

2 SCOB [2015] HCD 99**HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

WRIT PETITION NO. 3716 OF 2014.

Mst. Halima Khatun and another
..... Petitioners

-Versus-

Government of the People's Republic of
Bangladesh, represented by the Ministry of
Mass and Primary Education, Bangladesh
Secretariat Building, Ramna, Dhaka-1000 and
others.

..... Respondents

Mr. Mohammed Hedayet Hossain, Advocate
... For the Petitioners.Mr. A.S.M. Nazmul Haque, D.A.G. with
Mr. Md. Osman Gani Khan, A.A.G.

... For the Respondent No. 2.

Heard on: The 9th, 16th and 23rd August, 2015
andJudgment on: The 24th August, 2015.**Present:****Mr. Justice Md. Rezaul Hasan****And****Mr. Justice Farid Ahmed****Registered Private Primary School Teachers (appointment, promotion, discipline and welfare)
Rules 2009:**

We have also consulted the rules and, in our considered opinion, a show cause notice, as required under clause (Ka) of Rule- 5.4 giving 7 days time to explain the allegations brought, if any, and further asking, in the same notice, the petitioners as to whether they were willing to appear before the enquiry committee were mandatory on the part of the respondents and such notices ought to have been issued upon the petitioners. We also find that, as per clause (Kha) of Rule 5.4, it is also mandatory that appointing authority should form a 3(three) members enquiry committee and the enquiry committee shall dispose of the disciplinary proceedings, if initiated, within 60 days. But, we find nothing on record to show that any notice was issued upon the petitioners or any enquiry committee was formed required by clause (Kha) or clause (Kha) of Rule 5.4 of the said rules and the impugned memo was not issued following the procedure laid down in clauses (Ka) and (Kha) of Rule 5.4. ... (Para 8)

Principle of natural justice:

We are also of the opinion that the government portion of the salary of the petitioners has conferred vested rights in them and this cannot be taken away arbitrarily, violating the principle of natural justice. ... (Para 11)

JUDGMENT**Md. Rezaul Hasan, J:**

1. In this application, filed under Article 102 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi has been issued calling upon the respondents to show cause as to why the impugned Memo No. *DkZv/ AvGvB/ bIM/ 2013/ 296* dated 14.05.2013 issued by the Respondent No. 6 stopping the Monthly Payment Order (M.P.O.) to the petitioners (Annexure-G) on the ground of illegality in appointing the petitioners and others should not be declared to have been made illegally and without lawful authority and as to why they (Respondents) should not be directed to allow M.P.O

to the petitioners and/ or pass such other or further order or orders as to this Court may seem fit and proper.

2. It has been stated in the petition, amongst other, that the petitioners are law abiding citizens of Bangladesh. They are serving and discharging their duty regularly as Assistant Teachers in the Registered Primary school; that due to retirement and death of some teachers in some registered Primary School in Atrai Upazila some posts of Assistant Teacher had been declared vacant and the respondents invited circular for appointment of those posts and the petitioners being eligible candidate applied for the same; that the respondents and others after scrutinizing the applications the respondents found the applications of the petitioners are correct and valid for appointment to their respective posts; that, thereafter, through competitive examination held by the respondents and on the basis of merit the petitioners qualified for appointment in their respective posts; and the respondents issued appointment letters, dated 03.06.2009 and 02.06.2009 as Assistant Teacher of Horipur Registered Primary School and Joynathpur Registered Primary School (Atrai, Naogaon), respectively, to the petitioners; that it is further stated that the petitioner No.1 having received the appointment letter joined the Horipur Registered Primary School, Atrai, Naogaon on 06.06.2009 as Assistant Teacher and the petitioner No.2 Joined the Joynathpur Registered Primary School, Atrai, Naogaon on 07.06.2009 as Assistant Teacher; that the petitioners have been performing their functions regularly as Assistant Teacher since the date of their joining. In this connection it may be noted that the petitioners got their portion of salary from Government by Monthly Payment Order (M.P.O.) from March 2010 and May-2010, respectively, and had been paid regularly till the month of May-2013; that all on a sudden and without serving any Notice whatsoever and holding any enquiry, one Mohammad Shahhadat Hossain, Director (Admin and Finance) of Primary and Mass Education Ministry submitted an inquiry report with a recommendation for stopping the Government portion of salary of the petitioners on 14.03.2013; that the Respondent No.3 issued a letter dated 06.05.2013 requesting the Respondent No.07 to explain cause regarding the appointment of the petitioners and others; that thereafter the Respondent No.3 on behalf of Respondent No.2, Director General, issued a letter dated 06.05.2013 stopping the Government portion of salary of the petitioners and others; that thereafter the Respondent No.7 by his letter, dated 21.05.2013 made an explanation of show cause notice issued by the Respondent No.3; that thereafter the Respondent No.6 issued the impugned Memo No. *DmkZiv/ AvGivB/ bI Mv/ 2013/ 296* dated 14.05.2013 issued by the Respondent No. 6 stopping the Monthly Payment Order (M.P.O.) to the petitioners on the ground of illegality in appointing the petitioners and others.

