

07.03.2021, 07.03.2021, 07.03.2021, 07.03.2021, 07.03.2021

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

WRIT PETITION NO. 6866 OF 2016

IN THE MATTER OF:

An Application under Article 102(2)(a)(i)(ii) of
the Constitution of the People's Republic of
Bangladesh.

AND

IN THE MATTER OF:

Mst. Asma Khatun

..... Petitioner

VERSUS

Government of Bangladesh and others

..... Respondents

Mr. Syed Mohideul Kabir, Advocate

... For the Petitioner

Mr. Shaukh Mohammad Zakir Frossain, Adv.

... For the Respondent No. 6

Heard on: 17.6.2019, 7.7.2019, 9.7.2019, 9.7.2019 and
11.7.2019

Judgment on: 12.11.2020

Present:

Mr. Justice Syed Refaat Ahmed

And

Mr. Justice Md. Iqbal Kabir

SYED REFAAT AHMED, J.-

This Rule Nisi was issued on 13.7.2016 calling upon the

Respondents to show cause as to why rules 40 and 43 of ভোলা পরী বিহু

সমিতি কর্মসূচী চুক্তী বিধি, ১৯৯২ (সংশোধিত, ২০১২ ইং) modified vide resolution

No. 12495 স্মারক নং-পরিবো/সচিব. (সেঃ স ৪৯২)/২০১২/৪২২ dated 18.11.2012

(Annexure-"E-1") are not inconsistent with section 3(1) of সংসদসভা স্ম

আইন, ২০০৬ (Act 42 of 2006) and should not be declared *ultra vires* under

Article 7(2) of the Constitution of the People's Republic of Bangladesh

and as to why the letter of suspension from the service issued by the

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“দেশস্বৈর্যের স্বপথ নিল, দুর্নীতিকে বিনাশ দিল”



Respondent No. 6 vide Memo No. 27.12.0929.504.01.013.15.4066 dated 23.12.2015 (Annexure-"A") and letter of dismissal issued by the Respondent No. 6 vide Memo No. 27.12.0929.504.01.024.16.1777 dated 24.5.2016 (Annexure-"G") should not be declared to have been passed without lawful authority and are of no legal effect and/or such other or further order or orders passed as to this court may seem fit and proper.

The instant Writ Petitioner Asma Khatun entered into the service of the Bangladesh Rural Electrification Board (BREB) and joined in the Pirojpur Pally Biddyut Samity (PBS) on 3.3.1989.

It so transpired that on 8.2.2004 the General Manager of Pirojpur PBS sent a Show Cause Notice to the Petitioner (then working as a Bill and Cash Supervisor) regarding billing irregularities. The Pirojpur PBS authority at this instance wanted to know from her within seven working days from the receipt of that Show Cause Notice why Tk. 1,22,471/- would not be deducted from her allowance for a specified billing irregularity constituting a punishable offence under the applicable service code. The response consequentially elicited from the Petitioner proving to be unsatisfactory, the General-Manager of Pirojpur PBS on 23.5.2004 informed the Petitioner of the stoppage of her তখন বৃদ্ধি or salary increase temporarily for a year in keeping with the service code given that her negligence had caused the PBS to suffer financial and reputation loss. On 30.9.2004 the Petitioner in reply, to the letter dated 23.5.2004 sought to be absolved of the allegations brought by providing a supporting explanation.

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“সংশয়ের উপস্থিতিতে দুর্নীতিকে বিচার দিন।”



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The records indicate that on several dates thereafter, i.e., on 6.8.2005, 28.3.2006 and 3.12.2006 the Assistant General Manager, Firojpur PBS addressed "advisory letters" to the Petitioner on one ground on the other pointing to the fact that her service record was far from exemplary.

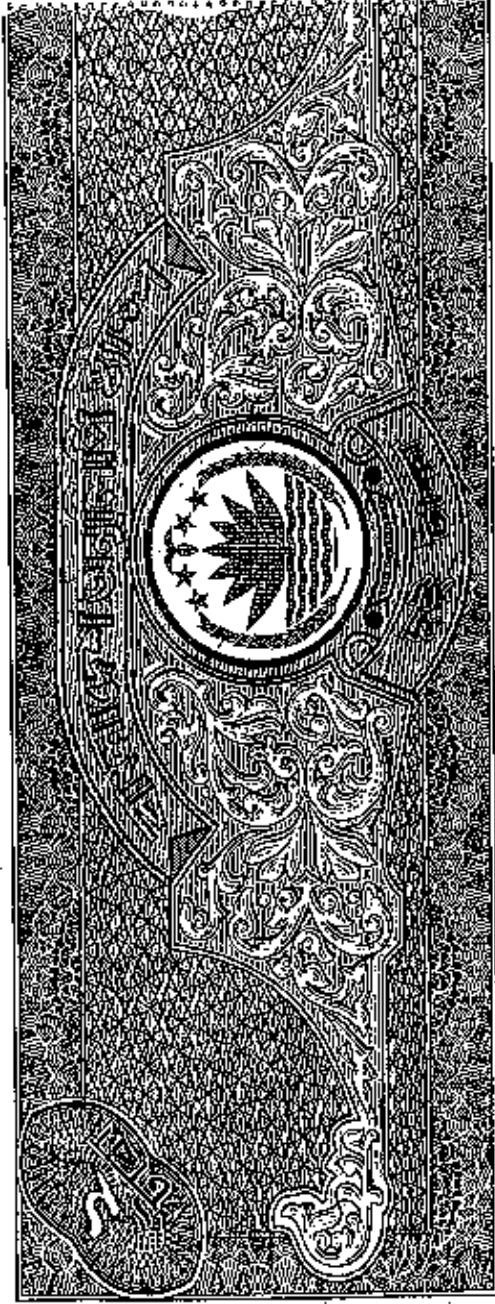
On 19.4.2007 the instant Writ Petitioner was transferred to Bhola PBS as Billing Supervisor. Here as well from 19.6.2007 to 27.3.2013, and as the Supplementary Affidavit-in-Opposition of 27.6.2019 of the Respondent No. 6, General Manager, Bhola PBS attests to, there followed an uneasy relationship between the Petitioner and the Bhola PBS marked by accusations leveled at and warnings, "advisory letters" and show cause notices issued to the Petitioner on no less than eight occasions by the said Respondent No. 6. The documents annexed with the Supplementary Affidavit-in-Opposition are also in evidence of the opportunity given to and availed of by the Petitioner to answer to allegations and accusations variously of illegal acts committed, acting irresponsibly and without due care, negligence and professional misconduct. It is on at least one such occasion that the Petitioner on 15.10.2012 replying to a Show Cause Notice dated 8.10.2012 acknowledged lapses and mistakes made in the discharge of her responsibilities overall as a Billing Supervisor and sought forgiveness.

