

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

Division Bench of:

Mr Justice Bhishmadev Chakrabortty
-And-
Mr Justice Abdur Rahman

WRIT PETITION NO. 6549 of 2011

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. Amir Hossain

.... Petitioner

-versus-

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

.... Respondents

Mr Md. Salauddin Dolen, Senior Counsel with

Mr Md. Tofayel Ahmed, Counsel

....for the petitioner

Mr Akter Rasul, with Ms Dolon Chanpa, Counsel

...for the respondents 2 and 3.

Date of Hearing: 04.05.2026, 07.06.2026 and

08.06.2026 A.D.

Date of Judgment: 02.07.2026 A.D.

Thursday, 18 Ashhar, 1433 B.S.

JUDGMENT:

Abdur Rahman, J:

This *Rule Nisi*, at the instance of the petitioner, 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 of temporary suspension dated 27.10.2009, vide memo No. বাউবি/প্রশ্ন-৪ (৪০২) ০৫/৪২৮৪ (Annexure-I), and order of dismissal dated 22.12.2010 vide memo No. বাউবি/প্রশ্ন-৪ (৪০২) ০৫/৫৩৫৬ (Annexure-O) should not be declared to have been passed without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper."

The core of the facts (*i.e., nucleus factorum*) leading to the issuance of this *Rule Nisi* in brief are that the Bangladesh Open University, which is a statutory body, advertised inviting applications for the post of security

guard, in "The Daily Star" on 23.07.2005, and the present petitioner accordingly applied for the same for one of the security guard posts. The authority conducted his interview for the post on 14.11.2005, and he duly qualified. As such, he was issued an appointment letter on 30.11.2005 and joined the Bangladesh Open University on 04.01.2006, which the University duly accepted on that date.

Thereafter, all of a sudden, Respondent 3 issued a notice to the petitioner on 17.05.2007, making vague, baseless, and false allegations without any reference to any complaint from anyone, and asked the petitioner to show cause within two weeks. The petitioner filed a reply to the show-cause notice.

Thereafter, by office order dated 13.11.2007, respondent 3 issued a notice temporarily suspending the petitioner pursuant to regulation 5 of the 39th meeting of the Board of Governors.

Thereafter, it was found that the Director of the Administration Department (General Administration) was

appointed as an inquiry officer regarding the allegations against the petitioner, and the petitioner filed a written statement before the inquiry officer on 08.01.2008.

Hereinafter, as the petitioner was threatened, he prayed to respondent 3 through applications dated 23.03.2008 and 06.04.2008, and also prayed to the Regional Director, Chittagong, vide application dated 24.03.2008, to transfer him from the Bandarban coordinating office.

Afterwards, upon perusal of the inquiry report, the Bangladesh Open University authority withdrew the petitioner's temporary suspension order, vide office order dated 25.06.2008, as per the decision of the Board of Governors.

Thereafter, the petitioner was transferred from the Bandarban coordinating office to the Pirojpur coordinating office vide office order dated 05.08.2008. The petitioner was released on 14.08.2008 by the coordinating officer, Bandarban, and by the Regional Director, vide two

separate release letters dated 14.08.2008, and the petitioner joined the Pirojpur office.

Thereafter, the petitioner was issued a show cause notice on 13.08.2008 by respondent 3, asking him to show cause as to why action would not be taken against him under Order 38(2) of the Bangladesh Open University Act, 1992, and the petitioner filed a written reply to it on 19.09.2008.

Thereafter, unexpectedly, the petitioner was temporarily suspended on 27.10.2009, and Mr Md. Hemayet Miah, Deputy Administrator, was appointed as an inquiry officer, and a charge of complaint was framed on 27.10.2009. The inquiry officer issued a notice on 04.11.2009, asking the petitioner to appear on 13.11.2009 at the coordinating office in Pirojpur for the inquiry.

Thereafter, the petitioner replied to the charges brought against him vide letter dated 13.11.2009. The petitioner also appeared before the inquiry officer on the date fixed for the inquiry and submitted a written reply, but the inquiry officer neither took nor recorded the

petitioner's statements, nor did he take the deposition of any witness.

Thereafter, the respondents did not supply any copy of the inquiry report to the petitioner, but respondent 3 demanded a final reply from the petitioner, stating that the charges were *prima facie* proved against the petitioner vide his letters dated 27.04.2010 and 20.05.2010.

