

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

Writ Petition No. 3250 of 2014

with

Writ Petition No. 8413 of 2014.

In the matter of an application under article 102 of the
Constitution of the People's Republic of Bangladesh.

-AND-

In the matter of:

Mohammad Ali Akond, Son of late Mofazzal Haque
Akond, P.S.- Barhatta, Dist- Netrokona. Presently-
House No. C-8, University Staff Quarter, Jahangirnagar
University, Savar, Dhaka

.....Petitioner.

-Versus-

Jahangirnagar University, Savar, Dhaka and others.

.....Respondents.

Mr. M.I. Faruqui with

Mrs. Nazneen Nahar, Advocates,

.....For the Petitioner.

Mr. A.S.M. Abdul Mubin with

Mr. Sayem M. Morad, Advocates.

...For the respondent nos. 2, 4 & 5.

Mr. Hasan Kabir Shahin, Advocate

...For the respondent no. 6.

**Heard on : 12.08.2015, 11.11.2015,
26.11.2015&18.12.2015**

Judgment on: 15.12.2015

Present:

Justice Tariq ul Hakim

and

Justice Md. Farid Ahmed Shibli

Md. Farid Ahmed Shibli, J:

Since similar facts and common issues are involved in these two
Writ Petitions having nos. 3250 and 8413 of 2014, they are thus taken up
together for hearing and disposal.

In Writ Petition No. 3250 of 2014, a Rule Nisi has been issued calling upon the respondents to show cause as to why the decision taken by the Syndicate of the Jahangirnagar University on 05.03.2014 and 20.03.2014 suspending Writ Petitioner from service (Annexure-F) and asking him to reply the notice issued vide memo. no. Regi:/Teaching/10559 dated 24.03.2014 (Annexure-G) should not be declared to have been made without lawful authority and why the Respondents should not be directed to file the report prepared by the Inquiry Committee vide Office Order dated 26.09.2011 and the report submitted by the Committee formed in the Syndicate meeting dated 27.04.2012 (Annexure-I&I-1) and/or pass such other order or orders as to this court may seem fit and proper.

In Writ Petition no. 8413 of 2014, a separate Rule Nisi has been issued calling upon the Respondents to show cause as to why memo. no. Regi:/Teaching/1285 dated 26.08.2014 signed by the Respondent No.5 (Annexure-I-1) informing the Writ Petitioner that he has been dismissed from the service and why the decision of the Syndicate of Jahangirnagar University taken in the meetings held on 05.03.2014 and 20.03.2014 suspending the Petitioner (Annexure-G-1&G-2) should not be declared to have been issued without lawful authority and as to why the Respondents should not be directed to file the reports by the Committees formed on 26.09.2011 and 27.04.2012 (Annexure-E) and/or pass such other order or orders as to this Court may seem fit and proper.

The facts material for disposal of those Writ Petitions are as follows:- The Writ Petitioner namely Mohammad Ali Akond was a Professor of the Department of Botany in Jahangirnagar University, who held the office of the Chairman of Botany Department for 03 yrs. from October, 2010. Being the Chairman of the Department from time to time some allegations of corruption and misappropriation were made by him against some teachers of the University. It is alleged that being angered the accused teachers physically assaulted the Petitioner, who lodged an F.I.R. with the Police Station of Ashulia and the police upon investigation submitted a charge-sheet against the teachers. The concerned Court took cognizance of the offence accordingly. During trial of the Criminal Case, the leading members of the Teachers' Association including accused teachers apologized assuring the Writ Petitioner to settle the matter amicably out of the Court. Getting such assurance of the teachers and for the sake of prestige of the community, the Petitioner agreed to withdraw that Criminal Case. After such withdrawal instead of stopping mischievous harmful activities against the Petitioner, the accused teachers continued their misdeeds.

On 05.03.2014 at 4:40 p.m. the Petitioner staged a sit down hunger strike in front of the Main-gate of the Botany Department protesting nefarious activities of the accused teachers. However, on good faith getting verbal assurance from the Proctor and other leading members of the association on that day at 7:00 p.m. the Petitioner called off the strike and

left the place. But in collusion with the charge-sheeted accused teachers the Respondent nos. 2-5 at around 7:30 p.m. arranged a Syndicate meeting and formed a Preliminary Inquiry Committee. On 12.03.2014 the said Committee prepared its report and placed the same on 18.03.2014 in the Syndicate meeting. It was decided by the Syndicate to hold a formal full-fledged inquiry on the alleged occurrence of 05.03.2014 and put the Writ Petitioner on suspension with effect from 20.03.2014. Due to which the Writ Petition having no. 3250 of 2014 challenging the order of suspension was filed and the Petitioner obtained a Rule Nisi in the terms as referred to above. At that time passing an interim order this Court stayed the operation of suspension but due to interference of their Lordships in the Appellate Division that order lost its force.

