IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Zubayer Rahman Chowdhury,
Chief Justice
Mr. Justice Md. Ashfaqul Islam.
Mr. Justice Md. Rezaul Haque.
Mrs. Justice Farah Mahbub.

CIVIL APPEAL NO.73 OF 2023.
WITH
CIVIL PETITION FOR LEAVE TO APPEAL NOS.1271 AND 1326 BOTH OF 2020.

(From the judgment and order dated 11.03.2019 passed by the High Court Division in Writ Petition Nos.14344 of 2017 and 12977 of 2015).

Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Primary and Mass Education, Bangladesh Secretariat, Ramna, Dhaka. : .....Appellant.
(In C.A No.73 of 2023)

The Director General, Directorate of Primary Education, Mirpur-02, Dhaka-1216. : .....Petitioner.
(In C.P No.1271 of 2020)

Md. Emdad Hossain Chowdhury and others. : .....Petitioners.
(In C.P No.1326 of 2020)

-Versus-

Md. Shahjamal Sardar and others. : .....Respondents.
(In C.A No.73 of 2023)

Md. Giasuddin, Headmaster, Ranigonj Registered Non-Government Primary School, Police Station-Gowinghate, District-Sylhet and the President of Bangladesh Prathomic Shikhak Kollan Samity and others. : .....Respondents.
(In C.P Nos.1271 and 1326 both of 2020)

For the Appellant. : Mr. Md. Ruhul Quddus, Attorney-General with Mr. Aneek R. Hoque, Additional Attorney-General, Mr. Muntasir Uddin Ahmed, Advocate and Mr. Ajit Sil, Advocate instructed by Mr. Md. Helal Amin, Advocate-on-Record.
(In C.A No.73 of 2023)

For ther Petitioner. (In C.P No.1271 of 2020)	:	Mr. Md. Ziaur Rahman, Advocate-on-Record.
For ther Petitioners. (In C.P No.1326 of 2020)	:	Mr. Md. Ramjan Ali Sikder, Senior Advocate instructed by Mr. Mohammad Abdul Hai, Advocate-on-Record.
For the Respondents. (In C.A No.73 of 2023)	:	Mr. Salahuddin Dolon, Senior Advocate with Mr. Md. Miftahuddin Chowdhury, Senior Advocate instructed by Mr. Mohammad Abdul Hai, Advocate-on-Record, Mrs. Taslima Chowdhury, Advocate-on-Record, Mrs. Madhu Malati Chowdhury Barua, Advocate-on-Record and Mr. Md. Nurul Islam Chowdhury, Advocate-on-Record.
For the Respondents. (In C.P Nos.1271 and 1326 both of 2020)	:	Mr. Mohammad Ali Azam, Advocate-on-Record.
Date of Hearing.	:	18.06.2026
Date of Judgment.	:	02.07.2026.

J U D G M E N T

Farah Mahbub, J:

Since common question of law and similar facts are involved in the instant Civil Appeal and Civil Petitions for Leave to Appeal, as such, those have been heard together and are being disposed of by this single judgment.

Civil Appeal bearing No.73 of 2023, by leave is directed against the judgment and order dated 11.03.2019 passed by the High Court Division in Writ Petition No.14344 of 2017 making the Rule absolute in part.

Civil Petition for Leave to Appeal bearing Nos.1271 and 1326, both of 2020, are preferred against the judgment and order dated 11.03.2019 passed by the High Court Division in Writ Petition No.12977 of 2015 making the Rule absolute in part.

Facts in connection with Civil Appeal No.73 of 2023 arising out of Writ Petition No.14344 of 2017, in brief, are that, challenging Rule 2(ga) of the "অধিগ্রহণকৃত বেসরকারি প্রাথমিক বিদ্যালয়ের শিক্ষক (চাকুরীর) শর্তাদি নির্ধারণ বিধিমালা, ২০১৩" (in short, Rules, 2013), said writ petition was filed before the High Court Division, insofar it deducted 50 percent of the service tenure of the teachers of the registered non-government primary schools, subsequently nationalized, to be declared *ultra vires* the Constitution of the People's Republic of Bangladesh (in short, the Constitution). At the same time, the writ petitioners also sought for a direction to count their entire service tenure from the date of inclusion of their names in the Monthly Payment Order (in short, MPO) and to ensure their salary and other service benefits as Headmasters of the nationalized government primary schools.

The writ petitioners, however, based their claim on the assertions, *inter alia*, that they were duly appointed as Headmasters of the respective registered non-government primary schools with receipt of monthly allowance of Tk.50/- (Taka fifty) in addition to their MPO. Since their appointments, they have continuously performed their duties with satisfactory service record.

Upon becoming eligible under the government circular dated 14.07.2008, the writ petitioners sought fixation for the prescribed pay scale of Headmaster. Despite repeated representations, the corresponding financial benefits were not granted to them.

In this regard, their categorical contention is that, pursuant to the said circular, the respective Upazila Education Committees approved the promotions of the writ petitioners as Headmasters. Acting upon those decisions, the concerned Upazila Education Officer forwarded the proposals to writ respondent no.5, Director General, Compulsory Primary and Mass Education Implementation Unit, for awarding pay scale of Headmasters to the writ petitioners.

While the matter remained under active consideration, the government took over 26,193 (twenty six thousand one hundred and ninety three) registered non-government primary schools including the respective primary schools of the writ petitioners under Section 3 of the Primary Schools (Taking Over) Act, 1974 (in short, the Act, 1974), with effect from 01.01.2013.

Meanwhile, with a view to regulating the service conditions of the teachers of the nationalized primary schools, the government proposed to frame *‘‘অধিগ্রহণকৃত বেসরকারি প্রাথমিক বিদ্যালয়ের শিক্ষক (চাকুরীর) শর্তাদি নির্ধারণ বিধিমালা, ২০১৩’’*. To that effect, a gazette notification was published on 01.08.2013 inviting opinions or objections thereof from the public at large, to be submitted within a prescribed period. Objections and opinions given from different quarters were duly received by the authority concerned. Ultimately, the government framed Rules, 2013 by publication in gazette on 29.09.2013, in exercise of power as provided under Section 6 read with Section 3(2)(b) of the Act, 1974 giving effect

from 01.01.2013 [Rule 1(2) of the Rules, 2013]. In Rules, 2013 the government, however, introduced the concept of "*কার্যকর চাকুরিকাল*", i.e. 50 percent of the continuous service rendered by the teachers prior to nationalization of these schools, to be counted for seniority *inter se*.