3. The petitioners have filed this writ petition challenging the impugned Memo No. *DmkZiv/ AvGivB/ bI Mv/ 2013/ 296* dated 14.05.2013 issued by the Respondent No. 6 stopping the Monthly Payment Order (M.P.O) to the petitioners.

4. Mr. Mohammat Hedayet Hossain, learned Advocate having placed the petition along with the relevant rules, first of all has drawn our attention to Rule- 5.4 of the “ Registered Private Primary School Teachers (appointment, promotion, discipline and welfare) Rules 2009” (the Rules in brief) and submits that clause –(Ka) of Rule 5.4 mandatorily requires that notice upon the petitioner should be served specifying the allegations, if any, brought against the petitioners and proposed punishment as well as they (the petitioners) should be asked, in the said notice, as to whether they are willing to appear for any personal hearing. Then, as per clause (Kha) there member committee shall be formed and they shall disposed of the disciplinary proceedings within 60 days. The learned Advocate next submits that although in an investigation report (*Z`š*) dated 14.3.2013 has been enclosed to a *mwiK bs - evcUrk/ cwi Pvj K, (ckymb I A_ŷ) Z`š/ 2012/217 ZwiL 14/3/2013*, addressed to the concerned Officials authority, however, it will be evident from the forwarding letter and the enclosed report that no copies of the forwarding letter to the enquiry report (*Z`š*) (Annexure-C) was sent to the petitioners. The said Memo, Annexure- C, was addressed to the Director General, Compulsory Primary Education Finalized Monitoring Unit. Besides it will be evident from the said investigation (*Z`š*) report dated 14.3.2013 that none of the petitioners were asked to attend at the time of holding said investigation (*Z`š*). The learned Advocate submits that the proper word should be *cŃ_igK Z`š/* not *Z`š/* Then

referring to Rule 5.4, the learned Advocate submits that no notice was served at all upon any of the petitioners giving 7 days time to explain as to why the government portion of their salary should not be stopped/ curtailed from their monthly salary nor any opportunity was given to them to submit their explanation. Neither any Enquiry Committee was formed nor any enquiry at all was held as required under clauses (Ka) and (Kha) of Rule 5.4 of the said Rule and as such the impugned Memo under reference No. *DikZiv/ AvGvB/ bIMv/ 2013/ 296 ZviiL 14/5/2013* (Annexure- G) has been passed without any lawful authority and in an unlawful manner. Next, drawing our attention to the judgment and order passed in Writ Petition No. 9724 of 2013 filed by Most. Sultana Nazneen and 7 others against the Government of the People's Republic of Bangladesh, in which the same Memo No. *DikZiv/ AvGvB/ bIMv/ 2013/ 296 ZviiL 14/5/2013* (Annexure- G) was impugned before a Division Bench. The petitioners and 7 other teachers are named against Sl. No. 1-8 of the said impugned Memo. A Bench of this Division, by a judgment and dated 6.7.2014 has declared the impugned memo to have been passed without lawful authority and is of no legal effect and a direction was given upon the respondents to pay the petitioners (of that writ petition) the government portion of salary under the M.P.O Scheme from 1.3.2013 with all arrear within 60 days from the date of receipt of the said judgment and order. He next submits that, as referred to in paragraph No. 6 of the supplementary affidavit filed by the petitioners sworn on 23.8.2015, the Government filed C.P.L.A. No. 1529 of 2014 against the said judgment and order dated 6.3.2014 passed in Writ Petition No. 9724 of 2013, but the Appellate Division was pleased to dismiss the CPLA by judgment and order dated 30.7.2015, as such this dispute has been set at rest by the apex court, so far as the Memo No. *DikZiv/ AvGvB/ bIMv/ 2013/ 296 ZviiL 14/5/2013* (Annexure- G) is concerned in respect of 8 petitioners, named against serial Nos. 1-8 in the impugned Memo. He, therefore, asserts that the petitioners i.e. whose name appear against serial Nos. 9-10 are also entitled to get the similar relief. Besides, he also submits that this government portion of the salary has become vested right of the petitioner and this cannot be taken away arbitrarily or in violation of the principle of natural justice. Accordingly he has prayed for making the rule absolute.

