

In the Supreme Court of Bangladesh
 High Court Division
 (Special Original Jurisdiction)
Present
Justice Md. Habibul Gani
And
Justice Sk. Tahsin Ali

Writ Petition No. 11082 of 2015

In the matter of:

An application under Article 102 read with Article 44 of the Constitution of the People's Republic of Bangladesh.

-And-

In the matter of:

Md. Omar Faruque

..... Petitioner

Vs.

Bangladesh and others

...Respondents

Mr. Md. Tajul Islam, Senior Adv. with

Mr. Md. Omar Faruq, Advocates

... for the petitioner

Mr. Md. Mohaddesh-Ul-Islam, DAG with

Mr. Md. Alamgir Hossian, AAG with

Mr. Kamrul Islam, AAG with

Mr. Kamrunnahar Tamanna, AAG with

Mr. Ahmad Musanna Chowdhury, AAG

..... For the respondents

Heard on: 14.08.2025, 20.10.2025 and
Judgment on: 23.10.2025

Sk. Tahsin Ali, J:

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh filed by the petitioner, a Rule Nisi was issued calling upon the respondents to show cause as to why the respondents shall not be directed to pay the unpaid salary of the petitioner's institution namely Sharifpur Dakhil Madrasa, Post Office- Sharifpur, Upazilla and District- Jamalpur for the period of May, 2010 to April, 2015 as per the judgment and order dated 14.12.2010 passed in

Writ Petition No. 6227 of 2010 affirmed by the Hon'ble Appellate Division in Civil Petition for Leave to Appeal No. 2031 of 2011 and/or pass such other or further order or orders as to this court may seem fit and proper.

The case of the petitioner, as set out in the Writ Petition, in short is as follows: the petitioner's Institution namely Sharifpur Dakhil Madrasah, post office-Sharifpur, Upazilla and District-Jamalpur after completion of the building, structure, admission of the students and formation of the Managing committee applied to the concern authorities for permission of Initial (Dhakil) class and the authorities after conducting inspection being satisfied vide letter dated 01.01.1988 approved Permission and thereafter under Memo No. 1080 dated 25.07.2002 the authorities allowed to open Class IX in the said Madrasah with some condition. That thereafter the Madrasah authority after compliance of all the conditions applied to the Madrasah authority for Academic Recognition and the Madrasah Board being satisfied by letter dated 01.01.2009 granted Academic Recognition initially for 5 (five) years with effect from 01.01.2010 and the same has been renewed up to 31.12.2014. Pursuant to the Government decision of enlistment of the Educational Institutions from different categories in the financial year 2009-2010, the petitioner applied for being enlisted in the M.P.O. on 25.02.2010 before the Respondent No.1 furnishing all relevant documents.

Thereafter the Respondents after scrutinizing all the relevant papers enlisted the petitioner's Madrasah in the M.P.O. list on 6th of

May, 2010. That in this regard a list of qualified Madrasahs including the name of the petitioner's Madrasah was published by the Respondent No. 2 vide Memo No- শাঃ ১৩/এম সি ও-১২/২০০৯/১৮৪ dated 06.05.2010 and the same was published accordingly under serial no.61 of the MPO list.

Thereafter while the petitioner was waiting for drawing up the monthly salary of the teachers and staffs of the aforesaid Madrasah, the respondent no.5 by memo no. শিম/শা-১৩/এমপিও-১২/২০০৯/২০৯ dated 31/05/2010 published the second MPO list and declared the earlier MPO order as ineffective and enclosed a fresh list consisting of 1483 Educational Institution including the petitioner's Madrasah and in the second list of MPO petitioner's Madrasah was placed under serial No. 106. After publication of the Second MPO list, the petitioner was eagerly waiting to have MPO in the name of the said Madrasah but to the utter surprise, the Respondent no.5 vide memo no. শিম/শা-১৩/এমপিও-১২/২০০৯/২২৯ dated 16/06/2010 with Schedule 'Ka' and 'Kha' cancelled the MPO of 61 Madrasah including the Petitioner's Madrasah in Schedule 'Kha', hence the instant writ petition to which the petitioner obtained Rule.

Mr. Md. Tajul Islam, Senior Advocate along with Mr. Md. Omar Faruq learned Advocate appeared on behalf of the petitioner while learned Deputy Attorney General Mr. Md. Mohddesh-Ul –Islam with Mr. Md. Alamgir Hossain, Assistant Attorney General with Mr. Kamrul Islam, Assistant Attorney General with Mr. Kamrunnahar Tamanna, Assistant Attorney General with Mr. Ahmad Musanna Chowdhury, Assistant Attorney General appeared for the respondents.

