

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

WRIT PETITION NO. 7022 of 2015

Present:

Mr. Justice K.M. Hafizul Alam

-And-

Mr. Justice Abdur Rahman

IN THE MATTER OF:

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

-And-

IN THE MATTER OF:

Kushtia Sugar Mills Ltd., represented by its
Managing Director, Kushtia Sugar Mills
Ltd. Post Office - Kushtia, District- Kushtia

..... Petitioner

-versus-

Chairman, Labour Appellate Tribunal,
Dhaka of Kakrail (next to Anjuman
Mofidul Islam) and others

... Respondents

Ms. Qumrun Mahmud Deepa, Advocate

... for the petitioner

Mr. Md. Sharafatullah, Advocate

...for the respondent No.3.

Heard on 20.01.2026 & Judgment on:
25.2.2026

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 Judgment and Order dated 24.11.2013 passed by the respondent No.1 in Labour Appeal No.106 of 2010 dismissing the appeal and affirming the judgment and order dated 02.06.2010 passed by the Chairman, Labour Court, Khulna in Labour Case No.C-31/2003 allowing the case declaring the order of dismissal dated 24.07 2003 under reference No: X/2003/2572 is illegal and directed the petitioner to reinstate the respondent No.3 with all back wages within 90 days of receiving the copy of the order should not be declared to have been made without any lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.”

The facts leading to the issuance of this Rule Nisi in brief are that: the Respondent No. 3, Badruddoza Bachchu, filed a Labour case no. C 31/2003 before the respondent No.2, stating *inter alia* that he was appointed as a seasonal clerk on 16.01.1990, the post of the respondent no.3 was changed to seasonal Weight Clerk on 10.09.2002 through his application, and then he was transferred from Mubarakgonj Sugar Mills to Kustia Sugar Mills as Purchase Clerk. The petitioner purchased sugar cane from more than one center, and at each center, there is one In-Charge (CIC), 1-2 CDA, 1 weight clerk, 1 Purji Distributor, and 1 guard posted to the center. All the long sugar cane is collected, and afterwards, a purchase sheet is prepared, which has been supplied to the CIC. The CIC has verified the same with the purchase receipt and issued 3 copies of the purchase sheet, keeping one in the center and the other two at the mill with a messenger. Sometimes, some sugar cane is left in

the center, which is taken to the mill once every 15 days or once a month; that day is called cleaning day. And on the cleaning day, the purchase registrar was brought up to date, and any irregularity that should have been revealed was to be recorded. Every year, there are at least 7 to 10 cleaning days in every mill. In the 2002-2003 season, the respondent no. 3 purchased sugar cane, which the mill has duly received without any deficit. At the Ramudi center one Haji Mozzammel Haque was highest sugar cane seller in the year of 2002-2003 seasons and in that year 24/03/2003 was the last day to purchase sugar cane and on that day Al-Haj Mozzammel Haque came and said he failed to collect all the sugar cane due to shortage of labour and will be carried those within 4-5 days and if his sugar cane is not taken, he will face huge loss. And as such, an advance purchase receipt has been issued in the name of Mozzammel Haque, but he failed to supply the sugar cane, and the plaintiff refused to

sign the purchase receipt. And those advance purchase orders have not been registered in the purchase registrar, and the mill has not paid any amount against those purchase orders, since Md. Mozammel Haque failed to supply sugar cane on time, brought it later than the cleaning day, and requested it, but the respondent refused. 3, along with CIC, refused to take the same, and they said Mozammel Haque threatened them with dire consequences, and afterwards made a complaint to the mill authority with the purchase receipt, and 12 other farmers also made a complaint against the respondent no. 3 and since the mill didn't receive any sugar cane against those purchase receipts, it was not under obligation to pay the same. Still, with the influence of the counterpart Union activities, a show cause notice 15.07.2003, requesting the respondent no. 3 to appear before the investigating authority on 20.07.2003. Respondent No. 3 appeared before the investigating authority. Still, respondent no. 3 has

not been given a proper opportunity to prove his innocence. The investigating authority was not fair, and they asked some irrelevant questions and received the respondent no.'s signature on the blank paper, besides the respondent's number. 3 having not been supplied with any formal charge and not being given any scope to prove innocence, and afterwards being dismissed from service on 28.07.2003. Afterwards, the respondent no. 3 issued a grievance notice on 05.08.2003, requesting the authority to reinvestigate the offence, unsuccessfully finding the reply filed in the instant Labor case.

