The relevant facts for disposal of the Rule, in brief, are that the petitioner joined B-R Powergen Limited as D.G.M. on a contractual basis. Subsequently he was promoted to the post of Chief Engineer on 09.04.2019. While he was serving as Project Director of a power plant situated at Mirsarai, Chittagong, an allegation was raised against him regarding country of origin of the Generator in connection with the said power plant and accordingly several inquiries were held. Thereafter the authority served a show-cause notice upon him on 24.09.2019 as per the decision of 97th Board meeting, to which the petitioner replied on 03.10.2019 denying the allegations. Later, charges were framed on 26.02.2020 and the enquiry committee submitted report on 11.06.2020. A final show-cause notice was served on 15.06.2020 to which the petitioner replied. The authority removed the petitioner from service on 23.06.2020, against the order of removal, he preferred an appeal before the higher authority, which was rejected and he was notified on 05.08.2020. Subsequently following the change of government on 5th August, 2024, he filed an application on 18.09.2024 before the concerned Ministry for his reinstatement. Accordingly, the Ministry by Memo dated 13.11.2024 asked the company namely B-R Powergen Limited to consider the said application as per Service Rules. In view of the same a report was submitted on 13.03.2025, later a new report was submitted on 02.06.2025. Subsequently the Board of the Company decided that

there is no scope for reinstatement of the petitioner as per Service Rules.

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

Mr. Md. Bodruddoza with Mr. A.B.M. Siddiquir Rahman Khan, learned Senior Advocates appearing on behalf of the petitioner, at the very outset, submitted that the actions of the Respondents in illegally removing the Petitioner from service vide the impugned memo dated 23.06.2020 on account of alleged negligence, inefficiency and misconduct in performing his duties was completely ill-motivated, mala fide and thus illegal. As such, the same is liable to be declared to have been made without lawful authority and is of no legal effect.

Learned Advocate next submitted that, the inquiries conducted by the previous inquiry committees were defective and questionable and based on those flawed findings of investigation the decision was made to remove the Petitioner from service. As such, the same is liable to be declared to have been made without lawful authority and is of no legal effect.

He also submitted that, the previous Inquiry Committees miserably failed to take into account the fact that the belated submission of the report by the petitioner did not create any complexity whatsoever in relation to the issue of Generator supply. Without considering this aspect, the Inquiry Committee recommended taking action against him, which rendered both inquiries as defective and questionable and based on those flawed findings of investigation,

the petitioner was removed from service. As such, the same is liable to be declared to have been done without any unlawful authority.

Learned Advocate further submitted that, the previous inquiry committees failed to consider that it was the then Managing Director Mr. Abdus Sabur, who approved the revised FAT (Factory Assessment Test) knowing that the Generators will be supplied from ABB's Shanghai plant and the FAT for Generators shall be arranged in Shanghai. As the petitioner had no approving authority, and the then Managing Director, being his superior authority, was completely aware and responsible for creating such complexity and could not evade his responsibilities by shifting the burden/blame to the Petitioner, who is not in any way accountable for these. As such, his removal from service is liable to be declared to have been made without any lawful basis.

Mr. Khan also submitted that, both the inquiry committees previously formed by the Respondent No. 3 have miserably failed to take into account the fact that the petitioner at the earliest opportunity, incorporated the issue in the agenda of 88th Board Meeting dated 18.04.2019. Having no approving authority, he merely presented the issue for decision and guidance from his superior authority as soon as he identified the deviation of contract terms by the EPC Contractor. However, without considering this aspect, the inquiry committees recommended to take action against the petitioner. Based on those flawed findings of investigation the decision was made to remove the petitioner from service. As such, the same is liable to be declared to have been made without lawful authority and is of no legal effect.

