Bench:
Mr. Justice Md. Ali Reza

Civil Revision No. 5282 of 2022
Sobuj Hawlader
.....petitioner
-Versus-
Shamim and others
.....opposite parties

Mr. Md. Masud Hasan Chowdhury with
Mr. M. Ashraf Ali, Advocates
.....for the petitioner

Mr. Md. Abdur Razzak with
Ms. Afifa Begum, Advocates
.....for the opposite parties

Heard on: 10.12.2025, 18.12.2025, 21.01.2026, 03.02.2026 and 24.02.2026

Judgment on: 26.02.2026

In the instant revision Rule was issued on 21.11.2022 calling upon the opposite parties 1-11 to show cause as to why the judgment and decree dated 04.10.2022 passed by the Additional District Judge, Gopalgonj in Title Appeal No. 51 of 2021 disallowing the appeal thereby affirming the judgment and decree dated 28.03.2021 passed by the Assistant Judge, Kotalipara, Gopalgonj in Title Suit No. 21 of 2014 should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The present opposite party 1 as plaintiff instituted Title Suit No. 21 of 2014 on 20.03.2014 in the Court of the Assistant Judge, Kotalipara, Gopalganj seeking a declaration that the appointment of defendant 4 to the post of Peon-cum-Guard in No. 49 Uttarpara Madrasha Songlogno Government Primary School, Kotalipara, Gopalganj pursuant to the impugned office order dated 10.03.2014 is illegal, void, without lawful authority and not binding upon the plaintiff.

It is stated in the plaint that a notice was published for appointment to the said post. The plaintiff participated in the interview held on 08.02.2014 and secured first position therein. Subsequently defendant 3 allegedly instructed the managing committee of the said school to appoint defendant 4 who is the present petitioner to the advertised post and accordingly an office order dated 10.03.2014 was issued appointing him.

The plaintiff asserts that having secured first position in the interview he is legally entitled to be appointed to the said post. The appointment of defendant 4 and the recommendation made by defendant 3 are alleged to be baseless, illegal and in violation of the Recruitment Policy for Appointment of

Manpower through Outsourcing (আউটসোসিং এর মাধ্যমে সরকারি প্রাথমিক বিদ্যালয়ের দপ্তরী কাম প্রহরী নিয়োগ নীতিমালা). Hence the suit.

Defendant Numbers 1, 2 and 4 contested the suit by filing separate written statements denying all material allegations made in the plaint.

The specific case of defendant 1 is that the plaintiff did participate in the interview held on 08.02.2014 and stood first therein. However defendant 4 who is the present petitioner in this civil revision allegedly secured 3rd position in the merit list and therefore his appointment to the advertised post is illegal.

On the other hand the specific case of defendant 4 is that after completion of the viva voce examination the scrutiny and recruitment committee of the said school prepared a panel based on the overall assessment including the physical fitness of the candidates. It is stated that the present petitioner is S.S.C. passed and physically fit whereas the plaintiff was physically weak and unsuitable for the post. According to defendant 4 although the petitioner was placed at serial 3 in the list and the plaintiff at serial 1 but the list was duly forwarded to the UNO for approval in accordance with law.

It is the further case of the petitioner that he was physically fit, competent and duly qualified for the post in question. It is stated that after consultation with the local Chairman and the representative deputed by the local Member of Parliament he was appointed to the advertised post of Peon-cum-Guard. Pursuant thereto he joined the said post upon complying with all procedural requirements and relevant rules. Hence the suit is liable to be dismissed.

The trial Court framed as many as five issues for determination. During trial the plaintiff examined himself as P.W. 1 and adduced Exhibit-1 as documentary evidence. Defendant 4 examined himself as D.W. 1. The defendant adduced documentary evidence marked as Exhibits-Ka(1) and Ka(2) in support of his case.

Upon consideration of the pleadings of the parties along with the oral and documentary evidence on record and the relevant laws the trial Court by judgment and decree dated 28.03.2021 decreed the suit.

