

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

Present:

**Mr. Justice Md. Moinul Islam Chowdhury**

**Civil Revision No. 3095 of 2015**

Executive Chairman  
Bangladesh Agricultural Research Council, New  
Airport Road, Farmgate, Dhaka and another

----- The defendant-appellant-petitioners

=Versus=

Feroza Sultana  
Junior Bibliographic Officer (Dismissed)  
Bangladesh Agricultural Research Council, New  
Airport Road, Farmgate, Dhaka. At present: 48/1,  
Purana Paltan Lane, Dhaka-1000.

----- The plaintiff-opposite-party

Mr. Syed Mohammad Javed Pervez, Advocate

----- For the petitioners.

Mr. Mamun Mahbub with

Mr. Bivuti Torafder, Advocates

----- For the opposite-party No.1

Heard on 15.02.2017, 28.02.2017 and

**Judgment on 30.03.2017**

At the instance of the present defendant-appellant-petitioners, Executive Chairman, Bangladesh Agricultural Research Council (BARC), Dhaka and another, this Rule has been issued calling upon the plaintiff-opposite-party to show cause as to why the judgment and decree dated 02.02.2015 passed by the learned Additional District Judge, 2<sup>nd</sup> Court, Dhaka in Title Appeal No.189 of 2010 affirming those dated 08.04.2010 passed by the learned Assistant Judge, 2<sup>nd</sup> Court, Dhaka in Title Suit No.193 of 2007 should not be set aside.

The relevant facts for disposal of the Rule, inter alia, are that the present opposite-party as the plaintiff filed the Title Suit No.193 of 2007 in the Court of the learned Assistant Judge, Court No.2, Dhaka for a declaration of the dismissal order from the service was illegal and void. The plaint contains that the plaintiff was an employee under the petitioners (BARC) and on 12.11.1999 the plaintiff obtained a scholarship from the Brac University, Canada to undertake the course of Bachelor of Computer Science as 2<sup>nd</sup> degree. On 17.04.2001 she applied to her employer the Bangladesh Agricultural Research Council (BARC), the defendant-petitioner No.1, for obtaining an educational leave for a period of 2 years with effect from 27.05.2001. BRAC allowed her application by its letter dated 24.05.2001 without pay under the circular being Memo No.সম (বিঃপ্রঃ) ৮০/ ৯২-৫১৮ (৫০০) dated 29.08.1992 issued by the Ministry of Establishment, Government of Bangladesh, the plaintiff-opposite-party No.1, Feroza Sultana, the Junior Bibliographic Officer went to Canada and started the course of Bachelor of Science (General) Program under the Brac University, Ontario, Canada and completed the above course.

After completing the said course the plaintiff undertook another course being the Bachelor of Computer Science (Hon's) in the same University and then applied on 07.05.2003 for extension of the said education leave without pay for another two years. On receiving the said application BARC declined to allow any further education leave and

directed the plaintiff to come back and to join in service by the letter dated 30.11.2003. The plaintiff made service applications for extension during the period of 2003 and 2004. The BRAC-defendant-petitioners, thereafter, framed charge on 30.03.2005 against the plaintiff desertion and asked her to show cause as to why she would not be dismissed from the service. In reply the plaintiff wrote a letter on 17.09.2005 without specifying date of return to join in the service, however, on 30.05.2006 the plaintiff came back to Bangladesh and submitted a joining letter which was not accepted and she was not permitted to join in the said service. In the year of 2007 she was informed by the Director (Administration & Finance) BARC that she has been dismissed from service by a letter dated 22.01.2006 with a retrospective effect from 04.06.2003. Challenging the same she filed the suit.

