

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Hasan Foez Siddique
-Chief Justice
Mr. Justice Md. Nuruzzaman
Mr. Justice Borhanuddin
Mr. Justice M. Enayetur Rahim

CIVIL PETITION FOR LEAVE TO APPEAL NO.1347 of 2017.

(From the judgment and order dated 28.07.2016 passed by the High Court Division in Writ Petition No.5452 of 2015).

Md. Montaj Uddin. :Petitioner.
-Versus-
Ministry of Public Administration :Respondents.
and others.

For the Petitioner. : Mr. Salahuddin Dolon, Senior Advocate, instructed by Mvi. Md. Wahidullah, Advocate-on-Record.

For the Respondents. : Mrs. Tania Amir, Senior Advocate, instructed by Mrs. Shirin Afroz, Advocate-on-Record.

Date of Hearing : **The 7th April, 2022.**

J U D G M E N T

Borhanuddin, J: This civil petition for leave to appeal under Article 103 of the constitution is directed against the judgment and order dated 28.07.2016 passed by the High Court Division in Writ Petition No.5452 of 2015.

Brief facts as gathered from the writ petition are that the petitioner being an Assistant Professor of the Bhandaria Government College, Pirojpur, was made a room

invigilator of an examination hall at the said college for the Higher Secondary Certificate examination of 2015 under the Board of Intermediate and Secondary Education, Barishal; Being on duty during the said examination of Higher Secondary English First Paper on 09.04.2015, the petitioner was severely humiliated by the writ-respondent no.6 Ashraful Islam, Assistant Commissioner (Land) and Executive Magistrate, Bhandaria, writ-respondent no.7 M Monir Hossain, Upazila Nirbahi Officer, Bhandaria and ABM Fokhruzzaman, Principal of the Bhandaria Government College for not being able instantaneously react to an order of the writ-respondent no.6 in rearranging the seating position of two examinees who were allegedly sitting closely to each other during the said examination; The petitioner was humiliated simply because he wanted to know the identity of the respondent no.6 who entered the said examination hall without any prior notice or voluntarily refrained from disclosing his identity who was later identified as a junior BCS officer; The said humiliation was so gross that the petitioner was literally forced to extend his apology by

way of touching the feet of the respondent no.6 upon instigation of the respondent nos.7 and 8 at the office of the respondent no.8; The respondent nos.6, 7 and 8 did not stop there, they further incited reporters of local daily newspapers that were brought alongwith respondent nos.6 and 7 in taking photographs of such disturbing and distasteful incident, which was purposefully published on the following day by many daily newspapers and social media websites to publicly humiliate the petitioner; Due to such inhuman and degrading treatment by the respondent nos. 6, 7 and 8, the petitioner almost went to the verge of committing suicide; For such heinous and degrading act of the respondents, the BCS General Education Association demonstrated procession throughout the country but did not get appropriate response from the concern authorities and as such the petitioner is constrained to file writ petition.

Upon hearing the petitioner, a Division Bench of the High Court Division issued a *Rule Nisi* upon the respondents to show cause and directed the Chief Judicial Magistrate, Pirojpur, to conduct an inquiry with regard

to the alleged occurrence and submit the report to the Attorney General Office by 15.06.2015 and also directed the respondent no.6 Ashraful Islam, Assistant Commissioner (Land) and Executive Magistrate, Bhandaria Upazila to appear in person before the court on 15.06.2015 alongwith his statement with regard to the show cause notice and on the same day the petitioner was also directed to be present in person before the court vide order dated 25.05.2015.

