

In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)
Present

Madam Justice Kashefa Hussain

And

Madam Justice Fatema Najib

Writ Petition No. 3096 of 2019

In the matter of:

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

-And-

-And-

In the matter of:

Syed Jihad Ali and others

..... Petitioners.

Vs.

The Government of Bangladesh and
others.

..... Respondents.

Mr. Ekramul Haq, Advocate

with Mr. Sheikh Md. Tariquel Islam, Advocate

with Mr. Md. Motiar Rahman, Advocate

with Mr. Md. Shariful Islam, Advocate

.....for the petitioners.

Mr. Noor Us Sadik Chowdhury, D.A.G

with Ms. Sayeda Sabina Ahmed Moli A.A.G

with Ms. Farida Parvin Flora, A.A.G

... for the respondents No. 1-6

Heard on: 15.11.2022, 17.11.2022 and

judgment on: 24.11.2022.

Kashefa Hussain, J:

Rule nisi was issued calling upon the respondents to show
cause as to cause as to why the impugned letter bearing memo No.
38.002.015.00.00.024. 2010-1116 dated 21.08.2019 issued by the
respondent No. 1 containing the decision of stay and cancellation of

the appointment process of Daptori-cum-Prohori (Annexure-X-113) should not be declared to have been made without lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

The petitioner No. 1 Syed Jihad Ali along with 34 others are the citizen of Bangladesh having permanent addresses shown in the cause title of the Writ petition. The respondent No. 1 is the Secretary, Ministry of Primary and Mass Education, Bangladesh Secretariat, Dhaka 1000, the respondent No. 2 is the Director General, Directorate of Primary Education, Section-2, Mirpur, Dhaka, the respondent No. 3 is the Assistant Director (General Administration), Directorate of Primary Education, Section-2, Mirpur, Dhaka, the respondent No. 4 is the District Primary Education Officer, Narail, the respondent No. 5 is the Chairman, Upazila Parishad, Lohagara, Narail, the respondent No. 6 is the Upazila Nirbahi Officer, Lohagara, Narail and the respondent No. 7 is the Upazila Education Officer, Lohagara, Narail.

The petitioners inter alia is that the Upazila Education Officer, Lohagara, Narail published an advertisement on 20.06.2018 vide Memo No. উশিঅ/লোহা:/নড়াইল/২০১৮/৪৬৯ inviting applications from candidates for appointment in the post of Doptori Cum Prohori and accordingly the petitioner along with others applied for appointment in the said posts. That the respondent No. 3 directed respondent No. 6 vide Memo No. ৩৮.০১.০০০০.১০৭.২৭.০০১.১৮.১২৭১ dated 12.08.2018 to take necessary steps as per Nitimala for accomplishing the functions of recruiting the Manpower's of 42 Government Primary Schools under Lohagora Upozila, District- Narail. That the respondent No. 6

passed a resolution dated 14.10.2018 to publish appointment circular of Daptori-cum-Prohori by every Headmaster of the 35 Government Primary School under Lohagara Upozila, District-Narail. That Headmaster of the 35 different schools of Lohagara Upozila under Narail District published appointment circular with some conditions for the post of Daptori-cum-prohori for their respective schools in different dates. That in pursuance of the said advertisement the petitioners duly applied for the said post and were issued interview cards and accordingly they appeared before the interview board. They stood first in their respective school in the interview for the post of Doptori Cum Prohori and their names were recommended by the respective Interview Board for appointment in the said post on different dates. They all possess the required qualification and were selected through a competitive and qualitative process under advertisement for appointment. That the respondent No. 6 sent a letter dated 12.07.2018 to the respondent No. 2 seeking permission to appoint the petitioners in the post of Doptori-cum-Prohori. That the respondent No. 3 on behalf of the respondent No. 2 by a letter dated 12.08.2018 requested the respondent No. 6 to take all necessary steps according to the Jonobol Niyoger Karjokram Nitimala to appoint the petitioners in the 42 Government Primary Schools of Upazila-Lohagara, District- Narail. That the aforesaid Nitimala was issued by the respondent No. 1 on 09.12.2012 and subsequently the respondent No. 1 issued an amended Nitimala vide Memo No. ৩৮.০০২.০১৫.০০.০০.০২৪.২০১০ (অংশ)-১১৫ dated 26.01.2015 by incorporating a new provision namely Rule 7(2) which provides for

