



26-05-22, 24-09-24, 24-09-24, 24-09-24, 24-09-24

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

Writ Petition No. 14474 of 2016

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. Sabur Khan

..... Petitioner

-Versus-

Bangladesh, Rural Electrification Board,  
represented by its Chairman, Nikunja-2,  
Joarshara, Khilkhet, Dhaka-1229 and others

..... Respondents

Mr. Mohammad Ali Khan, Advocate

.....for the petitioner

Mr. Sheikh Md. Zakir Hossain, Advocate

..... for the respondent No.4

*Heard on: 13.04.2022 & 27.04.2022*

Judgment on : 25.05.2022

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 be issued calling upon the  
respondents to show cause as to why the Memo No.27.12. 0929. 504.  
01.052.16.3155 dated 05.10.2016 issued by the respondent no.4  
(Annexure-L), disapproving the decision of the Appellate Authority  
dated 16.06.2016 (Annexure-K) setting aside the order of punishment  
issued on 24.05.2016 vide Memo No. 27.12.0929.504.01.024.16.1778 by

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the respondent no.4 (Annexure-I) dismissing the petitioner from his service should not be declared to have been done/ issued illegally, without lawful authority and is of no legal effect and why the respondents should not be directed to pay all arrear salary, all other attending benefits to the petitioner and/or pass such other or further order or orders as to this Court may seem fit and proper.

The facts necessary for disposal of the Rule, in brief are:

On 29.04.2007, the petitioner was appointed in the post of Assistant Junior Engineer and accordingly he joined on 09.05.2007 at Bhola Pally Biddut Samity and the authority being satisfied the performance of the petitioner on 11.11.2010 regularized him in the service with effect from 09.05.2008 for the post of Assistant Junior Engineer. The respondents being satisfied with the performance on 22.10.2013 given promotion to the post of Junior Engineer issuing fresh appointment letter fixing one year provision period and the same date the petitioner had joined therein on 13.11.2014. Subsequently, his service was regularized under the post of Junior Engineer with effect from 22.10.2014.

On 24.04.2015, the petitioner joined at Charfassion Sub-Zonal Office. After 8 months of his joining the Billing Supervisor of Bhola Pally Biddut Samity, in the month of December 2015 detect some irregularities regarding deposit of security money then he

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informed it to D.G.M, who communicated the same to G.M. then G.M on 10.12.2015 suspended the petitioner and some other employees.

In the meantime, 4 member inquiry committee, amongst them 3 A.G.M and one accountant, who hold the same status in post with the petitioner was formed and after completion, inquiry report was submitted and on 31.01.2016. On 03.02.2016. The respondent no.4 had issued show cause notice upon the petitioner asking him to reply within 7 days and on 09.02.2016. The petitioner replied the same and denied his involvement regarding the matter as the irregularities have been committed before his joining on 24.04.2015. The General Manager was not satisfied with the reply of the petitioner and on 14.02.2016 issued formal charge against him and formed 3 member inquiry committee including DGM,AGM and Assistant Accountant, who is 2 grade Junior to petitioner in the post and status asking the petitioner to reply within 10 days. Thereafter the inquiry committee after a defective inquiry with a view to harass the petitioner on 03.05.2016 submitted an inquiry report without considering the facts and all the matters came before them in inquiry and the petitioner on 25.03.2016 categorically replied the show cause denying the charge brought against him. The respondent no.4 without considering the said reply on 08.05.2016 issued final show cause notice upon the petitioner along with inquiry report and the petitioner further replied to the same.

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On 24.05.2016, the respondent no.4 without considering the inquiry report as a whole, Pally Biddut Samity Instruction 300-14, 300-17 and 300-42, Rule 40(3) of PBS Service Rule dismissed the petitioner. Against the impugned order of dismissal the petitioner on 14.06.2016 preferred an appeal before the respondent No.3 in terms of Rule-45 of Pally Biddut Samity Service Code. The respondent no. 3 in its 228<sup>th</sup> monthly meeting held on 16.06.2016, after considering the charge, inquiry report, fact, law related in terms of Rule 45(1) of Pally Biddut Samity Service Rules set aside the punishment of dismissal awarded against the petitioner, restored the service of the petitioner with all salary and all other attending benefit withholding /staying one year increment for a period of 2 years by their decision No.03/228/2016.

