



29.11.23, 29.4.25, 29.9.25

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

Writ Petition No. 8567 of 2018

IN THE MATTER OF:

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

-And-

IN THE MATTER OF :

Mohammed Mosleh Uddin

.....Petitioner

-Versus-

Bangladesh Rural Electrification Board
(BREB), represented by the Chairman,
Bangladesh Rural Electrification Board
(BREB), Khilkhet, Dhaka and others

.....Respondents

Mr. Md. Imam Hossain, with

Mr. Md. Oziullah, with

Mr. Kamal Hossain, with

Mr. Md. Ruhul Quddus Patwary, Advocates

.....for the petitioner

Mr. Shaikh Mohammad Zakir Hossain,
Advocate

.....for the respondent No.2

Heard on: 18.10.2023, 12.11.2023, 16.11.2023

Judgment on : 20.11.2023

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 on 08.07.2018
calling upon the respondents to show cause as to why the impugned
Office order dated 30.04.2018 vide Memo No.

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২৭.১২.৩০২৯.৫২২.০২.০১৮.১৮.২১০৯ dated 30.04.2018 issued under the signature of respondent No.6, dismissing the petitioner from service purportedly under regulation 39(1) (Kha) (5) of Feni Polli Biddut Samity Karmachari Chakuri Bidi, 1992 (Amended-2012) (Annexure-H) should not be declared to have been issued without any lawful authority and is of no legal effect and as to why the respondents should not be directed to reinstate the petitioner in service with all benefits, including back wages and/or pass such other or further order or orders as to this Court may seem fit and proper.

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

On 17.12.1995, the petitioner appointed in the service of the Rural Electrification Board (in short, 'the REB') as Peon-Cum-Messenger.

In 2017, a news has published in the weekly in the headline of corruption and misappropriation of Feni Polli Biddut Samity. On the above allegations, formal departmental proceedings were initiated against the petitioner by framing charge under the relevant provisions of the REB Service Regulations. The petitioner gave written reply. Formal enquiry committee was formed. But enquiry officers did not examine any witnesses before the petitioner and as such he was not given opportunity for cross-examinations. The petitioner was issued second show cause notice and the petitioner replied to the same but without considering his replies, the respondent No. 6 vide Memo No. 27. 12.

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3029. 522. 02. 018. 16.2109 dated 30.04.2018 dismissed the petitioner. Against the order of dismissal, the petitioner made a departmental appeal to his higher authority [the President of the Feni Palli Bidyut Samity Board] on 08.05.2018 for reinstating him in service which was refused but no copy was served upon him and hence the Rule.

The respondent No. 2 has entered appearance in the Rule by filing an affidavit in opposition. The case of the respondent No. 2 as stated in the affidavit in opposition may be summarized as under:

Several allegations were brought against the petitioner and formal departmental proceeding was initiated against him. Inquiry committee was constituted in accordance with law and the petitioner was found guilty by the inquiry committee. Since the charges leveled against the petitioner was proved, he was rightly dismissed by the authority as well as his departmental appeal was rightly rejected by the appellate authority. It was also sated in the affidavit in opposition that since the order of dismissal is purely administrative in nature and the respondents while dismissing the service of the petitioner performs his duty in accordance with law, the writ petition lacks prima facie case and accordingly not maintainable.

When the case was taken up for hearing, the learned Advocate for the petitioner, at the very outset, submits that in the petitioner was dismissed by violating the Rule 41(2)(4) of the Palli Bidyut Samity Employees Service Regulation 1992(as amended 2012) and the

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petitioner was gravely prejudiced. The learned counsel for the petitioner further submits that the inquiry officers did not examine any witness before the petitioner and as such he was not given opportunity for cross examination and thus he was gravely prejudiced in his defence which is also a clear violation of the doctrine of Natural Justice.

On the other hand, the learned Advocate for the respondent No. 2 submits that the petitioner was charged for corruption and misappropriation. Formal departmental proceeding was initiated against him. There was no violation of Service Rules starting from drawing up of departmental proceedings to rejection of departmental appeal. 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.

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 corruption and misappropriation, the authority concerned has dismissed the petitioner which is clear violation of Rule 41(2)(4) of the Feni Polli Biddut Samity Karmachari Chakuri Bidhi, 1992 (Amended-2012).

This Court is of the view that the inquiry officers did not examine any witness before the petitioner and as such he was not given

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opportunity for cross examination and thus he was gravely prejudiced in his defence.

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 Coperative 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

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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.

Having regard to the attending facts, circumstances and laws discussed above, we are of the view since the petitioner is first time offender and as such the dismissal order is unduly harsh, highly disproportionate and shocking to the conscience. Hence, the penalty of dismissal dated 30.04.2018 (Annexure-H) is set aside. 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 02(two) 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 (30.04.2018) to the date of judgment (20.11.2023) shall be treated as extra ordinary leave without pay.

With the above observations and directions, the Rule is made absolute.

No order as to costs.

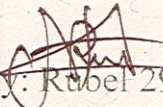
Communicate the judgment and order at once.


Naima Haider

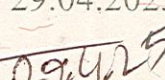
Kazi Zinat Hoque, J:


I agree.

Kazi Zinat Hoque.

Typed by:  29.04.2025

Read by: 

Exam. by: 

Readied by: 

6/N

“দেশপ্রেমের সপ্তাহিক”
Ruhul Amin,
Administrative Officer
29.4.25
Md. Shahidul Islam Khan
Superintendent
29.4.25

আবৃত্তি
29.4.25
কাজিরী
বাংলাদেশ প্রশাসনিক আদালত
(১৮-৯২ ই সেক্টর ৯৯২ আফিসের
৩৬ কক্ষস্থিত কক্ষের প্রাঙ্গণে)