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# A Writ Petition Challenging the Denial of M.P.O Enlistment (Sample Drafting, Arguments and Judgement)

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## Chapter – 10

### A WRIT PETITION CHALLENGING THE DENIAL OF M.P.O ENLISTMENT

M. Jashim Ali Chowdhury\*

#### 1. The Chapter Outline

This Chapter deals with a Writ Petition challenging a decision of the Assistant Director (College) at the Directorate of Secondary and Higher Education, Ministry of Education. Assistant Director refused the M.P.O enlistment of a principal of a private educational institution. The aggrieved principal claimed that while he was evidently an appropriate candidate for M.P.O enlistment, the Assistant Director’s refusal was *mala fide* and reflected a total non application of mind. Moreover, the principal had developed an uneasy relationship with the School & College authority. From the facts and circumstances, it appears that the college authority was no more interested in the Principal and his non inclusion in the M.P.O was one of the problems. As there was no scope of review or appeal within the administrative hierarchy of the Ministry of Education against the refusal, the Principal moved the High Court Division under Article 102 alleging the violation of articles 27 (Equality), 31 (Due process) and 40 (Profession). As a consequential relief he prayed for a *status quo* in relation to his post, salaries and other benefits he was expecting from the college authority. The facts, drafts of petitions, applications and affidavits presented here are based on a true story. I have changed the names and identity of the persons, institution and Benches of the Court concerned for the purpose of anonymity. The petitions, affidavits and responses are presented chronologically so that the learners may get a complete idea on how a Writ Petition before the High Court Division actually goes on. Model Submissions and Judgment are prepared on the basis of my in-person-interview with the counsels involved in the case.

#### 2. The Writ Petition for M.P.O. Enlistment (05.06.2013)

Mr. Md. Salah Uddin Ahmed Khan was the Principal of Chittagong Technical School and College, Rauzan, Chittagong. Starting his teaching career as a Lecturer in a private college in 1987, he used to receive M.P.O (Monthly Payment Order) till 2004. Monthly Payment Order is a government list of private school and college teachers, a major portion of whose salaries and other benefits are paid by the government. Rest of the amount of their salaries and benefits are paid by the school and colleges concerned. After a higher study break of two years, Mr Md. Salah Uddin Ahmed Khan returned to his teaching career as the Principal of another private college in 2006. After serving as Principal of several colleges, he again got enlisted in the M.P.O in 2008 and continued to receive

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government portion of his salary till January 2011. In February 2011, he joined the Chittagong Technical School and College as Principal. The School & College authority applied on his behalf for inclusion of his name in the M.P.O list as the Principal of the School & College. The Assistant Director (College) in the Directorate of Secondary and Higher Education, this time denied his enlistment.

By the time of this Writ Petition in May 2013, Mr Md Salah Uddin Ahmed Khan developed sour relationship with some of his colleagues and the School & College authority. Governing Body of the School & College started showing disinterest in him as the Principal of the School & College. In May 2013, Mr Khan was hospitalized for cardiac complexities. He received treatment, including a major surgery, in different hospitals and remained absent from his work place. On 05 May 2013, Mr Khan filed a Writ Petition challenging the denial of his M.P.O. enlistment and made the government officials and the School & College authority respondents. Following is the draft of the Writ Petition.

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)  
Writ Petition No..... of 2013**

**IN THE MATTER OF:**

An application under Article 102(1) and (2)(a)(i)(ii) of the Constitution of Peoples' Republic of Bangladesh;

**AND**

**IN THE MATTER OF:**

Md. Salah Uddin Ahmed Khan, son of Mohammad Saber, Principal of the Chittagong Technical School & College, P/S: Rauzan, Dist: Chittagong

..... **Petitioner**

**- VERSUS -**

1. Bangladesh represented by the Secretary, Ministry of Education, Bangladesh Secretariat, P.S. Shahbag, District – Dhaka;
2. Director General, Directorate of Secondary and Higher Education, Shikkha Bhaban, 16, Abdul Gani Road, Dhaka;
3. Assistant Director (College 3), Directorate of Secondary and Higher Education, Shikkha Bhaban, 16, Abdul Gani Road, Dhaka;
4. The Board of Intermediate and Secondary Education, Chittagong, represented by its Chairman;
5. Chairman, Governing Body, Chittagong Technical School and College, P.S.- Rauzan, District – Chittagong

..... **Respondents**

**AND**

**IN THE MATTER OF:**

Memo No. 7G/93(ka-3)/10/5733/2 dated 06.06.2011 (Annexure A) issued by the respondent No. 3 Assistant Director refusing M.P.O. enlistment of the petitioner as the Principal of Chittagong Technical School and College, Rauzan, Chittagong alleging the ground of his lack of 12 years’ experience in service for inclusion in the Monthly Payment Order (M.P.O) despite submission of necessary papers showing experience of more than 25 years’ as evidenced by earlier enlistment in the M.P.O. under index No. 013852 in relation to Chittagong Public College (Annexure C), the same being vitiated by arbitrariness, *mala fide*, non application of mind and also violative of Articles 27, 31 and 40 of the Constitution, and thus, to be declared without lawful authority and of no legal effect;

**AND**

**IN THE MATTER OF:**

Direction upon the respondents for the immediate payment of government portion of the salary to the petitioner by way of inclusion of his name in the Monthly Payment Order (M.P.O.) list as the Principal of Chittagong Technical School & College, Rauzan, Chittagong.

**TO**

Mr Justice Surendra Kumar Sinha, the Hon’ble Chief Justice of Bangladesh and his Companion Justices of the said Hon’ble Court.

The humble petition on behalf of the applicant above named most respectfully –

**SHEWETH:**

1. That the petitioner is a law abiding citizen and resident of Bangladesh and the Principal of Chittagong Technical School and College, Rauzan, Chittagong.
2. That the address of the petitioner for service of petitions, affidavits and other documents relating to this application is under care of *Juristic Minds, Barristers and Consultants*, of House – 18, Road – 145, Flat – F2, Gulshan 1, Dhaka - 1212 and the Supreme Court Bar Building, Room No. 330 (Old Building), Supreme Court, Dhaka.
3. That the respondent No. 1 is Bangladesh being represented by its Secretary, Ministry of Education, the respondent No. 2 is the Director General of Directorate of Secondary and Higher Education, the respondent No. 3 is the Assistant Director (College 3) of the Directorate of Secondary and Higher Education, the respondent No. 4 is the Board of Intermediate and Secondary Education, Chittagong represented by its Chairman and the respondent No. 5 is the Chairman

of the Governing Body of Chittagong Technical School and College, Rauzan, Chittagong. The addresses of the respondents as given in the cause title are correct for the purposes of notices etc. upon them.

4. That the petitioner has impugned herein the memo No. 7G/93(ka-3)/10/5733/2 dated 06.06.2011 issued by the respondent No. 3 Assistant Director refusing M.P.O. enlistment of the petitioner as the Principal of Chittagong Technical School and College, Rauzan, Chittagong alleging the ground of his lack of experience in service for inclusion in the Monthly Payment Order (M.P.O), the same being vitiated by arbitrariness, *mala fide*, non application of mind and also violative of Articles 25, 31 and 40 of the Constitution.

Photocopy of the said memo dated 06.06.2011 is annexed hereto and marked as **Annexure A**.

5. That the petitioner is a teacher by profession. After his graduation and upon obtaining a degree of Master of Science in Mathematics, the petitioner joined the profession on 02.02.1987 as a Lecturer of Chittagong Public College, Chittagong. Upon joining as such, the petitioner continued teaching in the same institution without any service break up till March 4, 2004.

Photocopy of the release letter dated 07.10.2007 showing the total length of service of the petitioner in the said college is annexed hereto and marked as **Annexure B**.

6. That during the period from 02.02.1987 to 04.03.2004, the petitioner was promoted to the post of Assistant Professor and accordingly, served in the above noted institution for the last 4 (four) and half years of his service as an Assistant Professor of the said college with satisfaction of all concerned.
7. That upon joining the Chittagong Public College as a Lecturer of Mathematics on 02.02.1987, the name of the petitioner was included in the Monthly Payment Order (M.P.O) list vide Index No. 013852 and, thus, he was enjoying salary under the Monthly Payment Order (M.P.O) since 1987 till 2004.

Photocopies of the M.P.O sheets showing the receipt of M.P.O by the petitioner since 1987 under Index No. 013852 is annexed hereto and marked as **Annexure C and C-1**.

8. That, thereafter, the petitioner decided to pursue further study and, accordingly, took admission in the University of Chittagong as a M.Phil student. After successful completion of the M. Phil course, the petitioner joined Mirza Gaus College, Mohora, Chittagong on 01.04.2006 as the Principal of the said college.
9. That after a short period of service as the Principal in the said Mirza Gaus College, the petitioner joined Monsaf Nagar College, Patya, Chittagong and Syeda Jahan Memorial College, Bakalia, Chittagong on 04.10.2007 and 03.05.2008 respectively. The Petitioner served in

the said colleges as the Principal with sincerity, honesty and satisfaction of all concerned.

10. That as the Principal of Syeda Jahan Memorial College, the petitioner used to receive government portion of the salary as per Monthly Payment Order (M.P.O) under a separate Index No. 3082122.

Photocopy of the M.P.O for November 2010 showing receipt of M.P.O under Index No 3082122 is annexed hereto and marked as **Annexure D**.

11. That, subsequently, pursuant to an advertisement published in the daily newspaper, the petitioner submitted an application for appointment as the Principal of the Chittagong Technical School and College.

12. That, accordingly, Chittagong Technical School and College vide letter dated 15.01.2011 invited the petitioner to join the post as the Principal of the said College on a monthly pay scale to the tune of Tk 22,250 to 32,250/-

Photocopy of the said appointment letter dated 15.01.2011 is annexed hereto and marked **Annexure E**.

13. That the petitioner joined the post of Principal on 09.02.2011. After the joining of the petitioner as above, the Governing Body of the aforesaid College vide an application dated 15.03.2011 made a request to the Directorate of Secondary and Higher Education for granting government portion of the salary in favor of the petitioner by way of inclusion of his name in the Monthly Payment Order (M.P.O) list as the Principal of Chittagong Technical School and College.

Photocopy of the said application dated 15.03.2011 is annexed hereto and marked as **Annexure F**.

14. That the said application for M.P.O dated 15.03.2011, the all necessary documents were enclosed to consider the eligibility of the institution and the petitioner to receive the government portion of the salary by way of inclusion of the name of the petitioner in the Monthly Payment Order (M.P.O) list as the Principal of Chittagong Technical School and College.

15. That upon receipt of the said application dated 15.03.2011, the office of the Director General, Directorate of Secondary and Higher Education vide letter dated 06.06.2011 (**Annexure A**) refused to include the name of the petitioner in the Monthly Payment Order (M.P.O) list on alleging the ground of his lack of experience in service.

16. That, subsequently, the Governing Body of the college in question vide another application dated 29.09.2011 together with a list of teachers further requested the Director General of the Directorate of Secondary and Higher Education for granting government portion of the salary in favor of the petitioner by way of inclusion of his name in the Monthly Payment Order (M.P.O) list as the Principal of the said

School and College. Despite receipt of the said application, the respondents have failed to take necessary steps towards inclusion of name of the petitioner in the M.P.O.

Photocopy of the said application and list of teachers dated 29.09.2011 are annexed hereto and marked **Annexure G & G-1**.

17. That the petitioner joined the profession of teaching back in 1987. After joining the profession as the Lecturer of Chittagong Public College, the name of the petitioner was included in the Monthly Payment Order (M.P.O) list in February 1987 and, accordingly, he received government portion of the salary vide Index No. 031852 since 1987 till 2004.
18. That during service as the Principal of Syeda Jahan Memorial College, the petitioner used to receive government portion of the salary as per Monthly Payment Order (M.P.O) under a separate Index No. 3082122.
19. That considering the vast experience in teaching and his eligibility for the post of the Principal, the petitioner was lawfully appointed as the Principal of Chittagong Technical School and College and, as such, he is entitled to receive government portion of the salary as the principal of the said College from February 2011 and onwards.
20. That, lastly on 24.04.2013 the petitioner by a notice demanded government portion of the salary in favor of the petitioner by way of inclusion of his name in the Monthly Payment Order (M.P.O) list as the Principal of Chittagong Technical School and College but to no avail.

Copy of the said notice dated 24,04,2013 is annexed hereto and marked **Annexure H**.