Finding no other alternative and efficacious remedy, the petitioner has moved this Court and obtained the instant Rule Nisi.

Respondent no.4 has entered appearance by filing affidavit in opposition.

The case of respondent no.4, in short is that the allegation against the petitioner to setting up meters by the illegal CMO, an inquiry committee was formed to find out the details of the allegations. Thereafter, on the basis of the inquiry committee he was found guilty and on 03.02.2016 a show cause notice was served upon the petitioner for some allegations and the petitioner on 09.02.2016 replied to the same. Then on 14.02.2016, a formal charge was formed against him.

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formed 3 member inquiry committee and the petitioner was given the reasonable opportunity to explain his position. The Inquiry Committee after an effective inquiry all allegations were proved against him and submitted inquiry report on 03.05.2016. Accordingly, the petitioner was given final show cause notice on 08.05.2016 and the petitioner replied to the final show cause notice, while was not accepted by the respective authority. Eighteen numbers of complain have been proven categorically in the inquiry report against him. The respondent no.4 on 24.05.2016 considering the inquiry report dismissed the petitioner from his service for committing gross misconduct, corruption, irresponsible behaviour and his involvement in such conduct which was discrediting the reputation of Pally Biddut Samity under Rules 39(1) (Kha)(5) of the Pally Biddut Samity Service Rules 1992 (Amended -2012). The petitioner had preferred an appeal against the dismissal order before the Palli Biddut Somity Board and the Samity on humanitarian ground considered his appeal to reinstate his job that was subject to the confirmation by the Board (BREB). The authority took necessary steps according to the law by applying judicial mind. The dismissal against the petitioner has been done according to Rules and Regulations of the Palli Biddut Samity Service Rules,1992 (Amended -2012).

Mr. Mohammad Ali Khan, the learned Advocate appearing on behalf of the petitioner submits that the General Manager dismissed the

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petitioner mentioning that the PBS sustained a loss an amount of Tk. 3,08,250/- but the inquiry Committee found that for this reason no financial loss was sustained by the Pally Biddut Samity. The learned Advocate next submits that the respondent No.4 without proved the allegation brought against him most illegally and very harshly awarded highest punishment of dismissal against the petitioner. He lastly submits that the petitioner had joined on 24.04.2015 at Charfassion Sub-Zonal Office but the alleged occurrence had been started from December, 2014 before the joining of the petitioner for which the petitioner is not liable, as such the impugned Memos is liable to be declared without lawful authority and is of no legal effect.

Per contra, Mr. Sheikh Md. Zakir Hossain, learned Advocate appearing on behalf of the respondent No.4 submits that the petitioner was charged for misconduct. Formal departmental proceeding was initiated against him. There was no violation of Service Rules starting from drawing up of departmental proceedings. Therefore, rule issued in the instant case is not maintainable and the same is liable to be discharged.

Heard the learned Advocates and perused the materials on record placed before us.

Admittedly the petitioner on 24.04.2015 joined as Junior Engineer at Charfassion Sub Zonal Office under Lalmohon Zonal office, Bhola Palli Bidyut Samity. Amongst all the charges against the petitioner it

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appears that in charge No.11, particularly, the petitioner did not receive the security money, application fees and membership fees from the consumers and according to the PBS instruction it is not a duty of the Junior Engineer i.e., the petitioner, herein. The authority without considering this aspect by an order imposed highest punishment against him. In terms of clause 25 and clause 26 of REB Ordinance of 1977 and sections 28 and 29 of the REB Act of 2013 without prior permission from the government has punished through a departmental proceeding which was initiated and completed by the Palli Biddut Samity Employees Service Rules, 1992 amended in 2012.

