

**IN THE SUPREME COURT OF BANGLADESH  
APPELLATE DIVISION**

**PRESENT:**

***Mr. Justice Obaidul Hassan, C.J.***

***Mr. Justice Borhanuddin***

***Mr. Justice M. Enayetur Rahim***

***Mr. Justice Md. Ashfaquul Islam***

***Mr. Justice Md. Abu Zafor Siddique***

***Mr. Justice Jahangir Hossain***

**CIVIL APPEAL NOS.82-83 OF 2021**

(From the judgment and order dated the 1<sup>st</sup> August, 2017 passed by a Division Bench of the High Court Division in Writ Petition No.1326 of 2016 and Writ Petition No.10041 of 2016)

Md. Mobarak Hossain : . . . Appellant  
(In both the cases)

-Versus-

Bangladesh represented by the : . . . Respondents  
Secretary, Ministry of Power, (In both the cases)  
Energy and Mineral Resources,  
Bangladesh Secretariat, Ramna,  
Dhaka and others

For the Appellant : Mr. Salah Uddin Dolon, Senior Advocate  
(In both the cases) instructed by Mr. Zainul Abedin,  
Advocate-on-Record

For Respondent No.1 : Mr. Sk. Md. Morshed, Additional  
(In both the cases) Attorney General, instructed by Mr.  
Haridus Paul, Advocate-on-Record

For Respondents No.2 : Mr. K.S. Salah Uddin Ahmed, Senior  
(In both the cases) Advocate instructed by Ms. Madhu Maloti  
Chowdhury Barua and Mr. Mohammad  
Ali Azam, Advocate-on-Record

For Respondents No.6 : Mr. Mohammad Ali Azam, Advocate-on-  
(In both the cases) Record

For Respondent Nos.3-5 : Not represented  
(In both the cases)

**Date of Hearing** : **The 22<sup>nd</sup> day of November, 2023**

**Date of Judgment** : **The 7<sup>th</sup> day of December, 2023**

## **J U D G M E N T**

**M. Enayetur Rahim, J:** Civil Appeal Nos.82-83 of 2021, by leave, are directed against the judgment and order dated 01.08.2017 passed by the High Court Division in Writ Petition No.1326 of 2016 with Writ Petition No.10041 of 2016 discharging the Rules.

In both the appeals parties are same and similar law and facts are involved and those were heard analogously and are being disposed of by this single judgment.

The relevant facts for disposal of these two Civil Appeals, in brief, are that the present appellant writ-petitioner, being an engineer of Bangladesh Polli Biddot Unnoyon Board, had been working in different Polli Biddot Samities of Bangladesh under Bangladesh Rural Electrification Board (BREB). While he was working at Bancharampur Zonal Office of Brahmanbaria Polli Biddut Samity during a period from September,2012 to 5<sup>th</sup> November,2014 he was found to be involved in corruption. Accordingly, after proceeding having been drawn against him in view of the relevant provisions under the পল্লী বিদ্যুৎ সমিতি কর্মচারী চাকুরী বিধি,১৯৯২, (Service Rules), the authority removed him from service vide impugned removal order dated 17.05.2016 (Annexure-F in Writ Petition No.10041 of 2016). Being aggrieved by such removal, the writ petitioner moved Writ Petition No.10041 of 2016 before the High Court Division and obtained the aforesaid Rule. After writ petitioner's service in Brahmanbaria, when the writ petitioner joined as Deputy General Manager at

Biswanath Zonal Office of Sylhet Polli Biddut Samity-1, he was again found involved in committing corruptions etc. and, accordingly, he was proceeded again departmentally in view of the relevant provisions under the said Service Rules. Accordingly, after enquiry and show cause notice, he was finally removed from service vide impugned order dated 24.12.2015 (Annexure-H) in Writ Petition No.1326 of 2016). As against this order, the writ petitioner obtained the aforesaid Rule, and, subsequently, when his appeal against the same was rejected vide impugned order dated 20.01.2016, he then obtained a supplementary Rule.

The Rules and supplementary- Rule were opposed by the writ respondent No.6 (in Writ Petition No.1326 of 2016) and writ respondent No.02 (in Writ Petition No.10041 of 2016), present-respondent No.2 mainly, contending that, due process of law was followed in the departmental proceedings and that the writ petitioner was removed after giving all opportunities of hearing in accordance with the relevant provisions of the Service Rules.