Eventually, the Ministry of Primary and Mass Education vide office order bearing Memo no.38.007.015.000.08.00.2013-480 dated 10.11.2013 appointed the respective writ petitioners as Assistant Teachers with effect from 01.01.2013 under Rule 4(1) of the Rules, 2013. Later, vide circular dated 05.06.2014, the writ respondents applied the said definition in fixing pay, leave and other service benefits by counting only 50 percent of the service of the absorbed teachers prior to nationalization.

Consequently being aggrieved, the writ petitioners invoked the writ jurisdiction by filing Writ Petition No.14344 of 2017 before the High Court Division under Article 102 of the Constitution and obtained a *Rule Nisi*.

Subsequently, allowing the prayer of the writ petitioners, the High Court Division issued a supplementary Rule as to why Rule 9 of the Rules, 2013 should not be declared to be unlawful and unconstitutional and violative of the fundamental rights guaranteed under the Constitution and why the writ respondents should not be directed to treat the writ petitioners as Headmasters of their respective school till their regular retirement age, unless otherwise disqualified.

Facts in relation to Civil Petition for Leave to Appeal Nos.1271 and 1326 of 2020, both arising out of Writ petition No.12977 of 2015, in brief, are that the writ petitioner respondent no.1 herein, joined Ranigonj Registered Non-Government Primary School (now, nationalized) as an Assistant Teacher in 1989 and was subsequently promoted to the post of Headmaster. His service came under the MPO scheme in 1991. Although he has been discharging the duties of Headmaster, he has not been granted the selection grade and other service benefits attached to that post.

Having found *prima facie* substance, a *Rule Nisi* and a supplementary Rule were issued accordingly.

The common contention of the writ petitioners in all the cases is that, despite being absorbed into government service after satisfying the prescribed eligibility criteria of serving as Headmasters of the registered non-government primary schools, the writ respondents arbitrarily subtracted 50 percent of their service period prior to nationalization, thereby depriving them of their lawful entitlement to pay scale, seniority and other service benefits. Their further contention is that Rule 9(1) of the Rules, 2013, unjustifiably places the writ petitioners below the directly recruited teachers in the seniority list, without giving due weight to their long and continuous service as Headmasters prior to nationalization. Consequently, Rule 9(1) results in a continuous reduction of their qualifying service, thereby impairing their vested rights and rendering the provision manifestly unreasonable and arbitrary.

They also alleged discrimination on the ground that, the writ respondents had previously granted the pay scale of Headmaster to other similarly situated teachers vide Memo no. 38.225.001.12.01.000.2010 dated 18.03.2014. Nevertheless, despite being identically situated and having secured all requisite approvals from the competent authorities, the writ petitioners were denied the same benefit. Said actions being arbitrary and discriminatory are violative of Articles 27, 31 and 40 of the Constitution frustrating their legitimate expectation of being absorbed and treated as Headmasters upon nationalization.

The writ respondent no.4 opposed the Rule issued in Writ Petition No.14344 of 2017 by filing affidavit-in-opposition stating, *inter alia*, that the Rules, 2013 was framed in strict conformity with the procedure prescribed under the Act, 1974; as such, there is no legal basis for the High Court Division to interfere with the same. Referring to the government circular dated 14.07.2008, subsequently captioned as Registered Non-Government Primary School Teachers (Recruitment, Promotion, Discipline and Welfare) Policy, 2009 vide memorandum dated 02.05.2010, it is submitted that promotion to the post of Headmaster was subject to fulfillment of the prescribed eligibility criteria including work experience of 7 (seven) years as Assistant Teacher and approval through the statutory process involving the School Managing Committee, the Upazila Education Committee and the District Primary Education Officer. It is further submitted that, following nationalization with effect from 01.01.2013, the government, vide

circular dated 24.03.2013, prohibited any further promotion of Assistant Teacher to the post of Headmaster after 31.12.2012 and simultaneously superseded all earlier circulars, policies and notifications relating to promotion and seniority of the teachers of the nationalized schools. Later, the service conditions of the absorbed teachers came to be regulated exclusively by the Rules, 2013, framed under Section 3 of the Act, 1974. In this regard, the writ petitioners failed to produce any authentic official records demonstrating that they had been duly promoted as Headmasters before nationalization. Also, neither the Upazila Committee nor the District Committee recommended for their promotion during the verification process. Accordingly, the writ respondents lawfully treated the writ petitioners as Assistant Teachers. Consequently, the Rule and the supplementary Rule are liable to be discharged.

The writ respondent nos. 8, 9 and 10 contested the *Rule Nisi* by filing an affidavit-in-opposition stating, *inter alia*, that under Rules, 2013 the teachers appointed through direct recruitment are entitled to preference over the teachers absorbed upon nationalization and, accordingly, should be appointed as Headmasters. It is further asserted that the writ petitioners had previously instituted a series of writ petitions involving similar issues but failed to disclose the same in the instant proceeding. On these grounds as well, both the Rule and the supplementary Rule are liable to be discharged.

None appeared to contest the Rule issued in Writ Petition No. 12977 of 2015.

Upon hearing the respective contending parties, the High Court Division made the Rules absolute in part in both the Writ Petition Nos.14344 of 2017 and 12977 of 2015 respectively vide judgment and order dated 11.03.2019 with the following findings:

> *"It is declared that:*
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> *(i) Rule 2(ga) of the 2013 Rule is not illegal; and*
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> *(ii) The following in Rule 9(1), being এবং উক্ত তারিখের অব্যবহিত পূর্বে নিয়োগবিধির অধীন শিক্ষক পদে সরাসরি নিয়োগপ্রাপ্ত সর্বশেষ ব্যক্তির নিম্নে উক্ত শিক্ষকের অবস্থান নির্ধারিত হইবে is illegal and without lawful authority."*

Accordingly, direction was given upon the respondents to confer seniority to the writ petitioners and to determine their seniority and payable service benefits taking into considering of the "*কার্যকর চাকুরীকাল*" as defined in Rule 2(ga) of the Rules, 2013. The High Court Division further directed the writ respondents to treat the writ petitioners who are the Headmasters, not as junior to the direct appointees so appointed as Headmasters and to publish an official gazette to that effect, if necessary.

Being aggrieved thereby, the writ respondents of Writ Petition Nos. 14344 of 2017 and 12977 of 2015, as petitioners filed Civil Petition for Leave to Appeal Nos.71, 1271 and 1326 all of 2020 respectively before this Division under Article 103 of the Constitution.

