

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

Present:
Mr. Justice Mustafa Zaman Islam
And
Mr. Justice Md. Atabullah

WRIT PETITION NO. 13360 OF 2015

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. Ali Ullah

... Petitioner

-Versus-

The Government of the People's Republic of Bangladesh,
represented by the Secretary, Ministry of Education,
Bangladesh Secretariat, Ramna, Dhaka and another

... Respondents

Mr. Md. Kamrul Alam (Kamal), Advocate

... 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 on 09.11.2023 and Judgment on 27.11.2023.

Md. Atabullah, J:

This *Rule Nisi* was issued at the instance of the petitioner Md. Ali Ullah
Clerk-Cum-Teacher, Rasulpur Alim Senior Madrasa, calling upon the
respondents to show cause as to why the inaction of the respondents in not
amending the date of birth of the petitioner in the MPO list of the
Government by inserting the correct date of birth 20.01.1956 in place of

wrong date of birth 20.01.1955 and in not continuing payment of Monthly Salary as Clerk-Cum-Teacher of Rasulpur Alim Senior Madrasa, Nandail, Mymensingh should not be declared illegal and why the respondents should not be directed to amend the date of Birth of the petitioner in the MPO list of the Government by inserting correct date of birth 20.01.1956 in place of 20.01.1955 and to continue payment of his Monthly Salary as Clerk-Cum-Teacher of the Rasulpur Alim Senior Madrasa and/or such other or further order or orders passed as to this Court may deem fit and proper.

2. Relevant facts for the purpose of disposal of the Rule are that on the basis of an application dated 15.12.1975 the petitioner was appointed on 01.01.1976 in Rasulpur Alim Senior Madrasa, Nandail, Mymensingh in the post of Clerk-Cum-Teacher and since then he has been performing his job sincerely. His name was included in the MPO list on 01.06.1984 and he obtained index No. 640870. Time to time, list of the teachers and employees of the said Madrasa was sent to the concerned authority and the petitioner was paid the government portion of salary from the said Madrasa regularly from the date of enlistment in the MPO scheme, but all on a sudden the petitioner was noticed that in the MPO sheet of March 2015 the name of the petitioner was absent and on quire he came to know that inadvertently the office of the respondent No. 2 mentioned the date of birth of the petitioner as 20.01.1955 instead of 20.01.1956. The principal of the Rasulpur Alim Senior Madrasa being empowered by the decision of the Managing Committee dated 07.04.2015 sent forwarding to the respondent No. 2 vide letter dated 15.04.2015 and petitioner requested the respondent No. 2 in prescribed form

to amend the date of birth and to pay salary which was forwarded by the principal of the Madrasa. Thereafter the petitioner sent demand justice notice to the respondent No. 2 on 23.11.2015 through his learned Advocate requesting to make correction of his date of birth in the MPO list and pay his salary but the respondent No. 2 did not take any step rather he kept the matter pending. The petitioner did not get his salary due to mistake of the respondent No. 2 after the date of 02.03.2015 although the petitioner has been regularly performing his duties. The petitioner filed this writ petition and obtained the present Rule.

3. Mr. Md. Kamrul Alam (Kamal), learned Advocate appearing for the petitioner submits that the petitioner had been performing his duties in the Rasulpur Alim Senior Madrasa, Nandail, Mymensingh with his utmost sincerity, honesty and diligence. He further submits that the respondent No. 2 has inserted wrong date of birth 20.01.1955 instead of correct date of birth 20.01.1956 in the MPO list and deprived the petitioner illegally from obtaining his government portion of salary after the date of 02.03.2015 which he is entitled to get. Under such circumstances he prayed for remedy as per prayer of this writ petition.

4. On the other hand, Mr. Tushar Kanti Roy, learned Deputy Attorney General submits that the petitioner is not legally entitled to get the salary as prayed for since his name was not included in the MPO list.

5. It appears from the Annexure--B that the petitioner applied for the post of Office Assistant wherein he stated his date of birth as 20.01.1956. Annexure--A is the photocopy of the appointment letter issued by the

Superintendent of Rasulpur Senior Madrasa on 01.01.1976. Annexure--A(1) is the joining letter which has been submitted on 01.04.1976 and accepted on the same date. Annexure--B is the MPO list which indicates that petitioner's name has been included in the serial No. 17 wherein his date of birth has been mentioned as 20.01.1956. It appears from the Annexure--C(1) that the petitioner obtained an index No. 640870 as one of the teachers of Rasulpur Senior Madrasa, Nandail, Mymensingh. Annexure--C is the photocopy of Secondary School Certificate of the petitioner from which it appears that date of birth of the petitioner is 20.01.1956. Annexure--D denotes that the petitioner Md. Ali Ullah as Clerk of the Rasulpur Alim Senior Madrasa received his monthly government portion of salary from the said madrasa putting his signature alongwith other teachers and employees upto 01.01.2015. The respondents do not disagree or denied the truthfulness or correctness of the above mentioned documents marked as Annexure A-D

6. It is translucent from the above Annexure (A-D) that the petitioner was appointed in the Rasulpur Senior Madrasa, Nandail, Mymensingh and his date of birth is 20.01.1956 who got government portion of salary upto 01.01.2015 as an enlisted MPO Clerk-Cum-Teacher of the said Madrasa.

7. As per claim of the petitioner he has been regularly paid government portion of salary, but all on a sudden he was noticed that the MPO of the month of March, 2015 in the name of the petitioner is absent due to the wrong insertion of date of birth 20.01.1955 instead of 20.01.1956.

8. It appears from the Monthly Pay Order (MPO) sheet of January, 2015 that date of birth of the petitioner has been stated as 20.01.1955 which is

wrong insertion of date of birth in place of 20.01.1956. The MPO sheet was prepared by the respondent No. 2. As such the wrong insertion of date of birth of the petitioner was done by the respondent No. 2.

9. On perusal of the materials on record, it comes into view that the Principal of the Rasulpur Alim Senior Madrasa on the basis of the decision passed by the managing committee dated 07.04.2015 a forwarding was sent to the respondent No. 2 for amending the date of birth in the MPO inserting correct and actual date of birth 20.01.1956 in place of incorrect date of birth 20.01.1955. The petitioner also himself prayed for the same to the respondent No. 2 through proper channel, but the respondent No. 2 without taking any step kept the matter pending. Wrong insertion of the date of birth of the petitioner is the wrong and negligent act done by the respondent No. 2 for which the petitioner is not liable rather the respondent No. 2 is fully liable for the same. Whenever, the matter comes to the knowledge of the respondent No. 2, he should have taken proper step to amend the MPO inserting correct date of birth of the petitioner and regularize his government portion of salary so long and so much he is entitled to get the same.

10. In the light of the above deliberation, we find merit in the Rule.

11. In the result, the Rule is made absolute without any order as to cost.

The inaction of the respondents in not amending the date of birth of the petitioner in the MPO list of the government by inserting correct date of birth 20.01.1956 in place of incorrect date of birth 20.01.1955 and in not continuing payment of his monthly salary as Clerk-Cum-Teacher of Rasulpur Alim Senior Madrasa to have been declared illegal and the respondents are

directed to amend the date of birth of the petitioner in the list of MPO by inserting correct date of birth and to make payment of his monthly government portion of salary so long and so much he is entitled to get the same as arrear of salary.

Let a copy of the judgment and order be sent to the respondents concerned at once

(Md. Atabullah, J.)

Mustafa Zaman Islam, J:

I agree.

(Mustafa Zaman Islam, J.)