The suit was contested by the present defendant No.1-petitioner by filing a written statement contending that the present plaintiff-opposite-party No.1 was granted educational leave for two years to undertake a course in Brac University, Ontario, Canada on 24.05.2001 with some conditions, including to the report her employer as to the progress of the education through her Supervisor which she never did, before completion the said 2 years course she made an application for extension of further year. She had undertaken a fresh course namely Bachelor of Computer Science (Honors) course without granting any further leave. The plaintiff-

opposite-party was asked to join in the service by a registered letter dated 30.11.2003 which she failed to comply. The employer the defendant No.1 again serve a notice on 19.02.2004 asking her to join the service or to file a departmental proceeding to be drawn against her for desertion by the letter dated 24.01.2004. On her failure to join in the service the defendant framed charges under section 39(C) of the Bangladesh Agricultural Research Council Employees Service Regulation, 1989 against the plaintiff for desertion on 30.03.2005. The defendant thereafter issued a show cause notice by publishing a notification in a newspaper as to why she could be dismissed from her service under Rule 40(1)(B)(T) of the said Regulation, 1989. The said notice was published in a Daily News Paper on 09.09.2005. On receiving no response from the plaintiffs she was dismissed from the service by the registered letter being Memo No.ARC/1-19/90-Personal/4759 dated 22.01.2006 to take into effect of the dismissal order from the date of 04.06.2003 and the said dismissal order was published in the Daily Manabjamin on 17.04.2006 as per the provision of the Service Regulation, 1989.

After hearing the parties considering the evidences on record adduced and produced by the parties the learned Assistant Judge, Dhaka decreed the suit by his judgment and decree dated 08.04.2010. Being aggrieved the present petitioners as the appellants preferred the Title Appeal No.189 of 2010 in the Court of the learned District Judge, Dhaka

which was heard by the learned Additional District Judge, Court No.2, Dhaka, who by his judgment and decree dated 02.02.2015 dismissed the appeal thereby affirmed the judgment and decree passed by the learned trial Court. This revisional application has been filed challenging the said decree passed by the learned appellate Court below and the Rule was issued thereupon.

Mr. Syed Mohammad Javed Pervez, the learned Advocate appearing for the petitioners submits that both the Courts below have committed serious error of law in not considering that the plaintiff has violated the condition of education leave and stayed in Canada with an unauthorized leave that occasioned failure of justice. He further submits that both the Courts below have committed serious error of law in not considering that the defendants have not committed procedural wrong in taking the decision of dismissal of the plaintiff for desertion according to the Bangladesh Agricultural Research Council Employees Service Regulation, 1989 thereby, occasioning failure of justice.

The learned Advocate also submits that the plaintiff filed the title suit without exhausting the remedy available under section 48 of the Regulations, 1989, as such, the suit is not maintainable within the framework of law. He also submits that the defendant-petitioners have taken all required steps against the said plaintiff-opposite-party as an employee within the provision of the said Regulations. He submits that the

requirements of taking a final decision within 180 days is not a mandatory, but directory and this is in regular procedural matter.

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

Mr. Mamun Mahbub, the learned Advocate with Mr. Bivuti Torofder, the learned Advocate appearing for the opposite-party No.1 submits that both the Courts below after considering the relevant documents adduced and produced by the parties concurrently found that the order of dismissal has been passed without complying any steps including forming charge by inquiry committee by giving opportunity to the alleged person for hearing and also to conclude a departmental proceeding within 180 days, therefore, any deviation from such steps required under the provision of law, a dismissal from the service became inoperative and not lawfully, as such, the Rule should be discharge.

The learned Advocate also submits that under Regulations 48 the present plaintiff-filed an appeal to Ministry of Education against the dismissal order passed by the Director, Administration, Finance on 22.01.2006 by a registered letter. He also submits that after conclusion of a departmental proceeding it must be communicated by the competent dismissing authority within 180 days which is a mandatory provision and any violation of statutory period makes any order ineffective.

Considering the above submissions made by the learned Advocates appearing for the respective parties and also considering the revisional

application filed under section 115(1) of the Code of Civil Procedure along with the annexure therein, in particular, the impugned judgment and decree passed by the learned appellate Court below and also taking into consideration the materials in the lower Court records, it appears to me that the present opposite-party as the plaintiff filed a Title Suit for a declaration that the dismissal order passed by the defendant is illegal and void. In order to prove its case the plaintiff adduced evidence in particular the correspondences between the plaintiff and the defendant as well as the relevant laws provided in the Bangladesh Krishi Gobesona Council Karmochari Chakuri Probidhanmala, 1989.

