ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D-2844 of 2011
(Muhammad Babar Baloch versus Dawood College of Engineering & another)

Date	Order with signature of Judge

Before:-
Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Zulfiqar Ali Sangi

Date of hearing and order: 22.4.2026

M/s Syed Shafqat Ali Shah Masoomi and Syed Shahbaz Ali Shah Masoomi advocates for the petitioner
Moulvi Iqbal Haider advocate for respondent No.1 alongwith Syed Asif Ali Shah, Registrar, Dawood University of Engineering & Technology (DUET)

O R D E R

Adnan-ul-Karim Memon, J. Petitioner Muhammad Babar Baloch has filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer: -

a) To set aside the impugned order of Termination From Service dated 20-11-2002 passed by the respondents and declare the same as ultra virus and null and void.

b) To re-instate the Petitioner in service with all the consequential benefits/reliefs

2. The petitioner states that he was initially appointed as Assistant Registrar on ad hoc basis on 17.11.1994 in the respondent institution, later re-designated as Maintenance Officer, and was confirmed in service on 24.07.1996. He submits that disciplinary proceedings were initiated against him through show-cause notice dated 04.09.2002 on allegations of inefficiency, negligence, and habitual absence. Although he submitted replies to the show-cause and final show-cause notices, his services were terminated vide order dated 20.11.2002, communicated on 30.11.2002. The petitioner assails the termination as unlawful, contending that he was condemned unheard, no proper enquiry or opportunity of defence was provided, the order was passed by an incompetent authority, and the punishment was harsh and disproportionate, particularly as he was a confirmed employee. He also alleges violation of due process and reliance on defective proceedings. The respondents, however, justify the termination on the ground that the petitioner was guilty of misconduct, inefficiency, and repeated unauthorized absence, duly supported by departmental record. It is further contended that the petitioner's service was not governed by statutory rules, hence the relationship was of master and servant, limiting constitutional jurisdiction. It is also stated that the petitioner's service appeal had abated and the writ petition was earlier dismissed by this Court in 2013 on merits. However, the Supreme Court later held the matter maintainable on the ground that action was taken under statutory dispensation

(RSO 2000) and remanded the case to this Court for decision on merits without expressing any view on the legality of termination.

3. Learned counsel for the petitioner submitted that his termination from service vide order dated 20.11.2002 is illegal, void ab initio, and liable to be set aside on multiple legal and factual grounds. It is contended that the petitioner was condemned unheard, as the impugned order was passed without affording him proper opportunity of defence, personal hearing, or cross-examination, thereby violating principles of natural justice. He further submits that although a show-cause notice and final show-cause notice were issued alleging inefficiency, negligence, and unauthorized absence, no proper departmental enquiry was conducted in accordance with law, nor was any enquiry report supplied to him, rendering the entire proceedings defective and illegal. The petitioner's counsel also argues that the termination order was not passed by a competent authority, as it was signed by an officer allegedly not authorized to impose such penalty, making the action without lawful authority. It is further contended that the punishment of termination was imposed on the basis of preliminary or administrative enquiry findings, which is not permissible in law for awarding major penalty without proper regular enquiry. It is the petitioner's stance that the alleged charges of inefficiency and negligence were never conclusively proved, and in any case, such allegations do not justify the extreme penalty of termination from service. He maintains that the action is disproportionate, arbitrary, and contrary to settled principles of service law. The petitioner's counsel further submits that he was a confirmed employee at the relevant time, having been initially appointed on 17.11.1994 and confirmed on 24.07.1996, therefore his services could not be terminated in the manner adopted, particularly without adherence to due process requirements applicable to confirmed civil servants. Lastly, it is pleaded that the termination was not simpliciter but punitive in nature, yet the mandatory procedural safeguards were not followed, thereby vitiating the entire action. On these grounds, the petitioner prays for setting aside of the impugned order of termination, reinstatement in service with all consequential benefits.

4. The learned counsel for the respondents submits that the instant petition is not maintainable in law, as the Service Rules of Dawood College of Engineering & Technology (DCET) are not statutory in nature. It is further pointed out that this legal position has already been admitted by the petitioner himself in his service appeal before the Federal Service Tribunal, Karachi, as reflected in the abatement order dated 06.06.2011. It is also contended that the petitioner's service appeal before the Tribunal was hopelessly time-barred, with a delay of 21 days, which fact has likewise been acknowledged by the petitioner in his supporting affidavit filed along with the application under Section 5 of the Limitation Act.

