



12-04-22, 18-07-24, 18-07-24, 18-7-24, 18-7-24

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

Writ Petition No. 608 of 2017

IN THE MATTER OF:

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

-And-

IN THE MATTER OF :

Benoy Chandra Paul

.....Petitioner

-Versus-

Bangladesh, represented by the Secretary, Ministry of Power, Energy and Mineral Resources, Bangladesh Secretariat, Ramna, Dhaka and others

.....Respondents

Ms. Shamima Binte Habib, with

Mr. Md. Sakib Rezwan Kabir, Advocates

.....for the petitioner

Mr. Shaikh Mohammad Zakir Hossain, Advocate

.....for the respondent No.2

Heard on : 08.03.2022 & 13.03.2022

Judgment on : 10.04.2022

Present:

Ms. Justice Naima Haider

&

Mr. Justice Md. Khairul Alam

Naima Haider, J:

In this application under Articles 102(2)(a)(i) and (ii) 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 Order of dismissal of the petitioner from the service of Bangladesh Rural Electrification Board issued under Memo no.27.12.2607. 012. 31. 041.

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15. 115 dated 04.08.2016 (as contained in Annexure-O) communicated under the signature of the Director (Current Charge), Enquiry and Discipline, Bangladesh Rural Electrification Board, respondent No.4 and Order under Memo No. 27.12.2637.012.31.041.15.284 dated 18.09.2016 (as contained in Annexure-Q) issued by the respondent No.4 dismissing the appeal and thereby affirming the order of dismissal of the petitioner should not be declared to have been passed without lawful authority and is of no legal effect and as to why a direction should not be given upon the respondent nos. 2-5 to reinstate the petitioner in his service upon giving all attending service benefits 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 that:

The petitioner joined with the respondent no.2 as an Assistant General Manager (Member Service) on 23.06.1988 at Kishorganj Polli Biddut Samity and his honesty and hard work, the authority promoted him to the post of Deputy General Manager on 06.07.2003 and since, he has been performing his function in the said post with sincerity and honesty in different stations of the respondents. Thereafter, he served in different Pally Biddut Samity as Deputy General Manager, while posted at Nabinagar Zonal Office, he was withdrawn vide an office order dated 21.07.2015. He was attached with the office of the Human Resources Directorate of the Palli Biddujt Samity.

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Pursuant to the office order dated 21.07.2015, he joined in the office of Director, Human Resources Directorate of the Rural Electrification Board and accepted his joining report on 23.07.2015. On the same date, the respondent no.5 suspended the petitioner without showing any specific reasons. Rather mentioning that due to certain irregularities committed by the petitioner while posted as Deputy General Manager of Nobinagar Zonal Office under Polli Biddut Samity. Thereafter, Polli Biddut Samity Management Operation (Central Zone) vide dated 30.08.2015 formed a two member primary inquiry committee comprising the rank of Deputy Directors. The said committee conducted their inquiry and on 02.09.2015, the petitioner duly appeared before the inquiry committee. After completion of the inquiry, they submitted the report with some findings. As per the report and findings of the primary inquiry committee, the respondent no.4 initiated departmental proceeding against the petitioner by issuing a show cause- notice dated 30.09.2015. After receipt of the show cause notice, the petitioner filed a reply on 13.10.2015 denying the allegation brought against him. He filed an application on 02.11.2015 before the respondent no.5 for cancelling the suspension and to provide him 100% salary with others benefits. Subsequently, he filed another application on 29.11.2015 reiterating the same facts. The respondent no.4 on 09.11.2015 prepared a charge sheet against him and also formed an Inquiry Committee consisting by one Deputy Director (Technical) and another Assistant Director, Collection


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Directorate. Charge was framed against the petitioner with 46 allegations and on 17.11.2015, he made a reply to the charge sheet denying all the material allegations brought against him and the inquiry committee submitted their report on 13.01.2016. The petitioner filed two applications dated 14.03.2016 and 16.05.2016 prayed for constituting an impartial inquiry committee before the Member(Administration), Bangladesh Rural Electrification Board but the respondents turned a blind eye and the said two member inquiry committee made a further inquiry and submitted a report on 27.04.2016. On the basis of the said inquiry reports dated 14.01.2016 and 27.04.2016, the respondent no.4 on 22.05.2016 issued final show cause-notice upon the petitioner. Respondent no.4 by the order dated 04.08.2016 dismissed the petitioner from his service of the Bangladesh Rural Electrification Board under section 39 (1)(Kha)(5) of the Palli Biddut Samity Employees Service Rules, 1992 (Amendment,2012).

