

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

Writ Petition No. 3558 of 2023

IN THE MATTER OF:

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

-AND-

IN THE MATTER OF:

Md. Nasir Uddin Akon
.....Petitioner

-Versus-

Present:

Mr. Justice Sashanka Shekhar Sarkar
And
Justice Urmeem Rahman

The Government of the People's Republic
of Bangladesh, represented by the
Secretary, Ministry of Power, Energy and
Mineral Resources and others
..... Respondents

Mr. Samarendra Nath Biswas, Advocate with
Mr. Md. Abul Kalam Khan (Daud), Advocate
...For the petitioner

Mr. Md. Sanwar Hossain, Advocate
.... For the respondent No. 4

Mr. Mohammad Waliul Islam Oli, D.A.G with
Mr. Md. Ershadul Bari Khandakar, D.A.G,
Ms. Nilufar Yesmin, A.A.G,
Mr. Md. Moshir Rahman (Rahat), A.A.G,
Mr. Md. Motasin Billah Parvez, A.A.G and
Mr. Md. Faridul Islam, A.A.G
.... For the respondents

Heard on 27.01.2026, 03.02.2026 and 15.02.2026

Judgment on 26.02.2026

Urmeem Rahman, J:

In the instant matter a Rule Nisi was issued on an application
under Article 102 of the Constitution of the People's Republic of
Bangladesh in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the office order dated 10.01.2023 contained in Memo No. 27.22.4785.002.29.001.23.167 (Annexure-N) purported to have been issued under signature of the respondent No. 9 dismissing the appeal thereby affirming the order dated 06.06.2022 vide Memo No. 27.22.4785.002.29.001.22.1098 removing the petitioner from his service as Upper Division Accounts Assistant in the West Zone Power Distribution Company Limited (WZPDCL), Sales and Distribution Department, Madaripur should not be declared to have been passed without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.”

Necessary facts for disposal of the instant Rule, in brief, are that, the petitioner was absorbed as Junior Division Accounts Assistant on 26.06.1986 by the Power Development Board (PDB). Thereafter he was made permanent in his service on 13.09.1987. West Zone Power Distribution Company Limited (WZPDCL) was created under PDB in 2005 and on 23.03.2005 an agreement was executed between the PDB and WZPDCL. Following that agreement, the petitioner was appointed as Computer Operator Junior Accounts Assistant in this Company vide order dated 27.02.2008. He was promoted as Upper-Class Accounts Assistant

and his tenure of service has been extended from time to time by WZPDCL and lastly it was extended on 12.12.2017, which is to be expired on 15.12.2022.

During service of the petitioner the respondent No. 13 namely, Md. Miraz Hossain made an allegation of misconduct against the petitioner to the authority and upon receiving the complaint, the WZPDCL vide memo dated 29.11.2021, issued show cause notice upon the petitioner, to which he replied on 02.12.2022 denying all the allegations brought against him. The reply not being found satisfactory, the authority issued a second show cause notice on 14.12.2021 as to why departmental proceeding should not be initiated against him. The petitioner replied to that notice on 22.12.2021.

Thereafter charge was framed against him on 13.01.2022 for the offence of misconduct, threatening for life and assaulting the respondent No. 12. One enquiry officer was appointed, who asked the petitioner to submit written reply. Upon receiving the written reply, the petitioner was asked to appear in person for hearing with supporting documents. Finally, by the order dated 06.06.2022 the petitioner was removed from service.

Being aggrieved, the petitioner filed an application on 11.06.2022 for reviewing the order of removal. The respondent authority treated the application as appeal under the provision of law and sent it to the concerned authority for disposal vide memo dated 14.06.2022. Since the authority did not dispose of the appeal,

the petitioner filed Writ Petition No. 12556 of 2022 and upon hearing a Division Bench of the High Court Division by the order dated 07.11.2022 directed the respondents to dispose of the petitioner's appeal within 15 days of receipt of the order. Upon receiving the order of his Court, the respondent No. 3 rejected the appeal on 10.01.2023 without hearing the petitioner. Being aggrieved thereby and there having no other equally efficacious alternative remedy available, the petitioner filed the instant writ petition and obtained the Rule.

Mr. Samarendra Nath Biswas, learned Advocate with Mr. Md. Abul Kalam Khan (Daud), learned Advocate appearing on behalf of the petitioner submitted that, the allegation brought against the petitioner is vague and mala fide and as such the order of removal is not sustainable in the eye of law.

Mr. Biswas next submitted that, earlier on 02.11.2010 the Manager, HRM & D of WZPDCL issued a memo to all the Operation and Maintenance Circle that every discipline and enquiry must be held primarily by the local office and after completion of enquiry the allegation having been proved, the same should be sent to the Head Office for imposing punishment but in the instant case the enquiry was held by the Head Office in violation of that memo.

