

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

WRIT PETITION NO.1764 of 2015

IN THE MATTER OF:

An application under Article 102 of the
Constitution of the People's Republic of
Bangladesh

And

IN THE MATTER OF:

Rahima Akter

... Petitioner

-vs-

***Government of Bangladesh, represented by
Secretary, Ministry of Education and others.***

... Respondents.

And

Mr. Mohammad Mosfequs Salehin, Advocate
.... For the petitioner.

Mr. Sk. Shafique Mahmud, Advocate
..... For the respondent No.7

Mr. Samarendra Nath Biswas, D.A.G. with
Mr. Md. Abul Kalam Khan (Daud), A.A.G. and
Mr. Md. Modersher Ali Khan (Dipu), A.A.G.
....For the respondents-government.

Heard in part :08.02.2024

And judgment on:22.02.2024

Present:

Mrs. Justice Farah Mahbub.

And

Mr. Justice Muhammad Mahbub Ul Islam

Farah Mahbub, J:

In this Rule Nisi, issued under Article 102 of the Constitution of the People's Republic of Bangladesh, the respondents have been called upon to show cause as to why they should not be directed to provide government portion of salary (MPO) at a higher scale as per clause 11(g)

of the “বেসরকারী শিক্ষা প্রতিষ্ঠান (স্কুল, কলেজ, মাদ্রাসা ও কারিগরি শিক্ষা প্রতিষ্ঠানসমূহ) এর শিক্ষক ও কর্মচারীদের বেতন-ভাতাতির সরকারি অংশ প্রদান এবং জনবল কাঠামো সম্পর্কিত নির্দেশিকা, ২০১০” (Janabal Kathamo, 2010) along with arrear from 01.06.2010 in favour of the petitioner in accordance with law.

Facts, in brief, are that the petitioner joined at Manikkathi Girls Dakhil Madrasah, Barisal (in short, Madrasha) on 01.01.1986 as a Junior Teacher. On 04.01.1986 said educational institution was enlisted in the list of Monthly Payment Order (MPO), bearing MPO Code No.5106012102. Subsequently, the name of the petitioner was enlisted in the said list bearing Index No.076475, salary code No.15 fixing her salary scale at Tk.4,900/- (Taka four thousand nine hundred) only per month (Annexures-A and A-1 respectively).

While the petitioner was discharging her duties and functions without any objection from any quarter whatsoever she obtained higher degree. Subsequently, she was promoted to the post of Assistant Teacher vide appointment letter dated 04.08.2007 issued by the authority concerned of the said Madrasah. Meanwhile, she obtained the degree in Bachelor of Arts (B.A.) in 2007 from Bangladesh Open University. In the year, 2009 she obtained her Bachelor of Education (B.ed.) Degree from a private university approved by the government (Annexures-C and C-1 respectively).

In this regard, the categorical contention of the petitioner is that as per clause 11(ga) of the “Janabal Kathamo, 2010” she was eligible to get MPO at a higher scale of Tk.8,000/- (Taka eight thousand), which runs as follows:

“১১/ শিক্ষক ও কর্মচারীদের বেতন- ভাতা নির্ধারণঃ

(ক).....

(খ).....

(গ) কোন পদে কর্মরত কোন শিক্ষক/কর্মচারী তাঁর প্রশিক্ষণ/উচ্চতর ডিগ্রী/ অভিজ্ঞতার জন্য উচ্চতর স্কেল বা বর্ধিত বেতন পাওয়ার যোগ্য হলে বিধিত হারে বেতন- ভাতাদি'র সরকারী অংশ পাবেন। তবে এ নির্দেশিকা জারীর পূর্বে কোন বকেয়া প্রাপ্য হবেন না।”

To that effect the Managing Committee of the said Madrasha upon adopting a resolution dated 25.03.2010 took decision to provide MPO to the petitioner at a higher scale. Pursuant thereto the respondent No.5 gave a representation to the respondent No.2 on 13.07.2010 along with all necessary documents for taking necessary steps to that effect. Said representation was duly forwarded by the District Education Officer, Barishal to the said respondent on 29.07.2010 vide Memo No.jsheo/Bori/1713, but with no response. Subsequently, the petitioner also made several representations to the office of the respondent No.2 on 24.04.2012, 11.03.2013 and 26.02.2014 respectively with a prayer for taking necessary steps in the matter in question, but with no result. Hence, the application.

Mr. Mohammad Mosfequs Salehin, the learned Advocate appearing for the petitioner submits drawing attention to clause 11(Ga) of the Janabol Kathamo, 2010 that in view of the said provision of law any teacher/employee while in service obtained training/higher degree/experience, shall be entitled to get higher scale and accordingly, they shall get the government portion of salary at a higher scale. However, they shall not be entitled to claim any arrear before introduction of the said “Janabol Khatamo, 2010”.

In the instant case, he submits, the petitioner despite being entitled to receive MPO at a higher scale since 2010 and that respective

representations of the Madrasah was also forwarded to the respondent No.2 by the District Education Officer, Barishal, respondent No.3 on 29.07.2010 (Annexure-E2) for taking necessary steps to that effect, but to date the authority did not give any decision over the matter in question. Moreover, for the last 13 years the petitioner was awaiting decision of the respondent No.2, but with no result. Meanwhile, she is going to retire from her respective post in the month of April, 2024 without getting her due entitlement of MPO at a higher scale.

Accordingly, he submits that upon making the Rule absolute a direction be given by this Hon'ble Court upon the respondent concerned to provide MPO to the petitioner at a higher scale under clause 11(ga) of the "Janabol Khathamo, 2010" along with arrear from 01.06.2010.

Mr. Sk. Shafique Mahmud, the learned Advocate appearing for the respondent No.7 merely opposes the Rule without being able to substantiate the reason of opposition nor could justify the reason for not taking any decision whatsoever by the respondent No.2 now, the respondent No.7, who is empowered to look into the matter in question on the representation dated 29.07.2010 (Annexure-E2) forwarded by the respondent No.3 for taking necessary steps.

In the absence of any assertion on behalf of the respondent No.2 now, respondent No.7 on the claim of the petitioner to get MPO at a higher scale and also, having failed to justify its reason in not responding to the representation of the petitioner dated 29.07.2010 (Annexure-E2),so was forwarded earlier by the respondent No.3, within a span of 13 years justifies intervention by this Court to allow the prayer so made in the instant writ petition.

In the result, the Rule is made absolute without any order as to costs.

Respondent concerned is directed to provide MPO to the petitioner at a higher scale under clause 11(ga) of the “Janabol Khatamo, 2010” along with arrears with effect from 29.07.2010 (Annexure-E3), the date on which respective representation was forwarded by the respondent No.3 to the respondent No. 2, in accordance with law, within a period of 30(thirty) days from the date of receipt of the copy of this judgment and order positively considering the fact that the petitioner is going to attain the age of superannuation in the month of April, 2024.

Communicate the judgment and order to the respondents concerned at once.

Muhammad Mahbub Ul Islam, J:

I agree.