After hearing the parties concerned, leave was granted by this Division in Civil Petition for Leave to Appeal No.71 of 2020 vide order dated 20.11.2022 on three counts, which ultimately gave rise to the instant Civil Appeal and tagged the other 2(two) Civil Petition for Leave to Appeals to be heard and disposed of along with the said Appeal.

Mr. Ruhul Quddus Kazal, learned Attorney General appearing with Mr. Aneek R. Haque, learned Additional Attorney General, Mr. Muntasir Ahmed and Mr. Ajit Sil, learned Advocates on behalf of the appellants submits that, the High Court Division erred in law in declaring a part of Rule 9(1) of the Rules, 2013 illegal and without lawful authority so far it relates to placing the nationalised teachers after the directly recruited teachers without appreciating the provisions of Sections 3(1) and 3(2)(b) of the Act, 1974, read with Rule 2(ga) defining "কার্যকর চাকুরীকাল" ''effective service period", Rule 4 and 9(1) of the Rules, 2013 governing absorption of teachers into government service. In this regard, he goes to argue that, the Rules, 2013 lawfully protects the seniority and accrued service rights of directly recruited teachers while regulating the service conditions of the teachers absorbed upon nationalization.

He further submits that, under the settled principles of law, the seniority of direct recruits is determined from the date of their initial appointment in accordance with the applicable recruitment rules, whereas in view of Rule 9(1) of the Rules, 2013, "কার্যকর চাকুরীকাল"of the nationalised or absorbed teachers is the cardinal factor for counting their

seniority from the date of their appointment under Rule 4. However, Rule 9(2) of the Rules, 2013, as he contends, makes it abundantly clear that "কার্যকর চাকুরীকাল" shall be considered for counting the seniority of the nationalized teachers *inter se* only, not between the direct recruits and nationalized teachers. Thus, recognition of 50 percent of past service period under Rule 2(ga) read with Rule 9(2) cannot confer upon the respondents-writ petitioners any right to claim seniority over those teachers who had already been directly appointed under "সরকারি প্রাথমিক বিদ্যালয় শিক্ষক নিয়োগ বিধিমালা, ১৯৯১" [Rule 2(uma)] prior to the appointment of nationalised teachers under Rule 4 of the Rules, 2013. The High Court Division, therefore, misconstrued the scope of Rule 9(1) by treating the "কার্যকর চাকুরীকাল" as the basis for determining seniority between direct recruits and nationalised teachers.

Accordingly, he submits that the impugned judgment and order passed by the High Court Division warrant interference of this Division and is liable to be set aside.

Mr. Md. Ramjan Ali Sikder, learned Senior Advocate appearing for the petitioners in connection with Civil Petition for Leave to Appeal No.1326 of 2020 adopts the submissions so have been advanced by the learned Attorney General appearing for the appellant.

Mr. Md. Salauddin Dolon, learned Senior Advocate with Mr. Md. Miftauddin Chowdhury, learned Senior Advocate appearing for the respondents submits that, the High Court Division has rightly declared

the impugned portion of Rule 9(1) of the Rules, 2013 to be illegal and without lawful authority, as being manifestly arbitrary, discriminatory and self-contradictory.

In this regard, he goes to argue that, the respondent-writ petitioners had been duly appointed and had continuously served as Headmasters for nearly two decades with the knowledge and recognition of the competent authorities. However, due to operation of Rule 9(1) of the Rules, 2013, the respondent-writ petitioners, notwithstanding their long and continuous service and experience, would be placed below the direct recruits in the seniority list, which is manifestly arbitrary and unreasonable and has the effect of depriving them of their accrued and vested service rights. He further submits that, while preparing the Gazette notification and the list of the teachers consequent upon nationalisation, the appellant-writ respondents, without any lawful justification and with *mala fide* intent, excluded the names of the respondent-writ petitioners from the category of Headmasters. Accordingly, he submits that the High Court Division committed no error in granting the relief sought for and as such, the appeal is liable to be dismissed.

As appears from record, to nationalise the registered non-government primary schools of different categories the appellant government took over 26,193 (twenty six thousand one hundred and ninety three) registered primary schools on 01.01.2013 with 91,024 (ninety one thousand and twenty four) teachers being enlisted in the list

of MPO (Monthly Payment Order), exercising power as provided under Section 3 of the Primary Schools (Taking Over) Act, 1974 (in short, the Act, 1974).

Meanwhile, to govern the service conditions of the teachers, namely, Headmaster or Assistant teacher of these nationalized primary schools, the government proposed to frame "অধিগ্রহণকৃত বেসরকারি প্রাথমিক বিদ্যালয়ের শিক্ষক (চাকুরীর) শর্তাদি নির্ধারণ বিধিমালা, ২০১৩". To that effect, a gazette notification was published on 01.08.2013 inviting opinions or objections thereof from the public at large. Ultimately, the government framed "অধিগ্রহণকৃত বেসরকারি প্রাথমিক বিদ্যালয়ের শিক্ষক (চাকুরীর) শর্তাদি নির্ধারণ বিধিমালা, ২০১৩" (in short, the Rules, 2013) by publication in gazette on 29.09.2013, in exercise of power as provided under Section 6 read with Section 3(2)(b) of the Act, 1974 giving effect from 01.01.2013 [Rule 1(2) of the Rules, 2013].

Vide Rule 3, the Rules, 2013, however, has been given overriding effect to any other Rules.

Rule 9 of the Rules, 2013 prescribed the seniority, promotion etc. of the teachers, as defined in Rule 2(ja) i.e., the Headmaster or Assistant teacher of the nationalised school "কোন অধিগ্রহণকৃত বিদ্যালয়ের প্রধান শিক্ষক বা সহকারী শিক্ষক পদে নিযুক্ত ব্যক্তি".