Learned Advocate then argued that, according to Rule 7.7 (C) of the Service Rules of the WZPDCL, the authority shall constitute a committee consisting of two or three officer's seniors in rank to the accused to conduct the inquiry, which shall submit a report after

giving the employee a personal hearing if so desired by him, within two weeks (may be extended if so required) from the date of its constitution. But in the instant case inquiry committee was formed with one member only and report was submitted beyond the prescribed time period in clear contravention of the Rules and as such the enquiry report being quorum non iudice, the order of removal on the basis thereof has no lawful basis.

He further submitted that, the respondent No. 5 issued the letter removing the petitioner from his service but he had no power to pass the order of termination before the proposal for termination is approved by the Board of the WZPDCL and as such the impugned order is liable to be declared without any lawful authority.

He finally submitted that, the removal order and the rejection of appeal having been made in an arbitrary manner and the enquiry being held in contravention of the service rules, the order of removal is liable to be set aside. In support of his submission, learned Advocate referred to the case of *The Managing Director, Agrani Bank, Head Office, Dhaka and others Vs. Md. Serajuddin* reported in *10 MLR (AD) 2005 at page 159* and *Conforce Limited Vs. Titas Gas Transmission and Distribution Co. Ltd. And others* reported in *9 BLD 429*.

On the other hand, learned Advocate Mr. Md. Sanwar Hossain, entered appearance on behalf of Respondent no. 4 by filing an affidavit in opposition and vehemently opposed the Rule.

At the very outset he submitted that, the service of the petitioner with the WZPDCL is contractual in nature and therefore the appropriate forum to challenge the order of removal is before the Labour Court. Furthermore, WZPDCL not being a statutory body, no remedy can be sought for against it in writ jurisdiction. As such the instant writ petition is not maintainable.

He next submitted that the enquiry committee was formed by one inquiry officer and one prosecutor and as such there was no severe deviation from the provision of the Rules. Moreover, the time frame suggested in the Service Rules is not mandatory rather directive and the petitioner was not prejudiced in any way as the departmental proceeding was held following due process upon giving the petitioner ample opportunity of being heard.

He finally submitted that, the allegation of negligence, inefficiency, misconduct and corruption having been proved against the petitioner, the punishment was just and proportionate and as such the Rule is liable to be discharged.

Heard the learned advocates for the respective parties and perused the writ petition, affidavit in opposition, supplementary affidavit and the documents annexed therewith.

Let us first of all see whether the writ petition is maintainable or not since an argument has been raised by the respondent no. 4 that WZPDCL being a public limited company and not being a person performing any function in connection with

the affairs of the Republic is not a subject to the writ jurisdiction under Article 102 of the Constitution.

In the case of *Conforce Limited Vs. Titas GAS Transmission and Distribution Company Limited and others* reported in 9 BLD 429 the same question was raised as to the Respondent no. 1 i.e. Titas Gas Limited being a public limited company, whether writ petition was maintainable against it or not. On this issue it was held in that case by this Division that:

“16. It is, therefore, admitted that although the Respondent no. 1 was initially established as a limited company it now functions for the purpose of distribution, sale, etc. of gaseous substance under the direct control of a statutory corporation i.e. the Bangladesh Oil and Gas Corporation and also the Government acting through the ‘Ministry of Mineral, Oil and Gas Resources’. It is, therefore, apparent that the Respondent No. 1 is now a branch of a statutory Corporation.

21. ... The Bangladesh Oil and Gas Corporation having been established by Government under the Bangladesh Petroleum Act, 1974, is, therefore, a local authority. We have already seen that the Respondent No. 1 is a functionary under it. As such, this petition under Article 102 of the Constitution is maintainable against it.”

In the present case WZPDCL admittedly is a public limited company incorporated under the Company’s Act 1913. This Company entered into an agreement with the Power Development Board in 2005. Clause 11 to that agreement provides that:

“The company shall exclusively be accountable for its entire work performance to the management of BPDB.”

Though WZPDCL is a private limited company, by nature it is an enterprise of BPDB subject to its complete supervision. Since BPDB is a public body and WZPDCL is a branch of this body, remedy can well be sought for against it in writ jurisdiction following the principle laid down in the decision mentioned hereinabove.

Besides, learned Advocate for the petitioner referred to the judgment passed in Writ Petition No. 10571 of 2007 wherein the service matter of an employee of WZPDCL was the subject matter and the issue of maintainability of the writ petition was not raised therein; moreover, learned Advocate for WZPDCL in that case argued that, “the company is virtually the company of the PDB.”

With the aforesaid discussion, we therefore find that, the writ petition against West Zone Power Distribution Company Limited (WZPDCL) is maintainable.

