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

WRIT PETITION NO.1083 of 2021

IN THE MATTER OF:

An application under Article 102 of the
Constitution of the People's Republic of
Bangladesh.

IN THE MATTER OF:

Most. Tahmina Akter

.....Petitioner.

-Versus-

Government of the People's Republic of
Bangladesh, represented by the Secretary, Ministry
of Education, Secretariat Building Ramna, Dhaka
and others

.....Respondents.

Mr. Shaikh Mohammad Zakir Hossain, Advocate

.....For the petitioner.

Mr. Ajit Sil, Advocate

.....For the respondent No.2

Present:

Ms. Justice Md. Jahangir Hossain

And

Mr. Justice S M Masud Hossain Dolon

Heard on:- 07.12.2023, 12.12.2023, 14.01.2024 and 16.01.2024.

Judgment on: 17.01.2024

Md. Jahangir Hossain, J:

On an application under article 102 of the Constitution, the Rule Nisi
has been issued in the following terms:


“Let a Rule Nisi was issued calling upon the respondents
to show cause as to why the failure of the respondents to include
the name of the petitioner as an Assistant Teacher of the
respondent No. 6 school in the gazette lists prepared by the
respondent No. 5 (Annexure-‘H’) shall not be declared to have
been done without lawful authority and is of no legal effect and

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also as why the respondents shall not be directed to included the name of the petitioner in the gazette in accordance with law and and/or pass such other or further order or orders as to this Court may seem fit and proper.”

Facts relevant for disposal of the Rule are that the petitioner after interview and having the required qualifications was appointed at the aforesaid school on 05.04.1991 as an Assistant Teacher vide appointment letter dated 05.04.1991 and she subsequently joined in the school on 24.04.1991. Subsequently, the petitioner was enlisted under MPO Scheme in 1994 and started to enjoy the facilities of the same. The petitioner was performing her roles at the school with utmost sincerity and was getting benefits under MPO Scheme, she suddenly became sick on 01.05.2000 and as such made an application to the concerned authority for leave. However, due to serious illness the petitioner was under treatment until 27.12.2003 which was done with the knowledge of the concerned school authority. After full recovery from illness, the petitioner with her intention to re-join in her post made required application to the then President of the Governing Body of the School, who accepted the same. However, due to non-cooperation and undue threats of then headmaster of the school, the petitioner could not re-join in the post despite her legal rights and genuine intention. Having no other alternative, the petitioner filed a Title Suit being No. 12 of 2005 before the


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Senior Assistant District Judge, Bagerhat wherein the respondent Nos. 3-4 of this Writ Petition were defendants along with others. On 27.01.2013 the said suit of the petitioner was decreed on Solenama in favour of the petitioner.

The school was registered in the name of the government on 01.01.2013 and the petitioner on 02.03.2013 re-joined in her post at the school and since then she has been performing her roles with utmost sincerity and competency. However, since her name was excluded from the MPO Scheme and she was deprived off from all benefits available for the enlisted teachers, she was struggling with bad financial conditions. Under the circumstances, the said Managing Committee of the School in their meeting dated 25.01.2014 decided to take all necessary steps in respect enlisting the name of the petitioner in the Gazette. Subsequently, the petitioner in accordance with the said memo made her application to the respondents to include her name in the Gazette/MPO scheme; however, the said application of the petitioner has not been considered. The respondents with their malafide intention have not included the name of the petitioner in the Gazette which is absolutely unjustified and illegal. The petitioner on 06.03.2019 and 28.09.2020 submitted applications to the respondent No. 2 mentioning her financial conditions and thereby prayed to include her name in the Gazette. On 11.10.2020 the Upazilla Education Officer i.e. respondent No. 5 issued a Memo, dated 11.10.2020 wherein a list of 8 (eight) pages were

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attached. The attached pages provide a long list of names that were enlisted in the gazette, however, the respondents most arbitrarily and unlawfully did not include the name of the instant petitioner in the lists. The petitioner have spent more than 30 long years in teaching profession with an unblemished service records which have created "legitimate expectation" in her favour to be continued to be enlisted under the Gazette/MPO Scheme and enjoy the facilities of scheme. The respondents misused their statutory power conferred upon them by law which is not only ultra vires in nature but also is in violation of the fundamental rights as guaranteed under Article 27 of the Constitution of the People's Republic of Bangladesh. Hence there should be direction to the respondents to include the name of the petitioner in the relevant Gazette is required from this Hon'ble Court for the ends of justice.

