

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)  
Writ Petition No. 13118 of 2019**

**IN THE MATTER OF:**

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

-And-

**IN THE MATTER OF :**

Biplop Kanti Das and others

.....Petitioners

-Versus-

The Government of the People's Republic of  
Bangladesh, represented by the Senior  
Secretary, Ministry of Education, Secondary  
and Higher Education Division, Bangladesh  
Secretariat, Ramna, Dhaka and others

.....Respondents

Mr. Md. Siddique Ullah Miah, Advocate

.....for the petitioners

Mr. Mamun Chowdhury, with

Mr. Md. Zahirul Islam, Advocates

...for the respondents no.3

*Heard on: 18.01.2024, 08.02.2024 & 11.02.2024*

**Judgment on 22.02.2024**

**Present:**

**Ms. Justice Naima Haider**

**&**

**Ms. Justice Kazi Zinat Hoque**

**Naima Haider, J;**

In this application under Article 102 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued calling upon the respondents to show cause as to why the impugned notification No.৩৭.০.০০০০.০৭৪.০০২.২০১৬.৯৪ তারিখ ০২ বৈশাখ ১৪২৬ বঙ্গাব্দ/১৫ এপ্রিল, ২০১৯ খ্রীষ্টাব্দ (Annexure-F) issued under the signature of respondent No.5 should not be declared to have been passed without lawful authority and is of no

legal effect and/or such other or further order or order passed as to this court may seem fit and proper.

Subsequently, a supplementary Rule was issued under the following terms:

Let a supplementary Rule Nisi be issued calling upon the respondents to show cause as to why the impugned gazette notifications under S.R.O. No. 88-Ain/2017 dated 20.06.2017 and S.R.O. No. 89/Ain-2017 dated 15.06.2017 (Annexure-K and K1) published by respondent No. 1 thereby issued notification 37.00.0000.074.002.2016.94 dated 15.04.2019 (Annexure-L) by the respondent No. 5 without allowing any benefit as per ratio of deduction and deposited amount 4% and 6% in total 10% instead of 2% and 4% in total 6% from the salary of Non-Government Education Institution Teachers and Staffs for Retirement Benefit Board and Welfare Trust should not be declared illegal without lawful authority and is of no legal effect and as to why a direction should not be issued upon the respondents to take necessary steps to giving/allowing retirement benefit as per deducted and deposited ratio of 6% and 4% in total 10% amount from the salary of Non-Government Educational Institution Teachers and Staffs all over the country for Retirement Benefit Board and Welfare Trust by considering the প্রবিধানমালা বেসরকারী শিক্ষা প্রতিষ্ঠান শিক্ষক ও কর্মচারী কল্যাণ ট্রাস্ট আইন, ১৯৯৯ and বেসরকারী শিক্ষা প্রতিষ্ঠান শিক্ষক ও কর্মচারী অবসর সুবিধা প্রবিধানমালা, ২০০৫ and also frame a guideline for paying retirement benefits with all others service benefits with all others service benefits within 6(six) months approximate period of retirement

of the Teachers and Staffs of the Non-Government Educational Institution and/or pass such other or further order or orders as to this Court may seem fit and proper.

The facts leading to the issuance of the Rule, in brief, are:

All the petitioners are Non-Government Educational Institution Teachers and Staffs and they are dispensing their duties and responsibilities with full satisfaction.

The Government has been pleased to frame regulation named as "বে-সরকারী শিক্ষা প্রতিষ্ঠান শিক্ষক কর্মচারী অবসর সুবিধা প্রবিধান মালা-২০০৫" for the Non-Government Educational Institution Teachers and Staffs for their retirement benefit on 08.01.2005, vide SRO No. 06 law/2005 and which has been published in the Extraordinary Gazette on 17 July 2005.

In the regulation in clause-9 it is stated that 4% of the basis salary of every Non Government Educational institution Teachers and Staffs will be deducted as "Retirement Benefit contribution" for every month. The Government has been pleased to frame regulation named as বে-সরকারী শিক্ষা প্রতিষ্ঠান শিক্ষক ও কর্মচারী কল্যাণ ট্রাস্ট প্রবিধানমালা- ১৯৯৯" for the Non-Government Educational Institution Teachers and Staffs for their retirement benefit on 01.07.1990, vide SRO No. 322 law/1990 and which has been published in the Extraordinary Gazette on 01 November 1999.

