

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

WRIT PETITION NO. 9258 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. Lison Howlader

.....Petitioner

-VERSUS-

Government of Bangladesh, represented by the
Secretary, Ministry of Agriculture, Bangladesh
Secretariat, Ramna, Dhaka and others

..... Respondents

Mr. Md. Jafor Ali, Advocate with
Mr. A.K.M. Fazlul Karim, Advocate

..... For the Petitioner

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

.....For the Respondents

Mr. Md. Hafizur Rahman, Advocate

.....For the Respondent Nos.2 & 3.

Present:

**Mr. Justice Sashanka Shekhar Sarkar
And
Justice Urmee Rahman**

Heard on 07.01.2026, 20.01.2026 and
Judgment on 27.01.2026

Urmee Rahman, J:

In the instant writ petition rule was issued in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned memo No. 12.203.027.00.00.2394.2014.3267 dated 19.02.2015 issued by respondent No. 3 under Section 80(এ)(খ)(১) of বাংলাদেশ কৃষি উন্নয়ন কর্পোরেশন (বিএডিসি) কর্মচারী চাকুরী প্রবিধানমালা/১৯৯০ (এস. আর. ও নং-১৮৭-আইন/৯০) dismissing the petitioner from his service and the order dated 23.04.2015 issued by the respondent No.2 rejecting the appeal should not be declared illegal, void, without any lawful authority and is no legal effect; and why the respondents should not be directed to reinstate the petitioner in service with all arrear salary/back wages from the date of dismissal and/or such other or further order or orders as to this court may seem fit and proper.”

The relevant facts for disposal of this matter in brief are that the petitioner had joined in the service of Bangladesh Agriculture Development Corporation (B.A.D.C.) on 30.06.2005. Thereafter, he was promoted to the post of Deputy Assistant Director attached to the office of General Manager (Garden) and he has been working in his profession with utmost sincerity, honesty and efficiency. On the basis of some allegations he was dismissed from service on 15.05.2013 and against that dismissal order he preferred a review application under Section 48 (4) of বাংলাদেশ কৃষি উন্নয়ন কর্পোরেশন (বিএডিসি) কর্মচারী চাকুরী প্রবিধানমালা/১৯৯০ (এস. আর. ও নং-১৮৭-আইন/৯০) and after proper consideration of the same, the review

application was allowed and he was reinstated in his service on 20.06.2013; however, with a lower pay scale.

Thereafter, the respondent vide memo dated 23.01.2014 and 29.04.2014 framed a new charge against the petitioner on the basis of some other allegations. The petitioner vide letters dated 25.05.2014 and 16.06.2014 submitted written statements against the charges dated 23.01.2014 and 29.04.2014 respectively explaining the real facts with all relevant documents in support of him and denying all the allegations made against him.

The respondent no. 3 appointed one Mr. Mesbahuddin Ahmed, Deputy Director (ASC) of BADC, Dhaka as the inquiry officer to enquire into the allegations brought against the petitioner. The Investigating officer submitted three enquiry reports on the three different charges on 13.07.2014, 21.08.2014 and 04.09.2014 respectively. In the inquiry report the inquiry officer found the petitioner guilty of all of the three charges. Thereafter, the respondent on 12.10.2014 issued second show cause notice against the petitioner. That the petitioner on 19.10.2014 submitted reply against that show cause notice denying all the allegations made therein. Finally the petitioner was dismissed from his service vide the memo dated 19.02.2015 issued by the Respondent no. 3. Thereafter, the petitioner filed an Appeal before the Respondent no. 2 i.e., the Chairman, Bangladesh Agriculture Development Corporation (BADC) on 02.04.2015 challenging the order of dismissal. On 23.04.2015 the appeal was rejected

by the authority. Then the petitioner filed the review petition on 22.04.2015 under Section 48 (4) of BADC Service Regulations, 1990 which is still pending before the Respondent no. 2. The petitioner filed two applications on 07.09.2017 and 18.04.2018 before the Respondent no. 2 for disposal of the review application but without any result. He also sent a Demand of Justice Notice dated 15.09.2017 upon the respondents. Finding no other alternative remedy, the petitioner filed Writ Petition No. 8330 of 2018 before the High Court Division and by the order dated 17.07.2018 this Division was pleased to summarily dispose of the writ petition directing the respondent no. 2 to dispose of the review application within one month. However, the respondent no. 2 did not dispose of the review petition as yet; hence the instant writ petition.

Mr. Md. Jafor Ali, learned Advocate with Mr. A.K.M. Fazlul Karim, learned Advocate appeared for the petitioner. At the very outset of his submissions the learned Advocate submitted that that the respondent no. 2 did not dispose of the petitioner's review application till date in compliance with the order of this Hon'ble Court. Besides respondent no. 3 quite illegally and on the basis of perverse enquiry reports dismissed the petitioner from service vide impugned order dated 19.02.2015.

