

9 SCOB [2017] AD 62

APPELLATE DIVISION

PRESENT

Mr. Justice Md. Abdul Wahhab Miah

Mr. Justice Muhammad Imman Ali

Mr. Justice A. H. M. Shamsuddin Choudhury

CIVIL PETITION FOR LEAVE TO APPEAL NOS. 251-255 OF 2012

(From the judgement and order dated 25th of August, 2011 passed by the High Court Division in Writ Petition Nos. 2464, 2679 and 2680-2682 of 2011)

Non-Government Teacher's Registration and Certification Authority (NTRCA) and another ... Petitioners
(in all cases)

Versus

Lutfor Rahman and another ... Respondents
(in C.P. No. 251 of 2012)

Pulack Chakma and another ... Respondents
(in C.P. No. 252 of 2012)

Faizar Ahman and another ... Respondents
(in C.P. No. 253 of 2012)

Md. Mustaque Ahmed and another ... Respondents
(in C.P. No. 254 of 2012)

Md. Shaiful Islam and another ... Respondents
(in C.P. No. 255 of 2012)

For the Petitioner (in all cases)	:Mrs. Sufia Khatun Advocate-on-Record,
For Respondent No. 1 (in C.P. No.251,253 & 255 of 2012)	:Mrs. Madhu Malaty Chowdhury Barua, Advocate-on-Record on behalf of Mr. Md. Nawab Ali, Advocate-on-Record
For Respondent No. 1 (in C.P. No.252 & 254 of 2012)	: Mr. Syed Mahbubar Rahman Advocate-on-Record
Respondent No. 2 (in all cases)	: Not represented
Date of hearing & judgement	:The 12th of April, 2015

Without issuing any show cause notice the petitioners could not lawfully cancel the letter of appointment of the respondents:

It is patent from the records that all the respondents went through the rigorous process of selection and were appointed in their respective post. They were served with notices cancelling their appointment without issuing any show cause notice. The respondents

joined their posts and served accordingly for more than nine months at the time of filing their writ petition.

We are of the view that without issuing any show cause notice the petitioners could not lawfully cancel the letter of appointment of the respondents.

... (Para 13 &14)

JUDGMENT

MUHAMMAD IMMAN ALI, J:-

1. These five civil petitions for leave to appeal are directed against the judgement and order dated 25.08.2011 passed by a Division Bench of the High Court Division in Writ Petition Nos. 2464, 2679 and 2680-2682 of 2011 making the Rules absolute.

2. The facts of all petitions are almost same except the date of joining of the respondents in their respective post on their first appointment. These petitions are heard together and they are dealt with by this single judgement.

3. The facts relevant for disposal of the petitions are that the writ respondent No. 2 (petitioner herein) in his official capacity published a circular in “the Daily Samakal” on 16.02.2010 and “the Daily Jugantor” on 20.02.2010 to appoint persons in some posts in the office of the Non-Government Teachers Registration and Certification Authority (NTRCA). The respondents had applied for the post of Assistant Director in the NTRCA complying all the formalities and, accordingly, admit cards were issued inviting the respondents to sit in the examination for selection. Ultimately, the 5 (five) respondents were selected through written examination followed by viva-voce for the post of Assistant Director in the NTRCA, and upon their selection the Chairman of NTRCA issued appointment letters to respondent Lutfor Rahman vide Memo No. বেশিনিক/১ম শ্রেণীর কর্মকর্তা নিয়োগ/ ২৫৫/২০১০/৩৭৬ dated 13.06.2010, to respondent Pulack Chakma vide Memo No. বেশিনিক/১ম শ্রেণীর কর্মকর্তা নিয়োগ/ 255/2010/379 dated 13.06.2010, to respondent Faizar Ahmed vide Memo No. বেশিনিক/১ম শ্রেণীর কর্মকর্তা নিয়োগ/ 255/2010/377 dated 13.06.2010, to respondent Md. Mustaque Ahmed vide Memo No. বেশিনিক/১ম শ্রেণীর কর্মকর্তা নিয়োগ/ ২৫৫/২০১০/৩৭৫ dated 13.06.2010, and to respondent Saiful Islam vide Memo No. বেশিনিক/১ম শ্রেণীর কর্মকর্তা নিয়োগ/ ২৫৫/২০১০/৩৭৪ dated 13.06.2010.

4. Pursuant to the said appointment letters, respondent Lutfor Rahman submitted his joining letter on 16.06.2010 which was duly accepted by the Chairman, NTRCA (petitioner No. 1) and he was appointed on the same day in the post of Assistant Director (Service and Co-ordination) at Administration and Finance Wing of NTRCA. Respondent Pulock Chakma submitted his joining letter to the Chairman, NTRCA on 21.06.2010 and after acceptance of the same he was appointed in the post of Assistant Director (Certificate) at Evaluation and Certificate Wing of the NTRCA on the same date. Respondent Faizar Ahmed, Md. Mustaque Ahmed and Md. Shaiful Islam submitted their joining letters to the Chairman, NTRCA on 15.06.2010 and after acceptance of the same, respondent Faizar Ahmed and Mustaque Ahmed were posted as Assistant Director at Evaluation of Examination and Certificate Wing and respondent Shaiful Islam in the post of Assistant Director at Administration and Finance Wing of NTRCA on 16.06.2010.

