

IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(SPECIAL ORIGINAL JURISDICTION)

PRESENT:

Mr. Justice K.M. Hafizul Alam

And

Mr. Justice Abdur Rahman

WRIT PETITION NO. 5073 of 2013

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. Abdul Hai

.... Petitioner

-Versus-

Government of the People's Republic of Bangladesh,
represented by the Secretary, Ministry of Education,
Bangladesh Secretariat, Ramna, Dhaka, 1000, and
others

.... Respondents

Mr. Qazi Zahed Iqbal, Advocate

... for the petitioner

Mr. J.R. Khan Robin, DAG with

Mr. Md. Osman Gani, DAG with

Mr. Ahmed Musanna Chowdhury, AAG with

Ms. Kamrunnahar Tamanna, AAG

....For the Respondents

Heard on: 03.02.2026 and 03.03.2026

Judgment on: 08.03.2026 A.D. Sunday, 23 Falgun
1432 B.S.

Abdur Rahman, J:

This *Rule Nisi*, at the instance of the petitioner, was issued on an application under Article 102 of the Constitution in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the office order dated 27.12.2012, contained in Memo No. ৩৭,০০,০০০০,০৭৫,০৩,০০১,১২-৪৫৮ issued under the signature of the Deputy Secretary (Madrasha), Branch-14, Ministry of Education, the Government of the People's Republic of Bangladesh (respondent No.4) directing the Director General, Secondary and Higher Education Directorate, Shikkha Bhavan, Dhaka (respondent No. 2) to stop the government portion of salary of the petitioner (Annexure-C) should not be declared to have been issued without lawful authority and is of no legal effect and/or such order or further orders as to this Court may seem fit and proper.”

In the same sitting, this Court was also pleased to stay the operation of the Memo No. ৩৭,০০,০০০০,০৭৫,০৩,০০১,১২-৪৫৮,

issued on 27.12.2012 (Annexure-C) for a period of 6(six) months, which was not extended for further period.

The matrix of facts leading to issuance of this Rule Nisi in brief are that: the petitioner applied for the post of Superintendent, in response to the advertisement published by the concerned authority and the duly constituted selection committee selected the petitioner to be appointed for the said post and consequently the petitioner joined as Superintendent in Baliadanga Khanpur Dakhil Madrasha, Moniampur, Jessore on 01.03.2000 and since then he has been discharging his duties honestly, sincerely and with satisfaction of the authority concerned.

Thereafter, the petitioner was sanctioned Government Portion of Monthly Salary being Index No. 356151, and he duly received the government portion of his monthly salary and other financial benefits regularly without any interruption up to the arbitrary and sudden stoppage of the same on 27.12. 2012.

Thereafter, while the petitioner rendering his service as Superintendent of the aforesaid Madrasha, without issuing any prior show cause notice and without holding any inquiry or

without supplying any inquiry report upon the petitioner all on a sudden with a malafide intention on 27.12.2012, the Deputy Secretary (Madrasha), Branch-14, Ministry of Education (respondent No. 4) arbitrarily issued a letter directing the Director General, Secondary and Higher Education Directorate, Dhaka (respondent No. 2) to stop the government portion of salary of the petitioner contained in memo No. ৩৭.০০.০০০০.০৭৫.০৩.০০১.১২-৪৫৮, dated 27.12.2012, and stopping the monthly payment order (MPO) of the petitioner once by way of punishment, and such punishment may not be legally imposed upon him by the concerned authority without the sanction of law for the purpose. Before imposing such punishment, the authority ought to have issued a notice giving the petitioner an opportunity of being heard, and as such, the impugned order dated 27.12.2012 is required to be declared to have been passed without any lawful authority and is of no legal effect. Then, getting no alternative petitioner invoked this forum.

Mr. Qazi Zahid Iqbal, the learned Counsel, appearing for the petitioner submitted that the impugned office order dated 27.12.2012 issued by respondent No. 4 is illegal, mala-fide,

capricious in nature and has been passed by exercising high executive fait, and as such the impugned order dated 27.12.2012 is required to be declared to have been passed without any lawful authority and is of no legal effect.