21. That the petitioner craves kind leave of the Hon'ble Court to swear affidavit with photocopies of the annexures as some of the originals are lying with the respondents. The photocopies of the annexures are genuine and represent the true and accurate version of the original copies.
22. That being aggrieved by and dissatisfied with the impugned memo and there being no other equally efficacious remedy, the petitioner above named begs to prefer this application on the following among others:

### **GROUND S**

- I. For that refusal to include the name of the petitioner in the M.P.O. list on the alleged ground of his lack 12 years' experience in the profession of teaching despite submission of necessary papers showing experience of more than 25 years' as evidenced by earlier enlistment in the M.P.O under index No. 031852 in relation to Chittagong Public College (**Annexure C**) is *arbitrary and mala*

*fide* inasmuch as the petitioner has been continuing the profession of teaching for the last 25 (twenty five) years and, as such, he is entitled to receive government portion of the salary as the Principal of the said college.

- II. For that refusal to include the name of the petitioner in the Monthly Payment Order (M.P.O) list also vitiated by *non application of mind* inasmuch in the list of teachers as enclosed with the application for M.P.O dated 15.03.2011, it was categorically mentioned that the name of the petitioner was included in the M.P.O list for the first time in 1987.
- III. For That the petitioner's *legitimate expectation* that the government portion of the salary in favor of the petitioner by way of inclusion of his name in the Monthly Payment Order (M.P.O) list is to be released forthwith after his joining in the college in question on 09.02.2011.
- IV. That refusal to include the name of the petitioner in the Monthly Payment Order (M.P.O) list is also violative of Articles 27, 31 and 40 of the Constitution.

Wherefore, it is most humbly prayed that your Lordships would most graciously be pleased to

- A. Issue a *Rule Nishi* calling upon the respondents to show cause as to why memo No. 7G/93 (ka-3)/10/5733/2 dated 06.06.2011 (Annexure A) issued by the respondent No.3 Assistant Director refusing M.P.O. enlistment of the petitioner shall not be declared to have been issued without lawful authority and is of no legal effect and why the respondents shall not be directed for the immediate payment of government portion of the salary by way of inclusion of his name in monthly payment order (M.P.O) list as the Principal of Chittagong Technical School and College, Rauzan, Chittagong.
- B. Direct the authorities to certify and transmit the records of the case; and
- C. Make the Rule absolute upon hearing the parties and causes shown, if any, by the respondents and/or such other or further order or orders as to the Court may deem fit and proper; and
- D. Pending disposal of the Rule, your Lordships would further be pleased to direct the respondent No. 5 to maintain *status quo* in respect of the service of the petitioner as the Principal of Chittagong Technical School and College, Rauzan, Chittagong.

And for this act of kindness, your humble petitioner, as in duty bound, shall ever pay.



### **AFFIDAVIT**

I, Md. Salah Uddin Ahmed Khan, son of Mohammad Saber and Roshida Begum, Principal of the Chittagong Technical School and College, Police Station - Rauzan, District- Chittagong; a Bangladeshi national, aged about 59 years, by faith Muslim, by profession- teacher, national ID No. .... do hereby solemnly affirm and say as follows:

1. That I am the petitioner of this writ petition and as such I am fully acquainted with the facts and circumstances of the case and otherwise competent to swear this affidavit.
2. That the statement made in paragraphs No. 1-22 are statements of facts which are true to my knowledge and information derived from the records of the case, which I verily believe to be true and the rest are the submissions before this Hon'ble Court.

Prepared in my office

.....

Deponent

.....

(Hasan Rashid Chowdhury)

Advocate

The Deponent is known to me  
and identified by me

Solemnly affirmed before me by the  
said deponent on this 5th day of  
June 2013

.....

(Hasan Rashid Chy)

Advocate

Membership No 3567

Hall Room No 330 (Old)

S.C.B.B

.....

COMMISSIONER OF

AFFIDAVITS

SUPREME COURT OF

BANGLADESH

HIGH COURT DIVISION,

DHAKA

### **3. The Rule Nishi and Interim Order of 07.07.2013**

After a preliminary hearing of the aforesaid Writ Petition, a Division Bench of the Hon'ble High Court Division comprising their Lordships Mr. Justice Ashiqur Rouf and Mr Justice Sayed Mazhar Uddin vide Order dated 07.07.2013 was pleased to issue a Rule Nishi and an interim Order as under:

"Let a Rule Nishi be issued calling upon the respondents to show cause as to why memo No. 7G/93 (ka-3)/10/5733/2 dated 06.06.2011 (Annexure A) issued by the respondent No.3 Assistant Director refusing M.P.O. enlistment of the petitioner shall not be declared to have been issued without lawful authority and is of no legal effect and why the respondents shall not be directed for the immediate payment of government portion of the salary by way of inclusion of his name in monthly payment order

(M.P.O) list as the Principal of Chittagong Technical School and College, Rauzan, Chittagong and/or such other or further order or orders be passed as to this Court may seem fit and proper.

The Rule is made returnable within 6 (Six) weeks.

Pending hearing of the rule the respondent No.5 is directed to maintain *status quo* in respect of the service of the petitioner as the Principal of Chittagong Technical School and College, Rauzan, Chittagong for a period of six months.

The petitioner is directed to put in two sets of requisites for service of notices both in usual course as well as through registered post within 72 hours."

#### **4. Writ Petitioner's Application for a Direction Order (06.09.2014)**

By the end of July 2013, the Writ Petitioner was well enough to resume his job. He wrote to the School & College authority on 30.07.2013 wishing to resume his post of Principal of the School and College. He also prayed for a medical leave for the months of May 2013 to July 2013. The School and College authority, however, was reluctant to see the Petitioner as their principal any more. On 26.08.2014, after exchange of few letters, the writ petitioner served a lawyer's notice upon the School and College authority to take necessary steps towards payment of his arrear salary, increment and bonuses and also to allow him to resume his official duties as the Principal with all usual service and other benefits. Being a failure, the Writ Petitioner came to the High Court Division again with an application for a Direction order upon the School and College authority on the basis of the interim order of 07.07.2013. Following is the draft of the application:

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)  
Writ Petition No..... of 2013**

**IN THE MATTER OF:**

An application for a direction upon the respondents to pay salary, the yearly increments and Eid bonuses to the petitioner since May, 2013 and allow him to resume his official duties as the Principal of Chittagong Technical School and College;

**AND**

**IN THE MATTER OF:**

Md Salah Uddin Ahmed Khan ....

**Petitioner**

-VERSUS-

Government of Bangladesh and others .....

**Respondents**

**AND**

**IN THE MATTER OF:**

Md Salah Uddin Ahmed Khan, son of Mohammad Saber, Principal of the Chittagong Technical School and College, P/S - Rauzan, District - Chittagong ..... **The Applicant**

**TO**

Mr Justice Surendra Kumar Sinha, the Hon'ble Chief Justice of Bangladesh and his Companion Justices of the said Hon'ble Court.

The humble petition on behalf of the applicant above named most respectfully –

**SHEWETH:**

1. That the petitioner above-named filed the instant writ petition challenging memo No.7G/93(ka-3)/105733/2 dated 06.06.2011 (Annexure A) issued by the respondent No.3 Assistant Director refusing M.P.O enlistment of the petitioner and also praying for direction for the immediate payment of government portion of the salary to the petitioner by way of inclusion of his name in the Monthly Payment Order (M.P.O) list as the Principal of Chittagong Technical School and College, Rauzan, Chittagong.
2. That after a preliminary hearing of the aforesaid writ petition, a Division Bench of the Hon'ble High Court Division comprising their Lordships Mr. Justice Ashiqur Rouf and Mr Justice Sayed Mazhar Uddin vide Order dated 07.07.2013 was pleased to issue a Rule Nishi and an interim Order as under:  
*[The Rule Nishi issued by the Court is then reproduced - Author]*
3. That it is categorically stated that as per interim Order dated 07.07.2013, as reproduced above, the petitioner is legally entitled to continue his service as the Principal of Chittagong Technical School and College, Rauzan, Chittagong. As the Principal of the said College, the petitioner is also entitled to receive all benefits, yearly increments and Eid bonuses including his salary, except the Government's portion of his salary from the college authority and the college authority is legally under an obligation to pay the same in favor of the petitioner. The petitioner received the said financial benefits from the college from February, 2011 till April, 2013.
4. That the petitioner is a cardiac patient. The college authority had information that due to cardiac problem, the petitioner was admitted to a hospital in Chittagong on 02.05.2013. Subsequently, since his health condition was found to be deteriorating, the petitioner was transferred to the United Hospital, Dhaka for treatment. After diagnosis at the United Hospital, the concerned doctor advised the petitioner for some

immediate surgery and, accordingly, the petitioner had to undergo by-pass surgery. After the surgery, health condition of the petitioner was found to be improving and he came back to Chittagong by the end of June, 2013.

5. That after arrival in Chittagong, the petitioner by a letter dated 30.07.2013 requested the Chairman, Governing Body of the College to issue necessary office orders allowing him to resume his official duties. The petitioner by letter dated 30.07.2013 also requested the college authority to consider his absence in the college from May, 2013 to July 2013 as medical leave. However, the authority by a letter dated 20.08.2013 advised the petitioner to collect a fitness certificate from the concerned doctor before resuming official duties.

Photocopy of the said letter and a medical certificate both dated 30.07.2013 and a letter by college authority dated 20.08.2013 are annexed hereto and respectively

**Annexures-1, 2 and 3.**

6. That accordingly the petitioner visited his doctor namely Dr. S.C. Dhar for further examination of his physical fitness to join the office and after examination as such, the concerned doctor found the petitioner to be fit for joining the office and, thus, certified that the petitioner is physically sound to resume his duties.

Photocopy of the said certificate dated 20.08.2013 is annexed hereto and marked as **Annexure 4.**

7. That although the petitioner submitted the medical fitness certificate as stated above, the College authority, to the surprise of the petitioner, took no official steps and issued no office orders allowing the petitioner to resume official duties as the Principal of Chittagong Technical School and College .
8. That although the absence of the petitioner to the college from May 2013 to July 2013 was considered by the authority as medical leave but the college authority, for the reasons best known to them, has not been paying monthly salary to the petitioner since May, 2013. The petitioner has also not been allowed to join his office and resume his official duties.
9. That in the facts and circumstances as above, the petitioner by his lawyer served a notice upon the respondents on 26.08.2014 to take necessary steps towards payment of salary including annual increments and Eid bonuses as per the scale of the post of Principal in favor of the petitioner since May 2013 till date and also allow him to resume his official duties as the Principal of Chittagong Technical School and College with all usual service and other benefits. Despite receipt of the said notice dated 26.08.2014, the college authority miserably failed to take any steps in this regard.

Copy of the said notice dated 26.08.2014 is annexed hereto and marked as **Annexure 5.**

10. That it is categorically stated that as per the interim Order dated 07.07.2013 passed by the Hon'ble High Court Division in the instant writ petition, the petitioner is legally entitled to continue his service as the Principal of Chittagong Technical School and College, Rauzan, Chittagong. As the Principal of the said college, the petitioner is also entitled to receive all benefits including yearly increments, Eid bonuses as per scale for the post of Principal from the college authority and college authority is legally under an obligation to pay the same in favor of the petitioner.
11. That it is also categorically stated that the order of *status quo* dated 07.07.2013 passed in the instant writ petition means that the petitioner would be functioning as the Principal of Chittagong Technical School and College, Rauzan, Chittagong with usual service and other benefits incidental to the said post as the petitioner enjoyed from February 2011 till April, 2013. The Order of status quo dated 07.07.2013 is specific and clear both in its terms and meaning.
12. That it is submitted that failure on the part of the respondents to pay salary, the yearly increments and Eid bonuses to the petitioner since May 2013 and allow him to resume his official duties is arbitrary and mala fide and as such, the respondents may be directed to pay the same and allow him to resume his official duties for ends of justice.
13. That unless the respondents are directed to pay the petitioner his salary, the yearly increments and Eid bonuses to the petitioner since May 2013 and allow him to resume his official duties, the petitioner shall suffer irreparable loss and injury.

Wherefore, it is most humbly prayed that your Lordships would most graciously be pleased to pay salary, the yearly increments and Eid bonuses to the petitioner since May 2013 and also to immediately allow him to continue his official duties as the Principal of the Chittagong Technical School and College, Chittagong and/or pass such other or further order or orders as to your Lordships may seem fit and proper.

And for this act of kindness, your humble petitioner, as in duty bound, shall ever pay.

#### **AFFIDAVIT**

I, Md. Salah Uddin Ahmed Khan, son of Mohammad Saber and Roshida Begum, Principal of the Chittagong Technical School and College, Police Station- Rauzan, District- Chittagong; a Bangladeshi national, aged about 59 years, by faith Muslim, by profession- teacher, national ID No. .... do hereby solemnly affirm and say as follows:

1. That I am the petitioner-applicant of this writ petition and as such I am fully acquainted with the facts and circumstances of the case and otherwise competent to swear this affidavit.
2. That the statement made in paragraphs No. 1-13 are statements of facts which are true to my knowledge and information derived from the records of the case, which I verily believe to be true and the rest are the submissions before this Hon'ble Court.

