

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

WRIT PETITION NO. 14571 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. Abu Hanif and others

.....Petitioners

-VERSUS-

Government of Bangladesh, represented by the
Secretary, Ministry of Education and others

..... Respondents

Mr. Md. Ataur Rahman, Advocate

..... For the Petitioners

Mr. Mohammad Waliul Islam Oli, D.A.G with

Mr. Mohammad Rashadul Hassan, D.A.G,

Ms. Nilufar Yesmin, A.A.G,

Mr. Md. Moshir Rahman (Rahat), A.A.G,

Mr. Md. Motasin Billah Parvez, A.A.G and

Mr. Bishwanath Karmaker, A.A.G

.....For the Respondents

Present:

Mr. Justice Sashanka Shekhar Sarkar

And

Justice Urmee Rahman

Heard on 21.06.2026 and 24.06.2026

Judgment on 30.06.2026

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 non inclusion of the petitioners’ name in monthly pay order (MPO) list upon rejection of the petitioners’ applications dated 24.09.2024 (Annexure-F to F-3) being Docket No.20241095857 dated 09.10.2024, Docket No. 20241011171 dated 11.10.2024, Docket No. 20241011222 dated 11.10.2024 and Docket No. 20241011182 dated 11.10.2024 respectively, even filed for including their names in the Roll of the Monthly Pay Order (MPO) (Annexure-G) shall not be declared to have been passed without lawful authority and is of no legal effect and why the respondents shall not be directed to include the petitioners’ names in the Roll of the Monthly Pay Order (MPO) with effect from October, 2024 and onwards and/or pass such other or further order or orders as to this Court may seem fit and proper.”

Relevant facts necessary for disposal of the instant Rule, in short, are that, after participating in a competitive examination the petitioners were appointed on 29.12.2015 in Rosey Mozammel Women’s College, Gurudaspur, Natore as Lecturers in the Departments of Economics, Psychology, English and Social Welfare respectively and they joined in the respective posts on 30.12.2015. They were given appointment following the provisions of জাতীয় বিশ্ববিদ্যালয়ের অধিভুক্ত বেসরকারী কলেজ শিক্ষকদের চাকুরীর শর্তাবলী রেগুলেশন (সংশোধিত) ২০১৫ since the College is a Non-government Degree College affiliated with the National University of Bangladesh.

At the time of appointment, the college was not under the government MPO scheme. On 19.04.2020 petitioners’ college was

enlisted in the MPO. On 29.08.2024 the government decided to include the names of the 3rd teachers, who were appointed on or before 31.12.2016, in the roll of MPO. Accordingly, the Principal of the College, on behalf of the petitioners, forwarded the applications dated 09.10.2024 and 11.10.2024 providing information of the petitioners for the purpose of including their names in the Monthly Pay Order. The applications were forwarded through the respondent No. 3 i.e. the Director, Directorate of Secondary and Higher Education, Rajshahi Region, Rajshahi.

Petitioners' applications for enlistment in the MPO were rejected by the respondents via online. MPO for the month of November, 2024 was issued without including the names of the petitioners on the ground that, they did not have NTRCA certificates. After rejection of the applications, petitioners made representations on 12.01.2025 before the respondent No. 1 praying for inclusion of their names in the MPO, which was received on 13.01.2025 but no response was made. On 26.08.2025 the petitioners through their lawyer sent a Demand Justice Notice upon the respondents but without any result till date.

Finding no other alternative and equally efficacious remedy available, the petitioners have filed the instant writ petition and obtained the Rule.

Learned Advocate Mr. Md. Ataur Rahman, appeared on behalf of the petitioners. Mr. Rahman submitted that, the petitioners were duly appointed on 29.12.2015 as 3rd teachers in the Degree (Pass) level of the College following the provisions of জাতীয় বিশ্ববিদ্যালয়-র অধিভুক্ত বেসরকারী কলেজ

শিক্ষক-দর চাকুরীর শর্তাবলী রেগুলেশন (সংশোধিত) ২০১৫. In this Regulation there is no condition for obtaining NTRCA certificate in order to be appointed in the non-government colleges. In the memo dated 29.08.2024 issued by the Directorate of Secondary and Higher Education there was no precondition to obtain NTRCA certificates for including the names of 3rd teachers in the roll of MPO, who were appointed on or before 31.12.2016. Thus, the impugned order of rejection of petitioners' applications on the ground of lack of NTRCA certificate is illegal, arbitrary and mala fide and as such the same is liable to be declared to have been done without lawful authority.

