

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice Murad-A-Mowla Sohel

Writ Petition No.6664 of 2014

Prof. Md. Abdus Samad petitioner

-Vs-

The Government of Bangladesh and others

..... respondents

Mr. Md. Mozammel Hossain with Ms. Shalina Tazrin, Advocatesfor the petitioner

Ms. Tapati Ghosh, Advocate for Mr. Subrata Chowdhury, learned Senior Advocate
..... for Respondents 2 and 3

Judgment on 04.3.2026.

Bhishmadev Chakrabortty, J:

The Rule in the aforementioned writ petition was issued in the following terms:

“Let a Rule *Nisi* issue calling upon the Respondents to show cause as to why the Notification issued by the Respondent No.3 under Memo No. খুপ্রবি/২৩/৬ dated 03.07.2014 (Annexure-C) in compulsory retiring the petitioner from service should not be declared to have been issued without any lawful authority and of no legal effect and/or such other or further order or orders passed to this Court may seem fit and proper.”

At the time of issuing the Rule operation of the impugned notification as contained in annexure-C to the writ petition was stayed for a limited period which was subsequently extended from time to time and still subsists.

The material facts as stated in the writ petition, in brief, are that the petitioner was appointed as Director of Bangladesh Institute of Technology (BIT), Khulna on 28.07.1991 for 4 years. After expiry of the tenure his directorship was extended. After establishment of Khulna University of Engineering & Technology (KUET) on 1st September, 2003 he was serving there as professor Department of Electrical and Electronic Engineering (EEE). During his service there the Hon'ble President of Republic appointed him as Vice-Chancellor of Prime University, Dhaka for 4 years. The KUET authority approved his 4 years unpaid leave with lien. He joined in the Prime University on 11.04.2007 as Vice-Chancellor and after tenure of 4 years of service there he joined in the KUET on 12.04.2011 and till date of filing of the writ petition he was serving his professional responsibilities and obligations efficiently. All of a sudden the petitioner came to learn that the Syndicate of KUET in its 45th meeting formed a committee to investigate whether he served in the University of Science and Technology Chattogram (USTC) as a Dean and took salary of Taka 1 lac each month from January 2013 to July 2013. Subsequently, the Registrar of KUET, respondent 3 herein sent a letter to the petitioner asking him to explain the allegation denoting the said letter. The aforesaid letter shows that an inquiry committee was formed against him. He sent a reply of the same to respondent 3 on 06.03.2014. The committee requested him to appear before the Chairman of the committee at Dhaka to explain his position as to the allegation brought against him. The petitioner appeared before the Chairman of the Inquiry Committee on 24.05.2014 and on that day or afterwards the authority did not inform him that they are going to take major penalty against him. Respondent 3 suddenly without any further show cause notice upon him

issued a notification on 03.07.2014 compulsory retiring him from service of KUET under the provisions of Rule 19(7)(Kha)(2) of Khulna University of Engineering & Technology, 2nd Rules (2nd Statute) framed in 2005 read with Rule 4(3)(Kha) of the Government Servants (Discipline and Appeal) Rules, 1985 (the Rules, 1985). The impugned notice was issued by violating the mandatory provisions of law of the Rules 1985 and 2nd Statute of the University. In passing the order of compulsory retirement to the petitioner, the respondents violated the provisions of Article 135 of the Constitution without serving any show cause notice upon him and without framing any charge for imposing major penalty. The petitioner then through his learned Advocate sent a notice upon the respondents demanding justice. But the respondents did not inform anything to the petitioner which is nothing but denial of justice. The petitioner finally approached this Court with this writ petition and obtained this Rule with an interim order of stay.

Respondents 2 and 3 filed affidavit-in-opposition to contest the Rule. There they denied the material facts as stated in the writ petition further contending that in 45th meeting of KUET Syndicate they took decision and constituted an Inquiry Committee to investigate into allegation brought against the petitioner of serving as Dean in USTC taking remuneration of Taka 1 lac from January 2013 without taking approval of the KUET. In reply to the said notice the petitioner admitted the allegation brought against him. As a professor of KUET he cannot avail extra financial benefit by abusing professional ethics. But he joined in the USTC and took honorarium behind the back of the respondents which amounts to misconduct. The petitioner is a self-

declared doyen in the rank of Professor of KUET. He initially took assignment for 3 months service offered by USTC from 03.10.2010 as Advisor to the Vice Chancellor and Dean with monthly financial benefit of Taka 1 lac as a matter of contract dated 11.11.2010 and further extended 2 terms from 03.01.2011 to 02.01.2013 and 03.01.2013 to 02.01.2015 vide correspondence dated 22.01.2011 and 02.10.2013 keeping all other conditions unchanged behind the back of KUET Authority withholding information as to drawal of honorarium. The KUET Authority correctly took the decision of imposition of major penalty against him on holding inquiry by forming an inquiry committee, and as such the Rule would be discharged.