Prepared in my office

.....  
Deponent

.....  
(Hasan Rashid Chowdhury)  
Advocate

The Deponent is known to me  
and identified by me

Solemnly affirmed before me by the  
said deponent on this 6<sup>th</sup> day of  
September 2014

.....  
(Hasan Rashid Chowdhury)  
Advocate  
Membership No 3567  
Hall Room No 330 (Old)  
S.C.B.B

.....  
COMMISSIONER OF AFFIDAVITS  
SUPREME COURT OF  
BANGLADESH  
HIGH COURT DIVISION, DHAKA

#### **5. The Direction Order (30.09.2014)**

A Vacation Bench of the High Court Division comprising Mr. Justice Sheikh Nur Mohammad and Mr Justice Badrul Ahsan issued a direction order upon the Chittagong Technical School and College authority to reinstate the Writ Petitioner in his post within two weeks from date of the order, pay arrears of his salaries and bonuses since May 2013 and maintain *status quo* in relation to the post until further order.

#### **6. Respondent's Application for Vacation of the Status Quo & Direction Order (03.12.2014)**

After a series of letter exchange between the Writ Petitioner, Md. Salah Uddin Ahmed Khan, and the School & College authority, the Governing Body of the School & College ultimately decided to move an application for vacation of the Status Quo Order of 07.07.2013 and Direction Order of 30.09.2013. In that application the School & College authority tired to make out a case that they did not get any certified copy of the order of 07.07.2013. They also claimed that the Direction Order of 30.09.2013 did not identify them correctly. Here is the draft:

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)  
Writ Petition No..... of 2013**

**IN THE MATTER OF:**

An application for vacating the order of status quo dated 07.07.2013 passed by a Division Bench of the Honorable High Court Division comprising their Lordships Mr. Justice Ashiqur Rouf and Mr Justice Sayed Mazhar Uddin directing the respondent No. 5 to maintain *status quo* in respect of the service of the Writ Petitioner as Principal of Chittagong Engineering University School & College and the order of direction dated 30.09.2014 passed by a Division Bench of the Honorable High Court Division comprising their Lordships Mr. Justice Sheikh Nur Mohammad and Mr Justice Badrul Ahsan directing the respondents, in particular respondent No. 5 to pay salaries, yearly increments and Eid bonuses to the Writ Petitioner since May, 2013 and also to allow him to resume his function as the Principal of the Chittagong Technical School and College; Chittagong within two weeks from receipt of the copy of the said order so far it relates to the applicant.

**AND**

**IN THE MATTER OF:**

Md. Salah Uddin Ahmed Khan ..... **Petitioner**

-VERSUS-

Government of Bangladesh and others ..... **Respondents**

**AND**

**IN THE MATTER OF:**

Chairman, Governing Body of Chittagong Technical School and College,  
P/S – Rauzan, Dist- Chittagong ..... **Respondent No.5/ the Applicant**

**TO**

Mr Justice Surendra Kumar Sinha, the Hon'ble Chief Justice of Bangladesh and his Companion Justices of the said Hon'ble Court.

The humble petition on behalf of the applicant above named most respectfully –

**SHEWETH:**

1. That the instant application is directed against the order of status quo dated 07.07.2013 and the order of direction dated 03.09.2014 in the aforementioned Writ Petition which was filed by the Writ Petitioner challenging Memo No. 7G/93(KA-3)/10/5733/2 dated 06.06.2011 (Annexure-A), issued by the respondent No. 3 Assistant Director refusing Monthly Payment Order (M.P.O) enlistment of

the Writ Petitioner and also praying for direction for the immediate payment of Government portion of the salary to the writ petitioner by way of inclusion of his name in the M.P.O list as the Principal of School & College.

2. That after preliminary hearing of the aforesaid Writ Petition, a Division Bench of the Hon'ble High Court Division comprising their Lordships Mr. Justice Ashiqur Rouf and Mr Justice Sayed Mazhar Uddin vide order dated 07.07.2013 was pleased to issue a Rule Nishi and an interim order. The *Rule Nishi* called upon the respondents to show cause as to why the memo issued by Assistant Director refusing MPO enlistment of the Writ Petitioner shall not be declared to have been issued without lawful authority and is of no legal effect and why the respondents shall not be directed for the immediate payment of Government portion of the salary to the petitioner by way of inclusion of his name in the M.P.O list. Whereas the Rule was made returnable within six weeks, pending the hearing of the Rule, the respondent No. 5, the present Applicant, was directed to maintain *status quo* in respect of the service of the Writ Petitioner as Principal of the School & College for a period of six months.
3. That the applicant is the respondent No. 5 to the Writ Petition. But he did not receive any copy of the aforesaid order dated 07.07.2013 as of today. However, the office assistant (clerk) of the School and College placed a joining letter of the petitioner dated 11.10.2014 annexed with a photocopy of the certified copy of an order dated 30.09.2014 passed by this court in the instant Writ Petition at the time of ongoing meeting of the Governing Body of the School and College held on 16.10.2014.

Copy of the said Joining Letter is annexed herewith and marked as **Annexure-1**.

4. That the Writ Petitioner did not submit the aforementioned joining letter being present in the School & College. He gave it to the office assistant (clerk) by calling him in his Chittagong town residence. On perusal of the same it appeared that there is a direction upon the writ respondents, in particular the respondent No.5 (the present applicant) by this Hon'ble Court. The applicant did neither get copy of the order dated 30.09.2014 through this court nor the Writ Petitioner submitted the certified copy of the same to the School & College authority nor was the submitted photocopy attested by the Writ Petitioner's lawyer. The School & College authority therefore found it risky to take step upon the photocopy of the said order. Therefore, on 16.10.2014, the School & College authority issued a letter to the Writ Petitioner disclosing their apprehension.



Copy of the letter dated 16.10.2014 is annexed herewith and marked as **Annexure-2**.

5. That on 20.10.2013 the Writ Petitioner received the aforesaid letter dated 16.10.2014 and then on 23.10.2014, the holiday for Hizri New year, he submitted the certified copy of the order dated 30.09.2014 to the office assistant (clerk) of the School & College in the way stated earlier. The office assistant (clerk) gave the same to the School & College authority on 25.10.2014 (opening day) having duly enrolled in the receiving register on the same date. While perusing the certified copy, the School & College authority found the wrong identification of the respondent No.5, the applicant, in the identity portion of the order. The Governing Body therefore in its meeting of 01.11.2014 issued another letter to the Writ Petitioner requesting him to submit a copy of the 30.09.2014 order with correct identification of the applicant as respondent No.5. The letter of 01.11.2014 was received by the Writ Petitioner on 06.11.2014.

Copy of the said letter is annexed herewith and marked as **Annexure-3**.

6. That the writ petitioner obtained the order dated 30.09.2014 on *ex parte* by misleading this Hon'ble Court. Since then, the applicant had been waiting for a copy of the order in correct form (regarding the applicant's identity) from the Writ Petitioner in response to its request of 01.11.2014 or from this Hon'ble Court in due course. The applicant neither got such copy from the Writ Petitioner nor he got the same through this Hon'ble Court.
7. That the Writ Petitioner obtained direction order of 30.09.2014 through an application for direction on the basis of concocted and baseless statements mentioned in paragraph Nos. 5 to 8 of the said application

*[Paras 4 to 8 of the application for direction order are then reproduced verbatim – Author].*

8. That the real facts are as follows:
  - (I) While absent without authorization of the School & College authority from the beginning of May 2013, the Writ Petitioner sent an application praying for Medical Leave on 09.05.2013. Thereafter, on 30.07.2013 the Writ Petitioner filed another application to the applicant praying for permission to resume his service. In response to the said letter the applicant issued a letter dated 20.08.2013 directing the Writ petitioner to submit a proper physical fitness certificate. Surprisingly, while the Writ Petitioner claimed to get a Rule Nishi against the applicant by an order dated 07.07.2013, he did not mention that at all in his joining letter dated 30.07.2013. It is clear that at the time of the said status quo order of 07.07.2013, the Writ

Petitioner was absent from his work station without authorization.

- (II) Though the Writ Petitioner received the letter dated 20.08.2013, he did not bother to reply to the said letter and thereby defied the service rules and authority of the School & College. Though the Writ Petitioner claims that he submitted a certificate of fitness dated 20.08.2013 given by Dr. S.C. Dhar, actually he did not. Rather he remained absent from the School & College as earlier.
- (III) The Writ Petitioner now most cunningly claims all benefits, yearly increments and Eid bonuses including his salaries as arrears for a time during which he was absent without authorization. The Writ Petitioner in fact is not entitled to claim the same for the period as he remained absent in the School & College.
- (IV) The applicant did not get the copy of the order dated 07.07.2013 through court or from any reliable source. The Writ Petitioner also did not submit any copy of the same to this applicant. Even he did not mention the matter of the said order dated 07.07.2013 in his letter dated 30.07.2013 written to this applicant. The School & College authority was kept in dark about the said order. Yet the Writ Petitioner has made false averments and submissions on these points without hesitation.
- (V) This Hon'ble Court gives protection only to those people who come to this Court with clean hands. The Writ Petitioner did not come in clean hands to take recourse of law. He violated the terms and conditions of his appointment letter as well as service rules of the School & College which were briefly pointed out in the letter of the Governing Body dated 16.10.2014.

A copy of which is attached herewith as Annexure

2.

- (VI) In the said letter of 16.10.2014, the School & College authority has given detailed account of various written allegations against the Writ Petitioner filed by the teachers and staffs regarding harassment to the female colleagues by way of objectionable gesturing, posturing and verbal communication and misappropriation of fund with a lot of anomalies in respect of his assigned job. Details of the responses given by the Writ Petitioner against those allegations and actions taken by the Governing Body in those cases were also presented in the said letter of 16.10.2013. Given the situation the petitioner found himself unfit both physically and morally. Having serious moral degradation and breach of service rules, the Writ

Petitioner started to find tricky ways for enjoying financial and other benefits from the School & College authority very unlawfully. At the same time he remained absent from the School & College to avoid such unavoidable circumstances.

(VII) The Writ Petitioner misled the School & College authority claiming that he has required experience for having appointment in the post of Principal. But as of today he could not include his name in the M.P.O by submission of necessary papers to the respondent Nos. 1-4 of the instant Writ Petition. The School & College authority is not in a position to allow a teacher to continue his service as Principal like the petitioner for indefinite period without inclusion of his name in the M.P.O. So the Writ Petitioner's service is liable to be terminated.

(VIII) The aforesaid activities of the Writ Petitioner deserve termination from the service as per Service Rules. Though series of actions and steps have already been taken against him, the School & College authority shows lenient view toward him believing the information given by him, especially considering his illness. Moreover, he is given much time to correct himself. But he remains incorrigible. When the authority finds no other alternatives except his termination from service the petitioner started beating around the bush just to escape himself from the allegations lodged against him. Copies of the appointment letter, allegations, show-cause notices and letters, and mercy petitions are annexed herewith and marked as **Annexure-4-series**.

9. That since the applicant was directed in particular by the order of this Hon'ble Court dated 30.09.2014, obtained by the Writ Petitioner in the aforementioned way, there is serious apprehension of irreparable loss and injury to the School & College authority if the said order remains in force. The School & College authority therefore has preferred this application for vacating the orders of status quo dated 07.07.2013 and of direction dated 30.09.2014.
10. That this Hon'ble Court by the direction order of 30.09.2014 directed the respondent No. 5 (the applicant) in particular to pay salaries, yearly increments and Eid bonuses to the Writ Petitioner and also to allow him to resume his function as the principal of the School & College. But the applicant is not the sole authority to do so. This School & College is a non Government Educational Institution. A teacher of a Non Government Educational Institution gets a portion of his salary and other benefits from the government and the rest portion from the School & College fund, if there be any.

