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THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

Writ Petition No. 216 of 2018

IN THE MATTER OF :

An application under Article 102 of the
Constitution of the People's Republic of
Bangladesh.

-And-

IN THE MATTER OF :

Mohammed Mahobobor Rahman.

..... Petitioner

-Versus-

Government of Bangladesh, represented by the
Secretary, Ministry of Labour and
Employment, Bangladesh Secretariat, Ramna,
Dhaka and others.

..... Respondents

Mr. Mahbubur Rahman Kishore, Advocate

.....for the petitioner

Mr. Shaikh Mohammad Zakir Hossain,
Advocate

.....for the respondent No.2

Heard on: 17.07.2023 & 24.07.2023

Judgment on : 01.08.2023

Present:

Ms. Justice Naima Haider

&

Ms. Justice Kazi Zinat Hoque

Naima Haider, J:

In this application under Article 102 of the People's Republic of
Bangladesh, a Rule Nisi was issued calling upon the respondents to
show cause as to why the impugned illegal and unlawful final show
cause notice for compulsory retirement of the petitioner from his

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employment issued vide Memo No.27.12.0000.012.31.016.16.16.856 dated 27.12.2017 under the signature of respondent No.3 should not be declared to have been issued without any lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.

The facts of the case as stated in the writ petition may be summarized as follows:

On 20.07.1999, the petitioner appointed in the service of the Meherpur Palli Bidyut Samity as "Plant Account Assistant". Thereafter, on 22.01.2013, he was appointed as an Accountant (Revenue) and on 31.01.2013 and joined in his job at Mymensingh Palli Bidyut Samity-1. The petitioner had been rendering service with utmost sincerity and honesty.

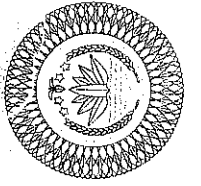
In 2017 several allegations were brought against the petitioner and as such show cause notice was issued and the petitioner replied to the same. On 21.05.2017, formal departmental proceedings were initiated against the petitioner by framing charge under the relevant provisions of the REB Service Regulations. The petitioner gave written reply. Formal enquiry committee was formed and submitted its report dated 18.10.2017 and found that the allegations against the petitioner were proved.

The petitioner was issued final show cause notice before compulsory retirement of the petitioner from his service under the

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signature of respondent no.3 and the petitioner was directed to show cause within 10 working days from receipt of the said notice. Thereafter, the petitioner moved this Division and obtained the instant Rule Nisi.

The respondent no.2 has entered appearance in the Rule by filing an affidavit in opposition. The case of the respondents as stated in the affidavit in opposition may be summarized as under :

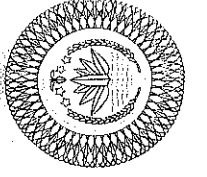
Several allegations were brought against the petitioner and formal departmental proceeding was initiated against him. Inquiry committee was constituted in accordance with law and alleged allegations against the petitioner were proved by the inquiry committee. Final show cause notice was served upon the petitioner. The petitioner did not challenge any procedural irregularities and thereby, it cannot be said that there was any violation of any mandatory provision of the PBS Service Rules and as such the instant writ petition is liable to be discharged.

Heard the learned Advocates and perused the materials on record placed before us.

Disciplinary proceedings are initiated by an authority under certain statutory guidelines and in most cases the statute requires the authority to complete the disciplinary proceeding within certain time. In some cases however, the statute does not set out a timeframe within which disciplinary proceeding is to be concluded. Even in latter case, disciplinary proceeding is to be concluded within a reasonable period and if that is not done, in the absence of any cogent ground, it would be



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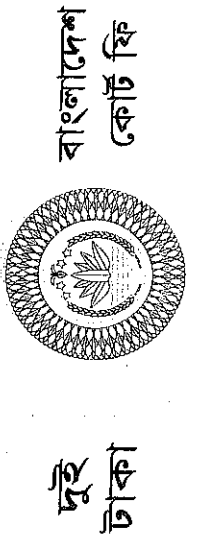


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fair to hold that the accused should no longer be subject to such proceeding. In the former case, the statute may provide for consequence(s) in the event of failure to complete disciplinary proceeding within certain time; if the statute so provides, it becomes mandatory for the authority to complete the proceeding within the stipulated time, failing which, the consequences of failure as set out in the statutory provision, becomes applicable. Even if the statute does not provide for such consequence(s), the authority in question cannot be permitted to continue the proceeding beyond the statutory timeframe without any cogent ground and any attempt to do so shall be unlawful.