Matters evidently, however, came to a head in 2015.

In what had by now become commonplace and a fairly routine affair, on 6.6.2015 the Respondent No.6 issued a Show Cause Notice to the Petitioner regarding overall failure on her part to streamline the

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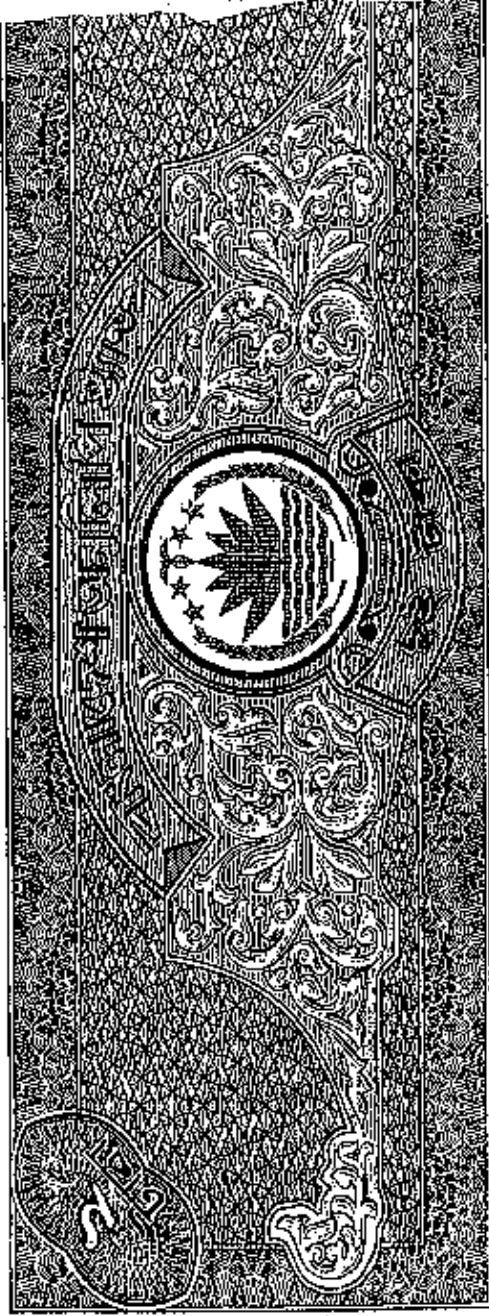
“দেশপ্রেমের অপথ শিল্প, দুর্নীতিকে বিদায় দিন”



meter reading process and the consequential billing mechanism as also to efficiently and with care oversee and manage the work of subordinates. The Petitioner's reply of 14.6.2015, as had by now become the norm, spoke of commitments to address all lapses and remain vigilant against the repetition of mistakes on her part. Notably further, and as had by now also become a common feature of the Petitioner's replies, this reply was also accompanied by an admission of her lapses and an apology. But this time around the Bhola, PBS was not content to leave the matter at that and went a step further to express a heightened sense of displeasure with the Petitioner's lack of efficiency and competence. Dissatisfied with the Petitioner's explanation and expression of contrition of 14.6.2015 the Respondent No.6 issued a strongly worded warning on 6.7.2015 placing the Petitioner on notice on an express and categorical terms of the possibility of harsh administrative measures being adopted against her should she not guard against future negligence in performing her duties.

In December 2015 the Bhola PBS authority was alerted to widespread irregularities in electricity connections given. The problem arose particularly concerning Customer Meter Orders (CMO) being prepared and completion of work thereunder shown in different customers' names in different areas and on different dates but under the same Contract Demand (CD) number. Accordingly, on 10.12.2015 an inquiry committee was formed to investigate into such irregularities regarding the same CD number appearing in such different CMOs.

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However, during the course of the investigation the Petitioner was perceived to impede and obstruct the unearthing of essential information through her general lack of cooperation and by resorting to compelling her subordinates to be similarly obstructionist. As a result, the Petitioner was temporarily suspended by the Respondent No. 6 and attached to the Head Office of Bhola Sadar PBS vide the impugned memo issued on 23.12.2015. Further, as per পল্লী বিদ্যুৎ সমিতি কর্মচারি চাকুরিবিধি, ১৯৯২ (সংশোধিত ২০১২) or the Palli Biddyut Samity Karnachari Chakuri Bidhi, 1992 (amended in 2012). But the Petitioner was assured nevertheless of availability of certain financial benefits during such period of suspension. Predicated on the above and as an immediate follow-up to the Petitioner's temporary suspension, on 24.1.2016 the Respondent No.6 issued a Show Cause Notice to the Petitioner citing lapses of duty in her supervisory capacity and general lapses in meter reading, billing and detecting payments by commercial users of bills at residential rates as have caused the PBS to suffer substantial financial losses. Accordingly, the Bhola PBS sought explanations from the Petitioner within seven working days as to why 5% of the cited financial loss shall not be recovered from her. To this the contrite Petitioner on 31.1.2016 replied in admission of her mistakes seeking forgiveness.

It so transpired that the inquiry committee formed on 10.12.2015 submitted its extensive investigation report on 31.1.2016. Premised on the report, on 4.2.2016 the Respondent No. 6 sent a preliminary Show Cause Notice to the Petitioner citing fifteen allegations against her to which the Petitioner sent her reply on 13.2.2016. That reply proving to

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“শেখহাফিজুর রহমান মিন, দুর্নীতিকে বিদায় দিন”



