

**IN THE SUPREME COURT OF BANGLADESH**  
**APPELLATE DIVISION**

**PRESENT:**

Mr. Justice Borhanuddin  
Mr. Justice M. Enayetur Rahim  
Mr. Justice Md. Ashfaqul Islam  
Mr. Justice Md. Abu Zafor Siddique  
Mr. Justice Jahangir Hossain

**CIVIL PETITION FOR LEAVE TO APPEAL NO.519 OF 2023**

(From the judgment and order dated 06.11.2022  
passed by the High Court Division in Writ  
Petition No.3351 of 2022)

Rukhsana Ahmed Ruxi and ... Petitioners  
others

=VERSUS=

Bangladesh, represented by ..... Respondents  
the Secretary, (Secondary and  
Higher Education), Ministry  
of Education, Bangladesh  
Secretariat, Ramna, Dhaka and  
others

For the Petitioners :Mr. Probir Neogi, Senior  
Advocate with Mr. Tanjib-  
ul-Alam, Senior Advocate  
and Mr. Mohammad Bakir  
Uddin Bhuiyan, Advocate  
instructed by Mr. Zainul  
Abedin, Advocate-on-  
Record.

For the Respondent :Mr. Mohammad Saiful  
Nos.1-4 Alam, Assistant Attorney  
General, instructed by  
Mr. Haridas Paul,  
Advocate-on-Record.

For the respondent :Mr. Motahar Hossain,  
Nos.5-6 Senior Advocate  
instructed by Mr.

Mohammad Ali Azam,  
Advocate-on-Record

For the respondent :Not represented  
Nos.7-8  
Date of hearing and :The 7<sup>th</sup> December, 2023  
judgment on

**J U D G M E N T**

**Md. Ashfaqul Islam, J:**

This Civil Petition for Leave to Appeal is directed against the judgment and order dated 06.11.2022 passed by the High Court Division in Writ Petition No.3351 of 2022 discharging the Rule with observations.

The writ petitioners who are teachers of Lalmatia Mohila College whose salary was degraded after the nationalization of the College filed the writ petition being Writ Petition No.3351 of 2022 before the High Court Division challenging the arbitrary degradation of the present position of the writ petitioner

Nos.1, 4, 5, 7, 9, 11, 12, 15, 16, 23 and 26 from the post of Associate Professor to the post of Lecturer and the present position of the writ petitioner Nos.2, 3, 6, 10, 13, 14, 17, 18, 19, 20, 21, 22 and 24 from the post of Assistant Professors to the post of Lecturers and the position of the writ petitioner No.8 from the post of Associate Professor to the post of Demonstrator of Lalmatia Mohila College, now Lalmatia Government Mohila College which is evident from Annexure-M issued under signature of the writ respondent No.6, Principal, Lalmatia Government Mohila College, Lalmatia, Mohammadpur, Dhaka-1207 and thereby reducing the existing monthly salaries of the writ petitioners without any written communication to the writ petitioners as

evident from the representations made by the writ petitioners.

The case, made out in the writ petition before the High Court Division, in brief, is as follows:

The writ petitioner Nos.1-7 and 9-26 obtained Bachelor degree with Honours and Masters Degree from different universities and thus having requisite qualifications got appointment as Lecturer on different dates in different departments of the Lalmatia Mohila College, Lalmatia, Dhaka (the College). The writ petitioner No.8 also got an appointment letter as Demonstrator (Physics) on 16.07.2021 in the said College. Accordingly, joining the said College, the writ petitioners have been discharging their respective duties. The writ

petitioner Nos.1, 4, 5, 7, 9, 11, 12, 15, 16, 23 and 26 subsequently got promotion on different dates to the post of Assistant Professor and then to the post of Associate Professor. The writ petitioner Nos.2, 3, 6, 10, 13, 14, 17, 18, 19, 20, 21, 22 and 24 on also got promotion to the post of Assistant Professor on different dates and the writ petitioner No.8 (initially Demonstrator) got promotion to the post of Lecturer and then to the post of Assistant Professor.

