

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

Present:

Mr. Justice Mustafa Zaman Islam
And
Mr. Justice Md. Atabullah

WRIT PETITION NO. 10113 OF 2022

In the matter of:

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

And

In the matter of:

Most. Tahmina Khatun

... Petitioner

-Versus-

The Government of the People's Republic of Bangladesh,
represented by the Secretary, Ministry of Education,
Bangladesh Secretariat, Ramna, Dhaka-1000 and others

... Respondents

Mr. Md. Shafiqul Islam, Advocate

... For the petitioner

Mr. Muhammad Rafiul Islam, Advocate

í for the respondent No. 4.

Mr. Tushar kanti Roy, Deputy Attorney General with

Ms. Anis-ul-Mawa, Assistant Attorney General and

Mr. Md. Salim Azad, Assistant Attorney General.

... For the respondents.

Heard on 11.01.2024, 31.01.2024

and Judgment on 18.02.2024.

Md. Atabullah, J:

This *Rule Nisi* was issued under Article 102 of the Constitution of the
People's Republic of Bangladesh at the instance of the petitioner calling upon
the respondents to show cause as to why failure of respondents to correct date
of birth of the petitioner inserting 11.09.1979 as per National Identity Card

(NID) No. 6893478872 as well as Secondary School Certificate by deleting the incorrect date of birth 03.09.1964 in the MPO sheet of the petitioner should not be declared to be no legal authority and as to why the respondents should not be directed to correct the date of birth inserting 11.09.1979 of the petitioner as per National Identity Card (NID) No. 6893478872 as well as Secondary School Certificate by deleting the incorrect date of birth 03.09.1964 in the MPO Sheet of the petitioner and/or such other or further order or orders passed as to this Court may deem fit and proper.

2. Relevant facts for the purpose of disposal of the Rule are that the petitioner Most. Tahmina Khatun joined on 19.02.2003 as an Assistant Teacher of Chapra Ashrafia Dimukhi Dakhil Madrasha, Pirgacha, Rangpur who performed her duties successfully with sincerity and diligence and her name was enlisted in the MPO on 01.09.2005. According to her National Identity Card (NID) and Secondary School Certificate, her date of birth is 11.09.1979 but her date of birth was incorrectly stated in the MPO as 03.09.1964 beyond the knowledge of the petitioner. The petitioner requested the superintendent of the said Madrasha to take proper step for correcting the date of birth in her MPO sheet. Thereafter, on an application of the petitioner the superintendent of the said Madrasha on 06.04.2019 sent an application before the respondent No. 4 for correcting the date of birth in her MPO sheet. Thereafter, on the basis of resolution passed by the managing committee on 15.11.2021 the superintendent of the madrasha sent application to the respondent No. 4 for correcting the date of birth in the MPO sheet. On 04.01.2022 the respondent No. 8 also forwarded the copy of the same

application to the respondent No. 4 for correcting her date of birth. But the respondents did not take any initiative or action on the said application. Thereafter, the petitioner filed this writ petition and obtained the present Rule.

3. Mr. Md. Shafiqul Islam, Learned Advocate appearing for the petitioner submits that correct date of birth of the petitioner is 11.09.1979 but it has been incorrectly stated in the MPO sheet as 03.09.1964 which should be corrected. He further submits that on the basis of application of the petitioner and resolution of the managing committee, the superintendent of the madrasa sent application to the respondents but they did not take any action. Under such circumstances, he prayed for relief as per prayer of the writ petition.

4. On the other hand, Mr. Muhammad Rafiul Islam, learned Advocate appearing for the respondent No. 4 by filing an affidavit-in-opposition submits that the petitioner herself filled up the application form of MPO sheet wherein she declared her date of birth as 03.09.1964 on the basis of which the MPO committee upon scrutinizing recommended to include her name in the MPO list. He also submits that such kind of declaration of age of the petitioner is as like as declaration of age made by a government service holder as provided in chapter 3 Rule 9 of the Bangladesh Service Rules, Part-1 which cannot be changed, modified or corrected subsequently. He further submits that during her service period, she did not raise the question and file any application to correct the date of birth which was written by herself. He also submits that the petitioner after 17 years filed an application for correction of the date of birth to enhance her service for 15 years illegally. He

again submits that the grounds taken in the writ petition are misconceived and contrary to both law and facts and as such the rule is liable to be discharged.

5. We have heard the learned Advocates appearing for both the sides at length and considered the writ petition, affidavit-in-opposition and other materials on record meticulously with precision.

6. Admittedly, the petitioner Most. Tahmina Khatun was appointed as Assistant Teacher in Chapra Ashrafia Dimukhi Dakhil Madrasha, Pirgacha, Rangpur and her name was enlisted in the Monthly Payment Order (MPO). Annexure-2 is the filled up MPO form from which it appears that this filled up MPO form contains all the information as to the petitioner Most. Tahmina Khatun including her educational qualifications. As per her educational qualifications, she passed S.S.C., H.S.C and Degree or equivalent examinations. It also appears that the MPO form in the name of Most. Tahmina Khatun has been filled up by the programmer of Madrasha Education Management and Information System, namely Md. Shariful Islam and on completion of filling up the MPO form the said programmer, Md. Sharriful Islam procured the hard copy by means of computer and put his signature thereon. We find nothing in the filled up MPO sheet that the information including the date of birth of the petitioner were filled up by herself. We find no signature of the petitioner on the filled up MPO sheet, except the signature of programmer Md. Shariful Islam. So, the contention of the learned Advocate appearing for the respondent No. 4 is fully wrong that the petitioner has filled up the MPO application form herself and she has written her date of birth as 03.09.1964.

