

2 SCOB [2015] HCD 32**HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

Writ Petition No. 735 of 2007

Md. Habibur Rahman
..... Petitioner

-Versus-

**Bangladesh, represented by the Secretary,
Ministry of Commerce, Bangladesh
Secretariat, Ramna, Dhaka and others.**
..... RespondentsMr. Md. Ashiqur Rahman, Advocate
.... For the petitioner.Mr. Md. Abdul Halim, Advocate
.... For the Respondents

Date of Hearing: 18.08.2015 & 23.08.2015

Date of Judgment: 24.08.2015

Present:
Mr. Justice Zubayer Rahman Chowdhury
And
Mr. Justice Mahmudul Hoque**No authority can act arbitrarily:****Administrative actions by Government and statutory bodies should be judged on the scale of fairness. In other words, no authority can act arbitrarily and whimsically in discharging its duties, thereby affecting the rights and privilege of the property of an individual. ... (Para 16)****Duty of a lawyer:****Mr. Md. Abdul Halim, the learned Advocate appearing on behalf of the respondents, submits that having gone through the writ petition and its Annexures, he finds it difficult to oppose the Rule. We appreciate the submission of Mr. Md. Abdul Halim, which goes to show he has discharged his duties as an officer of the Court. It should be borne in mind by all the learned members of the Bar that the duty of a lawyer lies first to the Court and then to his client.**

...(Para 17)

JUDGMENT**Zubayer Rahman Chowdhury, J :**

1. By an application under Article 102(2)(a)(ii) of the Constitution of the People's Republic of Bangladesh, the petitioner challenges the legality and propriety of Order No. T.C.B (Clearance-155)/R.O./83/84/2300 dated 31.05.1984 issued by respondent no. 3, as evidenced by annexure 'D', removing the petitioner from service and further, seeking a direction upon the respondents to reinstate the petitioner in service.

2. The Rule is being opposed by respondent nos. 2-5 by filing an affidavit-in-opposition.

3. The petitioner was serving as Jetty Supervisor of Trading Corporation of Bangladesh (briefly T.C.B) and was posted at the Zonal Office, Faridpur. During the course of his service, T.C.B brought an allegation of misappropriation of corrugated tin sheets against Mr. A.K.M. Salehuddin, who was the Officer-in-Charge of the Zonal Officer at Faridpur. The petitioner was servicing as Assistant to Mr. Salehuddin at the relevant time.

4. Subsequently, vide Memo No. T.C.B. (Clearance-155)/R.O./479 dated 30.03.1983, issued under the signature of respondent no. 3, the petitioner was suspended from service. However, no prior show cause notice was issued upon the petitioner before issuance of his suspension order. Subsequently, a charge sheet dated 17.05.1983, under the signature of respondent no. 4, was sent to the petitioner. A departmental proceeding was started and an enquiry officer was appointed, who directed the petitioner to submit a reply to the charge sheet. Upon conclusion of enquiry, the concerned Officer, a Senior Executive, submitted the report on 19.01.1984 with the findings that the charge against the petitioner could not be proved. However, despite the categorical findings by the Enquiry Officer, the petitioner was removed from service by the impugned Memo No. T.C.B. (Clearance-155) R.O/83/84/2300 dated 31.05.1984.

5. The petitioner made representation to the concerned authorities for reinstating him in service. However, T.C.B. issued a letter dated 15.09.1992 informing the petitioner that due to pendency of Money Suit No. 104 of 1990 before the Artha Rin Adalat, Barisal, his application for reinstatement could be considered at that stage. Thereafter, the petitioner filed several applications on various dates for reinstating him in service, but to no effect.

6. It is to be noted that T.C.B. filed a Artha Rin Suit before the Artha Rin Adalat, Barisal against Mr. A.K.M. Salehuddin and another, (being the petitioner) for recovery of Tk. 1,56,299.62 which was dismissed on contest.

7. T.C.B. preferred 1st Appeal No. 148 of 1993, which was dismissed on contest by a Division Bench of the High Court Division by judgment and order dated 23.07.2002, thereby affirming the judgment and decree passed by the Subordinate Judge and Artha Rin Adalat, Barisal dismissing Money Suit No. 104 of 1990. On appeal by T.C.B, the Appellate Division upheld the judgment of the High Court Division passed in 1st Appeal No. 148 of 1993. Subsequently, Civil Petitioner for Leave to Appeal No. 1648 of 2002, was dismissed on contest by judgment dated 07.03.2004.

8. In the meantime, Mr. A.K.M. Salehuddin filed Writ Petition No. 3324 of 2001 challenging the legality of order of his removal dated 31.05.1984. By judgment and order dated 14.12.2004, a Division Bench of this Court made the Rule absolute on contest declaring the order of removal dated 31.05.1984 to have been issued without lawful authority and of no legal effect and also directed the respondent “to pay all attending service benefits and allowances treating him as in service on the date of retirement.”

9. However, T.C.B. decided not to challenge the aforesaid judgment passed in Writ Petition No. 3224 of 2001 directing the reinstatement of Mr. A.K.M. Salehuddin in service, which is evident from the office order dated 23.06.2005, as evident by Annexure ‘H1’ to the writ petition.