Lalmatia Mohila College was affiliated under the National University established under the National University Act, 1992 and recognized by the Directorate of Secondary & Higher Education, Dhaka and the services of the writ petitioners were regulated under the Non-

Government Degree College Teachers Service Regulations, 1994 (in short, the Regulations, 1994). All the writ petitioners are the regular and permanent teachers of the Lalmatia Mohila College and the Governing Body of the College took decision on 23-12-2016 to pay salary as per National Pay Scale, 2015 and the writ petitioners were receiving their salary as per National Pay Scale, 2015.

In the year 2019, the nationalization process of Lalmatia Mohila College was started under the "সরকারী কলেজ শিক্ষক ও কর্মচারী আত্তীকরণ বিধিমালা, ২০১৮" (in short, the Absorption Rules, 2018) which was framed repealing the earlier Rules, namely, "জাতীয়করণকৃত ক-লজ শিক্ষক ও অ-শিক্ষক কর্মচারী আত্তীকরণ বিধিমালা, ২০০০" (in short, the Absorption Rules, 2000).

The College has been nationalized by the Ministry of Education following the Notification contained in Memo No.37.00.0000 .370.39.001.18.03 dated 04.01.2022 with effect from 31.12.2021, but the service of teachers and employees of the College is under process for absorption.

In the circumstances, as per office order issued by the Ministry of Education dated 27.08.2018, the financial transaction including all other matters of the College are being done with the joint signatures of the Deputy Commissioner, Dhaka and the Principal till completion of the process of absorption of service of the teachers and employees.

Although the writ petitioners have been drawing their salaries according to their

designated posts and entitlement, but the writ respondents without following the existing provisions of law proposed and compelled all the teachers (Assistant Professor and Associate Professor) to receive salary in the post of Lecturer and to the writ petitioner No.8 in the post of Demonstrator from the month of January, 2022. In this backdrop, the writ petitioners finding no other alternative efficacious remedies moved the abovementioned writ petition before the High Court Division and obtained the Rule.

The writ-respondent No.3, the Director General, Directorate of Secondary and Higher Secondary Education and the writ respondent No.6, Principal, Lalmatia Government Mohila College, Lalmatia, Mohammadpur, Dhaka contested



the Rule by filing separate affidavit-in-oppositions.

A Division Bench of the High Court Division upon hearing the parties discharged the Rule by the impugned judgment and order dated 06.11.2022. The High Court Division observed that, the writ petitioners are eligible for absorption only to the post of Lecturer and Demonstrator (writ petitioner No.8) and after absorption, since there is scope for promotion in accordance with Rule 12 of the Rules, 2018 in the vacant post of absorbed teachers, the writ respondents shall consider the writ petitioners' promotion in those promoted posts subject to vacancy.

Being aggrieved, by the impugned judgment and order of the High Court Division, the writ

petitioners as petitioner Nos.1-20 herein filed the instant civil Petition for leave to appeal before this Division.

Mr. Probir Neogi, the learned Senior Advocate appearing on behalf of the petitioners submits that, from the list of writ petitioners (11 Associate Professors, 14 Assistants Professors and 1 Lecturer) along with their particulars embodied in the impugned judgment and order it is evident that, the writ petitioner Nos.1-2, 4-12,15-17,20-24 and 26 were appointed in between 1995 to 2004 and the writ petitioner Nos.3,13-14, and 18-19 were appointed in the service in the year 2008 and the writ petitioner No.25 was appointed in the year 2011 and the High Court Division relying on the circular dated 17.04.2015 (actual date

would be 17.04.2005) issued on the basis of the service Regulations, 1994, discharged the Rule although the aforesaid circular dated 17.04.2005 was abolished by issuance of new service regulation namely, "জাতীয় বিশ্ববিদ্যালয়ের অধিভুক্ত বেসরকারী কলেজ শিক্ষকদের চাকুরীর শর্তাবলী রেগুলেশন, ২০১৫" (in short, the Service Regulations, 2015) wherein no such requirement of approval from syndicate for appointment/promotion of Assistant Professor, Associate Professor and Professor in National University affiliated degree college is stipulated and thus the High Court Division committed serious illegality in discharging the rule relying on an abolished circular and, as such, the impugned judgment and order of the High Court Division is liable to be set aside.