Learned Advocate for the Respondent no. 4 further argued that the appropriate remedy for the petitioner was before the Labour Court and in support thereof he annexed two judgments of the Labour Court and Labour Appellate Tribunal by filing a supplementary affidavit in opposition dated 26.02.2026 to establish that, employees of WPDCL file application before the Labour Court. In that particular case an employee of WZPDCL filed a

petition under Section 33(3) of the Labour Act, 2006 challenging his termination from service (Annexure-4). It appears that in this judgment the Labour Appellate Tribunal upon detail discussion held that the employee of WZPDCL is not a labour as per the definition of Labour Act, 2006 and the petition before the Labour Court is not maintainable. Hence, the argument put forwarded by the learned Advocate on this point is devoid of any substance.

Now we shall determine whether the impugned order of removal was made without any lawful authority or not.

The learned Advocate for the petitioner submitted that the enquiry committee was formed by only one enquiry officer in contravention of Rule 7.7(C) of the Employee Service Rules-2016 of WZPDCL. Rule 7.7(C) provides as follows:

“The competent authority shall constitute a committee consisting of two or three officers senior in rank to the accused to conduct the inquiry which shall submit a report after giving the employee a personal hearing if so desired by him within two weeks (may be extended if so required) from the date of its constitution.”.

The language of this provision makes it obvious that this is a mandatory provision of law and should be strictly adhered to by the authority without any deviation. In the case of, *The Managing Director, Agrani Bank, Head Office, Dhaka and others Vs. Md. Serajuddin* reported in *10 MLR (AD) 2005 at page 159* it has been

held by the apex court that, violation of mandatory provisions of the service rules by the inquiry committee has vitiated the whole proceedings.

From Annexure-2 to the supplementary affidavit in opposition dated 01.02.2026 filed by the respondent No. 4, it transpires that, on 13.01.2022 one Mr. Md. Rokunuzzaman, Superintendent Engineer (Commercial), Head Office, WZPDCL, Khulna was appointed as inquiry officer in order to inquire into the allegations brought against the petitioner. It also appears from this memo that Mr. Md. Mominur Rahman, Assistant Manager (Security), WZPDCL, Head Office, Khulna was appointed as Prosecutor in order to represent the company in the departmental proceeding. It is therefore evident from this document that only one inquiry officer was appointed in clear contravention of the mandatory provision of the service rules.

Besides, during the inquiry the only eye witness, meter reader Md. Gias Uddin Mollah in his deposition categorically stated that:

“জনাব মোঃ নাসির উদ্দিন আকন, উচ্চমান হিসাব সহকারী জনাব মোঃ মিরাজ হোসেন, উপসহকারী প্রকৌশলী এর সাথে অশোভন আচরণ করেন নাই। ফাইল স্বাক্ষর নিয়ে কথা হয়েছে। এতে অশোভন আচরণ বলে মনে হয় না।

জনাব মোঃ নাসির উদ্দিন আকন, উচ্চমান হিসাব সহকারী জোরপূর্বক স্বাক্ষর করতে যান নাই। জীবন নাশের হুমকি প্রদান করেন নাই। শারিরিকভাবে তাকে লাঞ্চিত করেন নাই।”

The rest of the eye witnesses were not called as witness before the inquiry committee. The sole inquiry officer based his finding mainly on the C.C.T.V. footage and the hearsay evidence of the higher officials. By filing a supplementary affidavit dated 26.01.2026 the learned Advocate for the petitioner submitted that an application was filed by the petitioner in order to get a copy of the C.C.T.V. footage but the authority has not made any reply thereto and that he has been prejudiced by the arbitrary exercise of power by the authority.

Considering that, the inquiry committee was formed in clear deviation of the mandatory provisions of the relevant service rules, the very foundation of the inquiry proceeding was vitiated. Consequently, the inquiry report and all subsequent actions taken on the basis thereof have no legal effect. The impugned order of removal from service and rejection of appeal are therefore not sustainable.

The Respondent no. 4 has failed to show that the said deviation is merely procedural or that no prejudice has been caused to the petitioner.

In view of the facts and circumstances discussed hereinabove, we find that the Rule issued in the writ petition has merit.

Accordingly, the Rule is made absolute.

However, without any order as to cost.

The removal of the petitioner from service by the impugned memo is hereby declared unlawful and without any lawful authority.

From Annexure-E it appears that the service contract period of the petitioner has already expired by this time on 15.11.2022 and the order of removal was issued earlier on 06.06.2022. The respondents are therefore directed to provide the petitioner with all the financial facilities which he is entitled to get for the complete contractual period of service in accordance with the service rules within 30 (thirty) days from the date of receipt of this judgment and order.

Let a copy of this judgment and order be communicated to the concerned authorities at once.

Sashanka Shekhar Sarkar, J:

I agree.