

LEX/BDHC/0094/2015 **Equivalent Citation:** 68 DLR (2016) 125

**IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION)**

Writ Petition No. 3657 of 2015

Decided On: 10.11.2015

Appellants: **Nurun Nabir Sarker**  
**Vs.**

Respondent: **Secretary, Ministry of Education and Ors.**

**Hon'ble Judges:**

*Md. Rezaul Hasan and Khizir Ahmed Choudhury, JJ.*

**Counsels:**

*For Appellant/Petitioner/Plaintiff: Humayun Kabir, Advocate*

*For Respondents/Defendant: ASM Nazmul Hoque DAG, Md. Jahangir Alam, AAG and Md. Abdur Rahman Howlader, AAG*

**Case Note:**

**Service - Necessary Steps - Rule 38(3) of Regulation, 1979 - Whether there is ground to issue direction against Respondents No. 3 to 5 that they dispose of petitioner's application for taking necessary action against order of his suspension as Headmaster? - Held, petitioner has been appointed as Headmaster of concerned School after compliance with all procedure as laid down in concerned Rules and Regulations - Petitioner has been suspended, but no time has been mentioned in said letter as to period of suspension - On other hand this court do not find any materials on record that governing body has initialed any disciplinary proceeding against petitioner, though it has kept petitioner under suspension for in definite period - This act of Respondent No. 7 tantamount to colorable exercise of power, violation of petitioner's fundamental right - Hence, this order/letter of suspension is bound to be declared to have been issued without any lawful authority and is of no legal effect - This court find merit in this Rule -Accordingly this Rule is made absolute - In consequence, Chairman, Board of Intermediate and Secondary Education/competent Authority is hereby directed to dispose of petitioner's application within 10(ten) working days from date of receiving copy of this judgment and order to ensure that Governing body/Managing Committee follow procedure laid down in Regulation, 1979 - Since petitioner or any other person cannot be kept suspended for indefinite period, therefore, as consequential order and to secure ends of justice respondent No. 7 and respondents No. 1, 2 and 6 are hereby directed to ensure full payment or balance amount of full payment of petitioner's salary, due after expiry of 60 (sixty) days from relevant date, within 30 (thirty) days of receiving copy of this judgment and order - Respondent No. 7, Chairmen of Managing Committee, is hereby directed to pay cost of then thousand only to petitioner within 15 (fifteen) days from date of receiving copy of this judgment and order and to file an affidavit of compliance within 15 (fifteen) days thereafter. [5],[6],[7], [8],[9],[10], [14],[15],[16], [17],[18]**

**JUDGMENT**

## Md. Rezaul Hasan, J

1. In this petition, filed under Article 102 of the Constitution, a Rule has been issued calling upon the respondents to show cause as to why respondents No. 3 to 5 shall not be directed to dispose of the application filed by the petitioner on 22-3-2015 before them (Annexure-C to the application), praying for taking necessary action against the order of suspension of the petitioner from his service as the Headmaster. Uzan Teura TUM High School, Sundargonj, Gaibandha under rule 38(3) of the

মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড, দিনাজপুর (মাধ্যমিক ও উচ্চ মাধ্যমিক স্তরের বেসরকারী শিক্ষা প্রতিষ্ঠানের গভর্নিং বডি ও ম্যানেজিং কমিটি) প্রবিধানমালা,