Thereafter, Mr Md. Abul Kashem Sikder, Joint Director, Information and Public Relations Department of the said University, issued a notice to the petitioner on 08.06.2010 to appear before the coordinating officer, Pirojpur, on 15.06.2010 for an inquiry and to give his statement, both orally and in writing, in response to the allegations.

Thereafter, the petitioner appeared before the inquiry officer on the fixed date and time. He submitted his written reply vide 15.06.2010, but his statements were not recorded, no one's deposition was taken, and no copy of the inquiry report was supplied to the petitioner.

Thereafter, without supplying a copy of the inquiry officer's report, respondent 3 issued an order dismissing the petitioner from his service vide office order dated 22.12.2010, with memo No. বাউবি/প্রশা-৪(৪০২)০৫/৫৩৫৬, and the said dismissal order is the impugned order.

Thereafter, the petitioner filed an appeal before the Honourable Chancellor against the impugned dismissal order on 19.01.2011, as per section 44 of the Bangladesh Open University Act, through respondent 3, but received no reply.

Thereafter, the petitioner, being aggrieved by and dissatisfied with the dismissal order as stated above, invokes this forum. Later, the petitioner filed supplementary affidavits with Annexures, which shall be considered part of the original petition.

Respondents 2 and 3 oppose the Rule by filing an affidavit-in-opposition, contending, inter alia, that the petitioner was appointed as a security guard at the Bangladesh Open University on 04.01.2006, and thereafter, the Co-Ordinating Officer, namely Md. Motiar Rahman

filed two complaints against the petitioner. Pursuant to that, the first show-cause notice was issued on 17.05.2007. The petitioner replied to the same. Since the petitioner's reply was not satisfactory, the petitioner was temporarily suspended on 27.10.2009. The first Inquiry Officer, namely Md. Hemayet Mia was appointed by the Board of Governors, and after proper inquiry, a report was submitted on 24.01.2010, in which the petitioner was found guilty. The report was duly accepted at the meeting of the Board of Governors (BOG). Thereafter, a second and final show-cause notice was issued by the authority on 27.04.2010. A second Inquiry Committee was formed, and after due inquiry, a report was submitted on 15.06.2010, in which the petitioner was again found guilty. The petitioner was then dismissed by the authority.

Mr. Md. Salauddin Dolan, the learned Senior Counsel, assisted by Mr Mohammad Tofayel Ahmed and Ms Amina Akter Lovely, learned Counsels, appearing for the petitioner, submitted that the petitioner was first temporally suspended on 13.11.2007 vide ANNEXURE-"D"

and after inquiry and the cause shown by petitioner his temporary suspension order was withdrawn on 25.06.2008 vide ANNEXURE-"G", but again he was asked to show cause on the plea of said allegation on 13.08.2008 vide ANNEXURE- "I" and he was again temporarily suspended on 27.10.2009 vide ANNEXURE-"J" and ultimately he was dismissed by impugned order on the same allegation and once allegation was not proved and temporary suspension was withdrawn subsequent proceeding and punishment for the same offence is against the provisions of Article 35 (2) of the Constitution of the People's Republic as of Bangladesh and such subsequent proceeding and punishment by impugned order has been done without lawful authority and is of no legal effect.

Learned Counsel has further submitted that the inquiry report was not supply to the petitioner and charge-sheet against petitioner was drawn on 27.10.2009 and petitioner duly appeared before inquiry officers though they did not record his statement and evidences given by petitioner and inquiry officers did not file inquiry report

within statutory three months as per provision of section 38(2) of Bangladesh Open University Act, 1992, as such impugned proceeding and punishment is illegal without jurisdiction and of no legal effect.

Learned Counsel has further submitted that no copy of the inquiry report was supplied to the petitioner, as is evident from ANNEXURE-"M"; that the petitioner was not supplied with the allegations and contents of the inquiry report and proceedings; and that the impugned punishment is against natural justice.

Learned Counsel has further submitted that the charge sheet was framed on 27.10.2009 vide ANNEXURE-"J(2)" and the inquiry officer issued the last notice on 08.06.2010 vide ANNEXURE-"N" to appear before him on 15.06.2010, i.e., after about eight months, which is a clear violation of section 38(2) of the Bangladesh Open University Act.

