

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

WRIT PETITION NO. 9792 OF 2016

IN THE MATTER OF:

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

-And-

IN THE MATTER OF :

Mohammad Manjurul Alam

....PETITIONER

-Versus-

Govt. of Bangladesh represented by the
Secretary, Ministry of Industries, Bangladesh
Secretariat, Ramna, Dhaka and others.

....RESPONDENTS

Mr. Kayser Kamal, Advocate

.... For the Petitioner

Mr. Md. Abdus Samad with

Mr. M.G.H. Ruhullah, Advocates

... For the Respondent No. 2

Heard on: 21.03.2018 & 04.04.2018

Judgment on: 09.05.2018

Present:

Ms. Justice Naima Haider

&

Mr. Justice Zafar Ahmed

Naima Haider, J:

In this application under Article 102 of the Constitution, Rule Nisi
was issued in the following terms:

*Let a Rule Nisi be issued calling upon the respondents
to show cause as to why the Rule 54(2) of the Bangladesh
Chemical Industries Co-operation Employees and Service
Rules, 1998 should not be declared to be ultra vires to the
Constitution of the People's Republic of Bangladesh and also
the order of appellate forum dated 18.07.2006 vide Memo No.*

36.01.027.01.02.5398.2016/628;PF-325 (JF) Employee No. 4298-3 (Annexure-F) upholding the order of termination vide memo No. 36.091.027.01.02.5398.2016/494 dated 04.04.2016 (Annexure-C) issued by the respondent No.3 terminating the petitioner from the post of Assistant Accounts Officer in pursuance of Rule 54(2) of the Bangladesh Chemical Industries Employees and Service Rule, 1998 violating the constitutional provisions and principles of natural justice, and /or such further order or orders passed as this Court may seem fit and proper.

In the instant writ petition, the petitioner challenged the legality of Rule 54(2) of the বিসিআইসি কর্মচারী চাকুরী প্রবিধানমালা, ১৯৮৮. The petitioner also challenged the legality of the order of termination dated 04.04.2016 and the order dated 18.07.2016 passed by the appellate authority upholding the order of termination.

The petitioner is a citizen of Bangladesh. He is educated and has obtained Masters degree from the National University. The petitioner's father is a freedom fighter. The petitioner was appointed as an Assistant Accounts Officer of Bangladesh Chemical Industries Corporation through competitive selection process. He was appointed on 29.01.2014. After his appointment, the petitioner rendered service to the satisfaction of the respondents. The petitioner received the impugned order of termination dated 04.04.2016 issued under Rule 54(2) of the বিসিআইসি কর্মচারী চাকুরী প্রবিধানমালা, ১৯৮৮. No reason was assigned. The petitioner was not offered any show cause. Against the said order of termination, the petitioner appealed before the appellate forum but the appellate authority by order

dated 18.07.2016 affirmed the order of termination. Being aggrieved, the petitioner moved this Division and obtained the instant Rule.

The learned Counsel for the petitioner takes us through the petition and the documents annexed. He submits that the termination was illegal; the petitioner was neither offered any chance to represent the case nor was he assigned any reason for the termination. He submits that the order of termination and the order passed by the appellate authority are violative of the principles of natural justice and should be declared illegal. He also submits that Rule 54(2) of the বিসিআইসি কর্মচারী চাকুরী প্রবিধানমালা, ১৯৮৮ is violative of the constitutional provision and should be declared illegal. He submits that the Rule should be made absolute with direction to reinstate the petitioner.

The Rule is opposed. The respondent No.2 filed an Affidavit in Opposition. The Affidavit in Opposition adds nothing more than bare denial.

We have perused the pleadings and the documents annexed. We have also heard the learned Counsels.

This Division feels that adherence to the principles of natural justice is fundamental to ensuring fairness. This Division in exercise of supervisory power under Article 102 of the Constitution emphasizes on the principle that executives and/or quasi judicial authorities “must demonstrate fairness”. This Division is also bound by the same principle. In R v Benn and Church [(1795) 6 T.R. 198] Lord Kenyon held that a summons for payment of poor rates must precede a warrant of distress “which is in the nature of an execution” because if warrant was to be issued without any previous summons the party would have no opportunity of

showing cause why the execution should not issue against him. In *Capel v Child* [(1832) 2 C&J, 558, 579] *Bayley J held:*

“Is it not a common principle in every case which has in itself the characteristics of judicial proceeding, that the party against whom the judgment is to operate shall have an opportunity of being heard?”

The High Court Division in exercise of its power under Article 102 of the Constitution issues Rules upon the respondents. The purpose of the Rule is to permit the respondents in the writ petition a chance to explain their position.