11. That it is clear that giving the government portion of the salary will be exclusively within the authority of the respondents Nos. 1-4. About the rest of the amount to be given by the School & College authority, it is pertinent to mention that the Writ Petitioner being absent without authorization during the period concerned, the direction upon the applicant regarding the same is unlawful and not tenable in the eye of law.
12. That the government portion of the salary and other benefits is subject to the condition of the Writ Petitioner being qualified for inclusion in the M.P.O list. The respondent No.5 (the applicant) clearly included a condition of the Writ Petitioner being included in the M.P.O list in his appointment letter (condition No. 9) which is annexed within the **Annexure 4- series**. Admittedly the Writ Petitioner failed to get enlisted in the M.P.O list twice on 15.03.2011 and 29.09.2011. In spite of the School & College authority extending all possible assistance, the government authority, the respondent No. 3 in particular, refused to include his name in the M.P.O vide Memo No. 7G/93(Ka-3)/10/5733/2 dated 06.06.2011.
13. That the Writ Petitioner by hiding his lack of qualification to be appointed as principal of the School & College already swallowed a lot of benefits including his salaries and incidental benefits from the School & College fund till May 2013. Since the Writ Petitioner finds no hope and legal possibility to include his name in the M.P.O for long time, the Governing Body of the School & College took a decision being No. 107/8 (Ga) in its meeting of 08.03.2013 to take step against his professional misconduct and other illegal activities. The Writ Petitioner started to avoid the School & College to skip his responsibilities, liabilities and offences. He remained absent without authorization on pretext of illness and it is during that time that he filed the instant Writ Petition with *mala fide* intention of continuing his swallowing financial benefits through this Court and obtained the order dated 30.09.2014 upon false and concocted statements keeping the Hon'ble Court in quite dark.
14. That the Writ Petitioner practiced imposture and falsity in obtaining the order dated 30.09.2014 and 07.07.2013 and by making prayer for extending the order of 07.07.2013 time to time so far as it relates to *status quo*.
15. That there is serious apprehension of irreparable harm to the School & College if he resumes his service as Principal of the same as per *interim order* dated 30.09.2014 without ascertaining the matter in question that is inclusion of his name in M.P.O. by the respondent Nos. 1-4 upon final hearing of the Writ Petition. Therefore, the

order of direction dated 30.09.2014 should be vacated for ends of justice.

16. That the School & College authority is very much conscious about the holy order of the apex court. The applicant, the founder Vice Chancellor of public university of Chittagong, who earned much fame for his honest and sincere administrative qualities, has been rendering relentless service to the School & College as the Chairman of the Governing Body. In that capacity, he assures this Hon'ble Court that the School & College authority is willing to obey any order passed by this Hon'ble Court.
17. That the applicant prays for kind leave of the Hon'ble Court to swear affidavit with photocopies of annexure since the original copies of Annexure 1 to 3 and some of Annexure 4 series are lying with the Writ Petitioner and the rest of the Annexure 4 series are lying with the School & College authority and the same will be shown at the time of hearing.

Wherefore, it is most humbly prayed that your Lordships would graciously be pleased to allow the instant application and pass an order vacating the order of *status quo* dated 07.07.2013 and other order of direction dated 30.09.2014 and/or pass such order or further order or orders as your Lordships may deem fit and proper.

#### **AFFIDAVIT**

I, Professor Md. Khairuzzaman, son of Latre Abdul Gafur Saleh and Late Mosammat Khairunnessa Begum, Chairman of Governing Body, Chittagong Technical School & College, P/S- Rauzan, Dist- Chittagong aged about 67 years, Profession- teacher by faith Muslim, by nationality Bangladeshi, national ID No. .... do hereby solemnly affirm and say as follows:

1. That I am the respondent No.5 - applicant being aware of the facts and circumstances of the case and as such I am competent to swear this affidavit.
2. That the statements made in this application are true to my knowledge and belief.

Prepared in my office

.....  
Deponent

.....  
(H.M. Khaleq)  
Advocate

The Deponent is known to me  
and identified by me

Solemnly affirmed before me by the  
said deponent on this 3<sup>rd</sup> day of  
December 2014

.....  
COMMISSIONER OF AFFIDAVITS  
SUPREME COURT OF  
BANGLADESH  
HIGH COURT DIVISION, DHAKA

.....  
(H.M. Khaleq)  
Advocate  
Membership No 3909  
Hall Room No 216 (Annex)

**7. Affidavit-in-Opposition on behalf of the School & College (11.01.2015)**

The application for vacation of the *status quo* and Direction Order being a failure, the Governing Body of the Chittagong Technical School & College decided to contest the case on merit and filed an Affidavit-in-Opposition on 11.01.2015. Interestingly, the question of qualification or disqualification of the Writ Petitioner to be included in the M.P.O was an issue related to the government authorities, the respondent Nos. 1-4. But the School and College authority took it upon themselves to show that the Writ Petitioner was not eligible to be included in the M.P.O. The government, on the other hand did not enter any written opposition. It rather made some oral submissions during the hearing. Following is the draft of the Affidavit-in-Opposition:

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)  
Writ Petition No..... of 2013**

**IN THE MATTER OF:**

Md. Salah Uddin Ahmed Khan

..... **Petitioner**

-VERSUS-

Government of Bangladesh and others

..... **Respondents**

**AFFIDAVIT-IN-OPPOSITION ON BEHALF OF THE  
RESPONDENT NO. 5**

I, Professor Md. Khairuzzaman, son of Late Abdul Gafur Saleh and Late Mosammat Khairunnessa Begum, Chairman of Governing Body, Chittagong Technical School & College, P/S- Rauzan, Dist- Chittagong aged about 67 years, Profession- teacher by faith Muslim, by nationality Bangladeshi, national ID No. .... do hereby solemnly affirm and say as follows:

1. That I am the respondent No. 5- applicant being aware of the facts and circumstances of the case and as such I am competent to swear this affidavit.
2. That the respondent No. 5 to the Writ Petition did not receive any copy of this Rule. The office assistant (clerk) of the School and College placed a joining letter of the petitioner dated 11.10.2014 annexed with a photocopy of the certified copy of an order dated 30.09.2014 passed by this court in the instant Writ Petition at the time of ongoing meeting of the Governing Body of the School and College held on 16.10.2014.

Copy of the said Joining Letter is annexed herewith and marked as **Annexure-1**.

3. That on 23.10.2014, the holiday for Hizri New year, the Writ Petitioner submitted the certified copy of the order dated 30.09.2014 to the office assistant (clerk) of the School & College in the way stated earlier. The office assistant (clerk) gave the same to the School & College Authority on 25.10.2014 (opening day) having duly enrolled in the receiving register on the same date. While perusing the certified copy, the School & College authority found the wrong identification of the respondent No.5, the applicant, in the identity portion of the order. The Governing Body therefore in its meeting of 01.11.2014 issued another letter to the Writ Petitioner requesting him to submit a copy of the 30.09.2014 order with correct identification of the applicant as respondent No.5. The letter of 01.11.2014 was received by the Writ Petitioner on 06.11.2014.

Copy of the said letter is annexed herewith and marked as **Annexure-2**.

4. That the writ petitioner did not respond to the letter dated 01.11.2014 issued by the respondent No.5 to him. The School & College authority thereafter collected a copy of this writ petition and took decision to contest the case and accordingly they engaged learned lawyer and appeared in the case by filling a power on 03.12.2014. However, the respondent No.5 has been advised to converted only those statements which are necessary for disposal of this Rule and the statements which have not been specifically admitted hereinafter shall be deemed to have denied by the respondent No.5.
5. That the statements made in paragraph No. 1 are not true it's sense and hence denied. It is submitted regarding his claim of being the Principal of Chittagong Technical School & College, Rauzan, Chittagong that Writ Petitioner has been remaining unauthorized absent in the School & College from May, 2013 as of today. Remaining unauthorized absent he can't claim himself as Principal of the School & College. Besides he failed to show any honor

upon terms and condition of his appointment letter as well as Service Rules.

6. That the statements made in paragraph 2 of the Writ Petition are matters of facts and hence the deponent did not make any comment.
7. That the statements made in paragraph 3 of the Writ Petition are maters of facts and hence calls for no comments.
8. That the statements made in paragraph 4 of the Writ Petition are maters of facts and hence calls for no comments.
9. That with regard to statements made in paragraph 5 to 10 are denied because the Writ petitioner could not annex the concerned documents before this Hon'ble Court or to the respondent No. 5 as of today according to his reference though he is bound to do so. It is submitted that after 2004, the writ petitioner's name was included in the monthly payment order (M.P.O) only for once while Sayeda Jahan Memorial College was listed in the M.P.O for the first time. Here it is pertinent to mention that though the writ petitioner claims that he was the principal of the said college but the annexures D to the writ petition says that the writ petitioner's name was included in the M.P.O against a scale to the tune of 18000+ which is the scale of a Assistant Professor not the scale of a Principal.
10. That the statements made in paragraph No. 11 of the Writ Petition are matters of record as such called no comments.
11. That with regard to the statements made in paragraph No. 12 are matters of record except selection of the Writ Petitioner for the post of Principal of the School and College and called for no comment. It is submitted regarding selection of the Writ Petitioner for the post of Principal of the School and College that the Writ Petitioner gave assurance to the respondent No. 5 by saying that he has necessary qualification and experience for being the Principal of the School and College and he would be able to produce the necessary documents thereof. But as of today he could not prove his eligibility for the post of principal of the School and College.
12. That the statements made in paragraph No. 13 are matters of record and called for no comment.
13. That the statements made in paragraph No. 14 are matters of record and called for no comment.
14. That with regard to the statements made in paragraph No 15 matters of record except making request by the respondent No. 5 for inclusion the Writ Petitioner's name in the M.P.O and as such do not require any comment. Regarding making by respondent No. 5 for granting government portion of the salary in favor of the petitioner by way of inclusion his name in the M.P.O it is



submitted that the respondent No 5 refused to do so at first. But being convinced by the petitioner's repeated claim that the documents annexed with the application dated 15.03.2011 was sufficient for such inclusion; it applied on the second thought.

15. That the statements made in paragraph No 16 are not correct except as regards the enclosure to consider the eligibility of the School and College for inclusion in the list of M.P.O. The enclosure regarding eligibility of institution is sufficient and hence other teachers of the school and college have been enjoying the government portion of their salary from the respondent No. 1 to 4 for long time.
16. That the statements made in paragraph No. 17 are matters of record and called for no comment.
17. That regarding the statements made in the paragraph No 18 it is submitted that the respondent No 5 made request in application dated 29.09.2011 for the reason stated in the paragraph No 12 of this affidavit-in-opposition.
18. That with regard to the statement made in paragraph No 19 and 20 it is submitted that the Writ Petitioner could not submit concerned documents before this Hon'ble Court as well as to the respondent No 5
19. That the statements made in paragraph No 21 are not correct and hence denied. It is submitted that the Writ Petitioner suffers from shortage of experience to be appointed as Principal of the School & College and also to include his name in the M.P.O and hence he has failed to include his name in the M.P.O as of today. Being failed to do so the Writ Petitioner filed this petitioner *mala fide* and upon false statement and obtained the Rule.
18. That the real facts are as follows:
  - i. That the Writ Petitioner by hiding his lack of qualification to be appointed as principal of the School & College already swallowed a lot of benefits including his salaries and incidental benefits from the School & College fund till May 2013. Since the Writ Petitioner finds no hope and legal possibility to include his name in the M.P.O for long time, the Governing Body of the School & College took a decision being No. 107/8 (Ga) in its meeting of 08.03.2013 to take step against his professional misconduct and other illegal activities. The Writ Petitioner started to avoid the School & College to skip his responsibilities, liabilities and offences. He remained absent without authorization on pretext of illness and it is during that time that he filed the instant Writ Petition with *mala fide* intention of continuing his swallowing financial benefits through this Court and obtained the order dated

- 30.09.2014 upon false and concocted statements keeping the Hon'ble Court in quite dark.
- ii. While absent without authorization of the School & College authority from the beginning of May 2013, the Writ Petitioner sent an application praying for Medical Leave on 09.05.2013. Thereafter, on 30.07.2013 the Writ Petitioner filed another application to the applicant praying for permission to resume his service. In response to the said letter the applicant issued a letter dated 20.08.2013 directing the Writ petitioner to submit a proper physical fitness certificate. Surprisingly, while the Writ Petitioner claimed to get a Rule Nishi against the applicant by an order dated 07.07.2013, he did not mention that at all in his joining letter dated 30.07.2013. It is clear that at the time of the said status quo order of 07.07.2013, the Writ Petitioner was absent from his work station without authorization.
  - iii. Though the Writ Petitioner received the letter dated 20.08.2013, he did not bother to reply to the said letter and thereby defied the service rules and authority of the School & College. Though the Writ Petitioner claims that he submitted a certificate of fitness dated 20.08.2013 given by Dr. S.C. Dhar, actually he did not. Rather he remained absent from the School & College as earlier.
  - iv. The Writ Petitioner now most cunningly claims all benefits, yearly increments and Eid bonuses including his salaries as arrears for a time during which he was absent without authorization. The Writ Petitioner in fact is not entitled to claim the same for the period as he remained absent in the School & College.
  - v. The applicant did not get the copy of the order dated 07.07.2013 through court or from any reliable source. The Writ Petitioner also did not submit any copy of the same to this applicant. Even he did not mention the matter of the said order dated 07.07.2013 in his letter dated 30.07.2013 written to this applicant. The School & College authority was kept in dark about the said order. Yet the Writ Petitioner has made false averments and submissions on these points without hesitation.
  - vi. This Hon'ble Court gives protection only to those people who come to this Court with clean hands. The Writ Petitioner did not come in clean hands to take recourse of law. He violated the terms and conditions of his appointment letter as well as service rules of the School & College which were briefly pointed out in the letter of the Governing Body dated 16.10.2014.