He further submits that, the writ petitioner No.1 got promotion as Assistant Professor on 13.11.2002, the writ petitioner No.5 got promotion as Assistant Professor on 14.11.2002, the writ petitioner No.7 got promotion as Assistant Professor on 06.10.2003, the writ petitioner No.9 got promotion as Assistant Professor on 14.11.2002, the writ petitioner No.23 got promotion as Assistant Professor on 14.01.2002 and the writ petitioner No.26 got promotion as Assistant Professor on 06.10.2003 and admittedly the circular in question was issued on 17.04.2005 and it is not the contention of any of the contesting writ respondents that the promotion of the writ petitioners are defective due to the clause No.(vii) and (ix) of the circular dated

17.04.2005, but upon making third case, the High Court Division relying on the abolished circular dated 17.04.2005, discharged the Rule by the impugned judgment and order in wholesale manner and thus committed gross illegality and therefore, the impugned judgment and order of the High Court Division is liable to be set aside.

He also submits that, from the list of writ petitioners along with their particulars embodied in the impugned judgment and order it further appears that, the writ petitioner No.2 got promotion as an Assistant Professor on 25.04.2016, the writ petitioner No.3 got promotion as an Assistant Professor on 09.04.2016, the writ petitioner No.13 got promotion as an Assistant Professor on

07.04.2016, the writ petitioner No.14 got promotion as an Assistant Professor on 25.04.2016, the writ petitioner No.18 got promotion as an Assistant Professor on 09.04.2016, the writ petitioner No.19 got promotion as an Assistant Professor on 09.04.2016, the writ petitioner No.21 got promotion as an Assistant Professor on 25.04.2016 and the writ petitioner No.22 got promotion as an Assistant Professor on 25.04.2016 following the provisions of existing law i.e. the said Service Regulations, 2015 which came into force on 13.06.2015 in place of earlier Service Regulations, 1994 and consequently, the circular under reference No.০১(১৬২) জাতীঃবিঃ/প্রশাঃ ৯২/(৭৭)/১ dated 17.04.2005 was also abolished and the High Court Division

relying on the aforesaid abolished circular has taken away the vested right of the aforesaid writ petitioners by passing the impugned judgment and order dated 06.11.2022 and thus committed serious illegality.

Next he further submits that, approval for nationalization of Lalmatia Mohila College and embargo on appointment and on promotion came on 26.02.2019 and all the writ petitioners were appointed and got promotion in their respective posts in the aforesaid college before the date of embargo and subsequently the college was nationalized vide memo dated 04.01.2022 with effect from 30.12.2021 and one Mr. Md. Enayetullah without having any requisite qualification got an appointment letter as an Assistant Professor in the aforesaid college on

the date of putting embargo that is on 26.02.2019 and he is receiving higher salary holding the post of Assistant Professor and thus the writ respondents have shown utter discriminatory treatments towards the writ petitioners and the High Court Division allowed the aforesaid discrimination in passing the impugned judgment and order and the same is liable to be set aside.

Finally, he submits that, the writ petitioners are the regular teachers of Lalmatia Mohila College, now Lalmatia Government Mohila College and the petitioners were appointed and promoted in their respective posts following the prevailing Rules and Regulations and they have no disqualifications and they are to be absorbed in the Lalmatia



Government Mohila College as per provision of Rule 4 read with Rules 5 and 6 of the "সরকারিকৃত কলেজ শিক্ষক ও কর্মচারী আত্তীকরণ বিধিমালা, ২০১৮", but the High Court Division fell into error in interpreting the provision of the "সরকারিকৃত কলেজ শিক্ষক ও কর্মচারী আত্তীকরণ বিধিমালা, ২০১৮" in passing the impugned judgment and order dated 06.11.2022 and thus committed illegality.

On the other hand, Mr. Mohammad Saiful Alam, the learned Assistant Attorney General appearing on behalf of the respondent Nos.1-4 made submissions in support of the impugned judgment and order of the High Court Division.

Mr. Motahar Hossain, the learned Senior Advocate appearing on behalf of the respondent Nos.5-6 submits that, earlier the writ petitioners executed undertaking not to claim

Government fund by way of their promotion. Moreover, out of 118 teachers except the few writ petitioners, all other teachers have been receiving the salary in the post of Lecturer and even the writ petitioner Nos.9 and 23 being MPO enlisted in the post of Lecturer, are receiving salary under the MPO scheme. Hence, the High Court Division rightly discharged the Rule and passed the impugned judgment and order and therefore, he prays for dismissal the instant leave petition.