A Division Bench of the High Court Division after hearing both the Rules analogously by the impugned judgment and order dated 01.08.2017 discharged both the Rules.

Feeling aggrieved by and dissatisfied with the said impugned judgment and orders the writ-petitioner filed two separate civil petitions for leave to appeal and accordingly leave was granted.

Hence the present appeals.

Mr. Salahuddin Dolon, learned Senior Advocate, appearing for the appellant-petitioner submits that the High Court Division has filed to consider that the impugned order of removal from service dated 24.12.2015 was issued without jurisdiction by a Director (current charge) on behalf of the Chairman of Bangladesh Rural Electrification Board (BREB) instead of the Bangladesh Rural Electrification Board which is the only competent authority to remove the petitioner from his service pursuant to the provisions of section 24 of Act No.57 of 2013 as such the impugned Judgment and order dated 01.08.2017 of the Hon'ble High Court Division is liable to be set aside on this sole ground.

He further submits that the High Court Division has filed to consider that there are decisions of our apex court that the Board is the competent authority to initiate disciplinary proceeding against the employees of Rural Electrification Board and no subordinate authority can exercise disciplinary power inasmuch as only the Board is competent to appoint and take disciplinary action and any delegation of disciplinary authority was required to be published in the gazette pursuant to the provisions of section 26 of Act No.57 of 2013 but in the instant case, the impugned orders were issued by the chairman instead of the Board as such the impugned Judgment and Order dated 01.08.2017 of the Hon'ble High Court Division is liable to be set aside.

Mr. Salauddin also submits that the High Court Division has failed to consider that the 2(two) members inquiry committee which was formed to enquire into the allegations brought against the petitioner had been formed in clear and flagrant violation of the provisions of Rule-40(3) of পল্লী বিদ্যুৎ সমিতি কর্মচারী চাকুরী বিধি, ১৯৯২ (সংশোধিত, ২০১২) as 1(one) of the members of the inquiry committee, Deputy Director (Current Charge) was actually holding the substantive post of Assistant Director/Assistant General Manager which is a lower rank than that of the petitioner who was a Deputy General Manager (DGM) as such the impugned judgment and order dated 01.08.2017 of the High Court Division liable to be set aside. He further submits that, once an employee is Dismissed/removed from service has ceases to be an employee therefore, a dismissed/removed employee cannot be dismissed/removed from service for 2<sup>nd</sup> time inasmuch as the petitioner has been dismissed twice in an unprecedented manner which is unheard of, thus, it proves malafide intention and personal grudge against the petitioner, therefore, the impugned Judgment and Order dated 01.08.2017 of the Hon'ble High Court Division is liable to be set aside.

Mr. Salauddin lastly submits that the High Court Division has failed to consider that removal from service is a serious matter which affects the livelihood of an employee and his family members and in the instant case punishment of removal from service was imposed upon the petitioner which is very harsh, excessive,

disproportionate and unreasonable in test of the general human conscience as such the impugned Judgment and Order dated 01.08.2017 of the Hon'ble High Court Division is liable to be set aside.

Mr. Sk. Md. Morshed, learned Additional Attorney General appearing with Mr. K.S. Salahuddin Ahmed, learned Advocate for the respondent Nos.1 and 2 having supported the impugned judgment and order submits that the appellant was an officer of Sylhet Palli Bidyut Samity-1, not Bangladesh Rural Electrification Board, which can be understood from (a) clause No.2 of his appointment letter bearing reference No. 27.12.9131.569.100.02. 14.6792 dated 05.11.2014 (“আপনার চাকুরী অত্র সমিতির চাকুরী বিধি, পবিস বাই’ল, পবিস নীতি নির্দেশিকা ও সময়ে সময়ে প্রবর্তিত বাপবি বোর্ডের সার্কুলার অনুযায়ী পরিচালিত ও নিয়ন্ত্রিত হইবে।”) issued by Sylhet PBS-1 and also from (b) the fact that PBS Service Code 1992 amended in 2012 has been admitted by the appellant to apply to him hence section 24 of Act no.57 of 2013 does not at all apply to the appellant given that the said section 24 only applies to officers and employees of BREB and it has no manner of application of officers and employees of PBS like the appellant and that section 26 of the said 2013 Act also has no manner of application in the instant matter because no delegation of disciplinary authority has taken place in the instant matter at all.

