HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.D-856 of 2010
[Asadullah vs. The V.C. LUMHS and Others]

Before:

JUSTICE ADNAN-UL-KARIM MEMON
JUSTICE MUHAMMAD JAFFER RAZA

Petitioner:	Mr. Muhammad Hashim Leghari, Advocate
Respondents	Mr. Kamaluddin advocate
Date of hearing	15.10.2026
Date of Decision	15.10.2026

O R D E R

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ADNAN-UL-KARIM MEMON J:- The petitioner seeks cancellation of the removal order and reinstatement in service, contending that the action is discriminatory, illegal, void ab initio, and mala fide, particularly as he had already been exonerated in the police investigation vide order dated 17.12.2009 passed by the learned Civil Judge and Judicial Magistrate, Hyderabad on summary report.

2. The petitioner, a Junior Clerk (BPS-07) in Liaquat University of Medical and Health Sciences (LUMHS), Jamshoro, was performing duties as Accountant at the Diagnostic and Research Laboratory, Hyderabad. On 07.11.2009 some armed persons robbed Rs.1.2 million from the laboratory after threatening and assaulting him. Although an FIR under Section 392 PPC was registered, the police investigation concluded that no evidence connected him with the offence, and the case was disposed of in "A" class vide report dated 16.12.2009 the petitioner was suspended on 24.11.2009 and issued a show-cause notice dated 01.12.2009 alleging suspicious conduct in connection with the robbery. He submitted replies dated 10.12.2009 and 12.04.2010, denying the allegations and asserting that his service record was unblemished. He further contends that departmental inquiry was conducted without affording him proper opportunity to participate, examine the evidence, or cross-examine witnesses, in violation of the principles of natural justice and the applicable disciplinary rules. He emphasized that the inquiry travelled beyond the original charges by introducing unrelated allegations of negligence and absence from duty. The petitioner further asserts that the respondents acted with mala fide intent, particularly respondent No.3, who bore personal enmity towards him. He added that despite his inclusion in the list of

employees considered for promotion, he was not promoted. Ultimately, vide order dated 08.06.2010, the respondents imposed the major penalty of removal from service under the Removal from Service (Special Powers) Sindh Ordinance, 2000, as amended in 2001. He challenges the order as illegal, discriminatory, and contrary to law, and contends that continuing the proceedings under the said Ordinance was unlawful in view of its abolition.

3. Learned counsel for the petitioner claims that the impugned action violated his constitutional rights under Articles 4, 14, 25 and 27 of the Constitution. He adds that despite submitting representations to the competent authorities, including the Chancellor, his grievance remained un-redressed. Accordingly, he seeks withdrawal of the removal order and a declaration that the impugned action is illegal, void, discriminatory and mala fide, along with any other appropriate relief.

4. Learned counsel for the respondent University contends that the petitioner's failure to deposit the laboratory collections into the UBL, LMCH Branch, Hyderabad, on a daily basis resulted in the accumulation of Rs. 10,72,213/- during the period from 27.10.2009 to 06.11.2009 which was robbed. He submits that the petitioner participated in the departmental inquiry throughout, that the police report was irrelevant to the departmental proceedings, and that no hearing was required before extending the suspension period. He further submits that Sindh Ordinance No. IX of 2000 remains in force and that the petitioner did not approach the respondents after issuance of Order No.5878/82 dated 08.06.2010. He prayed to dismiss the petition.

5. The actual charges / allegations against the petitioner, as discernible from the final show-cause notice, appear to be that his attitude and behavior were highly suspicious in connection with the robbery of approximately Rs.1.2 million that occurred on 07.11.2009 at about 12:30 a.m. in the Diagnostic and Research Laboratory of Liaquat University of Medical and Health Sciences (LUMHS), situated within the premises of Liaquat University Hospital (Civil Hospital), Hyderabad. The petitioner was alleged to have committed misconduct and negligence resulted in the aforesaid robbery incident. However, the Show Cause Notice does not specify the particular act or omission constituting the petitioner's alleged negligence, nor does it identify the specific circumstances forming the basis of the allegation of suspicious behavior. However, it appears that on 12.4.2010 the respondents called petitioner for evaluation of his case for promotion but lateron his suspension period was extended for three months and impugned order dated 8.6.2010 was passed on the same allegations in which the petitioner had already been discharged by the police and submitted the summary report under 'A' class which was approved by the Magistrate as discussed supra; therefore, the questions raised in the inquiry report with regard to his liability to deposit the amount with the bank in time and kept the same in his custody i.e. his office which was lateron

robbed is not disclosed in the charges / show-cause notice / final order. However, it emerged in the inquiry reports which is based on fact finding inquiry and the same cannot replace the regular inquiry as required under the law as the petitioner was removed from service with stigma.

