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

WRIT PETITION NO.8865 OF 2020

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. Abdur Rahim

.....Petitioner

- VERSUS -

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

.....Respondents

Mr. B.M. Elias with

Mr. Mohammad Ali Khan, Advocates

.....For the petitioner

Mr. Shaikh Mohammad Zakir Hossain, Advocate

.... For the respondents No.1

Heard on: 14.03.2024

Judgment on: 21.03.2024

Present:

Ms. Justice Naima Haider

&

Ms. Justice Kazi Zinat Hoque

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 as to why the Memo No.27. 12.0000.
030.98.001.18.78 dated 20.10.2020 issued by the respondent No. 2
(Annexure-I) dismissing the departmental appeal and thereby affirming
the official order vide Memo No. 27.12.0000.1586.568.02.012.20.2763
dated 10.09.2020 issued by the respondent No. 6 (Annexure-H)

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removing the petitioner from his service should not be declared to have been issued without lawful authority and is of no legal effect and /or pass such other or further order or orders as to this Court may deem fit and proper.

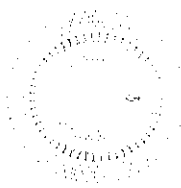
The facts of the case as stated in the writ petition may be summarized as follows:

On 16.08.2000, the petitioner appointed in the service of the Rural Electrification Board (in short, 'the REB') as Apprentice Lineman. On 16.08.2011, service of the petitioner was made regular. On 18.11.2007 the petitioner got promotion to the post of Lineman Grade-1 and transferred to Chattogram Palli Bidyut Samity-3, through office order dated 27.11.2008 his service was regularized and by office order dated 09.04.2016 he was promoted to the post of Line technician and through office order dated 01.04.2017 his service was regular and since then he had been serving at Chattogram Palli Bidyut Samity -3 to the post of Line Technician.

While the petitioner had been serving as Line Technician at Chattogram Palli Bidyut Samity-3 on 18.01.2020 an accident was took place while maintaining work was going on and Line Technician Md. Alamgir Hossain was died by electrification, for which the petitioner along with 4 others were suspended and attached with BREB Cumilla by order dated 20.01.2020.

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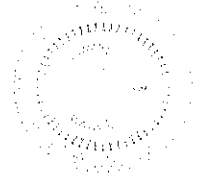
The respondent No.1 has entered appearance in the Rule by filing an affidavit in opposition. The case of the respondent no.1 as stated in the affidavit in opposition may be summarized as under :

The petitioner along with 2 others were given a task to maintain a 33KV disconnected switch vide Service Order dated 18.01.2020. Prior to the commencement of the said service order, the petitioner was well briefed about the scheduled work along with the safety measures that needed to be followed by the petitioner while working on the site. Moreover, directions were given by the higher authority on the site as well as ensure safety protocols. But the petitioner along with 2 others did not heed into the details, as such carelessly started working on the site. Hence the incident took place by the fault of the petitioner and as a matter of fact, line technician Md. Alamgir died by electrification. The petitioner was at fault because of the non-compliance with the service order let along his deliberate attempt in disobeying the orders of his higher authority. It is not an ordinary accident; rather it was gross negligence and misconduct portrayed by the petitioner which led to the incident.

The incident tarnished the image of the respondent no.1, moreover the petitioner was a fault as there were elements of gross negligence let along misconduct illustrated by him. The petitioner was charged with misconduct, gross negligence and for tarnishing the image of the respondent no.1 in pursuant to sections 38(1)(a),(d),(f) of the Palli

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Biddyut Samity Employee Service Code 1992. He was temporarily suspended and attached to BREB Cumilla Zone (Head Office) in accordance with section 43(1) of Palli Biddyut Samity Employee Service Code 1992(as amended in 2012).

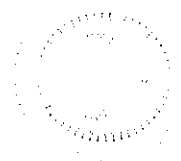
On 27.01.2020 show-cause notice was served upon the petitioner as per section 40(1) of the Service Code,1992 and he reply the same on 05.02.2020 and formal charge was framed against him under section 40(1)(f) of the Service Code,1992 due to violation of section.38(1)(a)(d) and (f) of the Service Code.

The respondent no.1 formed a competent inquiry committee and after inquired the matter, submitted report and on 10.09.2020 removed the petitioner from his service under section 39(1)(kha)(3) of the Service Code,1992. The petitioner as a consequence appealed on 16.09.2020 against the said punishment and the appellate authority dismissed the appeal on 20.10.2020.

