

IN THE SUPREME COURT OF BANGLADESH  
**Appellate Division**

**PRESENT**

*Mr. Justice Hasan Foez Siddique, C. J.*

*Mr. Justice M. Enayetur Rahim*

*Mr. Justice Jahangir Hossain*

**CIVIL PETITION FOR LEAVE TO APPEAL NO.4234 OF 2018**

(From the judgment and order dated the 24<sup>th</sup> day of August, 2017 passed by the High Court Division in Writ Petition No.9291 of 2017).

The Director General, Directorate of : . . . Petitioner  
Primary Education, Mirpur-02, Dhaka

-Versus-

Rahima Akter and others. : . . . Respondents

For the Petitioner : Mr. Muntasir Uddin Ahmed,  
Advocate, instructed by Mr. Ziaur  
Rahman, Advocate-on-Record

For Respondent Nos .1-15 & 17 : Mr. Mohammad Hossain, Advocate,  
instructed by Mr. Zainul Abedin,  
Advocate-on-Record

Respondent Nos. 16 & 18-22 : Not represented

**Date of hearing and judgment : The 21<sup>st</sup> day of May, 2023**

**JUDGMENT**

**M. Enayetur Rahim, J:** This civil petition for leave to appeal is directed against the judgment and order dated 24.08.2017 passed by the High Court Division in Writ Petition No.9291 of 2017 making the Rule absolute.

The relevant facts leading to the filing of the present civil petitioner for leave to appeal, in brief, are that the present respondents filed Writ Petition No. 9291 of 2017 before the High Court Division. In the writ petition, it is contended that writ petitioner Nos.1-16 and added writ petitioner No.17 were appointed as Assistant Teachers in different registered non-government primary schools. At the time of their appointment and recruitment, they had to undergo the process of interview and examinations pursuant to

notifications inviting applications for such recruitments in the said posts by the concerned schools. Apart from imparting education in those schools, the writ petitioners usually under-take several public duties such as making voter list, birth registration, census, polling activities, EPI program, Board exam duties etc. They also participated in various training programs. The writ petitioners, along with other teachers of the non-government Primary Schools, initiated national movement for nationalizing those primary schools and mobilized public support for that. Such activities of the writ petitioners and other teachers were widely published in different newspapers. They also made several representations to the Minister, Ministry of Primary and Mass Education, State Minister and other concerned authorities. Thereupon, the Hon'ble Prime Minister, on 09.01.2013, at a national assembly of teachers, made a declaration that 26000 registered primary schools would be made nationalized, and such declaration of the Prime Minister was widely published in different newspapers. The government, thereafter, vide notification dated 17.01.2013 as published in the gazette on 20.01.2013, declared the decision of the government to nationalize different types of non-government Primary schools along with their teachers, which were established and permitted to impart education before 27.05.2012. Accordingly, frameworks of different committees were provided in the said gazette notification for scrutiny of the schools and teachers for such nationalization and absorption. As regards absorption of teachers in those primary schools, it is stated in the said gazette notification dated 17.01.2013 that, while the MPO teachers would be absorbed automatically, non-MPO teachers would be absorbed through scrutiny process and recommendation of those committees. The Ministry of Primary and Mass Education, through its Deputy Director (respondent no.2), issued memo

dated 23.06.2013 to send the report of such scrutiny as regards teachers and schools within 25.07.2013 in accordance with the directions given in the aforesaid gazette dated 17.01.2013. In such process, the government, in exercise of its power under Section 3(1) of the Primary Schools (Taking Over) Act, 1974, took over control of MPO listed 4,825 registered non-government primary schools vide gazette dated 01.07.2013 as published on 10.07.2013 giving effect to such taking over from 01.01.2013. Accordingly, by such acquisition process, the schools, wherein the writ petitioners had been working, were taken under the control of the government. Though the schools of the writ petitioners were acquired and taken control by the government, the fate of the writ petitioners remained uncertain as they were not absorbed or no scrutiny process was undertaken pursuant to the gazette notification dated 17.01.2013 in respect of them. Vide order dated 06.11.2013, only the MPO listed teachers of the said schools were absorbed, though it was the declaration and intention of the government to absorb all the teachers of the said primary schools through scrutiny process in accordance with the directions given in the said gazette notification dated 17.01.2013. This being so, the writ petitioners have been discriminated and deprived of their legitimate expectation of being absorbed as regular government teachers of those primary schools. By annexing some certificates issued by the concerned schools, the writ petitioners have stated that, they are still serving as teachers in those schools and there are adequate vacant posts in those schools for absorbing the writ petitioners even though the government has in the meantime initiated process of fresh appointments through advertisements in spite of the fact that the fate of the writ petitioners is yet to be decided. Under such

circumstances, the writ petitioners moved before the High Court Division in its writ jurisdiction.

On behalf of the writ respondent no affidavit-in-opposition was filed.