6. The petitioner submitted his reply to the final show-cause notice dated 12.04.2010, contending that the findings of the inquiry officer travelled beyond the allegations contained in the original and final show-cause notices. He asserted that the inquiry report introduced allegations of absence from duty, negligence, and other alleged misconduct that were neither included in the charge nor formed part of the inquiry's terms of reference. According to the petitioner, such observations were subsequently relied upon to reinforce the allegation that his conduct was suspicious in connection with the robbery. The petitioner further contended that the allegation against him was confined to suspicion regarding the said robbery, whereas the FIR lodged by Professor Manzoor Ahmed had been investigated by the police without any allegation of his involvement, and the criminal case had been disposed of in “A-Class”. He maintained that the incident was attributable to unknown miscreants and not directly to him even criminal case could not be proved that, in the absence of any evidence connecting him with the offence, he could not be held responsible merely based on suspicion. He also challenged the inquiry officer’s observations concerning his alleged negligence and slackness, arguing that such matters had no direct nexus with the charge of suspicious conduct in relation to the robbery and could not constitute independent grounds for imposing a major penalty without specific allegations and an opportunity to defend himself besides his colleagues were exonerated from charges. The petitioner further challenged the continuation of proceedings under the Removal from Service (Special Powers) Ordinance, 2000, as amended in 2001, contending that the relevant special law had subsequently been abolished by the legislature in 2010. He claimed that, in view of its repeal, the continuation of proceedings under the repealed enactment was without lawful authority and amounted to an abuse of the process of law. He submitted that, since the Efficiency and Discipline Rules were also in force, any further proceedings, if legally permissible, ought to have been conducted afresh under the applicable rules rather than under the repealed Ordinance. Accordingly, he requested that the proceedings be discontinued and that the allegations against him be reconsidered in light of the absence of direct evidence, the disposal of the criminal case, the alleged expansion of the original charge through the inquiry report, and the change in the applicable legal framework.

7. We have been informed that pursuant to University Office Order No. LUMHS/ESTT/AR/-27925/30 dated 05.02.2010, an Inquiry Committee met on 10.02.2010 under the chairmanship of Prof. Ghulam Mustafa Memon, Professor of Pathology, with Mr. Muhammad Ali Bohyo, Director, Institute of Biomedical

Technology, and Dr. Pir Muhammad Ali Qureshi, Additional Registrar, as members, to inquire into the alleged negligence and misconduct of petitioner, in connection with the robbery of Rs.1.2 million on 07.11.2009 at about 12:30 a.m. from the Accounts Office of the Diagnostic and Research Laboratory, LUMHS, Hyderabad, where he had retained a substantial amount of cash that ought to have been deposited in the bank. It appears from the report that during the inquiry, the petitioner purportedly admitted that he collected daily receipts from the Laboratory and its Saddar collection point. Upon examination of the Daily Cash Book, Accounts Register, Cash Amount Register and Provisional Receipt Book, he acknowledged his signatures and admitted that the robbed amount had been collected by him but was not entered in the Daily Cash Register. He explained that, due to an excessive workload, he generally deposited the cash after two to three days instead of depositing it daily. The petitioner further stated that the cash collected from 27.10.2009 to 30.10.2009 had been handed over to Mr. Farman Ali, Laboratory Technician, for the purchase of diesel on the verbal directions of Prof. Shankar Lal Rathi, Incharge Finance Section. He claimed that he was engaged in the university's MBBS/BDS entry test duties from 31.10.2009 to 01.11.2009 and in payroll preparation at Jamshoro from 02.11.2009 to 03.11.2009. Regarding 04.11.2009, he stated that he received the collected cash from Mr. Farman Ali but kept it in the office almirah instead of depositing it in the bank, claiming that he had to attend a relative's funeral after obtaining telephonic permission. However, he produced neither documentary proof of leave nor post-facto approval. Mr. Farman Ali confirmed that he had collected cash from the receptionists on petitioner's behalf during his absence, pursuant to verbal directions from Prof. Shankar Lal Rathi, and had retained it without signing the Cash Book. He also admitted that such an arrangement had occurred previously by mutual understanding. The petitioner did not cross-examine him and agreed with his statement. The Committee observed that the petitioner had repeatedly failed to deposit the collected cash in the bank, retained government money in his custody contrary to financial rules, and failed to justify his absence from duty or produce sanctioned leave. It further noted that Mr. Farman Ali had collected and retained cash without proper documentation and that Prof. Shankar Lal Rathi had encouraged unauthorized cash transactions. The Committee also observed that the concerned senior officers had failed to properly supervise and prevent these irregularities. After examining the relevant record, statements and documentary evidence, the Inquiry Committee concluded that Mr. Asadullah Laghari was guilty of misconduct and negligence in failing to deposit the collected cash in the bank and retaining government money in unauthorized custody.