and/or pass such other or further order or orders as to this Court may seem fit and proper. Fact relevant for the disposal of this Rule, in brief, are that the petitioner applied for the post of Headmaster, in response to the advertisement published by the concerned authority and that a duly constituted selection committee selected the petitioner to be appointed for the said post and consequently the petitioner has joined the said School, on 11-4-1999, pursuant to the appointment letter dated 7-4-1999 issued by the Chairman of the Managing Committee Uzan Teura TUM High School, Sundargonj, Gaibandha, and since then he has been discharging his duties honestly, sincerely and to the full satisfaction of the authority concerned; that the name of the petitioner was enlisted in the monthly pay order (MPO) from May, 1995, being Index No. 258346, and since then he has been receiving government portion of his monthly salary and other financial benefit regularly, without any interruption, till to date; that without complying the mandatory provisions of the Recognised Non-Government School Teachers (Board of Intermediate and Secondary Education, Rajshahi) Terms And Conditions of Service Regulations, 1979" and with a malafide intention, the Managing Committee of the said school took a decision on 12-10-2014 to suspend the petitioner from his service; that the Governing Body of the said School has failed to conclude the proceedings against the petitioner in compliance with the provisions of the Regulation-11, 12, 13 and 14 of the said Regulation, 1979; that on 22-3-2015 the petitioner filed an application before the Chairman, the Secretary and the Inspector of Schools, Board of Intermediate and Secondary Education, Dinajpur, (respondent No. 3, 4 & 5) requesting them to take necessary action against the order of suspension of the petitioner from his service as the Headmaster, Uzan Teura TUM High School, Sundargonj, Gaibandha under Regulation-38(3) of the

“মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড, দিনাজপুর (মাধ্যমিক ও উচ্চ মাধ্যমিক স্তরের বেসরকারী শিক্ষা প্রতিষ্ঠানের গভর্নিং বডি ও ম্যানেজিং কমিটি) প্রবিধানমালা, ২০০৯.”

but the respondents remained silent without considering the prayer of the petitioner and without giving any reply; that though the said application has duly been received by the office of the Chairman, the Secretary and the Inspector of Schools, Board of Intermediate and Secondary Education, Dinajpur (respondent Nos. 3, 4 & 5), but they did not take any steps in respect the matter till to date that it is humbly submitted that the inordinate delay of the respondents to dispose of the application filed by the petitioner on 22-3-2015 is illegal, malafide and arbitrarily and, as such the inordinate delay of the respondents to dispose of the application filed by the petitioner on 22-3-2015 is required to be declared to have been done without any lawful authority and is of no legal effect; that it is the statutory duty of the respondents to dispose of the application filed by the petitioner within a reasonable time and, as such the respondents are required to be directed to dispose of the application filed by the petitioner without making any delay; that the action of the respondents in not disposing the application filed by the petitioner on 1-10-2013 (ANNEXURE-C) is malafide, arbitrarily and amounts to refusal to exercise their jurisdiction and hence, the respondents are required to be directed to dispose of the application filed by the petitioner without making any delay; that being aggrieved by

the action of the respondents in not disposing the application filed by the petitioner on 22-3-2015 praying for taking necessary action against the order of suspension of the petitioner from his service as the Headmaster, Uzan Teura TUM High School,

“মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড, দিনাজপুর  
(মাধ্যমিক ও উচ্চ মাধ্যমিক স্তরের বেসরকারী শিক্ষা প্রতিষ্ঠানের  
গভর্নিং বডি ও ম্যানেজিং কমিটি) প্রবিধানমালা, ২০০৯,”

Sundargonj, Gaibandha under Regulation-38(3) of the (ANNEXURE)-C) and finding no other equally efficacious alternative remedy available in law, your humble petitioner begs to file this petition under Article 102(2)(a)(i) & (ii) of the Constitution on the following amongst others. Hence this petition.