Learned Advocate next submitted that, the requirement of NTRCA certificates has been incorporated in 2019 by the National University Affiliated Non-Government College Teachers' Service Condition Regulation, 2019, which came into effect subsequent to the appointment of the petitioners, and the examination for NTRCA certificate for Degree (Pass) teachers was taken for the first time in the year, 2018. It is settled principle of law that the appointing authority has right to amend/alter the service rules to suit the need of time but not to the detriment of the rights or privileges that existed at the relevant time when an employee of such appointing authority entered into the service. The impugned order of rejection of petitioners' application for enlistment in the MPO on the ground of lack of NTRCA certificate is therefore liable to be declared to have been passed without lawful authority and is of no legal effect.

He finally submitted that, the respondents have exercised their power arbitrarily and capriciously and ignoring to do what they are legally bound to do and as such the respondents may kindly be directed to include the petitioners' names in the roll of Monthly Pay Order (MPO) with all arrears from October, 2024 and onwards upon making the Rule absolute.

Conversely Mr. Mohammad Rashadul Hassan, the learned Deputy Attorney General contested the Rule on behalf of the respondents, however, without filing an affidavit in opposition.

Learned Deputy Attorney General submitted that, granting MPO to any institution or any teachers of the institution is a matter of government policy decision and by this time it has been settled by the Apex Court that the Court should not interfere with the decision of the executive regarding policy matters and therefore, the instant Rule having no merit is liable to be discharged.

Learned Deputy Attorney General further submitted that, in the staff pattern there is no provision for the post of the 3rd teachers. Hence, the petitioners are not entitled to be included in the MPO and as such the authority rightly rejected their applications and therefore no illegality having been committed by the authority, the instant Rule is liable to be discharged.

We have heard the learned Advocates for the petitioners as well as for the respondents and perused the writ petition and all the documents annexed as Annexures therewith.

It appears from (Annexure-E-3) to the writ petition that pursuant to an appointment circular published in the newspaper on 15.09.2015 the petitioners, having the required qualification, applied for the post of 3rd teachers (extra teachers) in the relevant subjects. According to the জাতীয় বিশ্ববিদ্যালয়ের অধিভুক্ত বেসরকারী কলেজ শিক্ষকদের চাকুরীর শর্তাবলী রেগুলেশন (সংশোধিত) ২০১৫ Rule 8(ঙ) the required qualification to be appointed in that post is:

“৪। শিক্ষক পদে নিয়োগের যোগ্যতা ও অভিজ্ঞতা:

(ঙ)(১) দ্বিতীয় শ্রেণীর (স্নাতক পাস/স্নাতক সন্মান) ডিগ্রীসহ দ্বিতীয় শ্রেণীর স্নাতকোত্তর ডিগ্রী/ স্নাতক সন্মান ডিগ্রীসহ স্নাতকোত্তর ডিগ্রীপ্রাপ্তদের জন্য অগ্রাধিকার থাকিবে। শিক্ষা জীবন-এর কোন পর্যায়েই তৃতীয় শ্রেণী/বিভাগ গ্রহণ-যোগ্য হই-বনা।”

On perusal of the documents annexed with the writ petition we find that, all the petitioners had the required qualifications at the time when they applied to be appointed for the respective posts as lecturer of the College. Accordingly, they took part in the competitive examination and finally they were given appointment by the College Governing Body on 29.12.2015.

It is to be noted that, at the time, when the petitioners were appointed, their College was not under the MPO scheme of the government. Subsequently, on 19.04.2020 the College was brought under the MPO scheme along with 51(fifty-one) other non-government Colleges around the country.

On 12.06.2022 (Annexure-F-5) the Directorate of Secondary and Higher Education of Ministry of Education issued a memo from which it transpires that, government had taken the decision to grant MPO to the 3rd

teachers (excess teachers) of the 52 (fifty two) Colleges, which were brought under the MPO scheme on 19.04.2020 and who have been appointed in those Colleges before 31.12.2016. Accordingly, the Ministry decided that the teachers who have been given appointment as 3rd teachers (excess teachers) on the basis of the circulars issued before 30.12.2015 i.e. prior to the circular of the NTRCA dated 30.12.2015 came into effect and were given appointment before 30.12.2016, will be brought under the government MPO scheme. By the circular dated 30.12.2015 the appointment of the teachers was stopped without obtaining recommendation from the NTRCA. With this end in view the Ministry of Education asked for necessary information of those 3rd teachers from the concerned institutions. The relevant portion of the memo dated 12.06.2022 (Annexure-F-5) is reproduced below for the purpose of clarity:

“.....শিক্ষা মন্ত্রণালয়ের সূত্রস্থ পত্র মোতাবেক প্রেরিত পত্রে ৩০.১২.২০১৫ তারিখে জারীকৃত পত্রে এনটিআরসিএ-র সুপারিশ ব্যতিত কোন শিক্ষক নি-য়াগ প্রদান বন্ধ হ-য় যাওয়ার পূ-র্ব জারীকৃত বিজ্ঞপ্তির মাধ্য-ম মন্ত্রণালয়ের শর্ত মোতাবেক ২০১৬ সাল পর্যন্ত নিয়োগকৃত তৃতীয় শিক্ষকদের এমপিও ভুক্তির আবেদন সম্পর্কে তথ্যাদি প্রেরণ করার জন্য শিক্ষা মন্ত্রণালয় হতে অনুরোধ করা হ-য়-ছ।.....”