For ready reference, Rule 9 is quoted below:

> *"৯। শিক্ষকদের জ্যেষ্ঠতা, পদোন্নতি, ইত্যাদি।-*
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> *(১) বিধি ৪ এর অধীন কোন শিক্ষকের নিয়োগ প্রদানের তারিখ হইতে কার্যকর চাকুরীকালের ভিত্তিতে শিক্ষক পদে তাহার জ্যেষ্ঠতা গণনা*

করা হইবে, এবং উক্ত তারিখে অব্যবহিত পূর্বে নিয়োগ বিধির অধীন শিক্ষক পদে সরাসরি নিয়োগপ্রাপ্ত সর্বশেষ ব্যক্তির নিচে উক্ত শিক্ষকের অবস্থান নির্ধারিত হইবে।

(২) নিয়োগ প্রদানের পর শিক্ষকগণের পারস্পরিক জ্যেষ্ঠতা তাহাদের স্ব-স্ব কার্যকর চাকুরীকালের ভিত্তিতে নির্ধারণ করিতে হইবে; এবং কার্যকর চাকুরীকাল একই বা সমান হইলে তাহাদের ন্যূনতম শিক্ষাগত যোগ্যতা অর্জনের বৎসরের, এবং উক্ত বৎসর একই হইলে বয়সের, ভিত্তিতে জ্যেষ্ঠতা নির্ধারিত হইবে।

(৩) নিয়োগ বিধির শর্ত পূরণ সাপেক্ষে, উপ-বিধি (১) ও (২) এর অধীন জ্যেষ্ঠতার ভিত্তিতে শিক্ষকগণ পদোন্নতি, সিলেকশন গ্রেড এবং প্রযোজ্য টাইম স্কেল প্রাপ্য হইবেন।"

For proper understanding of Rule 9, it needs to be read along with Rule 4 including the definition clauses of "অধিগ্রহণকৃত বিদ্যালয়" [Rule 2(ka)], "কার্যকর চাকুরীকাল" [Rule 2(ga)], "নিয়োগকারী কর্তৃপক্ষ" [Rule 2(gha)], "নিয়োগ বিধি" [Rule 2(uma)], "প্রয়োজনীয় যোগ্যতা" [Rule 2(cha)] and "শিক্ষক" [Rule 2(ja)], which are accordingly quoted as under:

"২(ক) "অধিগ্রহণকৃত বিদ্যালয়" অর্থ আইনের section 3 এর sub-section (1) এর অধীন সরকার কর্তৃক অধিগ্রহণকৃত (take over) কোন বেসরকারি প্রাথমিক বিদ্যালয়;

(গ) "কার্যকর চাকুরীকাল" অর্থ কোন শিক্ষক অধিগ্রহণের অব্যবহিত পূর্বে একাদিক্রমে যে মেয়াদে চাকুরী করিয়াছেন উহার ৫০ শতাংশ;
তবে শর্ত থাকে যে, কোন শিক্ষক অধিগ্রহণের অব্যবহিত পূর্বে একাদিক্রমে ৪(চার) বৎসরের কম চাকুরী করিয়া থাকিলে উক্ত চাকুরীকাল কার্যকর চাকুরীকাল হিসাবে গণ্য হইবে না;

(ঘ) "নিয়োগকারী কর্তৃপক্ষ"অর্থ সরকার বা সরকার হইতে ক্ষমতাপ্রাপ্ত কোন কর্মকর্তা;

(ঙ) "নিয়োগ বিধি" অর্থ সরকারি প্রাথমিক বিদ্যালয় শিক্ষক নিয়োগ বিধিমালা, ১৯৯১;

(চ) "প্রয়োজনীয় যোগ্যতা" অর্থ নিয়োগ বিধিতে নির্ধারিত শিক্ষাগত যোগ্যতা;

(জ) "শিক্ষক" অর্থ কোন অধিগ্রহণকৃত বিদ্যালয়ের প্রধান বা সহকারি শিক্ষক পদে নিযুক্ত ব্যক্তি যিনি সরকার বা, ক্ষেত্রমত, যথাযত কর্তৃপক্ষ কর্তৃক, সময় সময়, নির্ধারিত

প্রক্রিয়ায় নিয়োগপ্রাপ্ত হইয়া অব্যাহতভাবে উক্ত বিদ্যালয়ে কর্মরত আছেন।"

"৪। শিক্ষক নিয়োগ, ইত্যাদি।-(১) বিধি ৬ এর বিধান সাপেক্ষে, নিয়োগকারী কর্তৃপক্ষ-

(ক) কোন শিক্ষকের-

(অ) বেসরকারি প্রাথমিক বিদ্যালয়ে নিয়োগ সরকারের প্রচলিত আদেশ অনুসরণে হইলে,

(আ) প্রয়োজনীয় যোগ্যতা থাকিলে,

(ই) পূর্বের চাকুরীর ধারাবাহিকতা অব্যাহতভাবে থাকিলে, এবং

(ঈ) পূর্ববর্তী চাকুরীকাল সন্তোষজনক হইলে,

তাহাকে আইনের Section 3 এর Sub-Section (2) এর clause (b) এর বিধান অনুসারে শিক্ষক পদে নিয়োগ প্রদান করিয়াছেন মর্মে প্রয়োজনীয় আদেশ জারি করিবে;

(খ) কোন শিক্ষকের দফা (ক) তে উল্লিখিত অন্যান্য যোগ্যতা থাকা সত্ত্বেও কেবল প্রয়োজনীয় যোগ্যতা না থাকিলে, আইনের Section 3 এর Sub-Section (1) এর অধীন অধিগ্রহণকৃত সংশ্লিষ্ট বিদ্যালয়ের অধিগ্রহণের তারিখ হইতে পরবর্তী ৩(তিন) বৎসরের মধ্যে উক্ত যোগ্যতা অর্জনের শর্তে নিয়োগ প্রদান করিয়া প্রয়োজনীয় আদেশ জারি করিবে।

(২) উপ-বিধি (১) এর দফা (খ) তে যাহা কিছুই থাকুক না কেন, নিয়োগপ্রাপ্ত কোন শিক্ষক তাহার নিয়োগের ৩(তিন) বৎসর পূর্তির পূর্বে অবসর গ্রহণ করিলে বা মৃত্যুবরণ করিলে অথবা শারীরিক বা মানসিকভাবে অসমর্থ হইয়া পড়িলে অবসর গ্রহণের বা মৃত্যুবরণের বা, ক্ষেত্রমত, শারীরিক বা মানসিক অসমর্থ হইবার তারিখের পূর্বের তারিখে ভূতাপেক্ষভাবে তাহার নিয়োগ নিয়মিত করা যাইবে এবং উক্ত শিক্ষক এই বিধিমালার অধীন প্রদেয় সকল সুবিধাদি প্রাপ্য হইবেন:

তবে শর্ত থাকে যে-

(ক) এইরূপ ক্ষেত্রে সংশ্লিষ্ট ব্যক্তির অবসর গ্রহণ বা মৃত্যুবরণ বা, ক্ষেত্রমত, অসমর্ত হইবার পূর্বের চাকুরী সন্তোষজনক হইতে হইবে; এবং

(খ) শারীরিক বা মানসিক অসমর্থতার ক্ষেত্রে বাংলাদেশ মেডিকেল ও ডেন্টাল কাউন্সিল আইন, ২০১০ (২০১০ সনের ৬১ নং আইন) এর ধারা ১৮ এর অধীন নিবন্ধিত ও রেজিস্টারভুক্ত চিকিৎসক কর্তৃক প্রদত্ত সনদ থাকিতে হইবে।"

Vide Rule 9(1), the seniority of the teachers, appointed under Rule 4 of the Rules, 2013, shall be counted from the date of their appointment

under Rule 4 basing on the "effective service period" "কার্যকর চাকুরীকাল", as provided under Rule 2(ga). However, the name of these teachers shall be placed after the name of the last appointed teacher who has been appointed directly under the "নিয়োগ বিধি", as defined in Rule 2(uma), immediate prior to the appointment of the nationalised teacher under Rule 4 of the Rules, 2013.