There are some admitted positions between the parties which are that the plaintiff was an employee under the defendant since 1990. It is also admitted that during her service under the defendant-petitioners she applied for an educational leave for 2 years in order to undertake in Brack University, Canada. However, the dispute arose between the parties from the continuation of that course she failed to report the progresses during the said course which was a terms for granting leave. There are also disputes that an application was made by the present plaintiff-opposite-party for extension for further 2(two) years in order to undertake a fresh course being Bachelor of Computer Science (Hon's) course in the same University.

Now the question is to answer is that whether the authorities could extend educational leave for any further period of time to the present opposite-party. In this regard, there is a circular published by the establishment by way of “বি-দ-শ প্রশিক্ষণ শাখা আ-দ-শ” being No. শম, বি,প্র, Ro/92/118(500) dated 29.08.1992 and paragraph 9 provides that for any higher education an officer cannot be granted leave for more than 5 years. On the other hand, the Regulations, 1989 contains a provision under Regulation 26(3) which contains that any educational leave cannot be granted for more than 2 years. From the above two available laws regarding leave of any employees the concern law would be the law of a particular institution. In the present case the circular of the Ministry is a general provision, whereas the provision in the regulation is specific law applicable for specific employees, as such, I consider that the applicable law would be Regulation 26(3) in the present case, therefore, the education leave for more than 2 years could not be granted.

The vital question in the present case is that whether the order of dismissal from service to the present plaintiff-opposite-party was in accordance with law or not. In this regard, the learned Advocate for the opposite-party raised this issue in the trial Court and the appellate Court below and both the Courts below referred Regulations 39 of the Regulation 1989 containing the procedures for imposing a major penalty upon any employee under the Bangladesh Agricultural Council. After the plain

reading of Regulations 39 along with Regulation 43 of the Regulation 1989.

It appears that there is a gray area for imposing lower penalty and major penalty. It can be considered that guilt of an employee of for desertion would not be automatically be subjected to Regulation 40(kha) i.e. dismissal from service. Therefore, the procedures provided under Regulation 43 are necessary to be follows which, include a departmental proceeding as provided under Regulation 43. It appears form the record that the present petitioners as the employer framed charges against the plaintiff-opposite-party, but no inquiry committee was formed, but there were some show because notices issued by the post and by publishing notices in the news paper. Under the provision of law, when an inquiry committee can only serve a notice asking as to why a person would not be dismissed from the service and to present before any inquiry committee to raise his side of the case by way of a personal hearing. In fact, no such procedures have been complied with by the present defendant-petitioners which are the serious defects in the present case. Accordingly, both the Courts came to a lawful conclusion to cancel the dismissal order.

Despite the above facts, the plaintiff-opposite-party also failed to take appropriate remedy after getting the dismissal order provided under Regulation 48 which provides a forum of an appeal on any decision taken

by the defendant-petitioner. The appellate authority under the said Regulation 48 had could provide the following remedies as follows :-

- “(২) আপীল কর্তৃপক্ষ নি-স্মাঙ্ক বিষয়সমূহ বি-বচনা করি-বন, যথা -  
(ক) এই প্রবিধানমালায় নির্ধারিত পদ্ধতি পালন করা হইয়া-ছ কিনা,  
না হইয়া থাকি-ল উহার কার-ণ ন্যায় বিচা-র হানি হইয়া-ছ কিনা,  
(খ) অভি-যোগসমূ-হর পর প্রদও সিদ্ধান্ত ন্যায়সংগত কিনা,  
(গ) আরোপিত দন্ড মাত্রাতিরিক্ত, পর্যাপ্ত বা অপর্য়াপ্ত কিনা, ”

In view of the above given facts, it transpires to me that both the parties have some defects as per the procedures under the Regulations 1989. However, I consider that an employee should not be allowed to punish without following the required procedures applicable to an employee, on the other hand, an employee should not be allow to take an advantage by deserting himself or herself from her own job. In the present case the defendant-petitioner admittedly did not follow the requirements a departmental proceeding before imposing penalty of dismissal from the service. The present plaintiff-opposite-party has also failed to take necessary steps for appealing to the higher authority which is the Ministry of Agricultural.

