

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

**Writ Petition No. 5583 of 2008**

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. Abdul Awal

...Petitioner

-Versus-

**Present:**

Mr. Justice Sashanka Shekhar Sarkar  
And  
Justice Urmee Rahman

The Government of the People's Republic  
of Bangladesh, represented by the  
Secretary, Ministry of Industry and others  
...Respondents

Mr. K.M. Saifuddin Ahmed, Senior Advocate  
...For the petitioner

Mr. Tufailur Rahman, Senior Advocate with  
Mr. Nasir Ahmed, Advocate  
.... For the respondent No. 4-6 and 8

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 03.03.2026

Judgment on 11.03.2026

**Urmee 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 impugned show cause notice contained in the reference No. KPM/LD/39/P/2008/660 dated 27.03.2008 made under the signature of the respondent No. 7 (Annexure-B) and impugned order contained in reference No. KPM/LD/38C/P/08/1120 dated 04.06.2008 (Annexure-D) issued by the respondent No. 4 dismissing the petitioner from the service of Karnaphuli Paper Mills Limited should not be declared to have been passed without lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.”*

At the time of issuance of the Rule it was further ordered that,

*“Pending hearing of the Rule, let operation of the impugned order of dismissal from service contained in reference No. KPM/LD/38C/P/08/1120 dated 04.06.2008 (Annexure-D) to the petition be stayed for a period of 3 (three) months from date.”*

This order of stay has been extended by the petitioner from time to time and on last occasion by the order dated 02.03.2010 the order of stay was extended till disposal of the Rule.

Relevant facts necessary for disposal of the instant Rule, in short, are that, the petitioner is a permanent employee of Karnaphuli Paper Mills Limited and has been serving as S.O.-2 for the last twenty-five years. One former worker of the company namely Md. Abdul Aziz submitted a complaint to the respondent No. 3 on 05.07.2007 alleging inter alia that a work order was issued in favour of one contractor named Messer's Kazi Abu Zafar for which the petitioner, who is a CBA member, had taken five lac taka bribe and later the period of contract was extended on influence by the petitioner and another one. On receipt of the complaint, a show cause notice was issued to the petitioner vide reference No. KPM/LD/39/ P/3008/660 dated 27.03.2008 stating that he has been found guilty under Labour Law and directed the petitioner to submit written statement as to why he shall not be punished on the allegations mentioned therein. The petitioner submitted his reply on 03.04.2008 controverting the allegations brought against him. Respondent Nos. 2 and 7 constituted an enquiry committee comprising of two members chaired by respondent No.6 by the office order dated 17.04.2008. Thereafter, the said committee directed the petitioner to appear before them on 03.05.2008 by their letter dated 29.04.2008. The petitioner appeared before the enquiry committee on the date so fixed and made his submissions against the allegations but the complainant did not appear, as such the petitioner could not cross-examine the complainant. Ultimately the respondent No.7 on behalf of respondent No.4 dismissed the

petitioner from service vide reference No. KPM/LD/38/C/P/08/1126 dated 04.06.2008 in pursuance of the report of the enquiry committee.

Being aggrieved thereby and there having no other alternative and equally efficacious remedy available, the petitioner has filed the instant writ petition and obtained the Rule and an order of stay of the dismissal order.

Mr. K.M. Saifuddin Ahmed, learned Senior Advocate, appearing on behalf of the petitioner emphatically submits that, the Petitioner is an employee of Karnaphuli Paper Mills Limited, an enterprise of Bangladesh Chemical Industries Corporation (BCIC) whose 100% shares are owned by the Government of the Peoples Republic of Bangladesh as such he cannot be prosecuted under Labour Law because that is barred by section 4(ka) of the Labour Act and by Section 6(i) as well as Section 2(p) (iii) of the Shops and Establishments Act, 1965 and also barred by Section 2(d) of the State-owned Manufacturing Industries Workers (Terms and Condition of Service) Ordinance, 1985 (Ordinance, 1985 No. of 1985). Hence the show cause notice dated 27.03.2008 is illegal and without lawful authority. If the Petitioner had done any wrong, he should have been charged under Bangladesh Chemical Industries Corporation Employees Service Rules, 1988 but the instant proceeding has been initiated under Labour Law. The petitioner is not a labour and therefore Labour law cannot be applied in his case.

Mr. Ahmed then submits that, there has been gross violation of Section 42(1)(ka) (kha) and Section 43(2) of the Bangladesh Chemical Industries Corporation Employees Service Rules, 1988 as well as violation of the principle of natural justice in passing the impugned order and as such same is liable to be declared to have been passed without any lawful authority and is of no legal effect.