Mr. Sheikh Mohammad Zakir Hossain, learned Advocate for the petitioner submits that the petitioner has been performing her duties and roles at the school with utmost and competency and there has never been any allegation raised against her, however, the failure of the respondents as to not including her name in the Gazette is malafide and arbitrary. The said Title Suit being No. 12 of 2005 was decreed on 27.01.2013 in favour of the plaintiff-petitioner on Solenama, but nevertheless, the respondent (who in fact did not contest the case) with their ill motive refused to include the name of the petitioner in the Gazette. In where the respondent is bound to obey the order of the Court.

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He further submits since the school authority reinstated her and since then she has been performing her roles at the school with sincerity, the respondents' decisions not to include the name of the petitioner in the Gazette is malafide and arbitrary. The respondents misused their statutory power conferred upon them by law which is not only ultra vires in nature. The petitioner was appointed following proper procedure and she has been working till today with sincerity and competency. As such the petitioner name should be included in the Gazette list. A direction should be passed by this Court to the respondent to include the name of the petitioner in the Gazette.

On the other hand Mr. Ajit Sil, the learned Advocate for the respondent No.2 submits affidavit an opposition in this case. Per contra in the affidavit in opposition it is stated that in order to nationalize the non-government primary schools, the Government has enacted a Rules namely “অধিগ্রহণকৃত বেসরকারি প্রাথমিক বিদ্যালয়ের শিক্ষক (চাকুরীর শর্তাদি নির্ধারণ) বিধিমালা, ২০১৩” and Rule 4 of the same deals with the appointment of teacher in the nationalized primary school define that there should be a continuation service period for the service holder i.e. the teacher. But the petitioner was not in the continuation service as per Rule-4 of the said Bidimala.

We have perused the said Bidimala, 2013 where it is stated as follows:-

৪। শিক্ষক নিয়োগ, ইত্যাদি। (১) বিধি ৬ এর বিধান সাপেক্ষে, নিয়োগকারী কর্তৃপক্ষ

(ক) কোন শিক্ষকের-

(অ) বেসরকারি প্রাথমিক বিদ্যালয়ে নিয়োগ সরকারের প্রচলিত আদেশ অনুসরণে হইলে,

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(আ) প্রয়োজনীয় যোগ্যতা থাকিলে,

(ই) পূর্বের চাকুরীর ধারাবাহিকতা অব্যাহতভাবে থাকিলে, এবং

(ঈ) পূর্ববর্তী চাকুরীকাল সন্তোষজনক হইলে,

তাহাকে আইনের Section 3 এর Sub-Section (2) এর clause (b) এর বিধান অনুসারে শিক্ষক পদে নিয়োগ প্রদান করিয়াছেন মর্মে প্রয়োজনীয় আদেশ জারি করিবে;

(খ) কোন শিক্ষকের দফা (ক) তে উল্লিখিত অন্যান্য যোগ্যতা থাকা সত্ত্বেও কেবল প্রয়োজনীয় যোগ্যতা না থাকিলে, আইনের Section 3 এর Sub-Section (1) এর অধীন অধিগ্রহণকৃত সংশ্লিষ্ট বিদ্যালয়ের অধিগ্রহণের তারিখ হইতে পরবর্তী ৩(তিন) বৎসরের মধ্যে উক্ত যোগ্যতা অর্জনের শর্তে নিয়োগ প্রদান করিয়া প্রয়োজনীয় আদেশ জারি করিবে।

Mr. Ajit Sil, the learned Advocate for the respondent No.2 further submits that the then Managing Committee of the 26 No. Purba Saira Registered Non-Government Primary School, after holding meeting, made a resolution dated 7/3/2002 regarding dismissal of service of the Petitioner wherein it is stated that despite issuing 3 notices through registered post, the Petitioner remained absent in the school and as such, she was dismissed from her service and further, directed the headmaster to notify the Petitioner in writing within 7 days.

In support of his submission I have examined the Annexure-3, the Regulation of the Managing Committee. Mr. Ajit Sil, the learned Advocate for the respondent No.2 also further submits that the Deputy Secretary, (School-1) Subdivision, Ministry of Primary and Mass Education has issued a Paripatro dated 10/6/2009 regarding appointment of teacher in the Registered Non-

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Government Primary School wherein it is stated that “পরিপত্র জারির পর এর আলোকে গৃহীত পরীক্ষায় উত্তীর্ণ ব্যক্তিগত (সংশ্লিষ্ট উপজেলার স্থায়ী বাসিন্দাদের মধ্য হতে মেধাক্রম অনুসারে) ছাড়া অন্য কেউ রেজিস্টার্ড বেসরকারি প্রাথমিক বিদ্যালয়ে শিক্ষকদের নিয়োগ লাভের জন্য বিবেচিত হবেন না।”

As such there is no remedy for the petitioner in this Writ Petition. Lastly Mr. Ajit Sil, the learned Advocate for the respondent No.2 submits as per the Secondary School Certificate [S.S.C] of the Petitioner as contained in “Annexure-A” of the Writ Petition that the date of birth of the Petitioner is on 17/2/1964 and according to the same, she is now 60 years old and her age limit for government service was expired in 2003 when she attained her 59 years of age. Upon such, the matter becomes infructuous. The subject matter of the Rule Nisi does not subsist anymore. So Mr. Ajit Sil, the learned Advocate for the respondent No.2 prayed for discharged the Rule.