Learned Counsel has further submitted that there was an inquiry against the petitioner as per law, and the impugned proceeding and punishment are in violation of

the provisions of Articles 27, 31 and 35 of the Constitution of the People's Republic of Bangladesh, and as such, the impugned order of punishment is not legally tenable.

Learned Counsel has further submitted that the impugned order of dismissal of the petitioner from his service is arbitrary, discriminatory, without jurisdiction, a violation of service rules and has been done without lawful authority and is of no legal effect.

Conversely, “Mr. Akter Rasul”, learned Advocate, appearing together with Mr Mohammad Abdul Hamid on behalf of Respondent 3, has strenuously contended that the writ petition is wholly devoid of substance, inasmuch as the alleged cause of action sought to be projected by the petitioner is misleading, misconceived, and founded upon an erroneous appreciation of the factual as well as legal position. It has been submitted that the petitioner has deliberately attempted to create an artificial cause of action by suppressing material facts and by placing the relevant events out of their proper factual and

chronological context. As such, the Rule, having been obtained without any legal basis, is liable to be discharged.

The learned Counsel has further submitted that the petitioner was initially appointed as a Security Guard of the Bangladesh Open University on 04.01.2006. Thereafter, on 31.03.2008, the Co-ordinating Officer of the University, namely Md. Motiar Rahman lodged two separate complaints against the petitioner alleging serious misconduct and dereliction of duty. Acting upon the said complaints, the competent authority initiated departmental proceedings in accordance with the applicable service rules and, in the first instance, issued a show-cause notice dated 13.08.2008 calling upon the petitioner to explain his conduct. The petitioner eventually submitted his written explanation on 19.09.2009. However, upon careful consideration of the explanation so furnished, the authority found the same to be wholly unsatisfactory and insufficient to dispel the allegations levelled against him. Consequently, in the interest of ensuring a fair and unhindered departmental inquiry, the

petitioner was placed under temporary suspension by an order dated 27.10.2009.

It has further been submitted that thereafter the Board of Governors (BOG), being the competent disciplinary authority, on 27.10.2009, appointed Mr Md. Hemayet Mia, as the first Inquiry Officer to conduct a comprehensive inquiry into the allegations brought against the petitioner. The Inquiry Officer, after affording the petitioner due opportunity of participation and after examining the relevant records, documentary evidence and other materials available on record, completed the inquiry and submitted his report on 24.01.2010. The Inquiry Officer unequivocally found the charges brought against the petitioner to have been duly established. The said inquiry report was subsequently placed before the Board of Governors, which, upon due deliberation, accepted the findings recorded therein.

The learned Counsel has next submitted that, in consonance with the principles of natural justice and to afford the petitioner a further opportunity of defence

before imposition of any major penalty, the competent authority issued a second and final show-cause notice on 27.04.2010. Thereafter, as an additional measure of fairness and transparency, a second Inquiry Committee was constituted to independently examine the matter afresh. Upon conducting a detailed inquiry and evaluating the evidence on record, the second Inquiry Committee submitted its report on 15.06.2010, wherein it likewise arrived at the categorical conclusion that the charges levelled against the petitioner stood proved beyond any reasonable doubt. Thus, both independent inquiries consistently reached the same conclusion regarding the petitioner's misconduct.

It has, therefore, been argued that the disciplinary authority, having meticulously complied with the prescribed statutory procedure, the applicable service rules, and the well-established principles of natural justice at every stage of the disciplinary proceedings, lawfully passed the order dismissing the petitioner from service. The impugned order, being the outcome of a valid

departmental proceeding conducted in accordance with law and founded upon concurrent findings of fact recorded by two separate inquiry bodies, does not suffer from any procedural irregularity, jurisdictional infirmity, perversity, or violation of any fundamental principle warranting interference by this Court in the exercise of its extraordinary writ jurisdiction. It is a settled proposition of law that this Court, while exercising jurisdiction under Article 102 of the Constitution, does not ordinarily sit as a Court of appeal over the findings recorded in departmental proceedings, nor does it reappraise or reassess the evidence unless the decision-making process is shown to be tainted by *mala fides*, arbitrariness, patent illegality, or violation of the principles of natural justice. Since none of these exceptional circumstances is present in the instant case, the writ petition is wholly misconceived and devoid of merit. Consequently, the Rule is liable to be discharged.

