

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Special Original Jurisdiction)**

WRIT PETITION NO. 10678 OF 2015

In the matter of:

Application under Article 102 of the
Constitution of the People's Republic of
Bangladesh.

-And-

In the matter of:

Md. Minhazul Huq Shah, son of Nazmul Huq
Shah and mother's name- Most Moksuda
Begum, Assistant Teacher (Social Science)
Porsha High Madrasah cum High School, Police
Station- Porsha, District- Naogaon.
... Petitioner

-Versus-

Secretary, Ministry of Education Bangladesh
Secretariat, Dhaka-1000 and others.

... Respondents

Mr. Md. Humayun Kabir, Advocate
...For the petitioner

Mr. A.S.M. Mokter Kabir Khan, DAG with
Mr. Mohammad Mohsin Kabir, DAG,
Mr. Mostafizur Rahman (Tutul), AAG,
Mr. Fuad Hasan, AAG,
Mr. Md. Moniruzzaman, AAG,
Ms. Sonia Tamanna, AAG and
Mr. Ashraful Alam, AAG

...For the government

**Heard on 10.08.2025, 11.08.2025 and
12.08.2025.**

Judgment on 12.08.2025.

Present:

Mr. Justice Md. Mozibur Rahman Miah
And
Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J.

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh, a Rule *Nisi* was issued in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why they should not be directed to include the name of the petitioner, namely, Md. Minhazul Huq Shah, Assistant Teacher (Social Science), Porsha High Madrasa-cum-High School, Police Station- Porsha, District- Naogaon in the Monthly Pay Order (MPO) Scheme of the Government and/or pass such other or further order or orders as to this court may seem fit and proper.”

The case of the petitioner in short is that:

One, Porsha High Madrasa-cum-High School, Porsha, Naogaon was established in the year 1972 and the teachers and employees of the said school was enlisted in the Monthly Pay Order (shortly, MPO) from January, 1985 and since then the teachers and staffs of the school have been receiving the government portion of the salary against their services. The petitioner successfully completed all his academic examinations and became qualified to be appointed as Teacher of Porsha High School. Meantime, one, Md. Sekender Ali, an Assistant Teacher (Social Science) retired from his service and the said post fell vacant. Accordingly, on 03.03.2013, the Managing Committee of the school took a resolution for

appointing in the said vacant post of Assistant Teacher (Social Science) of the school. In pursuance of the resolution taken on 03.03.2013, advertisements for appointment was then published with the signature of the Headmaster (In-Charge) on 14.03.2013 in “The Daily Bhorer Kagoj” as well as “The Daily Sunshine” and therefore, the District Education Officer, Naogaon vide letter dated 29.05.2013 issued a letter selecting the Headmaster, Shapahar Government High School, Shapahar, Naogaon as the representative of the Director General of the Directorate of Secondary and Higher Education, Dhaka (respondent no. 2) for the purpose of giving appointment of Assistant Teacher (Social Science) of the said school and informed it to the Headmaster of Porsha High Madrasha-cum-High School. The petitioner stood first in the examinations taken by the selection committee and recommendation was then made by the said committee to appoint petitioner as Assistant Teacher. In line with that, the Managing Committee of the school then on 03.06.2013 took a resolution approving the recommendation of the selection committee for appointing the petitioner in the post of Assistant Teacher (Social Science) and directed to issue appointment letter in his favour. In view of the resolution dated 03.06.2013, the Headmaster (In-Charge) then issued an appointment letter to the petitioner and accordingly, on 04.06.2013, the petitioner joined the said school and since then he has been discharging his duties honestly, sincerely and with full satisfaction of the authority concerned. However, in order to getting MPO to the petitioner as of Assistant Teacher, the Headmaster (In-Charge) on 08.06.2013 submitted necessary papers of the petitioner to the Director General, Directorate of Secondary