A copy of which is attached herewith as **Annexure**

**3.**

- vii. In the said letter of 16.10.2014, the School & College authority has given detailed account of various written allegations against the Writ Petitioner filed by the teachers and staffs regarding harassment to the female colleagues by way of objectionable gesturing, posturing and verbal communication and misappropriation of fund with a lot of anomalies in respect of his assigned job. Details of the responses given by the Writ Petitioner against those allegations and actions taken by the Governing Body in those cases were also presented in the said letter of 16.10.2013. Given the situation the petitioner found himself unfit both physically and morally. Having serious moral degradation and breach of service rules, the Writ Petitioner started to find tricky ways for enjoying financial and other benefits from the School & College authority very unlawfully. At the same time he remained absent from the School & College to avoid such unavoidable circumstances.
  - viii. The Writ Petitioner misled the School & College authority claiming that he has required experience for having appointment in the post of Principal. But as of today he could not include his name in the M.P.O by submission of necessary papers to the respondent Nos. 1-4 of the instant Writ Petition. The School & College Authority is not in a position to allow a teacher to continue his service as Principal like the petitioner for indefinite period without inclusion of his name in the M.P.O. So the Writ Petitioner's service is liable to be terminated.
  - ix. The aforesaid activities of the Writ Petitioner deserve termination from the service as per Service Rules. Though series of actions and steps have already been taken against him, the School & College authority shows lenient view toward him believing the information given by him, especially considering his illness. Moreover, he is given much time to correct himself. But he remains incorrigible. When the authority finds no other alternatives except his termination from service the petitioner started beating around the bush just to escape himself from the allegations lodged against him. Copies of the appointment letter, allegations, show-cause notices and letters, and Mercy petitions are annexed herewith and marked as **Annexure-4-series**.
19. That it is submitted that the School & College is a non government higher secondary educational institution. According to rules of higher secondary educational institution, a teacher needs to have an experience of 12 years teaching including 5 years as Assistant

Professor to include his name in the Monthly Payment Order (M.P.O). But the Writ Petitioner has no such experience and hence no right to get his name included in the M.P.O. So, the instant Rule has no legal force and therefore it is liable to be discharged for ends of justice.

20. That the submissions as well as grounds as enumerated in this Writ Petition are all vague, baseless, misleading and misconceived and are not sustainable in the eye of law.
21. That the respondent No. 5 craves kind leave of this Hon'ble Court to swear affidavit with the photocopy of the annexure since original copy of the annexure is lying with the petitioner.
22. That it is submitted that under the above facts and circumstances it is crystal clear that the Writ Petitioner has no required experience to include his name in the M.P.O. The impugned letter was issued on 06.06.2011. In the meantime a long time has elapsed. But the Writ Petitioner miserably failed to show his expected experience to include his name in the M.P.O. either to the respondent Nos.1-4 or to the respondent No.5. In fact, there is illegality in the impugned letter and as such the Rule issued by the Hon'ble Court is liable to be discharged and the status quo as passed during issuance of the Rule and the Direction Order shall also be liable to be vacated with cost.
23. That the statements made in this application are true to my knowledge and belief.

Prepared in my office

.....

Deponent

.....

(H.M. Khaleq)

Advocate

The Deponent is known to me  
and identified by me

Solemnly affirmed before me by the  
said deponent on this 11th day of  
January 2015

.....

(H.M. Khaleq)

Advocate

Membership No 3907

Hall Room No 216 (Annex)

.....

COMMISSIONER OF AFFIDAVITS  
SUPREME COURT OF  
BANGLADESH  
HIGH COURT DIVISION, DHAKA

**8. Affidavit-in-Reply by the Writ Petitioner (15.04.2015)**

On 15 April 2015, the Writ Petitioner submitted a written affidavit in reply to the affidavit in opposition filed by the respondent No.5 (Governing Body of the School & College). Following is the draft of the Affidavit-in-Reply:

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)  
Writ Petition No..... of 2013**

**IN THE MATTER OF:**

Md Salah Uddin Ahmed Khan, son of Mohammad Saber, Principal of the Chittagong Technical School and College, P/S - Rauzan, District - Chittagong ..... **Petitioner**

**- VERSUS -**

Bangladesh and others .....

**Respondents**

**AFFIDAVIT-IN-REPLY TO THE AFFIDAVIT-IN-OPPOSITION**

I, Md. Salah Uddin Ahmed Khan, son of Mohammad Saber and Roshida Begum, Principal of the Chittagong Technical School and College, Police Station- Rauzan, District- Chittagong; a Bangladeshi national, aged about 59 years, by faith Muslim, by profession- teacher, national ID No. .... do hereby solemnly affirm and say as follows:

1. That I am the petitioner of this writ petition and as such I am fully acquainted with the facts and circumstances of the case and otherwise competent to swear this affidavit.
2. That I have received copies of the affidavit in opposition of the respondent No 5 to the instant writ petition sworn on 11.01.2015, supplementary affidavit in opposition received on 18.01.2015 and another supplementary affidavit in opposition sworn on 22.01.2015. I have gone through the said affidavit in opposition and the supplementary affidavit in opposition and have understood the content thereof. I have been advised to controvert only those statements of the said affidavit in opposition and the supplementary affidavit in opposition as are necessary for disposal of the same and the statements which are not specifically admitted herein shall be deemed to have been denied by me.
3. That the statements made in paragraph No 1 of the said affidavit in opposition call for no comments.
4. That the statements made in paragraph no 2 of the affidavit in opposition are matters for the respondent No 5 to prove.
5. That the statements made in paragraph No 3 of the said affidavit in opposition clearly show the malicious attitude of the respondent No 5 to allow him to join his office of the Principal of Chittagong Technical

School and College, yet he was being denied the opportunity to resume functioning as the Principal of the said School and College on the flimsy plea that the petitioner was on medical leave while the order of status quo was passed in the instant writ petition on 07.07.2013. As a matter of fact, another Bench of this Hon'ble Court categorically held in the instant writ petition vide Order dated 30.09.2014 that "such conduct of the respondent No 5 is contemptuous and direct violation of the ad interim order issued by this Court at the time of issuance of the Rule". The said Division Bench further observed that the ad interim Order of status quo dated 07.07.2013 passed in the instant writ petition at the time of issuance of the Rule "means that the functioning of the petitioner as the Principal of the said College cannot be disturbed by the respondent No 5 or any other authority unless it is ordered by this Court." In such view of the matter, the statements made in paragraph No 3 of the affidavit in opposition are probably wrong and, hence, denied.

6. That the statements made in paragraph No 7 of the said affidavit in opposition are false, misleading and, hence, denied. It is categorically stated that before 2010, the requirement for getting the pay scale of a Principal was 12 years' experience as Lecturer including 5 years' experience as Assistant Professor. Moreover, at the relevant time the MPO Guidelines provided that if someone was not eligible to get a particular scale, he/she may be granted a lower scale if he acquired the required qualification for that scale. Hence, when the petitioner applied for the scale of Principal of Sayeda Jahan Memorial College, Bakalia, Chittagong, he did not possess the requisite experience as Assistant Professor for 5 years'. As such the petitioner was given the scale of Assistant Professor being the scale below the scale of Principal. Hence, although the petitioner working as the Principal of Sayeda Jahan Memorial College, Bakalia, he accepted the scale of an Assistant Professor as per guidelines. After 2010, however, the requirement of having 5 years' experience as Assistant Professor has been removed and, at present, the only requirement is 12 years' experience as Lecturer. Hence since the petitioner possesses more than 25 years' of experience as Lecturer, he is very much eligible to get the scale of Principal. It is also stated that the petitioner submitted all the required documents to the concerned authorities before joining as the Principal of Chittagong Technical School and College. This is very much conspicuous from the relevant M.P.O sheets (Annexures C, C1 and D to the Writ Petition) all of which contain seal and signatures of the respondent No 5.
7. That the statements made in paragraph No 9 the said affidavit in opposition are false, misleading, and hence, denied. It is categorically stated that the petitioner being fully qualified for the post of the Principal of Chittagong Technical School and College, was offered the job at the first place upon verification of all his documents and other credentials.

8. That the statements made in paragraph No 12 of the said affidavit in opposition are false, misleading and, hence denied. It is categorically stated that the petitioner being fully qualified for the said post of Principal, and being fully satisfied with his credentials, the respondent No 5 made a request to the Director General of the Directorate of Secondary and Higher Secondary Education for granting government portion of the salary in favor of the petitioner by way of inclusion of his name in the Monthly Payment Order (M.P.O) list as the Principal of Chittagong Technical School and College.
9. That the statements made in paragraph No 13 of the said affidavit in opposition are false, misleading and, hence, denied. The petitioner herein reiterates the statements made in paragraph No 16 of the writ petition.
10. That the statements made in paragraph Nos 15-17 of the said affidavit in opposition are false, misleading and, hence, denied. These are mere repetitions of some of the earlier statements and the petitioner has replied to the same in the preceding paragraphs.
11. That the statements made in paragraph Nos 18(i)-(v) of the said affidavit in opposition are false, concocted, misleading and, hence, denied. It is categorically stated that the petitioner suffered a cardiac arrest on 02.05.2013 and, as such, he sought medical leave on 09.05.2013. Moreover, the petitioner has never been engaged in any illegal activities either in the School & College in question, or anywhere else in his entire life. The petitioner submitted a doctor's certificate from Dr. S.C. Dhar of Chittagong Medical College as required by the respondent No 5 vide letter dated 20.08.2013. Yet, the respondent No 5 did not allow the petitioner to resume functioning as the Principal of Chittagong Technical School and College. Since joining the said post of Principal, the petitioner regularly received salary, all service benefits, annual increments, Eid bonuses etc till he suffered a cardiac arrest on 02.05.2013. Although an Order of status quo passed in the instant writ petition at the time of issuance of the Rule on 07.07.2013 means that the functioning of the petitioner as the Principal of the said College cannot be disturbed by the respondent No 5 or any other authority unless it is ordered by this Court as held in this writ petitioner vide order dated 30.09.2014, yet in utter defiance of a specific direction of this Hon'ble Court vide order dated 30.09.2014 the respondent No 5 in a most contemptuous manner has refrained from paying the same to the petitioner till date. On the other hand, the respondent No 5 in a most audacious manner now claims that the petitioner is not entitled to the same for the period he had not been working, whereas admittedly the petitioner applied for resumption of his functions from 30.07.2013 but he was not allowed to do so by the respondent No 5 himself in a most *mala fide* manner.
12. That the statements made in paragraph No 18 (vi) – (ix) of the said affidavit in opposition are false, concocted, misleading and, hence, denied. It is categorically stated that the petitioner has very much come

with clean hands before this Hon'ble Court. The letter dated 16.10.2014 written by the respondent No. 5 contains all false accusations made up subsequent to filling of the instant writ petition out of grudge against the petitioner by the respondent No 5. The petitioner was neither served with any copies of the complaints allegedly made by female teachers/staff of the said School & College, nor did the authority start any proceedings against the petitioner as these fabricated documents did not exist earlier at all. These have been created for the purpose of maligning the character of the petitioner for using in the instant writ petition simply to mislead this Hon'ble Court. These are malicious in nature and contain serious defamatory statements of made stories which did not ever occur. The petitioner still reiterates that he has the requisite qualification for enlistment in the M.P.O. in the scale of Principal as he has got more than 25 years' of teaching experience as Lecturer. It is categorically stated that the petitioner is a renowned teacher in the Chittagong area with vast experience in teaching and he possess a very strong moral character with high educational qualifications. He has never violated any terms and conditions of his services with any of the school/colleges he taught in his life and never ever in his life any proceeding were initiated against him involving allegations of moral turpitude. The allegations made herein are false, frivolous, made up and, hence, again categorically denied.