We have heard the learned Counsel for both parties with careful attention. We also perused the writ petition,

the affidavit-in-opposition, and the documents appended thereto. It is evident from the **Annexure-I** that the authority issued 1st show cause notice on 13.08.2008, giving the petitioner an opportunity to reply within 2(two) Weeks as per the provisions of Section 38(2) of the বাংলাদেশ উন্মুক্ত বিশ্ববিদ্যালয় আইন, ১৯৯২, mentioning the address of the petitioner at Bandarban, though he was in service of Pirojpur Co-ordinating Office, and the same reached to the petitioner after a long time, thus he replied upon the said show cause notice on 19.09.2008, thus the Annexure-J revealed that the suspension has been imposed upon the petitioner by the decision of the Board of Governors' resolution dated 03.09.2009, which created doubt as to how become the Board of Governors being dissatisfied without having reply of the show cause notice. This is nothing but the *mala fide* and colourable exercise of power by the Respondents, in violation of the principle of natural justice.

However, the contents of Annexures J, J1, and J2 reveal that Respondent 3 issued a suspension order,

appointed an Inquiry Officer, and served a Charge Sheet on 27.10.2009. It is also evident from the 1st show cause notice (Annexure-I) that, “যেহেতু আপনি গত ২১-০১-২০০৮ হতে ২৫-০১-২০০৮, ০৮-০৩-২০০৮ হতে ১১-০৩-২০০৮ এবং ২১-০৩-২০০৮ হতে ২৬-০৩-২০০৮ তারিখ পর্যন্ত অননুমোদিতভাবে কর্মস্থলে অনুপস্থিত ছিলেন যা অফিস শৃঙ্খলা পরিপন্থি। এবং দায়িত্ব ও কর্তব্য পালনে অবহেলা বটে।

যেহেতু আপনি অফিসে অননুমোদিতভাবে অনুপস্থিত থাকার পর ২৭-০৩-২০০৮ তারিখে অফিসে উপস্থিত হয়ে আপনার নিয়ন্ত্রণকারী কর্মকর্তার সাথে উত্তেজিত হয়ে অকথ্য ভাষায় গালি গালাজ করেন ও হত্যার হুমকি প্রদান করে কর্মকর্তার দিকে তেড়ে আসেন এবং নিম্নমান সহকারীর নিকট রক্ষিত কর্মচারীদের হাজিরা খাতা বাহিরে নিয়ে যাওয়ার চেষ্টা করেন যা সন্ত্রাস ও অসদাচরণ বটে;

যেহেতু আপনি অফিসে উপস্থিত হওয়ার পর হাজিরা খাতায় স্বাক্ষর করে নিয়ন্ত্রণকারী কর্মকর্তাকে কোন প্রকার অবহিত না করেই অফিসের বাহিরে চলে যান যা নৈতিকগুণন এবং চরম অবাধ্যতার সামিলা”

Similarly, the charge sheet (Annexure-J2) exposes that, “গত ১৩-০৮-২০০৮ তারিখের বাউবি/প্রশা-৪ (৪০২)/০৫/৪০৭৫ সংখ্যক স্মরণে আপনার বিরুদ্ধে কৈফিয়ৎ তলব পত্র জারী করা হলে সে প্রেক্ষিতে আপনার ১৯-০৯-২০০৮ তারিখে প্রদত্ত জবাব ০৩-০৯-২০০৯ তারিখে অনুষ্ঠিত বোর্ড অব গভর্নর্স-এর ১১১তম সভার সিদ্ধান্তে (সিদ্ধান্ত নং-৩৫) সন্তোষজনক বিবেচিত হয়নি বিধায় বাংলাদেশ উন্মুক্ত বিশ্ববিদ্যালয় আইন ১৯৯২ এবং সংশোধনী ২০০৯ এর ৩৮(২) ধারার বিধান অনুযায়ী আপনাকে ২৭-১০-২০০৯ তারিখের বাউবি/প্রশা-৪ (৪০২)/০৫/৪২৮৪ সংখ্যক স্মরণে সাময়িকভাবে বরখাস্ত করা হয় এবং সেমত আপনার বিরুদ্ধে নিম্নোক্ত অভিযোগনামা গঠন করা হলোঃ