selection of a panel of 3(three) candidates from whom one candidate would be appointed as per the recommendation of the Member of Parliament under Rule 7(2) of the Nitimala. That from the letter dated 08.02.2017 issued by the respondent No. 2 it appears that the petitioners at the time of issuing the Rule challenging Rule 7(2) of the said Nitimala but as per the judgment and order passed in writ petition No. 3458 of 2015 rule 7(2) has been further amended, and thereby rule which was issued in the instant writ petition has become partly infructuous. That the Senior Assistant Commissioner, office of the Divisional Commissioner, Khulna issued a letter bearing memo No. 05.44.0000.006.037.011.18-877 dated 28.11.2018 directing the office of the Deputy Commissioner, Narail to stay operation of the appointment process of the Doptory cum Prohori on considering the application having allegation of corruption by the Upozila Nirbahi Officer and a direction was issued upon the director, Local Govt. to submit report regarding this matter. That the Upazila Nirbahi Officer issued a letter bearing the memo No. 05.44.6552.001.14.005.18-1481 dated 12.12.2018 mentioning that to appoint Doptori cum Prohori a viva voce was taken by scrutiny and appointment committee constituting six members and after viva voce a panel constituting three persons including the petitioner has been prepared and it was sent to the Upozila Education Officer for taking further action and preserving the papers in connection with prepared panel, but Upozila Education officer is also requested to stay operation of the further process of the appointment of the petitioner. That the Director (Joint Secretary), Local Govt. Khulna Division, Khulna issued a letter bearing memo

No. 05.44.0000.004.19.001.19.394 dated 16.05.2019 submitting report to Divisional Commissioner, Khulna with opinion that no corruption was committed in respect of appointment of Daptori cum Prohori and no financial transaction was made between the authority and the petitioners. Divisional Commissioner issued letter vide Memo No. 05.44.0000.006.037.011.19.694 dated 21.07.2019 to Deputy Commissioner supporting the report prepared by the Director (Joint Secretary) local Government, Khulna. That the Secretary, Ministry of Primary and Mass Education issued a letter bearing memo No. 38.002.015.00.00.024.2010-1116 dated 21.08.2019 staying the appointment process until further direction and also the secretary cancelled the ongoing appointment process so far as it relates to appointing daptory cum prohori and the said enquiry report was forwarded to the Deputy Commissioner, Narail for consideration. Hence the writ petition.

Learned Advocate Mr. Ekramul Haq along with learned Advocate Mr. Motiar Rahman appeared on behalf of the petitioners while learned D.A.G Mr. Noor Us Sadik Chowdhury with Ms. Sayeda Sabina Ahmed Moli A.A.G with Ms. Farida Parvin Flora, A.A.G appeared for the respondents No. 1-6.

Learned Advocate for the petitioners submits that the examination was held in accordance with law and results were accordingly published in which the petitioners name was in the merit list. He submits that therefore the inaction of the respondents is causing infringement of the lawful and fundamental rights of the petitioners. He next draws attention to Annexure E1 of the writ