13. That the submission made in paragraph No 21 are baseless, misconceived and, hence, not tenable in law proper to which will be given at the time of hearing.
14. That the statements made in paragraph No. 3 of the supplementary affidavit-in-opposition are false, concocted, misleading and hence, denied. As stated categorically above, the M.P.O., guidelines published on 04.02.2010 only required 12 years' experience as Lecturer for being enlisted in the scale of Principal and the petitioner having more than 25 years' of experience as Lecturer is very much qualified to get the scale of a Principal.
15. That the statements made in paragraph Nos. 2-3 of the said supplementary affidavit-in-0opposition sworn on 22.01.2015 are misleading, and hence, denied. Proper reply to some similar statements have already been given in the preceding paragraphs and the petitioner reiterates the same here.
16. That the statement made in paragraphs Nos. 1-15 are statements of facts which are true to my knowledge and information derived from the records of the case, which I verily believe to be true and the rest are the submissions before this Hon'ble Court.



Prepared in my office

.....

Deponent

.....

(Hasan Rashid Chowdhury)

Advocate

The Deponent is known to me  
and identified by me

Solemnly affirmed before me by the  
said deponent on this 15th day of April,  
2015

.....

(Hasan Rashid Chowdhury)

Advocate

Membership No 3567

Hall Room No 330 (Old)

S.C.B.B

.....

COMMISSIONER OF AFFIDAVITS  
SUPREME COURT OF  
BANGLADESH  
HIGH COURT DIVISION, DHAKA

**9. Supplementary Affidavit of the Petitioner (26.04.2015)**

On 26<sup>th</sup> of April 2015, immediately after filling the affidavit-in-reply, the Writ Petitioner filed a supplementary affidavit annexing all the experience certificates substantiating his claim of 25 years' of teaching experience. Following is the draft of the affidavit.

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)  
Writ Petition No..... of 2013**

**IN THE MATTER OF:**

Md Salah Uddin Ahmed Khan, son of Mohammad Saber, Principal of the  
Chittagong Technical School & College, P/S - Rauzan, District -  
Chittagong ..... **Petitioner**

**- VERSUS -**

Bangladesh and others .....

**Respondents**

**SUPPLEMENTARY AFFIDAVIT ON BEHALF OF THE PETITIONER**

I, Md. Salah Uddin Ahmed Khan, son of Mohammad Saber and Roshida Begum,  
Principal of the Chittagong Technical School & College, Police Station- Rauzan,  
District- Chittagong; a Bangladeshi national, aged about 59 years, by faith  
Muslim, by profession- teacher, national ID No. .... do hereby solemnly  
affirm and say as follows:

1. That I am the petitioner of this writ petition and as such I am fully acquainted with the facts and circumstances of the case and otherwise competent to swear this affidavit.
2. That some important facts with documents are required to be brought to the attention of this Hon'ble Court specially and, as such, there is a need to file this supplementary affidavit.
3. That the petitioner was appointed in the Chittagong Public School and College as Lecturer vide appointment letter dated 20.01.1987. He continued teaching in the said college till 04.03.2004. He used to receive M.P.O in the said college since 1987 till 2004 under Index No. 031852. Thereafter, he took admission in M. Phil course under the University of Chittagong. After successful completion of M. Phil Course (Session: 2005-2006), the petitioner returned to his teaching profession and joined the Mirza Gaus College on 01.04.2006 as the Principal. The petitioner continued teaching as the Principal in the said college till 31.05.2007. Thereafter, the petitioner joined the Monsaf Nagar College on 04.10.2007. He joined the said college as the Principal and continued there till 02.05.2008. Before joining the present college, the petitioner also served as the Principal in Sayeda Jahan Memorial College as the Principal from 03.05.2008 till 15.01.2011. When the petitioner was serving in Sayeda Jahan Memorial College as the Principal, he was enlisted in the M.P.O and received Government portion salary in the said college till January 2011. As such, the petitioner has teaching experience of more than 25 (twenty five) years and he is legally eligible to be considered for M.P.O as the Principal of the present college.

Photocopies of the appointment letters as referred above and other relevant documents are annexed hereto and collectively marked **Annexure – I series**.

4. That the instant supplementary affidavit may kindly be formed part of the original writ petition.
5. That the statement made in paragraphs No. 1-4 are statements of facts which are true to my knowledge and information derived from the records of the case, which I verily believe to be true and the rest are the submissions before this Hon'ble Court.

Prepared in my office

.....  
Deponent

.....  
(Hasan Rashid Chowdhury)  
Advocate

The Deponent is known to me  
and identified by me

Solemnly affirmed before me by the  
said deponent on this 26th day of April  
2015

.....  
(Hasan Rashid Chowdhury)

..... Advocate  
COMMISSIONER OF AFFIDAVITS Membership No 3567  
SUPREME COURT OF Hall Room No 330 (Old) S.C.B.B  
BANGLADESH  
HIGH COURT DIVISION, DHAKA

**10. Affidavit-of-Compliance by the School & College (15.05.2015)**

At the hearing, it was argued that the respondent Governing Body cannot be allowed to contest the case on merit unless and until it shows that it complied with the status quo and direction order of the Hon'ble Court. Therefore, the Respondent No. 5, the Governing Body of the School and College, was required by the Hob'ble Court to submit an Affidavit-of-Compliance with the status quo order and direction order. Roma Kanti Singha, a Lecturer of the School and College filed an affidavit of compliance on behalf of the School and College on 5<sup>th</sup> May 2015. In that affidavit, the School & College authority basically tried to show that the Writ Petitioner has been already paid more than his dues and the School and College authority has a claim of balances against him. As regards, the M.P.O enlistment, it was claimed that it was the responsibilities of the respondent Nos. 1-4. Following is the draft of the Affidavit of Compliance:

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)  
Writ Petition No..... of 2013**

**IN THE MATTER OF:**

Md. Salah Uddin Ahmed Khan ..... **Petitioner**

-VERSUS-

Government of Bangladesh and others ..... **Respondents**

**AFFIDAVIT-OF-COMPLIANCE ON BEHALF OF RESPONDENT  
NO. 5**

I, Roma Kanti Singha, son of Parimal Kanti Singha and Nomita Singha, Lecturer, Chittagong Technical School & College, P/S- Rauzan, Dist- Chittagong aged about 28 years, Profession- teacher by faith Hindu, by nationality Bangladeshi, national ID No. .... do hereby solemnly affirm and say as follows:

1. That I am the authorized person on behalf of the respondent No.5 and being aware of the facts and circumstances of the case and as such I am competent to swear this affidavit.

Photocopy of the said letter of authority is annexed herewith and marked as **Annexure-5**.

2. That the affidavit of compliance arises from the order dated 30.09.2014 passed in the aforesaid Writ Petition by a vacation

Bench of this Hon'ble Court upon an application of the Writ Petitioner.

3. That it is stated that with rtegard to refusal by the School & College to join him in response to the joining letter of 30.07.2013, it is stated that the School & College authority was not aware of the afrosaid Writ nor did the Writ Petitioner disclosed this to the same. Since fitness certificate annexed with the said re joinder letter, was not in line of the advise of the doctor of the United Hospital, where the writ petitioner took treatment, he was requested by the respondent No.5 by letter dated 20.08.2013 to submit proper fitness certificate to consider his re joininbg letter. Not responding to the said letter dated 20.08.2013 to submit proper fitness certificate to consider his re joining letter. Not responding to the sadi letter dated 20.08.2013 the writ petitioner filed an application for direction before this Hon'ble upon false statements and obtained the said order dated 30.09.2013. Sicne the respondent No.5 had no knowledge about the order of status quo dated 07/.07.2013 and since he did not terminate the Writ Petitioner from the service the allegation of violation of the same is not maintainable against him.

Photocopy of the said re joining letter and letter dated 20.08.2013 are annexed herewith and marked as Annexure 6 and 7.

4. That the respondent No 5 did not get copy of the order dated 30.09.2014 as of today through court. On 11.10.2014 the writ petitioner filed another joining letter annexing thereto a photocopy of the certified copy of the School & College by calling him in his Chittagong town residence. The clerk placed the same before the meeting of Governing Body of the School & College on 16.10.2014.
5. That in response to joining letter dated 11.10.2014 of the writ petitioner he Governing Body of the School & College took a decision to give a letter to him by expressing their opinion regarding the same. And accordingly, on 18.10.2014 a letter was issued to him stating the fact that since the respondent No 5 did not get copy of the order dated 30.09./2014 through court, the photocopy of the certified copy of the same is not attested by the learned lawyer of the writ petitioner and the writ petitioner did not submit the original certified copy of the said order which he posses it would be risky to the authority to take step upon the photocopy of the certified copy of the said order. By the said letter it was also informed the writ petitioner that the order this Hon'ble Court must be complied after getting the same through court or after submission of the original certified copy of the said order by him.

Photocopy of the said letter dated 16.10.2014 is neexed herewith and marked as Annexure 8..

6. That in response to aforesaid letter dated 18.10.2014 the writ petitioner on 23.10.2014 submitted a certified copy of the order dated 30.09.2014 to the office Assistant (clerk) as the way stated earlier. The clerk gave the same to the School & College authority on 25.10.2014, the opening day after Holiday for Hizri New Year. After going through the same the authority found that the respondent No.5 was wrongly identified in there and hence on 01.11.2014 another letter was given by the respondent No.5 to the Writ Petitioner stating the following:

"আপনার প্রদত্ত আদেশে বর্ণিত মতে যে দরখাস্তেজ্ঞ উপর ভিত্তি করে আপনি বিগত ৩০.০৯.২০১৪ তারিখে আদেশ হাসিল করেছেন তৎবিষয়ে কর্তৃপক্ষের আপত্তি আছে বটে। তথাপি মহামান্য উচ্চ আদালতের আদেশের প্রতি কর্তৃপক্ষ যথেষ্ট শ্রদ্ধাশীল। মহামান্য আদালতের আদেশ অমান্য করার মত বিন্দুমাত্র ধৃষ্টতা কর্তৃপক্ষ লালন করে না। তবে ৫ নং বিবাদী হিসেবে অত্র পত্র প্রেরকের পরিচিতির সাথে অসঙ্গতিপূর্ণ হওয়ায় উক্ত সার্টিফাইড কপির আলোকে ব্যবস্থা গ্রহণ করা বুদ্ধিমান হলে মর্মে আশংকা প্রকাশ করতে বাধ্য হচ্ছে। কেননা, অত্র পত্র প্রেরক গভর্নিং বডি'র সিদ্ধান্তেজ্ঞ আলোকেই কাজ করে। গভর্নিং বডি তার কৃতকর্মের জন্য আইনগতভাবে প্রতিস্টান তথা সংশ্লিষ্ট নিয়ন্ত্রণকারী কর্তৃপক্ষের নিকট দায়বদ্ধ। তাই ভবিষ্যৎ দায় এড়াতে কর্তৃপক্ষ সঠিক পরিচিতি সম্বলিত আপনার কথিতমতে বাংলাদেশ সুপ্রিম কোর্টের হাইকোর্ট বিভাগ কর্তৃক রিট পিটিশন নং- ... .../২০১৩ এ বিগত ৩০/০৯/২০১৪ তারিখে প্রচারিত আদেশের গ্রহণযোগ্য কপি অত্র পত্র প্রেরকের বরাবরে দাখিল করতে বলা হল। উক্তরূপ আদেশ পাওয়ার পর কর্তৃপক্ষ যথা সময়ে প্রয়োজনীয় পদক্ষেপ গ্রহণ করবেন। অন্যথায় কর্তৃপক্ষকে মহামান্য উচ্চ আদালত হতে সরাসরি আদেশ প্রাপ্তির অপেক্ষায় থাকতে হবে।"

7. That on 06.11.2014 the Writ Petitioner received the said letter. After receiving the same as of today he did not submit any corrected copy of the said order to the respondent No.5 and the respondent No.5 also did not get copy of the same through court. In spite of that the School & College authority being satisfied about the identity of the respondent No 5 through their engaged lawyer took decision in the meeting held on 03.05.2015 to accept the joining letter of the writ petitioner honoring the Hon'ble Court's order and accordingly on 04.05.2015 a letter was issued to him through registered post.

Photocopy of the letter dated 04.05.2015 is annexed herewith and marked as Annexure 9.

8. That the respondent No 5 craves your Lordships kind permission to swear Affidavit with the photocopies of the Annexure by the authorized person.
9. That with regard to direction of payment of salaries, the yearly increments and Eid bonuses to the writ petitioner since May, 2013

the respondent No. 5 beg to submit that this School & College is a non government Educational institution. A teacher of a non government educational institution gets a portion of his salary and other benefits from the government and the rest of the portions from the School & College.