যেহেতু আপনি চট্টগ্রাম আঞ্চলিক কেন্দ্রাধীন বান্দরবান কো-অর্ডিনেটিং অফিসে

কর্মরত থাকাকালীন সময়ে গত ২১-১১-২০০৮ হতে ২৫-০১-২০০৮, ০৮-০৩-২০০৮ হতে ১১-০৩-২০০৮ এবং ২১-০৩-২০০৮ হতে ২৬-০৩-২০০৮ তারিখ পর্যন্ত অননুমোদিতভাবে কর্মস্থলে অনুপস্থিত ছিলেন, যা অফিস শৃঙ্খলা পরিপন্থি এবং দায়িত্ব ও কর্তব্য পালনে অবহেলা বটে;

যেহেতু আপনি অফিসে অননুমোদিতভাবে অনুপস্থিত থাকার পর ২৭-০৩-২০০৮ তারিখে অফিসে উপস্থিত হয়ে আপনার তৎকালীন নিয়ন্ত্রণকারী কর্মকর্তার সাথে উত্তেজিত হয়ে অকথ্য ভাষায় গালি গালাজ করেন ও হত্যার হুমকি প্রদান করে কর্মকর্তার দিকে তেড়ে আসেন এবং নিম্নমান সহকারীর নিকট রক্ষিত কর্মচারীদের হাজিরা খাতা বাহিরে নিয়ে যাওয়ার চেষ্টা করেন যা, সন্ত্রাস ও অসদাচরণ বটে।

যেহেতু আপনি অফিসে উপস্থিত হওয়ার পর হাজিরা খাতায় স্বাক্ষর করে নিয়ন্ত্রণকারী কর্মকর্তাকে কোন প্রকার অবহিত না করেই অফিসের বাহিরে চলে যান যা, নৈতিক স্থলন ও চরম অবাধ্যতার সামিলা”

More so, it is found that the Respondents earlier have imposed minor punishment (censure) upon the said offence, which manifested from the charge sheet mentioning as, “যেহেতু ২৫-০৬-২০০৮ তারিখের বাউবি/প্রশা-৪ (৪০২)/০৫/৩২৪৪ ২২গুণ স্মারকে আপনার বিরুদ্ধে আনীত সন্ত্রাস, অসদাচরণ, দাপ্তরিক শৃঙ্খলা ভঙ্গ ও কর্তব্য অবহেলার অভিযোগ প্রমাণিত হওয়ায় ২১-০৪-২০০৮ তারিখে অনুষ্ঠিত বোর্ড অব গভর্নর্স-এর ১০১তম সভায় গৃহীত সিদ্ধান্ত মোতাবেক সাময়িক বরখাস্ত আদেশ প্রত্যাহার করে তিরস্কার করা হয় এবং ভবিষ্যতে এ ধরনের আচরণ থেকে বিরত থাকার অন্য কঠোরভাবে সতর্ক করা হলেও আপনার স্বভাবের কোন পরিবর্তন না হওয়ায় প্রতীয়মান হয় যে, এ ধরনের আচরণ আপনার মজ্জাগত স্বভাবে পরিণত হয়েছে।”

However, upon sifting the contents of Annexure-N, it is presumed that, without being satisfied with the report of the 1st Inquiry Officer, the petitioner's authority appointed the 2nd Inquiry Officer on 27.04.2010. For reasons of necessity, we need to examine the provisions of Section 38(2) of বাংলাদেশ উন্মুক্ত বিশ্ববিদ্যালয় আইন, ১৯৯২ (সংশোধিত ২০০৯), which reads as under:

”৩৮। (১) বিশ্ববিদ্যালয়ের

বেতনভুক্ত সকল শিক্ষক, কর্মকর্তা ও কর্মচারী
লিখিত চুক্তির ভিত্তিতে নিযুক্ত হইবেন, চুক্তিটি
বিশ্ববিদ্যালয়ের রেজিস্ট্রারের নিকট গচ্ছিত
থাকিবে এবং প্রত্যেক সংশ্লিষ্ট শিক্ষক,
কর্মকর্তা বা কর্মচারীকে উহার একটি অনুলিপি
দেওয়া হইবে।

(২) ভাইস-চ্যান্সেলর, প্রো-ভাইস-

চ্যান্সেলর ও কোষাধ্যক্ষ চাকুরীর শর্তাবলী
অনুযায়ী চাকুরীতে বহাল থাকিবেন বা
অপসারিত হইবেন। বিশ্ববিদ্যালয়ের
বেতনভুক্ত শিক্ষক, কর্মচারী বা উপরোক্ত
তিনজন কর্মকর্তা বাদে অন্য কর্মকর্তাগণকে
তাহার কর্তব্যে অবহেলা, অসদাচরণ, নৈতিক