The learned Senior Advocate Mr. Md. Tajul Islam for the petitioner submits that the petitioner's Madrasha fulfilled all the requirements and duly applied for enlistment in the MPO before the Respondent No. 1 on 25.02.2010. He further submits that the respondents after scrutinizing all the relevant papers and considering all the requisite qualifications enlisted the petitioner's Madrasha in the MPO on 6th May, 2010. He further submits that the respondents without following the judgment and order of the Hon'ble High Court Division most arbitrarily deprived the petitioner from getting salaries and other benefits as per MPO between the period of May, 2010 to April, 2015. He further submits that the petitioner's institution has got legal and vested right to get the MPO facilities as per direction of the Hon'ble High Court Division.

Learned advocate for the petitioner cited several decision of other Writ Petitions being Writ Petition No. 4400 of 2014, Writ Petition No. 4428 of 2015, Writ Petition No. 6930 of 2014, Writ Petition No. 5915 of 2014 with Writ Petition No. 5916 of 2014 and Writ Petition No. 10882 of 2013 all in the writ petitions rules were made absolute in favour of the petitioners and directed to the respondents to provide the MPO benefit from financial year 2009-2010. Thereafter, the respondents filed Civil Petition For Leave to Appeal against all the writ petitions but the Hon'ble Appellate Division dismissed the appeals.

Mr. Md. Mohaddesh-Ul-Islam the learned Deputy Attorney General appearing for the respondents find difficulties to oppose the Rule.

We have heard the learned Advocates for both sides and perused the application along with the materials on record. It appears from the judgments dated 14.12.2010 passed by the Hon'ble High Court Division in Writ Petition No. 5130 of 2010 along with Writ Petition Nos. 5131 of 2010, 5574 of 2010, 6227 of 2010 and 5410 of 2010 filed by the instant petitioner and others that the benefit of MPO for the earlier year, that is, May, 2010 to April, 2015 were not given and the ordering portion of the judgment of the said writ petitions run as follows:

“the Rules in Writ Petition Nos. 5130, 5131, 5574, 6227 and 5410 all of 2010 are made absolute. The impugned Memo No. Shim/Sh-13/M.P.O-12/2009/209 dated 31.05.2010 issued under the signature of the Senior Assistant Secretary, Section-13, Ministry of Education and Memo no. Shit/Sh-13/MPO-12/2009/229 dated 16.6.2010 issued by the said authority so far excluding the name of the respective Colleges and Madrashes from the list of M.P.O (Monthly Payment Order) without showing any cause whatsoever are declared to have been passed without lawful authority and are of no legal effect.

The respondents are hereby directed to enlist the name the respective Colleges and Madrashes in the list of MPO (government portion of salary) provided they fulfill the requirements as provided in the "বেসরকারী শিক্ষা প্রতিষ্ঠান (স্কুল, কলেজ, মাদ্রাসা, ও কারিগরি শিক্ষা প্রতিষ্ঠানসমূহ) এর শিক্ষক ও কর্মচারীদের বেতন-ভাতাদির সরকারি অংশ প্রদান এবং জনবল কার্ঠামো সম্পর্কিত নির্দেশিকা" published on 4.2.2010 within a period of 90 days from date of the receipt of the copy of this judgment and order."

The ordering portion somehow did not mention the earlier financial year from May 2010 to April 2015 as such the petitioner's Madrasha could not been receive MPO facilities since 2010. The petitioner's Madrashah namely Sharifpur Dakhil Madrashah was enlisted in the MPO along with other educational institutions vide Memo No. শা-১৩/এমপিও-১২/২০০৯/১৮৪ dated 06.05.2010 issued by respondent No. 5. However, by Memo No. শিম/শা-১৩/এমপিও-১২/২০০৯/২২৯ dated 16.06.2010 issued by respondent No. 2, the name of the Madrasha was excluded from the MPO list.

The concerned authority of the Madrasha subsequently made an application to the Ministry of Education for enlistment of its teachers and staffs in the list of MPO, initially on 28.2.2009 and lastly on 28.02.2010. The said Ministry considering all the relevant documents

and also the previous permission and recognition given to the said Madrasah enlisted its name in the list of MPO vide memo no. Shim/Sh-13/MPO-12/2009/184 dated 06.05.2010 and posted the same at serial no.61 under Index no. 109955 That the District Education Officer, Jamalpur vide memo dated 19.05.2010 (Annexure-C2) confirmed the MPO of the Madrasaha. Subsequently the Ministry of Education under the signature of Senior Assistant Secretary, Section-13 published the list of 1483 educational institutions of the country enlisting those in the list of MPO including the name of the instant Madrasha posted at serial no. 106 and declared the earlier memo dated 06.05.2010 as ineffective. Later, the said Ministry by publishing another memo dated 16.06.2010 included the name of another 190 educational institutions in the list of MPO and cancelled the name of the said Madrasah along with the name of 60 other educational institutions of the country without citing any reason whatsoever. The petitioner made application to the concerned authority with a prayer to withdraw the said memo so far its exclusion from the list was concerned and to enlist its name in the MPO, but without any result.