The writ-respondent no.6 contested the rule by filing an affidavit-in-opposition denying the allegations made in the writ petition stating interalia that on 29.03.2015 the District Magistrate, Pirojpur, assigned the respondent to create an environment free from copying and maintain law and order situation of the examination centers used for Higher Secondary Certificate examination 2015; As a part of his duty the respondent went to the Bhandaria Government College on 09.04.2015 for a regular inspection; After entering hall no.2 he noticed that two examinees were sitting very closely and talking to each other; Respondent quietly requested the petitioner to

separate them at a distance but the petitioner did not pay heed and as such the respondent again requested him very politely but the petitioner being furious misbehaved with the respondent and questioned the authority of the respondent and asked him to leave the examination hall; Being insulted, the respondent went to the Principal's room and informed the matter to the respondent no.7 Upazila Nirbahi Officer over phone; After hearing the matter, the respondent no.8 Principal requested the petitioner to come at his room; While the respondent was going to lodge a complain under lawful authority, the petitioner started to seek apology and wanted to reach his feet in front of the respondent nos.7, 8 and others. But the respondent stopped the petitioner from touching his feet and take him to sit by his side cordially accepting his apology; On 23.04.2015 the Ministry of Education constituted an investigation committee to investigate the incident by Mr. Ashok Kumar Biswas, Additional Secretary, Ministry of Education, Dr. Molla Jalal Uddin, Joint Secretary (College), Ministry of Education and Mr. Md. Imam Hossain, Principal, Government

Bangla College, Mirpur, Dhaka. The committee after taking statement of witnesses submitted its report.

The respondent no.7 M. Monir Hossain, Upazila Nirbahi Officer, Bhandaria filed a separate affidavit-in-opposition supporting the contention of the respondent no.6.

The respondent no.8 ABM Fakhruzzaman the then Principal of the Bhandaria Government College also filed separate affidavit-in-opposition contending interalia that on the following day of the incident as stated in the writ petition 17 teachers of the college alongwith petitioner assembled in a meeting and condemned the heinous role of the respondent nos.6 and 7 which they played during the Higher Secondary Certificate examination and a resolution was adopted on that day in the meeting condemning the role of the Magistrate and UNO but not a single word was uttered by any person against the Principal, respondent no.8; Allegation against the respondent Principal is unfounded, after thought with malafide intension.

As per direction of the High Court Division at the time of the issuance of the Rule, the Chief Judicial Magistrate, Pirojpur, conducted the inquiry and after taking evidence of the parties and other witnesses arrived at a finding:

"সাক্ষ্য পর্যালোচনা অন্তে মতামত:

আমার তদন্তে সাক্ষীদের মৌখিক ও দালিলিক সাক্ষ্য প্রমাণের ভিত্তিতে এ কথা বলা যায় যে, রীটকারী জনাব মোঃ মোনতাজ উদ্দিন এবং এ.সি (ল্যাড) ভান্ডারিয়া উপজেলা ভূমি অফিস ও নির্বাহী ম্যাজিস্ট্রেট জনাব মোঃ অশ্রাফুল ইসলাম ভান্ডারিয়া সরকারী কলেজ পরীক্ষা কেন্দ্রের ০২নং কক্ষে একটি বেঞ্চের দুইজন মেয়েকে সরানোর ঘটনাকে কেন্দ্র করে বাক বিতন্ডায় জড়িত হবার পর পরীক্ষার হলের মধ্যে মোবাইল ফোনে এ.সি (ল্যাড) কথা বলার কারণ দেখিয়ে তাকে রীটকারি পরীক্ষার হল থেকে বের করে দেন মর্মে ঘটনার প্রাথমিক সত্যতা পাওয়া যায়।

পরবর্তীতে ভান্ডারিয়া সরকারী কলেজের অধ্যক্ষের কক্ষে উপজেলা নির্বাহী অফিসার ভান্ডারিয়া, এ.সি (ল্যাড) ও রীটকারী মোঃ মোনতাজ উদ্দিন এর বক্তব্য শুনে রীটকারীকে মোবাইল কোর্টের মাধ্যমে সাজা প্রদানের কথা উল্লেখসহ তার চাকরি হতে অব্যাহতি, তার ফ্যামিলি, সন্তান ইত্যাদি কথা উল্লেখ করায় কলেজের অধ্যক্ষ রীটের ০৮নং প্রতিপক্ষ আপোষ মিমাংসার উদ্যোগ নেন। অতঃপর অধ্যক্ষের উপস্থিতিতে ইউ.এন.ও ভান্ডারিয়া রীটকারীকে এ.সি (ল্যাড) এর হাত ধরে ক্ষমা চাইলে হবেনা, পায়ে ধরে ক্ষমা চাইতে হবে মর্মে বলার পর রীটকারী জনাব মোঃ মোনতাজ উদ্দিন মোবাইল কোর্টের সাজা থেকে বাঁচার জন্য নিরুপায় হয়ে এ.সি (ল্যাড) এর পা ধরে ক্ষমা প্রার্থনা করেন মর্মে সাক্ষীদের বক্তব্য হতে ঘটনার প্রাথমিক সত্যতা পাওয়া যায়।