In the regulation in clause-6 it is stated that 2% of the basis salary of every Non Government Educational institution Teachers and Staffs will be deducted as "Retirement Benefit contribution" for every month.

Respondent No. 1 amend that regulation (Annexure-A) on 19.04.2017 vide SRO No. 88/2017. In that amendment clause- 8 and 9 has been amended by increasing 6% instead of 4% without showing any reason. That SRO No. 88/2017 has been published in the Extraordinary Gazette on 20.06.2017.

Respondent No. 5 issued a letter to the effect that the teachers and staffs of Non-Government Educational Institutions will deduct 6% instead of 4% and welfare trust will deduct 4% instead of 2% from their monthly salary as retirement benefit contribution from 1<sup>st</sup> February, 2019 vide memo dated 17.12.2018. Against which the teachers and staffs were submitted a memorandum to the secretary Ministry of Education and the Hon'ble Secretary assured that the contribution in retirement benefit will not be enhanced and it will remain same as it was 4%. But all on a sudden respondent No. 5 without showing any new reason issued impugned letter on 15.04.2019 vide No. 37.00.0000.074.002.2016.94 to the effect that 6% and 4% amount will be deducted from the monthly basic salary as retirement benefit contribution from the teachers and staffs after rescinding the previous letter dated 17.12.2018 and it will take effect from the month of Aril, 2019.

Finding no other alternative efficacious remedy, the petitioners have moved this Court and obtained the instant Rule Nisi.

Respondent no.3 has entered appearance by filing affidavit in opposition.

The case of respondent no.3 in short is that :

The Respondent No. 4 Non-Government Education Teacher and Staff Welfare Trust (hereinafter referred to as "Trust") is established under section 3 of "বেসরকারি শিক্ষা প্রতিষ্ঠান শিক্ষক ও কর্মচারী কল্যাণ ট্রাস্ট আইন ১৯৯০" (hereinafter referred to as "Act 1990"). The said Trust is created for the welfare and benefit of the teachers and staff and their family members. The function or object of the said trust has been mentioned in section 7 of the Act 1990 which is quoted below:

"৭। ট্রাস্টের কার্যাবলী হইবে-

- (খ) বেসরকারী শিক্ষা প্রতিষ্ঠানের শিক্ষক ও কর্মচারীগণ চাকুরীকালীন সময়ে কোন কারণে অক্ষম হইয়া পড়িলে তাঁহাদেরকে আর্থিক সাহায্য প্রদান;
- (গ) বেসরকারী শিক্ষা প্রতিষ্ঠানের শিক্ষক ও কর্মচারীগণ চাকুরীকালীন সময়ে দুর্ঘটনায় তাঁহাদের মৃত্যু ঘটিলে তাঁহাদের পরিবারবর্গকে সাহায্য প্রদান;
- (ঘ) বেসরকারী শিক্ষা প্রতিষ্ঠানের শিক্ষক ও কর্মচারীগণ চাকুরীকালীন সময়ে গুরুতর এবং দীর্ঘদিন অসুস্থ থাকিলে তাঁহাদেরকে আর্থিক সাহায্য প্রদান;
- (ঙ) সাধারণভাবে বেসরকারী শিক্ষা প্রতিষ্ঠানের শিক্ষক ও কর্মচারীগণের কল্যাণ সাধন;"
- (চ) উপরি-উক্ত কার্যাবলী সম্পাদনের জন্য প্রয়োজনীয় যে কোন ব্যবস্থা গ্রহণ।"

Section 9 of the Act 1990 states that there will be a Trust Fund and money of the said Fund comes from the following sources:

- a) Taka one crore donated by the Government at the time of establishment of trust:
- b) Interest and profit that comes from the trust fund account
- c) Other donation from the government
- d) Contribution from the teachers and staffs
- e) Donations from local authority
- f) Donations from other source