5. Mr. A.S.M. Nazmul Haque, learned Deputy Attorney General appearing along with Mr. Md. Osman Gani Khan, learned Assistant Attorney General, on the contrary submits that the government portion of the petitioner's salary has have been rightly stopped by the impugned Memo, inasmuch as the reason has been stated for taking such action in an enquiry report dated 14.3.2013 (Annexure- C). He further submits that though the petitioners were not present at the time of enquiry, however, the Head Mistress of the School was present, but she could not submit any documents before the Director (Admin & Finance). Since, he continues, the government portion of the salary of the two petitioners was correctly stopped after holding inquiry, therefore, this rule has no merit and the same is liable to be discharged.

6. We have heard the learned Advocate appearing for both sides, perused the petition, supplementary affidavit along with documents annexed and the concerned Rule. We have also consulted the (unreported) judgment placed before us.

7. We find from the documents, vide Annexure- A series and B series, that there were orders for appointment of teachers and both the petitioners were appointed, being selected as they had qualified in the examination taken for that purpose and accordingly the petitioner No. 1 has joined on 6.6.2009 and petitioner No. 2 has joined on 7.6.2009 in the school, by submitting joining letters Annexure- B series and still they are continuing their services and performing functions as teachers in the schools.

8. We have also consulted the rules and, in our considered opinion, a show cause notice, as required under clause (Ka) of Rule- 5.4 giving 7 days time to explain the allegations brought, if any, and further asking, in the same notice, the petitioners as to whether they were willing to appear before the enquiry committee were mandatory on the part of the respondents and such notices ought to have been issued upon the petitioners. We also find that, as per clause (Kha) of Rule 5.4, it is also mandatory that appointing authority should form a 3(three) members enquiry committee and the enquiry committed shall dispose of the disciplinary proceedings, if initiated, within 60 days. But, we

find nothing on record to show that any notice was issued upon the petitioners or any enquiry committee was formed required by clause (Kha) or clause (Kha) of Rule 5.4 of the said rules and the impugned memo was not issued following the procedure laid down in clauses (Ka) and (Kha) of Rule 5.4.

9. The enquiry report, which should be called an investigation report, annexed to Memo No. *DkkZv/ AvGvB/ bI Mv/ 2013/ 296* dated 14.05.2013 (Annexure- C) cannot be the basis for passing the impugned order, nor does this investigation by one person namely, Director (Admin and Finance) and done in absence of the petitioners without giving them opportunity of being heard, is authorized under clause (Ka) and (Kha) of Rule 5.4.

10. The impugned Memo No. *DkkZv/ AvGvB/ bI Mv/ 2013/ 296* dated 14.05.2013, therefore, in our considered opinion, is liable to be declared to have been issued without any lawful authority and is of no legal effect. We, therefore, concur with the view taken by a Bench of this Division, in their judgment and order (unreported), passed in Writ Petition No. 9724 of 2013 and subsequently upheld by the Appellate Division, in that CPLA No. 1529 of 2014 filed by the government – writ respondent was dismissed on 30.7.29015.

11. We are also of the opinion that the government portion of the salary of the petitioners has conferred vested rights in them and this cannot be taken away arbitrarily, violating the principle of natural justice. Similar views were taken in 60 DLR 712, Emdadul Haque Vs. D.G, Secondary and Higher Secondary Education and others and in 18 BLT 303: Md. Shawkat Ali Vs. Director General and others.