পরবর্তীতে এ.সি (ল্যাড) জনাব মোঃ আশ্রাফুল ইসলাম পা ধরাতেও সন্তুষ্ট না থেকে ০২নং কক্ষে গিয়ে পর্যবেক্ষক রীটকারী জনাব মোঃ মোনতাজ উদ্দিনকে ছাত্রীদের সম্মুখে এ.সি (ল্যাড) এর নিকট ভুল স্বীকার করে ক্ষমা প্রার্থনা করতে বাধ্য করেন মর্মেও সাক্ষীদের বক্তব্য হইতে উক্ত ঘটনার প্রাথমিক সত্যতা পাওয়া যায়।"

This investigation report was signed by the Chief Judicial Magistrate, Pirojpur, on 11.06.2015.

Upon hearing the parties a Division Bench of the High Court Division has been pleased to discharge the Rule for suppressing the fact that before issuing the *Rule Nisi* a High Powered Committee was formed by the Ministry of Education and they hold an inquiry examining all the concern persons and submit report within a short period but the petitioner did not mention this matter in the writ petition. The operative portion of the judgment is quoted below:

"We are of the view that the government should be allowed to do the needful on the basis of the report submitted by the High Powered Committee formed by the Ministry of Education. It appears that this report was submitted on 04.05.2015 and the Rule was obtained on 25.05.2015, just after 20 days of submission of the report. The petitioner should have waited for the action of the government on the basis of the report submitted by the High Powered Committee. Since, we have already held that by suppressing material fact the petitioner obtained the Rule, he cannot get any relief from the Court. The petitioner has not come before us with clean hands. The government is still in a position to take appropriate measures against the perpetrators."

Feeling aggrieved, the petitioner filed instant civil petition for leave to appeal under Article 103 of the constitution.

Mr. Salahuddin Dolon, learned Senior Advocate appearing for the petitioner drew our attention to the investigation reports submitted by the Chief Judicial Magistrate, Pirojpur, at the instance of the High Court Division as well as High Powered Committee formed by the Ministry of Education and submits that though the Chief Judicial Magistrate and High Powered Committee formed by the Ministry found truthfulness of the allegation but no action has been taken till today. He also submits that the High Court Division though discharged the rule but observed that the government is still in a position to take appropriate measures against the perpetrators.

But no action has been taken till this day.

On the other hand Ms. Tania Amir, learned Senior Advocate appearing on behalf of the respondents submits that the petitioner filed the writ petition with a prayer to issue *Rule Nisi* upon the respondents to show cause as to why they shall not be directed to conduct inquiry and

punishment, as stated under section 5 of the Government Servants (Special Provisions) Ordinance, 1979 against respondent nos.6, 7 and 8 for wilfully humiliating the petitioner by the respondent no.6, by touching the feet of respondent no.6.

Accordingly a High Powered Committee was formed by the Ministry of Education who after investigation submitted its report with recommendation.

Heard the learned Advocate for the parties. Perused the papers/documents contained in the paper book.

We have gone through the investigation report submitted by the Chief Judicial Magistrate, Pirojpur, at the instance of the High Court Division as well as the report submitted by the High Powered Committee formed by the Ministry of Education. In both the reports the allegation of compelling the petitioner to seek apology by touching the feet of the AC (Land) *prima-facie* found true.