We have heard the learned senior Advocates of both sides as well as the learned Assistant Attorney General. Perused the impugned judgment of the High Court Division and other papers on record.

The High Court Division at the outset initiated the question of maintainability of the writ petition and upon plausible reasons decided that, the writ petition is maintainable. But, the writ petitioners' claim of absorption in the nationalized college has not been accepted by the High Court Division. Accordingly, the High Court Division found that, the writ respondent Nos.4, Deputy Commissioner, Dhaka and 6, Principal, Lalmatia Government Mohila College, Lalmatia, Mohammadpur, Dhaka-1207 rightly took steps to pay the salary to the writ petitioners at the scale of lecturer from the date of nationalization in accordance with Rule 4 of the Absorption Rules, 2018. The High Court Division also held that, the two posts

(Professor and Associate professor) have to be incorporated in Rules 2(9) and 5 of the absorption Rules, 2018. The writ petitioners are eligible only for absorption to the post of Lecturer and Demonstrator (petitioner No.8) and after absorption there is scope for promotion in accordance with the rule 12 of the Rules, 2018. For the sake of better understanding let us reproduce the said Rules verbatim below:

২(৯)। “সরকারিকৃত ক-ল-জর শিক্ষক ও কর্মচারী” অর্থ কো-না সরকারিকৃত ক-ল-জ অধ্যক্ষ, উপাধ্যক্ষ, সহকারী অধ্যাপক বা প্রভাষক প-দ কর্মরত এমন কো-না শিক্ষক বা কো-না প-দ কর্মরত এমন কো-না কর্মচারী, যিনি মাধ্যমিক ও উচ্চ শিক্ষা অধিদপ্তর কর্তৃক নির্বাচিত বেসরকারি ক-ল-জ নিয়োগের উপর নিষেধাজ্ঞা আ-রাপ করিবার তারি-খর পূ-র্ব, বেসরকারি কলেজের জন্য প্রযোজ্য নিয়োগ সংক্রান্ত আদেশ, নির্দেশ বা নীতিমালার অধীন, নিয়োগপ্রাপ্ত হইয়া অব্যাহতভাবে উক্ত কলেজে কর্মরত আছেন;

৪। পদ স্থানান্তর - মাধ্যমিক ও উচ্চ শিক্ষা অধিদপ্তর কর্তৃক কো-না নির্বাচিত বেসরকারি কলেজে নিয়োগের উপর নিষেধাজ্ঞা আ-রাপ করিবার তারিখ পর্যন্ত, বেসরকারি কলেজের জন্য প্রযোজ্য নিয়োগ সংক্রান্ত আদেশ, নির্দেশ বা নীতিমালা অনুযায়ী, সংশ্লিষ্ট ক-ল-জর নি-য়াগপ্রাপ্ত শিক্ষক ও কর্মচারীগণের বিদ্যমান পদসমূহ, সরকারিকরণের তারিখ হইতে উক্ত সরকারিকৃত ক-ল-জর পদ হিসা-ব স্থানান্তরিত হই-ব।

৫। অস্থায়ীভা-ব নি-য়াগ।- (১) নি-য়াগকারী কর্তৃপক্ষ, মাধ্যমিক ও উচ্চ শিক্ষা অধিদপ্তর কর্তৃক কো-না নির্বাচিত বেসরকারি ক-ল-জ নি-য়া-গর উপর নিষেধাজ্ঞা আরোপের তারিখে সংশ্লিষ্ট কলেজের -

(ক) অধ্যক্ষ, উপাধ্যক্ষ, সহকারী অধ্যাপক ও প্রভাষক প-দ কর্মরত প্রয়োজনীয় যোগ্যতাসম্পন্ন শিক্ষকগণকে, যথাক্রমে, অধ্যক্ষ (নন-ক্যাডার), উপাধ্যক্ষ (নন-ক্যাডার), সহকারী অধ্যাপক (নন-ক্যাডার) ও প্রভাষক (নন-ক্যাডার) হিসা-ব, এবং