In due course after hearing and considering the materials on record the High Court Division made the Rule *Nisi* absolute directing the writ respondents to absorb the petitioners after scrutiny in accordance with the directions contained in the gazette notification dated 17.01.2013 (published on 20.02.2013). Once absorbed, their service benefits will be given effect to from 01.01.2013, as that is the mandate of the said Gazette dated 01.07.2013 as published on 10.07.2013, in view of the entitlement of the petitioners under Section 3(2)(b) of the said Act. The government is also directed to issue necessary order in this regard in view of Rule 4(ka) of the said Rules. The respondents are directed to complete the said absorption process within 3(three) months from the date of receipt of the copy of this judgment and not to recruit any other teacher until recruitment of the petitioners is complete as aforesaid.

Being aggrieved by the said judgment and order, the writ respondent No.3 has preferred this civil petition for leave to appeal before this Division.

Mr. Muntasir Uddin Ahmed, learned Advocate, appearing on behalf of the petitioner submits that for making any appointment in any school there should be permitted level of post, i.e. organogram approval from the concerned Ministry as well as Ministry of Public Administration and allocation of

fund from the Ministry of Finance. Taking the opportunity of the declaration of nationalization a huge number of persons who were never appointed as teachers at all prepared some fake papers which had no legal basis. In the process the Chairman of School Managing Committee (SMC) prepared fake appointment letters and had shown huge number of teachers giving back dated and created appointment letters as well as joining letters. In some places the Headmasters with some corrupt government officials also helped them in procuring fake appointment letters and approved those created appointment letters in the shape of resolution which had also never existed. Thus, a huge number of persons who had never performed as teachers of any school had shown fake appointment letters as 'Para Teachers' and many of these teachers in connivance with the existing managing committee for getting material benefits had done these misdeeds. But the High Court Division without taking into consideration those aspects and the reports of the persons who made inspection, made the Rule absolute.

The learned Advocate also submits that under the provision of the notification dated 17.01.2013 (Clause 3.1.1) for nationalization of the Primary Schools the Upazila Monitoring Unit (যাচাই-বাছাই কমিটি) consisting of five members headed by Upazila Nirbahi Officer of the concern Upazila. On Scrutiny of the documents, appointment cannot be made where the conditions of appointment were found absent. The persons who were appointed by way of fake and created documents can never be made. He submits that it was found from the reply of the District Primary Education Officer and Upazila Education Officer that no newspaper advertisement was given prior to the appointment of the respondent Nos. 1 to 14 (writ

petitioner Nos. 1 to 14). The writ petitioner Nos. 15 and 16 had succeeded to show a newspaper advertisement published on 16.02.2009 but on query it was found that she had shown 2 (two) appointment letters. One is dated 20.01.2003 and another is dated 25.09.2010 but the Head Master of the said school mentioned clearly that he had never issued any such appointment letter to them.

Mr. Ahmed further submits that under the provisions of law, the nationalization of Registered Primary School, the approved limit of making appointment of the teachers was four and one of which will be Headmaster. Here, the writ petitioners were all beyond the approved limit. The teachers who had never been appointed as teachers are demanding service benefit. The persons who had been appointed as teacher even for a short period were all included in the list of nationalization. The government in order to make nationalization to the primary school teachers make highest level of nationalization so that a major portion can be nationalized. He submits that to justify the position of Nationalization the Government made a task force to scrutinize the matter of nationalization. The nationalization was very much dependent upon the number of posts, numbers of students, the land of the school compound and by way of sudden inspection to justify it. It was also very much vital to justify whether the teachers have the minimum qualification to be appointed as teacher. The task force had also been vested the task to justify about the objection raised against any teacher. However, the judgment of the High Court Division is not the proper manifestation of the existing Act and Rules. Thus, the judgment and order

passed by the High Court Division is liable to be set aside.

Mr. Mohammad Hossain, learned Advocate appearing for the respondents makes submissions in support of the impugned judgment and order of the High Court Division.

We have considered the submissions of the learned Advocates for the parties concerned, perused the impugned judgment and order of the High Court Division and other connected papers on record.

In the instant case on perusal of the documents as placed before us, it transpires from the reply of the District Primary Education Officer and Upazila Education Officer that prior to the appointment of respondent Nos.1 to 14 (writ petitioner No. 1-14) no newspaper advertisement was made. Writ petitioner No. 15 and 16 had succeeded to show a newspaper advertisement published on 16.02.2009 but on inquiry it was found that she had shown 2 (two) appointment letters. One is dated 20.01.2003 and another is dated 25.09.2010 but the Head Master of the said school mentioned clearly that he had never issued any such appointment letter to them. The gist of the reply is that:-

“১৯৭৪ সনের পরে বিদ্যালয়গুলো বেসরকারি বিদ্যালয় হিসাবে প্রতিষ্ঠিত হয়েছে। ১৯৮৯ এর ধারা অনুসারে ‘দি রেজিস্ট্রেশন অব প্রাইভেট স্কুল এমেন্ডমেন্ট, ১৯৮৯’ এর ৪(৩) ধারা মোতাবেক বেসরকারি প্রাথমিক বিদ্যালয়গুলো রেজিস্ট্রেশন প্রদান করা হয়।