Mr. Morshed also submits that the Removal order dated 14.12.2015 was issued as per the decision of the Chairman of BREB and the said removal order was merely

communicated by the Director (Current Charge) of Inquiry and Discipline Directorate of BREB and this practice has been emphatically endorsed by this Division in Judgment and Order dated 02.04.2017 passed in Civil Petition for Leave to Appeal No.3470 of 2015 heard with three other cases as such no illegality whatsoever has been communicated in issuing the removal order.

He also submits that PBSEs are separate entities registered under BREB which will be evident from section 2(10) of Act No.57 of 2013 and which can also be understood from the fact that service of officers and employees of BREB are regulated by বাংলাদেশ পল্লী বিদ্যুতায়ন বোর্ড কর্মচারী চাকরী প্রবিধানমালা ২০১৮ (previously বাংলাদেশ পল্লী বিদ্যুতায়ন বোর্ড কর্মচারী চাকরী প্রবিধানমালা ১৯৯০ was in force) but service of officers and employees of PBSEs are regulated by পল্লী বিদ্যুৎ সমিতি কর্মচারী চাকরী বিধি ১৯৯২ (সংশোধিত ২০১২) .

It has been also argued by the learned Advocate for the respondents that no illegality has been committed by the concerned authority of BREB in appointing a Deputy Director on Current Charge as one of the two members of the enquiry committee while appointing a Deputy Director as Convenor of the enquiry committee because in those cases where an enquiry committee has more than one member (like the present case), rule 40(3) of PBS Service Code only requires that the Convenor of the enquiry committee be at least a Deputy Director of BREB (“উপ-পরিচালক/নির্বাহী প্রকৌশলী পদ মর্যাদার নিম্নে কোন কর্মকর্তাকে... তদন্ত কমিটির আহ্বায়ক নিযুক্ত করা যাইবে না।”) while the other order member(s) only need(s) to be an officer of

BREB (“পবিস এর .... ডেপুটি জেনারেল ম্যানেজার .... পদবীর কর্মকর্তাগণের বিরুদ্ধে... অভিযোগনামা তদন্তের ক্ষেত্রে এই চাকুরী বিধির আওতায় পল্লী বিদ্যুতায়ন বোর্ডের কর্মকর্তাকে তদন্তকারী কর্তকর্তা নিয়োগ. . . করিতে হইবে।”).

Mr. Morshed further submits that no illegality has been committed by the authority in removing the appellant from service first vide memorandum No.430 dated 24.12.2015 in respect of some allegations arising out of the appellants service at Sylhet PBS-1 and then vide memorandum no.870 dated 17.05.2016 in respect of some allegations arising out of the appellants service at Brahmanbaria PBS for the reason that there is no limitation in the Service Code to conduct and complete a departmental proceeding when the delinquent employee has already been removed in another departmental proceeding; moreover in the said second departmental proceeding the appellant has enjoyed all the opportunities of defending himself as provided under the service code and moreover long before his first removal from service on 24.12.2015, the other departmental proceeding (in which the appellant was removed from service on 17.05.2016) had already started long ago on 31.03.2015 with issuance of show cause notice bearing reference no.638 and that the appellant is a serial offender which is evident from the fact that the appellant has been removed from service in respect of separate allegations which arose from his service at two separate PBSes and furthermore there are some similarities to the allegations in those two departmental proceedings as such the appellant is a

habitual offender whose removal from service as a result of his numerous misconduct and offences should be upheld.

We have considered the rival submissions of the learned Advocates for the respective parties, perused the impugned judgment, leave granting order and other materials as placed before us.

In the instant case, the appellant was appointed by the Bangladesh Rural Electrification Board and thereafter his service was transferred to the Palli Bidyut Samity and subsequently his various promotions and transfer to the different Palli Bidyut Samity was/were done by the Board and as such we have no hesitation to hold that the petitioner's terms of service shall be governed by the relevant Service Rules of the Bangladesh Rural Electrification Board, not by the Service Rules of Palli Bidyut Samity. In the instant case the departmental proceeding against the appellant was done in accordance with the provision of পল্লী বিদ্যুৎ সমিতি (চাকুরী বিধিমালা), ১৯৯২ though his appointing authority is the Rural Electrification Board, which has own service Rules. Proceeding initiated and conducted by one service Rules under a separate authority and ultimate decision taken by another authority is unheard of and not permissible in law and equity.