Mr. Md. Mozammel Hossain, learned Advocate for the petitioner taking us through the writ petition, the annexures appended thereto and the law relating to taking disciplinary action against the employees of KUET submits that the Inquiry Committee was formed before issuance of show cause notice upon the petitioner. As per the provisions of Rule 19(7)(Kha)(2) of the second Statute of KUET, the compulsory retirement (বাধ্যতামূলক অবসরদান) is a major penalty (গুরুদণ্ড) and to impose such penalty upon an employee, the inquiry should be as per the provisions of sub-rule 11 of Rule 19 of the Statute. As per the provisions of the aforesaid sub-rule charge is to be framed against an employee and proposed punishment, if the charge is proved, should be informed to him which was not at all done in the present case. Therefore, forming of the Inquiry Committee on 16.09.2013 in the 45th Syndicate meeting of KUET and imposing the penalty of compulsory retirement to the petition with all benefits through annexure-C has been issued in gross violation of the

provisions of 2nd Statue of KUET and Rules, 1985. By issuing such order the KUET authority has infringed the fundamental rights of the petitioner, and as such the Rule would be made absolute.

Ms. Tapati Ghosh appearing for Mr. Subrata Chowdhury, learned Senior Advocate for respondents 2 and 3 on the other hand taking us through the annexures of the affidavit-in-opposition and supplementary affidavit-in-opposition submits that by the strength of order of stay of the impugned order passed by this Division on 15.07.2014 the petitioner on completing his full tenure of service in the university went on retirement on 02.08.2016 after attaining the age of 65 years. Since the petitioner was given compulsory retirement with all benefits and in the meantime he has already relied from service, therefore, this Rule has virtually become infructuous. He then refers to the provisions of Rule 20 of the KUET, 2nd Statue and submits that against the impugned order of compulsory retirement, the petitioner ought to have preferred an appeal to the Syndicate but without doing so, he invoked writ jurisdiction of this Court directly. In that view of the matter, the instant writ petition is not maintainable. She lastly submits that the petitioner was a permanent teacher of KUET but by violating the laws and Rules he served in USTC and took salary therefrom which has been admitted by him in his written reply to the show cause notice. The aforesaid act of the petitioner is a misconduct within the meaning of Second Statue of KUET. The charge brought against him thus has been proved and as such there is nothing to interfere with the impugned order of imposing major penalty. The Rule, therefore, would be discharged.

We have considered the submissions of both the sides, gone through the materials on record, the annexures appended with the writ petition, the affidavit-in-opposition and the law relating to take action against any employee of KUET known as 2nd Statute of KUET and Rules, 1985.

It is admitted fact that the petitioner was a teacher of department of EEE of KUET. He was a permanent teacher and professor of the department. The Second Statute of KUET was framed in 2005 as per the provisions of section 20(2)(Ka) of Act 33 of 2003. Rule 18(3) of the aforesaid 2nd Statute provides that if he wants to serve any other university or any organization he has to take prior approval from the KUET Authority. The allegation was brought against him that he without taking permission from KUET served as a Dean in the USTC and drew regular salary therefrom as a teacher. On such allegation, the Syndicate in its minutes of meeting 45/39 dated 16.09.2013 through annexure-A formed an Inquiry Committee consisting of 4(four) members to inquire into the allegation so brought against him. Respondent 3, Registrar of KUET under the purported authority of respondent 2 sent a show cause notice to him on 29.01.2014 (Annexure-A-1) asking him to submit a reply within 7 days to the allegation brought against him. The petitioner through annexure-B replied to the said show cause notice. In the reply he stated amongst other, “KUET- এর সব দায়িত্ব সম্পন্ন করে weekend এ এবং ছুটির দিনগুলোতে অত্র বিশ্ববিদ্যালয়ের কোন প্রোগ্রামের বিঘ্ন না ঘটিয়ে শিক্ষকগণ যেমন ভাবে নানা কাজে সময় কাটান, তেমনি ভাবে আমার পুরো পরিবারের ব্যয়ভার চালিয়ে যাওয়ার জন্য জীবন বাজী রেখে আমি শ্রদ্ধেয় জাতীয় অধ্যাপক প্রফেসর ডা. নূরুল ইসলাম সাহেবের একান্ত অনুরোধে তাঁর নিজের গড়া বিশ্ববিদ্যালয়ে সেবা দিয়েছি এবং তার বিনিময়ে উনি আমাকে Honorarium (সম্মানী) দিয়েছেন। সাপ্তাহিক বন্ধের দিনে একজন সিনিয়র অধ্যাপকের Honorarium