Despite all those pending judicial events, the Respondent nos. 1-5 i.e. the University authority continued with the departmental proceedings and on the basis of the Inquiry Report dated 18.08.2014 decided to dismiss the Petitioner from the service (Annexure-I-1). The said order of dismissal has been impugned in the later Writ Petition having no. 8413 of 2014. It has been alleged that without holding a neutral inquiry and giving the Petitioner any reasonable opportunity of being heard, the order of dismissal was passed by the University authority and at that time the matter was sub-judice in this Court in connection with Writ Petition no. 3250 of 2014. It has further been alleged that the Respondent i.e. the University Syndicate initiated and conducted the inquiry against the Petitioner out of its malice

and that is why the Petitioner is entitled to the remedy as prayed for under article 102 of the Constitution.

In Writ Petition no. 3250 of 2014 the Respondent nos. 1-6 and in Writ Petition no. 8413 of 2014 the Respondent nos. 1-3, 5&6 have entered appearance engaging their respective Advocates. The Respondents i.e. the University authority has contested both the Writ Petitions filing separate Affidavits-in-Opposition contending inter alia that on 05.03.2014 at 4:15 p.m. the Petitioner in fact wrongfully confined some teachers of the Botany Department including the staff and students by locking the front gate of the Department. Immediately after the alleged occurrence the teachers confined by the Petitioner filed a complaint to Respondent no.2, who calling an emergency Syndicate meeting decided to constitute a 5-members' Primary Inquiry Committee to determine truth or falsehood of the allegations. On 12.03.2014 the Committee submitted its report, which was examined by the members of the Syndicate in a meeting held on 18.03.2014. In that meeting, it was decided to arrange a full-fledged inquiry and place the Writ Petitioner on suspension with effect from 20.03.2014. On conclusion of the inquiry, the Committee prepared its final report dated 18.08.2014 finding the Petitioner guilty of the charges. So, the Syndicate in its meeting dated 23.08.2014 decided to dismiss the Petitioner from service and communicated the decision vide the letter dated 26.08.2014 (Annexure-I-1). According to the Respondents, all legal requirements of “*Rivn½xi bMi nekpe` ij tqi KgPvix `¶|Zv I k;Lj v Aa`v#` kŪ*” and the

Jahangirnagar University Act, 1973 have been complied with in holding inquiry and passing the impugned order of dismissal and in doing that no error or illegality, whatsoever as alleged, has been occasioned and that is why the Petitioner does not deserve any remedy as prayed for. It has been contended that had the Petitioner been aggrieved by the impugned dismissal order, he could avail the forum of appeal under section 51 of the Jahangirnagar University Act, 1973, which provides an ample opportunity to have the Petitioner's grievances redressed by the Chancellor of the University. It has been stated by the Respondents that because of not availing opportunity of appeal under section 51, the instant Writ Petition is not maintainable.

Mr. M.I. Faruqui, learned Senior Advocate with Mrs. Nazneen Nahar, learned Advocate for the Writ Petitioner, Mr. A.S.M. Abdul Mobin, learned Advocate with Mr. Sayem M. Murad, learned Advocate for the Respondent Nos. 1-5 and Mr. Hasan Kabir Shahin, learned Advocates for Respondent no.6 (Writ Petition no. 3250/2014) have appeared and participated in the hearing.

Admittedly the Writ Petitioner Mohammad Ali Akond was a Professor of the Botany Department of Jahangirnagar University and also the Chairman of the Department for a period of 03 yrs. with effect from October, 2010. There is no dispute regarding the fact that once the Petitioner had filed a Criminal Case against some teachers of the Botany Department, which he withdrew on an amicable understanding with the

accused teachers and others. We do not notice any controversy between the parties regarding the incident of staging a sit-down hunger strike by the Petitioner in front of the Main-gate of the Botany Department.

It is alleged that on that day the Petitioner confined some teachers, students and others locking the Main-gate of the Botany Department. On the other hand, the Petitioner denies stating that he did not lock the Main-gate rather he made a symbolic protest staging an innocent programme of sit-down strike in front of the Department.

Mr. M.I. Faruqi, learned Senior Advocate for the Petitioner submits that the University authority i.e. the Respondents in collusion with some charge-sheeted accused teachers convened an emergency Syndicate meeting on 05.03.2014 bringing some false and fabricated allegations against the Petitioner and because of the Respondents' malice in the alleged facts the departmental proceeding was started in a capricious manner and ultimately dismissed the Petitioner from the service issuing the impugned letter (Annexure-I-1).

