

3 SCOB [2015] HCD 13**HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

Dr. Shahdeen Malik Advocate,
...for petitioner in W.P. No. 6324/13.

Writ Petition No. 6324 of 2013
&
Suo Moto Rule No. 19 of 2013
(Arising out of WP No. 6324/13).
with
Writ Petition No. 6791 of 2013..

Mr. Ruhul Quddus Kazol with
Mr. Harun Ar Rashid and
Mr. Md. Humayon Kabir, Advocates,
...for Petitioner in W.P. No.6791/13.

Dr. Md. Sarwar Jahan and others,
(Petitioners in W.P. No. 6324/13 & Suo
Moto Rule no. 19/13).

Mr. Shamim Khaled Ahmed, Advocate
...for Respondents No. 2 and 3(in both
the Rules and the Suo Moto Rule no.
19/13.

With
Dr. Md. Yasin Ali
(Petitioner in W.P. No. 6791/13)

Mr. Ruhul Quddus Kazol with
Mr. Harun Ar Rashid and
Mr. Md. Humayon Kabir, Advocates,
...For Respondents No.6 to 8, 10 &
11 (In WP No. 6324/13).

-Versus-

Khulna University, represented by the
Vice Chancellor, Khulna University and
others,
...Respondents in both writ petitions.

Heard on 27.11.2014
Judgment on 02.12.2014.

Present:

Mr. Justice Mirza Hussain Haider

&

Mr. Justice Md. Ataur Rahman Khan.

Khulna University Act 1990**Section 28 (5):**

When the law specifically used the words “প্রত্যেক স্কুলের বিভিন্ন ডিসিপ্লিনের মধ্যে জ্যেষ্ঠতার ভিত্তিতে এবং ভাইস চ্যান্সেলর কর্তৃক *in vacuo* ভাবে অধ্যাপকদের মধ্যে উহার জীন পদ আবর্তিত হইবে” we hold that the post of Dean will rotate firstly among the Disciplines, according to its seniority of being set up/established, and then also among the senior Professors of each Discipline of the school. Thus so far the two interpretations given by the two Ministries are concerned we are of the view that the subsequent interpretation dated 06.03.2013 given by the Ministry of Education is more rational, reasonable and acceptable for the purpose interpretation of section 28 (5) of the Act. ...(Para 21)

Judgment**MIRZA HUSSAIN HAIDER, J.**

1. When a good number of teaching staff, specifically the teachers of the life science school of the khulna University, started boycotting class examination on the event of appointment of Professor Dr. Samir Kumar Sadhu as the Dean of the Life Science School of

Khulna University, Causing a dead lock in the academic atmosphere, 31 Teachers of different Disciplines of the said University, finding no solution, came forward with Writ Petitions No. 6324 of 2013 and obtained Rule on 20.06.2013 in the following terms:

“ Let a Rule be issued calling upon the respondent to show cause as to why they shall not be directed to take all necessary steps to hold all the scheduled examinations of the Khulna University in accordance with the Academic Calendar of the University from 23rd June 2013 and / or pass such other or further order or orders as to this Court may seem fit and proper.”

2. Thereafter, on an application filed by the petitioners this Court on 10.07.2013 directed the respondents to hold term-2 Examination of the Life Science School of the said University within three weeks and perform all other academic and administrative duties relating to holding of examinations including setting and moderating the question papers by the concerned teachers of the said Life Science School of the said University. In the said order dated 10.07.2013, this Court also observed that the reasons of such boycotting classes and examinations by the teachers, which was continuing for last several months creating havoc in the University premises forcing the students to go for hunger strike in protest of the aforesaid conduct of the teachers, is due to the appointment of Professor Dr. Samir Kumar Sadhu as the Dean of the life science school.

3. Under such circumstances, this Court on 10.07.2013, along with the aforesaid direction also issued *Suo Motu* Rule No.19 of 2013 in the following terms:

“ Suo Moto Rule be issued upon the respondents to justify as to how and under what authority Professor Dr Samir Kumar Sadhu has been appointed as Dean of the said school within 03(three) weeks from date.”