8. Upon careful consideration of the submissions advanced by the learned counsel for the parties, the inquiry report, the show-cause notices, the petitioner's reply and the material available on record, this Court is of the considered view that

the impugned removal order dated 08.06.2010 cannot be sustained in law, although the inquiry committee found that the petitioner had retained the laboratory collections without depositing the same in the bank on daily basis, such finding, by itself, does not dispense with the requirement of establishing a specific charge of misconduct through a lawful and fair disciplinary process. The principal allegation against the petitioner, as reflected in the final show-cause notice, concerned his allegedly suspicious conduct in connection with the robbery of approximately Rs.1.2 million. However, the notice neither specified the precise act or omission constituting the alleged negligence nor clearly identified the applicable financial instructions or standard operating procedure that the petitioner had violated. The respondents' subsequent reliance upon the petitioner's alleged failure to deposit the collections daily, unauthorized retention of cash and absence from duty cannot cure these deficiencies unless such allegations were properly particularized, communicated to him and subjected to an effective opportunity of defence.

9. It is true that departmental proceedings operate independently of criminal proceedings and that the disposal of criminal case in “A-Class” does not, by itself, preclude disciplinary action based on independently established misconduct. Nevertheless, the respondents' contention that the police report is wholly irrelevant is equally untenable. Although the absence of criminal culpability does not conclusively establish the petitioner's innocence of departmental negligence, the record discloses no recovery of the stolen amount from him and no established evidence connecting him with the robbery. Consequently, the allegation of suspicious conduct could not lawfully be converted into a finding of guilt merely because the petitioner was responsible for handling the laboratory collections. The respondents were required to distinguish between the alleged criminal involvement in the robbery and the separate question of whether the petitioner breached an identifiable official duty in handling and depositing the cash.

10. Furthermore, the inquiry committee's own findings indicate that the irregular handling of cash was not attributable to the petitioner alone. The report records that Mr. Farman Ali had collected and retained cash on the petitioner's behalf pursuant to verbal directions attributed to Prof. Shankar Lal Rathi, while the committee also noted deficiencies in supervision by the concerned senior officers. These findings required the competent authority to assess the respective responsibilities of the persons involved, the nature of the instructions given, the established financial procedure and the evidence of individual culpability. The imposition of extreme penalty of removal upon the petitioner, without demonstrating a reasoned assessment of these material circumstances, raises serious concerns regarding the fairness and proportionality of the disciplinary action. The petitioner's explanation concerning his workload and assigned duties during the relevant period, as well as his assertion that the cash had been handed

over for official purposes, also required an objective assessment rather than a conclusion based merely on the subsequent loss of the money.

11. Equally significant is the objection that the inquiry report introduced or relied upon allegations of absence from duty, negligence and other irregularities beyond the charge originally communicated to the petitioner. An inquiry officer may examine evidence relevant to the charge, but cannot substitute materially different allegations for the charge framed by the competent authority and then use such allegations as independent grounds for imposing a major penalty without affording the employee a meaningful opportunity to respond. The fact that the petitioner acknowledged his signatures on the relevant registers and admitted that the cash had not been deposited daily may constitute relevant evidence concerning the handling of public funds; however, such admissions cannot automatically be treated as an admission of misappropriation, complicity in the robbery or every alleged act of misconduct. The distinction between an admitted factual circumstance and the legal conclusion sought to be drawn from it must be maintained.

12. The respondents' further contention that the petitioner participated in the inquiry does not, by itself, establish compliance with the principles of natural justice. The relevant question is whether he was adequately informed of the case against him and afforded a fair opportunity to rebut the material allegations and evidence relied upon for the proposed penalty. In the present case, however, it is unnecessary to rest the decision exclusively upon the disputed question of repeal, as the deficiencies in the framing and proof of the charge and the consequent disciplinary determination independently warrant interference.

13. In view of the foregoing, this Court finds that the respondents have failed to demonstrate that the impugned removal order was founded upon a sufficiently particularized charge, supported by cogent evidence and determined through a procedurally fair process. The inquiry committee's recommendation, insofar as it attributes misconduct to the petitioner without adequately distinguishing the allegation of suspicious conduct in the robbery from the separate issue of negligence in handling and depositing cash, cannot by itself sustain the major penalty imposed. Accordingly, the Constitution Petition is allowed to the extent that the impugned removal order dated 08.06.2010 is set aside, along with any consequential order founded thereon. He should be reinstated in service if not earlier reached the age of superannuation. The matter is remitted to the competent authority for fresh consideration in accordance with applicable law, if permissible, after clearly specifying the charge, disclosing the material relied upon, affording the petitioner a reasonable opportunity of defence and passing a reasoned order. The competent authority shall independently assess the petitioner's responsibility, the role of other officials identified in the inquiry report and the proportionality of

any penalty, without treating the occurrence of the robbery or the mere retention of cash as conclusive proof of complicity or misconduct. The question of consequential benefits shall be determined in accordance with the applicable law and the outcome of such proceedings. The aforesaid exercise shall be undertaken within three weeks. The pending applications, if any, disposed of accordingly.

JUDGE

JUDGE

Karar_Hussain/PS*