Learned Counsel further contends that the stoppage of the petitioner's Monthly Payment Order (MPO) as a measure of punishment is impermissible in law in the absence of express statutory sanction, and no such punitive action could lawfully be taken by the concerned authority without adhering to due process, including the issuance of a prior notice and affording the petitioner an opportunity to be heard. In the absence of compliance with these fundamental requirements, the impugned order dated 27.12.2012 is liable to be declared as having been passed without lawful authority and, thus, is of no legal effect.

Learned Counsel has further submitted that the impugned order has been passed based on an inquiry report, but the said inquiry report was not served upon the petitioner and non-service of the copy of the inquiry report to the petitioner along with a prior show cause notice had seriously prejudiced the

petitioner in representing his case which infringed the principles of Natural Justice and as such the impugned order dated 27.12.2012 is required to be declared to have been passed without any lawful authority and is of no legal effect.

Learned Counsel has further submitted that the impugned order has clearly stopped the monthly payment order (MPO) of the petitioner for an indefinite period, which is a violation of paragraph 18 of the "বেসরকারী শিক্ষা-প্রতিষ্ঠান (স্কুল, কলেজ, মাদ্রাসা ও কারিগরি শিক্ষা প্রতিষ্ঠানসমূহ) এর শিক্ষক ও কর্মচারীদের বেতন-ভাতাদির সরকারি অংশ প্রদান এবং জনবল কাঠামো সম্পর্কিত নির্দেশিকা-২০১০", and as such the impugned order dated 27.12.2012 is required to be declared to have been passed without any lawful authority and is of no legal effect.

Learned Counsel for the petitioner, in conclusion, submits that although the petitioner was reinstated in service by Resolution dated 26.01.2013 and his MPO was restored with effect from September, 2015, he was unlawfully deprived of salary and other service benefits for the intervening period of suspension on account of the impugned order dated 27.12.2012. It is, therefore, the said impugned Memo, having been issued

without lawful authority, is liable to be declared void and of no legal effect.

At variance with the foregoing submissions, the learned Deputy Attorney General for Bangladesh submitted that the Rule has, by reason of the petitioner's reinstatement in service, become infructuous, and that the petitioner, upon admitting his misconduct, was accorded pardon by the কর্তৃপক্ষ; thus, the impugned Memo (Annexure-C) was validly issued and calls for no interference.

Learned DAG further submitted that the petitioner did not make any prayer for due salary and other service benefits at the time of issuing the Rule, and as such, this Court has no jurisdiction to travel beyond the Rule; consequently, the instant Rule is liable to be discharged.

We have heard the learned Counsel for the petitioner and the learned Deputy Attorney General for the respondents, and also perused the writ petition and all annexures appended thereto.

The learned Deputy Attorney General strongly raised the issue of the admission of guilt, which was manifested from the

Resolution dated 26.01.2013 (Annexure-G) of the Baliadanga Dakhil Madrasa, where the authority, finding fault with the petitioner, showed favour to him to reinstate him in the service. We observed that, when an employee clearly admits the allegation in response to the show-cause notice, such an admission may be relied upon by the employer in disciplinary proceedings; however, the employer must still comply with the principles of natural justice and the statutory disciplinary procedure, and accordingly, the concerned authority reinstated the petitioner on certain conditions which have been complied with and his MPO resumed.

Now, the paramount question raised before us is whether the petitioner shall be entitled to get the arrear salary for the MPO suspended period or not. In this context, if we look into the contents of the Rule Nisi, we found that there is no trace of arrear salary and service benefit of the suspension period of MPO, or even in the prayer of the instant writ petition.

However, learned DAG further contended that the High Court Division has no jurisdiction to travel beyond the Rule. In this regard, we may get help from the decision taken by our Apex

Court in Moni Begum Vs. RAJUK, **46 DLR (AD) 154**. The gravamen of facts of the said case is that the dispute arose regarding **property and development actions taken by Rajdhani Unnayan Kartripakkha (RAJUK)**.

The writ petitioner challenged certain actions of the authority before the **High Court Division** under **Article 102 of the Constitution**. During the hearing, the High Court Division granted relief which was not strictly within the terms of the **Rule Nisi** issued in the writ petition. Then, the Leave was granted on the issue of whether the **High Court Division** can grant relief beyond the terms of the **Rule Nisi**. Finally, the Hon'ble **Appellate Division** held that:

“The High Court Division should ordinarily confine its judgment within the scope of the Rule Nisi issued.