He further submitted that, the previous inquiry committees miserably failed to take into account of the fact that the EPC Contractor was in gross violation of the Tender Agreement and failed to obtain prior approval from the Respondent No. 3 before deciding to procure/supply the Generators from Shanghai, China instead of Switzerland. Despite that the inquiry committees in their reports neither assessed this aspect nor recommended any sanction against the EPC Contractor, instead they most illegally and arbitrarily implicated the Petitioner and made him solely accountable and liable and recommended to take action against him. These circumstances render both inquiries as defective and questionable and based on those flawed findings of investigation the Petitioner was illegally removed from service.

Mr. Khan submitted that, the actions of the Respondent No. 3 in removing the petitioner from service was biased, unfair and ill-motivated in order to provide illegal and unlawful advantages to the EPC Contractors. Such action on the part of the respondents clearly demonstrates their ulterior motive to benefit the EPC Contractor by making the petitioner a scapegoat.

His next submission is that, the actions of the Respondents in removing the Petitioner from service on account of negligence, inefficiency and misconduct is self-contradictory with their subsequent action of accepting the proposal of the EPC Contractor for procurement/supply of China-originated generators instead of Swiss and as such the impugned order of removal is liable to be set aside.

Mr. Khan argued that, the inquiry committee, (consisting of an Additional Secretary as Convener) as formed by Respondent No. 1 to conduct further inquiry, has neither conducted any inquiry nor submitted any report whatsoever. The said Committee, in complete ignorance of the due process of Service Rules of 2016, recommended to take actions against the Petitioner in accordance with the Employees' Service Rules 2016 on the basis of the earlier findings. Such actions by the Inquiry Committee raise a serious question about the investigation's legitimacy and a clear demonstration of the malice on part of the Inquiry Committee.

He also argued that, as per the Employees' Service Rules-2016 of the Company there is no provision for an OSD. Despite that, the Petitioner vide an Office Order dated 01.09.2019 was discharged from his position as Project Director and was made OSD with immediate effect. Such action on the part of the Respondent No. 3 is ultra vires and establishes the mala fide of the respondents.

He lastly submitted that, as per Rule 7.7 (d) of the said Service Rules, the departmental proceeding shall have to be completed within 04 months from the date of framing charge against an employee. However, in the instant case, the initial proceeding was commenced against the Petitioner on 01.09.2019 when he was discharged from his position as Project Director and made OSD with immediate effect. Thereafter on 23.06.2020, the Petitioner was removed from service by the Respondent No. 3 vide its impugned Memo dated 23.06.2020. Evidently, the entire Inquiry Proceeding took more than 09 (nine) months, which is a clear violation of the aforesaid provision of law.

Such actions on the part of the respondents are not only illegal but also violate the fundamental rights of the Petitioner as guaranteed under Articles 31, 40 and 44 of the Constitution and hence the Rule is liable to be made absolute.

In support of his submission learned Advocate for the petitioner has referred to a number of decisions, which are as follows: ***M. A. Hai vs. Trading Corporation of Bangladesh*** reported in **32 DLR (AD) 46**, ***Ayub Ali Chowdhury vs. Government of Bangladesh and others*** reported in **57 DLR (2005) 578**, ***Director General, Bangladesh Agricultural Research Institute (BARI), Joydebpur, Gazipur vs. Md. Mustafizur Rahman*** reported in **XX ADC (2023) 857**. In these cases the punishment imposed upon the employees were found to be not in accordance with law inasmuch as the departmental proceedings were conducted without giving the employees an opportunity to cross examine the witnesses. In the instant case as well no opportunity was given to the petitioner to cross examine the witnesses during the course of the departmental proceeding.

Learned Advocate also referred to the cases of ***Muhammad Mohsin Siddiqi vs. Government of West Pakistan*** reported in **16 DLR (SC) (1994) 151**, ***Chairman Rural Electrification Board vs. Maziruddin Ahmed Khan and others*** reported in **70 DLR (AD) (2018) 151**, ***Tilak Chand Magatram Obhan vs. Kamala Prasad Shukla*** reported in **1995 SCC Suppl (1) 21**, ***Mohd. Yunus Khan vs. State of Uttar Pradesh and others*** reported in **(2010) 10 SCC 539**. In these cases it was held that, no man shall be judge of his own cause, which is the first rule of natural justice and that the superior courts

will not tolerate conditions in which official can be made prosecutors, judge and punishing authority when they themselves are the complainants, merely on the ground that the power of removal is vested in them as appointing authorities under the Rules. In the instant case the departmental proceeding against the petitioner was initiated at the instance of the then Managing Director Mr. Abdus Sabur and he remained present in all the Board meetings in which the order of removal of the petitioner was approved, thereby influenced in arriving at that decision.