The respondents can explain their position appropriately if and only if the petitioner drafts the writ petition clearly enough for the respondents to understand exactly how the subject matter under challenge is alleged to be illegal. The petition thus needs to be precise; the petition clearly needs to contain arguments which are relied upon by the petitioner in support of the contention that the subject matter under challenge is illegal. Unless the petition is clear and self explanatory, the respondents cannot respond properly. The respondents likewise need to provide a clear analysis. Unless that is done, the petitioner would not be able to respond properly. The doctrine of fairness requires precision and clarity from the petitioner and the respondents equally.

The High Court Division is a Court of Record. Petitions filed before this Division are not only important to the Bench which is adjudicating but also important for future reference. Others must understand on what basis a decision is reached. Others must understand not only by reference to judgments but also by reference to pleadings.

In the instant writ petition the petitioner challenged, legality of Rule 54(2) of the বিসিআইসি কর্মচারী চাকুরী প্রবিধানমালা, ১৯৮৮ , the order of termination and the order passed by the appellate authority affirming the order of termination. The petitioner took four grounds. First, the order of termination is illegal since it was issued further to Rule 54(2) which does not require issuance of show cause notice. Second, the order of termination is illegal because the order is non-speaking. Third, the order of termination was not preceded by any show cause notice and hence the order is illegal. Fourth, the respondents did not assign any cogent reason for termination and hence the termination is illegal. Interestingly, the petitioner did not set out any reason why Rule 54(2) of the বিসিআইসি কর্মচারী চাকুরী প্রবিধানমালা, ১৯৮৮ should be declared illegal. The petitioner ought to have done so. Since the petitioner did not set out the reasons as to why the Rule 54(2) of the বিসিআইসি কর্মচারী চাকুরী প্রবিধানমালা, ১৯৮৮ should be declared, the respondents did not advance any argument as to why said provision should not be declared illegal.

This Division adjudicates on the legality of any particular issue in light of the arguments set out in the petitions. This Division does not adjudicate any issue merely because it is raised. For instance if the petitioner raises issue on the legality of an order but does not set out why the order should be declared illegal, the issue is deemed a non issue. This has happened in the instant case. Though Rule 54(2) was challenged through the Rule issuing order, the petitioner did not set out any reason why the said provision should be declared illegal. In the absence of any such reason, this Division feels that it should not interfere on the basis of hypothetical explanations. The learned Counsel for the petitioner points out

and submits that Rule 54(2) is unconstitutional. This is a vague assertion. A provision may be constitutional or illegal but this Division must, in order to declare a provision illegal or unconstitutional, understand the basis. Vague assertion is neither here nor there. The learned Counsel advances a verbal argument that Rule 54(2) is contradictory and hence illegal. We are not inclined to accept the verbal submission and decide on the legality of Rule 54(2) on the basis of such verbal submission only. We must decide on the basis of what is in the record, and in this case, the pleadings. Unless we do that, we would deny the respondents the opportunity to respond properly. We would deny fairness to the respondents. It would be absurd if we are seen to preach the importance of fairness to the executives but we ourselves refrain from demonstrating fairness while adjudicating.

Accordingly, this Division is not inclined to deal with the legality of Rule 54(2) of the বিসিআইসি কর্মচারী চাকুরী প্রবিধানমালা, ১৯৮৮.

Let us now focus on the legality of the order of termination and the order passed by the appellate authority. To assess, we set out Rule 54(2) below for ease of reference:

“এই প্রবিধানমালা ভিন্নরূপ যাহা কিছুই থাকুক না কেন, উপযুক্ত কর্তৃপক্ষ কোন কারণ না দর্শাইয়া কোন কর্মচারীকে নব্বই দিনের নোটিশ দান করিয়া অথবা নব্বই দিনের বেতন নগদ পরিশোধ করিয়া তাহাকে চাকুরী থেকে অপসারণ করিতে পারিবে।”

Rule 54(2) permits the respondent to terminate employment without cause. The impugned order was issued on 04.04.2016 and the termination was to take effect from 04.07.2016. Three months notice was issued, as contemplated under the law. The termination was a termination simpliciter; no stigma was attached. In the circumstances, there is no reason to issue show cause notice as such notice would not have served any purpose. The order of termination was not non speaking. Therefore, there is no need for

us to intervene. The order dated 18.07.2016 issued by the appellate authority, in the given circumstance, need not assign any reason because the termination was not a termination for cause.

In the instant case, the legality of Rule 54(2) of the বিসিআইসি কর্মচারী চাকুরী প্রবিধানমালা, ১৯৮৮ has become a non issue. Rule 54(2) thus stands legal, as being unchallenged. Since Rule 54(2) stands to be legal, we are inclined to hold that the order of termination and the order passed by the appellate authority affirming the order of termination were issued in accordance with law. According to this Division, interference is not warranted.

The Rule is therefore discharged without any order as to costs.

Communicate the Judgment and Order at once for immediate compliance.

Zafar Ahmed, J:

I agree.