

IN THE SUPREME COURT OF BANGLADESH  
Appellate Division

PRESENT

*Mr. Justice Hasan Foez Siddique, C.J.*

*Mr. Justice M. Enayetur Rahim*

*Mr. Justice Jahangir Hossain*

**CIVIL PETITION FOR LEAVE TO APPEAL NO.4683 OF 2018**

(From the judgment and order dated the 9<sup>th</sup> day of April, 2018 passed by the High Court Division in Writ Petition No. 9430 of 2012).

Chairman, Rural Electrification : . . . Petitioner  
Board, Khilkhet, Dhaka

-Versus-

S.M. Sanoar Hossain and others : . . . Respondents

For the Petitioner : Mr. K.S. Salauddin Ahmed, Advocate,  
instructed by Mr. Ashraf-uz-Zaman Khan,  
Advocate-on-Record

For Respondent No.1 : Mr. Mohammad Ali Khan, Advocate,  
instructed by Mr. Moh. Abdul Hai,  
Advocate-on-Record

Respondent No. 2-7 : Not represented

**Date of hearing and judgment : The 29<sup>th</sup> day of January, 2023**

**JUDGMENT**

**M. Enayetur Rahim, J:** This civil petition for leave to appeal is directed against the judgment and order dated 09.04.2018 passed by the High Court Division in Writ Petition No.9430 of 2012 making the Rule absolute.

The relevant facts leading to filing of the instant leave petition, in brief, are that the writ petitioner-respondent No.1 (**herein after referred to as writ petitioner**) was appointed as Wiring Inspector in 2002 under the Rangpur Palli Biduyt Samity-1, and his service was confirmed on 01.05.2006. After his joining he had been discharging his duties sincerely.

On 10.08.2011, writ respondent No.3 issued a show cause notice to the writ petitioner alleging commission of certain irregularities. The writ petitioner replied to the said show cause notice. Thereafter, again on 16.11.2011 another show cause notice was issued. The writ petitioner also replied to the said show cause notice. No step had been taken by the respondents after receipt of the responses from the writ petitioner. The writ petitioner was not informed whether his response was satisfactory.

Thereafter, the writ respondents issued several show cause notices on 11.01.2012, 23.01.2012, 31.01.2012, 04.02.2012 and 18.03.2012. Five show cause notices were issued in a span of two months, of which four show cause notices were issued in 25 days. The writ petitioner responded to all the show cause notices. Again, on 23.04.2012, writ-respondent No.3 issued another notice containing supplementary charge and the writ petitioner responded to the same. Thereafter, the writ-respondents issued the order dismissing the writ petitioner from the service. Being aggrieved, the writ petitioner moved before the High Court Division by filing Writ Petition No.9430 of 2012 and obtained Rule *Nisi*.

No affidavit-in-opposition has been filed by the respondents.

In due course after hearing, by the impugned judgment and order the High Court Division made the

Rule absolute directing the writ-respondents to reinstate the writ petitioner within a period of 30 (thirty) days from the date of receipt a copy of the judgment and order.

Being aggrieved by writ-respondent No.2 is now before us having filed the instant civil petition for leave to appeal.

Mr. K.S. Salauddin Ahmed, learned Advocate, appearing on behalf of the petitioner submits that there are numerous allegations against the writ petitioner as such Rangpur Palli Biduyt Samity-1 (PBS-1) initiated departmental proceeding against him, in which he was served with separate show-cause notices, charges and final show-cause notice and his replies thereto were considered and thereupon the authority concerned found him guilty as has been found in the said enquiry report and thus, the relevant authority dismissed him from service. The authority has acted in accordance with Service Code and principles of natural justice. The learned Advocate also submits that the writ petitioner has admitted his guilt and involvement in his replies dated 28.11.2011 and 21.03.2012, both of which had been suppressed by him in the writ petition. He further submits that the writ petitioner has been punished at least fifteen occasions in the past and on most of those occasions he has admitted his guilt and those previous allegations are similar to the allegations in the instant matter as such the

writ petitioner habitually commits misconduct, but the High Court Division without considering the same has committed error of law in passing the impugned judgment and order.

Per contra, Mr. Mohammad Ali Khan, learned Advocate, appearing for present respondent No.1 having supported the impugned judgement and order has submitted that the High Court Division making the Rule absolute did not commit any illegality. The High Court Division on proper consideration of the materials on record rightly and legally held that the alleged inquiry/ investigation made by the authority concerned is not fair and as such this civil petition for leave to appeal is liable to be dismissed.

We have considered the submissions of the learned Advocates appearing on behalf of the respective parties, and perused the impugned judgment and order of the High Court Division and other connected papers on record.

It emerges from the judgment and order of the High Court Division that the High Court Division on proper appreciation of the materials on record held to the effect:

**“We are inclined to take the view that the process through which the petitioner was dismissed is questionable. The impugned order was issued following an ‘unprecedented procedure’. Service of repeated show cause notices within such span is unheard of. Moreover, inquiry/investigation reports were also not provided.**

**The proceedings leading to the issuance of the impugned order was grossly unfair. The respondents, in our view, have abused their powers. We are therefore inclined to hold that the entire proceedings initiated are vitiated by unfairness."**

Having considered the annexures annexed to the writ petition and the submissions of the learned Advocates for the respective parties we have no hesitation to concur with the findings of the High Court Division that the inquiry/investigation was done by the authority in an unfair and unjust manner. Admittedly, in 2012 within a period of two months, five separate show cause notices were issued upon the writ petitioner. Thereafter, another show cause notice was issued in April, 2012 containing supplementary charge. The above facts manifest that the authority had proceeded against the writ petitioner in an arbitrary manner. The writ petitioner replied to all the show cause notices, which were not duly considered by the authority. The principal of natural justice demands that authority concerned is required to evaluate/assess the reply judiciously and then take a decision. In the instant case the authority concerned without applying its judicial mind had proceeded against the writ petitioner in a hasty, unfair and unusual manner which caused serious prejudice to him.

We do not find any illegality or infirmity in the impugned judgment passed by the High Court Division.

However, we are inclined to modify the impugned judgment and order of the High Court Division to the extent that the period out of service of the writ petitioner should be treated as leave without pay.

Accordingly, the civil petition for leave to appeal is disposed of.

**C. J.**

**J.**

**J.**