Section 16 of the Act 1990 gives authority and power to the Trustee Board to promulgate regulations to implement the aim and objective of the Act 1990. Accordingly, a regulation titled "বেসরকারি শিক্ষা প্রতিষ্ঠান শিক্ষক ও কর্মচারী কল্যাণ ট্রাস্ট প্রবিধানমালা ১৯৯৯" (hereinafter referred to as Regulation 1999) was promulgated by the Trustee Board. This Regulation 1999 states the rate of contribution of the teachers and staff in the said Trust Fund, the procedure regarding collection of contributions from the teachers and staff, management, investment and accounts of the fund, benefits of the teachers and staff under the said trust fund etc. On 21.06.2006 the said Regulation was amended vide SRO No. 153.

Under regulation 8(1) of Regulation 1999 which is subsequently amended by S.R.O 153/2006, if a teacher or employee retires from the service of an educational institution, he shall be entitled to a one-time amount equal to the basic salary for the number of years he has served there as MPO included teacher or employee. Regulation 8(2) provides that if any teacher or employee dies during the period of service, his family shall be entitled to the principal amount equal to the number of years he has served as MPO included teacher or employee. As per regulation 8(2) the basic salary shall mean the last earned salary by the respective teachers or employee. Therefore, it transpires that despite the enhancement of contribution rate on account of welfare trust, the

teachers and employee still remain entitled to a far more generous benefit than the actual deduction.

Mr. Mohammad Siddique Ullah Miah, the learned Advocate appearing on behalf of the petitioners submits that after publishing notification dated 15.04.2019 concern authority already deducted 6% and 4%=10% amount from the salary of Non-Government Educational Institution Teachers and staffs for Retirement Benefit Board and Welfare Trust from 15.04.2019 was deducted and adjusted from the MPO sheet but no benefit was given by the authority. He further contends that the petitioners contacted with the respondents in various occasions and also requested to the respondents to give/allow retirement benefit as per deducted & deposited ratio of 6 % and 4 %=10% amount from the salary of Non-Government Educational Institution Teachers and Staffs for Retirement Benefit Board and Welfare Trust from 15.04.2019 but no steps have been taken by the respondents and lastly on 24.01.2021 the petitioners filed several applications to the respondent no.2 to give/allow retirement benefit as per deducted & deposited ratio of 6 % and 4 %=10% amount but no result come in the light till today.

Mr. Mamun Chowhdury, the learned Advocate appearing on behalf of the respondent nos. 3 & 4 submits that as per SRO No. 88-Ain 2017 and SRO No. 89-Ain 2017 both dated 19 April 2017, the government issued a notification dated 15 April 2019 directing all concerned authority to deposit the deducted amount to the respective accounts of the Board established under Act 2002 and Welfare Trust

established under Act 1990. Section 15 of the Act 2002 and section 16 of the Act 1990 has given necessary authority to promulgate and amend any regulation as long as the same does not contradict any provision of the said Acts. Hence, it is clear that the impugned amendment is well within the power and jurisdiction of the respective authorities and as such there is no scope say that the impugned SROs and the Notification is without lawful authority. He next argued that the deduction made from the salary of the teachers and staff forms part of the fund from which the welfare of the teachers and staff is ensured. Hence the provision of Act 2002 and Act 1990 and regulations made thereunder that both the funds are created solely for the benefit of the teachers and staff of non-governmental educational institutions. Using the said funds, government has been paying retirement benefits and other welfare to significant numbers of teachers and staff of non-governmental educational institutions and every year government contributes a significant amount as a donation in the said funds for the retirement benefit and other welfare of the teachers and staff. He lastly submits that initially the contribution of teachers and staffs in the Retirement Fund and Trust Fund was 4% and 2% respectively from their basic salary. The beneficiaries of the said Funds were increased significantly in the last few years since the government included a significant number of educational institutions and teachers under MPO and as such the disbursement of retirement and other welfare benefits from the said Funds became slow due to the shortage of funds. Therefore, to reduce



the disbursement backlogs, the authority decided to increase the contribution of teachers and staff part in the said Funds and accordingly issued the Impugned SROS and hence the Rules are liable to be discharged.