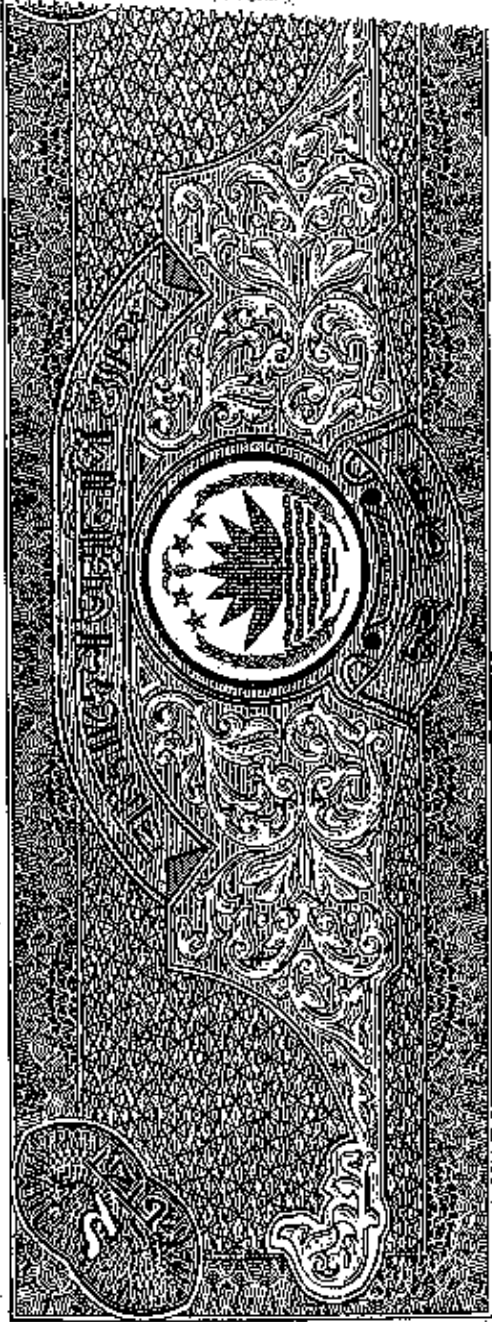
be unsatisfactory, on 16.2.2016 formal charges were brought against the Petitioner by reference to rule 38(1) (ka),(kha), (ga), (gha) and (cha) of the 1992 Bidhi (amended in 2012). By the said communication bearing the charges brought, the Petitioner was also put on notice of the formation of yet another inquiry committee under the relevant service code and provided an opportunity to submit her written statement regarding the charges brought and to be heard along with further substantiating and supporting evidence produced by her.

To this, on 28.2.2016 the Petitioner gave her reply. This led to the final Show Cause Notice to be issued on 5.5.2016 citing fifteen specific allegations brought against the Petitioner and seeking her explanation or regarding the same as had been found to be proven against her by the findings of the inquiry committee formed for probing into the matter. Thereafter, on 12.5.2016 the Petitioner replied to that final Show Cause Notice which was found to be unsatisfactory and unacceptable to absolve her of the charges brought and proven. Resultantly, on 24.5.2016 the Petitioner was dismissed from her service vide the impugned memo of that date.

The Petitioner submits that she was initially suspended arbitrarily without the assignment of any prior notice and in violation of the principles of natural justice. It is also her contention that the temporary suspension is tantamount to a punishment imposed. In a similar vein the Petitioner submits that the final dismissal order issued under the কোশা পত্রী

বিদ্যায় সশিডি কর্মচারী চাকরীবিধি, ১৯৯২ (সংশোধিত, ২০১২ ইং) is in excess of

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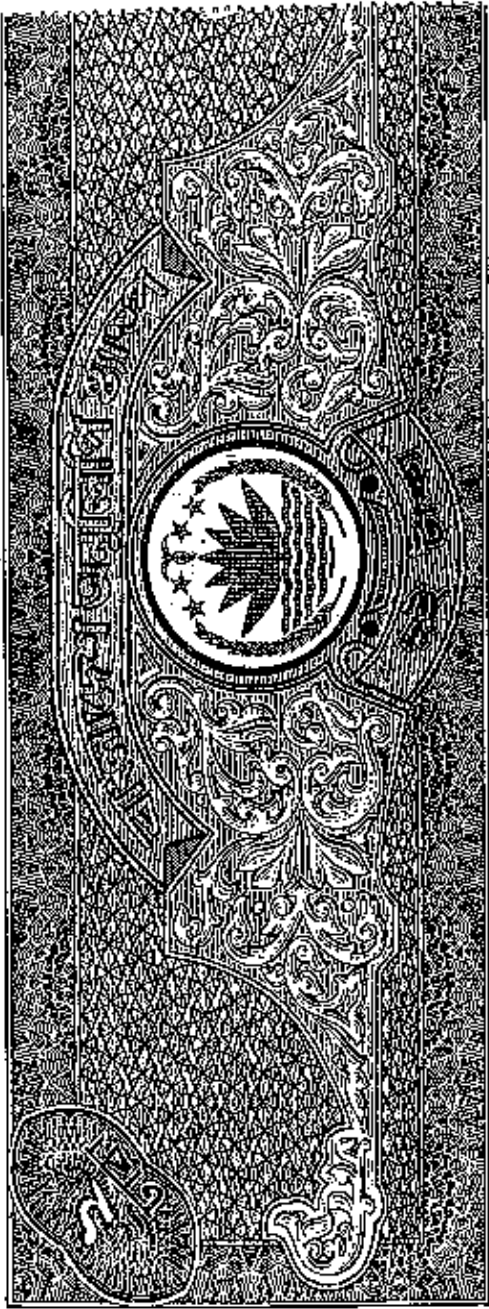


jurisdiction and hence tainted by illegality. The Petitioner's additional submission is that she is a worker within the meaning of section 2(65) of the Bangladesh Labour Act, 2006 and as such she should be treated as such and in accordance with such law.

In response, the Respondent No. 6, General Manager, Bhola PBS specifically states that the Petitioner as a Billing Supervisor of Bhola PBS used four hundred and eleven forged CMOs and executed these to set up new connections and install electric meters in blatant of her authority. Such acts, the Respondent No. 6 contends, have violated existing rules of service and conduct and consequently the PBS has incurred considerable financial losses. It is against this backdrop that an inquiry committee was formed on 10.12.2015 to delve into the allegations made. The committee found that the alleged acts had taken place between 18.4.2014 to 23.12.2015 while the Petitioner was working as a Billing Supervisor at billing Section of Lalmojon Zonal Office. It is also the contention of the Respondent No. 6 that the Petitioner having resorted to devices at impeding the entire investigation process as already earlier noted, she was suspended and attached to the Head Office of Bhola PBS on 23.12.2015 in accordance with rule 80(১)(গ) of the পঞ্জী বিদ্যুৎ সমিতি কর্মচারী চাকুরী বিধি, ১৯৯২ (সংশোধিত ২০১২). Rule 80(১)(গ) provides that