For example, Mr. X, a nationalised teacher, as defined in Rule 2(ja), was appointed on 01.01.2013 under Rule 4 by the "নিয়োগকারী কর্তৃপক্ষ", i.e. the government or officers empowered/authorised by the government [Rule 2(gha)]. His seniority shall be counted from the date of his appointment under Rule 4 i.e. from 01.01.2013 taking into consideration of his "কার্যকর চাকুরীকাল" i.e. 50 percent of his continuous service period prior to nationalisation of the respective primary school. In other words, prior to nationalisation, if Mr. X served as a teacher in the respective primary school, as defined in Rule 2(ka), for 10 years, 5(five) years of his past service shall be taken into consideration while counting his seniority from 01.01.2013. However, his name shall be placed after the name of Mr. Y, a teacher who has been appointed directly under the "নিয়োগ বিধি" [Rule 2(uma)], on 31.12.2012 i.e., immediate before the date of appointment of Mr. X under Rule 4. On the other hand, Mr. Z, who has been appointed directly on 02.01.2013 his name shall be placed after Mr. X, a nationalised teacher.

Rule 9(2) provides that after the appointment of the nationalised teachers, their *inter se* seniority shall be determined on the basis of their effective service tenure "কার্যকর চাকুরীকাল". If their effective service tenure is same or equivalent their seniority shall be counted from the year of their attaining required qualification, as defined in Rule 2(cha) and if the year is same in that case their seniority shall be counted from their respective date of birth.

Vide Rule 9(3), subject to compliance of the conditions as prescribed under the "নিয়োগ বিধি", as defined in Rule 2(uma), the teacher, as defined in Rule 2(ja), shall be entitled to promotion, selection grade and applicable time scale basing on the seniority as fixed under Rules 9(1) and 9(2).

According to Rule 10, his effective service period "কার্যকর চাকুরীকাল" shall be counted to determine his pensionable service period. Rule 10 is reproduced as under:

> *"১০। পেনশন, ইত্যাদি।-*
> *কোন শিক্ষকের পেনশনযোগ্য চাকুরীকাল নির্ধারণের ক্ষেত্রে তাহার কার্যকর চাকুরীকাল গণনা করা হইবে।"*

However, Rule 11 prescribes that the provisions of the "নিয়োগ বিধি", shall be applicable for all the nationalised teachers appointed under Rule 4 of the Rules, 2013.

Rules 11 runs as follows:

> *"১১। নিয়োগবিধির প্রযোজ্যতা।-*
> *এই বিধিমালার অধীন নিয়োগপ্রাপ্ত সকল শিক্ষকের ক্ষেত্রে নিয়োগ বিধির বিধানাবলী প্রযোজ্য হইবে।"*

It is an established rule of interpretation of statute that in construing a particular section of an Act, one must look at the whole Act, and it is necessary to consider the "context" in which such section occurs: *Muthammal Vs. Secretary of the State: 19 IC 68(Mad),* as far as possible, to make a consistent enactment of the whole statute: *Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand (1978) 2SCC 144, P 150*. By 'context' is meant not only the textual context arising out of the other provisions of the statute, but also factual context including the mischief to be remedied, and the circumstances under which the statute was passed: *Union of India Vs. Elphinstone Spinning and Weaving Co. Ltd. and others (2001) 4 SCC 139.*

Moreover, in interpreting an enactment, all its parts must be construed together as forming one whole and not in accordance with the sound principles of construction to consider one section, or group of sections, divorced from the rest of the statute. Further, so far as possible, that construction must be placed upon words in any part of the statute which makes them consistent with the remaining provisions and with the intention of the legislature to be derived from a consideration of the enactment: *Gurcharn Lal Vs. Shiva Narain: AIR 1948 Oudh 162*.

From a combined reading of the preamble, definitions, procedures of appointment, heading , punctuation, non-obstante clause etc., and also the context towards framing of the Rules, 2013 it is abundantly clear that Rules, 2013 is meant to apply only for the teachers of nationalised

primary schools governing their appointment process, cessation from their respective services, counting date of their seniority, entitlement of pension, promotion, selection grade as well as gratuity and applicable time scale. However, all those contexts are based on "কার্যকর চাকুরীকাল", as defined in Rule 2(ga), i.e. 50 percent of their past service period so have been rendered by them while serving in the "অধিগ্রহণকৃত বিদ্যালয়" "nationalised school" [Rule 2(ka)] prior to its nationalisation. That is to say, the "কার্যকর চাকুরীকাল" of the nationalised teacher is the determining factor for counting his seniority from the date of nationalising the respective registered non-government primary school.

It is the established principle of service jurisprudence that the initial date of joining is the determining factor for counting the seniority of the direct recruits who joined the service following the procedures as provided in the respective "নিয়োগ বিধি". Conversely, the seniority for nationalised/absorbed teachers is determined from the date of government gazette notification nationalising the institution or the date of their substantive absorption in the respective government cadre.

In Rule 9(2) with the use of the words *"নিয়োগ প্রদানের পর শিক্ষকগণের পারস্পারিক জ্যেষ্ঠতা তাহাদের স্ব-স্ব কার্যকর চাকুরীকালের ভিত্তিতে নির্ধারণ করিতে হইবে"* the framers of the Rules, 2013 made it abundantly clear that "কার্যকর চাকুরীকাল" shall be considered for counting seniority of the nationalished teachers *inter se* only, not between the direct recruits and nationalised teachers. In other words, recognition of 50 percent service period does not go to

create any legal standing for the respondents-writ petitioners to claim seniority over those teachers who have been appointed directly under the *"সরকারি প্রাথমিক বিদ্যালয় শিক্ষক নিয়োগ বিধিমালা, ১৯৯১"* [Rule 2(uma)], prior to the appointment of the nationalised teachers under Rule 4 of the Rules, 2013. In this regard, the High Court Division totally misconstrued Rule 9(1) by counting "কার্যকর চাকুরীকাল" for determining the seniority *inter se* of the direct recruited teachers and the nationalised teachers.