When the case was taken up for hearing, the learned Advocate for the petitioner, at the very outset, submits that the respondent no.3 initiated departmental proceedings, framed charge, final show cause notice and finally removed the petitioner, which is violation of principle of natural justice of none should be judge of his own cause. which is colourable exercise of power. The learned counsel for the petitioner further submits that the authority violating Rule 40(3) of the PBS Service Rule form and high power inquiry committee who without

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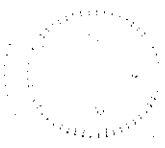
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following the provision of inquiry in terms of Rule 42(2) of the PBS Service Rule submitted a defective inquiry report, in which the petitioner did not get chance of defending himself properly, which is violation of principle of natural justice. He next submits that the petitioner has been serving under several Palli Bidyut Samity since 2000 and he performs his duty sincerely, honestly with satisfaction of all. The learned Counsel lastly submits that the respondents with a malafide intention very harshly awarded highest punishment of removal, which is violation of principle of proportionality.

On the other hand, the learned Advocate for the respondent No. 1, submits that the petitioner was charged with misconduct, gross negligence and tarnishing the image of the respondent no.1. He next submits that there was no violation of Service Rules starting from drawing up of departmental proceedings to rejection of departmental appeal. He lastly submits that the petitioner not only ignored the higher authority's command but also showed gross negligence and misconduct on his part resulting in a death of a team member. Therefore, rule issued in the instant case is not maintainable and the same is liable to be discharged.

Heard the learned Advocates, affidavit-in-opposition filed by the respondent no.1 and perused the materials on record placed before us.

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The only question before us, as argued by the learned Advocate for the petitioner, is whether the penalty of dismissal is disproportionate to the offence committed by the petitioner.

The crux of the allegation against the petitioner is that due to his misconduct and negligence of duty, the authority concerned has dismissed the petitioner though no punishment was specified in the charge sheet as required by the Regulation 40, 41(2), 42 & 45 of the Palli Bidyut Samity Employees Service Regulation 1992 (as amended 2012). It is also an admitted fact that the petitioner did not get chance of defending himself properly. We are not in agreement with the submission of the learned counsel for the respondent no.1 that the respondents were not required to give an opportunity to the petitioner to defend himself properly before the inquiry committee.

We note that in the Palli Bidyut Samity Service Code there are 4 types of minor and 5 types of major punishment but the respondents awarded highest punishment of removal of the petitioner for an accident, in which he is not responsible. The show-cause notice, charge, final show-cause notice, removal order has been issued against the petitioner with the approval of the Chairman, who is the Chief executive of the authority, which proves that at the consent of the Chief Executive departmental proceedings was initiated against him with a view to remove the petitioner. The respondents removed the petitioner without form any opinion of his own.



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While the Court adjudicates the issue as to proportionality of penalty awarded by the disciplinary authority, it has to weigh all factors, like nature of charges proved against, the past conduct, penalty imposed earlier, if any, nature of duties assigned having due regard to their sensitiveness, exactness expected of and discipline required to be maintained and the establishment where the delinquent works (Director General RPF vs. Sai Babu, AIR 2003 SC 1437; State Bank of Hyderabad vs. P. Kata Rao, (2008) 15 SCC 657).

In Noharlal Verma N.vs. District Cooperative Central Bank Ltd., AIR 2009, SC 664, the Indian Supreme Court held that while exercising power of judicial review, the Court will not substitute its own judgment for the decision of the disciplinary authority unless:

- (i) the order shocks the conscience of the Court;
- (ii) no reasonable man would impose such punishment;
- (iii) the decision maker must have taken leave of his senses.

It is settled principle of law that the punishment or penalty to be imposed must commensurate with the gravity of the misconduct. Although the choice and quantum of punishment is within the jurisdiction and discretion of the authority, yet it must suit the offence and “it should not be vindictive or unduly harsh” nor “so disproportionate to the offence so as to shock the conscience and amount in itself to conclusive evidence of bias” (Ranjit Thakur vs. Union of India, AIR 1987 SC 2386). We have no hesitation to hold that in the instant case, the penalty is disproportionate and too harsh.



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Having regard to the attending facts, circumstances and laws discussed above, we are of the view the dismissal order is unduly harsh, highly disproportionate and shocking to the conscience. Hence, the penalty of dismissal dated 10.09.2020 (Annexure-H) is set aside and instead lesser penalty by stoppage of 2(two) increments are awarded to the petitioner. This penalty, in our view, is commensurate with the gravity of the offence, the surrounding circumstances and the mitigating factors which we have already discussed.

The respondents are directed to reinstate the petitioner in the service within 03(three) months from the date of receipt of a copy of this Judgment and Order. However, the period of absence from the date of dismissal order (10.09.2020) to the date of judgment (21.03.2024) shall be treated as extra ordinary leave without pay.

With the above observations and directions, the Rule is disposed of.

No order as to costs.

Communicate the judgment and order at once.

Naima Haider

Kazi Zinat Hoque, J.

I agree

Kazi Zinat Hoque

Typed by: Sayed. 02.10.2024

Read by:

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Readied by:

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সহকারী রেজিস্ট্রার

বাংলাদেশ সুপ্রীম কোর্ট, হাইকোর্ট বিভাগ
(১৮৭২ ইং সনের ১নং আইনের
৭৬ ধারামতে ক্ষমতা প্রাপ্ত)