and Higher Education, Dhaka (respondent no. 2) through proper channel that is, District Education Officer, Naogaon (respondent no. 4) for enlisting his name in the MPO and the said paper was duly received by the respondent no. 2. However, the application filed by the Headmaster (In-Charge) of the school and forwarding letter issued by the respondent no. 4 (Annexure-‘M’ and ‘M-1’ to the supplementary-affidavit) for enlisting the petitioner in the MPO was rejected by the Assistant Director (Ka-4), Directorate of Secondary and Higher Education, Dhaka stating that “প্রস্তাবিত সহকারী শিক্ষা (সমাজ বিজ্ঞান) কে প্রাথমিক শাখায় নিয়োগ দেয়ায় এমপিওভুক্ত করা সম্ভব হচ্ছে না” (Annexure-‘C’ to the writ petition and Annexure-‘N’ to the supplementary-affidavit dated 03.08.2025). In reply to the said letter as contained in Annexure-‘N’ to the supplementary-affidavit, the Headmaster on 24.12.2013 filed another application before the respondent no. 2 through respondent no. 4 requesting him to enlist the name of the petitioner in the MPO. Then on 26.05.2016, the Assistant Secretary, Ministry of Education issued a letter to the respondent no. 2 instructing him to enlist the Teachers of Primary Level of the school contained in Memo No. 37.00.000.072.44.069.12.13 dated 26.05.2016 (Annexure-‘P’ to the supplementary-affidavit). Thereafter, on 26.07.2017, the respondent no. 4 forwarded the document of the petitioner before the respondent no. 2 for enlisting him in the MPO. In response to the said letter dated 26.07.2017, (Annexure-‘Q’ to the supplementary-affidavit), the Assistant Director (Ma-2), Directorate of Secondary and Higher Education, Dhaka issued a letter to the Headmaster of the school requesting him to supply the recognition letter of the Primary Level of the said school contained in

Memo No. 184/4G/1823-M/08/08(Part-1)/16526/5 dated 24.12.2017. Accordingly, on 22.04.2018, the Assistant Director (Ma-2), Directorate of Secondary and Higher Education, Dhaka issued a letter to the respondent no. 4 directing him to give some information about the school of the petitioner. Then in response to the said letter dated 24.12.2017, the Upazilla Secondary Education Officer, Porsha, Naogaon vide letter dated 03.01.2018 submitted the recognition letter of the primary level of the said school to the respondent no. 4 and on 08.01.2018, the respondent no. 4 forwarded the said recognition letter of the Primary Level of the said school to the respondent no. 2. But in spite of those series of correspondences, since the petitioner has not been enlisted in the MPO as of Assistant Teacher (Social Science), the petitioner then compelled to file the instant writ petition seeking direction to the respective respondents to provide him MPO and obtained the instant rule.

By filing a supplementary-affidavit, the learned counsel has also annexed all the correspondence made by the petitioner with the respondents.

Mr. Md. Humayun Kabir, the learned counsel appearing for the petitioner upon taking us to the material documents appended with the writ petition as well as supplementary-affidavit at the very outset submits that since the petitioner was appointed at the primary section of the school on the back of retirement of a teacher named, Md. Sekender Ali who had earlier appointed to the post of Assistant Teacher (Social Science) and he had been withdrawing MPO since July, 1985 which has been evident from Annexure-‘F’ to the supplementary-affidavit, so there has been no scope

to say that the petitioner's appointment has not been given in the primary section of the school and therefore, he is entitled to get the MPO from respondent no. 2.

The learned counsel by referring to the recommendation given by the selection committee as well as the resolution taken by the Managing Committee of the school also submits that from these resolution and recommendation, it has clearly been proved that for retiring of Md. Sekender Ali dated 31.05.2012, the said post fell vacant against which appointment was given to the petitioner complying due process, so there has been no scope to say that the petitioner was not entitled to get MPO from the respondent no. 2.

The learned counsel by referring to Annexure-'I' to the supplementary-affidavit also contends that from the letter issued by the respondent no. 4 to the Headmaster of the school, it clearly shows that, the representative of respondent no. 2 has been selected to give appointment in the post of Assistant Teacher (Social Science) in primary section (প্রাথমিক স্তর) so there should not be any ambiguity that the petitioner is not entitled to get MPO following appointment in the post of Assistant Teacher (Social Science) and therefore, the deliberate apathy of the respondent no. 2 in giving MPO to the petitioner for the post of Assistant Teacher (Social Science) is something denial of legal right of the petitioner following appointment through competitive examinations by the selection committee.

The learned counsel by referring to Annexure-'M' to the supplementary-affidavit next contends that the letter so have been issued

by the respondent no. 4 to the respondent no. 2 also depicts that the appointment of the petitioner was given in primary section where respondent no. 4 requested the respondent no. 2 to arrange MPO for the post of Assistant Teacher (Social Science) for the petitioner in primary section and therefore, the respondent no. 2 cannot deny to give MPO to the petitioner for the post of Assistant Teacher (Social Science) in primary section.