In this connection, it is pertinent to observe that the government has recognised the past service of the nationalised teachers as "কার্যকর চাকুরীকাল" while serving in the registered non-government primary school for counting their seniority purely basing on its policy decision, not under any statutory obligation. However, while giving the status of government servant to those teachers from the date of their appointment under Rule 4 of the Rules, 2013, the government could have totally ignored their past service period, for, counting those period for seniority, pension, selection grade, time scale evidently and eventually involves additional financial burden to be generated from public fund. But the government did so for the cause of education, considering the experience of these teachers, and also in view of the fundamental principles of State policy, as enshrined in Article 17 of the Constitution.

Taking into cognizance of the clear expression and context, as embodied in Rule 9(1) of the Rules, 2013, and also the observations and findings of this Division, there is no manner of doubt to find that the

words, "*এবং উক্ত তারিখে অব্যবহিত পূর্বে নিয়োগ বিধির অধীন শিক্ষক পদে সরাসরি নিয়োগপ্রাপ্ত সর্বশেষ ব্যক্তির নিচে উক্ত শিক্ষকের অবস্থান নির্ধারিত হইবে*, as incorporated in Rule 9(1), are neither unreasonable nor contradictory, as have been found by the High Court Division while declaring Rule 9(1) illegal and without lawful authority.

Apart from challenging Rule 9 of the Rules, 2013, the respondent-writ petitioners have also sought for a direction in the form of *mandamus,* to consider their entire service tenure from the date of enlisting their names in the list of monthly payment order as the teacher of the registered non-government primary school, and also to take necessary steps ensuring their salary and other service benefits as the Headmaster of the registered government primary school.

No doubt, prior to nationalisation, the respondent-writ petitioners were serving as the teachers of registered non-government primary schools. However, those primary schools became nationalised on 01.01.2013 having been taken over by the government under Rule 3 of the Act, 1974. Resultantly, the respective teachers and staffs of those schools became government servants with right to seniority, promotion and other service benefits but subject to fulfillment of the requirements as prescribed by law, rules, regulations so framed, circulars along with orders issued under the law.

As this juncture, Mr. Aneek R. Hoque, learned Additional Attorney General referring to circular dated 14.07.2008 issued by the

Ministry of Primary and Mass Education vide Memo no. প্রাথম/বিদ্যা-১/৮জি-৭/৯৮(অংশ)/ ২৫৩ submits that vide the said circular certain requirements have been prescribed to upgrade one post as Headmaster out of the four posts of Assistant teacher. However, subject to fulfillment of those requirements a teacher can claim to be the Headmaster of a Registered Non-Government Primary School. In this connection drawing attention to office order as contained in Memo no.38.007.015.000.08.00.2013-480 dated 10.11.2013 issued by the appellant, the Ministry of Primary and Mass Education, he submits that said order incorporates the names of the teachers who have been appointed as the Headmaster as well as Assistant teachers of the nationalised schools with effect from 01.01.2013. In the said office order the names of the respondent-writ petitioners have not been identified/placed as Headmaster. Fact remains, said order dated 10.11.2013 has not been challenged by the respondents-writ petitioners while filing the writ petition. As such, giving direction by the High Court Division to treat the respondent-writ petitioners as Headmaster is palpably illegal and not tenable in the eye of law.

Countering the said assertion, Mr. Salahuddin Dolon, the learned Senior Advocate argues with reference to the respective memos issued by the concerned Upazilla Primary Education Officers on 03.03.2025, 06.01.2025, 25.02.2025, 07.07.2025 respectively that vide those official correspondences, the appellant was informed that the respective respondent-writ petitioners had been discharging their duties and functions as Headmaster of their respective school (Annexure-X). Even,

their promotion to the post of Headmaster was duly approved by the concerned Upazilla Education Officer. However, while the matter of their promotion as Headmaster was under consideration in the office of the writ respondent no.5, the Director General, Compulsory Primary Mass Education Non-Government Primary Schools the government took over 26,193 registered non-government primary schools including the respective primary schools of the respondent-writ petitioners. In view of the said information, as provided by the government functionaries as well as the position of facts, he submits, there is no scope to deny the fact that the respective writ petitioners are legally entitled to be treated and are entitled to get their corresponding pay scale as Headmaster.

The respondent-writ petitioners have filed Writ Petition Nos.14344 of 2017 and 12977 of 2015 on the assertion that they are the Headmasters of the respective registered government primary schools (now, nationalished). It is their categorical claim that they have been discharging their duties as Headmaster since their appointment with receipt of monthly allowance of Tk.50/- (Taka fifty) in addition to their MPO. However, despite being qualified and being approved by the Ministry of Primary and Mass Education vide Memo no. প্রাথম/বিদ্যা-১/৮জি-৭/৯৮(অংশ)-৬৩৩ dated 08.04.2010 (Annexure-A to the writ petition) they are being deprived from getting pay scale as Headmaster, as alleged.

As have been agitated by the learned Additional Attorney General that for being eligible to claim the post of Headmaster before

nationalisation, the respondent-writ petitioners have to show due compliance of the requirements as provided in the circular bearing no. প্রাথম/বিদ্যা-১/৮জি-৭/৯৮(অংশ)/২৫৩ dated 14.07.2008 issued by the Ministry of Primary and Mass Education. In the absence of the said compliance, he submits, a mere information provided by the concerned Upazilla Primary Education Officer (Annexure-X) in connection with the present appeal, do not go to create any right in favour of the respondent-writ petitioners to claim their stand as Headmaster.