**2.** The learned advocate, appearing for the petitioner, Mr. Humayun Kabir, having placed the petition alongwith the documents annexed therewith, and first up all submits that the petitioner is the Headmaster of Uzan Teura TUM High School Sundargonj, Gaibandha. The learned advocate further submits that the petitioner was appointed in said post after compliance of all formalities and procedure as required by the concerned Rules and Regulations. He next submits that the name of the petitioner has been enlisted in the Monthly Pay Order (MPO) for May, 1995, being index No. 258346, and since then he has been receiving the govern portion of his monthly salary and other financial benefits regularly, without any interruption, till today. But, without compliance with the provisions of "The Recognised Non-Government School Teachers (Board of Intermediate and Secondary Education, Rajshahi Terms and Conditions of Service Regulations, 1979" the petitioner was suspended by the Managing Committee on 12-10-2014, with a malafide intention. But they have not initiated any departmental proceeding against the petitioner by way of issuing any show cause notice or charge sheet, although the petitioner has been kept under suspension till today without apprising him as to what was his fault and without bringing any allegation against him, by issuing show cause notice, as required by Regulations 11 and 12 of the above mentioned Regulation. Thereafter the petitioner filed an application on 22-3-2015 to the Chairman of the Board of Intermediate and Secondary Education (respondent No. 3, 4 and 5) seeking appropriate remedy in the background of the hardship and sufferings he has been put to by the aforesaid illegal order of suspension, but they remained silent. He further submits that, it is statutory duty of the respondent Nos. 3, 4 and 5 i.e. the Chairman, the Secretary and the inspector of the Schools, Board of Intermediate and Secondary Education, Dinajpur, to disposed of the said representation date 22-3-2015 within a reasonable time by giving direction upon the Managing Committee and that the board has power under Regulation No. 38(3) of the aforesaid Regulation of 2009. He further submits that, in the manner aforesaid, the fundamental right to be treated and accordance with law, as guaranteed to the petitioner by Article 31 read with Article 44 of the Constitution, has been denied to him. Accordingly he has prayed for-appropriate direction. In support of his contention, the learned advocate has referred to the decisions reported in 2012 (XX) BLT (AD) 239: Bangladesh Live Stock Research Institute vs. Dr. Md. Jahangir Alam Khan, LEX/BDHC/0007/2006 : 60 DLR 40: Zulfikeer Mahmud vs. National University and has also placed an unreported judgment dated 9-3-2014 passed in Writ Petition No. 1897 of 2014: Md. Jashimuddin vs. Government of the PRB. He has prayed making the Rule absolute in the facts and circumstances of this case.

**3.** The Learned Deputy Attorney-General Mr. ASM Nazmul Hoque a appearing alongwith the learned Assistant Attorney-General Mr. Md. Jahangir Alam, has found in the difficult to show as to why the board is to not be directed to the disposed of the petitioner's representation date 22-3-2015 (Annexure-C) within reasonable time to be fixed by this court.

4. Heard the learned advocates for both sides, perused the writ petition including the materials on record and also consulted the law cited before us.

5. We find from that the materials on record that the petitioner has been appointed as Headmaster of the concerned School after compliance with all the procedure as laid down in the concerned Rules and Regulations. His name has been listed in the MPO from May, 1995. We also find, that the petitioner has been suspended on 12-10-2014 (Annexure-B), but no time has been mentioned in the said letter as to the period of suspension. On the other hand we do not find any materials on record that the governing body has initialed any disciplinary proceeding against the petitioner, though it has kept the petitioner under suspension for in definite period.

6. In our consider view, this order of suspension dated 12-10-2014 bearing Memo No. উ/তে/বি/০২/১৪ (Annexure-B) does not mention any period for which the petitioner has been suspended or kept under suspension. Similarly, we do not find any material on record showing that the petitioner has been suspended pending any disciplinary proceeding or that any disciplinary proceeding has been initiated following the order/letter of suspension dated 12-10-2014.

7. In our considered view, this act of Respondent No. 7 tantamount to colorable exercise of the power, violation of the petitioner's fundamental right to be treated in accordance with law. We are also of the view that in order to be a valid suspension order the same must contain the period for which the incumbent shall remain suspended and such suspension order can only be issued pending a disciplinary proceeding. But, neither of these two conditions are met or found present in the letter/order of suspension dated 12-10-2014. The respondent No. 7 is not authorised by law to issue such an order or letter. Hence, this order/letter of suspension is bound to be declared to have been issued without any lawful authority and is of no legal effect. But, the petitioner has neither prayed for any relief under Article 102(1) for violation of his fundamental right, nor prayed for issuing any supplementary Rule challenging the suspension letter dated 12-10-2014.

8. We also find that the petitioner made a representation to the Board on 22-3-2015, giving the facts and particulars in the detail and pointing out that the Managing Committee did not follow the provisions Regulations No. 13(a), 14(a) and 14(b) of the above mentioned Service Regulations, 1979 as well as they have violated the provisions of the Regulations No. 33(5), 33(6), 35(1) and 35(4) of Governing Body and Managing Committee Regulations, 2009.