Being aggrieved thereby the defendant number 4 preferred Title Appeal No. 51 of 2021 before the District Judge, Gopalganj. The appeal was subsequently transferred to the Court of the Additional District Judge who by judgment

and decree dated 04.10.2022 dismissed the appeal affirming the judgment and decree of the trial Court.

Being further aggrieved the defendant number 4 filed the present civil revision before this Court and obtained Rule on 21.11.2022.

Learned Advocate Mr. Md. Masud Hasan Chowdhury along with Mr. M. Ashraf Ali appearing on behalf of the petitioner submits that both the Courts below failed to follow the provisions of the Recruitment Policy for Appointment of Peon-cum-Guard in Government Primary Schools through Outsourcing, 2012 (আউটসোসিং এর মাধ্যমে সরকারি প্রাথমিক বিদ্যালয়ের দপ্তরী কাম প্রহরী নিয়োগ নীতিমালা, ২০১২) [hereinafter referred to as the nitimala] and thereby wrongly passed the impugned judgment and decree committing error of law resulting in such decree occasioning failure of justice.

He further submits that under the said nitimala the Selection Committee is required to prepare a panel of three candidates against each post and the appointing authority is empowered to appoint any one candidate from the said panel. Referring to the nitimala he contends that nowhere therein is it provided that the candidate placed at serial 1 in the merit list must mandatorily be appointed to the advertised post.

According to him since the petitioner was included in the panel of three candidates duly prepared by the Selection Committee the competent authority lawfully appointed him. The Courts below failed to consider this vital legal aspect and thereby committed error of law occasioning failure of justice. He further contends that the petitioner was appointed to the post of Peon-cum-Guard strictly in compliance with the procedure prescribed by the statute and the nitimala and he joined the post accordingly. If any irregularity occurred the same was attributable to the authority concerned and not to the petitioner. The Courts below without considering the petitioner's lawful right arising from his inclusion in the panel erroneously decreed the suit thereby committing error of law occasioning failure of justice which cannot be sustained in law.

He next submits that although the plaintiff did not pray for any consequential relief both the Courts below in clear violation of law granted a decree effectively reinstating the plaintiff in service. Referring to Section 42 of the Specific Relief Act he submits that a mere declaration cannot be granted where the plaintiff being able to seek further relief omits to do so. In the absence of a prayer for consequential

relief or mandatory injunction the decree as passed is legally unsustainable and liable to be set aside. He further points out that the petitioner himself did not commit any illegality in the matter of his appointment and he cannot be penalized for any alleged procedural lapse on the part of the authority. The Courts below failed to consider this material aspect and thus committed error of law in passing the impugned decree occasioning failure of justice and since the Rule has merit the same may be made absolute. In support of his submission he refers to the cases of Dhunat Degree College Vs. Md. Abdus Samad, 49 DLR 38; TCB Vs. Syed Sajeduzzaman, 40 DLR 406; Jahir Uddin Vs. Rupali Bank, 12 BLC(AD) 114; Rupali Bank Vs. Md. Arab Ali, 7 BLC(AD) 1; Dhaka WASA Vs. Matiar Rahman, 7 BLC(AD) 4; Habibur Rahman Vs. DC Patuakhali, 51 DLR 70.

On the other hand learned Advocate Ms. Afifa Begum along with Mr. Md. Abdur Razzak appearing on behalf of the plaintiff-opposite party submits that the nitimala was promulgated on 27.09.2012 and was subsequently amended on several occasions. She submits that by amendment dated 26.01.2015 Niti 7(2) conferred absolute power upon the local Member of Parliament to recommend one candidate from

among the three selected candidates. The said amended provision was challenged in Writ Petition No. 3458 of 2015 wherein the Rule was made absolute declaring the said provision illegal.