Mr. Faruqi contends that since the matter relating to the proceedings and suspension of the Petitioner was sub-judice in this Court during pendency of Writ Petition no. 3250 of 2014, it was thus in no way lawful and fair for the Respondents to proceed with the inquiry and conclude the same dismissing the Petitioner from the service. According to the learned Advocate, the Respondents have virtually perpetrated injustice

resorting to malafide actions against the Petitioner and thereby dismissed him in an unlawful manner.

In reply Mr. Mubin, learned Advocate for the Respondents retorts stating that on 05.03.2014 in the evening the Writ Petitioner locked the Main-gate of the Botany Department and thereby wrongfully confined some teachers, students and staff staying inside the department and on the basis of the Preliminary Inquiry Report the Syndicate decided to hold a full-fledged inquiry constituting a Committee and finally dismissed the Petitioner from the service and all those steps were taken in full compliance with the requirements of *00Rivn1/2xi bMi wekpe`vj tqi KgPvix `¶Zv I k;Ljv Aa`v#`k00* and the relevant provisions of the Jahangirnagar University Act, 1973.

Mr. Mubin contends that in Writ Petition no. 3250 of 2014 this Court did not give any interim order staying inquiry or the proceedings, so on the plea of sub-judice the Petitioner cannot legally upset the result of the departmental inquiry or the decision taken to dismiss the Petitioner from the service. Mr. Mubin alleges that in spite of issuing several notices upon the Petitioner, he did not participate in the proceedings of inquiry conducted by the Committee and that is why at this stage he cannot castigate the report submitted by the Committee or any part of its proceedings merely on any fancy allegation of neutrality or impartiality.

Referring to the provisions of appeal laid down in sec. 51 of the Jahangirnagar University Act, 1973, Mr. Mubin has argued sagaciously

that the Petitioner's very failure in availing the opportunity of appeal to the Chancellor of University under section 51 has made him incompetent to get any remedy under article 102 of the Constitution. In an appeal under section 51, as added by Mr. Mubin, equally efficacious and adequate remedy is available and that is why this Writ Petition is not maintainable.

We have given our anxious consideration to the submission made by the learned Advocates above and perused the pleadings of the parties along with documents enclosed therewith. It is evident that the departmental proceedings including the inquiry against the Petitioner was initiated by the Respondent-University on a complaint filed by some teachers regarding an alleged incident taken place in the evening of 05.03.2014. During pendency of Writ Petition no. 3250 of 2014, proceedings of the inquiry against the Petitioner continued and finally he was dismissed.

According to Mr. Faruqui, due to a Criminal Case filed earlier, the Petitioner had bitter-relation with a group of teachers, who filed a complaint narrating some false story against the Petitioner and the Respondents having malice initiated the proceedings using that complaint. He contends that without holding any neutral inquiry during pendency of the Writ Petition having no. 3250 of 2014, the Respondents' decisions to proceed with the inquiry and dismiss the Petitioner clearly bear a testimony of the Respondents malafide intention.

We know, malafide is of two kinds: malice in fact and malice in law. On the point of malice in fact Mr. Faruqui, has referred to the fact of filing

a Criminal Case by the Petitioner and his strain relation with teachers of the department. In this context, Mr. Mubin submits that as the said Criminal Case was not ended with any order of conviction against any teacher rather it was withdrawn on amicable settlement, in such a plight those teachers are not supposed to have any malice or inimical attitude towards the Petitioner. We do not find any cogent reason to believe in the allegation of malice against the backdrop of a Criminal Case which was filed 2 years back and withdrawn by the Petitioner himself on an amicable settlement.

Nevertheless, whether there had been any malice or not is a question of fact regarding which it would be difficult for this Court to hold anything unerringly. Even then to keep no stone unturned we have gone through the record and found no impeccable testimony of malice on the part of the University Syndicate i.e. the Respondents against the Petitioner. The decisions of holding inquiry against the Petitioner and his dismissal were not taken by any individual teacher rather they were taken in a regular Syndicate meeting, where all Syndicate-members including the Respondents actively participated in deliberations and finally decided to pass the impugned order. In view of the above, it becomes hardly possible to place our reliance on allegations of malice as made against the University authority.

Referring to the case of *Shomsh Tiwari-Vs.-Union of India* reported in *CDJ 2008 SC 2162=2009(2) SCC 592*, Mr. Faruqui has argued that as the matter relating to proceedings against Petitioner was sub-judice in Writ

Petition no. 3250 of 2014, it was not lawful for the Respondents i.e. the University authority to proceed with the inquiry and take the impugned decision of dismissal. In the case of *Shomsh Tiwari-Vs.-Union of India at Para- 20,21,25*, as pointed out by Mr. Mubin, defying an interim order of the Madya Pradesh High Court, the authority initiated an inquiry against the appellant in terms of some allegations contained in an anonymous complaint and that was why the Indian Supreme Court held that the order in question suffered from malice in law.