বেসরকারি প্রাথমিক বিদ্যালয়ে শূন্যপদে নিয়োগের ক্ষেত্রে এসএমসি উপজেলা শিক্ষা কমিটির অনুমোদন গ্রহণপূর্বক জাতীয় দৈনিক পত্রিকায় বিজ্ঞপ্তি প্রচার করবে এবং উপজেলা শিক্ষা অফিসার বা তার প্রতিনিধি লিখিত ও মৌখিক পরীক্ষায় যোগ্যতা যাচাই পূর্বক শিক্ষক-চূড়ান্ত অনুমোদন দিবে উপজেলা/থানা কমিটি। যা পিটিশনারদের নিয়োগের ক্ষেত্রে অনুসরণ করা সম্ভব হয়নাই। কারণ, এই নিয়োগটি বিদ্যালয়ের ৫ টি অনুমোদন পদেই কর্মরত শিক্ষক আছে। নীতিমালা ও নির্দেশনা মোতাবেক হয়নি বিধায় নিয়োগটি গ্রহণযোগ্য নয়।”

The High Court Division committed grave error in passing the impugned judgment and order without taking into consideration of the above factual aspect.

Clause 4.2 of the notification dated 07.01.2013 relating to the ‘বেসরকারি প্রাথমিক বিদ্যালয় জাতীয়করণ এবং কর্মরত শিক্ষকদের চাকুরী সরকারিকরণের সিদ্ধান্ত’ runs as follows:

#### ৪.২ শিক্ষক সংক্রান্তঃ

- “(ক) এমপিওভুক্ত সকল শিক্ষকের চাকুরী সরকারিকরণের উপযুক্ত বিবেচিত হইবে;
- (খ) বিদ্যালয়ে কর্মরত শিক্ষকদের চাকুরীতে যোগদানকালীন সময়ে বা তারিখে প্রয়োজ্য/প্রয়োজনীয় যোগ্যতা থাকিতে হইবে। তবে যথাযথ প্রক্রিয়ায় নিয়োগকৃত হইয়া থাকিলে চাকুরী সরকারিকরণের পরবর্তী ৩ বৎসরের মধ্যে নির্ধারিত যোগ্যতা অর্জনের শর্তে প্রয়োজনীয় যোগ্যতাবিহীন শিক্ষককেও বিবেচনা করা যাইবে;
- (গ) ইতঃপূর্বে এমপিওভুক্ত হইয়াছে কিন্তু শৃঙ্খলাজনিত কিংবা প্রশাসনিক অথবা অন্যবিধ কারণে বর্তমানে এমপিও স্থগিত রহিয়াছে এইরূপ শিক্ষককেও বিবেচনা করা যাইবে;
- (ঘ) বিদ্যালয়ে সাধারণভাবে ১ জন প্রধান শিক্ষকসহ ৪ জন শিক্ষকের পদ থাকিবে। তবে ৪০০ জনের অধিক ছাত্র-ছাত্রী আছে এমন বিদ্যালয়ে ৫ম শিক্ষকের পদ সৃজিত থাকিলে তাহা বিবেচনা করা যাইবে;
- (ঙ) প্রয়োজনীয় যোগ্যতা এবং নির্ধারিত পদ্ধতিতে নিয়োগকৃত হইয়া থাকিলে নির্ধারিত বয়সের কম অথবা বেশী বয়সে যোগদানকারী শিক্ষককে প্রয়োজনীয় যোগ্যতা থাকা ও নির্ধারিত পদ্ধতিতে নিয়োগকৃত হওয়া সাপেক্ষে বিবেচনা করা যাইবে।”(Underlines supplied).

In view of the above provision it is abundantly clear that the approved limit of making appointment of the teachers in a nationalized school were 4(four) and one of which will be Headmaster; and one more teacher would be considered if number of students are more than 400. Here the petitioners of the writ petition were all beyond the approved limit. The teachers, who had never been appointed as teachers are demanding service benefit. The persons, who had been appointed as teachers even for a short period, were all included in the list of nationalization. The High Court Division without going into the depth of the position and status of the writ petitioners made the Rule absolute without considering the existing organogram of the nationalized



school, i.e. these primary schools cannot be made over 4(four) persons as teachers.

In the instant case, the writ petitioners-respondents have failed to prove that they were legally appointed by the school authority and their names were recommended by the উপজেলা যাচাই-বাছাই কমিটি and, as such, no legal and vested right has been created in favour of the writ petitioners to get appointment in the nationalized primary school. The High Court Division committed error in passing the impugned judgment by giving direction to absorb the writ petitioners after scrutiny in accordance with the directions contained in the gazette notification dated 17.01.2013 (published on 20.01.2013) and once absorbed, their service benefits will be given effect to from 01.01.2013.

In view of the above, we are inclined to interfere with the impugned judgment and order; however, since, we have heard both the parties at length, we are inclined to dispose of the civil petition for leave to appeal without granting any leave to avoid further delay in disposing of the case.

Accordingly, the civil petition for leave to appeal is disposed of. The impugned judgment and order dated 24.08.2017 passed by the High Court Division is set aside.

**C. J.**

**J.**

**J.**