We have perused the writ petition, its annexures, affidavit in opposition filed by the respondent no.4 and other materials on record placed before this Court.

The issue which has given rise to the dispute relates to the retirement benefits of the teachers and staffs of non-government educational institutions.

It appears that the Ministry of Education enacted an Act, namely, বেসরকারী শিক্ষা প্রতিষ্ঠান শিক্ষক ও কর্মচারী কল্যাণ ট্রাস্ট আইন, ১৯৯০ and as per the section 16 of the said Act, the probidhanmala namely, বেসরকারী শিক্ষা প্রতিষ্ঠান শিক্ষক ও কর্মচারী কল্যাণ ট্রাস্ট প্রবিধানমালা, ১৯৯৯ was enacted. In that probidhan 6 of the প্রবিধানমালা, 1999, 2% amount will be deducted and deposited from the salary of Non-Government Educational Institution Teachers and Staffs for Retirement Benefit Board and Welfare Trust and also in sub- প্রবিধান 8 of the Probidhanmala, 1999 the government inserted specific provision to pay benefits to the Teachers and staffs deducting and depositing 2% amount from the salary of Non-Government Educational Institution Teachers and Staffs for Retirement Benefit Board and Welfare Trust. For ready reference, extract of the the said probidhan 6 & 8 are quoted under :

**৬। চাঁদা আদায় ও জমাদান পদ্ধতিঃ (১)** প্রত্যেক শিক্ষা প্রতিষ্ঠানের প্রধান তাহার প্রতিষ্ঠানে কর্মরত সকল শিক্ষক ও কর্মচারীর চাকুরী সংক্রান্ত তথ্য বোর্ডের নিকট তৎকর্তৃক নির্ধারিত ছকে এবং নির্ধারিত সময়ের মধ্যে প্রেরণ করিবেন।

(২) প্রত্যেক শিক্ষা প্রতিষ্ঠানের শিক্ষক ও কর্মচারীগণের মাসিক বেতন ও ভাতার সরকারী অংশ হইতে সরকার প্রতিমাসে উক্ত অংশের ২% হারে চাঁদা কর্তন করিবে এবং কর্তনকৃত অর্থ ট্রাস্টের নামে চেকের মাধ্যমে বোর্ডের নিকট প্রেরণ করিবে।

**৮। ট্রাস্টের তহবিল হইতে শিক্ষক ও কর্মচারীগণকে প্রদেয় আর্থিক সুবিধাদিসমূহঃ**

(১) কোন শিক্ষক বা কর্মচারী শিক্ষা প্রতিষ্ঠানের চাকুরী হইতে অবসর গ্রহণ করিলে তিনি যত বৎসর শিক্ষা প্রতিষ্ঠানে চাকুরী করিয়াছেন তত মাসের মূল বেতনের সমপরিমাণ অর্থ এককালীন প্রাপ্য হইবেন।

(২) কোন শিক্ষক বা কর্মচারী চাকুরীকালীন সময়ে মৃত্যুবরণ করিলে তিনি যত বৎসর চাকুরী করিয়াছেন তত মাসের মূল বেতনের সমপরিমাণ অর্থ তাহার পরিবার প্রাপ্য হইবে।

(৩) কোন বেসরকারী শিক্ষা প্রতিষ্ঠান জাতীয়করণ করা হইলে উক্ত শিক্ষা প্রতিষ্ঠানের শিক্ষক বা কর্মচারীগণ কেবলমাত্র যত বৎসর বেসরকারী শিক্ষা প্রতিষ্ঠানে চাকুরীরত ছিলেন তত মাসের মূল বেতনের সমপরিমাণ অর্থ এককালীন প্রাপ্য হইবেন।

We note that the বেসরকারী শিক্ষা প্রতিষ্ঠান শিক্ষক ও কর্মচারী অবসর সুবিধা আইন, ২০০২ (Act No. 27 of 2002) was enacted by the Ministry of Education and as per power under section 15 of Act, 2002 and the বেসরকারী শিক্ষা প্রতিষ্ঠান শিক্ষক ও কর্মচারী অবসর সুবিধা প্রবিধানমালা, ২০০৫ which was enacted for ensuring retirement benefit of Government Educational Institution Teachers and Staffs. For proper adjudication, essence of said Probidhans 9 & 10 are quoted below:

**৯। চাঁদা সংগ্রহ ও জমাদান পদ্ধতি। (১)** বেসরকারী শিক্ষা প্রতিষ্ঠানের শিক্ষক ও কর্মচারীগণের মাসিক বেতন ভাতার সরকারী অংশ প্রদানকালে প্রত্যেক শিক্ষক ও কর্মচারীর মূল বেতনের ৪% হারে অর্থ "অবসর সুবিধা চাঁদা" হিসাবে সরকার কর্তৃক কর্তন করা হইবে।

(২) উপ-প্রবিধান (১) এর অধীন কর্তনকৃত অর্থ তহবিলে জমা হইবে।

(৩) ১লা ডিসেম্বর, ২০০২ ইং তারিখ হইতে "অবসর সুবিধা চাঁদা" কর্তন করা হইবে, তবে বকেয়া চাঁদা কর্তন সম্পন্ন না হওয়া পর্যন্ত উপ-প্রবিধান (১) এ বর্ণিত হারের দ্বিগুণ হারে চাঁদা কর্তন করা যাইবে।

১০। তহবিল হইতে শিক্ষক ও কর্মচারীগণকে প্রদেয় অবসর সুবিধাদি। (১) চাঁদা প্রদানকারী কোন শিক্ষক বা কর্মচারী শিক্ষা প্রতিষ্ঠানের চাকুরী হইতে অবসর গ্রহণ করিলে তিনি এমপিওভুক্ত হইবার পর যত বৎসর শিক্ষা প্রতিষ্ঠানে চাকুরী করিয়াছেন তাহার ভিত্তিতে নিম্নোক্তভাবে এককালীন আর্থিক সুবিধাদি প্রাপ্য হইবেন।

Admittedly, as per Probidhan 9 of the প্রবিধানমালা, ২০০৫ and প্রবিধানমালা, ১৯৯৯ that 2% and 4% amount will be deducted and deposited from the salary of Non-Government Educational Institution Teachers and Staffs for Retirement Benefit Board and Welfare Trust. The ratio of the tenure of service and retirement benefit was included in the probidhan 09 & 10 respectively.

From the above we are of the view that the well-being of teachers is integral to the advancement of national education goals, but it appears that the long struggle of school teachers covered the monthly payment order of the MPO scheme for regular payment and they undergo sufferings after their retire. They are even deprived of their retirement benefits for a longer period of time and it takes about benefits 2 to 6 years after their retirement but the benefits are not given to these Assistant Teachers though retirement benefits are to be given and they cannot be deprived of from the benefits. The petitioners before us have retired long time back and have been going from pillar to post for their retirement benefits to which they are entitled to.

In that view of the matter we are inclined to dispose of the rule based on the supplementary rule issued on 31.08.2022.

Accordingly, the Rules are disposed of.

The impugned gazette notification under S.R.O dated 20.06.2017 and 15.06.2017 Annexure-K & K-1 published by the respondent No.1, the notification dated 15.04.2019 Annexure-L by the respondent No.5 without allowing any benefits as per ratio of deduction and amount to be deposited in 4% and 6% in total 10% instead of 2% and 4% in total 6% from the salary of Non-Government Education Institution (MPO Listed) Teachers and Staffs for Retirement Benefit Board and Welfare Trust are declared to be without lawful authority.

The respondents are directed to take immediate steps and allow/give retirement benefits as per deducted and deposited ratio of 6% and 4 % in total 10% amount from the salary of Non-Government Educational Institution (MPO Listed) Teachers and Staffs all over the country with effect from notification dated 15.04.2019.

The respondents are further directed to pay the retirement benefits with all others benefits to all Teachers and Employees of the non-government Educational institution (MPO Listed) within 06(six) months after their respective retirements.

No order as to costs.

Communicate the judgment and order at once.

**Kazi Zinat Hoque, J.**

*I agree.*