(খ) কর্মচারীগণ-ক স্ব-স্ব প-দ, -

উক্ত কলেজ সরকারিকরণের তারিখ হইতে, বিধি ৬

এর বিধান সাপেক্ষে, আত্তীকরণের উদ্দেশ্যে অস্থায়ীভাবে

নি-য়াগ প্রদান করি-ব।

(২) সরকারিকৃত ক-ল-জর শিক্ষক ও কর্মচারীগণ-ক স্থানান্তরিত

পদ ব্যতীত অন্য কো-না প-দ অস্থায়ীভা-ব নি-য়াগ প্রদান করা

যাই-ব না।

ব্যাখ্যা। - এই বিধি-ত উল্লিখিত “প্র-য়াজনীয় যোগ্যতা” বলি-ত

বেসরকারি ক-ল-জর শিক্ষক প-দ নি-য়াগ লা-ভর জন্য প্র-য়াজনীয়

যোগ্যতা-ক বুঝাই-ব।

১২। প-দান্নতি।- সরকারিকৃত ক-ল-জর শিক্ষক ও কর্মচারীগ-ণর

প-দান্নতি-যাগ্য স্থানান্তরিত পদসমূহে সংশ্লিষ্ট কলেজে কর্মরত আত্তীকৃত শিক্ষক

ও কর্মচারীগণ পদোন্নতির জন্য বিবেচিত হইবেন এবং উক্ত ক্ষেত্রে সংশ্লিষ্ট

কলেজের সরকারিকরণের অব্যবহিত পূর্বের, ক্ষেত্রমত, বিষয় বা পদভিত্তিক

জ্যেষ্ঠতার ভিত্তিতে, সরকার কর্তৃক নির্ধারিত শর্ত পূরণ সাপেক্ষে, পদোন্নতি

প্রদান করা যাই-ব।

The High Court Division relying on the circular dated 17.04.2005 issued on the basis of the Service Regulations, 1994 discharged the Rule. But, unfortunately we have found that, the circular on which the High Court Division relied was abolished by that time with the introduction of the new service regulations wherein no such requirement of approval from syndicate for appointment/promotion of the Assistant Professor, Associate Professor and Professor in the National University affiliated degree College has been stipulated.

Mr. Probir Neogi, the learned Senior Counsel rightly contended that, it is not the contention of the writ respondents that, the promotion of the writ petitioners are defective due to the clause Nos. (vii) and (ix) of the

Circular dated 17.04.2005, but, upon making third case, the High Court Division relying on that abolished circular discharged the Rule which is not tenable in the eye of law. This submission stands with all force. He further went on saying that, the respondents have shown utter discriminatory treatments towards the writ petitioners and the High Court Division affixed permanent seal in the said deed done deliberately in passing the impugned judgment and order and thus committed illegality.

Palpably, the High Court Division ignored the important aspects of the prolonged services rendered by the petitioners and the arbitrary degradation of their post and salary expressly flouting fundamental rights of the writ



petitioners as guaranteed under Articles 27, 29, 31 and 40 of the Constitution.

The writ petitioners are the regular teachers of the Lalmatia Mohila College, now Lalmatia Government Moahila College and they were appointed and promoted in their respective posts in accordance with the prevailing Rules and Regulations and they have no disqualifications to be absorbed in the Lalmatia Government Mohila College as per provisions of Rule 4 read with rule 5 and 6 of the Rules, 2018 as discussed above, but the High Court Division fell into error in interpreting the provisions of the same Rules and came into a wrong decision in passing the judgment and order impugned against.

The submissions of the respondents as aforesaid merit no substance being fallacious and bereft of any consideration whatsoever.

With all the vehemence and authority we are declaring that, the petitioners herein shall have to be treated in accordance with the new law as in the manner all of their colleagues have been treated without any discrimination.

The petitioner Nos.8, 9, 17, 18 and 20 submitted relevant documents by an application for acceptance of additional paper book dated 23-11-2023 and they have no disqualification to be absorbed in the post of Assistant Professors in Lalmatia Government Mohila College, Dhaka.

Accordingly, this petition is disposed of. The impugned judgment and order of the High

Court Division is set aside. The respondents are directed to conclude the nationalization process of services of the petitioners as a Teachers of Lalmatia Government Mohila College, Lalmatia, Mohammadpur, Dhaka in accordance with law in the manner as it has already been done in case of their colleagues within 3(three) months.

**J.**  
**J.**  
**J.**  
**J.**  
**J.**

**The 7<sup>th</sup> December, 2023**  
**Hamid/B.R/\*Words 2,998\***