Learned Advocate further referred to the case of ***Chairman, Rural Electrification Board vs. S.M. Sanoar Hossain and others*** reported in ***27 ALR (AD) 143*** and ***Rezaul Haque vs. Government of Bangladesh and others*** reported in ***15 BLC (2010) 572*** wherein it was held that, the principle of natural justice demands that authority concerned is required to evaluate/assess the reply judiciously and then take a decision. In the instant case the appellate authority failed to consider the specific allegations raised by the petitioner as to the functioning of the departmental proceeding.

Conversely, learned Senior Advocate Mr. K. S. Salah Uddin Ahmed, entered appearance on behalf of respondent No. 3 and vehemently contested the Rule by filing an affidavit in opposition.

The case of the Respondent No. 3 as narrated in the affidavit in opposition, in brief is that, B-R Powergen Limited entered into a contract on 04.02.2018 with the SYNOHYDRO China for construction of 150 Mega Watt power station. The petitioner, who

was the Project Director, along with another person, a representative of the Ministry, was sent to Germany for participating in the Factory Accepting Test (FAT) of the Engine. As per government order he was supposed to file report within 07 (Seven) days but he filed report after 06 (six) months on 30.06.2019. The writ petitioner remained silent regarding the generator issue of the said power station after returning to Bangladesh on 12.12.2018. In the meantime the former Managing Director namely Md. Absus Sabur left the company on 07.04.2019 and on the same day at 1.45 p.m. the petitioner moved file before new M.D. on 08.04.2019 for taking decision on origin of Generator, who took decision for placing the matter before the Board on 18.04.2019. On 16.04.2019 the petitioner recommended the origin of Generator from Shanghai, China, whereas he himself earlier on 20.02.2019 asked the contractor that the Generator will be from Switzerland. This was detected as the previous M.D. Md. Abdus Sabur was present in the Board meeting as a Director representing REB and RPCL. He strongly objected on this and only then the Board created a fact finding preliminary committee which submitted report on 31.07.2019.

Subsequently, a second fact finding preliminary enquiry was held by the Ministry, which submitted report on 04.02.2020 recommending to initiate departmental proceeding against the petitioner. In the meantime, the company started departmental proceeding as per the decision taken in the 97th Board meeting in accordance with Service Rules-2016. Accordingly, proceeding was conducted following the provisions of the service Rules. Finally, the authority removed the petitioner from service on 23.06.2020. Against the order of removal the petitioner preferred Appeal before the

concerned authority, which was rejected and the petitioner was notified of the rejection on 05.08.2020. Thereafter the petitioner prayed for his service benefits on 02.01.2024 and the authority accordingly disbursed the same.

At the very outset, learned Advocate submitted that the instant writ petition is not maintainable due to the fact that, the respondent no. 3 i.e. B-R Powergen Company Limited is not a statutory authority in order to bring it within the ambit of Article 102 of the Constitution of Bangladesh. The relationship between the petitioner and the company being as that of a master and servant, no action for removal would lie either in civil court or under the writ jurisdiction.

Mr. Ahmed submitted that, the impugned order of removal was taken upon following the provisions of Service Rules-2016 and the principle of natural justice has been fully complied with in the present case.

He submitted that, after being removed from the service and the appeal being rejected, the petitioner did not challenge the order of removal before any court of law and thereby accepted the said removal. Moreover, he has already received all the service benefits from the respondent no. 3 company. Furthermore, after accepting removal and taking all the benefits from the company the petitioner cannot challenge the said removal by filing an application to the concerned Ministry wherein no allegation has been made against the fascist government. Therefore, filing of the instant writ petition after an inordinate delay of 04 (four) years renders the writ petition as not maintainable.