petition which is the নীতিমালা for appointment of Daptari Cum Guard upon out sourcing as issued by the respondents under the Ministry of Primary and Mass Education. He draws attention to clause 7(2) on the left hand of the নীতিমালা and points out that previously as of January 2015 clause 7(2) contemplated that Daptari Cum Guard will be appointed on the basis of physical fitness and 3(three) persons selected on the basis of physical fitness will be recommended to the concerned authority. He next draws attention to annexure E1 clause 7(2) dated 26.01.2015 on the right hand and contends that however by the amended নীতিমালা the respondents conferred the power to recommend appointment of candidates upon the concerned Member of Parliament of the area. He continues that clause 7(2) also contemplated that the decision of the local Member of Parliament shall be final. He next points out that however against the amended নীতিমালা dated 26.01.2015 some aggrieved persons filed a writ petition before this Division being Writ Petition No. 3458 of 2015 challenging the amended নীতিমালা of clause 7(2) which conferred the finality of the decision on appointment upon the local Member of Parliament. He next draws attention to the judgment wherein Rule was made absolute and the amended clause 7(2) was declared unlawful and illegal. He submits that pursuant to the judgment however the respondents did not file any appeal before the Appellate Division. He further draws attention to annexure X-74 of the supplementary affidavit. From Annexure X-74 he points out that Annexure X-74 which was issued by the respondent No. 3 clearly states that the government abided and complied with the High Court Division judgment in writ petition No.

3458 of 2015 and has already instructed the concerned authority to publish results and appoint Daptari cum Guard according to previous clause 7(2) in the নীতিমালা of 2015. He argued that therefore the obstacle/impediment created by the amending clause No. 7(2) of the নীতিমালা such obstacle has been removed. Inter alia other annexures he particularly draws attention to annexure D of the writ petition which is a letter addressed by an official under the office of the respondent No. 3 and which is addressed to the concerned UNO respondent No. 6. He points out that Annexure 'D' clearly shows that the office of the respondent No. 3 instructed the respondent No. 6 to take steps for appointment of Daptari cum Guard. He next draws attention to annexure 76 which is a letter dated 12.12.2018 and points out that this letter is addressed to the উপজেলা শিক্ষা অফিসার virtually instructing him to take steps for appointment of Daptari Cum Guard. He takes us to Annexure-X-111 of the supplementary affidavit which is an enquiry report. Upon a query from this bench regarding the enquiry report he submits that although there are some allegations of illegality in the appointment procedure against the concerned UNO, but however in the enquiry report it is found that the allegation could not be proved. Therefore he submits that in the absence of allegations being proved there are no procedural irregularity nor any illegality in the appointment procedure, therefore it is the petitioners' lawful right to be appointed to the post of Doptori-cum-Prohori. He concludes his submissions upon assertion that the Rule bears merits ought to be made absolute for ends of justice.

The respondents did not file any affidavit in opposition. However the learned D.A.G orally submits that although he contacted the concerned UNO but he could not provide him any relevant information about the current state of affairs involving publication of results. He however concludes that the Rule ought to be discharged.

We have heard the learned counsels from both sides, perused the writ petition and the annexures, thereto including the related laws. Upon scrutiny of all including the annexures it appears that the petitioners have substantively challenged the inaction of the respondents in the process of appointment. Similar writ petitions were filed arising out of similar issues inter alia in Writ Petition No. 856 of 2019 before this bench. The facts and laws in the instant writ petition we are relying upon are more or less same except the specific facts of this case. In the instant case there are allegations against the concerned UNO pursuant to enquiry conducted by the respondents. However Annexure-X111 followed by the enquiry report shows that the allegation could not be proved and therefore not correct. Therefore we are of the considered view that under the facts and circumstances it is the petitioners fundamental right in the absence of any other lacuna and considering that pursuant to the petitioners who were selected and recommended by the authorities themselves to be considered for appointment. We find merits in this rule.

In the result, the Rule is made absolute. The impugned letter bearing memo No. 38.002.015.00.00.024. 2010-1116 dated 21.08.2019 issued by the respondent No. 1 containing the decision of stay and cancellation of the appointment process of Daptori-cum-

Prohori (Annexure-X-113) is declared without lawful authority and is of no legal effect.

The respondent No. 6 is hereby directed to complete the appointment process of the petitioners within a period of 2(two) months of receiving of this judgment and order.

Communicate this judgment at once.

I agree.

Kazi Zinat Hoque,J:

Arif(B.O)