

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Syed Hassan Azhar Rizvi

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-1547 of 2016

Aamir Jamil Petitioner

Versus

University of Karachi and others Respondents

Date of hearing: 07.09.2017, 20.09.2017

Mr. M. R. Sethi Advocate for the Petitioner.
Mr. Moin Azhar Siddiqui and Mr. Ali Ahmed Turabi
Advocates for the Respondents No. 1 & 2.
Mr. Abdul Jalil Zubaidi, AAG along with
Mr. Asif Mukhtar Director Legal
Karachi University.

J U D G M E N T

ADNAN-UL-KARIM MEMON,J:- Through the instant Petition,
the Petitioner has prayed for the following relief(s).

- i) Declaring the act of removing the Petitioner from service as illegal, the removal letter issued by the Respondent No.1 may further be set aside and the Petitioner may be restored to his post with all benefits.
- ii) As an alternate remedy Issue Writ of Mandamus by directing the Respondent No.1 to issue to the Petitioner interview call letter, and treat the Petitioner in accordance with the law.

- iii) Directing the Respondent No.1 to refrain from conducting interview for the post of Assistant Registrar and if the interview have been conducted or are under process, stop further actions for completing the process of filling the vacancy for the post of Assistant Registrar so also stop issuance of any appointment letter likely to be issued pending disposal of instant Petition.
- iv) A direction by way of Writ of Prohibition to the Respondent No.1 to stop defaming be it slanderous or libelous, deprecating, disrespecting and issuing false and defamatory news items against the Petitioner in the print or electronic media, with a direction to the Respondent No.1 to compensate the Petitioner and to issue press release to all print and electronic media narrating therein the falsity of the news earlier aired, flashed against the Petitioner.

2. Brief facts of the case are that Petitioner was appointed as Assistant Registrar (BS-17) on contract basis for a period of six months in Respondent-University vide Office Order dated 08.05.2011. Petitioner further added that on 10th October 2011, he moved an application for regularization of service as Assistant Registrar but his service was not regularized. It is further averred by the Petitioner that on 18.08.2015 he was issued Show Cause Notice by the Registrar University of Karachi on the allegations against the Petitioner that at the time of appointment as Assistant Controller of Examination, he (Petitioner) submitted forged B.Sc (Pass) Degree and his case was referred to Competent Authority for disciplinary action under Clause 3 (c) of the University of Karachi Employees, (Efficiency & Discipline) Rules. Petitioner replied to the Show Cause Notice on 03.09.2015 and denied the allegations. Petitioner asserted that there is no B.Sc. (Pass) Degree in his educational documents. However, he submitted his Bachelor of

Business Administration (BBA) Degree from New Ports Institute of Communication & Economics. Petitioner further added that Respondent-University suspended him from service vide office Order dated 10.09.2015 and subsequently issued Charge Sheet dated 15.09.2015 to him. Per Petitioner, he replied to the Charge Sheet and denied the allegations. However, he reiterated his earlier stance that he did not submit any forged Degree to get his Appointment Order from Respondent-University. Petitioner further added that vide application dated 01.10.2015 he objected to appointment of Inquiry Officer and raised various objections against issuance of Show Cause Notice, Suspension Order and Charge Sheet. It is further averred by the Petitioner that he requested to the Competent Authority of Respondent-University to provide him personal hearing in the matter vide letter dated 05.10.2015 but the same was not considered. Per Petitioner, the Respondent-University finally decided to issue Termination Order vide Office Order dated 02.10.2015. Petitioner being aggrieved by and dissatisfied with the impugned Termination Order filed Review Applications before the Competent Authority on various dates i.e. 09.10.2015, 10.10.2015, 10.11.2015 and 18.12.2015. Petitioner claims that he was not given an opportunity of personal hearing on the issue involved in the matter; that the Competent Authority of Respondent-University took ex-parte decision against him. Petitioner lastly asserted that Respondent-University advertised the post of Assistant Registrar BPS-17 published in 'Daily Dawn' dated 16.04.2015 and he applied for the same post but the

Respondent-University did not call him for test/interview without assigning any cogent reason.

Upon notice, Respondent-University filed para-wise comments and denied the allegations.