4. Thereafter, one Dr. Md. Yasin Ali, Professor of Agrotechnology Discipline, Khulna University Khulna, filed Writ Petition no. 6791 of 2013 challenging the appointment of Dr. Samir Kumar Sadhu, Professor of Pharmacy Discipline as Dean of the Life Science School, vide impugned Memo no. Khu:Bi/ Prosha-83/95 dated 07.03.2013 (Annexure-E) and accordingly, Rule was issued on 14.7.2013 in the following terms:

“ Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned Office Order dated 07.03.2013 under memo No. Khu.Bi/ Prosha-83/95 (Annexure-E) issued under the signature of Respondent no.3 appointing respondent no.4 Namely Dr. Samir Kumar Sadhu, Professor of Pharmacy Discipline, Life Science School, Khulna University as Dean of Life Science School of the said University without complying with the provision of Section 28(5) of the Khulna University Act, 1990 should not be declared to have been issued without lawful authority and of no legal effect and further to show cause as to why the respondents should not be directed to appoint the petitioner as Dean of Life Science School, Khulna University as per the said provision of law and / pass such other or further order or orders as to this Court may seem fit and proper.”

5. The aforesaid three Rules being issued relating to the same subject matter, all are taken up for hearing analogously and disposed of by this single judgment.

6. The background of the Rules have already been stated hereinabove.

7. The petitioner in Writ Petition no. 6791 of 2013 claimed that being appointed as Lecturer in the Agrotechnology Discipline, of the Life Science School, under the Khulna

University, he joined the said post and was performing his duties as such to the satisfaction of the authority concerned. Thereafter, he was promoted to the post of Assistant Professor, Associate Professor and then promoted to the post of Professor of the said University on 26.11.2005 vide Memo no. Khu:Bi:Prosha-136/97-1226 dated 11.12.2005 and accordingly the petitioner, on 11.12.2005, joined as the Professor and since then he has been discharging his duties with full satisfaction of the authority concerned (Annexure- A-1). The respondent no. 3 prepared a seniority list of the Professors of different disciplines of Khulna University (Annexure-C) which was forwarded to the Dean of Science, Engineering and Technology School, Khulna University wherein the petitioner has been placed in Serial no.12. It is stated that in the meantime, Professor Dr. Md. Mizanur Rahman Bhuiyan the earlier Dean of Life Science School being sent on retirement, the petitioner become entitled to be appointed as Dean of the Life Science School, of the Khulna University pursuant to the explanation/interpretation of under Section 28(5) of the Khulna University Act, 1990 given by the Ministry of Law, Justice and Parliamentary Affairs obtained by respondent No.1 for Respondent No.2 on 29.12.2009 (Annexures D and D-1). But without complying with the provision of law and the explanation given by the concerned Ministry on Section 28(5), Dr. Samir Kumar Sadhu Professor of Pharmacy Discipline of the Life Science School, Khulna University (Respondent no.4) has been appointed as Dean of the Life Science School, vide impugned Memo dated 07.03.2013 (Annexure-E) instead of appointing the Senior Professor i.e. the petitioner.

8. Under such, circumstances the petitioner on 30.06.2013, served a notice demanding justice upon the respondent no.2, through his learned advocate, requesting him to appoint the petitioner as Dean of the Life Science School, Khulna University upon cancelling the earlier appointment of Professor Dr. Samir Kumar Sadhu (Annexure-F). But having received no reply to the same, the petitioner was compelled to file this writ petition under Article 102 of the Constitution and obtained the Rule on 14.07.2013 as mentioned above.

9. All the Rules being served upon the respondents, the Khulna University, represented by its Vice Chancellor, (Respondent no. 1 in Writ Petition no. 6324 of 2013 and Respondent no.2 in Writ Petition no. 6791 of 2013) entered appearance and filed affidavit in opposition denying the material allegations of the writ petitions and contending inter alia that under section 28(5) of the Khulna University Act, 1990 the petitioner in Writ Petition no. 6791 of 2013 is not eligible for appointment as Dean of the said school pursuant to the latest clarification issued from the office of the Chancellor through the Secretary of the Chancellor, who is no less than the Secretary of the Ministry of Education, modifying the earlier clarification given by the Ministry of law, Justice and Parliamentary Affairs on 29.12.2009. Thus there is no illegality committed by the respondent authority in appointing Professor Dr. Samir Kumar Sadhu, as the Dean of the said school. According to the said affidavit in opposition of the University-authority, the earlier clarification given by the Ministry of Law, Justice and Parliamentary Affairs in 2009 has been modified by further clarification/explanation by the Chancellor's Office i.e. the Ministry of Education vide Letter dated 6.03.2013, as such the Rule should be discharged.