The learned counsel by referring to Annexure-‘N’ to the supplementary-affidavit also contends that though from that letter it was denied to give MPO to the petitioner but no reason has been assigned as to why the petitioner will not be given MPO for the post he was appointed where it has been stated “প্রস্তাবিত সহকারী শিক্ষা (সমাজ বিজ্ঞান) কে প্রাথমিক শাখায় নিয়োগ দেয়ায় এমপিওভুক্ত করা সম্ভব হচ্ছে না”.

The learned counsel by referring to Annexure-‘P’ to the supplementary-affidavit further contends that in paragraph 3 of that letter issued by the Ministry of Education dated 26.05.2016 undersigned by its Assistant Secretary, it put a bar not to give MPO for the workforce (জনবল) of primary section from the date of issuance of that letter which turns out that the Teachers and staffs who had been appointed earlier in primary section of Non-government Secondary School (বেসরকারি উচ্চ বিদ্যালয়) will continue to receive their MPO since the appointment of the petitioner was given back in the year 2013, so the petitioner is entitled to get MPO as a Teacher at primary section.

The learned counsel by referring to the circular dated 01.01.1982 and by supplying us the circular/office memo dated 17.11.1981 issued

vide শিক্ষা মন্ত্রণালয়ের রেজুলিউশন নং শাঃ৪/৩বি-৫/৮১/১৪২ also contends that it has also been asserted therein that MPO given to the Teacher and staffs of each section of a primary school will continue so those letters also re-enforce giving MPO to the petitioner.

On the point of maintainability of this writ petition, in the form of writ of mandamus, the learned counsel has then placed his reliance in an unreported decision passed in Writ Petition No. 1556 of 2020 dated 07.12.2022 and submits that since by not providing respective MPO, the petitioner's legal right has been curtailed so the petitioner is entitled to get a direction from this Hon'ble court in the form of mandamus and therefore, the rule itself is maintainable. With those submissions, the learned counsel finally prays for making the rule absolute.

By contrast, Mr. Fuad Hasan, the learned Assistant Attorney-General appearing for the respondent-government at the very outset submits that the writ itself is not maintainable since no fundamental right of the petitioner has been violated for not providing MPO to him and the petitioner cannot claim of his MPO as a matter of right.

In support of his such submission, the learned Assistant Attorney-General also placed his reliance in the decision reported in 27 BLT (AD) 167 and another decision passed by the Appellate Division in civil petition for leave to appeal no. 4549 of 2018 dated 22.05.2022 and take us through paragraph nos. 13 and 14 of the said reported decision and that of the last part of the unreported decision of the said civil petition for leave to appeal. Giving reference to those decisions, the learned Assistant Attorney-General next contends that in those decisions a *ratio* has been

settled that any employee of any private institution cannot claim MPO by way of filing writ petition in the form of writ of mandamus and since the petitioner filed this writ petition in the form of mandamus, so those two decisions will be applicable in the facts and circumstances of the instant case.

The learned Assistant Attorney-General by taking us to the supplementary-affidavit in particular, Annexure-‘P’ thereof also contends that since in the “বেসরকারি শিক্ষাপ্রতিষ্ঠান (স্কুল, কলেজ, মাদ্রাসা ও কারিগরি শিক্ষাপ্রতিষ্ঠানসমূহ) এর শিক্ষক ও কর্মচারীদের বেতন-ভাতাদির সরকারি অংশ প্রদান এবং জনবলকাঠামো সম্পর্কিত নির্দেশিকা, ২০১০” (shortly, the Guidelines of 2010 amended up to 2013), there has been no mention to provide MPO in primary section, so the petitioner is not entitled to get MPO from the respondents.

By supplying us the said Guidelines of 2010 and the pattern provided therein (rule 6 that provides নিয়োগ, যোগ্যতা এবং জনবল কাঠামো), the learned Assistant Attorney-General further contends that since who will get MPO has clearly been described therein where it has been mentioned that only the Teacher who teaches in lower secondary school (নিম্ন মাধ্যমিক বিদ্যালয়) that is, teacher from class VI to XII only will be entitled to get MPO having no mention of any primary section therein, so as per that Guidelines, 2010 amended up to 2013, the petitioner cannot get any MPO from the respondents.

The learned Assistant Attorney-General by giving reference to Annexure-‘I’ to the supplementary-affidavit which is an “office order” dated 29.05.2013 issuing a letter by respondent no. 4 to the Headmaster of

the school, among others, mentioned two conditions, that is, condition nos. 3 and 4 where it has been asserted that, mere giving appointment to any post does not *ipso facto* give any right of getting MPO and therefore, in spite of completion of all required procedures in appointing the petitioner as Teacher involving the representative of the respondent no. 2 still the petitioner cannot claim MPO for the said post as of right.