In support of his submission learned Advocate relied on the decision reported in ***AIR 1970 (SC) 470*** wherein it was held that, “...*But there is a limit to the time which can be considered reasonable for making representations. If the Government has turned down one representation, the making of another representation on similar lines would not enable the petitioners to explain the delay.*”

Mr. Ahmed next submitted that, as per Service Rules the job of the petitioner was always contractual, which is admitted by the petitioner himself in the writ petition and also proved by the documents filed by the respondent by way of affidavit in opposition. As such the relationship of master-servant rule shall prevail in the instant case and the prayer for reinstatement by the writ petitioner is absolutely misconceived and beyond any lawful scope.

In support of his submission learned Advocate for the respondent No. 3 has referred to the case of ***Messers Malik & Haq and another vs. Muhammad Shamsul Islam Chowdhury and two others*** reported in ***13 DLR (SC) 228, New Dacca Industries Limited vs. Quamrul Huda and others*** reported in ***31 DLR (AD) 234, Rupali Bank Limited vs. Md. Arab Ali and others*** reported in ***7 BLC (AD) 1, Abul Khair (Md) vs. Pubali Bank Limited and another*** reported in ***53 DLR (AD) 62*** and ***Dipak Chandra vs. Selestin Resel and others*** reported in ***2 BLC 391***.

We have heard the learned Advocates for the respective parties and perused the writ petition, affidavit in opposition, supplementary affidavits, affidavit in reply thereto and as well as all the annexures annexed therewith.

In the above backdrop of the case the following issues fall for determination:

Issues:

1. Whether writ petition is maintainable against the B-R Powergen Company Limited, the respondent no. 3.
2. Whether this writ petition can be entertained after all these years when the matter has been finally decided and the petitioner received all the service benefits.
3. Whether the impugned memo dated 10.08.2025 issued by the respondent no. 3 containing the decision of refusal of reinstatement of the petitioner has been issued in accordance with law.
4. Whether the original removal and rejection of appeal was done in accordance with law.
5. Since the service of the petitioner was contractual, is there any scope of reinstatement of the petitioner in service as per the Service Rules-2016.

Issue no. 1

At the very beginning question of maintainability of this writ petition has been agitated by the learned Advocate for the respondent no. 3 as to whether a writ petition against the B-R Powergen Limited (BRPL), a Public Limited Company, is maintainable or not.

Admittedly, BRPL is a Government owned Power Generation Company in the country. 63.4310% of the total shares of BRPL are owned by Power Division, Ministry of Power, Energy and Mineral Resources, 18.2845% shares are owned by Bangladesh Power

Development Board (BPDB) and remaining 18.2845% shares are owned by Rural Power Company Limited (RPCL). Though it is a registered company, Government holds the majority shares and plays the supervisory role over the company. The online Government's official BRPL profile itself describes BRPL as a "সরকারি বিদ্যুৎ উৎপাদনকারী প্রতিষ্ঠান" (government power-generating organization).

The fact that B-R Powergen Limited is incorporated as a company under the Companies Act, 1994 does not, by itself, place it outside the writ jurisdiction of the High Court Division. This company is wholly owned by the Government and Government-controlled entities and operates as a Government power-generating enterprise, which was established as part of the Government's power-sector development programme, and performs functions having a public character. Hence, it is to be regarded as a public body/person performing functions in connection with the affairs of the Republic within the meaning of Article 102 of the Constitution.

Learned Advocate for the Respondent referred the case of ***New Dacca Industries Limited Vs. Quamrul Huda and others*** reported in ***31 DLR (AD) 234*** wherein Appellate Division held that, *"It is true the Government after nationalization of Company under P.O.27 of 1972 assumed by over-riding powers as the sole share-holder. The setting up of Bangladesh Jute Mills Corporation having same controlling power over nationalized company did not destroy the corporate character of the company and hence the relationship between the employee and the company continued, as before, as that of a master and servant. Therefore, no action for dismissal would lie either in*

civil court or under the writ jurisdiction under Article 102 before the High Court Division.”