10. That it is submitted that the matter of giving the government portion of salary, Eid bonuses and yearly increments to the writ petitioner will be exclusively decided by the respondents Nos. 1-4. As per the condition of his appointment letter, he was entitled only to get additional portion of his salary and benefits which have already been paid in advance.. The condition No 9 of the Appointment letter of the writ petitioner is as follows:

"সরকারি বিধি অনুযায়ী আপনাকে এম পি ও ভুক্ত হওয়ার ব্যবস্থা গ্রহণ করতে হবে। তবে সরকার থেকে প্রাপ্ত অর্থের অতিরিক্ত প্রাপ্য আপনাকে স্কুল তহবিল থেকে পরিশোধ করা হবে।"

11. That it is further submitted that since 09.02.2011, the joining date of the Writ Petitioner was entitled to get Tk 1,26,736.36 from the School & College in addition to the government portion. But the authority gave him Tk 7,65,55,36/- till May, 2013 in which Tk 6,38,814 was given as advance (refundable) which was not repaid by him yet. The additional amount is refundable to the School & College.
12. That the writ petitioner's claim for salary and other benefits during period of May 2013 till July 2013 are not admissible since he was absent without authorization during that period.
13. That it is most respectfully submitted that admittedly the respondent No.5 extended all possible assistance to the Writ Petitioner to apply for inclusion of his name in the M.P.O, the government's refusal to enlist him there and non-payment of the government portion of his salary and other benefits do not invite any responsibility on the respondent No 5.
14. That the respondent No 5 begs to submit further that due to repeated unprofessional behaviors, the writ petitioner already failed to earn confidence of the School & College authority as well as his colleagues, students and guardians. Rather some of his female colleagues made written allegation of sexual harassment against him which are very much serious and also tantamount to professional misconduct. The School & College authority is under pressure from the fellow teachers and guardians to take action against the writ petitioner.
15. That in the circumstances stated above it is humbly submitted that as a law abiding person the respondent No 5 pays utmost honor to this Hon'ble Court. Showing highest horror to order dated 30.09.2014 of this Court the respondent No 5 already complied with the direction in respect of that portion which is within his

jurisdiction. But since the direction relating to payment of salaries, increments and Eid Bonuses the respondents No 5 craves an opportunity to submit further that the same are not fully within his jurisdiction since the respondent No 5 already paid more salary to the writ petitioner than his entitlement from the School & College, he begs to pray before this Hon'ble Court to direct the writ petitioner to refund the excess amount paid to him.

16. That the statements made in this application are true to my knowledge and belief.

Prepared in my office

.....  
Deponent

.....  
(H.M. Khaleq)  
Advocate

The Deponent is known to me  
and identified by me

Solemnly affirmed before me by the  
said deponent on this 15th day of May  
2015

.....  
(H.M. Khaleq)  
Advocate  
Membership No 3907  
Hall Room No 216 (Annex)

.....  
COMMISSIONER OF AFFIDAVITS  
SUPREME COURT OF  
BANGLADESH  
HIGH COURT DIVISION, DHAKA

**11. Affidavit-in-Reply to the Affidavit-of-Compliance (25.05.2015)**

On 25.05.2015 the Writ Petitioner submitted a written affidavit-in-reply to the affidavit of compliance submitted by the respondent No.5. It was claimed by the Writ Petitioner that he was not given the chance to resume his office. Nor was he paid his salaries and increments till May 2013.

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)  
Writ Petition No..... of 2013**

**IN THE MATTER OF:**

Md Salah Uddin Ahmed Khan, son of Mohammad Saber, Principal of the  
Chittagong Technical School & College, P/S - Rauzan, District -  
Chittagong .....**Petitioner**

- **VERSUS** -

Bangladesh and others .....

**Respondents**

**AFFIDAVIT-IN REPLY TO THE AFFIDAVIT-OF-COMPLIANCE**

I, Md. Salah Uddin Ahmed Khan, son of Mohammad Saber and Roshida Begum, Principal of the Chittagong Technical School and College, Police Station- Rauzan, District- Chittagong; a Bangladeshi national, aged about 59 years, by faith Muslim, by profession- teacher, national ID No. .... do hereby solemnly affirm and say as follows:

1. That I am the petitioner of this writ petition and as such I am fully acquainted with the facts and circumstances of the case and otherwise competent to swear this affidavit-in-reply.
2. That I have gone through the said affidavit of compliance served by the respondent No. 5 and have understood the content thereof. I have been advised to controvert only those statements of the said affidavit in opposition and the supplementary affidavit in opposition as are necessary for disposal of the same and the statements which are not specifically admitted herein shall be deemed to have been denied by me.
3. That the statements made in paragraph Nos. 3-9 of the affidavit of compliance are not correct, apparently misleading and, hence denied. It is, however, emphatically stated that as per the Order of *status quo* dated 07.07.2013 passed in the instant writ petition, the petitioner is entitled to received his salary, yearly increment and other admissible benefits from the respondent in question. Since the petitioner was entitled as such, the School and College authority made payment of his salary, different increments and other allowances from February 2011 till April, 2013 as it is evident from the statement of account issued by the Sonali Bank Limited, Rauzan Branch, Chittagong. As such the payments made for a period from February 2011 till April 2013 are not any kind of advance payments, they were paid as the petitioner was entitled to such payment as per his appointment letter. Normally, school and college authority continue to pay as such until enlistment of the concerned teacher in the M.P.O. for receiving government portion of his salary and other admissible benefits.

Copy of the said statement of account as on 14.05.2015 issued by the Sonali Bank Limited, Rauzan Branch, Chittagong and a draft statement regarding claim of the petitioner are annexed hereto and respectively marked as **Annexure 6 and 7**.

4. That it is stated that pursuant to a letter dated 04.05.2015 issued by the college authority, the petitioner went to the college to join his office as the Principal of the said college. Although by the said letter dated 04.05.2015, the college authority categorically informed the petitioner that his joining letter was accepted but the petitioner was not allowed to join and resume his office. The petitioner was also denied to enter his office and function



as the Principal of the college. However, the petitioner by a letter dated 10.05.2015 informed the respondent No. 5 about the said matter.

Copy of the said letter dated 10.05.2015 is annexed hereto and marked as **Annexure 8**.

5. That the submissions made in the said affidavit-of-compliance being misconceived do not merit any consideration.
6. That it is submitted that the affidavit-of-compliance filed by the respondent No 5 is not a compliance proper of the Order dated 30.09.2013 passed by this Hon'ble Court in the instant writ petition.
7. That the statement made in paragraphs No. 1-6 are statements of facts which are true to my knowledge and information derived from the records of the case, which I verily believe to be true and the rest are the submissions before this Hon'ble Court.

Prepared in my office

.....  
Deponent

.....  
(Hasan Rashid Chowdhury)  
Advocate

Solemnly affirmed before me by the  
said deponent on this 25th day of  
May, 2015

The Deponent is known to me  
and identified by me

.....  
COMMISSIONER OF  
AFFIDAVITS  
SUPREME COURT OF  
BANGLADESH  
HIGH COURT DIVISION, DHAKA

.....  
(Hasan Rashid Chowdhury)  
Advocate  
Membership No 3567  
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S.C.B.B

## 12. Model Submission on behalf of the Writ Petitioner

My Lords, this is a Writ Petition for enforcement the petitioner's fundamental rights under Article 102(1) of the Constitution of Bangladesh and seeking a *mandamus* upon the respondents to enlist the petitioner in the Monthly Payment Order (M.P.O). My Lords, the petitioner also seeks an order upon the respondent Chittagong Technical School and College authority to maintain status quo in relation to the post of Principal of the said School and College until the disposal or discharge of the instant writ petition. The Petitioner apprehends that unless such a direction is given, the School and College authority may terminate petitioner and create a situation that may make the instant writ infructuous and thereby vitiate the fundamental rights of the petitioner guaranteed by the Constitution of Bangladesh. The petitioner therefore prays that the Rule Nishi issued by a Division Bench of the Hon'ble Court on 07.07.2013 made absolute by

ordering the respondent Nos 1-4 to include the petitioner's name in the M.P.O and pay the government portion of his salaries and other benefits also ordering respondent No 5 to allow the petitioner to resume his office and pay his salaries and other benefits in arrear since May 2013.

My Lords, the Writ Petitioner was appointed the Principal of Chittagong Technical School and College on 15.01.2011 on a monthly pay scale to the tune of Tk 22,250 to 32,250/-. As per the terms and conditions of the appointment letter, the School & College Authority was to pay as such until enlistment of the concerned teacher in the M.P.O. for receiving government portion of his salary and other admissible benefits. After the enrollment in M.P.O., the School & College authority was to pay only the portion remaining after the government portion. Accordingly the School & College authority's claim of paying their portion in advance is baseless. The copy of the statement of the Writ Petitioner's bank account as on 14.05.2015 issued by the Sonali Bank clearly establishes the point. Clearly, it is same understanding on the basis of which the Respondent No. 5 argued in his application for vacation of the interim order: "The School & College Authority is not in a position to allow a teacher to continue his service as Principal like the petitioner for indefinite period without inclusion of his name in the M.P.O."

My Lords, as regards the respondent Assistant Director (College)'s refusal to enlist the petitioner in the M.P.O., it is submitted that such refusal is evidently the result of a total non application of mind. There could be no justification for denying a teacher's M.P.O. enlistment who has been enlisted twice earlier as teacher of two different private educational institutions as is evidenced by the photocopies of earlier Index Nos. 013852 and 3082122. As is clearly established by the certificates of the Writ Petitioner's twenty five years' experience, there could be no plausible reason whatever to refuse enlistment of the Petitioner in the M.P.O. The refusal of enlistment is evidently an arbitrary one. My Lords, reference may be made to the Appellate Division verdict in *Mansurul Aziz & another v. Secretary M/O L.A. & L.R.* 1981BLD (AD) 75 wherein it was held that arbitrary exercise of power is itself *mala fide* and it is a malice in law. In *Nasiruddin v. Government of Bangladesh* 32 DLR (1980) (AD) 266, it was held that a *mala fide* act is not protected from challenge before law. Appellate Division disapproved of *mala fide* administrative act in *Kh. EHtesham Uddin Ahmed v. Bangladesh* 1981 BLD (AD) 107 also.

My Lords, the claim of a pre-requirement of 12 years' experience as Lecturer and 5 years' experience as Assistant Professor is not a clearly established one. Confusion, if there be any, must have been removed after 2010. It is categorically stated that before 2010, the requirement for getting the pay scale of a Principal was 12 years' experience as Lecturer including 5 years' experience as Assistant Professor. After 2010, however, the requirement of having 5 years' experience as Assistant Professor has been removed by the M.P.O., guidelines published on 04.02.2010. At present, the only requirement is 12 years' experience as Lecturer. Hence since the petitioner possesses more than

25 years' of experience as Lecturer, he is very much eligible to get the scale of Principal.

My Lords, the allegations of the respondent No 5 are made up subsequent to filling of the instant writ petition out of grudge against the petitioner by the respondent No 5. The petitioner was never served with any copies of the complaints allegedly made by female teachers/staff of the said School & College, nor did the authority start any proceedings against the petitioner as these fabricated documents did not exist earlier at all. These have been created for the purpose of maligning the character of the petitioner for using in the instant writ petition simply to mislead this Hon'ble Court. These are malicious in nature and contain serious defamatory statements of made stories which did not ever occur. The petitioner still reiterates that he has the requisite qualification for enlistment in the M.P.O. in the scale of Principal as he has got more than 25 years' of teaching experience as Lecturer. It is categorically stated that the petitioner is a renowned teacher in the Chittagong area with vast experience in teaching and he possess a very strong moral character with high educational qualifications. He has never violated any terms and conditions of his services with any of the school/colleges he taught in his life and never ever in his life any proceeding were initiated against him involving allegations of moral turpitude. The allegations made herein are false, frivolous, made up and, hence, again categorically denied.

My Lords, although an Order of *status quo* passed in the instant writ petition at the time of issuance of the Rule on 07.07.2013 means that the functioning of the petitioner as the Principal of the said College cannot be disturbed by the respondent No 5 or any other authority unless it is ordered by this Court as held in this writ petitioner vide order dated 30.09.2014, yet in utter defiance of a specific direction of this Hon'ble Court vide order dated 30.09.2014 the respondent No 5 in a most contemptuous manner has refrained from paying the same to the petitioner till date. On the other hand, the respondent No 5 in a most audacious manner now claims that the petitioner is not entitled to the same for the period he had not been working, whereas admittedly the petitioner applied for resumption of his functions from 30.07.2013 but he was not allowed to do so by the respondent No 5 himself in a most *mala fide* manner.

My Lords, given the circumstances, the Writ Petitioner humbly prays that the Hon'ble Court to make the *rule absolute* by declaring the memo No. 7G/93 (ka-3)/10/5733/2 dated 06.06.2011 issued by the respondent No.3 Assistant Director refusing M.P.O. enlistment of the petitioner to have been issued without lawful authority and is of no legal effect and directing the immediate payment of government portion of the Writ Petitioner's salary by way of inclusion of his name in monthly payment order (M.P.O) list as the Principal of Chittagong Technical School and College. The Hon'ble Court may further be pleased to direct the respondent No. 5 to maintain *status quo* in respect of the service of the petitioner as the Principal of Chittagong Technical School and College, Rauzan, Chittagong and allow him to resume his office and pay his arrear salaries, monthly increments and Eid bonuses.