In reply to the contention taken by the learned counsel for the petitioner that the petitioner was given appointment in primary section of the school on the back of retiring one, Md. Sekender Ali who had earlier served as Assistant Teacher (Social Science) in primary section, the learned Assistant Attorney-General then contends that he contacted respective official of the Ministry (respondent no. 1) who informed him that the said Teacher Md. Sekender Ali was subsequently given appointment to the secondary section (মাধ্যমিক শাখা) so it is not correct that the petitioner was appointed for falling vacancy on the retirement of said Md. Sekender Ali.

With reference to Annexure-‘F’ to the supplementary-affidavit where it has been shown that Md. Sekender Ali received MPO for the month of June, July and August of 1985 from the school, the learned Assistant Attorney-General then contends that from such MPO sheet it does not construe that said Md. Sekender Ali had been any teacher in primary section of that school and therefore, the petitioner had not been replaced for Md. Sekender Ali.

The learned Assistant Attorney-General further submits that mere sitting of any representative for respondent no. 2 in the selection

committee for giving appointment to the petitioner as Assistant Teacher of the school in primary section, does not *ipso facto* enable the petitioner to get MPO and therefore, the petitioner cannot claim MPO as of right.

With those submissions, the learned Assistant Attorney-General finally prays for discharging the rule.

By showing us the resolution taken by the school dated 03.03.2013, Mr. A.S.M. Mokter Kabir Khan, the learned Deputy Attorney-General contends that since from the resolution, it has been found that, in that school as many as 4-5 teachers were not getting MPO so it alternatively proves that, that petitioner is not entitled to get MPO since he has been given appointment in primary section. On that score, the learned Deputy Attorney-General also prays for discharging the rule.

Be that as it may, we have considered the submission so advanced by the learned counsel for the petitioner and that of the learned Deputy Attorney-General and the learned Assistant Attorney-General for the respondents-government. We have very meticulously gone through the writ petition, supplementary-affidavit and the decisions so have been referred by the learned counsel for the petitioner and that of the learned Assistant Attorney-General.

Since the learned Assistant Attorney-General at the very onset agitated the point of maintainability of the writ petition, we thus feel it expedient to address that very point of maintainability first.

On going through the decisions so have been placed by the learned Assistant Attorney-General as has been stated hereinabove, we find that in

those decisions, it has been decided that no direction in the form of mandamus can be given to the government by this court to give MPO.

On the contrary, the learned counsel for the petitioner by filing an unreported decision dated 07.12.2022 passed in Writ Petition No. 1556 of 2020 also contends that, the point of maintainability has also been addressed in the said decision where it has been held that if any legal right of any teacher or staff of any private institution or any law is found to have violated by the respondents innot providing MPO, in that case, this Hon'ble court under Article 102 of the Constitution assumes every right to give direction to provide MPO. The core observation passed in the said judgment is *"It is therefore apparent that the Apex Court did not impose a total bar regarding the inclusion of teachers in the MPO scheme, but held that MPO cannot be granted as a matter of right, unless there is infringement of legal right and secondly, MPO can be granted by the Authority in accordance with law."* We have taken those two decisions referred by the parties in juxtaposition, we find the Appellate Division put exception that is, if from the fact of the case, it is found that, by not giving MPO legal right or any law is violated, in that case, this court has got jurisdiction to give direction to the respondent in providing MPO. We find support of our such view if we take a glance to what has been asserted in paragraph 14 of the decision reported in 27 BLT (AD) 167 which runs as follows:

"This Division is of the view that teachers and staffs of the Non-Government School and College could not claim the MPO as a matter of right and as such,

direction could not be given unless infringement of legal right or violation of law.”

Now let us examine other points so assailed in the writ petition and supplementary-affidavit. There has been no denying that, for falling vacancy in the post of Assistant Teacher (Social Science) in primary section, on the retirement of one, Teacher named, Md. Sekender Ali, the Managing Committee of the school took a decision to fill up the said vacancy and then published an appointment notice and the petitioner and others applied for the said post where as per the Guidelines of 2010, a five-member selection committee was formed where a representative nominated by the respondent no. 2 sat in the said selection committee. Ultimately, the petitioner got highest mark and recommendation was given by the said selection committee to the Managing Committee of the school to give him appointment. Accordingly, the Managing Committee took a resolution to appoint the petitioner in the said post and the Headmaster issued appointment letter and accordingly, the petitioner joined the said post. Up to that very joining, there was no dispute on the part of the petitioner or the respondents.