10. In Writ Petition no. 6324 of 2013, the respondent- University authority filed an affidavit of compliance stating that pursuant to the direction dated 10.07.2013, the respondent authority held term-2 Examination of the Life Science School of Khulna University within time and are performing all other academic and administrative duties relating to holding of examinations including setting and moderation of question papers by the concerned teachers of the said School in accordance with the schedule declared in the

Academic Calendar of the University. In the said affidavit the respondent authority annexed certain papers in support of the claim that appointment of Professor Dr. Samir Kumar Sadhu as the Dean was made in accordance with law and without violating any provision of law.

11. However, on the face of affidavit of compliance as to holding of examinations on the schedule as per directions of this Court Dr. Shahdeen Malik, the learned advocate appearing on behalf of the petitioners in Writ Petition no. 6324 of 2013 submits that with the compliance of the direction, the purpose of the Rule has already been served and the students of the University are being allowed to sit in the examinations according to the academic calendar of the University and since the appointment of Dr. Sadhu has not been challenged in this writ petition there is nothing left for adjudication in this Rule. Dr. Malik on the question of *Suo Moto* Rule No. 19 of 2013 regarding justification of appointment of Professor Dr. Samir Kumar Sadhu, as Dean of the Life Science School, submits that on the face of two different interpretations given by the Ministry of Law in 2009 and the other one by the Chancellor's Secretariat i.e. the Secretary of the Ministry of Education, who is *ex officio* Secretary to the Chancellor in 2013, it has become essential for this Court to interpret Section 28(5) of the Khulna University Act 1990. Thus he submits that it would be judicious if the Court gives the correct interpretation on the said provision of law, for ends of justice, which will automatically give a fruitful result to the smooth functioning of the Khulna University.

12. Since the subject matter of the *Suo Moto* Rule no. 19 of 2013 and the subject matter of Writ Petition no. 6791 of 2013 are same it would be wise to discuss the submissions advanced by both the parties in Writ Petition no. 6791 of 2013.

13. Mr. Ruhul Quddus, the learned advocate appearing on behalf of the petitioner submits, firstly, that pursuant to the Letter dated 22.04.2007 of the Khulna University, the Ministry of Education requested the Ministry of Law, Justice and Parliamentary Affairs to give opinion to resolve the problems as to the applications of section 24(1)(Ga), 24(1)(Gha), 28(5) and 29(3) of the Khulna University Act, 1990 and accordingly, the Ministry of Law, referring to the clarification sought by the Khulna University, gave an opinion which had been in practice before Professor Dr. Samir Kumar Sadhu was appointed as Dean of the said school. It clearly shows that the Vice Chancellor would appoint the Dean of the Faculty/School by rotating the said post among the Senior Professors of the said School and as such the writ petitioner being Senior in all respect to Professor Dr. Samir Kumar Sadhu, although he is from another Discipline, he is eligible to be appointed as Dean of the Life Science School. In this respect he referred to Annexures C and D, respectively to the writ petition, which is the seniority list, prepared and sent to different persons for their perusal and opinion. This list, according to him, has been made in 2006 wherein the petitioner's name appears in serial no. 12 in respect of seniority and the name of Professor Dr. Sadhu has not been incorporated therein. As such he submits that the petitioner is senior to Dr. Sadhu. Lastly, he submits that the interpretation which has been given by the Ministry of Law, Justice and parliamentary Affairs in 2009 should prevail upon all further explanation/interpretation given by any other authority as such the Rule should be made absolute and the authority should be directed to appoint the petitioner as Dean of the Life Science School.