The Court also observed that granting relief outside the Rule Nisi amounts to travelling beyond the Rule, which is not proper unless the Rule is amended or the parties have been allowed to address the issue.”

However, the case in our hand concomitantly showed that the petitioner only challenged the Office Order dated 27.12.2012

contained in Memo No. 37.00.0000.075.03.001.12-458 issued under the signature of the Deputy Secretary (Madrasa), Branch-14, Ministry of Education (Annexure-C), should not be declared to have been issued without lawful authority and is of no legal effect. In this regard, learned Counsel for the petitioner noticed us that this Division may grant unclaimed relief under the authority of the last portion of the Rule, i.e., “--- and or such other or further order or orders should not be passed as to this Court may seem fit and proper.”

To make a reply to the learned Counsel for the petitioner, we observed that the Rule was issued on 18.06.2013, and the petitioner has been reinstated in his service as per the Resolution dated 26.01.2013 (Annexure-G), which was not annexed at the time of filing the writ petition. Even at the extended period, the petitioner did not make any attempt to amend the prayer or to make any Supplementary Rule. Consequently, we do not find any fit and proper way of giving relief as per the last portion of the Rule Nisi, or to grant relief beyond the scope of the Rule Nisi and the prayers made in the writ petition.

We wish to be more certain that, in the instant case, the Enquiry Committee had prima facie evidence of the allegation against the petitioner. They decided to make a pardon on *bona fide* confession and request from the part of the petitioner, where no inducement came into the light in respect of reinstating him in the service (Annexure-G). The petitioner again availed the opportunity of the MPO since September 2015 (Annexure-H). But, if the scenario were different, likely the authority, without finding any proven allegation against the petitioner, and thus bound to reinstate him in service, then this review forum has the authority to exercise power to the effect that the petitioner has honourably acquitted from the allegation, and then he might be entitled to the arrear pay and allowances.

Predominantly, in our jurisdiction, under the periphery of review jurisdiction in certain exceptional circumstances, the Court may go beyond the terms of the *Rule Nisi*. However, as a general principle, the Court normally confines its adjudication within the scope of the Rule Nisi issued. The Court may go beyond the terms of the Rule Nisi where: (i) the matter involves a pure question of law, (ii) the issue is apparent on the face of

the record, (iii) the question goes to the root of jurisdiction or legality, (iv) the parties had full opportunity to address the issue during hearing, and (v) it is necessary for the interest to the rule of justice. In such cases, the Court may grant appropriate relief even if it was not specifically mentioned in the Rule Nisi.

From the case in our hand, we do not find that a resultant punishment has been imposed upon the petitioner based on negligence, colorable exercise of power, and prudent bias of the authority concerned. However, we patently viewed that- (a) admission of misconduct by an employee is relevant evidence, (b) punishment may be based on such an admission if it is voluntary and clear, (c) an ambiguous or qualified admission cannot be treated as a full confession, (d) the confession must be without any inducement, and (e) disciplinary procedure and natural justice must still be followed.

From the above realities and scenario, it is palpable that the petitioner did not seek any relief against the Resolution dated 26.01.2013 (Annexure-G) by which he got pardon on certain conditions, and also failed to address in the prayer to get arrear salary and allowances.

End of the line, the Rule has lost its efficacy owing to the petitioner's reinstatement in service, and that upon admission of his wrongdoing, the petitioner was duly pardoned by the authority concerned; consequently, the impugned Memo (Annexure-C) suffers from no legal infirmity; so, we are of the view that no merit available in the instant Rule to stand on the legal feet.

Accordingly, the Rule is discharged without any order as to cost.

The Office is directed to communicate this judgment and order to the respondent No. 4 immediately.

The Court places on record its appreciation for the able assistance rendered by the learned Counsels for both parties, which has greatly aided in the expeditious disposal of the Rule.

(Abdur Rahman, J)

K.M. Hafizul Alam, J:

I agree.

(K.M. Hafizul Alam, J)