12. Before, parting of, we should record that, hundreds and thousands of writ-petitions have been filed and are pending, before this court, on identical causes of action. Ultravires acts are seen to have done in many cases, resulting in making the Rule absolute. Lack of accountability seems to be the reason for doing malafide or unlawful acts and colourable exercise of power in many cases. This not only causes hardship to the teacher's and the peace loving members of public, but dragging them to the court proceedings and also overwhelmingly burdening this court with thousands and lacs of writ petitions and other proceedings. Hence, time has arisen to ascertain as to whether the impugned act is done in bad faith, for which, if established, the person concerned shall be deprived of the immunity and may be held individually responsible to pay cost and/ or compensation. For, instance, doing an act contrary to the settled law/ decisions of the Supreme Court, acting in violation of the principle of natural justice or overlooking that a matter is subjudice etc. may (though not necessarily or in all cases) lead to drawing inference of bad faith and imposition of fine/ cost, to be borne individually by the person responsible, otherwise the excesses done by some may exceed the limit. It is to be noted here that every person, exercising statutory power, must ascertain. 1. If he/ she is invested with that power, 2. If he/ she is following the proper procedure, 3. If he/ she is acting bonafide and in good faith, 4. If the acts done is covered by relevant law, rules, regulations etc. 5) If he/ she is violating the principles of natural justice. 6) If she / he has taken extraneous matter into consideration or refused to take into consideration relevant matters; 7) If he/ she is free from any kind of bias; 8) If she/ he is acting under dictation or misusing his/ her discretion; 9) If he/ she is doing what is legally prohibited or is refraining from doing what is legally required to do, and 10) if he/ she is respectful to the peoples fundamental, statutory and customary rights recognized by law.

13. Since, we indicated about providing guidelines for exercising discretion and powers by the officials at field level, because the writ petitions of thousands of M.P.O listed teachers and of thousands of other persons are pending, for years together, at the cost of untold suffering of theirs, we therefore, consider it proper also to record that fair, equal and equitable treatment is one of the pre-conditions to convert the population into human resource, whether employed, unemployed or self-employed. Similarly, an ordered society, stability and respect to the Rule of Law is sine quo non for achieving all development goals, where the judiciary, as one of the three organs of the state, shall contribute from its own jurisdiction, in a concerted effort of all the organs, to achieve those goals. In its proper sense, administration of justice is a part of governance done by the judiciary, as other

components of the governance are within the province of two other organs. Here the Supreme Court is not a mere constitutional court. It is the judicial organ of the state, at the same time. Though, the functions of the three organs, created by the constitution are different and defined, however, there is oneness in the three, so far as the resolution to achieve the development goals and welfare of the people are concerned. It is further to be noted here that all the organs are of co-ordinate jurisdiction. The manner or procedure of assuming office, whether by election or otherwise, does not give superiority to one above the others inasmuch as it is the nature of the functions to be performed that determines the manner or procedure in assuming an office. The three organs shall work together, with aroma of reciprocal cooperation and respect amongst themselves, to secure the public good, in the manner permitted by law, and towards acquiring the ultimate goal to be a developed, prestigious and peace loving nation.

14. In view of the foregoing facts and circumstances, recorded herein above, considered alongwith the submissions made by both the sides, we find merit in this rule. The same merits to be made absolute with appropriate directions.

ORDER

15. In the result, the Rule is made absolute. The impugned Memo No. *DkkZv/ AvGvB/ bI Mv/ 2013/ 296* dated 14.05.2013 is hereby declared to have been issued without lawful authority and is of no legal effect, so far as the petitioners are concerned. The respondents are directed to pay the petitioners government portion of their monthly salary, under the MPO scheme, from 01.03.2013 with all arrear benefits, within 60 (sixty) days from the date of receipt of this judgment and order. However, the respondents shall be at liberty to proceed, following the procedure as laid down in the aforesaid Rules, 2009, if taking step against the petitioners is bonafide required in the interest of the institution.

16. No order as to costs.

17. Communicate the judgment and order to the respondents at once.

18. Let copies of this judgment be sent to the Honourable Chairperson of the 'Parliamentary Standing Committee on the Ministry of Public Administration' Sangsad Bhaban, Sher-e-Bangla Nagar, Dhaka, to the Honourable Minister, Ministry of Public Administration, Bangladesh Secretariat, Dhaka, to the Honourable Minister, Ministry of Education, Bangladesh Secretariat, Dhaka, to the Honourable Minister, Ministry of Primary & Mass Education, Bangladesh Secretariat, Dhaka; to the Director General, Directorate of Secondary & Higher Education, Shikha Bhaban, Ramna, Dhaka and to the Director General, Directorate of Primary Education, Mirpur, 2, Dhaka-1216, Bangladesh, for their appraisal and, if they deem fit, for issuing office orders or circulars bearing appropriate guide lines to be followed by the officials concerned.