Annexure-K reveals that the respondent No.3 in his 228<sup>th</sup> meeting held on 16.06.2016, considering the charge, inquiry report, fact, law and other terms in relation Rule of 45(1) of the PBS Service Rules had set aside the punishment of dismissal award against the petitioner and restored the service of the petitioner and that being the position the petitioner is entitled to his salaries and other benefits by their decision No. 03/228/2016. For ready reference, extract of the said decision is quoted under :

... ১৬। জুনিয়র ইঞ্জিনিয়ার জনাব মোঃ সবুর খান এর বিরুদ্ধে অন্যান্য অভিযোগ সমূহ পর্যালোচনা করে দেখা যায় যে, সেই সকল অভিযোগের সহিত তাহার কোন সম্পৃক্ততা নাই, শুধু মাত্র দায়িত্ব পালন করেছেন। আফিস চালানোর জন্য নিয়মিত দায়িত্ব পালন করায় ভুল ত্রুটি কিছু থাকতে পারে তবে তাহার বে আইনি কাজ বা অসৎ উদ্দেশ্য এর কোন সম্পৃক্ততা পাওয়া যায় নাই বলে সমিতি বোর্ড মনে করে।

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তাই সর্বোপরি সমিতি বোর্ড সর্বসম্মতি ক্রমে এই সিদ্ধান্তে উপনিত হয় যে জুনিয়র ইঞ্জিনিয়ার জনাব মোঃ সবুর খান কে প্রদত্ত দণ্ড বাতিল করিয়া তাহাকে ০১ টি বেতন বর্ধন/প্রবৃদ্ধি ০২ বছরের জন্য স্থগিত করিয়া সকল প্রকার বেতন ভাতাদি সহ স্ব-পদে পূর্ববহাল করা হল। জেনারেল ম্যানেজার, ভোলা পবিস কে জুনিয়র ইঞ্জিনিয়ার জনাব মোঃ সবুর খান কে স্ব-পদে পূর্ববহাল করার জন্য বলা হল।

It is on record that the petitioner on 24.04.2015 had joined the Charfession Sub-Zonal Office but the alleged occurrence had started from December, 2014 i.e., before the petitioner had joined the post.

The learned Advocate further brought to the notice of this Court that there are 4 types of minor punishment and 5 types of major punishment mentioned in Rule 39 of PBS Service Rule, which to be imposed according to gravity of offence but the authority without considering this matter awarded highest punishment of dismissal hence the PBS Board considering this aspect very rightly amended the punishment.

From the above discussions made hereinbefore, we find merit in this Rule.

Accordingly, the Rule is made absolute.

The Memo No.27.12. 0929. 504. 01. 052.16.3155 dated 05.10.2016 issued by the respondent no.4 (Annexure-L), disapproving the decision of the Appellate Authority dated 16.06.2016 (Annexure-K), setting aside the order of punishment issued on 24.05.2016 vide Memo No. 27.12.0929.504.01.024.16.1778 by the respondent no.4 (Annexure-

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1), dismissing the petitioner from his service is declared to have been done/ issued illegally, without lawful authority and is of no legal effect.

The respondents are directed to reinstate the petitioner and pay all arrear salary and other attending benefits to the petitioner, in accordance with law within 30(thirty) days from the date of receipt of a copy of this order.

No order as to costs.

Communicate the judgment and order at once.

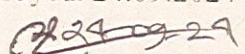
Md. Khairul Alam, J:


I agree.

Naima Haider

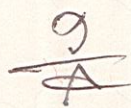
Md. Khairul Alam

Typed by: Sayed. 24.09.2024

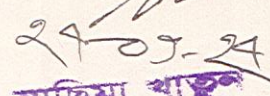
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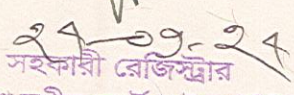
Readied by: 

  
24-09-24  
রুহুল আমিন  
প্রশাসনিক কর্মকর্তা

24.09.24

  
24-09-24  
নাইমা খায়ুন  
সুপারিনটেন্ডেন্ট

প্রত্যায়িত অবিকল প্রতিলিপি

  
24-09-24  
সহকারী রেজিস্ট্রার  
বাংলাদেশ সুপ্রীম কোর্ট, হাইকোর্ট বিভাগ  
(১৮৭২ ইং সনের ১নং আইনের  
৭৬ ধারামতে ক্ষমতা প্রাপ্ত)

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