স্থলন, অর্থ আত্মসাৎ, সন্ত্রাস, জালিয়াতি বা
অদক্ষতার কারনে চাকুরী হইতে অপসারণ
করা যাইবে;

তবে শর্ত থাকে যে, তাহাকে তাহার
নিয়োগকারী কর্তৃপক্ষ লিখিতভাবে দুই
সপ্তাহের নোটিশ দ্বারা কৈফিয়ত তলব
করিবেন। কৈফিয়তের জবাব সন্তোষজনক না
হইলে তাহার উপরস্থ কর্মচারী দ্বারা একটি
তদন্ত করিতে হইবে এবং তাহাকে আত্মপক্ষ
সমর্থনের সুযোগ দিতে হইবে। তদন্তের
রিপোর্ট তিন মাসের মধ্যে দাখিল করিতে
হইবে। তদন্তের রিপোর্ট সন্তোষজনক না
হইলে তাহাকে চাকুরী হইতে অপসারণ বা
পদচ্যুত বা অন্য কোন শাস্তি প্রদান করা
যাইবে। তদন্তকালীন সময়ে তাহাকে
সাময়িকভাবে বরখাস্ত করা যাইবে এবং
সাময়িক বরখাস্তকালীন তিনি জীবন-ধারণ
ভাতা (Subsistence allowance)
পাইবেন। যে কোন শাস্তির বিরুদ্ধে তিনি ৪৪
দফা মোতাবেক চ্যাপেলরের নিকট (এক
মাসের মধ্যে) আপিল করিতে পারিবেন।”

From a careful reading of the section, it is ostensible that a mandatory duty has been cast upon the authorities to take due course and issue a show-cause notice with two weeks' notice before taking any disciplinary measure against the person concerned. If the reply to the show cause notice is not satisfactory, an enquiry committee has to be formed with a person holding a superior rank to that of the person, and the said enquiry has to be concluded within three months. Again, the authority has to allow self-defence. After completing all legal formalities, the authority can endorse the safe navigation to remove the person concerned from his service. But, nowhere in the aforesaid provisions is there any endorsement to appoint a 2nd Inquiry Officer.

A careful examination of the materials brought on record, particularly Annexures-1 to 3 appended to the Affidavit-in-Opposition, reveals that one and only Mr Md. Motiar Rahman initially levelled certain allegations against

the petitioner by way of a complaint dated 09.04.2007. Thereafter, he submitted a report dated 25.03.2008 alleging the petitioner's absence from office and subsequently furnished another report on 31.03.2008 concerning the alleged acts of misconduct attributed to the petitioner. It further transpires from the records that the competent authority, having considered the said allegations and the materials placed before it, concluded the disciplinary proceedings by imposing upon the petitioner the minor penalty of "Censure."

We observed that once the disciplinary authority had examined the allegations on their merits and awarded the aforesaid penalty, the matter stood finally concluded and attained its logical culmination. The respondents, having consciously exercised their disciplinary jurisdiction and exhausted the same by inflicting the penalty of censure, were thereafter precluded from reopening the very same allegations or initiating a fresh round of disciplinary proceedings founded upon the identical set of facts and accusations. To permit such a course would not

only offend the settled principles governing disciplinary jurisprudence but would also expose a delinquent employee to repeated harassment for the same cause of action.

It is a well-recognized principle of service law that, unless expressly authorised by the governing statute or service rules, a disciplinary authority, after finally disposing of a disciplinary proceeding and imposing a punishment, becomes ***functus officio*** in respect of the selfsame charges and cannot revive or re-agitate the matter merely because it has become dissatisfied with the nature or extent of the punishment already imposed. Any subsequent proceeding initiated on the basis of the very allegations which have already been adjudicated upon and culminated in the imposition of a penalty is devoid of legal foundation and is liable to be struck down as being without lawful authority.

Accordingly, the subsequent disciplinary proceedings initiated against the petitioner on the basis of the identical allegations, which had already been considered and exhausted by the imposition of the penalty of censure,

stand bereft of any legal footing and are, therefore, patently unsustainable in law, having been undertaken without jurisdiction and in derogation of the settled principles of fairness, finality, and certainty governing disciplinary proceedings.