14. Mr. Shamim Khaled Ahmed, the learned advocate appearing on behalf of the University authority (Respondent no.2 in Writ Petition no. 6791 of 2013), on the other hand, relying on annexures appended to the affidavit of compliance filed in Writ Petition no. 6324 of 2013 submits that the question raised in this writ petition encircles interpretation of

Section 28 (5) of the Khulna University Act, 1990 as the opinion of the Ministry of Law dated 29.12.2009 regarding the said provision does not clearly indicate anything as to rotating the post of Dean among all the Professors of all the Disciplines rather the said opinion/explanation indicates that the post of Dean shall rotate within the Senior professors of the said School only. In this respect, he submits that such explanation has created confusion among the mind of the professors of other Disciplines of the said Faculty/School which has been established subsequently in different years. In this respect, he drew our attention to Annexure-5 to the affidavit of compliance and submits that seven Disciplines under the Life Science School have been established in different years from 1992 to 1999. As such, there is less scope of promotion from the Disciplines which have been established subsequently. Thus under the explanation of the Ministry of Law dated 29.12.2009 the post of Dean of the said school would rotate only among the Professors of Forestry and Wood Technology disciplines, Fisheries and Marine Resource Technology discipline; Biotechnology and Genetic Engineering discipline and Agro- technology discipline, which have been established much earlier, in 1992 to 1996. Whereas the Environmental science and Pharmacy discipline (Dr. Sadhu's discipline) both being established in 1997 the Professors of these two disciplines being juniors to earlier established disciplines, will never get any chance of becoming the Dean of the said School. Such position created frustration among the Professors of other disciplines which have been established at a later state. As such further explanation in respect of section 28 (5) of the Act of 1990 was sought for by the University authority from the Chancellor's Secretariate. Accordingly, it has been opined in 2013 by the Chancellor's Secretariat, that the system of rotating the post of Dean of each School of the Khulna University, as provided for in Section 28(5) of the Khulna University Act, 1990, will mean rotation among the Disciplines as well as among the Senior Professors of each Discipline. Pursuant to the said explanation, since all the senior professors of each discipline would get a chance to be appointed as the Dean of all schools the frustration caused earlier in the mind of the Professors of other Disciplines established subsequently has been removed. In this respect he submits that the language used in Section 28(5) of the said Act, 1990 "প্রত্যেক স্কুলের বিভিন্ন ডিসিপ্লিনের মধ্যে জ্যেষ্ঠতার ভিত্তিতে এবং ভাইস চ্যান্সলর কর্তৃক নিম্নলিখিতভাবে অধ্যাপকদের মধ্যে উহার ডীন পদ আবর্তিত হইবে" clearly indicates that the post of Dean will rotate among the Disciplines first then among the Senior Professors of each Discipline which will not create any frustration in the mind of any professor of any Discipline as each and every professor of each and every Discipline would get a chance to be the Dean of each school in his life time. He further submits that since section 28(5) of the said Act 1990 specifically empowered the Vice Chancellor to appoint a Dean, from among the senior professors of all Disciplines by rotation, unlike the Dhaka University wherein the post of Dean is an elected post, the Vice Chancellor of Khulna University is required to exercise the said power more judiciously so that none of the Professors of either of the disciplines is left out in respect of being appointed as the Dean of the said School. In this respect he further submits that the interpretation/explanation/clarification given by the Ministry of Education by its letter dated 06.03.2013 clearly indicates that any Discipline which does not have any professor, that Discipline shall not get any chance to be appointed in the post of Dean of the said School. The explanation in the said letter further indicates that if no other professor is found from any other Disciplines then the first Discipline having adequate number of professors would get a chance to be appointed as Dean and in the said explanation it has further been stated that any Senior Professor, who has once been appointed as Dean will not be considered to be appointed as Dean on a subsequent time rather the next Senior Professor of that particular Discipline will be appointed. Accordingly, Mr. Ahmed submits that this opinion given by the Chancellor's Office through the Ministry of Education, is more rational, reasonable and

judicious in nature for which there should not be any grievance from any Discipline and as such, prays for discharging the Rule.