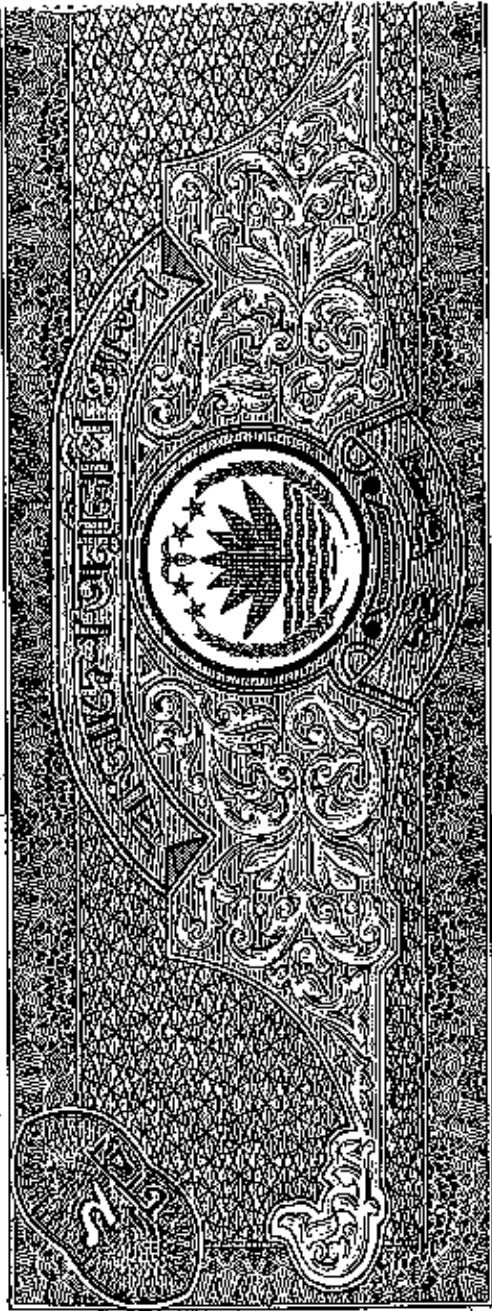
"(১) ধারা ৩৮ এর অধীনে কোন কর্মকর্তা/কর্মচারীর বিরুদ্ধে আনুষ্ঠানিক অভিযোগনামা (Formal Charge) প্রদান করতঃ বিতর্কীয় কার্যধারা সূচনা করার ক্ষেত্রে কর্মচারী- (গ) কর্তৃপক্ষ প্রয়োজন বা নীতিনির্নয়নে করিলে তাহাকে সাময়িকভাবে বরখাস্ত করতঃ পবিস বা পঞ্জী বিদ্যুতায়ন বোর্ডের কোন দপ্তরে তাহাকে সংরক্ষণ করিতে পারেন"

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The General Manager, Bhola PBS submits accordingly that suspending the Petitioner and attaching her to the head office was wholly permissible under rule ৪০(১)(গ) of the 'শুল্ক বিদ্যুৎ মনিফিস্ট করফরমী চাকুরী বিধি, ১৯৯২ (সংশোধিত ২০১২) at the concerned authority's discretion to facilitate the initiation of departmental proceedings against her in the facts and circumstances upon the framing of formal charges against her. Consequentially, specific fifteen allegations were brought against the Petitioner by the inquiry committee headed by the General Manager, Bhola PBS and the same were notified to the Petitioner vide letter dated 24.5.2016. These included that the Petitioner had unlawfully directed her Billing Assistants not to issue CMOs and the Petitioner started to issue CMOs herself from May, 2015 onwards. Moreover, the Petitioner was charged with wrongfully earning Tk. 5,000 to Tk. 10,000 per new power supply connections by issuing forged CMOs. The Respondent No. 6 further states that the Petitioner had withdrawn seventeen CMO books in July, 2015 and twenty CMO books in August, 2015 which the Petitioner had used to issue forged CMOs and to provide illegal connections in different areas of Char Fashion Upazilla. In addition to that, on 6.9.2016 and 7.9.2015 the Petitioner had directed one of her Billing Assistants to record fifty-eight forged CMO Wiring Inspections and Executions in her register. As a consequence, the Petitioner had caused institutional financial loss of Tk. 3,08,250/- by issuing and executing four hundred and eleven forged CMOs. Given these circumstances, the Respondent No. 6 submits that, therefore, it is not true that the allegations/charges

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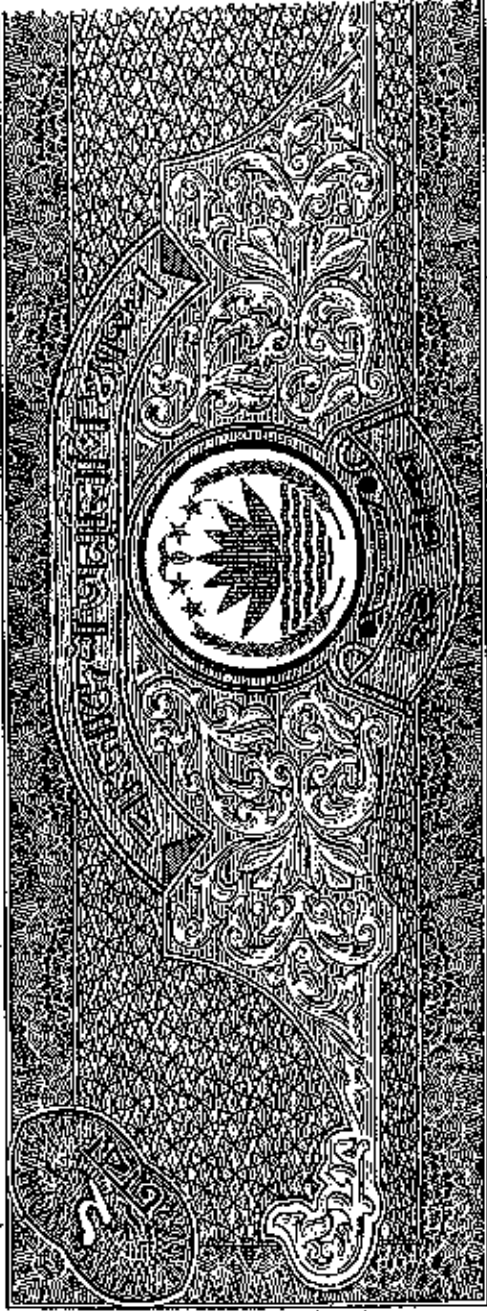


made against the Petitioner were in any sense, the product of an arbitrary and opaque process or that they were in any way unspecific and vague.

The Respondent No. 6 further states that the Respondents started the investigation by serving upon the Petitioner a Show Cause Notice vide letter dated 4.2.2016 and sought her reply within seven days from the service of the Notice in accordance with rule 80(১)(ঙ) of 'পঞ্জী বিদ্যুৎ সমিতি কর্তারী চাকুরী বিধি, ১৯৯২ (সংশোধিত ২০১২). Consequently, the Petitioner replied to the Show Cause Notice vide a letter dated 10.2.2016 and after carefully considering the aforesaid response the Respondent No. 6 found that the Petitioner had failed to provide any logical explanation to extricate herself from the allegations brought against her. Thereafter, formal charges were framed against the Petitioner under rule 80(১) (ক), (খ), (গ), (ঘ) and (ঙ) of the 'পঞ্জী বিদ্যুৎ সমিতি কর্তারী চাকুরী বিধি, ১৯৯২ (সংশোধিত ২০১২) and an inquiry committee comprising of three members was formed in accordance with rule 80(৩) of the 'পঞ্জী বিদ্যুৎ সমিতি কর্তারী চাকুরী বিধি, ১৯৯২ (সংশোধিত ২০১২).