That the petitioner's Madrasha being a unfortunate Educational Institution did not get the MPO since 2009 though their Lordships directed the respondents to include the name of the petitioners Institution in the list of the MPO within a period of 90 (ninety) days.

The respondent No. 1 being aggrieved and dissatisfied with the judgment and order dated 14.12.2010 passed by the High Court Division preferred a Civil Petition for leave to Appeal before the Hon'ble

Appellate Division of the Supreme Court of Bangladesh but the Appellate Division by its order dated 17.11.2013 dismissed the Civil Petition for leave to Appeal No. 2031 of 2011. Thereafter, the respondent No. 6 by an office order bearing Memo No. ১জি/৬২৫বি/২০১০/৮৮/৯ dated 06.01.2014 asked the respondent No. 7 to start the MPO code for the Madrasha of the petitioner from the month of January, 2014 which is violation of the direction of the Judgment and order of the Hon'ble High Court Division. Hence the respondents allowed the facilities of the MPO to the petitioner's institution from the month of March, 2015 and the teacher and staffs of the petitioner's Madrasha has been getting the benefits of the MPO from the month of March, 2015 till date. The Petitioner finding no other alternative again filed an application before the respondents No. 1 for getting the salaries and other facilities of the teachers and staffs of the Madrasha for the period between May, 2010 to April, 2015 as they are entitled to the same as per the direction of the High Court Division but the respondent No. 1 remained silent till today.

The learned advocate for the petitioner submits that the High Court Division in the Writ Petition No. 6227 of 2010 is the petitioner's institution will get the benefit of MPO from the month of May, 2010 as on the same month they were enlisted in the list of MPO. Since the subsequent order cancelling the MPO granting order of the petitioner has been stuck off by the High Court Division, the previous order dated 31.05.2010 prevails and all the subsequent actions should be on the basis

of that initial MPO granting order. He further submits that the respondents are in legal obligation to pay the MPO facilities to the petitioner's Institution for the period of May, 2010 to April, 2015 as the High Court Division declared the MPO cancelling order illegal and stuck it off and thereby ultimately declared the MPO granting order of the petitioner's institution lawful.

It appears from the Annexure-K-6 of the supplementary affidavit that the Jahajmara Mohila Dhakil Madrasha, Hatia, Noakhali has already been obtained the due salaries and privilege of the benevolent fund and retirement benefit for all the teachers and employees of the said Madrasha for a period of January, 2010 to Jun, 2014 and in this regard office order has been issued on 29.01.2019 by the Assistant Director (Finance), Madrasha Education Department, Dhaka. Which is in connection with the Writ Petition No. 10882 of 2013. Hence the petitioner's Educational Institution stand on the similar footing as entitled to get the same benefit with above Madrasha as well.

Respondent No. 1 has filed the Leave Petition against the judgment and order of the High Court Division dated 14.12.2010 being Civil Petition for Leave to Appeal No. 2031 of 2014 but same was dismissed by the Hon'ble Appellate Division. The petitioner got inalienable legal right by virtue of the Judgment and Order passed by the High Court Division considering the above legal position of the petitioner's institution. The respondents got no other option but to obey and respect the judgment passed by the High Court Division and as such

a directions needs to be passed against the respondents directing them to provide MPO facilities to the petitioner's institution for the period May 2010 to April, 2015.

As per the direction of the Hon'ble high Court Division the petitioner's institution has got legal and vested right as well as fundamental right to get the salaries and other benefits as per the MPO for the period of the May, 2010 and April, 2015 and as such a direction to be given upon the respondents to pay the unpaid salary of the petitioner from the month of May, 2010.

It appears from the writ petitions cited by the learned advocate for the petitioner that the petitioners therein were granted MPO benefits with effect from the financial year 2009-2010. However, in the earlier Writ Petition Nos. 5131 of 2010, 5574 of 2010, 6227 of 2010 and 5410 of 2010, judgment dated 14.12.2010, no effective financial year for granting MPO facilities to the instant petitioner was mentioned. By reason of such omission, discrimination has been created between similar judgments among the others colleagues standing on the same rank and status with the writ petitioners.

Under the facts and circumstances and upon relying on the relevant laws and the judgments referred in Writ Petition No. 4400 of 2014, Writ Petition No. 4428 of 2015, Writ Petition No. 6930 of 2014, Writ Petition No. 5915 of 2014 with Writ Petition No. 5916 of 2014 and Writ Petition No. 10882 of 2013 filed by the petitioner in his

supplementary affidavit and in view of the observations made above, we are of the considered opinion that the Rule bears merit.

In the result, the Rule is made absolute with directions. The respondents are hereby directed to take necessary steps regarding the payment of the salaries and other benefits of the teachers and staff of the petitioner's institution, namely Sharifpur Dhakil Madrasha, Jamalpur for the period from May 2010 to February 2015 within a period of 90 (ninety) days from the date of receipt of this judgment and order.

Communicate this judgment at once.

Md. Habibul Gani, J

I agree.