

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice Md. Moinul Islam Chowdhury

CIVIL REVISION NO. 295 OF 2015

Md. Abu Bakar Siddique

----- Plaintiff-Respondent -Petitioner

=Versus=

Md. Moksedul Mondal and others

----- Defendant-Appellant- Opposite
Parties

Mr. Md. Mostafa, Advocate

----- For the Petitioner

Mr. Md. Riaz Uddin Khan, Advocate

----- For the Opposite Party Nos. 1-4

Heard on: 29.01.2018

Judgment on: 13.02.2018

At the instance of the present plaintiff-respondent-petitioner, Md. Abu Bakar Siddique, this Rule has been issued calling upon the opposite party Nos. 1-4 to show cause as to why the judgment and order dated 20.05.2014 passed by the learned Additional District Judge, 2nd Court, Rangpur, in Miscellaneous Appeal No. 52 of 2013, allowing the appeal, reversing those dated 22.07.2013 passed by the learned Assistant Judge, Taragonj, Rangpur in Other Suit No. 4 of 2013 allowing the prayer for temporary injunction should not be set aside.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present petitioner as the plaintiff filed the Other Class Suit No. 04 of 2013 in the court of the learned Assistant Judge Taragonj, Rangpur for declaration that the appointment of the defendant No. 1 namely Md. Moksedul Mondal in the post of Daptry-cum-Night Guard in the

Chilapak Government Primary School (the school) was illegal collusive and not binding upon the plaintiff. The plaint contains that the school published an advertisement for appointment in the post of Daptory-Cum-Night Guard. Fourteen candidates made applications. The plaintiff appeared in the written and viva examinations. A short list was prepared containing five candidates including the plaintiff by the present defendant opposite party No. 13, Upazila Nirbahi Officer, Taragonj, Rangpur who appointed the defendant No. 1. The said appointment has been challenged on the ground that the defendant No. 1 was under the age of 18 at the time of appointment thus the suit was filed. In the said suit the present plaintiff petitioner also filed an application under Order 39 Rule 1 and 2 for temporary injunction upon the function of the defendant No. 1.

After hearing the parties the learned trial court allowed the prayer for temporary injunction restraining the defendant opposite party Nos. 2-13 from allowing him to function in the school. Being aggrieved the present opposite party No. 1 as an appellant preferred the Miscellaneous Appeal No. 52 of 2013 in the court of learned District Judge, Rangpur which was heard by the Additional District Judge on transfer who by his judgment and order allowed the appeal by the judgment and order dated 20.05.2014. This revisional application has been filed challenging the legality of the said order and the Rule was issued thereupon.

Mr. Md. Mostafa, the learned Advocate appearing for the petitioner submits that the advertisement of appointment the condition was the age of the candidate would be 18 years to 30 years but the age of

defendant No. 1 was below 18 years as such he was not eligible for the post of Daptry-Cum-Night Guard and the learned Assistant Judge after considering the above facts allowed the prayer for temporary injunction but the learned appellate court without reversing those finding allowed the appeal and thereby committed an error of law resulting in an error in the decision occasioning failure of justice.

The Rule has been opposed by the opposite party No. 1.

Mr. Md. Riaz Uddin Khan, the learned Advocate appearing for the opposite party Nos. 1-4, submits that the present opposite party No. 1 was a student of Sakerhat High School, Gopalganj, Ragnpur. Wherein the school record contains his date of birth on 10.07.1990 accordingly on the date of application he was 22 years 5 months 7 days. He secured good marks in the examination for appointment, as such, being satisfied the other opposite parties appointed him in the post, thereby, the learned appellate court rightly allowed the appeal preferred by the present opposite parties by setting aside the order of the trial court, as such, no interference from this court is called for and the Rule should be discharged.

Considering the above submissions made by the learned Advocates appearing for the respective parties and considering the revisional application filed under Section 115 (1) of the Code of Civil Procedure along with the Annexures therein, in particular, the impugned judgment and order passed by the appellate court below and also considering the materials in the lower court records, it appears to me the School namely Chilapak Government primary School situated in Police

Station-Taragonj, District-Rangpur published an advertisement for appointment in the post of Daptory-Cum-Night Guard. Both the present petitioner and the defendant opposite party No. 1 along with the others made applications and after scrutiny by way of written examination and viva, a short list was prepared containing 5(five) candidates. In the said short list both the petitioner and the opposite party No.1 were enlisted, however, the Upazila Nirbahi Officer of the Taragonj Upazila as the appointing authority appointed the present opposite party No. 1 Md. Moksedul Mondal. Challenging the said appointment the present petitioner filed the suit which is pending for hearing. During pendency of the suit an application was filed seeking a temporary injunction for restraining the present opposite party No. 1 from functioning in the post of Daptory-Cum-Night Guard and restraining from withdrawing the monthly salary.