In the dismissal order (Annexure-K) it has been mentioned to the effect:

“সেহেতু, সার্বিক পর্যালোচনান্তে পল্লী বিদ্যুৎ সমিতি কর্মচারী চাকুরী বিধি, ১৯৯২,  
সংশোধিতঃ ২০১২ইং এর ৩৮।১।(ক) ও (গ) নং ধারা অনুযায়ী আপনাকে অসদাচরণ

ও উৎকোচ গ্রহণের দায়ে দায়ী করতঃ একই চাকুরী বিধির ৩৯।(১)(খ)(৩) নং ধারা  
অনুযায়ী আপনাকে দণ্ডিত করে চাকুরী হতে অপসারণ দণ্ড আরোপ করা হল।”

(Underlines supplied)

In view of the above admitted facts and circumstances entire departmental proceeding against the appellant is without jurisdiction and illegal.

Since departmental proceeding against the appellant under the পল্লী বিদ্যুৎ সমিতি কর্মচারী চাকুরী বিধি, ১৯৯২ is illegal and without jurisdiction, we do not feel it necessary to decide other grounds on which leave was granted. Because, in this particular case departmental proceeding has vitiated the whole proceedings.

The definition of ‘কর্তৃপক্ষ’ as defined in পল্লী বিদ্যুৎ সমিতি কর্মচারী চাকুরী বিধিমালা, ১৯৯৯ and পল্লী বিদ্যুতায়ন বোর্ড এর কর্মচারী চাকুরী প্রবিধানমালা, ১৯৯০ are quite distinguishable.

‘কর্তৃপক্ষ’ and ‘কর্মকর্তা’ as defined in পল্লী বিদ্যুৎ সমিতি কর্মচারী চাকুরী বিধি, ১৯৯২ are as follows:

“বিধি ২(গ)- কর্তৃপক্ষ বলিতে নিয়োগকারী কর্তৃপক্ষ কিংবা কর্তৃপক্ষ কিংবা কর্তৃপক্ষের ক্ষমতা প্রয়োগ করার জন্য তা কর্তৃক মনোনীত/ক্ষমতাপ্রাপ্ত কোন কর্মকর্তাকে বুঝাইবে এবং নিয়োগকারী কর্তৃপক্ষের উদ্দতন কর্তৃপক্ষ ইহার অন্তর্ভুক্ত হইবে। ইহা ছাড়া কর্তৃপক্ষ বলিতে পল্লী বিদ্যুতায়ন বোর্ড কিংবা বোর্ডেও ক্ষমতা প্রয়োগ করার জন্য তা কর্তৃক মনোনীত/ক্ষমতা প্রাপ্ত কোন কর্মকর্তাকে বুঝাইবে।

বিধি ২(ঘ)- কর্মকর্তা বলিতে পল্লী বিদ্যুৎ সমিতির যে কোন কর্মকর্তাকে বুঝাইবে।”

In পল্লী বিদ্যুতায়ন বোর্ড এর কর্মচারী চাকুরী প্রবিধানমালা, ১৯৯০ ‘কর্তৃপক্ষ’ এবং ‘কর্মকর্তা’ have defined as under:

“প্রবিধানমালা ২(গ) কর্তৃপক্ষ বলিতে নিয়োগকারী কর্তৃপক্ষ কিংবা কর্তৃপক্ষের ক্ষমতা প্রয়োগ করার জন্য তৎকর্তৃক মনোনীত কোন কর্মকর্তাকে বুঝাইবে এবং নিয়োগকারী কর্তৃপক্ষের উদ্দতন কর্তৃপক্ষও ইহার অন্তর্ভুক্ত হইবে;

প্রবিধানমালা ২(ঘ) কর্মকর্তা বলিতে বোর্ড এর কোন কর্মকর্তাকে বুঝাইবে।”

In view of the above, there is no scope to say that an officer appointed by the Board, who is subsequently transferred to the Samity is a regular officer of the Samity.

In view of the above, we find merit in the appeal.

Accordingly, the appeal is allowed without any order as to cost.

The judgment and order dated 01.08.2017 passed by the High Court Division in Writ Petition No.1326 of 2016 with Writ Petition No.10041 of 2016 is hereby set aside.

C.J.

J.

J.

J.

J.

J.