However, in respect of the provision of Section 38(2) of the বাংলাশে উন্মুক্ত বিশ্ববিদ্যালয় আইন, ১৯৯২, we may refer to a similar footing decision of this jurisdiction where their Lordships, Mr. Justice Zubayer Rahman Chowdhury and Mr. Justice Sashanka Shekhar Sarkar, in Writ Petition No. 5506 of 2010 (Md. Rawshan Ali Vs Bangladesh Open University, et al.), vide judgment and order dated 12.03.2019, opined that,

"In the instant case, the order of suspension was issued on 31.05.2010, but the show cause notice was issued on 20.06.2010, as evidenced by Annexure D. Therefore, admittedly, the order of the suspension was issued at an earlier point of time. This is where the respondents went wrong. In other words, the cart was put before the horse."

Similarly, the case at hand shows that the suspension was issued before the show-cause notice was served upon the petitioner. Upon a meticulous perusal of Annexure-I, it transpires that the concerned authority issued the first show cause notice on 13.08.2008, calling upon the petitioner to submit his explanation within two (2) weeks in accordance with the provisions of Section 38(2) of the *বাংলাদেশ উন্মুক্ত বিশ্ববিদ্যালয় আইন, ১৯৯২*. It further appears that the said show-cause notice was dispatched to the petitioner's address in Bandarban, notwithstanding the undisputed fact that at the relevant time he was serving at the Pirojpur Co-ordinating Office. Consequently, owing to the erroneous address of the notice, it reached the petitioner after considerable delay, and he ultimately submitted his reply thereto on 19.09.2008.

Be that as it may, Annexure-J discloses that, pursuant to the resolution of the Board of Governors dated 03.09.2009, the petitioner was placed under suspension. The sequence of events, as borne out by the records, gives rise to a serious and legitimate doubt as to how the Board

of Governors could have reached its purported satisfaction and proceeded to take an adverse decision against the petitioner before duly considering his explanation submitted in response to the show-cause notice. Such conduct clearly indicates that the decision-making process was predetermined and that the opportunity afforded to the petitioner to submit his explanation was nothing more than a mere formality, and this kind of act has no sanction to establish the foundation for imposing the highest penalty in any sort of service.

In the circumstances, the action of the respondents unmistakably bears the imprint of *mala fide* intention and constitutes a colourable exercise of statutory power, undertaken in flagrant disregard of the cardinal principles of natural justice, particularly the rule of ***audi alteram partem***, which mandates that no person shall be condemned without being afforded a fair and meaningful opportunity of being heard. Consequently, the impugned action stands vitiated, not only for procedural impropriety

but also for having been taken in a manner that defeats the very object of fair administrative decision-making.

The aforementioned legal position clearly indicates that the authority was tactful in issuing a two-week show-cause notice before suspending the petitioner and concomitantly violated the principle of natural justice. But we wish to be more certain of reaching any result. It is evident from a careful scrutiny of the contents of **Annexure-N** that the competent authority, being dissatisfied with the findings and recommendations of the first Inquiry Officer, appointed a second Inquiry Officer by order dated 27.04.2010 to investigate the same allegations against the petitioner. Such a course of action unmistakably suggests that the authority sought to reopen or recommence the disciplinary inquiry merely because the outcome of the first inquiry did not conform to its expectations.

However, a plain reading of the relevant provisions of the governing University Act reveals that no statutory authority has been conferred upon the respondents to

appoint an Inquiry Officer and thereafter to appoint another Inquiry Officer to conduct a *de novo* inquiry into the very same allegations. In the absence of any express or implied provision empowering the disciplinary authority to adopt such a procedure, the appointment of the second Inquiry Officer is manifestly *dehors* the statutory framework and, therefore, without lawful authority.

It is a settled principle of administrative law that a statutory authority must act strictly within the four corners of the powers conferred upon it by the governing statute of its own, and cannot assume jurisdiction or exercise powers which the legislature has not expressly or impliedly vested in it. Consequently, the appointment of the second Inquiry Officer, having been made without any sanction of their own law, cannot but be regarded as an action taken in excess of jurisdiction and in colourable exercise of statutory power, thereby rendering the subsequent disciplinary proceedings legally unsustainable. These types of manipulation by respondents indicated that they sowed the seeds of *mala fides* in their own domain.