In this regard, the learned Advocate for the opposite-party, however, shown a document that an appeal was made to the Ministry but it contains no manner of appeal nor it contains any when it was made. Accordingly, I consider the dismissal order passed by the present petitioners was not an appropriate penalty without complying necessary steps as required under

the above law. The learned trial Court after considering the evidence and deposition by the respective parties came to a lawful conclusion to decree the suit on the basis of the following findings :-

“On consideration of the above facts and circumstances, it appears to the Court that the plaintiff has violated the condition of education leave and the plaintiff has stayed in Canada with an unauthorized leave. It also appears to the Court that the plaintiff is liable for desertion but the defendants have committed procedural wrong in taking the decision of dismissal for desertion according to the Bangladesh Agricultural Research Council Employees Service Regulations, 1989. Therefore, this issue is partially decided in favour of the plaintiff.”

The appellate Court also dismissed the appeal finding concurrently in favour of the present plaintiff-opposite-party on the basis of the following findings :-

“ On perusal of the said circular of the Ministry of Establishment, it also appears to the court that to get education leave is not a right of any employee but the authority would liberally to consider the education leave. Under discussion it appears to the court that the plaintiff has violated the condition of education leave and the plaintiff has stayed in Canada with an unauthorized leave. It also appears to the Court that the plaintiff is liable for desertion but the defendants have committed procedural wrong in taking the decision of dismissal for desertion according to the Bangladesh Agricultural

Research Council Employees Service Regulations, 1989.”

After examining the above two judgments passed by the two Courts concurrently finding that the dismissal order passed by the petitioners is not based in compliance with the required provisions for a departmental proceeding, thus, illegal. However, there is a serious allegation of desertion against the present opposite party which is not acceptable because such kind of desertion would set a bad example in BARC and elsewhere, therefore, of the plaintiff-opposite-party is to face a departmental proceeding for allegation of desertion as per Regulation 39(ga) from the station of her employment by violating the orders of her employer which is an insubordination and this matter should be examined by an inquiry committee for deciding an appropriate penalty for such allegation. However, the present petitioners passed the dismissal order without forming an inquiry committee, giving an opportunity for personal hearing and others procedural steps, thus, the present dismissal order is inappropriate. Moreover, the present plaintiff-opposite-party did not avail the appellate forum available under the law. I am, therefore, inclined to dispose of this Rule. Accordingly, the Rule is disposed of with the following directions.

In view of the above, the dismissal order of the plaintiff-opposite-party, Feroza Sultana, dated 22.01.2006 is hereby declaration illegal and

void. Therefore, the petitioners are hereby directed to give her employment back in a place or post where the present defendant-petitioners consider appropriate and she will be entitled to salary and other benefits in the post given by the present defendant-petitioner from the date of her joining in the service but not any arrears. This is considered as an exceptional case.

The present petitioners may draw a departmental proceeding after complying all the required steps provided in Regulation 43 or other law under the “Bangladesh Agricultural Research Council under the Bangladesh Krishi Gobesona Council Kormochari Chakuri Probidhanmala, 1989”, upon the allegation of desertion against the present opposite party.

In view of the above, the judgment and decree passed by the appellate Court below is thereby upheld with the above modifications.

In the result, the Rule is disposed of.

The interim order of stay granted upon the operation of the judgment and decree dated 02.02.2015 passed by the learned Additional District Judge, 2<sup>nd</sup> Court, Dhaka in Title Appeal No.189 of 2010 affirming those dated 08.04.2010 passed by the learned Assistant Judge, 2<sup>nd</sup> Court, Dhaka in Title Suit No.193 of 2007 is hereby recalled and vacated.

The office is directed to communicate this judgment and order and also to send down the Lower Courts Record immediately.