The Respondent No. 6 highlights further that the Petitioner was informed about the formation of the inquiry committee vide letter dated 16.2.2016 and was asked to provide a written response to the allegations brought against her within ten days from the service of the notice. Though the Petitioner vide letter dated 28.2.2016 replied to the Show Cause Notice, it was found to have no substance and was instead determined to be devoid of logical explanations regarding the allegations brought against her. Moreover, subordinates working in the office of the

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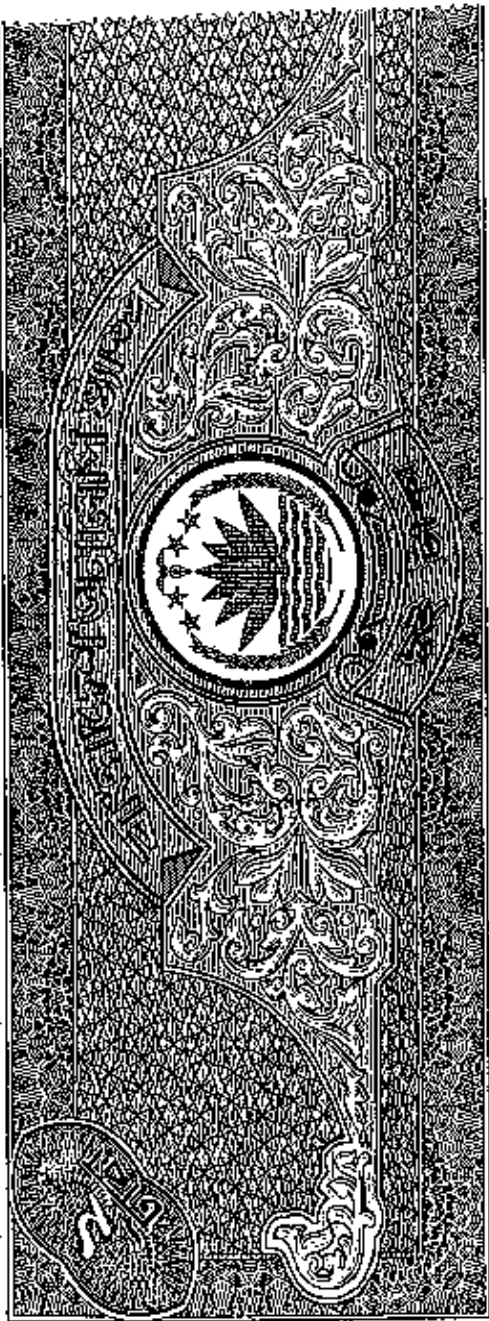


Respondent No. 6 had also testified regarding the allegations against the Petitioner and as such the committee found that all allegations against the Petitioner had been established to be true and hence the Petitioner was given a final Show Cause Notice on 5.5.2016 in accordance with rule 83(2)(g) of the 'পল্লী বিদ্যুৎ সমিতি কর্তারী চাকুরী বিধি, ১৯৯২ (সংশোধিত ২০১২) and the Petitioner was asked to reply to the same within ten days of its receipt. Thereafter, the Petitioner's reply of 12.5.2016 was found to be a mere replication of her previous replies and hence the said reply was found inadequate and unsatisfactory. As a result, a letter of dismissal with effect from 24.5.2016 was served on the Petitioner by the Respondent No. 6. Predicated on these facts, the Respondent No. 6 for submits, it is not true that the entire process of dismissal was unlawful given that all the procedures under 'পল্লী বিদ্যুৎ সমিতি কর্তারী চাকুরী বিধি, ১৯৯২ (সংশোধিত ২০১২) were followed by the Respondent No. 4 in the dismissal process.

It is emphasized in this context that the Petitioner intentionally impeded the functioning of the inquiry committee and, therefore, the inquiry could not be feasibly initiated and completed without suspending the Petitioner as she tried to jeopardize the inquiry by unduly influencing co-workers and subordinates. Hence, and unavoidably so, it was necessary to suspend the Petitioner to complete the inquiry process free of further impediment and the same was done in accordance with rule 80(5)(g) of পল্লী বিদ্যুৎ সমিতি কর্তারী চাকুরী বিধি, ১৯৯২ (সংশোধিত ২০১২). Premised on these facts and predicated on a process playing out against full compliance with the applicable rules of procedure the final dismissal

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“সংশোধিত পত্রিকায়, দুর্নীতিকে বিদায় দিন”



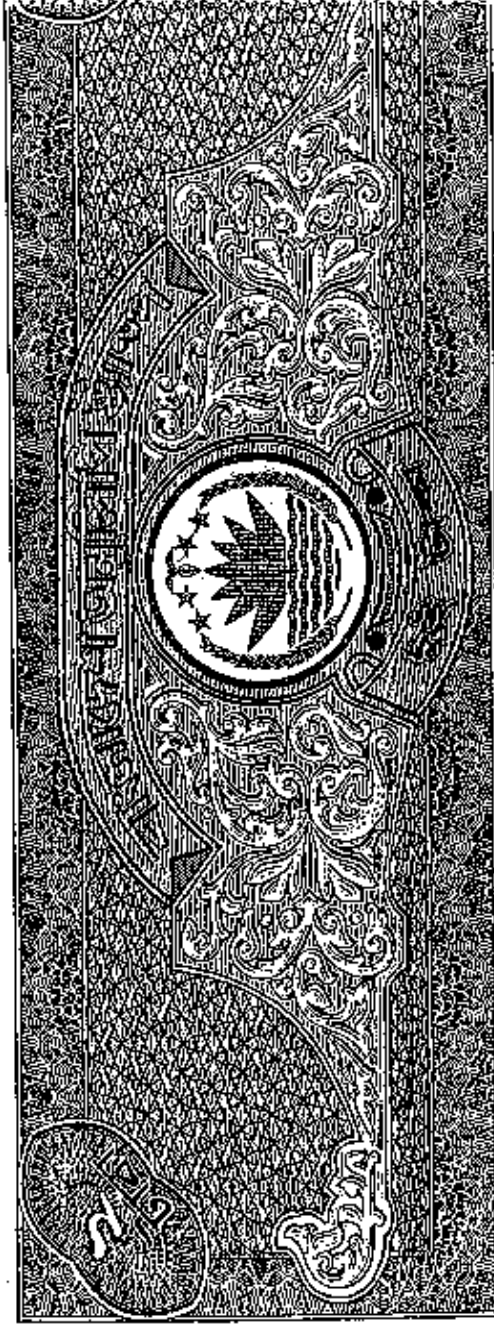
was issued in accordance with the rule ১১(১)(খ) (৫) of শ্রমী বিতরণ সন্থিত

কর্তব্যী চক্রী বিধি, ১৯৯২ (সংশোধিত ২০১২).