For proper appreciation of the arguments so have been advanced by the respective contending parties the circular dated 14.07.2008, providing requirements to be complied with for being appointed as Headmaster, needs to be looked into, which runs as under:

"পরিপত্র

Memo No.নং-প্রাথম/বিদ্যা-১/৮জি-৭/৯৮(অংশ)/২৫৩ তারিখ:-১৪.০৭.২০০৮

রেজিস্টার্ড বেসরকারী প্রাথমিক বিদ্যালয়সমূহে শিক্ষা ও ব্যবস্থাপনার মান উন্নয়নের লক্ষ্যে সরকার এ সকল বিদ্যালয়ে বিদ্যমান শিক্ষকের ৪টি পদের একটিকে উন্নীতকরণের মাধ্যমে প্রধান শিক্ষক পদ সৃষ্টির সিদ্ধান্ত গ্রহণ করেছেন।

২। প্রধান শিক্ষকের বেতন স্কেল হবে নিম্নরূপ:

(ক) সি-ইন-এড প্রশিক্ষণপ্রাপ্ত: টাকা ৩৫০০-২১০×৭-৪৯৭০-ইবি-২৩০×১১-৭৫০০/-
(খ) সি-ইন-এড প্রশিক্ষণবিহীন: টাকা ৩৩০০-১৯০×৭-৪৬৩০-ইবি-২১০×১১-৬৯৪০/-

উক্ত বিদ্যালয়সমূহে কর্মরত (কিন্তু এমপিওভুক্ত নন)/পদোন্নতিপ্রাপ্ত/নবনিযুক্ত প্রধান শিক্ষকগণ উল্লিখিত বেতন স্কেলের প্রারম্বিক বেতনের উপর সরকার কর্তৃক নির্ধারিত হারে বেতনের সরকারি অংশ এবং সরকার অনুমোদিত অন্যান্য সুবিধা পাবেন।

৩। সহকারী শিক্ষক হিসাবে কর্মরত (শিক্ষক হিসাবে এমপিওভুক্ত)-দের প্রধান শিক্ষক পদে পদোন্নতি ও এমপিওভুক্তির পদ্ধতি ও শর্তাবলী:

(ক) *সহকারী শিক্ষক পদে নিরবিচ্ছিন্নভাবে কমপক্ষে ৭(সাত) বৎসরের সন্তোষজনক চাকরি, অর্থাৎ ৭ বছর যাবৎ এমপিওভুক্ত থাকতে হবে। প্রয়োজনীয় যোগ্যতাসম্পন্ন শিক্ষকদের মধ্যে সর্বজ্যেষ্ঠ ব্যক্তি প্রধান শিক্ষক পদে পদোন্নতি পাবেন;*

(খ) *কোন স্বীকৃত বোর্ড হতে উচ্চ মাধ্যমিক বা সমমানের পরীক্ষায় উত্তীর্ণ হতে হবে; তবে শর্ত থাকে যে, মাধ্যমিক ও উচ্চ মাধ্যমিক বা সমমানের পরীক্ষার মধ্যে অন্তত: একটিতে ন্যূনতম ২য় বিভাগ/সমমান থাকতে হবে;*

(গ) *সার্টিফিকেট-ইন-এডুকেশন প্রশিক্ষণ থাকতে হবে;*

(ঘ) *সহকারী শিক্ষক হিসাবে নিয়োগপ্রাপ্তির সময় আবেদনকারীর বয়স ১৮ হতে ৩০ বৎসরের মধ্যে ছিল, এ মর্মে উপজেলা শিক্ষা কমিটির প্রত্যয়ন থাকতে হবে;*

(ঙ) *কর্মরত কোন সহকারী শিক্ষককে প্রধান শিক্ষকের উন্নীত শূন্যপদে পদোন্নতি প্রদান করতে হলে তাঁর আবেদনের ভিত্তিতে বিদ্যালয় ম্যানেজিং কমিটি তাঁকে প্রধান শিক্ষক পদে পদোন্নতি প্রদান করতে পারে, তবে তা উপজেলা/মহানগর শিক্ষা কমিটি কর্তৃক অনুমোদিত হতে হবে। পদোন্নতিপ্রাপ্ত প্রধান শিক্ষকের এমপিওভুক্তি, অর্থাৎ তাঁকে বেতনের সরকারি অংশ প্রদানের ক্ষেত্রে তাঁর আবেদনের ভিত্তিতে বিদ্যালয় ম্যানেজিং কমিটি এবং উপজেলা/মহানগর শিক্ষা কমিটির সুপারিশসহ সংশ্লিষ্ট উপজেলা/থানা শিক্ষা অফিসার কর্তৃক সুনির্দ্দিষ্ট প্রস্তাব পাঠাতে হবে। প্রেরিত প্রস্তাব মহাপরিচালক, বাধ্যতামূলক, প্রাথমিক শিক্ষা বাস্তবায়ন পরিবীক্ষণ ইউনিট যথাযথভাবে পরীক্ষান্তে অনুমোদনের পর প্রধান শিক্ষক এমপিওভুক্ত হবেন।*

৪। প্রধান শিক্ষক পদে কর্মরত (কিন্তু এ পদে এমপিওভুক্ত নন) শিক্ষকদের এমপিওভুক্তির পদ্ধতি ও শর্তাবলী:

(ক) *বিদ্যালয় ম্যানেজিং কমিটি কর্তৃক নিয়োগের সময় আবেদনকারীর বয়স ২৫ হতে ৩৫ বৎসরের মধ্যে ছিল, এ মর্মে উপজেলা/থানা শিক্ষা কমিটির প্রত্যয়ন থাকতে হবে;*

(খ) *নিয়োগপ্রাপ্তির সময় সরকারি প্রাথমিক বিদ্যালয়/রেজিস্টার্ড বেসরকারি প্রাথমিক বিদ্যালয়/স্বীকৃতপ্রাপ্ত নিম্ন মাধ্যমিক বিদ্যালয়/উচ্চ মাধ্যমিক বিদ্যালয়/মাদ্রাসায় শিক্ষকতার ০৩(তিন) বৎসরের অভিজ্ঞতা এবং কোন স্বীকৃত বিশ্ববিদ্যালয় হতে স্নাতক/সমমানের ডিগ্রি থাকতে হবে; তবে শর্ত থাকে যে, এস.এস.সি হতে স্নাতক বা সমমানের পরীক্ষাসমূহের মধ্যে কমপক্ষে একটিতে ন্যূনতম ২য় বিভাগ/২য় শ্রেণী/সমমান থাকতে হবে;*

(গ) এ নিয়োগ সংশ্লিষ্ট বিদ্যালয় ম্যানেজিং কমিটি ও উপজেলা/মহানগর শিক্ষা কমিটি কর্তৃক যথাযথভাবে অনুমোদিত হতে হবে;

(ঘ) যথাযথ প্রক্রিয়া অনুসরণ পূর্বক ইতোমধ্যে নিয়োগপ্রাপ্ত এবং প্রয়োজনীয় যোগ্যতাসম্পন্ন প্রধান শিক্ষকগণ এ পরিপত্র অনুযায়ী প্রধান শিক্ষক হিসাবে এমপিওভুক্ত হবেন। তবে এ জন্য তাঁর কোন বকেয়া আর্থিক সুবিধা পাবেন না;