Learned Advocate for the petitioner submitted that the petitioner has been given a major penalty and there is a specific time limit given in the BADC Service Regulations for conducting the inquiry proceeding in case of implementation of a major penalty, which has been provided in

Rule 43 of the Service Regulation of 1990. In Rule 43 a total of 50 (fifty) days' time limit has been provided in order to conduct the inquiry proceeding and to submit the report before the appropriate authority. In the present case, the Investigating Officer has failed to complete the inquiry proceeding and submit the report within that stipulated time frame as has been categorically mentioned in Rule 43(4) of the Service Regulation of 1990. The learned Advocate for the petitioner argued that, the inquiry report submitted by the Investigating Officer having not been made in accordance with law, the report is unlawful and therefore, the order of dismissal on the basis of such report cannot withstand in the eye of law. The learned Advocate prayed that the impugned order is liable to be set aside for ends of justice.

Mr. Md. Hafijur Rahman, learned Advocate appeared on behalf of the respondent Nos. 2 and 3 by filing an affidavit in opposition.

Mr. Rahman submitted that departmental proceeding was initiated against the petitioner on the basis of the allegations and the investigation was conducted in accordance with the provisions of the BADC Service Regulation of 1990. The investigation officer found the allegations raised against the petitioner to be proved. The impugned departmental punishment has been given to the petitioner in accordance with law by following all the procedures in a departmental proceeding and giving the petitioner ample opportunity of being heard and as such the authority of

BADC committed no illegality in dismissing the petitioner from his service and therefore, the Rule is liable to be discharged.

It was finally submitted by the learned advocate for the respondents that the BADC authority has discretion under the provisions of বিধি ৪০(১)(খ)(এ) of the বাংলাদেশ কৃষি উন্নয়ন কর্পোরেশন (বিএডিসি) কর্মচারী চাকুরী প্রবিধানমালা/১৯৯০ to impose one or more major penalties upon a delinquent employee. Since the petitioner has been found guilty in the departmental proceeding, BADC authority rightly imposed the impugned punishment on the petitioner and therefore no illegality has been committed thereby and that the Rule may be discharged there having no merit.

We have heard the learned advocates for the petitioner as well as for the respondents and perused the writ petition, the affidavit in opposition and all the documents annexed therewith.

It appears from the record that on 23.01.2014 and 29.04.2014 two charges were brought against the petitioner on the basis of some allegations (annexures-B and B(1)) and he was asked to show cause as to why a major penalty should not be imposed upon him for the alleged misconducts. It is admitted that the petitioner vide letter dated 25.05.2014 and 16.06.2014 made reply against those charges in his defense with all relevant documents in support thereof and he also prayed for a personal hearing. Accordingly, an inquiry officer was appointed to investigate into the allegations, who submitted three enquiry reports on the three different charge sheets on 13.07.2014, 21.08.2014 and 04.09.2014 respectively and

found the petitioner guilty of two charges. However, he submitted these reports beyond the period of the time frame provided by the service rule in this regard.

The core submission of the petitioner's advocate is that the inordinate delay of 160 days in submitting the inquiry report by the inquiry officer, in violation of the provision of law, has vitiated the entire inquiry proceeding and therefore, the punishment imposed upon the petitioner on the basis of that inquiry report cannot sustain in the eye of law. Apart from that, the learned advocate for the petitioner did not point out any other procedural irregularities made in course of the departmental proceeding, e.g., whether the inquiry officer was appointed in accordance with law or not, whether the petitioner was given adequate opportunity of being heard or not etc.

Upon perusing the documents annexed with the writ petition as well as in the affidavit in opposition in addition to the BADC service regulation it is found that in issuing the impugned order of dismissal of the petitioner from service the BADC authority have complied with all the procedural requirements following the provisions of the BADC service regulation except that the inquiry report was submitted beyond the stipulated time frame provided in that regulation.

We have gone through the provisions of বাংলাদেশ কৃষি উন্নয়ন কর্পোরেশন (বিএডিসি) কর্মচারী চাকুরী প্রবিধানমালা/১৯৯০. Rule 43 of this Regulation provides

the procedure for an investigation in a case where major penalty will be imposed if the allegations found to be true. Rule 43 (4) runs as follows:

“তদন্তকারী কর্মকর্তা বা, ক্ষেত্র বিশেষ তদন্ত কমিটি তদন্তের আদেশ দানের তারিখ হইতে দশটি কার্যদিবসের মধ্যে তদন্তের কাজ শুরু করিবেন এবং প্রবিধান ৪৪এ বর্ণিত পদ্ধতি অনুসারে তদন্ত পরিচালিত করিবেন, এবং তদন্ত কমিটি, নিয়োগের তারিখ হইতে ত্রিশটি কার্যদিবসের মধ্যে, কর্তৃপক্ষের নিকট তাহার বা উহার তদন্ত প্রতিবেদন পেশ করিবেন।”