9. Sub-regulation (3) of regulations 38 reads as follows:--

“৩৮। গভর্নিং বডি বা ক্ষেত্রমত, ম্যানেজিং কমিটি বাতিলকরণ, ইত্যাদিঃ—

(১) .....

(২) .....

(৩) বোর্ড স্বপ্রণোদিত হইয়া বা সরকারের নির্দেশে গভর্নিং বডি বা, ক্ষেত্রমত, ম্যানেজিং কমিটির যে কোন কার্য বিষয়ে অনুমোদন করিতে কিংবা কোন অভিযোগের বিষয়ে তদন্ত করিতে পারিবেন এবং সংশ্লিষ্ট রেকর্ডপত্র তলব করিতে পারিবে।

(emphasis added)

**10.** As such, in our considered view, the board has authority to examine any order or decision passed by the Governing Body or Managing Committee of the educational institution placed under its supervision and control and to pass appropriate order, though this cannot be treated as an efficacious alternative remedy.

**11.** We are also of the considered view that in order to prevent malafide exercise of power, to ensure equitable and fair treatment to all employees, including the petitioner, this court should declare law, as contemplated under Article 111 of the Constitution, to put an end to this unjust situation and shall fix a period as to how long a person can be kept suspended pending inquiry, when such suspension is not imposed as penal measures. Accordingly, we declare that in the absence of any law providing, otherwise, no person shall be kept under suspension beyond 60 (sixty) days from the date of his/her suspension. If the suspension continues for further period, exceeding 60(sixty) days, then the person suspended shall be entitled to receive full pay, instead of subsistence allowance, till the suspension order/letter ends up in a final order.

**12.** Next, we also record that, for the conducts noted above, the Chairman and other members of the Managing Committee as well as the concerned official of the board should have been compensated, for their inaction, that in fact amounts to gross neglect of duty.

**13.** We are also of the view that government officials are conferred powers not to victimize innocent person or teacher. They are bound to discharge their duties as fairly and as provided in law. Their findings should be based on materials on the record. They should take into consideration all material facts in taking any decision or step. Their bonafide and neutrality must be visible at the first sight. They are not permitted to secure unlawful gain to themselves or to any other person. Nor they are permitted to act unreasonably, disproportionately, discriminatorily, arbitrarily, whimsically or to resort to colourable exercise of their power. They will lose indemnity if they don't act bonafide.

**14.** We find merit in this Rule.

Order

**15.** Accordingly this Rule is made absolute.

**16.** In consequence, the Chairman, Board of Intermediate and Secondary Education, Dinajpur is hereby directed to dispose of this application within 10(ten) working days from the date of receiving copy of this judgment and order to ensure that the Governing body/Managing Committee follow the procedure laid down in aforesaid Regulation, 1979. He should also keep in mind the guidelines provided herein above the Chairman is directed to file an affidavit of compliance within 15 days thereafter to this court, through the learned Registrar of the High Court Division.

**17.** Since the petitioner or any other person cannot be kept suspended for indefinite period, therefore, as consequential order and to secure ends of justice the respondent No. 7 and the respondents No. 1, 2 and 6 are hereby directed to ensure the full payment or the balance amount of the full payment of the petitioner's salary, due after expiry of 60 (sixty) days from 12-10-2014, within 30 (thirty) days of receiving copy of this judgment and order.

**18.** The respondent No. 7, Chairmen of the Managing Committee, is hereby directed to pay of Taka 10,000 (then thousand only) as cost to the petitioner within 15 (fifteen)



days from the date of receiving copy of this judgment and order and to file an affidavit of compliance within 15 (fifteen) days thereafter, through the learned Registrar of the High Court Division. Let a copy of the judgment and order be sent to the respondent No. 3 and 7 at the expenses of the petitioner and two other copies be sent to the secretaries Ministry of Education and to the Secretary Ministry of Primary and Mass Education, Bangladesh Secretariat, to issue directives or circular upon all Chairman and the Director Generals, as the case may be, in the light of the law declared in paragraph 12 herein above. They should ensure compliance as required under the provisions of Article 112 of the Constitution of the People's Republic of Bangladesh and submit an affidavit of compliance through the learned Registrar of the High Court Division, within 30 (thirty) working days of receiving copies of this judgment and order.

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