

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

***Present:***

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

**WRIT PETITION NO. 4027 OF 2000**

**IN THE MATTER OF :**

An application under Article 102(2) of the Constitution  
of the People's Republic of Bangladesh.

***-AND-***

**IN THE MATTER OF :**

A.K.M. Golam Sarwar  
... Petitioner

***-Versus-***

The Secretary, Ministry of Finance, Internal Resources  
Division and others.

... Respondents

No one appears

... For the petitioner.

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 and Judgment on 01.11.2023.**

**Md. Atabullah, J:**

This *Rule Nisi* was issued, under Article 102(2) of the Constitution of the People's Republic of Bangladesh, at the instance of the petitioner A.K.M. Golam Sarwar, calling upon the Respondent Nos. 3 and 4 to show cause as to why the impugned order of temporary suspension against the petitioner dated 13.06.2000 should not be declared to have been made without lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may deem fit and proper.

2. Facts, in brief, in connection with the writ petition are as follows:

The petitioner was temporarily appointed as Inspector of Customs, Excise and Vat at Khulna Office vide order and letter No. C No. II/5(1)2-ET/86(P-III)/167-72 dated 11.01.1988 and since then he had been serving and discharging his duties with utmost sincerity and honesty. Subsequently, on 01.08.1999 in between 6 to 14 hours, 04 (four) Indian Trucks entered Bangladesh illegally with Indian Cigarette Papers without any requisite and valid papers while the petitioner was not performing his duties and he or other officials on duty did not sign on the form of -Crew Slipö for clearance of the said four trucks. The said facts were ascertained by the enquiry committee headed by Additional Commissioner of Customs, Jeshore. In spite of that the petitioner received the impugned order of temporary suspension dated 13.06.2000 from the Respondent No. 3. Prior to the said order dated 13.06.2000, no show cause notice was served upon the petitioner and he was not given any opportunity to defend himself which was violation of the fundamental principle of natural justice. The impugned temporary suspension order dated 13.06.2000 was passed without following the legal procedure which was vires of law and is of no legal effect.

3. None appears on behalf of the petitioner to press the Rule.

4. Mr. Tushar kanti Roy, learned Deputy Attorney General appearing for the respondents submits that the writ petition is not maintainable since it has been filed against an order of temporary suspension which is nothing but administrative order. He adds that it is settled principle of law that writ is not maintainable against an administrative order.

5. On perusal of the materials on record it appears that the petitioner, Customs Inspector, filed this writ petition alleging that he was discharging his duties with utmost sincerity and honesty, inspite of that he was illegally suspended on 13.06.2000 by the Respondent No. 3 and the authority did not follow the legal procedure and even he was not served with any show cause notice which is vires of law and against principle of natural justice and is of no legal effect.

6. Admittedly, the petitioner was a government servant in the office of Customs, Excise and Vat office at Khulna. It is also admitted that he has been suspended from his office on 13.06.2000. It is settled principle of law that suspension order is not considered as punishment rather it is an administrative order relates to the terms and conditions of the service. As a result no writ petition is maintainable challenging such suspension order since it is an administrative order for the purpose of proper administration of the department of Customs, Excise and Vat. In such a case writ petition is barred under provisions contained in Article 117(2) of the Constitution of the People's Republic of Bangladesh, but the petitioner may seek remedy, if any, in the Administrative Tribunal under Article 117.

7. It is pertinent to mention here that although the petitioner stated in his petition that the action of suspension was vires of law and the order of suspension was passed without following the legal procedure but the petitioner failed to specifically state in his writ petition what type of legal procedure was not followed by the respondents. There was no legal bar to suspend a public servant for his misconduct or corruption without giving

him any prior show cause notice. Undoubtedly it can be said that he got a show cause notice when he received the suspension order. So, there is no question of violation of the principle of natural justice.

8. Moreover, it has been held in the case of Bangladesh represented by the Secretary Ministry of Home Affairs and other vs. Sontosh Kumar Saha and 240 others reported in 21 BLC (AD) (1016) 94 (para 118) that except challenging the vires of law or violation of fundamental rights, judicial review of a decision of authority relating to the terms and conditions of service under Article 102 (1) is not permissible. In the instant writ petition, the petitioner did not specifically show the vires of law and violation of fundamental rights committed by the respondents in passing the impugned order. We also find no such vires of law and violation of fundamental rights. So, none of the above conditions is available in the instant writ petition. Therefore this writ petition is not maintainable. As such the Rule is liable to be discharged.

9. In the result, the Rule is hereby discharged without any order as to costs.

Communicate the judgment and order to the respondents concerned at once

(Md. Atabullah, J.)

Mustafa Zaman Islam, J:

I agree.

(Mustafa Zaman Islam, J.)