Rural Electrifications Board Employees Rules 1990 ("the 1990 Rules") was repealed by Rural Electrifications Board Employees Rules 2018. In the 1990 Rules shall be applicable in the present context given that it was the applicable law when the departmental proceeding was initiated and concluded. Rule 43(8) of the 1990 Rules provides that disciplinary proceeding must be completed within 180 (one hundred and eighty days) from the date when the accused is informed of the allegation(s) against him. The said provision also provides that if the proceeding is not concluded within the statutory period, the accused shall be deemed not guilty. Not only that, Rule 43(8) also provides that those responsible for such failure shall may in appropriate circumstances be subjected to proceedings for their incompetence. The wordings of Rule 43(8) of the 1990 Rules thus clearly indicate that the requirement to

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complete the departmental proceeding within the stipulated time is mandatory.

Rule 43(8) of the 1990 Rules is set out below for ease of reference:

অভিযুক্ত ব্যক্তিকে অভিযোগ সম্পর্কে অবহিত করার পর একশত আশিটি কার্যদিবসের মধ্যে এই প্রবিধানের অধীনে চূড়ান্ত সিদ্ধান্ত গ্রহণের কর্তৃপক্ষ ব্যর্থ হইলে অভিযুক্ত ব্যক্তি তাহার বিরুদ্ধে আনিত অভিযোগ হইতে আপনা হইতেই অব্যাহতি পাইয়াছেন বলিয়া গণ্য হইবে এবং সেই ক্ষেত্রে যে ব্যক্তি বা ব্যক্তিবর্গ এইরূপ ব্যর্থতার জন্য দায়ী তিনি বা তাহারা ইহার কৈফিয়ত প্রদান করিতে বাধ্য থাকিবে এবং যদি উক্ত কৈফিয়ত সন্তোষজনক না হয় তবে তাহার বা তাহাদের বিরুদ্ধে অদক্ষতার দায়ে ব্যবস্থা গ্রহণ করা যাইবে।

The departmental proceeding was initiated against the petitioner through the show-cause notice dated 04.04.2017. The proceeding came to a conclusion on 27.12.2017 through the issuance of the impugned order-final decision. It is an admitted position that the proceeding was not concluded within 180 working days, as required by Rule 43(8) of the 1990 Rules.

In our view, when an authority initiates departmental proceeding against an employee, the authority should proceed with caution. The authority should ensure that the proceeding takes places strictly in accordance with the law. The authority should further ensure that the departmental proceeding is fair. As a starting point, the authority should ensure that the allegations against the accused employee are clear and specific and that there is no vagueness in the allegation(s). The authority should also ensure that the show cause notice, through which the proceeding is initiated, does not demonstrate a pre-conceived

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স্বাক্ষর: সত্যজিৎ কুমার বিশ্বাস



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determination of guilt on the part of the authority. The wordings of the show cause notice must not be such that a reasonable person, reading the notice, perceives that even at the time of issuance of the show-cause notice the authority has determined the issue in hand.

We note gross irregularities in the initiation and continuation of the proceeding against the petitioner. It is settled principle of law that the punishment or penalty to be imposed must commensurate with the gravity of the misconduct. Although the choice and quantum of punishment is within the jurisdiction and discretion of the authority, yet it must suit the offence and "it should not be vindictive or unduly harsh" nor "so disproportionate to the offence so as to shock the conscience and amount in itself to conclusive evidence of bias" (*Ranjit Thakur vs. Union of India*, AIR 1987 SC 2386). We have no hesitation to hold that in the instant case, the penalty is disproportionate and too harsh.

Having regard to the attending facts, circumstances and laws discussed above, we are of the view that the dismissal order is unduly harsh, highly disproportionate and shocking to the conscience. Hence, the penalty of compulsory retirement notice dated 27.12.2017 (Annexure-D) is set aside and instead lesser penalty by stoppage of 1 (one) increment is awarded to the petitioner. This penalty, in our view, is commensurate with the gravity of the offence, the surrounding circumstances and the mitigating factors which we have already discussed. The respondents are directed to reinstate the petitioner in the

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