Thereafter, the petitioner, Kustia Sugar Mills Ltd., contested the case by filing a written statement denying the allegation and stating inter alia that the case is barred by limitation and is not maintainable in the present form and manner, besides the case is liable to be dismissed for non-joinder of parties, and the application is barred by waiver and estoppels. The

respondent no.3 joined the service in the season of 1980-1981, and from the time of joining in service, the record of the respondent no.3 was bad, and as such, the respondent no.3 was pardoned, admitting guilt and also issue show cause notice several times. The respondent no.3, in collusion with the CIC purchase the sugarcane in violation of the purchase rule and issued a false purchase receipt in favour of the sugarcane cultivators. Twelve number of sugarcane sellers filed complain that on 22.07.2003 they supplied 1,10,400 K.G sugarcane and received 46 purchase receipt without the signature of the weight Clerk and the CIC and also forged the signature of the Record Clerk and afterwards on the specific allegation show cause notice was issued against the respondent no.3 who confessed before the investigating authority and again sought pardon and the investigating authority investigating the allegations impartially submits report on 23.07.2003 and based on the said report considering the gravity of the offence the respondent was dismissed from service on 24.07.2003 and prayed to dismissed the case.

Following which, the Divisional Labour Court, Khulna, after hearing the parties, by its judgment and order dated 26/06/2010 allowed the application of the present respondent No. 3 of the writ petition, holding the view that the dismissal order was illegally passed based on proceedings which were drawn in his absence and no opportunity of hearing the said petitioner, the present respondent No. 3 deprived of getting shelter of natural justice and then the present petitioner being aggrieved by and dissatisfied with decision of the Labor Court preferred Appeal being No. 106 of 2010 before the Labour Appellate Tribunal, Dhaka. The Labour Appellate Tribunal, after hearing the parties, was pleased to affirm the judgment and order of the Labour Court, Khulna vide judgment and order dated 24.11.2013, and then, the petitioner, finding no alternative, invoked this forum.

Ms. Qumrun Mahmud Deepa, the learned Counsel, appearing for the petitioner, submitted that the respondent No. 2, Chairman of Divisional Labour Court, failed to notice that fair and transparent

proceedings had been drawn up against the respondent No. 3 to deal with the complain made against him and an impartial investigation has been held which delved into the matter and before them the respondent no.3 confessed his illegalities and on proper appreciation of the evidence oral and documentary the authority rightly dismissed the respondent No. 3 from service but the respondent No. 2 without considering anything allowed the case. The same has been affirmed by the respondent no. 1 without demonstrating any reason, which is illegal, and as such, the judgment and order passed by the Court below are liable to be set aside.

Learned Counsel has further submitted that when the respondent no. 3 confessed the offence, there is no scope to say that a reasonable opportunity has not been given to the respondent No. 3 to defend himself and the same is clear wrong findings of the learned Court's below because after confessing offence there is nothing to defense and the basic principal of law has not been considered in deciding the case which causes

miscarriage of justice and as such the same should be set aside.

Learned Counsel has additionally submitted that the respondent No. 3 is a habitual offender and several times he has committed an offence and confessed the same and sought pardon, and that was taken generously by the authority, and this time the respondent No. 3 has taken the same tactics committing grave offence not to be pardoned and rightly punished on the confession and as such nothing illegality happens in deciding the dismissal of the respondent no. 3, and without considering the same, the learned Court below allowed the case which has been done without any lawful authority. Learned Advocate has further submitted that the respondent no. 2 didn't at all consider the written objection and oral and documentary evidence submitted by the petitioner, but based on the application of the respondent no. 3 come to a wrong findings that the Exhibit-B has no evidential value and the same has been fabricated but before coming to this findings the

learned Court below did not show any reason, and as such the same findings cannot stand in the eye of law and on that basis the learned Court below turned down the case of the petitioner which is illegal and as such the same has been done without lawful authority and is of no legal effect and as such the judgment and order passed by the respondent No. 1 should be set aside.

Conversely, Mr. Md. Sharafatullah, the learned Counsel appearing on behalf of the respondent No.3, has submitted that the cause of actions of the writ petition is misleading, misconceived, and manifestly out of context, and as such, the Rule is liable to be discharged. Learned Counsel has further submitted that the confession made by the present plaintiff is not a confession in the eyes of the law because it was not corroborated by any independent witness, and the complainant, Hazi Md. Mozammel Haque has already withdrawn the complaint and not he was examined in the Court, and the grounds formulated in this writ

petition are baseless, and as such, the petitioner has to prove their submission accurately.