She further submits that from the nitimala of 2012 upto the amended versions including the nitimala of 2019 the provision relating to allocation of 20 marks for viva-voce examination has never been repealed which clearly manifests the legislative intent that candidates securing the highest marks out of the allotted 20 marks in viva-voce would receive priority in appointment. Such intent is also reflected in Niti 7(Kha) of the nitimala, 2019. He submits that Clause 7 of the nitimala dated 09.12.2012 clearly provides that defendant 3 had no authority to appoint any candidate but only to approve the panel of three candidates and thereafter defendants 1 and 2 were competent to appoint in compliance with Clause 7(5) of the nitimala, 2012. According to her both the Courts below upon proper appreciation of the pleadings and evidence and the applicable nitimala lawfully decreed the suit. The concurrent findings of fact and law do not call for interference in revision under section 115(1) of the Code of Civil Procedure.

She lastly submits that if the plaintiff is otherwise entitled to any relief for substantial justice the Court is empowered to grant appropriate relief in accordance with law. Since the impugned judgments have ensured justice in the facts and circumstances of the case the same may be maintained and the Rule be discharged. Supporting her submission she refers to the cases of DCC Vs. Shamsur Rahman, 59 DLR 207; General Manager, Rangpur Palli Bidyut Samity Vs. Md. Ali Reza, 11 MLR(AD) 382; Bangladesh Railway Vs. Din Mohammad, 7 BLT(AD) 361; Jibon Bima Vs. Mustafa Hussain, 50 DLR 411.

Heard the learned Advocates and perused the materials on record and the laws relating thereto.

It is admitted by both parties that in the recruitment process for the post of Peon-cum-Guard of No. 49, Uttarpara Madrasha Songlogno Government Primary School the plaintiff secured first position and defendant 4 secured third position in the viva-voce examination.

The case of the plaintiff is that the appointing approving authority namely defendant 3 illegally and without lawful basis approved the appointment of defendant 4 bypassing the plaintiff who stood first in the merit list. On the other hand

defendant 4 contends that among the three shortlisted candidates he was physically stronger and more suitable and therefore his appointment was duly approved by the appointing approving authority.

Under Clause 2(g) of the Recruitment Policy of Appointment of Peon-cum-Guard in Government Primary Schools through Outsourcing, 2012 (hereinafter referred to as the nitimala) the Upazila Nirbahi Officer of the concerned Upazila is defined as the "appointing approving authority." In the present case defendant 3 is the said appointing approving authority.

P.W. 1 stated in cross-examination that a viva-voce examination was held and he secured first position therein. D.W. 1 stated that one of the conditions of appointment was physical fitness. However he admitted in cross-examination that he did not submit any document proving that he was physically more fit than the plaintiff. He further admitted that no document was produced showing that the plaintiff was physically unfit. From the appointment memorandum dated 22.03.2014 issued by the Headmaster's office it appears that the appointment of defendant 4 was purportedly made pursuant to the nitimala published on 09.12.2012 and the

amendment dated 07.10.2013 and such appointment was based upon the result of the viva-voce examination subject to approval. Clause 7(2) of the nitimala 2012 provides that the Selection and Recruitment Committee shall conduct a viva-voce examination carrying 20 marks and upon assessment of physical fitness prepare a panel of three qualified candidates and forward the same to the appointing approving authority.

Clause 7(3) provides that within 30 days of receipt of such recommendation the appointing approving authority shall in consultation with the Upazila Parishad Chairman and the concerned Member of Parliament accord approval or if approval is withheld then record the reasons and issue necessary direction.

Clause 7(5) provides that upon approval and in absence of contrary direction the candidate placed at serial 1 of the panel shall be offered appointment subject to the prescribed monthly service charge and terms of contract.

Clause 7(8) further provides that if the approved candidate fails to join within the stipulated time the candidate placed at serial 2 and in his absence the candidate placed at serial 3 shall be offered appointment. The 2013 amendment modified Clause 7(5) by allowing at least one week's time for

joining from the date of issuance of appointment letter and provided that if the appointee fails to join within the period or resigns within six months the next candidate in order shall be appointed. Upon conjoint reading of Clauses 7(2), 7(3), 7(5) and 7(8) of the original and amended nitimala it is evident that although a panel of three candidates is to be prepared the statutory scheme clearly attaches primacy to the candidate placed at serial 1 in the merit list. Departure from such order is permissible only in accordance with the structured mechanism provided therein.