(ঙ) কোন প্রধান শিক্ষক স্বয়ংক্রিয়ভাবে এমপিওভুক্ত হবেন না, তাঁকে বেতনের সরকারি অংশ প্রদানের জন্য তাঁর আবেদনের ভিত্তিতে সংশ্লিষ্ট উপজেলা/থানা শিক্ষা অফিসার কর্তৃক সুনির্দ্দিষ্ট প্রস্তাব পাঠাতে হবে এবং তাতে সংশ্লিষ্ট বিদ্যালয়, ম্যানেজিং কমিটি এবং উপজেলা/মহানগর শিক্ষা কমিটির সুপারিশ থাকতে হবে। প্রেরিত প্রস্তাব মহাপরিচালক, বাধ্যতামূলক, প্রাথমিক শিক্ষা বাস্তবায়ন পরিবীক্ষণ ইউনিট কর্তৃক যথাযথভাবে পরীক্ষান্তে অনুমোদনের পর সংশ্লিষ্ট প্রধান শিক্ষক এমপিওভুক্ত হবেন।

৫। নতুনভাবে প্রধান শিক্ষক নিয়োগের ক্ষেত্রে অনুসরণীয় পদ্ধতি ও শর্তাবলী:

(ক) প্রার্থির বয়স সর্বনিম্ন ২৫ এবং সর্ব্বোচ্চ ৩৫ বৎসর হতে হবে;

(খ) সরকারি প্রাথমিক বিদ্যালয়/রেজিস্টার্ড বেসরকারি প্রাথমিক বিদ্যালয়/ স্বীকৃতপ্রাপ্ত নিম্ন মাধ্যমিক বিদ্যালয়/উচ্চ মাধ্যমিক বিদ্যালয়/ মাদ্রাসায় শিক্ষকতার ০৩(তিন) বৎসরের অভিজ্ঞতা এবং কোন স্বীকৃত বিশ্ববিদ্যালয় হতে স্নাতক/সমমানের ডিগ্রি থাকতে হবে; তবে শর্ত থাকে যে, এস.এস.সি হতে স্নাতক বা সমমানের সকল পরীক্ষায় কমপক্ষে ২য় বিভাগ/২য় শ্রেণী/সমমান থাকতে হবে। কোন পরীক্ষায় ৩য় শ্রেণী গ্রহণযোগ্য হবে না;

অথবা

এস.এস.সি থেকে স্নাতকোত্তর বা এর সমমানের পরীক্ষাসমূহে অন্তত: একটিতে ন্যূনতম দ্বিতীয় বিভাগ/সমমানসহ কোন স্বীকৃত বিশ্ববিদ্যালয় থেকে স্নাতকোত্তর বা সমমানের ডিগ্রি।

৬। যে সকল বিদ্যালয়ে বর্তমানে ৪ জন শিক্ষক এমপিওভুক্ত আছেন, বা প্রধান শিক্ষক পদে পদোন্নতির জন্য বর্তমানে কোন উপযুক্ত প্রার্থী নেই, ঐ সকল বিদ্যালয়ে পুনরাদেশ না দেওয়া পর্যন্ত এমপিওর সকল ব্যবস্থা বহাল থাকবে। এ সকল বিদ্যালয়ে ভবিষ্যতে শিক্ষকের কোন পদ শূন্য হলে উপর্যুক্ত পদ্ধতি ও শর্তাবলী অনুসরণে প্রধান শিক্ষক নিয়োগ করা যাবে, তাদের এমপিওভুক্তির ক্ষেত্রে উক্ত পদ্ধতি ও শর্তাবলী প্রযোজ্য হবে।

৭। রেজিস্টার্ড বেসরকারি প্রাথমিক বিদ্যালয়ের নবসৃষ্ট প্রধান শিক্ষক পদ ব্যতিত বিদ্যমান শিক্ষকের অন্যান্য পদ এখন থেকে "সহকারি শিক্ষক" নামে অভিহিত হবে।

স্বাক্ষরিত
জিয়া হাসান ইবনে আহমদ
উপ-সচিব (বিদ্যালয়)"

In this regard, the categorical contention of the respondents-writ petitioners is that prior to nationalisation of their respective primary schools, they were receiving monthly allowance of Tk.50/-(Taka fifty) only in addition to their MPO for having been appointed as Headmasters by the authority concerned. Moreso, their proposals for promotion as Headmasters were pending before the Director General, Compulsory Primary and Mass Education Implementation Unit for final approval.

However, fact remains, the appellant, Ministry of Primary and Mass Education vide office order bearing Memo no. 38.007.015.000.08. 00.2013-480 dated 10.11.2013 appointed the respective respondent-writ petitioners as Assistant Teacher with effect from 01.01.2013 under Rule 4(1) of the Rules, 2013. While filing the writ petition, the respondent-writ petitioners, who were appointed as Assistant teachers vide the said office order, neither challenged the same nor was the *Rule Nisi* issued to that effect. They also did not challenge Memo no. 05.00.0000.171.12. 020.18.23 dated 23.02.2020 issued by the Ministry of Public Administration negating their prayer to consider "কার্যকর চাকুরীকাল" for determining their seniority in view of Rules 4(1) and 9(1) of the Rules, 2013. In addition, vide Memo no.07.00.0000.161.38.001.17.92 dated 12.08.2020, the Finance Division, Ministry of Finance reiterated the

legal position that "কার্যকর চাকুরীকাল" is applicable for counting pensionable service period only for the nationalised teachers. Said memo has also not been challenged.

Without challenging the said office orders dated 10.11.2013, 23.02.2020 and 12.08.2020 respectively seeking direction in the form of *mandamus* to treat the respondent-writ petitioners as Headmasters is not maintainable in the eye of law. In addition, no document is available before this Division to show that the respondents-writ petitioners have been duly appointed as Headmasters prior to nationalisation with the approval of the Director General, Compulsory Primary and Mass Education Implementation Unit, as is required under memo dated 14.07.2008, save and except that they received Monthly allowance of Tk.50/- (Taka fifty) only in addition to their MPO for rendering service as Headmaster.

The High Court Division did not at all take into consideration of the said legal and factual position of the case.

In view of the above, the High Court Division erred in law by giving direction upon the appellant-writ respondents to treat the respondents-writ petitioners as Headmaster when they failed to show that their entitlement to be treated as Headmaster is rooted in statute, as being the foundation to claim writ of *mandamus*.

Accordingly, the appeal is allowed without any order as to costs.

Civil Petition Nos.1271 and 1326 both of 2020 are disposed of in the light of the judgment being delivered in Civil Appeal No.73 of 2023.

C.J.

J.

J.

J.

02.07.2026.
Jamal/B.R./Words*6200*