In the above given circumstances this court has to take a decision whether there is any necessity of a temporary injunction restraining the opposite party No. 1 to function when the suit is pending. In this regard I have carefully examined the documents submitted by the parties in the lower court and also considered the judgment and order passed by the courts below and I found that the learned trial court allowed the injunction on the ground that there is a prima facie case in favour of the present petitioner whereas the learned appellate court below considered that regarding the age of the present opposite party No. 1 the suit should be decided on merit instead of restraining by a temporary injunction.

In order to take a decision I consider that the defendant No. 1 was appointed by the concern authority in a Government Primary School after taking all necessary steps required under the law but the said appointment has been challenged. Both the parties can adduce and produce evidence in support of their respective case in order to decide and conclude the suit itself instead of seeking any interim order for disrupting the conclusion of the suit. Moreover, I consider that the matter of age of the opposite party No. 1 is the subject matter of dispute in the suit and the validity of the appointment shall only be decided by hearing of the parties. Therefore any interim order of temporary injunction from functioning or withdrawing salary during his service is unnecessary and not a proper remedy for the present petitioner. I am therefore of the view that the Suit should be concluded expeditiously without any further delay as to the appointment of the present opposite party No. 1.

The learned trial court came to a wrongful conclusion to allow the interim order of temporary injunction on the basis of the following findings:

“উভয় পক্ষের দাখিলী কাগজের প্রেক্ষিতে দেখা যায় যে, বাদীপক্ষ দাখিলী ১ নং বিবাদীর নামীয় রেজিস্ট্রেশন কার্ড ও প্রবেশ পত্রের মধ্যে উল্লেখিত স্বাক্ষর এবং লিখিত আপত্তিতে প্রদত্ত স্বাক্ষর একই অর্থাৎ ১ নং বিবাদী নিয়োগের সময় নাবালক ছিল বলিয়া প্রতীয়মান হওয়ায় বাদী পক্ষে অত্র দরখাস্তের প্রাইমাফেসী আরগুয়েবল কেস রহিয়াছে বলিয়া অত্র আদালতের নিকট প্রতীয়মান হয়।”

On the other hand the learned appellate court below came to a lawful conclusion to set aside the judgment of the trial court on the basis of the following findings:

“১ নং বিবাদী আদৌ উক্ত ভোকেশনাল ট্রেনিং সেন্টার রেজিস্ট্রেশন করিছেন কিনা সে বিষয় অনুসন্ধানের প্রয়োজন রয়েছে। নিয়োগকারী কর্তৃপক্ষ ১ নং বিবাদীর নামীয় জন্ম সনদ এবং অষ্টম শ্রেণী পাঠের কাগজাদি পর্যালোচনা করিছেন। আপাতঃ দৃষ্টিতে উক্ত কাগজাদি একজনের বয়স প্রমাণের জন্য উপযুক্ত প্রমাণ হিসেবে গ্রহণযোগ্য হতে পারে। তদুপরি ১ নং বিবাদী নিয়োগ পরীক্ষায় প্রথম স্থান অধিকার করেছিলেন মর্মে দাখিলী কাগজপত্র পর্যালোচনায় দেখা যায়।”

In view of the above discussions and on perusal of the judgment and order passed by the courts below, I consider that the learned trial court committed an error of law by granting an interim order of injunction but the learned appellate court below committed no error of law by passing the impugned judgment and order. I am therefore not inclined to interfere into the judgment and order passed by the appellate court below.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is discharged.

The interim order of stay upon the operation of the judgment and order dated 20.05.2014 passed by the learned Additional Judge in the Miscellaneous Appeal No. 52 f 2013 is hereby recalled and vacated.

The learned Assistant Judge, Taragonj, Rangpur is hereby directed to conclude and decide the Other Class Suit No. 04 of 2013 within 6(six) months from the date of receipt of this judgment and order.

The office is directed to communicate the judgment and order to the concern Court immediately and the section is also directed to send down the lower court records at once.