5. The respondents had been performing their respective duties to the satisfaction of the authority and all others concerned from the date of their joining. The Secretary of NTRCA

wanted police verification reports of the respondents from the Superintendent of Police of their respective district. The office of the Superintendent of Police in compliance of the said letter verified the character of the respondents and submitted report accordingly. All of a sudden, on 14.03.2011 the petitioner No. 2 by his order (Annexure-E to the writ petition) cancelled the appointment of the respondents. The respondents moved the Ministry of Education to redress their grievances but in vain. The respondents, before joining in the NTRCA, had been working in different posts, and they duly applied for the post of Assistant Director in the NTRCA after leaving their jobs and they were duly appointment in accordance with law. Hence, the impugned order cancelling the appointments of the respondents is illegal. No show cause notices were served upon the writ petitioners-respondents before issuing the impugned order. Thus the arbitrary action of the petitioner No. 2 is nothing but malice in law which was passed with an ulterior motive to cause harm to the respondents. The respondents filed five separate writ petitions and obtained Rule.

6. The Rules were opposed by the petitioner Nos. 2 and 3 by filing affidavit-in-opposition contending, *inter alia*, that the former Chairman of NTRCA violating the rule Nos. 4, 5 (2) (Ka) and (Kha) of the Service Rules (Officers and Employees) of NTRCA, 2009 (in short, the Service Rules) had appointed the respondents. There is provisions in rule 4 of the Service Rules that the authority in order to appoint an employee in the NTRCA will constitute a Selection Committee (হিঁরঁিঁ Lঁj ৱ) and without the approval of such "হিঁরঁিঁ Lঁj ৱ" there would be no appointment in the NTRCA. Rule 5(2) (Ka) and (Kha) of the Service Rules also provides that no person will be appointed in any post of NTRCA until and unless he is found physically fit by a medical officer or medical board appointed by the authority for the said purpose, and also, there would be no appointment without verification of his character by the agency having competent jurisdiction to do the same. In this particular case there was no such "হিঁরঁিঁ Lঁj ৱ" and there was no recommendation from the "হিঁরঁিঁ Lঁj ৱ" for the appointment of the respondents. As such, the appointment of the respondents was illegal and the former Chairman, who appointed the respondents, had no jurisdiction to appoint them. As soon as the said violation of the provisions of the Service Rules was detected their appointments were cancelled duly by the Executive Board of NTRCA in its 32nd meeting, which was duly approved by the 35th meeting of the said Board of NTRCA. Pursuant to the said decision the impugned order was issued canceling the appointments of the respondents. So the Rules should be discharged.

7. After hearing the parties, by the impugned judgement and order dated 25.08.2011, the Rules were made absolute. Hence, the writ respondents as petitioners filed the instant civil petitions for leave to appeal.

8. Mrs. Sufia Khatun, learned Advocate-on-Record appearing on behalf of the petitioners submits that the Service Rules require that appointment of staff or officer in the NTRCA must be made by a selection committee (হিঁরঁিঁ Lঁj ৱ), but in this case there was no recommendation of the "হিঁরঁিঁ Lঁj ৱ" in respect of the respondents. She submits that the appointment of the respondents by the former Chairman, without the recommendation of the selection committee, was illegal and, therefore, their appointments were rightly cancelled. She submits that the cancellation of the appointment of the respondents was agreed in a resolution of the Executive Board of NTRCA in its 32nd meeting which was approved in the 35th meeting of the Board. She submits that the High Court Division erred in law in not considering the fact that the respondents were appointed illegally.

9. Mrs. Madhu Malati Chowdhury Barua learned Advocate-on-Record appears for respondent No. 1 in Civil Petition for Leave to Appeal Nos. 251,253 and 255 of 2012 and Mr. Syed Mahbubar Rahman, learned Advocate-on-Record appears for respondent No. 1 in Civil Petition for Leave to Appeal Nos. 252 and 254 of 2012. Both submit in support of the impugned judgement and order of the High Court Division.

10. We have considered the submissions of the learned Advocates for the parties concerned, perused the impugned judgement and other connected papers on record.

11. It appears from the materials on record that the respondents applied for their respective post in response to the advertisement for the vacancies mentioned, and after fulfilling all the requirements of the selection procedure, including appearing in the competitive written and viva voce examinations. They were duly issued their appointment letters after medical examination and police verification. It transpires that the appointment of the respondents was subsequently cancelled without issuing any show cause notice.

12. The High Court Division observed that before issuing the impugned order cancelling the appointment of the writ petitioners no show cause notice was served upon them and that the principles of natural justice has been seriously violated and ignored.

13. It is patent from the records that all the respondents went through the rigorous process of selection and were appointed in their respective post. They were served with notices cancelling their appointment without issuing any show cause notice. The respondents joined their posts and served accordingly for more than nine months at the time of filing their writ petition.

14. We are of the view that without issuing any show cause notice the petitioners could not lawfully cancel the letter of appointment of the respondents.

15. We find that the impugned judgement does not suffer from any illegality or infirmity and does not call for any interference. Accordingly, the civil petitions for leave to appeal are dismissed.