তবে শর্ত থাকে যে, তদন্তকারী কর্মকর্তা বা তদন্ত কমিটি নির্ধারিত সময় সীমার মধ্যে তদন্ত কার্য সম্পন্ন করিত না পারিলে, লিখিতভাবে কারণ উল্লেখ করিয়া তদন্তের সময় বৃদ্ধির জন্য তদন্তের আদেশ দানকারী কর্তৃপক্ষের নিকট অনুরোধ জানাইতে পারেন, এবং আদেশদানকারী কর্তৃপক্ষ উক্ত অনুরোধ বিবেচনা করিয়া প্রয়োজন মনে করিলে, অনূর্ধ্ব বিশটি কার্য দিবস পর্যন্ত উক্ত সময় বর্ধিত করিতে পারেন।”

On a careful reading of this provision we find that although a specific time period of fifty days has been provided in this particular Rule, no consequence in case of failure in submitting the report within that time-frame has been mentioned therein.

Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that a failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specific consequence should not be followed, but in a case where nothing has been laid down in a statute about any specific consequence on the failure to comply with the particular requirement, in that case, it is safe to hold that the requirement

is not mandatory but mere been a directory. In the case of *Abdur Rouf (MD) Vs. Power Development Board and others* reported in **60 DLR 292** it was held that, “A procedural rule ordinarily, should not be construed as mandatory. The Bangladesh Power Development Board (Employees) Service Rules, 1982 provides for the procedural matter regarding the employees of the Board. From the plain reading of the Rules it appears that no specific consequence has been mentioned in case of failure to comply with the requirement of the Rules. We are of the view that the Rule 143 was only directory and the delay in concluding the departmental proceedings beyond three months necessarily do not vitiate the proceeding.” And as such finally it was held in that case that, in a case where all the procedural formalities have been followed in accordance with law the mere fact that the inquiry proceeding was not concluded within the time period will not render the inquiry proceeding unlawful. This principle was also established by the Appellate Division in the case of *S.M. Mozammel Hoque Talukder and Ors. Vs. State* reported in **68 DLR (AD) 370** wherein the apex court found that time frame stipulated in the Druta Bichar Tribunal Ain to complete the trial was only directory and not mandatory and therefore, it was held that, “If without reasonable cause the trial is not concluded within the stipulated period, departmental action may be taken against the Judge of the tribunal but for that matter the trial so held after the expiry will not be illegal in any manner.”

In the present case we have already found that all the procedural formalities as mentioned in the service regulation regarding holding

departmental proceeding has been followed by the BADC authority, e.g. charge was framed, show cause notice was issued, inquiry officer was appointed and the petitioner was given ample opportunity to defend himself against the charges brought against him and finally he was dismissed from service in accordance with law. Thus it cannot be said that the petitioner was prejudiced in any manner. The only shortfall is that the inquiry report was not submitted in time. It has been submitted by the learned Advocate for the respondents that the said delay mainly occurred due to the willful absence of the petitioner.

In the light of the decisions of the Appellate Division as well as the High Court Division mentioned hereinabove, we are of the view that since all other procedural formalities have been followed by the authority while dismissing the petitioner, the mere failure to conduct the inquiry within the stipulated time would not vitiate the ultimate result and the impugned order of dismissal has been lawfully passed by the authority.

Before parting, one issue raised by the petitioner needs to be discussed. It has been submitted by the petitioner that the departmental appeal being rejected he filed a review application but the respondent no. 2 did not dispose of the same despite there having an order of the High Court Division in writ petition No. 8330 of 2018 in this regard. It appears from the record that the impugned order of dismissal was issued by the Respondent no. 3 i.e. the Secretary, BADC, against which the petitioner preferred appeal before the Respondent No. 2 i.e. the Chairman, BADC.

Upon reading Rule 48 of the BADC service regulations it appears that, there is no provision for review in case of rejection of appeal by the Chairman. The option of review is only available if the original dismissal order is given by the Chairman. As per Rule 48 (4) if the penalty is imposed by the Chairman, no appeal shall lie against that order rather a review application could be filed before him. As such, we are of the view that as per the provision of বাংলাদেশ কৃষি উন্নয়ন কর্পোরেশন (বিএডিসি) কর্মচারী চাকুরী প্রবিধানমালা/১৯৯০ there is no scope to file a review in the petitioner's case and the respondents were not under any lawful obligation to dispose of the same.

With the foregoing discussion and the observation, we find that the Rule therefore, does not have any merit.

In the result, the Rule is discharged.

However, without any order as to costs.

Communicate the judgment and order at once.

Justice Sashanka Shekhar Sarkar, J:

I agree.