In the present case the memorandum dated 10.03.2014 issued from the office of defendant 3 does not disclose any re-fixation or lawful rearrangement of the order of merit. There is no material on record showing that the order of preference was reconsidered upon consultation with the Upazila Parishad Chairman and the concerned Member of Parliament. There is no explanation as to why the candidates placed at serial numbers 1 and 2 were bypassed and the candidate placed at serial 3 was approved. From the records produced pursuant to the Court’s requisition it appears that in the viva-voce examination the plaintiff secured 18 marks out of 20 and stood

first and Ibrahim Molla secured 15.67 marks and stood second and defendant 4 secured 15 marks and stood third.

The very purpose of preparing a merit list is to ensure appointment of the most meritorious candidate. If the appointing approving authority is permitted to ignore the order of merit without recorded justification it would open the door to arbitrariness and frustrate the objective of the nitimala.

Since no documentary evidence has been produced to substantiate the claim that defendant 4 was physically superior or that the plaintiff was physically unfit the plea of physical superiority remains unproved. Therefore this Court finds that the appointing approving authority acted in violation of Clauses 7(3) and 7(5) of the nitimala, 2012 in approving the appointment of defendant 4. The procedure prescribed by law was not followed and the approval was granted without lawful basis.

It is true that the plaintiff instituted the present suit primarily challenging the memorandum dated 10.03.2014 and sought declaratory relief. However under Order 7 Rule 7 of the Code of Civil Procedure the Court is empowered to grant appropriate relief consistent with the pleadings and supported by evidence even if such relief has not been expressly prayed

for provided that the foundation for such relief exists in the plaint and evidence. In the present case the entire cause of action revolves around wrongful denial of appointment to the plaintiff despite his entitlement under the nitimala. The consequential relief of appointment flows directly and inevitably from the declaration sought. Law does not hesitate to grant substantive relief when the materials on record justify such course and when denial thereof would perpetuate illegality. For securing ends of justice and to give meaningful effect to the statutory framework the Courts below rightly granted effective relief in favour of the plaintiff. The *ratio* of the case laws referred to by the plaintiff-opposite party is consistent with the facts and circumstances of the present case.

Since the appointing approving authority violated the mandatory provisions of the nitimala, 2012 in approving the appointment of defendant 4 bypassing the first candidate in the merit list without lawful justification the approval dated 10.03.2014 is illegal, void and not binding upon the plaintiff.

Accordingly the appointment of defendant 4 pursuant to memorandum dated 10.03.2014 is declared illegal and cancelled. The said appointment shall not be binding upon the plaintiff. The concerned authority is directed to appoint the

plaintiff to the post in question within 30 days from the date of receipt of this judgment in accordance with the nitimala, 2012. The plaintiff shall stand substituted in the said post within the stipulated period. Any civil or criminal liability if arising from acts committed by defendant 4 during his tenure shall not attach to the plaintiff.

The decisions cited by the learned Advocate for the petitioner having been rendered on facts and circumstances materially distinguishable from those of the present case are not applicable herein. Since both the Courts below correctly appreciated the evidence and law and committed no jurisdictional error or illegality or material irregularity occasioning failure of justice within the meaning of section 115(1) of the Code of Civil Procedure this Court finds no merit in the rule.

Accordingly the Rule is discharged.

The judgments and decrees of the Courts below are hereby affirmed.

Since the relief of appointment granted in favour of the plaintiff is in the nature of consequential relief flowing from the declaration sought and since such relief attracts payment of ad velorem court fee under the Court Fees Act the plaintiff is

directed to pay the highest ad velorem court fee as prescribed under the present law on the valuation of the consequential relief within 30 working days from the date of receipt of this judgment. In default of payment of such court fee within the time stipulated above the decree insofar as it relates to the consequential relief of appointment shall stand recalled automatically without further reference to the Court and the decree shall remain confined only to the declaratory relief as sought for. Office is directed to verify compliance before issuance of the decree.

No order as to costs.

The order of stay passed by this Court stands vacated.

Communicate this judgment to the concerned Court and send down the lower Courts' record.

Md. Ali Reza, J:

Naher-B.O