Learned Counsel has additionally submitted that the respondent No. 3 successfully proved his case by giving PWs, including himself and the Courts below, in their findings after discussing held that show cause notice was not served upon this respondent No.3 as per Section 18 of the Labour Court Act, 1965, and so the Trial Court set aside the dismissal order dated 24.07.2003 under reference No. X/2003/2572 and thus the Rule is liable to be discharged. Learned Counsel also submitted that the grounds taken in the Writ Petition are not proper and do not attract the case of the parties, and are not relevant in this Writ Petition. Learned Advocate has further submitted that the courts below rightly held that the Charge Sheet is not corroborated with the inquiry report and others paper which-were exhibited by the present writ petitioner in the lower Court. Learned Counsel has further submitted that the Writ Petition in their Written Statements

claimed that one Haji Md. Mozammel Haque filed an allegation against respondent No.3, but they did not produce him as a witness, either in the departmental proceeding or in the Labour Court; as such, the instant rule is liable to be discharged.

We have heard the learned Counsels for both parties with careful attention. We also perused the writ petition and affidavit-in-opposition, as well as the documents appended thereto.

On shifting the judgment and order passed by the learned Chairman Labour Court, Khulna it is evident that the P.W.1 at the time of his deposition categorically supported the facts of the case he initiated and nothing have been disclosed against the interest of him, moreover, the learned Judge of the Labour Court mentioned in the judgment that, “বাদী তার দরখাস্তে দাবী করেছেন তার বিরুদ্ধে আনীত অভিযোগ এবং তদন্ত সম্পর্কিত বিষয়ে কোন কারণ দর্শানোর নোটিশ বা অভিযোগপত্র প্রদান করা হয় নাই। অপরদিকে বিবাদী তার জবাবে উল্লেখ করেছেন বাদীকে

তার বিরুদ্ধে অভিযোগ সম্পর্কে এবং তদন্ত সম্পর্কিত বিষয়ে কারণ দর্শানোর নোটিশ বা অভিযোগপত্র দেয়া হয়েছিল। উক্ত অভিযোগপত্রটি এক্সিবিট বি হিসেবে চিহ্নিত হয়। এক্সিবিট বি কে পরীক্ষা করলে দেখা যায় উহা যেভাবে সংরক্ষণ করা হয়েছে তার সঙ্গে অন্যান্য কাগজপত্রের মিল নাই। এথেকে সহজে অনুমান করা যেতে পারে বিবাদী বাদীকে আদৌ কোন কারণ দর্শানোর নোটিশ প্রদান না করে এই মামলা হওয়ার পর এই মামলার স্বার্থে উক্ত অভিযোগপত্রটি তৈরী করেন। উল্লেখিত অবস্থায় এ কথা বলা যেতে পারে যে, বিবাদী তৎক্ষণাতঃ মাধ্যমে উক্ত অভিযোগ পত্রটি প্রস্তুত করেছিলেন বিধায় এক্সিবিট বি এর প্রকৃত পক্ষে কোন স্বাক্ষর মূল্য নাই। সেকারণে একথা অতি নিরাপদে বলা যেতে পারে বিবাদী বাদীকে কোন কারণ দর্শানোর নোটিশ বা অভিযোগপত্র প্রদান না করে তাকে তদন্তে ডেকে বরখাস্ত করেছেন। ১৯৬৫ সালের শ্রমিক নিয়োগ (স্থায়ী আদেশ) আইনের ১৮ ধারায় উল্লেখ আছে,”

Procedure of Punishment: 1. No Order for discharge or dismissal of a worker shall made, unless

(a) The allegations against him are recorded in writing:

(b) He is given a copy thereof sent not less than three

days time to explain, (c) He is given a personal hearing if such a prayer is made, and (d) The employer or the manager approves of such order. “এই মামলার ক্ষেত্রে দেখা যায় যেহেতু বাদীকে তদন্তে ডাকার পূর্বে বিবাদী তাকে কোন কারণ দর্শানো নোটিশ প্রদান করেন নাই সেহেতু, বিবাদী ১৯৬৫ সালের শ্রমিক বিপ্লব (স্থায়ী আদেশ) আইনের ১৮ ধারার বিধানকে লঙ্ঘন করে বাদীকে তদন্তে ডেকেছে এবং বরখাস্ত করেছিল। সেকারনে বাদীর বিরুদ্ধে তদন্ত কার্যক্রম বেআইনী ছিল।”

However, the Chairman of the Labour Appellate Tribunal stated in his judgment dated 24.11.2013, that, “I have gone through the impugned judgment and found that the Court below has rightly sifted evidence on record, both oral and documentary. The learned Advocates of both parties perused the judgment and placed these arguments. It appears that the inquiry committee did not follow the prescribed norms in conducting the inquiry. No formal charge was read over to the delinquent worker, nor was a complaint examined, even though Morimmel Haque complained

as a witness in the trial court; it appears from the judgment that Mozammel Haque has withdrawn his complaint.”