However, this decision of the Appellate Division has subsequently been overruled by the Appellate Division itself in other cases. In subsequent cases Appellate Division developed the principle that where a nationalized company is completely controlled by the Government/Corporation, lacks autonomy, and has no independent will, its separate corporate character may be regarded as submerged and writ petition was found to be maintainable (***Musharraf Hossain Chowdhury vs. Titas Gas Transmission and Distribution Limited*** reported in **33 DLR (AD) 186**). This latest principle has been considered by both the Divisions ever since. For example, in the case of ***Md. Arif Sultan vs. DESA*** reported in **60 DLR (2008) 431** and ***Md. Mahbubur Rahman vs. Teletalk Bangladesh Limited*** reported in **66 DLR (2014) 615** both authorities were considered and ultimately the principle laid down in the ‘*Musharraf Hossain*’ case was followed, rather than the principle of the case of ‘New Dacca Industries’ referred by the learned Advocate for the respondent no. 3.

Hence, we find that, an action or decision of BRPL involving public law elements, violation of fundamental rights, statutory illegality, lack of jurisdiction, mala fide exercise of power or breach of natural justice shall be amenable to judicial review. Accordingly, the writ petition is maintainable against B-R Powergen Limited.

Issue no. 2:

Admittedly, the petitioner did not seek any further relief after the appeal was rejected and ultimately withdrew all his financial

benefits from the service after the removal. The question that has now arisen is, whether a matter that had attained finality can be reopened after a lapse of more than four years by taking advantage of the change in the political regime following the revolution in 2024.

It transpires from the record that, in the changed circumstances, the petitioner made a representation on 18.09.2024 before the Senior Secretary, Power Division, Ministry of Power, Energy and Mineral Resources, praying for his reinstatement in service on the ground that he had been a victim of the fierce rage of the former Managing Director of the company. In the said representation, he categorically stated, inter alia, that several committees had been formed, but none could establish any specific allegation against him; nevertheless, he was removed from service with the sole intention of protecting those who were involved in corruption with the EPC contractor. He further stated that during his 23 (twenty-three) years of service, he had never received any show-cause notice or warning, nor had he ever been accused of any misconduct (Annexure-R).

The Ministry acknowledged his grievance, and by Memo dated 13 November 2024 (Annexure-S), the Deputy Secretary of the Power Division of the concerned Ministry forwarded the matter to the Managing Director of B-R Powergen Limited with a specific direction to scrutinize the matter and ascertain whether, after his final removal from service, there remained any scope for his reinstatement under the service rules. For better understanding the memo is reproduced below:

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
বিদ্যুৎ, জ্বালানি ও খনিজ সম্পদ মন্ত্রণালয়।
বিদ্যুৎ বিভাগ
কোম্পানি অ্যাফেয়ার্স-২ অধিশাখা
www.powerdivision.gov.bd

স্মারক নম্বর- ২৭.০০.০০০০.০৮৯.২৭.০০৯.১৯.৩১৭

তারিখ: ২৮ কার্তিক ১৪৩১
১৩ নভেম্বর ২০২৪

বিষয়: বি-আর পাওয়ারজেন লি. (বিআরপিএল)-এর সাবেক ব্যবস্থাপনা পরিচালক-এর রোযানল/বৈষ্যমের শিকার হয়ে জনাব মোঃ মাহবুব কবির, প্রধান প্রকৌশলী (অপসারিত) চাকরি ফেরত প্রদানের জন্য আবেদন।

সূত্র: জনাব মোঃ মাহবুব কবির, প্রধান প্রকৌশলী (অপসারিত) বিআরপিএল হতে প্রাপ্ত আবেদন। তারিখ: ১৮-০৯-২০২৪