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

The respondent no.2 has entered appearance by filling affidavit-in-opposition. The case of the Respondent No.2, in short is that: 46 allegations of committing gross misconduct against the writ petitioner to clear breach of section 38(1)(ka)(gaa)(gha) and (cha) of Palli Biddut Samity Service Rules, 1992 as amended in 2012 and punishable under sections 38 and 40 of the said Palli Biddut Rules. The Organogram of


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Service of Bangladesh Rural Electrification Board and Palli Biddut Samity are different. Both members of the Inquiry Committee were holding the position of Deputy Director(Current Charge) and due to the delegated power they were holding upper position and were capable to be the member of the said Inquiry Committee. The inquiry Committee investigated the matter independently and transparently and found the petitioner guilty. On the basis of the report, the respondent has taken the decision to dismiss the petitioner. Therefore, no illegality or procedural improprieties were committed by the writ respondents concerning the investigation and imposing appropriate punishment.

Ms. Shamima Binte Habib with Mr. Md. Sakib Rezwan Kabir, the learned Advocates appearing on behalf of the petitioner submits that the primary inquiry committee has been formed by inferior officers in violation of the provision of section 40(3) of the Polly Biddut Samity Employees Service Rules, 1992 (Amendment-2012) and the respondent no.4 without considering the same most illegally and arbitrarily passed the order of dismissal on the basis of illegal inquiry reports. She next submits that the inquiry committee though submitted its report on 14.01.2016 but the respondent no.4 by a subsequent letter dated 08.03.2016 asked to make further investigation and the said letter reflects that to fill up some lacuna it was needed. She lastly submits that the inquiry committee lost its credibility as it has recommended to impose

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severe punishment which is violation of Rule 40(4) of the Polli Biddut Samity Employees Service Rules, 1992 (Amendment-2012) .

Per contra, Mr. Shaikh Mohammad Zakir Hossain, the learned Advocate appearing on behalf of the respondent No. 2 submits that the respondents after considering all the procedure of the Service Regulation of BREB and based on the available evidences dismissed the petitioner from his service and therefore, it cannot be concluded that the dismissal from service has been unfairly done by the respondents. He next submits that the BREB investigated the complaint brought against the petitioner neutrally and transparently found the petitioner guilty. He lastly submits that the petitioner enjoyed the full protection of law and the respondents took all the appropriate steps against the petitioner in accordance with law, as such the Rule may be discharged.

We have perused the writ petition, its annexures, affidavit in opposition filed by respondent no.2 and others materials on record.

It appears from the record that the petitioner joined with the respondent no.2 as an Assistant General Manager (Member Service) on 23.06.1988 at Kishorganj Polli Biddut Samity and for his honesty and hard work, the authority promoted him to the post of Deputy General Manager on 06.07.2003. He has been performing his function in the said post with sincerity and honesty in different stations of the respondents. Thereafter, he served in different Pally Biddut Samity as Deputy General Manager. Pursuant to the office order dated 21.07.2015, he

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joined in the office of Director, Human Resources Directorate of the Rural Electrification Board and accepted his joining report on 23.07.2015 and on the same day, the respondent No.5 suspended the petitioner without any show cause notice. Rather mentioning that due to certain irregularities committed by the petitioner while posted as Deputy General Manager of Nobinagar Zonal Office under Polli Biddut Samity. Thereafter, the Pally Biddut Samity Management Operation (Central Zone) on 30.08.2015 formed a two member primary inquiry committee of Deputy Directors(Current Charge) Collection Directorate. After completion of the inquiry, they submitted their report with some findings and the respondent no.4 initiated departmental proceeding against him by issuing a show cause notice dated 30.09.2015 and the petitioner replied on 13.10.2015 denying the allegation brought against him. He filed an application on 02.11.2015 before the respondent no.5 for cancelling the suspension and the authority to provide him 100% salary with others benefits. Subsequently, he filed another application on 29.11.2015 reiterating the same facts. Charge was framed against the petitioner and on 17.11.2015 and the inquiry committee submitted their report on 13.01.2016 and the said two member inquiry committee made a further inquiry and submitted a report on 27.04.2016 and the respondent no.4 on 22.05.2016 issued final show cause notice upon the petitioner. Respondent no.4 by the order dated 04.08.2016 dismissed the petitioner from service of the Bangladesh Rural Electrification Board

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under section 39 (1)(Kha)(5) of the Polli Biddut Samity Employees Service Rules, 1992(Amendment,2012).