Mr. Shaikh Mohammad Zakir Hossain, the learned Advocate for the Respondent No. 6, has at this juncture taken up the issue of the Petitioner's claim to be treated as a worker as understood within the precincts of Labour Law. Mr. Hossain argues such stance adopted by the Petitioner to be absolutely misconceived, deliberately misleading and calculatingly vague. Mr. Hossain explains that section 2(65) of the Bangladesh Labour Act, 2006 provides that "worker" means any person including an apprentice employed in any establishment or industry, either directly or through a contractor, [by whatever name he is called,] or to do any skilled, unskilled, manual, technical, trade promotional or clerical work for hire or reward, whether the terms of employment are expressed or implied, but does not include a person employed mainly in a managerial, administrative [or supervisory] capacity" and, therefore, it is abundantly clear that the Petitioner is/was not a "labour" or worker under section 2(65) of the Bangladesh Labour Act, 2006 as claimed since her official terms of reference and her role as a Billing Supervisor would certainly amount to the assumption of responsibilities and discharge of duties in a "managerial capacity".

Mr. Hossain draws this Court's attention further to the fact that in the course of determining the constitutional validity of section 31 of the Rural Electrification Board Act, 2013 as challenged in the case of *Ma. Tarikul Islam and Others vs. Government of Bangladesh and Others* reported in 1 LNJ (2019)313 this Court, in that earlier instance, had

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opportunity to delve into the question of the claimed status of "workers" put forward by BREB/PBS employees. In that case, a Division Bench of this Court comprising of one of us (i.e., Mr. Justice Syed Refaat Ahmed) and Mr. Justice Md. Salim discharged the Rule Nisi holding that an employee of BREB and/or PBS is not a worker as per the definition of section 2(65) of the Bangladesh Labour Act, 2006 as determined by the very nature of the BREB/PBS which at their very institutional core and by reason of their operational mechanism are not intended to fall *per se* within the ambit of the Act of 2006. Therefore, Mr. Hossain argues that it stands to reason, and as supported by the aforesaid Judgment, that this instant Writ Petitioner was/is not a worker as per the definition provided in section 2(65) of the Bangladesh Labour Act, 2006.

It is submitted further that the instant Petitioner was temporarily suspended on 23.12.2015 and that temporary suspension does not mean punishment as per the decision in *Abdul Hashim vs Chairman, National Board of Revenue Dacca and Others* reported in 32 DLR, HCD, 55.

Revisiting the *ratio decidendi* in the *Md. Tarikul Islam Case*, we note that section 31 of the Rural Electrification Board Act (*Palli Bidyutayan Board Act*). 2013 provides that "হেড, ইন্সপেক্টর নোকার, বাগিচিকার হিসাব, কারখানা শ্রম ইত্যাদি হিসাবে ব্যাখ্যা না করা-অসম্ভব ব্যাপক অন্যান্য পোষ আইন শরহই থাকুক না কেন, এর আইন ২০০৬ (২০০৬ সালের ৪২ নং আইন) অনুযায়ী হেড, মনিডিং বা এই আইনের ধারা ৬ (ট) এ বর্ণিত কোল সংগঠন বা কোম্পানীতে লোকাল, বাগিচিকার হিসাব, কারখানা, শ্রম, বাগিচিকার প্রতিষ্ঠান বা শ্রম প্রতিষ্ঠান হিসাবে ব্যাখ্যা করা যাইবে না". The relevant portion of the said Judgment reads as follows:

"কোম্পানীটির শ্রমিক নিন, দুর্নীতিকে বিচার নিন"



"The contradicting features are above highlighted to emphasize that neither the BREB nor any PBS under it is either an establishment or an industry in any sense as per definitions given in the Act of 2006. It is further deduced from the above that BREB/PBS employees like the Petitioners are not workers as per definition given in section 2(65) of the Act of 2006 as they do not work in any establishment or industry in the sense of the section 2 definitions of the Act of 2006."

Mr. Hossain satisfactorily emphasizes, therefore, that according to section 31 of the Rural Electrification Board Act (Palli Bidyutayan Board Act), 2013 and following the Judgment in the *Md. Tarikul Islam Case*, any employee of the BREB and/or PBS is not a worker under section 2(65) of the Bangladesh Labour Act, 2006 and hence, the question of inconsistency of rules 40 and 43 of জালা শ্রমী নিয়ম সমিতি কর্তৃক বিধি, ১৯৯২ (সংশোধিত, ২০১১ ই.) with section 3(1) of the Act of 2006 as contended by the Petitioner is unjustified and baseless and, hence, the Rule is liable to be discharged.

²⁰ Section 3(1) incidentally reads thus:

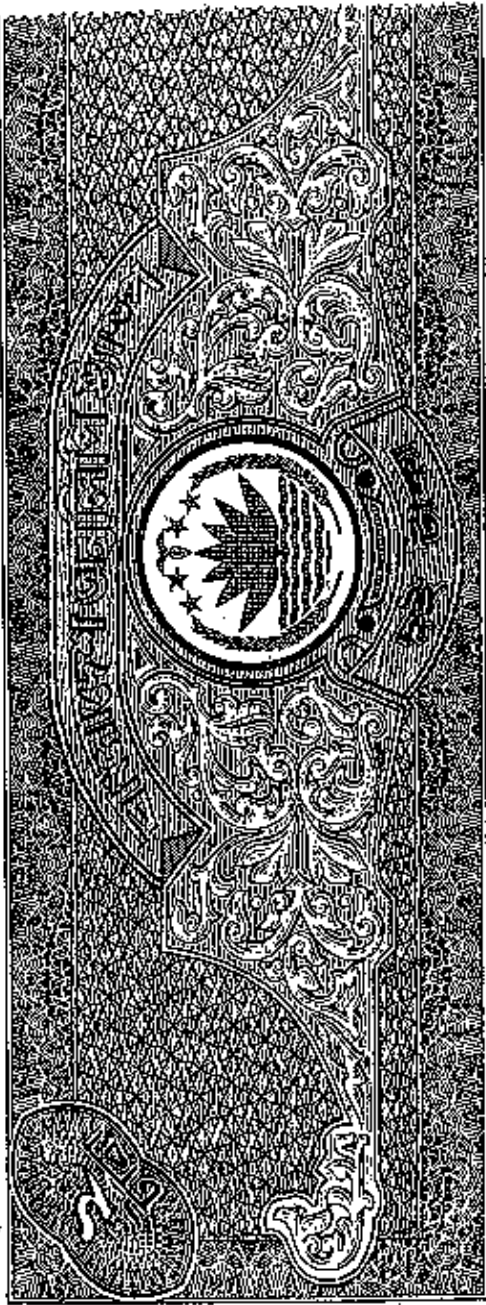
"3. Conditions of service.-(1) In every establishment employment of workers and other matters incidental thereto shall be regulated in accordance with the provisions of this Chapter:

Provided that any establishment may have its own service rules regulating employment of workers; but no such rules shall be less favourable to any worker than the provisions of this Chapter[.]