Considering the above facts and circumstances, it is presumed that the learned trial Court and Appellate Tribunal have given concurrent findings and decisions in respect of the facts of the instant case, and it is also found that the petitioner as defendant failed to prove the shifted burden as per the provisions of Section 102 of the Evidence Act, 1872 by examine the pertinent witnesses expectedly, complainant Mojammel Haque, Center In-charge (CIC), Record Clerk and the Guards who were on duty at the relevant time of the cause of action of the case. In this context, it presumed that under Labour Law jurisdiction, the employer virtually assumes the role of complainant; hence, if the employer's decision is challenged, the onus to substantiate the allegation predominantly rests upon the employer. This matrix is absent from the part of the petitioner, and now we cannot help but say that the

petitioner as defendant appeared in the case to make a contest, likely, “Sitting on a branch and striking it with an axe, which is nothing but weakening its own position.”

The learned Counsel for the petitioner strongly raised the issue of the confessions of respondent No.3, but no single corroborating evidence was found in the instant case. We considered 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.

We wish to be more certain that it is a settled principle that misconduct must be proved in accordance with the law through a fair enquiry, and where the aberrant employee admits the allegation, such admission constitutes substantive evidence against him, and the disciplinary authority may rely upon the same. However, compliance with the procedure of

disciplinary enquiry and the principles of natural justice remains essential.

Predominantly, our jurisdiction under the **Bangladesh Labour Act 2006**, disciplinary action requires: (i) a show cause notice, (ii) a written charge, (iii) opportunity to reply, (iv) inquiry, and (v) reasoned punishment. Even if an employee admits to misconduct, the employer must still follow the statutory procedure before imposing reasoned punishment.

It is incumbent upon the disciplinary authority to act with fairness and impartiality towards the employee throughout the entire course of the disciplinary proceedings. The test of improper purpose considered that a decision would be unreasonable, either made in bad faith or considers irrelevant matters in the case, showing an improper purpose. The authority must avoid unreasonable acts. If an action is so unreasonable that a reasonable person could never make a reasoned decision.

From the case in our hand, we find that a resultant punishment has been imposed upon the respondent No.3 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.

Our Apex Court, in P.W.V. Rowe –Vs- Chairman, Labour Court, Chittagong, (reported in 31 DLR (AD)-119), held that: -

“When one's service is liable to be 'terminated' on the happening of a certain event, it is obviously not automatically put to an end on the happening of such event, but it requires a further act on the part of the authority to finally terminate his service on such ground.”

From the above realities and scenario it is obvious that the concurrent findings cannot be interfered under domain of judicial review if they are found to be perverse meaning the findings are not supported by any evidence or are legally untenable, and in case of synchronized findings the subsequent review by a writ court is often limited to points of law or jurisdictional errors rather than re-evaluating the evidence itself; consequently, we are of the view that no merit available in the instant Rule, accordingly, the Rule is discharged without any order as to cost.

Consequently, the judgment and order dated 24.11.2013 passed by the respondent No.1 in Labour Appeal No. 106 of 2010 dismissing the appeal and affirming the judgment and order dated 02.06.2010 passed by the Chairman, Labour Court, Khulna in Labour Case No. 31 of 2003, allowing the case, declaring the order of dismissal dated 24.07.2003 under reference No. X/2003/2572 is illegal, are hereby upheld, except to reinstate the respondent No.3, as his

service age already exceeded, which has to be considered at the relevant service tenure as per law. And the other directions of the Chairman, Labour Court, Khulna, likely back wages and other service benefits of the respondent No.3 shall remain effective. The petitioner, i.e., Kustia Sugar Mills Limited, represented by its Managing Director, is hereby directed to take proper steps to pay all back wages and service benefits of the respondent No.3, Badruddoza Bachchu, within 60 days from the date of receipt of this judgment, failing which the concerned authority shall be liable personally for negligence, *mala fide*, and contempt of Court.

The office is directed to communicate a copy of this judgment to the petitioner expeditiously, without fail.

(Abdur Rahman, J)

K.M. Hafizul Alam, J

I agree,

(K.M. Hafizul Alam, J)