উপর্যুক্ত বিষয় ও সূত্রের পরিপ্রেক্ষিতে বি-আর পাওয়ারজেন লি. (বিআরপিএল)-এর সাবেক ব্যবস্থাপনা পরিচালক-এর রোযানল/বৈষ্যমের শিকার হয়ে জনাব মোঃ মাহবুব কবির, প্রধান প্রকৌশলী (অপসারিত) চাকরি ফেরত প্রদানের আবেদন এতদসঙ্গে সংযুক্ত করা হলো। বিআরপিএল-এর প্রধান প্রকৌশলী (অপসারিত) জনাব মোঃ মাহবুব কবির-কে চাকরি হতে চূড়ান্তভাবে অপসারণ করার পরে তার হারানো চাকুরি ফেরত পাওয়ার আবেদনটি কোম্পানির সার্ভিস রুলস অনুযায়ী যাচাই-বাছাই করে দেখার জন্য নির্দেশক্রমে অনুরোধ করা হলো।

সংযুক্তি: বর্ণনামতে।

স্বাঃ
(ফারজানা খানম)
উপসচিব
ফোন: ৯৫১১০৫১
ই-মেইল: c.affairs-2@pd.gov.bd

We find that, by this direction, the Ministry did not merely ask for a mechanical scrutiny of the service rules; rather, its objective was to examine the entire process of removal. Since the Ministry itself reopened the matter at its instance after all these years, taking into consideration the gravity of the allegations, there appears to be no impediment in filing this writ petition against the very recent decision of BPRL on the basis thereof. In the given circumstances, the objection of inordinate delay cannot be considered in isolation from the subsequent events and, in particular, from the Ministry's own decision to entertain the grievance and direct reconsideration of the matter. The present writ petition is not founded merely upon the

original order of removal passed years ago; rather, it principally challenges the subsequent decision taken pursuant to the Ministry's direction in November 2024. The latter decision constitutes a fresh and immediate cause of action.

Issue no. 3:

Since the latest decision of the respondent no. 3 refusing reinstatement of the petitioner contained in the memo dated 10.08.2025 (Annexure-T to the writ petition) is also under challenge in this writ petition, it is now incumbent upon us to decide whether the BRPL has acted with fairness and in accordance with law in taking the impugned decision rejecting any possibility of reinstating the petitioner in his service.

Being directed by the Ministry of Power, Energy and Mineral Resources a three-member committee was formed on 06.01.2025 by the respondent no. 3 company comprising one Executive Director, one Chief Engineer and one Deputy General Manager of the company. The committee upon thorough examination of the materials on record submitted a detailed report on 13.03.2025 containing 56 (fifty six) pages before the Managing Director of the BRPL. In this report the committee found significant irregularities in the removal process of the petitioner. It was also stated in the report that, the complexities regarding the generator issue have finally been resolved by imposing conditions upon the EPC contractor that 6% of the contract price for the generator will be curtailed, FAT witness to be done by one company representative and another independent representative and one year extra warranty shall be provided by the contractor etc.

It is noteworthy that, though the committee submitted a detailed report, they did not come up with any opinion or decision in order to meet the direction by the Ministry regarding reinstatement of the petitioner.

On receiving this report, as per the decision of the Board in its 184th meeting dated 15.05.2025, the Managing Director (Additional Charge) of BRPL by the memo dated 24.05.2025 (Annexure-XX to the second supplementary affidavit in opposition dated 16.7.2026) directed the committee to submit another report in accordance with the 'terms of reference' within seven days and the members of the committees were also asked to show cause for submitting report without authority and beyond the direction.

Accordingly, by making individual explanation dated 02.06.2025 the members of the committee prayed for apology for submitting the report without authority and beyond the direction since they failed to realize the same and submitted another report on the same day. Surprisingly, this subsequent report containing 8 (eight) pages did not assert a single word as to the irregularities committed in the removal making process as had mentioned in the earlier report. They merely submitted statement of facts which led to the removal of the petitioner from service. Thereafter by the impugned decision taken in the 189th Board meeting, it was decided to communicate the concerned Power Division of the Ministry that there is no scope in the service law to reinstate the petitioner.