7. It is translucent from the annexure-2 that the programmer of Madrasha Education Management and Information System namely Md. Shariful Islam inserted all the information of the petitioner Most. Tahmina Khatun including her wrong date of birth by means of computer in the MPO sheet and thereafter he procured a hard copy from the computer and put his signature thereon. So, the incorrect or wrong date of birth of the petitioner was inserted in the MPO sheet by means of computer by the programmer Md. Shariful Islam, not by the petitioner Most. Tahmina Khatun. This incorrect insertion of date of birth is nothing but clerical mistake done by the programmer. Under such circumstances, for the fault of the respondents in inserting incorrect date of birth, the petitioner cannot be deprived from her relief as prayed for in the writ petition relating to correction of date of birth which has been wrongly or mistakenly inserted in the MPO sheet by the programmer Md. Shariful Islam.

8. Such kind of clerical mistake as to date of birth cannot be considered as declaration of age of the petitioner as like as declaration of age of a Government service holder as provided in Chapter III, Rule 9 of the Bangladesh Service Rules Part-I, which runs as follows:

“A declaration of age, made by an applicant for Government service at the time of, or for the purpose of, entry into Government service shall be deemed to be binding on the person who has made it and no revision of such a declaration shall be allowed to be made by him at a later date for any purpose whatsoever.”

9. It is pertinent to mention here that the decision passed in the case of Moshiar Rahman vs. Government of the people's Republic of Bangladesh in

writ petition No. 13604 of 2018 referred by the learned Advocate for the respondent No. 4 is not applicable in the instant case, inasmuch as in that case the petitioner's claim was that in the S.S.C certificate his date of birth was mistakenly stated as 02.01.1960 instead of 02.01.1962 which was not accepted by the Honøble High Court Division because of rational grounds stated in the judgment although subsequently the date of birth was amended by the Jashore Board.

10. But in the instant case, the petitioner do not pray for amending or changing the date of birth stated in her S.S.C. certificate, rather her prayer is to correct the incorrect date of birth in the MPO sheet on the basis of National Identity Card and S.S.C. certificate which has been mistakenly inserted in the MPO sheet as 03.09.1964 instead of 11.09.1979 by the programmer of the respondents.

11. It is very much relevant to mention here that the decisions passed by the Honøble High Appellate Division in the cases reported in 53 DLR(AD) Page-105 and XIII ADC(2016) Page-107 support the case of the petitioner of this writ petition. Because, as per decision passed in the case of *Habibur Rahman (Md) vs. Bangladesh*, represented by the Secretary and others reported in 53 DLR(AD) page-105, the S.S.C. certificate being a legally recognized document giving the date of birth carries more weight than any of the other date of birth claimed by the parties in the instant case the petitioner prayed her relief on the basis of date of birth as stated in the S.S.C. certificate. According to the decision passed in the case of *the Project Head, Aleem Jute Mills Limited, Atra, Khulna vs. Mia Eklas Uddin Ahmed and others* reported in XIII ADC(2016) page-107, the declaration made under Rule 9 (B.S.R.-Part-I) does not put an embargo on the employer to look into the personal

record of declaring to see if the declaration made in the verification roll is correct or not.

12. In the light of the above decisions passed in the cases reported in 53 DLR(AD) Page-105 and XIII ADC(2016) Page-107 and on consideration of the materials on record we are of the view that incorrect date of birth mistakenly inserted in the MPO sheet due to clerical mistake, can be corrected on the basis of NID and S.S.C. certificate if otherwise not proved incorrect. The respondent did not raise any claim that the date of birth of the petitioner mentioned in the National Identity Card or S.S.C. certificate as 11.09.1979 is incorrect.

13. It is important to mention here that the respondent No. 4 in his affidavit-in-opposition stated, upon scrutiny the application alongwith documents required by law for giving MPO, the MPO committee recommended to include the name of the petitioner in the MPO sheet. As per MPO sheet annexure-2, the petitioner has passed the S.S.C., H.S.C. and Degree. As per her S.S.C. certificate annexure-C-1 her date of birth has been stated as 11.09.1979. In spite of that the programmer of the respondents stated her incorrect date of birth in the MPO sheet which indicates that the MPO committee without scrutinizing the application of the petitioner, her National Identity Card and S.S.C. certificate properly filled up the MPO sheet for which the incorrect date of birth has been detected after a long period of time. It appears from Annexure- E, E-1 and E-2 that the petitioner having got information about incorrect insertion of date of birth in the MPO sheet filed representations through proper channel which were not considered by the respondents.

14. As such their inaction is liable to be declared without lawful authority and is of no legal effect.

15. In view of the above deliberation we find merit in this Rule. As such the Rule should be made absolute.

16. In the result, the Rule is made absolute without any order as to cost.

The inaction of the respondents in not amending the date of birth of the petitioner in the MPO sheet of the government by inserting correct date of birth 11.09.1979 as per National Identity Card (NID) No. 6893478872 as well as Secondary School Certificate by deleting the incorrect date of birth 03.09.1964 in the MPO sheet of the petitioner is declared illegal and without lawful authority and is of no legal effect and the respondents are directed to correct the date of birth inserting as 11.09.1979 as per National Identity Card (NID) No. 6893478872 as well as Secondary School Certificate by deleting the incorrect date of birth 03.09.1964 in the MPO Sheet of the petitioner within 60 (sixty) days from the date of receipt of the judgment and order and to make payment of his monthly government portion of salary so long and so much she is entitled to get the same.

Let a copy of the judgment and order be sent to the respondents concerned at once.

(Md. Atabullah, J.)

Mustafa Zaman Islam, J:

I agree.

(Mustafa Zaman Islam, J.)