15. Lastly, referring to Annexure 12 and 13(dated 15.09.2013 and 09.04.2014 respectively) to the supplementary affidavit in opposition filed in Writ Petition no. 6324 of 2013, Mr. Ahmed submits that since Mr. Sadhu on 15.09.2013 resigned from the post of Dean of the Life Science School, the University Authority by letter dated 09.04.2014, signed by the Registrar of the Khulna University, accepted the same and on the face of such vacancy the Vice Chancellor of the University is working as the Dean in charge of the said Faculty/School. So the grievance of the petitioner of writ petition No. 6791 of 2013 in respect of the appointment of Dr. Sadhu, who is allegedly junior to him, is no more in existence. As such all the Rules have become infructuous. Thus the University authority will have to give fresh appointment in the post of Dean of the Life Science School as per interpretation given by the Court.

16. Having gone through the entire facts and circumstances as well as the law referred to by the parties, as stated hereinabove, we find that a simple question has been raised in these Rules which relates to explanation/ interpretation/ Clarification of Section 28(5) of the Khulna University Act, 1990. Rather which of the two interpretations given by the Ministry of Law Justice and Parliamentary Affairs, in 2009 and the interpretation given by the Chancellor's office through the Ministry of Education on 06.03.2013 is the correct or more rational/judicious. In this respect we need to see section 28(5) of the University Act, 1990 which reads as follows:

২৮(১) বিশ্ববিদ্যালয়ে প্রাথমিক পর্যায়ে নিম্নবর্ণিত স্কুলসমূহ থাকিবে, যাহা স্কুল সংশ্লিষ্ট ডিসিপ্লিন এবং অধ্যয়ন-ক্ষেত্র ও ইনস্টিটিউট সমন্বয়ে গঠিত হইবে, যথাঃ-

- (ক)
- (খ)
- (গ)
- (ঘ)
- (ঙ)
- (চ)
- (ছ)
- (জ)

(২)

(৩)

(৪)

(৫) প্রত্যেক স্কুলের বিভিন্ন ডিসিপ্লিনের মধ্যে জ্যেষ্ঠতার ভিত্তিতে এবং ভাইস চ্যান্সলর কর্তৃক নির্দিষ্টভাবে অধ্যাপকদের মধ্যে উহার ডীন পদ আবর্তিত হইবে এবং তিনি দুই বাসরের মেয়াদে তাহার পদে বহাল থাকিবেন”।

17. Side by side the two explanations/ clarifications given by the Ministry of Law, Justice and Parliamentary Affairs in 2009 as well as by the Chancellor's Office, through Secretary Ministry of Education on 6.3.2013, as appears from Annexure 8 to the affidavit in compliance, filed by Respondent No. 1 in writ petition No. 6324 of 2013 also annexed as Annexure D(1) in writ petition No. 6791 of 2013 and explanation from the Chancellor's Secretariat dated 6.3.2013 Annexure E to writ petition No. 6791 of 2013 which has been replaced by Annexure 10 to the affidavit of compliance filed in writ petition No. 6324 of 2013 relating to section 28(5) of the Act of 1990 reads as follows:

“১৬। খুলনা বিশ্ববিদ্যালয়ের ভাইস চ্যান্সেলর, খুলনা বিশ্ববিদ্যালয় আইন, ১৯৯০ এর ১৪(১) (গ), ২৪(১) (ঘ), ২৮(৫) এবং ২৯ (৩) ধারাসমূহ প্রয়োগের ক্ষেত্রে সমস্যা উদ্ভূত হওয়ায় উক্ত ধারাসমূহের ব্যাখ্যা / স্পষ্টিকরণ / দিকনির্দেশনা চেয়ে শিক্ষা মন্ত্রণালয়ে একটি পত্র প্রেরণ করেন। তদপ্রেক্ষিতে প্রত্যাশী মন্ত্রণালয় নিম্নোক্ত বিষয়সমূহের উপর মতামত যাচনা করেছেঃ

(১).....

(২).....