The manner in which the matter was subsequently dealt with by the Board raises a serious question. Pursuant to the direction of the

Ministry, the committee initially scrutinized the matter and submitted its report wherein it found massive irregularities and anomalies in the inquiry proceeding which had culminated in the order of removal of the petitioner. Although the committee did not express any opinion as to whether in view of such irregularities the Service Rules permitted reinstatement of the petitioner, the proper course for the Board, if it had considered the report as incomplete one, was to require the committee to address the specific question for which the matter had been referred to it. Instead, the Board treated the report as having been submitted without lawful authority and beyond the terms of reference but the Board did not stop there; it issued show cause notices to the members of the committee. Thereafter, upon receiving their apology, a fresh report was obtained from them in which, significantly, no finding regarding the irregularities earlier noticed by the committee was retained and the procedure adopted by the authority was stated to have been duly followed.

The subsequent acceptance of the latter report by the Board, without addressing or even disclosing to the Ministry the material findings contained in the earlier report, raises a serious question as to the fairness and objectivity of the decision making process. The Board was not at liberty to disregard material which was directly relevant to the very question under consideration merely because the earlier findings were not to its liking. The course adopted by the Board, particularly by issuance of show cause notice to the members followed by their apology and the circumstances in which the second report was prepared omitting the material findings contained in the

earlier report, further call for careful scrutiny of the decision making process. In the circumstances, the subsequent report cannot, without further examination of the material findings contained in the earlier report, be treated as a sufficient basis for rejecting the petitioner's claim for reinstatement.

Furthermore, the conclusion communicated to the Ministry that there was no scope for reinstatement under the Service Rules does not appear to have been preceded by the meaningful examination of the relevant provisions of the said rules. The decision does not disclose which provision of the Service Rules excludes reinstatements in the circumstances of the case nor does it address the effect. The impugned decision, therefore suffers not only from non-consideration of relevant materials but also from non-application of mind to the precise question which the Ministry had required the company to examine.

Hence, we find that the impugned decision contained in the memo dated 10.08.2025 (Annexure-T to the writ petition and also as Annexure-BB to the application for issuance of supplementary Rule) refusing to consider reinstatement of the petitioner has been done without any lawful authority.

Issue No. 4:

It is also incumbent upon us to decide whether the original removal order and rejection of appeal was in accordance with law.

Upon meticulous perusal of the record, we find that it is the specific case of the petitioner that he had informed the then Managing Director, Mr. Md. Abdus Sabur, about the matter in question regarding generator issue. Conversely, Mr. Md. Abdus Sabur denied

having received such information and sought to place the blame upon the petitioner. It further appears that Mr. Sabur submitted a written statement before the Inquiry Committee. In fact, the Inquiry Committee obtained written statements from all the witnesses. As a result, the petitioner was deprived of the opportunity to cross-examine those witnesses. In the facts and circumstances of the case, particularly when the petitioner's case and the statement of Mr. Sabur were clearly contradictory to each other, the lack of scope to cross-examine the witnesses deprived the petitioner of a reasonable opportunity to test the evidence relied upon against him and thereby caused prejudice to him.

It also appears that Mr. Sabur, being the principal complainant against the petitioner, remained present at all the meetings of the Board wherein decisions adverse to the petitioner were taken. Such participation in the decision making process, in the backdrop of the conflicting positions taken by him and the petitioner raises a serious question as to the fairness and impartiality of the decision-making process.

Having regard to the decisions referred to by the learned Advocate for the petitioner, we find substance in the contention that the earlier inquiry proceeding was not conducted in accordance with law. Consequently, the order of removal from service imposed upon the petitioner on the basis of the report submitted by the Inquiry Committee cannot be sustained in the eye of law.