In the instant case, the situation is different. Here this Court has not passed any such interim order restraining the Respondents from proceeding with the inquiry or taking any decision against the Petitioner. Although, the Court, as it reveals, passed an interim order staying the operation of suspension but subsequently the same lost its force due to interference by the Appellate Division. So, it is clear like anything that the case of *Shoms Tiwari-Vs.-Union of India* cannot come to the help of the Petitioner here.

Mr. Mubin submits that had the Petitioner been apprehensive about the final fate of the departmental proceedings, he could pray for an interim order of injunction against the Respondents but he did not do anything in that score for the cause best known to him. Taking the above facts and legal aspects of the matter into account, we do not find any tangible reason to castigate the proceedings of inquiry or the impugned decision of dismissal by invoking the principles of malice in law or fact.

During pendency of Writ Petition no. 3250 of 2014, the Writ Petitioner himself, as pointed out by Mr. Mubin, filed an appeal to the Chancellor of University under section-51 challenging the order of his suspension. In reply to a query on that matter, Mr. Faruqui cannot give any plausible answer as to why during pendency of the Writ Petition the forum of appeal was availed by the Petitioner, which was not consistent with the principle of sub-judice. However, he expresses the view that it was not proper at that time for the Petitioner to file any appeal under section-51.

In writ Petition no. 3250 of 2014, propriety of the order of suspension was challenged and that was an interlocutory decision of the University authority. Since the inquiry proceeding has by this time been ended with the impugned decision of dismissal of the Petitioner, the Writ Petition no. 3250 of 2014 becomes in-fructuous now. In this context, Mr. Mubin has relied upon the decision reported in 6MLR(AD)(2001)9 in the case of Md. Abdur Rashid Khan-Vs.-Government of the Peoples' Republic of Bangladesh, where their Lordships observed- "the suspension order is for a temporary period and if the allegations made are found not correct the Petitioner may be reinstated".

Mr. Mubin contends that unless the order of suspension suffers from any defect of legal sanction or authority, the Petitioner cannot get any remedy in Writ Petition no. 3250 of 2014. We find strong force in the above submission and like to hold that in Writ Petition no. 3250 of 2014

the Petitioner does not deserve any remedy and that is why it is liable to be discharged.

In fine, Mr. Mubin has referred to the case of Controller of Examination, University of Dhaka-Vs.-Mahinuddin & others reported in 44 DLR(AD)(1992)305 and vehemently argues that the Petitioner's failure of availing forum of appeal against the impugned order of dismissal dated 26.08.2014 (Annexure-I-1) under section 51 of the Jahangirnagar University Act, 1973 has made him incompetent to get the remedy under article-102 of the Constitution and as such this Writ Petition is not maintainable. In the above referred case their Lordships observed:

“.....remedy by appeal is quite simple and speedy, particularly when a time limit has been given for the opinion of the Syndicate on the report of the Inquiry Commission. An application under article-102 of the Constitution is maintainable if the High Court division is satisfied that no other equally efficacious remedy provided by law. Here, the remedy available by appeal to the Chancellor is efficacious and speedy.”

We have gone through section 51 of the Jahangirnagar University Act, 1973 and found that the Writ Petitioner had equally efficacious and adequate remedy by way of appeal to the Chancellor of the University, where the Syndicate will necessarily be a party. According to section 51 of the Act of 1973, on receipt of appeal the Chancellor will send a copy thereof to the Syndicate seeking its opinion and if he is satisfied with the opinion given by the Syndicate, then may reject the appeal straightaway, in

which case the aggrieved party may come with an application under article 102 of the Constitution. There is another option for the Chancellor in which case he will appoint an Inquiry Commission consisting of such persons having no involvement with affairs of the University and on the basis of the report of the Inquiry Commission and the recommendations of the Syndicate, the Chancellor shall decide the appeal. In view of the said provisions of appeal and the decision given by their Lordships in the Appellate Division, as referred to above, we are inclined to hold that at this stage both the Writ Petitions, as filed, under article 102 of the Constitution are not maintainable.

Having regard to what we have discussed above and the attending facts and circumstances to the cases, we are, therefore, inclined to hold that the Petitioner does not deserve any remedy for failure to show any ex-facie illegality in the proceedings taken or the impugned order passed against him and on the ground of maintainability.

Consequently, the Rules are discharged without any order as to cost. However, the Petitioner is at liberty to avail forum of appeal under section 51 of the Jahangirnagar University Act, 1973, if not barred by otherwise. Parties are directed to bear their respective costs. With this judgment Writ Petition nos. 3250 and 8413 of 2014 are disposed of accordingly.

Tariq ul Hakim, J

I agree.