Learned Senior Advocate further submits that, the inquiry committee was constituted by the respondent No. 2 but it was not conducted in accordance with law as such the inquiry report was illegal and pursuant to that illegal inquiry report the petitioner was dismissed from service and as such the impugned order of dismissal is illegal, without lawful authority and is of no legal effect.

He finally submits that, the petitioner is a permanent staff of the Karnaphuli Paper Mills Limited, and he has 29 years' service record without stigma but this time he has been victimized in a false and fabricated case which has no basis at all. The Petitioner is a 4<sup>th</sup> class employee and he has no connection with any tender work or the tender committee of the said mills in any manner, hence his dismissal from service by the memo dated 04.06.2006 on the basis of the illegal inquiry report is mala fide, illegal and without lawful authority.

On the other hand, learned Senior Advocate Mr. Tufailur Rahman with Mr. Nasir Ahmed Advocate, entered appearance on behalf of Respondent no. 4 -6 and 8 and contested the Rule by filing an affidavit in opposition.

Mr. Rahman at the very outset of his submission contended that the petitioner being a 'Labour' the appropriate forum for seeking redress was before the Labour Court. The petitioner without exhausting the appropriate forum has straight away come in writ jurisdiction, as such this writ petition is not maintainable in its present form. In support of his submission learned Senior Advocate referred to case of *Bangladesh Film Development Corporation Vs. Chairman, 1<sup>st</sup> Labour Court, Dhaka and others* reported in **49 DLR (1997)** at page **396**.

Learned Senior Advocate further submitted that, since the petitioner has no legally tenable grievance against the respondents, the writ petition is not maintainable. He finally submitted that, this matter involves disputed question of fact which needs to be proved by taking evidence and as such the Rule is liable to be discharged for not being maintainable.

We have heard the learned Advocates for the respective parties, perused the writ petition, the supplementary affidavit dated 04.08.2024 and all the documents annexed therewith.

It appears from the record that, the impugned order of dismissal from service dated 04.03.2008 (Annexure-D) was stayed initially at the time of issuance of the Rule for a period of 3 (three) months which was lastly extended till disposal of the Rule by the order dated 02.03.2010 by this Division.

Learned Senior Advocate for the petitioner submits that, admittedly by dint of this order of stay the petitioner joined his

service and received his monthly salary and all the benefits regularly till attainment of sixty years of age.

The petitioner, by filing a supplementary affidavit dated 04.08.2024 produced a memo dated 26.11.2020 issued on behalf of the respondent no. 4 (Annexure-F). Content of the memo is quoted below:

“সূত্র নং-কেপিএম/এলডি/৩৮এ/পি/২০২০/১৮২৭

তারিখ: ২৬-১১-২০২০ খ্রিঃ

জনাব মোঃ আব্দুল আউয়াল

এসও-২

(চা/দল নং-২৯২৬/৪৩)

কাপ্তাই চিপার হাউজ/উৎপাদন বিভাগ

বিষয়ঃ- চাকুরী হতে বিরত থাকা প্রসংগে।

মহোদয়,

আপনার সদয় অবগতির জন্য জানানো যাচ্ছে যে, ০৯-০১-২০২১ খ্রিঃ তারিখ আপনার অবসর গ্রহণের বয়স সীমা ৬০ (ষাট) বছর পূর্ণ হবে বিধায় আগামী ০৯-০১-২০২১ খ্রিঃ (অপরাহ্ন) তারিখ আপনি অত্র কারখানার চাকুরী হতে বিরত থাকবেন। পরবর্তীতে মাননীয় আদালতের রায়ের প্রেক্ষিতে প্রয়োজনীয় ব্যবস্থা গ্রহণ করা হবে।”

Although the writ petition was filed challenging the order of dismissal from service but it appears that the petitioner has completed his tenure of service on attainment of sixty years of age on 09.01.2021 by dint of the order of stay passed by this Division back in the year 2021. Learned Advocate of the petitioner submitted that the petitioner regularly received his monthly salaries and other entitlements during this period. However, due to pendency of this writ petition, he has been deprived of receiving his pension benefits.

We, therefore, are of the opinion that, the Rule need not be disposed of on merit. Since the petitioner has completed his tenure of service working in the company, we find that justice would be better served if the respondents are directed to give him the retirement benefits.

Hence, the respondent nos. 4-8 are hereby directed to provide the retirement benefits to the petitioner as per the service rules applicable to him.

With the aforesaid direction the Rule issued in the instant writ petition is disposed of.

However, without any order as to cost.

The order of stay granted at the time of issuance of the Rule is hereby vacated.

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

**Sashanka Shekhar Sarkar, J:**

I agree.