The authority vested with the power to show cause, take evidence, make inquiry, grant self-defence, and examine witnesses in any proceeding leading to the imposition of punishment or acquittal upon the employees concerned is consonant with a quasi-judicial act. So, the authority has to go through the mandates of law with due care and diligence, extending the proceedings to the periphery, showering equal justice under the principle of "***Actus legis nemini facit injurium***," i.e., the act of the law does injury to none.

The learned Counsel for the respondents vehemently sought the attention of this Court, stating that the petitioner had been absent from the workplace for an extended period. If so be that it's our contention whether the authority had created any situation to make presence of the petitioner from the part of the authority concerned, thus record displayed that the respondents did not provide the enquiry report of the alleged allegation within mandatory period, which stands that the authority did not act fairly and judicially, as well as the said disciplinary authority failed adhere to the principle of natural justice,

and accordingly, all the subsequent events will be treated as frustrating and unreasonable attribution toward the legal accountability.

The principle of *audi alteram partem* is now universally established: whenever an individual's right, liberty, or protection of the law is deliberately affected by the exercise of a decision-maker's power, the person so affected must have an opportunity to be heard. Article 27 of the Constitution of the People's Republic of Bangladesh endorsed the inalienable fundamental right of the citizens, i.e., the entitlement to "equal protection of the law," and Article 31 significantly declared the right "to be treated in accordance with law," and these moulded our legal system as a basic part of "natural justice."

However, we noticed that the petitioner availed the opportunity to appeal to the Chancellor of the Bangladesh Open University under section 44 of the বাংলাদেশ উন্মুক্ত বিশ্ববিদ্যালয় আইন, ১৯৯২ (সংশোধিত ২০০৯), but did not receive any decision. Upon perusal, it can be observed that the

contents of the said section indicate a directory provision rather than a mere formality.

Nevertheless, we find the whole proceedings against the petitioner stand upon a rootless tree, because of the patent violation of the mandatory provisions of section 38(2) of the বাংলাদেশ উন্মুক্ত বিশ্ববিদ্যালয় আইন, ১৯৯২ (সংশোধিত ২০০৯), so far it relates to the show cause notice and enquiry report having a mandatory nature of stipulated time, not being complied with, and thus culminating the impugned proceedings into the scale of ***void ab initio***. All the more, it is the established principle of law that a *mala fide* act is an act without jurisdiction, and no legislature grants power for the *mala fide* exercise of it; coherently, *mala fide* goes to the root of jurisdiction, and if the impugned action is *mala fide*, the alternative remedy provided by statute need not be availed of.

In view of the above facts, circumstances, and applicable laws, we are of the view that the facts do not accord with the affidavit-in-opposition, and the submissions of the learned Counsel for the respondent 3

have no substance and are barren of merit in the case; thus, the challenged dismissal order issued vide Memo No. বাউবি/প্রশা-৪(৪০২)/০৫/৫৩৫৬, তারিখ: ২২-১২-২০১০ খ্রি. (Annexure-O) stands on no legal footing; consequently, no legal effect.

Be that as it may, the Bangladesh Open University failed to receive proper contributions from a prospective employee due to the respondents' arbitrary and *mala fide* conduct.

Our considered view is that the petitioner has the right to be reinstated in his service, if his retirement age permits, and to receive all financial benefits up to the age of retirement from the date of suspension, in accordance with the conditions of his service. The respondents have the duty to provide all the service benefits to the petitioner within 60 (Sixty) days from the date of receipt of the copy of this judgment, failing which, the respondents in position respectively shall have to bear the consequence of personal liabilities of indiscipline, negligence, *mala fide*, and the violation of the rule of justice.

In the light of the above, and having found merit in the writ petition and substance in the Rule Nisi, the Rule is hereby made absolute, subject to the observations and directions above.

In view of the facts and circumstances of the case, and having regard to the issues involved, this Court is of the opinion that no order as to costs is called for. Accordingly, there shall be no order as to costs.

Communicate this judgment to the Respondents 2 & 3, so they can take the necessary steps as per the above decision expeditiously or within the stipulated time.

Before parting with the case, this Court duly acknowledges and appreciates the efforts of the learned counsels representing both parties.

(Abdur Rahman, J)

Bhishmadev Chakraborty, J:

I agree.

(Bhishmadev Chakraborty, J)