It transpires from the record that the petitioner was punished for some specific allegations brought against him which were denied by the petitioner in his written reply. But without considering the said written representation on 13.10.2015, the Respondent intimated the petitioner that the petitioner had been found guilty of the charges by the enquiry committee. It is vital to put on record that the enquiry committee did not supply the copy of the report to the petitioner which is mandatory.

Annexure-F and F(1) reveals that on 02.11.2015 and 29.11.2015, the petitioner had submitted two representations refuting all the charges against him and he also prayed for cancelling the order of suspension to provide him 100% salary and other benefit. The respondents did not pay any heed to the petitioner application's dated 02.11.2015; rather the respondent no. 4 on 09.11.2015 prepared a charge sheet against him with 46 allegations. The inquiry committee after investigation into the matter and without considering the explanation given by the petitioner most illegally prepared the inquiry report stating all the allegation brought against him have been proved and submitted report on 14.01.2016 and the petitioner filed an applications on 14.03.2016 and 16.05.2016 prayed for constituting an impartial inquiry committee before the Member (Administration) Bangladesh Rural Electrification Board. But the respondents turned a blind eye on the said applications. Again the

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said two members of inquiry committee made a further inquiry and submitted report on 27.04.2016 and the respondent no.4 without considering the same most illegally and arbitrary passed the order of dismissal the petitioner on the basis of an illegal inquiry report.

It was brought to the notice of this Court that the petitioner was deprived the opportunity to prosecute the case against him diligently and efficiently and that the committee submitted a report supported without materials on record and the respondent on the basis of that enquiry report held the petitioner guilty of the charges. From the above, we note that reproduction of the charges in verbatim without disclosing the sources and imposition of punishment without assigning any reason is the clear reflection of non-application of the mind of the authority to the facts and circumstances of the case and of passing the orders complained of in a mechanical fashion and thus the order is bad in law.

From the materials on record it further appears that the procedure itself is a farce as because, the respondent no.4 has issued the show cause notice, initiated the departmental proceeding; issued final show cause notice, the order of dismissal and this very respondent also affixed her signature in the impugned order of dismissal the appeal and respondent no.4, holding the same post has passed 5(five)orders with the approval of the respondent no.3, which violates the principle '*nemo judex in re sua causa*' and thus this is a case of exercising

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jurisdiction erroneously and the decision complained of has been passed without lawful authority.

In the light of above discussions and taking the facts in their entirety, we are of the view that the Rule has got merit and deserve to succeed.

Accordingly, the Rule is made Absolute.

The Order of dismissal of the petitioner from the service of Bangladesh Rural Electrification Board has issued under Memo no.27.12. 2637. 012. 31. 041. 15. 115 dated 04.08.2016 (as contained in Annexure-O) and Order under Memo No. 27.12. 2637. 012.31. 041. 15. 284 dated 18.09.2016(as contained in Annexure-Q) issued by the respondent No.4 dismissing the appeal and thereby affirming the order of dismissal of the petitioner is liable to be declared to have been passed without lawful authority and is of no legal effect.

The respondent nos. 2-5 are directed to reinstate the petitioner in his service within 30(thirty) days from the date of receipt of a copy of this judgment and order. However, 02(two) increments will be held up and the absence of the petitioner due to his dismissal will be considered leave/ extra ordinary leave without pay.

No order as to cost.

Communicate the Judgment and Order at once.

Naima Haider

Md. Khairul Alam, J.

I agree.

Md. Khairul Alam

Typed by: Sayed. 18.07.2024

Read by: 18.7.24

Exam.by: 18.7.24

Readied by: 18.7.24

প্রত্যয়িত অবিকল প্রতি...
18.7.24
সহকারী রেজিস্ট্রার
বাংলাদেশ সুপ্রীম কোর্ট, হাইকোর্ট বিভাগ
১৯৭২ ইং সনের ১নং আইনের
৩৬ ধারামতে ক্ষমতা প্রাপ্ত
এ.এম. এম সাইফুরাহ আল হোসেন
সুপারিনটেনডেন্ট

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