10. However, following the death of Mr. A.K.M. Salehuddin on 11.04.2005, T.C.B, at its 893rd meeting of the Board, decided to grant all service benefits and retirement facilities that was due to Mr. A.K.M. Salehuddin treating him to be in service until his retirement on 30.09.2003, as evident from the office order dated 23.06.2005 Annexure ‘H1’.

11. In view of the decision taken by the Board of T.C.B. to grant all service benefits to late Mr. A.K.M. Salehuddin treating him to be in service, the petitioner filed an application dated 10.05.2006 addressed to the Secretary, Ministry of Commerce, Bangladesh Secretariat, Dhaka praying for his reinstatement in service. The aforesaid application was forwarded by the Joint Secretary, Ministry of Commerce, who, in turn, forwarded the same to the Joint Secretary (Administration). In this manner, the petitioner’s application dated 10.05.2006 was forwarded from one office to another, but without any result. Finding no other alternation, the petitioner caused a Notice of Demand of Justice dated 25.01.2007 to be issued upon the respondents. Once again, there was no response from the other end. Being constrained, the petitioner finally moved this Court and obtained the instant Rule, as noted at the outset.

12. The chronology of evidence, as noted above, makes a sorry reading indeed. The petitioner, a Jetty Supervisor, who was serving along with on Mr. A.K.M. Salehuddin (since deceased), was put on suspension. It is to be noted that no prior of show cause notice was issued upon the two accused persons before their suspension from service. A Enquiry Committee, constituted by T.C.B., conducted an investigation into the charges brought against both Mr. A.K.M. Salehuddin and the petitioner. None of them were found guilty during the investigation, which culminated with the filing of the Enquire Report by the Enquiry Officer, one Mr. A. Munim Chowdhury, a Senior Execution on 06.11.1983.

13. The petitioner made an application before T.C.B. for his reinstatement in service. However, the said application was not considered on the ground of pendency of Money Suit No. 104 of 1990. Subsequently, as noted earlier, the said Money Suit was dismissed on contest and the 1st Appeal preferred by T.C.B. before the High Court Division also met the same fate, as did C.P.L.A. No. 1648 of 2002 preferred by T.C.B.

14. On the other hand, Writ Petition No. 3324 of 2001, which was filed by late Mr. A.K.M. Salehuddin seeking reinstatement in service was also made absolute by a Division Bench of this Court by Judgment dated 14.12.2004 and the appeal therefrom to the Appellate Division at the instance of TCB was also dismissed on contest. However, since late Mr. A.K.M. Salehuddin died on 19.12.2004, the Board granted all his retirement benefits to his family upon his death.

15. Since the petitioner and late Mr. A.K.M. Salehuddin were both charged together and the investigation conducted by the Enquiry Committee also absolved both of them from the said charges, it was incumbent upon the respondents to consider the petitioner's application for reinstatement in service. However, without doing so, the respondents demonstrated extreme high-handedness and acted in an arbitrary manner in dealing with the petitioner's case. Such conduct on the part of the respondents, holding responsible positions in a Statutory Corporation, is not only unacceptable, but strongly deprecated in no uncertain terms.

16. It is now well settled through judicial pronouncement that administrative actions by Government and statutory bodies should be judged on the scale of fairness. In other words, no authority can act arbitrarily and whimsically in discharging its duties, thereby affecting the rights and privilege of the property of an individual. In the instant case, the petitioner service and other benefits are his valuable property. Therefore, the respondents were under a legal duty and obligation to treat the petitioner's case in accordance with law. Regrettably, the respondents failed to discharge their duties and made him go through a protracted litigation since 2007.

17. Mr. Md. Abdul Halim, the learned Advocate appearing on behalf of the respondents, submits that having gone through the writ petition and its Annexures, he finds it difficult to oppose the Rule. We appreciate the submission of Mr. Md. Abdul Halim, which goes to show he has discharged his duties as an officer of the Court. It should be borne in mind by all the learned members of the Bar that the duty of a lawyer lies first to the Court and then to his client.

18. In view of the discussion made above and having regard to the facts and circumstances of the case, we are inclined to hold that the instant Rule merits positive consideration.

19. In the result, the Rule is made absolute.

20. The impugned Order No. T.C.B.(Clearance-155)/ R.O./ 83/ 84/ 2300 dated 31.05.1984, is declared to have been without lawful authority and to be of no legal effect.

21. The respondents are directed to reinstate the petitioner in service with effect from the date of his suspension that is, on and from 30.08.1983, if he has not attended the age of retirement in the meantime. However, if the petitioner have already attained the age of retirement, the respondents are hereby directed to treat the petitioner to be in service on and from 31.05.1984 till the date of his

retirement and accordingly, pay all his service and other retirement benefits due to him in accordance with law.

22. The respondents are further directed to ensure that the aforesaid financial dues are paid to the petitioner in full within 60 (sixty) days from the date of receipt of the certified copy of the judgment passed today, failing which, the petitioner will be at liberty to initiate appropriate legal proceedings against the concerned official for non-compliance of the Court's order.

23. Although we were inclined to award substantial costs to the petitioner for the agony and harassment caused to him by the conduct of the respondents, we refrain from doing so as it would probably prolong the matter even further.

24. The office is directed to communicate the order at once.