Following that memo, the Directorate of Secondary and Higher Education issued another memo (Annexure-F-4) on 29.08.2024, enclosing a list of as many as 726 teachers, who were appointment as 3rd teachers before 30.12.2016 and this list was sent to the respective institutions for submitting the required documents for the purpose of granting MPO to them and the present petitioners before us were in serial No. 33, 34, 35

and 36 of that list. On receiving those directions from the Directorate, the Principal of the present petitioners' College by applications dated 24.09.2024 sent the relevant information to the authority with supporting documents in compliance with the memo dated 29.08.2024 for the purpose of granting MPO in favour of the petitioners as evidenced from Annexure-F-2 to F-3. Thereafter, by the impugned online result, the petitioners' applications were rejected stating that; '**NTRCA এর সনদ -নই**'.

We have already seen from the Regulation of 2015 that there was no requirement of submitting or obtaining NTRCA certificate for the teachers, who were given appointment at that time. The requirement for submitting NTRCA certificate for the first time came into effect in the year 2019, which is evident from the Regulation of 2019 (Annexure-H). The relevant provisions of this regulation provides that:

“৪ (ছ)) প্রভাষকঃ

১. দ্বিতীয় শ্রেণির স্নাতক ডিগ্রীসহ দ্বিতীয় বিভাগ/শ্রেণির স্নাতকোত্তর ডিগ্রী/শিক্ষা জীবনের কোন পর্যায়েই তৃতীয় বিভাগ/শ্রেণী গ্রহণযোগ্য হইবেনা। চাকুরীতে প্রথম প্রবেশের সময়সীমা ৩৫ (পঁয়ত্রিশ) বৎসর (নিয়োগ বিজ্ঞপ্তি প্রকাশের তারিখে)। সংশ্লিষ্ট বিষয়ে এনটিআরসিএ-র সনদপ্রাপ্তগণ সৃষ্ট পদে নিয়োগ পরীক্ষায় অংশগ্রহণ করিতে পারিবে।”

Upon meticulous perusal of all other relevant documents annexed to the writ petition we have found that the appointment of the 3rd teachers (excess teachers) in the Degree College were made pursuant to the government decision that, in order to be affiliated under the Government, the Degree Colleges must have as many as three teachers per subject. Accordingly, the appointment circulars were issued in 2015 for

appointment of the 3rd teachers in the respective subjects and government also subsequently took the decision to grant MPO to these 3rd teachers. Therefore, the submission made by the learned Deputy Attorney General that, the posts of 3rd teachers were not available in the staff pattern (জনবলকাঠামো) is devoid of any substance inasmuch as the post of 3rd teachers i.e. excess teachers are recognized by the government. Therefore, there is no confusion or doubt regarding the entitlement of MPO of the 3rd teachers in the Non-government Degree Colleges.

Now the only question to be determined is whether the rejection by the authority was done in accordance with law or not.

We have already observed from the relevant provisions that at the time when the petitioners were appointed there was no requirement for obtaining NTRCA certificate because the requirement came into force for the first time in the year 2019. Therefore, no question for obtaining NTRCA certificate arises so far as the petitioners are concerned.

It is by now has been well settled by the Apex Court that granting MPO is the matter of policy decision and the judiciary is not accepted to make any direction upon the executive for inclusion of their names in the MPO. However, this policy decision of the government is not immune from judicial scrutiny if it is found to have been done without any lawful basis and in an arbitrary or whimsical manner. In those circumstances it requires interference by this Court.

Since we have found that the petitioner's applications were rejected showing the grounds which are not applicable to them, we therefore find that the impugned rejection has been done without any lawful basis and the petitioners are very much lawfully entitled to get the MPO considering that they have fulfilled all the requirements and conditions that has been set forth by the government in the memo as mentioned above.

In view of the facts and circumstances discussed hereinabove, we find merit in the Rule.

Accordingly, the Rule is made absolute.

The respondent No. 1 is hereby directed to include the names of the petitioners in the Roll of Monthly Pay Order (MPO) with effect from November, 2024 and pay all the arrear financial entitlements to them, which they are lawfully entitled to since November, 2024, within 60 (sixty) days from the date of receipt of a copy of this judgment and 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.