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

Writ Petition No. 6315 of 2017

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. Rafiqul Islam and others

... Petitioners

-Versus-

Bangladesh represented by the Secretary, Ministry of
Law, Justice and Parliamentary Affairs, Bangladesh
Secretariat, Ramna, Dhaka-1000 and others

....Respondents

Mr. B.M. Elias, with
Mr. Shahriar Kabir and
Mr. Syed Md. Tazul Hossain, Advocates

....for the petitioners

Mr. Sheikh Mohammad Zakir Hossain, Advocate

...for the respondent No. 03

Heard on: 05.02.2023, 13.02.2023 & 29.03.2023

Judgment on :03.04.2023

Present:

Ms. Justice Naima Haider

&

Mr. Justice Md. Khairul Alam

Naima Haider, J.:

In this application under Article 102 of the Constitution of the
People's Republic of Bangladesh, a Rule Nisi was issued calling upon
the respondents to show cause within 7(seven) days from the date of the
received notices, as to why the impugned illegal and unlawful final show
cause notice to terminate the employment of the petitioners bearing
Memo No. 27.12.2637.012.31.078.16.1293, Memo No.27. 12. 2637.

“দেশপ্রেমের শপথ নিন, দুর্নীতিকে বিদায় দিন”



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কোর্ট ফি




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012.31.078.16.1295 and Memo No. 27.12.2637.012.31.078.16.1294 all dated 25.04.2017 issued under the signature of the Respondent No.04 in violation of the order of the Hon'ble Court should not be declared to have been done without any 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, this Court passed an order staying operation of the impugned illegal and unlawful final show cause notice to terminate the employment in relates to the Petitioner Nos. 1 & 2 only dated 25.04.2017 issued under the signature of the Respondent No. 4 for a limited period.

Facts relevant for disposal of the Rule, in short, are that: the Petitioners in the instant writ petition are employed by Palli Bidyut Samity, Jhinaidah under the Bangladesh Rural Electrification Board. As per the provisions of the Bangladesh Labour Code, 2006, the Petitioners and others formed a Trade Union with the proposed name of "Palli Bidyut Sramik Karmachari League". The Petitioner No. 01 is the Organizing Secretary, the Petitioner No.2 is the General Secretary and the Petitioner No. 03 is a Vice- President of its Jhinaidah Unit. The office bearers of the said Trade Union filed an application to the Director, Labor for registration of their Trade Union with the proposed name of "Palli Bidyut Sramik Karmachari League" which was refused.

Against the said refusal, the President and Secretary of the Trade Union


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filed an appeal before the First Labour Court, Dhaka. Appeal was allowed and the Director, Labor was directed to give registration to the "Palli Bidyut Sramik Karamachari League". Against the said Judgment and order, the Respondent No. 3 preferred appeal before the Labour Appellate Tribunal. Learned Appellate Tribunal after hearing the parties allowed the appeal. Thereafter, office bearers of the said Trade Union filed Writ Petition No. 2871 of 2015 and on 30.03.2015 rule was issued in the said writ petition. Pending hearing of the rule this Division was also pleased to pass an order restraining the Respondent No.03 not to take any adverse action against the worker of the Rural Electrification Board or any Samity under it. The matter is now pending for hearing. Even though there has been a restraining order upon the Respondent No.03, but it continued harassing the workers of different Palli Biddut Samity under it on various pretexts. In the course of its systematic harassment efforts, the authority by its letters dated 07.11.2016 issued show cause notice to the Petitioners have submitted wrong wearing report; have shown that the applicants' houses were 30-50 feet further away than they actually were. The Petitioners submitted their reply to the said show cause notices denying the allegations brought against them.

The authority thereafter issued charges against the Petitioners and formed investigation committee to submit investigation report over the matters. The committee accordingly on 04.04.2017 submitted its report

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and found that only one out of four allegations against the Petitioner No. 01 was proved; two allegations against the Petitioner No. 02 were proved and four allegations against the Petitioner No.03 were proved. Thereafter, the Respondent No.3 vide letters dated 25.04.2017 issued the final show cause notice before imposing the penalty of Compulsory Retirement upon the Petitioners.

Finding no other alternative efficacious remedy, the petitioners moved before this Court and obtained the Rule Nisi.

Mr. B.M. Elias, learned Advocate appearing on behalf of the Petitioners submits that the Petitioners are only trying to exercise their right as guaranteed under the Constitution but the over jealous Respondents apparently have taken the matter as a challenge to their authority and have been availing all possible excuse to harass the Petitioners and others who are involved with Trade Union activities and as such the impugned orders are discriminatory, misuse of the statutory power and as such not tenable in law and equity.