We have perused the elaborately the Rule issued by this Court and the ground stated in the Writ Petition by the petitioner and the submissions of the learned Advocate for the petitioner it transpires from the Annexure papers and the statement of the Writ Petition that the petitioner joint in the school when the school was Non-Government Primary School and the school was established by the co-operation by the local people and the petitioner family. It reveals the Government has enact a Rules namely “অধিগ্রহনকৃত বেসরকারী প্রাথমিক বিদ্যালয়ের শিক্ষক (চাকুরীর শর্তাদি নির্ধারণ) বিধিমালা, ২০১৩” and Rule-4 of the same deals with the appointment of said teacher with the nationalized Primary School which define as follows:-

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(ক) কোন শিক্ষকের-

(অ) বেসরকারি প্রাথমিক বিদ্যালয়ে নিয়োগ সরকারের প্রচলিত আদেশ অনুসরণে হইলে,

(আ) প্রয়োজনীয় যোগ্যতা থাকিলে,

(ই) পূর্বের চাকুরীর ধারাবাহিকতা অব্যাহতভাবে থাকিলে, এবং

(ঈ) পূর্ববর্তী চাকুরীকাল সন্তোষজনক হইলে,

তাহাকে আইনের Section 3 এর Sub-Section (2) এর clause (b) এর বিধান অনুসারে

শিক্ষক পদে নিয়োগ প্রদান করিয়াছেন মর্মে প্রয়োজনীয় আদেশ জারি করিবে;”

In this case it appears on 7/3/2002 the then Managing Committee of the 26 No. Purba Saira Registered Non-Government Primary School, after holding meeting, made a resolution regarding dismissal of service of the Petitioner wherein it is stated that despite issuing 3 notices through registered post, the Petitioner remained absent in the school and as such, she was dismissed from her service. After dismissal from service, the petitioner filed a Civil Suit being No. 12 of 2005 before the Senior Assistant Judge Court, Bagerhat for permanent injunction along with a declaration and obtained Settlement Decree by filing a Solenama with the Headmaster of the said school only which was on 27.01.2013. It appears the issue of permanent injunction and declaration settled with the Headmaster not with the Managing Committee of this school. Though the Managing Committee is in the respondent or defendant in the Civil

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In order to get appointment as Assistant Teacher in the nationalized school, one must have continuation of service as Assistant Teacher in the said school prior nationalization as per Rule "অধিগ্রহনকৃত বেসরকারী প্রাথমিক বিদ্যালয়ের শিক্ষক (চাকুরীর শর্তাদি নির্ধারণ) বিধিমালা, ২০১৩". It appears there was a discontinuation of service of the petitioner as Assistant Teacher of the 26 No. Purba Saira Registered Non-Government Primary School.

At the relevant time it appears she is barred by the Rule 4(1) (ক) (ই) of the "অধিগ্রহনকৃত বেসরকারী প্রাথমিক বিদ্যালয়ের শিক্ষক (চাকুরীর শর্তাদি নির্ধারণ) বিধিমালা, ২০১৩". Furthermore it appears the petitioner date of birth is 17/02/1964 which shows from the Secondary School Certificate [S.S.C] of the Petitioner as contained in "Annexure-A". According to the certificate the age limit for Government Service has been expired and petitioner appeared now in 60 years old.

We have perused the terms of the Rule. We do not find the cause of action and the remedy exists upon the terms of the Rule. As such the matter becomes infructuous. We do not find any merit in the Rule.

Hence the Rule is discharged.

No order as to cost.

Communicate the judgment and order at once.

Md. Jahangir Hossain

S. M. Masud Hossain Dolon, J:

I agree.

S. M. Masud Hossain Dolon

Typed by: Sayed: 30.09.2024

Read by: 30.09.24

Exam.by: 30.09.24

Readied by: 30.09.24

প্রত্যায়িত অন্লিপি প্রতিনিপি

30.09.24
সহকারী রেজিস্ট্রার
বাংলাদেশ সুপ্রীম কোর্ট, হাইকোর্ট বিভাগ
(১৮৭২ ইং সনের ১নং আইনের
৭৬ ধারামতে ক্ষমতা প্রাপ্ত)

“দেশপ্রেমের অঙ্গুষ্ঠান নিঃস্বার্থে বিদায় দিন”
স্বাধীনতা সংগ্রামে
সংশ্রান্তে