[Provided further that the establishments to which this Act does not apply shall not make any policy, rule or house policy providing benefits less than the benefits provided in this Act.]"

We are inclined, for reasons evident as above, to accept Mr. Hossain's substantive arguments in this regard and find the Petitioner's contentions to the contrary to be untenable in law.

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Reverting to the core issues of the case, Mr. Hossain convincingly argues that rules 40 and 43 of the Rules and procedures in relation to the framing of formal charges against an employee, forming an inquiry committee as well as suspending an employee temporarily should be required and become necessary on reasonable grounds. It is further stated that the said rules and procedures of the respondent are evidenced in long-standing and entrenched practices. Moreover, Mr. Hossain argues that the Petitioner has miserably failed to show how and which part of these rules are inconsistent with the Constitution itself to justify the same in any way being declared *ultra vires* under Article-7(2) of the Constitution and, accordingly, the Rule is liable to be discharged.

Upon a consideration of all filings, pleadings of the respective parties and the extensive submissions on fact and law as made by the learned Advocate for the Petitioner, Mr. Syed Mohidul Kabir and the learned Advocate for the Respondent No. 6, Shaikh Mohammad Zakir Hossain this Court has arrived at the findings as laid down below.

It is found that there was no procedural impropriety or irregularity in relation to the suspension of the Petitioner. The Petitioner evidently forged Customer Meter Orders (CMOs) to issue illegal electricity connections and as such deceitfully violated the rules and consequently an inquiry committee was formed on 10.12.2015. However, not only did the Petitioner deliberately not co-operate with the inquiry committee rather she caused hindrances along the way including threatening her

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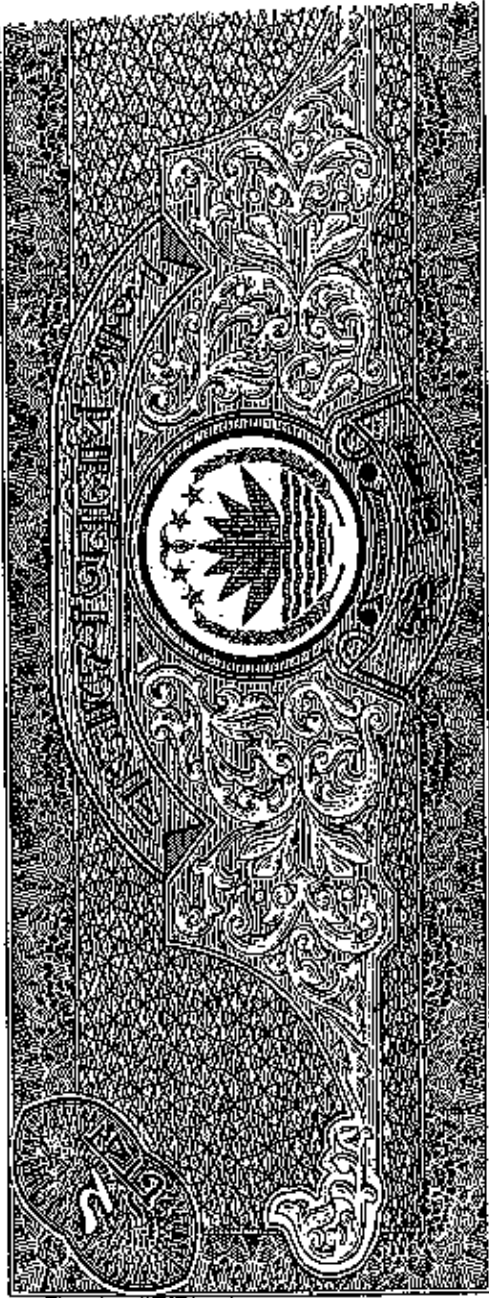
“দেশপ্রেমের অপরাহ্ন নিন, দুর্নীতিকে বিচার নিন”



subordinates into not co-operating with the committee. Therefore, as recommended by the inquiry committee and with a view to getting to the bottom of the matter and unearthing the truth and finding out the details of the allegations without any impediment the Petitioner was temporarily suspended and attached to the Head Office in accordance with rule 40(1)(ga) of the Palli Biddut Samity Service Rules, 1992 (as amended in 2012). Subsequently, on the basis of the inquiry committee's findings supporting a case for charges to be brought against her, the Petitioner was, accordingly, served a Show Cause Notice. While the Petitioner responded to the Show Cause Notice she, however, provided no reasonable and logical explanation as to the allegations brought against her. Thereafter, formal charges were framed against the Petitioner under section 38(1) (Ka), (Kha), (Ga), (Gha) and (Cha) of the Service Rules 1992 and an inquiry committee comprising of three members was formed in accordance with rule 40(3) of the said Service Rules of 1992 and the same was notified to the Petitioner by letter dated 16.2.2016. The Petitioner was asked to provide a written response to the charges brought against her and through her letter dated 28.2.2016 she replied but the same was found to be devoid of any no substance and logical explanations as would absolve her of the charges brought against her. Moreover, other employees working in the office testified against her and as such the inquiry committee aptly found that all allegations against the Petitioner had been substantiated and hence the Petitioner was given a final Show Cause Notice on 5.5.2016 in accordance with rule 41(2)(4) of the Service Rules 1992 and she was asked to reply within ten days

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“শিক্ষার্থীদের মঙ্গল নিশ্চিত করার লক্ষ্যে বিচার করা হবে”