The High Powered Committee formed by the Ministry after investigation found that:

"সার্বিক মন্তব্য:

পিরোজপুর জেলার ভান্ডারিয়া সরকারি কলেজে ২০১৫ সালের এইচএসসি পরীক্ষা চলাকালে গত ০৯ এপ্রিল ২০১৫ তারিখে উদ্ভূত অনভিপ্রেত ঘটনার প্রেক্ষাপটে কলেজের সহকারী অধ্যাপক জনাব মোঃ মোনতাজ উদ্দিন এর ক্ষমা চাওয়ার পর্যায়ে পা ধরার বিষয়টি নিতান্তই অনভিপ্রেত ও দুঃখজনক। পরীক্ষা কেন্দ্রে উদ্ভূত অনভিপ্রেত ঘটনার নিষ্পত্তি হিসেবে কোন বিবেচনাতেই এ ঘটনা গ্রহণীয় নয়।"

The Chief Judicial Magistrate also found that:

"অতঃপর অধ্যক্ষের উপস্থিতিতে ইউ.এন.ও ভান্ডারিয়া রীটকারীকে এ.সি (ল্যাভ) এর হাত ধরে ক্ষমা চাইলে হবেনা, পায়ে ধরে ক্ষমা চাইতে হবে মর্মে বলার পর রীটকারী জনাব মোঃ মোনতাজ উদ্দিন মোবাইল কোর্টের সাজা থেকে বাঁচার জন্য নিরুপায় হয়ে এ.সি (ল্যাভ) এর পা ধরে ক্ষমা প্রার্থনা করেন মর্মে সাক্ষীদের বক্তব্য হতে ঘটনার প্রাথমিক সত্যতা পাওয়া যায়।"

From the investigation report of the High Powered Committee formed by the Ministry of Education it appears that in the report dated 04.05.2015 the committee made a recommendation which runs as follows:

"১০.১ পর্যালোচনার আলোকে উদ্ভূত অনভিপ্রেত ঘটনার সংশ্লিষ্টতায় অসহিষ্ণুতা ও অপরিপক্বতার পরিচয় দেয়ায় উপজেলা নির্বাহী কর্মকর্তা ও সহকারী কমিশনার (ভূমি)-কে অবিলম্বে অন্যত্র বদলী/প্রত্যাহার করা যেতে পারে। একই কারণে কলেজের অধ্যক্ষ ও সংশ্লিষ্ট সহকারী অধ্যাপক জনাব মোঃ মোনতাজ উদ্দিনকে অন্যত্র বদলী/প্রত্যাহার করা যেতে পারে। এছাড়া অনভিপ্রেত ঘটনায় সংশ্লিষ্টদের সম্পৃক্ততার গুরুত্ব বিবেচনাক্রমে সরকার আইনানুগ ব্যবস্থা গ্রহণ করতে পারে।"

It need not be mentioned that teaching is one of the noblest profession and at the time of the occurrence the petitioner was performing as an Assistant Professor of Islamic History and Culture at the Bhandaria Government College, Pirojpur. The petitioner qualified in the BCS examination (In Education Cadre) in the year 2005.

The High Powered Committee formed by the Ministry of Education in its recommendation after investigation stated that:

"এছাড়া অনভিপ্রেত ঘটনায় সংশ্লিষ্টদের সম্পৃক্ততার গুরুত্ব বিবেচনাক্রমে সরকার আইনানুগ ব্যবস্থা গ্রহণ করতে পারে।"

Even High Court Division though discharged the Rule for the reasons stated therein but observed that:

"The government is still in a position to take appropriate measures against the perpetrators."

The high handedness of the respondent nos.6 and 7 is reflected from the investigation report submitted by the Chief Judicial Magistrate as well as High Powered Committee formed by the Ministry of Education. The High Powered Committee submitted its report on 04.05.2015 and the High Court Division passed the impugned judgment and order with the observation on 28.07.2016. Thereafter, almost 6 years have been elapsed but no action has been taken as per recommendation of the High Powered Committee as well as observation of the High Court Division.

It appears that the inquiry held by the High Powered Committee by the Ministry of Education found *prima-facie* truthfulness of the allegation. We are of the view that the

Government may proceed on the basis of that investigation report without further delay.

Accordingly the civil petition for leave to appeal is disposed of with the above observation.

Communicate a copy of this order to the respondent nos.1 and 2 at once.

CJ.

J.

J.

J.

The 7th April, 2022.

Jamal / B.R./ Words-*2312*