(৩) ধারা ২৮(৫) অনুসারে প্রত্যেক স্কুলের বিভিন্ন ডিসিপ্লিনের মধ্যে জ্যেষ্ঠতার ভিত্তিতে এবং ভাইস চ্যান্সেলর কর্তৃক নির্দিষ্টভাবে অধ্যাপকদের মধ্যে উহার ডীন পদ আর্ভিত হবে এবং তিনি ২ বছর মেয়াদে তার পদে বহাল থাকবেন। এক্ষেত্রে প্রত্যেক স্কুলের বিভিন্ন ডিসিপ্লিনের মধ্যে জ্যেষ্ঠতার ভিত্তিতে বলতে সকল ডিসিপ্লিনের সকল অধ্যাপকগণের মধ্যে নির্দিষ্টভাবে অধ্যাপকগণের মধ্যে অর্থাৎ জ্যেষ্ঠতার ভিত্তিতে আর্ভিত হবে না বিভিন্ন ডিসিপ্লিনের মধ্যে অর্থাৎ একবার যে ডিসিপ্লিন থেকে ডীন পদ পেয়েছে সেই ডিসিপ্লিন বাদ দিয়ে অন্য ডিসিপ্লিন গুলোর মধ্যকার অধ্যাপকগণের মধ্যে জ্যেষ্ঠতার ভিত্তিতে হবে;

(৪).....

১৭। আইনগত মতামতঃ

(গ) নোট -১৬ (৩) বিষয়ে মতামত হছে ধারা ২৮ (৫) এ উল্লেখ করা হয়েছে যে , প্রত্যেক স্কুলের বিভিন্ন ডিসিপ্লিনের মধ্যে জ্যেষ্ঠতার ভিত্তিতে এবং ভাইস - চ্যান্সেলর কর্তৃক নির্দিষ্টভাবে অধ্যাপকদের মধ্যে উহার ডীন পদ আর্ভিত হইবে এবং তিনি দুই বতসরের মেয়াদে তাহার পদে বহাল থাকিবেন।” এখানে প্রত্যেক স্কুলের বিভিন্ন ডিসিপ্লিনের মধ্যে জ্যেষ্ঠতার ভিত্তিতে বলতে সকল ডিসিপ্লিনের সকল অধ্যাপকদের মধ্যে জ্যেষ্ঠতার ভিত্তিতে আর্ভিত হবো।”

18. On the other hand the explanation given by the Chancellor’s Office through Secretary Ministry of Education on 6.3.2013 (Annexure 10) reads as follows:

“ প্রত্যেক স্কুলের ডিসিপ্লিনসমূহের মধ্যে ডীনের পদ আর্ভিত হবে ঃ এক্ষেত্রে ডিসিপ্লিনসমূহের প্রতিষ্ঠা সনের ক্রমানুযায়ী একটি ডিসিপ্লিনের পর অন্য ডিসিপ্লিনের জ্যেষ্ঠ অধ্যাপকের কাছে ডীনের পদ যাবে । যে ডিসিপ্লিনে অধ্যাপক নেই সেখানে ডীন মনোনয়নের সুযোগ থাকবে না। এক্ষেত্রে প্রতিষ্ঠার দিক থেকে প্রথম ডিসিপ্লিন থেকে পুনরায় ডীন মনোনীত হবেন। তবে জ্যেষ্ঠতম অধ্যাপক যিনি ইতোপূর্বে ডীন হয়েছেন তার বদলে পরের জ্যেষ্ঠ অধ্যাপক ডীন হবেন ”

শিক্ষা মন্ত্রণালয়ের ২৯ ডিসেম্বর ২০০৯ তারিকের শিমশাঃ ১৭/২ আইন -২/২০০৭/৭৪৫ সংখ্যক পত্রের মাধ্যমে খুলনা বিশ্ববিদ্যালয় আইন, ১৯৯০ - এর ২৮ (৫) ধারার ব্যাখ্যা এতদ্বারা বাতিল করা হলো।”

19. One thing is required to be mentioned here that the explanation given by the Ministry of Law on 29.12.2009 if followed then many of the Professors of other Disciplines established lately shall be deprived of getting any chance of being appointed to the post of Dean of any Faculty/School of the University. This can not be the intention of the law makers. From the affidavit in opposition it appears that when the previous Dean of Life Science school, Dr. Mizanur Rahman Bhuiyan, was sent on retirement, a vacuum was created in respect of appointment of the Dean from among the Professors of other Disciplines who were eligible. In this respect the earlier opinion created frustration in the mind of the professors of other disciplines which were established lately. Accordingly, the University authority, to prevent the frustration from among the Professors of subsequently established Disciplines requested the Chancellor’s office through the secretary Ministry of Education, who acts as the Chancellor’s Secretary to re-assess the same and give further opinion on Section 28(5). Accordingly, on 6.3.2013 explanation has been given as stated above.