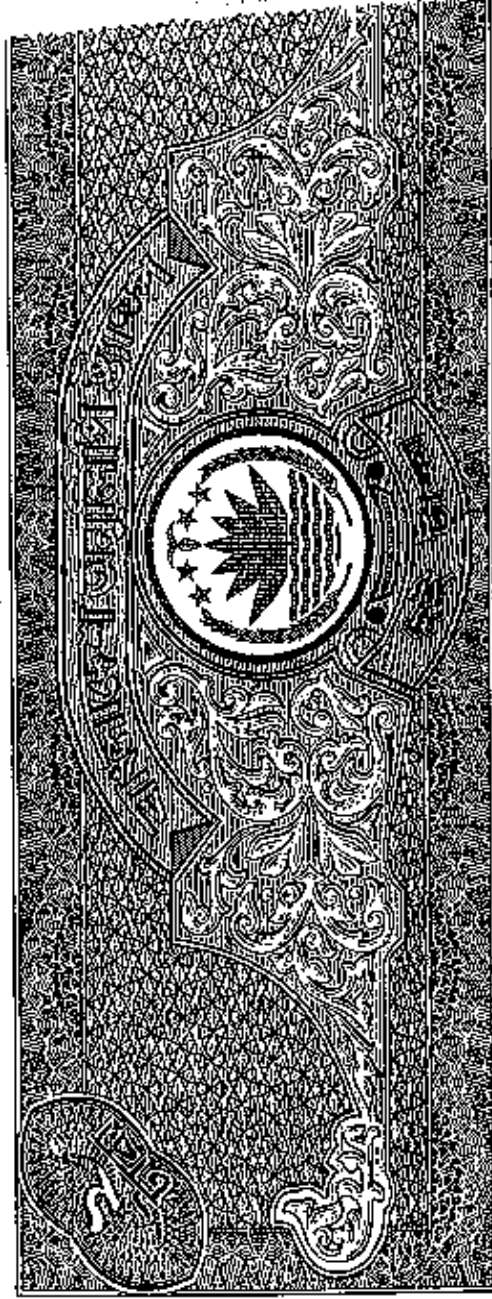
from the receipt of the said Notice. Thereafter, the Petitioner replied to the final Show Cause Notice vide letter dated 12.5.2016 which was a mere replication of her previous replies and, hence, the reply was found inadequate and unsatisfactory. As a result, a letter of dismissal with effect from 24.5.2016 was served on the Petitioner by the Respondent No. 6. Upon a thorough consideration of the above, it is found that the entire process leading to the dismissal and the final order of dismissal itself were justified and in accordance with law given that all procedural safeguards and requirements under the Service Rules of 1992/the 1992 Bidhi (amended in 2012) were followed by the Respondents in the manner as extensively recorded hereinabove by reference to the parties' pleadings.

This Court also finds on the applicability of the *ratio decidendi* of the *Tarikul Islam Case* as negates the justifiability of the Petitioner to be treated in any way as a worker.

It is also our finding that the Petitioner has not only submitted to the procedure leading to ultimate dismissal from service but saw reason in following through the procedure in rules 40 and 43 because at the material time she saw merit in doing so. Indeed, the learned Advocate for the Petitioner has submitted that the Petitioner was always of mind to seeing the process through, whatever the outcome.

However, with the outcome not proving to be favourable, she is found by this Court to rely on unsubstantiated and inadequate excuses striking, thereby, at the very genesis of the disciplinary process.

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commencing with the impugned suspension order (and by extension the second impugned dismissal order).

Furthermore, it is noted that the question of non-exhaustion of the statutory appeal process on the alleged ground of it not being efficacious is found to be a peripheral one raised by the Petitioner given the nature of the challenge mounted by the Petitioner against the applicable law itself and the impugned processes of suspension and dismissal (i.e., the entire process being void *ab initio* for want of subscription of principles of natural justice when the initial order of suspension was issued) and, therefore, need not be gone into in any detail for the purposes of the substantive disposal of the terms in which the Rule Nisi was issued.

It is found that the dismissal order proceeds upon three stages of determination begun with a show causes notice issued the Petitioner on each occasion. That process, this Court finds, if adjudged to be vitiated now by reason of an initial faulty suspension order, shall inexcusably and unjustifiably result in grave injustice to be done to the administrative — set up not the least because the Petitioner can be held to have been remiss in sitting on her claimed rights over an unduly long period of time and subsequently having petitioned this Court in judicial review. Such delay in this Court's view constitutes unreasonable delay operating irreversibly and unavoidably to the Petitioner's detriment. It has further to be borne in mind that a suspension order is in any case not a punishment and that indeed there is nothing on record to suggest that the process of temporary suspension was in any way faulty or legally compromised. If, however, for argument's sake it was to be insisted

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“সুশাসনের শপথ মিন, দুর্নীতিকে বিচার মিন”



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upon by the insistent Petitioner (against all and any discernible reason or ground to the contrary in the facts) that the suspension order was legally compromised somehow, then this Court's inevitable response will be that such defect in the issuance of such an order and the adverse consequences, if any, stemming therefrom have, in the facts and circumstances, been amply mitigated by a thorough process of determination leading to the dismissal order. Here, the following *dictum* of the House of Lords in *Chief Constable of the North Wales Police vs. Evans* reported in 1 *W.L.R.*, 1982, 1155 at 1173 comes immediately to mind:

"Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing see abuse of power, be itself guilty of usurping power."

For the reasons as above stated, this Court remains wholly disinclined to favourably exercise its constitutional mandate of judicial review under Article 102 of the Constitution as prayed for by the Petitioner. There is, consequentially, found no discernible and legally substantiated ground for overturning any of the impugned decisions as are found to be the products and outcome of legally sanctioned processes which are in themselves sound and fair. The position overall adopted by the Respondents in responding to the Rule Nisi are on the other hand, and for reasons above discussed, found to be sound and unassailable in fact and in law. In that context, this Court finds that neither the impugned order of suspension nor the impugned order of dismissal suffer from any legal defects or infirmities as claimed by the Petitioner.

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“দেশভেদেয় অপর্য নিন, দুর্নীতিকে বিচার্য নিন”



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That finding added to our view above that rules 40 and 43 of the Service Rules of 1992 do not allow *per se* for any comparison to section 3(1) of the Bangladesh Labour Act, 2006 to merit any intervention as prayed for by the Petitioner invariably leads to the conclusion that the Petitioner's Application under Article 102 of the Constitution is wholly without merit and the Rule Nisi issued lacking consequentially in substance.

Resultantly, the Rule Nisi is discharged.


There is no Order as to costs.

Communicate this Judgment and Order at once.


Syed Refaat Ahmed

MD. IQBAL KABIR, J.


I agree




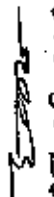
Typed by: Fahir: 07.03.2021

Read by: 

Exam by: 

Readied by: 


07.03.2021.
মোঃ হালিম সিকদার
প্রশাসনিক কর্মকর্তা


07.03.2021.
মোঃ হালিম সিকদার
মুপারিনটেনডেন্ট

Md. Iqbal Kabir

প্রত্যক্ষিত অনিকল প্রতিজ্ঞা


07.03.2021.
সরকারী জজ/জজ
প্রথম শ্রেণি সিনিয়র সিনিয়র বিচারক
১৮৭২ ইং সেক্টর ১ নং আদালত,
সি.এস.জি. বিচারকালয়

“দেশপ্রেমের অপহৃদিত, দুর্নীতিকে বিদায় দিন”