এর বিনিময়ে সেবা প্রদান করার জন্য অনুমতি নেওয়ার প্রয়োজন আছে কিনা তা আমার জানা নেই। থাকলে আমার সেবা প্রদান অজ্ঞতাবশতঃ ভুল হয়েছে। KUET-এর EEE Dept-এর Course Load ও অন্যান্য শিক্ষা সংক্রান্ত সকল কাজ যথারীতি পালন করেছি। (*emphasis supplied*).

The aforesaid written statement submitted by him proves that he provided service to the USTC while he was a full time professor of KUET without taking any approval or permission from KUET Authority in gross violation of Rule 18(3) of the 2nd Statue which comes within the meaning of misconduct defined in Rule 3(21)(Ga) of the same Statue. The petitioner was a professor of KUET and as such his aforesaid acts obviously do not go with his status and position. Therefore, we find that allegation so brought against the petitioner by the KUET authority is found proved. But the fact remains that to impose major penalty upon an employee of the aforesaid University, the Authority has to follow the procedure of law applicable at the material time, *i.e.*, the 2nd Statue of KUET read with the relevant provisions of the Rules, 1985. Rule 19(7)(Ka) and (Kha) of the 2nd Statue classified the penalty may be imposed upon an employ of KUET in 2 categories as under-

১৯(৭) দণ্ড সমূহঃ এই সংবিধির অধীনে দুই ধরনের দণ্ড আরোপযোগ্য হইবে যথাঃ লঘু দণ্ড ও গুরু দণ্ড। নিয়োগকারী কর্তৃপক্ষ ব্যাতিত অধঃস্তন কোন কর্তৃপক্ষ গুরুদণ্ড প্রদান করিতে পারিবে না।

(ক) লঘু দণ্ডঃ নিম্নোক্ত বিষয়সমূহ লঘু দণ্ডের অন্তর্ভুক্ত-

(১) তিরস্কার (Censure),

(২) নিদিষ্ট মেয়াদের জন্য পদ আপগ্রেডেশন বা সিলেকশন গ্রেড প্রদান বা বেতন বৃদ্ধি, দক্ষতা সীমা অতিক্রম স্থগিত রাখা,

(৩) কর্মচারী কর্তৃক সংঘটিত বিশ্ববিদ্যালয়ের আর্থিক ক্ষতির অংশ বিশেষ বা সম্পূর্ণ তাঁহার বেতন বা অন্য কোন খাতের পাওনা হইতে আদায়করণ,

(৪) টাইম স্কেলের নিম্নধাপে নামিয়ে দেয়া।

কোন কর্মচারীর বিরুদ্ধে আনীত অভিযোগের কারণে উপবিধি (৭)(ক)(১) অনুযায়ী শাস্তি পাওয়ার যোগ্য অনুমিত হইলে উপযুক্ত কর্তৃপক্ষ উক্ত কর্মচারীকে

আত্মপক্ষ সমর্থনের জন্য ৩ (তিন) দিন সময় দিয়া লিখিতভাবে কারণ দর্শানোর নোটিশ জারী করিবেন এবং প্রাপ্ত জবাবের উপর সিদ্ধান্ত গ্রহণ করিবেন।

(খ) **গুরু দণ্ডঃ** নিম্নোক্ত বিষয়সমূহ গুরু দণ্ডের অন্তর্ভুক্ত-

(১) নিম্নপদে বা নিম্নতর বেতনক্রমে অবনতরকরণ (Reduction to a lower post or time-scale),

(২) বাধ্যতামূলক অবসরদান (Compulsory retirement),

(৩) চাকরী হইতে অপসারণ (Removal) এবং

(৪) চাকরী হইতে বরখাস্ত (Dismissal) (*emphasis supplied*)