20. On perusal of section 28(5) of the Act 1990 it appears that the law provides “cZK ~đj i weirfbadWimic#bi gta tR`ôZvi wFiEŁZ Ges FvBm P`vYj i KZR`ubw` @ Fiŕe Aa`vcKŕ i gta Dnvi Wlb c` AveZxŁ nBŕe.” (underlined for emphasis) and since the word “gta” has been used twice one

after the words “*cØZ`K `qj i newfbæ Wwmmic#bi Ó*” and then after the words “*Ges fivBm P`vYj i KZR. wbw`Ø fivte Aa`vcKt`i Ó*” and since it appears further that the words “*cØZ`K `qj i newfbæ Wwmmic#bi gta` tR`ôZvi wfvÉtZ`*” has been used first we are of the view that the post of Dean would first rotate among each Discipline on the basis of its seniority i.e year of establishment and then again among the Senior Professors of each Discipline of the School. Not on the basis of combined list of all Professors of all disciplines of the School. If the later meaning is given then the post of Dean will be rotating only among the Senior Professors of the entire School and a discipline being set up in 1992, definitely, will have larger number of senior professors than those set up subsequently. Thus if the appointment rotates only among the Senior Professors of the entire School then the senior professors of other Disciplines established or set up subsequently, will not get any chance of becoming the Dean probably in their life time.

21. On a comparative study of the Khulna University Act 1990 with Dhaka University Act it appears that the post of Dean of different Disciplines/ Faculties of Dhaka University are appointed by election and there is no chance/ opportunity of rotating the said post among the Professors of different Departments/Disciplines rather than by election, whereas in the said Act of 1990 it appears that the legislature intentionally/purposefully used the aforesaid term “*cØZ`K `qj i newfbæ Wwmmic#bi gta` tR`ôZvi wfvÉtZ`....*” not “*cØZ`K `qj i newfbæ Wwmmic#bi Aa`vcKt`i gta` tR`ôZvi wfvÉtZ`*” so that each and every professor of each and every discipline gets an opportunity to be appointed as Dean. Thus, what appears to us, is that the Vice Chancellor shall appoint a Senior Professor as a Dean of a particular School / Faculty who will function for two years and such nomination/appointment will be made on the basis of rotation of the post among the Disciplines as well as among the Senior Professors of each Discipline. In that view of the matter, one Discipline, which has been set up on an earlier date, may have good number of Professors than the Discipline which has been set up on a latter date, then the Professors of an older discipline having more senior professors will get the benefit than the professors of a subsequently set up discipline, who will not get any chance. That can not be the intention of the legislature. Thus when the law specifically used the words “*cØZ`K `qj i newfbæ Wwmmic#bi gta` tR`ôZvi wfvÉtZ` Ges fivBm P`vYj i KZR. wbw`Ø fivte Aa`vcKt`i gta` Dnvi Wxb c` AveZix nBte`*” we hold that the post of Dean will rotate firstly among the Disciplines, according to its seniority of being set up/established, and then also among the senior Professors of each Discipline of the school. Thus so far the two interpretations given by the two Ministries are concerned we are of the view that the subsequent interpretation dated 06.03.2013 given by the Ministry of Education is more rational, reasonable and acceptable for the purpose interpretation of section 28 (5) of the Act. As such we find substance in the submissions made by the learned advocate for the University authority. Accordingly we do not find any merit in the Rule issued in Writ Petition no. 6791 of 2013.

22. In the result, the Rule issued in Writ Petition No. 6791 of 2013 is discharged.

23. With the compliance filed by the respondent No. 1 in Writ Petition No. 6324 of 2013 pursuant to the Rule issuing order and the subsequent order dated 10.07.2013 the Rule is disposed of.

24. Consequently, Suo Muto Rule No. 19 of 2013 is also disposed of.

25. However there will be no order as costs.