However, soon after giving appointment and joining by the petitioner, the respondent no. 4 time and again requested the respondent no. 2 to arrange MPO of the petitioner for the post of Assistant Teacher (Social Science) by issuing repeated letters but as respondent no. 2 kept silent, the petitioner then compelled to file the instant writ petition in the form of writ of mandamus.

Now only question remains, whether the petitioner is entitled to get MPO in the form of direction by this court.

There has been no denying that the petitioner was rightly appointed to the post of Assistant Teacher (Social Science) in primary section and the respondent no. 4 kept on recommending to give MPO to the petitioner as Assistant Teacher (Social Science) in primary section. So on the clear admission of the respondent no. 4, that is, the District Education Officer to give MPO and on the denial from the office of respondent no. 2 (Annexure-‘C’ to the writ petition) certainly legal right of the petitioner has been infringed for which the petitioner has got no other option but to invoke writ of mandamus of this court. If the respondent had not played any role in the process of appointing the petitioner and requested respondent no. 2 to give his MPO in that case, the issue would have otherwise.

Though it is the persistent submission of the learned Assistant Attorney-General that mere giving appointment and involvement of the respondent no. 2 in the appointment process of the petitioner does not arise any right to get MPO by the petitioner. But we cannot simply take such submission because when by any act an expectation is created in any ones favour, it then becomes a legitimate expectation and in instilling such expectation involvement of the respondents are apparent then there has been no scope on the part of the respondents to move away from implementing such expectation when it creates a legal right to the person on whose favour such expectation is created. Because, respondent no. 4 that is, District Education Officer, Naogaon time and again wrote to the

respondent no. 2 requesting him to provide MPO to the petitioner but subsequent correspondences do not show why the petitioner was not given his legitimate MPO for the post he was given appointment rather from documents annexed with the supplementary-affidavit rather depicts, a slew of unnecessary correspondences have been made between the parties without giving any effective steps providing MPO to the petitioner.

On behalf of the government though the learned Assistant Attorney-General consistently submits that the petitioner was not given appointment in primary section of the school but from the documents annexed with the supplementary-affidavit, we clearly find that the petitioner's appointment was made in primary section of the school as stated above so the submission made by the learned Assistant Attorney-General is totally devoid of any substance.

Another submission made by the learned Assistant Attorney-General that, he came to learn from the respective officer of the Ministry, that earlier Teacher named, Md. Sekender Ali on whose post the petitioner was subsequently given appointment was appointed in secondary section of the school which sounds absurd not supported by any document.

On top of that, from resolution no. (1) of the letter so issued by the Assistant Secretary, Ministry of Education dated 26.05.2016 (Annexure- 'P' to the writ petition), we find that providing MPO to the primary section has been going on since 01.01.1982 and to substantiate the said point, the learned counsel for the petitioner has also placed the staff pattern which was made by way of resolution dated 17.11.1981 where it

has clearly been asserted, providing MPO in the primary section will continue.

Furthermore, in paragraph no. 3 of that letter dated 26.05.2016, it has also been asserted that, the Teachers who are employed in the primary section of a private secondary school, MPO will continue even though enlistment of the Teacher in primary section has been ordered to be stopped from the date of issuance of that very letter that is, from 26.05.2016. So since the appointment of the petitioner in primary section of the school has been made long 3 years before the issuance of the said letter so there has been no earthly reason not to provide MPO to the petitioner as per the said circular as well.

Given the above discussion and observation, we find that legal right of the petitioner has been violated for not complying with the circular issued by the respondents vis-à-vis with the inaction of the respondents innot providing MPO. So the writ itself is quite maintainable even in view of the decisions of the Appellate Division cited by the Assistant Attorney-General vis-à-vis the unreported decision so relied upon by the learned counsel for the petitioner in Writ Petition No. 1556 of 2020.

In the above backdrop, we find ample substance to the submission so placed by the learned counsel for the petitioner and merit in the rule.

Accordingly, the rule is made absolute however without any order as to costs.

The respondents are hereby directed to take necessary steps so that the petitioner can get his MPO for the post of Assistant Teacher (Social Science) in primary section from the date of joining in the said post with

all arrear service benefits within a period of 60(sixty) days from the date of receipt of the copy of the order.

Let a copy of this judgment be communicated to the respondents forthwith.

Md. Bashir Ullah, J.

I agree.