He next submits that the Respondent No. 03 had already dealt with the selfsame subject matter and allegations against the Petitioner No. 02 and issued a warning letter against him. But subsequently authority served another show cause notice and issued the impugned letter which clearly shows the malafide inaction and arbitrary action of the authority and as such the impugned notices are illegal and without lawful authority. He further submits that the impugned office order is a

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colorable exercise of the statutory power on the part of the Respondents and the impugned office order is designed with ill motive, which prima-facie is discriminatory and malafide as such the impugned order is void and unconstitutional being violative of the rights of the Petitioners as granted by the Constitution.

Mr. Sheikh Mohammad Zakir Hossain, learned Advocate for the Respondent No. 03 submits that a proper investigation was conducted by an Inquiry Committee and after conducting detailed, just and fair investigation found prima facie evidence/material against the Petitioners vide respective Inquiry Reports against which, the Petitioners themselves had acknowledged about their respective wrong doings and therefore the departmental proceedings including the punishment proposed upon them- suffers no material defect.

Learned Advocate for the Respondent No. 03 next submits that the Petitioners possessed the alternative forum of preferring appeal but instead of availing such alternative efficacious remedy provided under the respective rules, the Petitioners jumped gun so to speak and filed the instant writ petition before this Hon'ble Court. Moreover, the present Petitioners have preferred the instant writ petition raising disputed questions of fact, which cannot be appropriately adjudicated before a writ jurisdiction and therefore the Rule issued in the instant writ petition is required to be discharged.

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We have heard the submissions of the learned Advocate for the petitioner and for the Respondent No. 03 and perused the application and the annexures annexed hereto.

The question raised in the instant writ petition is in respect of issuance of final show cause notice to terminate the employment of the petitioners. It is evident before this Court that the Respondents have violated the principle of natural justice, which justifies the issuance of Rule. The Petitioners were not offered any opportunity to properly represent their case. It is settled principle of law that show cause notice must be effective. The purpose of such notice is that the accused is offered an opportunity to deny guilt and establish his innocence. Therefore, it is desirable that when a show cause notice is issued, the issuing authority provide the documents which are relied upon. If such documents are not provided, then the person to whom show cause notice is issued cannot effectively defend his position. In such a situation, the show cause notice is rendered ineffective. This is exactly what happened in the instant case. Furthermore, the Respondents also did not provide any opportunity to cross examine the witnesses. Such failure, in our view rendered the proceeding questionable, particularly in view of Rule 44 (2) of the Bangladesh Rural Electrification Board Service Rules 1990, relevant part of which provides that অভিযোগ ও সংশ্লিষ্ট সকল বিষয় উপস্থাপনকারী ব্যক্তিও অভিযুক্ত ব্যক্তি এবং তাহার তলবকৃত সাক্ষীগণকে জেরা করার অধিকারী হইবেন।

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In view of the above, we are inclined to hold that the manner in which the Respondents proceeded to deal with the Petitioners' case was manifestly illegal and violative of the principle of natural justice.

Considering these facts, circumstances, we find substance in the submissions of the learned counsel appearing for the petitioners and merit in the instant Rule and as such we are inclined to make the Rule absolute.

Accordingly, the Rule is made absolute.

The impugned final show cause notice to terminate the employment of the petitioners bearing Memo No. 27.12.2637.012.31.078.16.1293, Memo No.27.12.2637.012.31.078.16.1295 and Memo No. 27.12.2637.012.31.078.16.1294 all dated 25.04.2017 issued under the signature of the Respondent No.04 is hereby declared to have been done without any lawful authority and is of no legal effect.

No order as to costs.

Communicate the Judgment and Order at once.

Md. Khairul Alam, J.

Naima Haider

I agree

Md. Khairul Alam

Typed by: Halim: 21.01.2025

Read by: 21.1.25

Exam by: 21.01.25

Readied by: 21.01.25

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সিনিয়র আমিন
স্বাক্ষরিত কর্মকর্তা

21.01.25
Nasima Khatun
Superintendent

প্রত্যয়িত অবিকল প্রতিলিপি

21.01.25

সহকারী রেজিস্ট্রার

বাংলাদেশ সুপ্রীম কোর্ট, হাইকোর্ট বিভাগ

(১৮৭২ ইং সনের ১নং আইনের

৭৬ ধারামতে ক্ষমতা প্রাপ্ত)

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