### **13. Model Submission on behalf of the State**

My Lords, the case in hand deals with the refusal by the Assistant Director (College), Directorate of Secondary and Higher Education to include the name of the petitioner in the M.P.O. The rules regarding the eligibility for enlistment in the M.P.O are clear. The M.P.O., guidelines published on 04.02.2010 requires 12 years' experience as Lecturer for being enlisted in the scale of Principal. Though the petitioner claims to have more than 25 years' of experience in teaching, it was never continuous one. Admittedly, he had a two years' break in the teaching during 2004-2006 which makes his fresh application for enrollment in the M.P.O. as a Principal a bad one. It is the plain meaning of the M.P.O guideline that for being qualified to get the scale of a Principal, one must have 12 years' of previous experience as Lecturer or five years' of previous experience as Assistant Professor. Starting his teaching career a fresh in 2006, the Writ Petitioner's service was not continuous. He worked in Mirza Gaus College, Monsaf Nagar College and Syeda Jahan Memorial College for different duration and he never completed a continuous five years' period as Assistant Professor. Therefore in 2011, he could not be legally qualified to get a Principal's scale in the M.P.O. The Assistant Director (College) in the Directorate of Secondary and Higher Education therefore rightfully refused the enlistment in 2011.

### **14. Model Submission on behalf of the School & College**

My Lords, the respondent No. 5, the Chittagong Technical School & College categorically claims that it done whatever remains to be done by it in relation to the M.P.O enlistment of the petitioner. Admittedly, the School & College authority have applied twice on behalf of the writ petitioner. Since the petitioner lacks in requisite qualification for the M.P.O enlistment, the Assistant Director (College) has refused the enlistment of the petitioner in the M.P.O.

My Lords, the School & College authority had nothing to do with the enlistment in M.P.O. and as per the condition of his appointment letter, it is the respondent of the writ petitioner to get him enlistment and it is impossible for the School & College authority to continue to pay the whole amount of his salaries and benefits indefinitely.

My Lords, most alarmingly, the Writ Petitioner has failed to attain the confidence and trust of his colleagues in the School & College. A huge lot of serious and substantial allegations of mismanagement and corruption was filed against the writ petitioner and the Governing Body of the School & College has taken note of those and warned the petitioner on several occasions. Facing those allegations, the writ petitioner starting evading his office and most cunningly resorted to this Hon'ble Court and took an interim order of *status quo* keeping the School & College authority completely ignorant of all those.

My Lords, the conduct of the petitioner throughout the continuance of this proceeding is malicious. This Hon'ble Court gives protection only to those people who come to this Court with clean hands. The Writ Petitioner did not come in clean hands to take recourse of law. He violated the terms and conditions

of his appointment letter. The Writ Petitioner misled the School & College authority claiming that he has required experience for having appointment in the post of Principal. But as of today he could not include his name in the M.P.O by submission of necessary papers to the respondent Nos. 1-4 of the instant Writ Petition. The School & College authority is not in a position to allow a teacher to continue his service as Principal like the petitioner for indefinite period without inclusion of his name in the M.P.O. So the Writ Petitioner's service is liable to be terminated.

My Lords, the School & College authority took all possible steps to be aware of the order of this Hon'ble Court and due to the writ petitioner's non cooperation and failure to submit the correctly identified certified copy of the interim order of the Hon'ble court, the process of resumption was delayed. Ultimately become sure of the order, the respondent No. 5 by a letter dated 04.05.2015, informed the petitioner that his joining letter was accepted but the petitioner for reasons best known to him did not resume his office.

Given the situation, it is most humbly prayed that your Lordships would graciously be pleased to discharge the writ petitioner and pass an order vacating the order of status quo dated 07.07.2013 and other order of direction dated 30.09.2014 and/or pass such order or further order or orders as your Lordships may deem fit and proper.

## **15. Model Judgment**

IN THE SUPREME COURT OF BANGLADESH  
High Court Division  
(Special Original Jurisdiction)  
Writ Petition No .....of 2013

### **IN THE MATTER OF:**

An application under Article 102(1) and (2)(a)(i)(ii) of the Constitution of Peoples' Republic of Bangladesh;

### **AND**

### **IN THE MATTER OF:**

Md. Salah Uddin Ahmed Khan, son of Mohammad Saber, Principal of the Chittagong Technical School & College, P/S: Rauzan, Dist: Chittagong

..... **Petitioner**

### **- VERSUS -**

1. Bangladesh represented by the Secretary, Ministry of Education, Bangladesh Secretariat, P.S. Shahbag, District – Dhaka;
2. Director General, Directorate of Secondary and Higher Education, Shikkha Bhaban, 16, Abdul Gani Road, Dhaka;
3. Assistant Director (College 3), Directorate of Secondary and Higher Education, Shikkha Bhaban, 16, Abdul Gani Road, Dhaka;

4. The Board of Intermediate and Secondary Education, Chittagong, represented by its Chairman;
5. Chairman, Governing Body, Chittagong Technical School and College, P.S.- Rauzan, District – Chittagong

..... **Respondents**

**Present:**

Mr Justice Faizul Hoque

And

Mr Jusitce Nur Mohammad

**Md. Faizul Hoque, J:** 1. This Rule was issued calling upon the respondents to show cause as to why memo No. 7G/93 (ka-3)/10/5733/2 dated 06.06.2011 (Annexure A) issued by the respondent No.3 Assistant Director refusing M.P.O. enlistment of the petitioner shall not be declared to have been issued without lawful authority and is of no legal effect and why the respondents shall not be directed for the immediate payment of government portion of the salary by way of inclusion of his name in monthly payment order (M.P.O) list as the Principal of Chittagong Technical School and College, Rauzan, Chittagong.

2. Facts of the case in brief are that Mr. Md. Salah Uddin Ahmed Khan was the Principal of Chittagong Technical School and College, Rauzan, Chittagong. Starting his teaching career as a Lecturer in a private college in 1987, he used to receive M.P.O (Monthly Payment Order) till 2004. Monthly Payment Order is a government list of private school and college teachers, a major portion of whose salaries and other benefits are paid by the government. Rest of the amount of their salaries and benefits are paid by the school and colleges concerned. After a higher study break of two years, Mr Md. Salah Uddin Ahmed Khan returned to his teaching career as the Principal of another private college in 2006. After serving as Principal of several colleges, he again got enlisted in the M.P.O in 2008 and continued to receive government portion of his salary till January 2011. In February 2011, he joined the Chittagong Technical School and College as Principal. The School & College authority applied on his behalf for inclusion of his name in the M.P.O list as the Principal of the School & College. The Assistant Director (College) in the Directorate of Secondary and Higher Education, this time denied his enlistment.

By the time of this Writ Petition in May 2013, Mr Md Salah Uddin Ahmed Khan developed sour relationship with some of his colleagues and the School & College authority, the respondent No.5. On 05 May 2013, Mr Khan filed this Writ Petition challenging the denial of his M.P.O. enlistment and made the government officials and the School & College authority respondents. Accordingly, the petitioner obtained an order of *status quo* against the School & College authority. Later on he also obtained a direction order upon the School & College authority asking them to allow the petitioner to resume his office of Principal of the said college.

**3.** Governing Body of the School & College therefore applied for vacation of the *status quo* and direction order. Being a failure, respondent School & College authority entered a written affidavit in opposition. Advocate H.M. Khaleq appeared on behalf of the School and College authority. Arguments advanced by the respondent No. 5 may be stated briefly.

**4.** The School and College has already done whatever remains to be done by it in relation to the M.P.O enlistment of the petitioner. Admittedly, the School & College authority have applied twice on behalf of the writ petitioner. Since the petitioner lacks in requisite qualification for the M.P.O enlistment, the Assistant Director (College) has rightly refused the enlistment of the petitioner in the M.P.O. Absent M.P.O enlistment it was impossible for the School & College authority to continue to pay the whole amount of his salaries and benefits indefinitely.

The School and College also alleged that the Writ Petitioner has failed to attain the confidence and trust of his colleagues in the School & College. A huge lot of serious and substantial allegations of mismanagement and corruption was filed against the writ petitioner and the Governing Body of the School & College has taken note of those and warned the petitioner on several occasions. Facing those allegations, the writ petitioner starting evading his office and most cunningly resorted to this Hon'ble Court and took an interim order of *status quo* keeping the School & College authority completely ignorant of all those.

The School and College authority then submitted that the conduct of the petitioner throughout the continuance of this proceeding was malicious and he did not come to the court with clean hands. As regards the delay in complying with the status quo and direction order, the School & College submitted an affidavit of compliance in which it was argued that the authority took all possible steps to be aware of the order of this Hon'ble Court and due to the writ petitioner's non cooperation and failure to submit the correctly identified certified copy of the interim order of the Hon'ble court, the process of resumption was delayed. Ultimately become sure of the order, the respondent No. 5 by a letter dated 04.05.2015, informed the petitioner that his joining letter was accepted but the petitioner for reasons best known to him did not resume his office. The Writ Petitioner, however denied the truth of the claim through an affidavit-in-reply.

**5.** The learned Assistant Attorney General appearing on behalf of the Respondent No. 3 strenuously argued that the M.P.O., guidelines published on 04.02.2010 requires 12 years' experience as Lecturer for being enlisted in the scale of Principal. Though the petitioner claims to have more than 25 years' of experience in teaching, it was never continuous one. Admittedly, he had a two years' break in the teaching during 2004-2006 which makes his fresh application for enrolment in the M.P.O. as a Principal a bad one. It is the plain meaning of the M.P.O guideline that for being qualified to get the scale of a Principal, one must have 12 years' of previous experience as Lecturer or five years' of previous

experience as Assistant Professor. Starting his teaching career a fresh in 2006, the Writ Petitioner's service was not continuous.

6. Advocate Hassan Rashid Chowdhury appearing on behalf of the Writ Petitioner denied all the material allegations raised by the respondent No 5 school and college authority. As regards the respondent Assistant Director (College)'s refusal to enlist the petitioner in the M.P.O., it was submitted that such refusal was evidently the result of a total non application of mind. There could be no justification for denying a teacher's M.P.O. enlistment who has been enlisted twice earlier as teacher of two different private educational institutions as is evidenced by the photocopies of earlier Index Nos. 013852 and 3082122.

7. A plain reading of the materials in hand and documents and papers presented before the Court makes it clear that the Writ Petitioner was admitted in the M.P.O. twice earlier vide Index Nos. 013852 and 3082122. The arguments of continuity advanced by the state do not appear to have any place within the four corners of the M.P.O guidelines published in 2010. What the guideline requires is as simple as the language of the guidelines is. It has been the consistent position of this court that where the language of the law is clear there is no scope of interpretation or assertion of an intention which is not clearly established. The honourable Appellate Division of the Supreme Court was unequivocal in *Abdul Kader v. Election Commissioner* 58 DLR (AD) 71: "We are to interpret the law as it stands giving the section its natural and ordinary meaning unless it admits of any other meaning (para 6)"

8. Given the clear position of law, the submission of the Assistant Attorney General holds no ground and according we hold that the refusal to enlist the Writ Petitioner in the M.P.O represents a total non application of mind and hence void. We direct hereby the Respondent No 3 to take immediate steps to enlist the Writ Petitioner in the M.P.O.

9. Since the Writ Petitioner is lawfully entitled to be enlisted in the M.P.O the submissions made by the Respondent No. 5 School and College authority on the basis of his alleged failure to be enlisted in the M.P.O also hold no ground. There is no reason whatever to deny the Writ Petitioner resumption in his post of the Principal of the School and College. We therefore direct the School and College authority to take positive steps in that direction and pay him his salaries, incrememnts, Eid bonuses in arrear till May 2013.

10. We, however, don't pass any judgment on the allegations of corruption, mismanagement and moral turpitude brought by the School and College authority against the Writ Petitioner. These not being subject matter of this writ, the School and College authority remains free to investigate and, if appropriate, take necessary disciplinary action, including a possible termination, against the Writ Petitioner. For now, it suffice for us to hold that the Writ Petitioner is lawfully



entitled to be enlisted in the M.P.O and eligible to continue in his office untill allegations against him are proved in due course.

**11.** In the result, this Rule is made absolute and the Respondents are directed to take steps to this effect. Considering the facts and circumstances of the case we pass no order as to cost.

**Md Nur Mohammad, JJ. :** I concur.