The penalty imposed upon the petitioner is found a major penalty as per Rule 19 (7) (Kha) (2) of the 2nd Statue of KUET. In case of imposition of major penalty, the procedure of Rule 19(11) of the Statue is to be followed which reads as follows:

(১১) **গুরুদণ্ডের ক্ষেত্রে তদন্তের কার্যপ্রণালীঃ**

(ক) যেইক্ষেত্রে কোন কর্মচারীর বিরুদ্ধে এই সংবিধির আধীনে কোন কার্যধারা সূচনা করিতে হইবে এবং কর্তৃপক্ষ অভিমত পোষণ করেন যে, অভিযোগ প্রমাণিত হইলে গুরুদণ্ড আরোপ করা প্রয়োজন হইবে, সেইক্ষেত্রে কর্তৃপক্ষ-

(১) অভিযোগনামা (Charge) গঠন প্রণয়ন করিবেন এবং প্রস্তাবিত দণ্ডের বিষয় উহাতে উল্লেখ করিবেন এবং যে সকল অভিযোগের ভিত্তিতে অভিযোগনামাটি (Statement of allegations) গঠিত হইয়াছে, উহার বিবরণ এবং কর্তৃপক্ষ আদেশ প্রদানের সময়ে অন্য যে সকল ঘটনা (Circumstances) বিবেচনা করিবার ইচ্ছা পোষণ করেন, তাহাও কর্মচারীকে অবহিত করিবেন;

(২) অভিযুক্ত ব্যক্তিকে অভিযোগনামা অবহিত করিবার পর দশটি কার্য দিবসের মধ্যে তিনি তাঁহার আত্মপক্ষ সমর্থনে লিখিত বিবৃতি পেশ করিবেন এবং প্রস্তাবিত দণ্ড কেন তাঁহার উপর আরোপ করা হইবে না তৎসম্পর্কে কারণ দর্শাইবেন এবং তিনি ব্যক্তিগতভাবে শুনানীর ইচ্ছা পোষণ করেন কিনা তাহাও উল্লেখ করিবেন। তবে শর্ত থাকে যে, উল্লিখিত মেয়াদ শেষ হইবার পূর্বে অভিযুক্ত ব্যক্তি যদি সময় বৃদ্ধির জন্য আবেদন করেন, তাহা হইলে কর্তৃপক্ষ তাঁহাকে তাঁহার লিখিত বিবৃতি পেশ করিবার জন্য আরও দশটি কার্য দিবস পর্যন্ত সময় দিতে পারেন। (*emphasis supplied*)

The aforequoted provisions of law provides that for taking disciplinary action against an employee formal charge/charges has to be brought and he has to be given 10 days time to submit its reply. But in the present case no formal

charge was brought against the petitioner, only allegation was brought against him. He was given only 7 days time to submit reply and Inquiry Committee was formed before issuance of show cause notice. But the petitioner submitted replay to the allegation brought against him. The aforesaid law also prescribes that in case of probability of inflicting major penalty the proposed punishment and the charge is to be mentioned in the show cause notice which is totally absent in this case. The university Authority very casually proceeded with the inquiry against the petitioner and imposed major penalty upon him which cannot be sustained in law. The whole proceeding and action taken against the petitioner is found to have been done in gross violation of law which are without lawful authority and are of no legal effect.

We have gone through Rule 20 of the 2nd Statue of KUET where it is found that there is provision of appeal to the Syndicate against order passed against any employee alike the petitioner. We find that in the present case the KUET Syndicate took final decision to impose major penalty, therefore, the question of filing appeal to the same authority is found meaningless. The argument made by learned Advocate for respondents 2 and 3 on this point, therefore, bears no substance. Since the order has been passed in flagrant violation of law infringing the fundamental right of the petitioner guaranteed in the Constitution, the petitioner rightly invoked writ jurisdiction of this Court.

In view of the discussion made hereinabove, we find merit in this Rule. Accordingly, the Rule is made absolute. The impugned order as contained in annexure-C to the writ petition dated 03.07.2014 compulsory retiring the petitioner from service is declared to have issued without lawful authority and

is no legal effect. Since the petitioner in the meantime has retired from service after completing his tenure of job attaining the age of retirement, therefore, no order is required to be passed for his reinstatement.

However, the petitioner is entitled to get all financial benefits in accordance with law as he was entitled to as a regular teacher after his retirement.

Communicate this judgment and order to the concerned.

Murad-A-Mowla Sohel, J.

I agree

Sumon-B.O.