

**In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)**

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 459 of 2002

IN THE MATTER OF :

An application under section 115 of the Code of Civil
Procedure

-And-

In the Matter of:

Muhammad Afsar

..... Plaintiff-Petitioner

-Versus-

Government of Bangladesh and others

..... Defendant-Opposite Parties

Mr. Md. Ataur Rahman, Advocate

..... For the Opposite Party No.2

Judgment on: 08.03.2026

Md. Riaz Uddin Khan, J-

At the instance of the plaintiff Rule was issued asking the opposite parties to show cause as to why the judgment and decree dated 12.09.2001 passed by the Additional District Judge, Insolvency Court, Dhaka in Title Appeal No.285 1997 affirming the judgment and decree dated 15.09.1997 passed by the Assistant Judge, 4th Additional Court, Dhaka in Title Suit No.82 of 1997 should not be set aside and/or such other or further order or orders should not be passed as to this Court may deem fit and appropriate.

Brief facts for disposal of this Rule are that the petitioner as plaintiff filed the Title Suit No.79 of 1995 in the Court of Assistant Judge, 4th Court, Dhaka against Opposite Parties for declaration of title and cancellation of two impugned orders. Subsequently the suit was transferred to the Assistant Judge, 4th

Additional Court for trial and renumbered as title Suit No.82 of 1997.

The plaint case in a nutshell *inter alia* is that the plaintiff was appointed as dish washer in the Cabin Facility Section of Bangladesh Biman and had been serving faithfully, honestly and sincerely. On 16.11.1983 the petitioner was granted four days casual leave, with effect from 16.11.1983 to 19.11.1983. Then he went to his native village and due to prolonged illness he had to stay at home for three months under the care of a local physician. He then applied for resumption of duties with a medical certificate on 1.4.1985. He was called for explanation, then charge-sheeted and inquiry was held he was awarded the punishment of CENSURE Vide Biman's letter No.Dacca (AMA)/P-32228/85/447 dated 20.8.85 and his two Annual increments were stopped and period of absence (illness) from 20.11.1983 to 10.6.1984 was treated as L.V.P. That on 28.8.90 the plaintiff was again charge sheeted vide Biman's Charge sheet No. DAC HD/P-3222/90 dated 28.8.90 on charges of stealing two pan pastries and a piece of cheese; he took those items from the garbage for breakfast which were collected from Biman's return flight, enquiry was held in a slipshod manner without following the procedures of Biman and consequently he was dismissed from the service on 19.11.1990 vide Biman's letter No.DACG5 (AMA)/P-32228/2095/40/364 dated 19.11.90; he preferred an appeal to the review Committee who recommended his re-instatement but Biman Management violating all the forms of natural justice deprived him of the pay and allowances for the period with effect from 19.11.1990 to 03.06.1991 unlawfully

without any just cause; the plaintiff serve a demand of justice notice to the Biman Management for redress of his grievances but Biman Management did not reply to his legal notice; the plaintiff was illegally deprived of his six months fourteen days salary and 5(five) annual increments most illegally with malafide intention and ill motive, as such he filed the suit.

That the defendant-opposite Parties contested the suit by filing a written statement and denied the plaintiff's case. They claimed that the plaintiff without approval from the authority was absent in the office and after following procedure he was censured with suspension of two increments and to treat the time of absent as LVP. Thereafter the plaintiff by violating office rule took away two pan pastry and one piece of cheese and for that reason following all the procedure his three increments were stopped. The suit is not maintainable as being a labourer his remedy lies with the labour court and not in the civil jurisdiction and the suit is liable to be dismissed.

The trial court after conclusion of trial by the Judgment and decree dated 15.9.1997 dismissed the suit on the finding that the plaintiff filed the suit challenging two different cause of action in a single suit which is not maintainable. Moreover the plaintiff failed to specify in the schedule against what order he claims remedy and as such the suit is not maintainable in its present form.

Against that judgment and decree the plaintiff filed Title Appeal No. 285 of 1997 before the District Judge, Dhaka and amended the prayer portion and added the two impugned orders specifically. The appeal was

ultimately heard by the Additional District Judge, Insolvency Court, Dhaka who by his impugned judgment and decree dated 12.09.2001 was pleased to dismiss the appeal and affirmed the trial court's judgment and decree.

Being aggrieved by and dissatisfied with the said judgment and decree dated 12.09.2001 the plaintiff filed the instant civil revision and obtained the Rule.

No one appears to press the Rule though it is appearing in the list since 18.11.2025.