On merits, it is argued that the post of Assistant Registrar, being part of the non-teaching staff, is not a sanctioned or properly existing post, and that the petitioner was appointed unlawfully, without due process and under political influence. Reference is made to the relevant gazette list of non-teaching posts. The learned counsel further submits that the impugned termination order dated 20.11.2002 is lawful and based on due process. The petitioner had been repeatedly issued warnings dated 07.12.2001, 28.05.2002, and 26.07.2002 for misconduct and habitual negligence in duties. Thereafter, he was served with a show-cause notice dated 04.09.2002 and a final show-cause notice dated 12.10.2002, followed by a proper departmental enquiry conducted by a duly constituted enquiry committee. The warnings, notices, and enquiry report are part of the official record. He prayed to dismiss the petition.

5. After hearing the learned counsel for the parties and perusal of the record, this Court finds that the impugned order of termination dated 20.11.2002 cannot be sustained in law, for the reasons recorded hereunder.

6. At the outset, the case of the respondents that the petitioner's services were terminated on account of inefficiency, negligence, and habitual absence is primarily founded upon certain warnings and a departmental enquiry report. However, a careful scrutiny of the record reveals that the alleged absence attributed to the petitioner is neither continuous nor of such magnitude so as to justify the extreme penalty of removal from service, particularly in the case of a confirmed employee with long service record. The absence period, as reflected from the material placed on record, appears to be sporadic and of short duration, which, at best, could have warranted minor or proportionate disciplinary action rather than the harsh penalty of termination.

7. Furthermore, although the respondents claim that a departmental enquiry was conducted, the record does not demonstrate strict adherence to mandatory procedural safeguards required under service jurisprudence. It is evident that the petitioner was not provided effective opportunity of personal hearing, nor was he afforded the right of cross-examination of witnesses whose statements allegedly formed the basis of the findings. More importantly, the enquiry report, upon which the impugned action is said to rest, was not supplied to the petitioner prior to imposition of major penalty, thereby causing serious prejudice to his right of defence. It is well-settled that imposition of a major penalty without supplying the enquiry report and without affording meaningful opportunity of hearing offends the principles of natural justice and vitiates the entire proceedings.

8. The objection raised by the respondents regarding non-statutory service rules and applicability of "master and servant" relationship also does not advance their case, as even in such situations, when termination is punitive in nature and

stigmatic allegations are involved, minimum standards of fairness, due process, and natural justice remain fully applicable. The constitutional jurisdiction of this Court cannot be ousted merely on this ground where illegality and arbitrariness are apparent on the face of record.

9. The further contention that the petitioner was habitually absent is also not convincingly established. The record shows that the petitioner had otherwise served for a considerable period, and no material has been produced to demonstrate repeated or prolonged absenteeism of such gravity as to justify capital punishment of service termination. Even otherwise, proportionality is a settled principle of service law, and punishment must correspond to the gravity of misconduct. In the present case, the penalty of termination appears to be grossly disproportionate to the alleged lapses.

10. As regards the plea of the respondents that the petitioner's appointment was irregular or influenced, no substantive inquiry or competent finding has been placed on record to substantiate such serious allegation, and the same cannot be used to justify an otherwise illegal termination after confirmation in service.

11. In view of the foregoing, this Court is of the considered opinion that the impugned order suffers from procedural illegality, violation of due process, non-observance of principles of natural justice, and is also disproportionate to the alleged misconduct. The same, therefore, cannot be allowed to sustain.

12. Resultantly, the petition is allowed. The impugned order dated 20.11.2002 is set aside. The petitioner shall be treated as reinstated for all legal purposes and shall be entitled to all consequential benefits, including back benefits in accordance with law; however, since he has attained the age of superannuation during pendency of the proceedings, his pensionary benefits shall be computed by treating his entire service as continuous up to the date of superannuation and shall be released forthwith by the respondents.

13. These are the reasons for our short order of even date, whereby the petition was allowed.

JUDGE

JUDGE

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