Regarding the dismissal of appeal, it appears from the record that, the petitioner was removed from service on 23.6.2020

(Annexure-P) on the allegation of creating complexity in supplying generator for the Mirshorai 150 Mega Wattpower plant project as its project director under rule 7.4 (a) (iv) having been found guilty according to Rule 7.3 (a) (b) and (c) of the 'B-R Powergen Limited Employees' Service Rules-2016', which are, negligence, inefficiency and misconduct. He preferred an appeal to the Chairman of B-R Powergen Limited on 14.07.2020 with some specific allegations as to the inquiry proceeding on the basis of which the penalty was imposed upon him and also prayed for reinstatement in service. As per the provision of Rule 7.10 (e) of the Service Rules-2016, "The appellate authority shall examine-

- i. Whether the facts on which the order of penalty is based have been established; and
- ii. Whether the penalty is adequate, inadequate or excessive and after such examination shall pass such order as it considers proper."

In the present case we find that the appeal was disposed of on 05.08.2020 upholding the penalty on the ground that the procedure of the Employees' Service Rules was properly followed in imposing punishment upon him, as such the order of removal was appropriate and there is no scope to consider the appeal. The appellate authority did not at all consider or controvert the specific allegations pointed out by the petitioner in his application and failed to dispose of the appeal in the light of the specific provision of the Service Rules. Hence, we find rejection of the appeal upholding the initial punishment was unlawful.

Issue No. 5:

It is the submission of the learned Advocate for respondent No. 3 that the service of the petitioner was contractual in nature and the last tenure of contract period having expired on 05.04.2021, thus there is no scope for reinstatement in service.

Upon consideration of the relevant provisions of the respondent no. 3 Company's Employees' Service Rules-2016 we find that in the definition clause an '**Employee**' has been defined as "an officer or staff employed on a contractual basis in the approved post of the Company." It is, therefore, apparent that employments under this company are generally contractual in nature. In **Rule 2.4.2** it has been provided that, "After successful completion of the period of probation including the extended period (if any), the incumbent will be appointed in the permanent post for contractual basis." It is thus apparent that, in this company the permanent posts are also being held on a contractual basis. Admittedly the petitioner's service was confirmed on a contractual basis. According to **Rule 4.5** of the Service Rules-2016, "The appointment/contract may be reviewed at the end of each contract by the competent authority. Service contract may be extended for 03 (three) years on the basis of satisfactory service record, result and average performance appraisal rating minimum 60% (sixty percent) in the last 03(three) consecutive years of the employee." Following this provision, the petitioner's service was extended from time to time.

Rule 7.4. (b) of the Service Rules provides that, "Removal from service does not, but dismissal from service does, disqualify from

future employment in the Company.” **Rule 7.11** provides the procedure in case of reinstatement in service. The petitioner having been removed from service, there is scope for his reinstatement. Hence, we are unable to accept the argument placed by the learned Advocate for the respondent no. 3 that, petitioner’s service being contractual in nature, there is no scope for reinstatement.

We have already seen that the last tenure of the petitioner’s contract had expired on 05.04.2021 but he was removed from service within the tenure i.e. on 23.06.2020. On every earlier occasion his service contract was regularly extended by the company. In the given circumstances we therefore find no substance in the contention that the contractual nature of the petitioner’s service, or the subsequent expiry of his last contractual tenure, by itself operates as a bar to the relief sought by him. Since we have found the removal to be illegal, the respondent no. 3 has no bar to reinstate the petitioner in his service as per the provision of the Service Rules-2016. It also appears from the record that the petitioner has not attained the age of retirement yet.

In view of the facts and circumstances of the present case and upon the discussion made hereinabove we find merit in the Rule.

In the result, the Rule is made absolute.

The impugned order of removal dated 23.06.2020, the order of rejection of the appeal dated 05.08.2020, and the impugned decision contained in the memo dated 10.08.2025 refusing to consider the petitioner’s reinstatement are hereby set aside. The respondent Nos. 2 and 3 are further directed to reinstate the petitioner in his service.

However, there will be no order as to cost.

Communicate a copy of the judgment and order at once.

Sashanka Shekhar Sarkar, J:

I agree.

Helal/ABO