The opposite party No.2 entered appearance by filing counter affidavit wherein denying the facts of the revisional application amongst other stated *inter alia* that the petitioner Md. Afsar, Employee No. 3228 joined in the service of Bangladesh Biman as Dish Washer on 27.08.1981; at the very beginning of his service, for the misconduct, the Biman management vide Memo No. DACCK/P-3228/83/563 dated 26.04.1983 warned him; then due to unauthorized absence, the Biman Management vide memo No. DACGS/AMS/P-3228/84/2294 dated 17.06.1987, censured the petitioner and then again due to unauthorized absence, the Biman authority vide memo No. DACGS (AMA) P-3228/85-447 dated 20.08.1985 censured the petitioner, then again due to unauthorized absence, the Biman authority vide memo No. DACCA/P-3228/86/917 dated 20.09.1986 censured the petitioner and due to dishonesty, the Biman Authority vide memo No. DACCA/P-3228/88/286 dated 20.02.1988 censured the petitioner; thereafter, the petitioner as Dishwasher was on duty on 04.08.1990 till 22.00 hours and after duty, on 05.08.1990 while getting out from BFCC at 5.50 hours, the security after checking recovered 02 (two) Pan

Pastry and one (01) piece of cheese from the pocket of the petitioner and he admitted in writing at the office of security that he collected the same food from the garbage of the arrived Flight, that to take out the food item of BFCC in illegal way is punishable offence; that the allegation being proved, the Biman authority dismissed the petitioner from his service on 19.11.1990; that then upon the recommendation of the Review committee, the Biman Management re-instated the petitioner in his service vide order dated 03.06.1991, withdrawing the dismissal order and imposing the penalty of stopping the increments of 05(five) years and also censured the petitioner and not to give the arrear salary and allowance from 19.11.1990 to 03.06.1991.

It is further stated in the counter affidavit that the petitioner subsequently availed the golden hand shake under voluntarily Retirement Scheme (VRS) on 28.06.2007 and took all of his pension and benefits and the petitioner has nothing to get from the Biman and during pendency of the instant Civil Revision No. 459 of 2002, the petitioner retired from his service under voluntary retirement scheme on 28.06.2007 and as such the rule is liable to be discharged.

Mr. Md. Ataur Rahman, the learned advocate appearing for the opposite party No. 2, Managing Director of Bangladesh Biman Corporation placing the above facts submits that the Biman Management took impugned actions against the petitioner following all the procedure of Bangladesh Biman Corporation Employees (Service) Regulations, 1979 which is the service rules for the petitioner. The Biman Management did not take

any action against the petitioner beyond their jurisdiction or beyond the principle of equity and good conscience and hence the Rule is liable to be discharged.

The learned advocate then submits that since the petitioner admittedly was absent in the office without approval, his such absence was rightly treated unauthorized absent and he was not entitled to get his salary of those period of unauthorized absence. Further, for illegally taking away of two pastry and one piece of cheese, he was at first dismissed from service but latter on humanitarian ground on the recommendation of review committee he was reinstated and stopped to get increments for five years. The decision of the Biman Management being administrative cannot be challenged in civil court as he could go to the Labour Court and as such the rule is liable to be discharged.

The leaned advocate finally submits that since the petitioner took all his benefits from Biman authority under voluntary retirement service on 28.06.2007 with all his benefits during pendency of this civil revision, this Rule has become infructuous.

I have heard the learned advocate for the opposite party No.2, perused the reviosional application, counter affidavit along with the annexures. I have also gone through the Lower Court Records including plaint, written statement, depositions, exhibited documents and both the judgments passed by the courts below.

It appears from the judgment of the trial court that it dismissed the suit as it was not maintainable in its present form and the appellate court affirmed

the judgment of the trial court. Sitting in revisional jurisdiction ordinarily this Court does not interfere with the concurrent findings of the courts below unless there is error of law, misreading or non consideration of evidence on record. The petitioner could not show any error of law or misreading of evidence or non-consideration of evidence on record by the Courts below.

Moreover, the opposite party No.2 the Managing Director of the Bangladesh Biman Corporation specifically asserted by filing affidavit that the petitioner took all his retirement benefits under voluntary retirement service on 28.06.2007. This fact has not been denied by the petitioner. In that view of the matter, as the rule has become in-fructuous there is no need to go into the merit of the case.

In the result the Rule is **discharged**. However, without any order as to cost.

Send down the Lower Courts Record along with a copy of this judgment at once.