3. Mr. M.R. Sethi learned counsel for the Petitioner has contended that the Termination Order dated 02.10.2015 issued by Respondent-University is in gross violation of Sections 8,9 & 10 of the University of Karachi (Employees Efficiency and Discipline) Ordinance, 1962; that the Petitioner had illegally been removed from service upon false allegations and by stigmatizing his personality; that the Petitioner has been condemned unheard and removed from service without holding proper inquiry into the allegations leveled against the Petitioner, which is unwarranted under the law; that the act of Respondent-University is based on malafide intention and personal ego; that the Petitioner though appointed on contract basis, is entitled to a fair opportunity to clear his position in terms of Article 4, 10-A and 25 of the Constitution of Islamic Republic of Pakistan 1973; that this Court has jurisdiction to interfere in the matters involving denial of such rights of citizens of this Country by the State Functionaries. He has further contended that the Respondent-University is on the way to appoint a person to the post of Assistant Registrar by their own choice in violation of Rules and Regulations of Respondent-University; that in terms of Subsection (3) of Section 4 of University of Karachi (Employees Efficiency and Discipline) Ordinance, 1962; that the Petitioner is competent and qualified to

apply for the post of Assistant Registrar but the Respondent-University by not calling him for interview had caused grave prejudice to the rights of the Petitioner; that the fresh appointment for post of Assistant Registrar is being filled in violation of Section 11 of Condition of the Service of the University Employees University Ordinance 1962; that no any criteria is fixed for the appointment against the said post, whereupon the Petitioner was working and Respondent-University is on the way to fill the vacancy upon its personal whims and wishes, which is not permissible under the law; that if the Termination Order conveys a message of a stigma the employ cannot be ousted from service without resorting the procedure as provided under the University of Karachi Employees' (Efficiency and Discipline) University Ordinances, 1962 but in the matter of the Petitioner, no procedure was adopted but he was removed from the employment against the law and procedure; that it is a trite principle of law that even if a person is to be condemned for the misconduct and even if he is employed on contract basis or probation, he is entitled to fair trial and an opportunity should be provided to him to clear his position but in the instant matter not only the Petitioner was condemned unheard but on the basis of his earlier stigmatized removal had rendered and disintitiled him for interview call or appointment in lieu thereof; that the Petitioner had been punished for raising voice against the corrupt practices, corruption and misuse of powers being practiced by the Officials within Respondent-University due to which he had been terminated against the settled principle of law; that the Respondent-University cannot be allowed to punish

its employees for the illegal acts of its own. He lastly prays for allowing the instant Petition. Learned counsel for Petitioner in support of his contention, has placed reliance upon the cases of Aleem Jaffar Vs. WAPDA through its Chairman (1998 SCMR 1445), The Secretary Government of Punjab and others Vs. Riaz-ul-Haq (1997 SCMR 1552), Muhammad Ajmal Vs. The Chief Engineer WAPDA (1998 PSC 337), The DIG Police Lahore and others Vs. Anis-ur-Rehman Khan (PLD 1985 SC 134), Alamgir Vs. Divisional Forest Multan and others (1993 SCMR 603), Jan Muhammad Vs. The General Manager Karachi and others (1993 SCMR 1440), Ghulam Muhammad Khan Vs. Prime Minister of Pakistan and others (1996 PLC (C.S) 868), Muhammad Siddiq Javed Chaudhry Vs. The Government of West Pakistan and others (PLD 1974 SC 393), Pir Imran Sajid Vs. MD/GM Telecom Industries and others (2015 SCMR 1257), Muhammad Mubeen-us-Salam and others Vs. Federation of Pakistan and others (PLD 2006 SC 602), ICCBS and others Vs. Syed Ejaz Ahmed Soofi and others (2017 SCMR 203), Engineer Majeed Ahmed Memon Vs. LUMS Jamshoro and others (2014 SCMR 1263).

4. Mr. Moin Azhar Siddiqui learned counsel for the Respondent-University has raised question of maintainability of instant Petition; that the Authorities of the answering Respondents have not acted malafidely nor violated any provisions of law or prescribed Rules in discharging their duties; that Petitioner concealed the material facts from this Court, which disentitle him to the relief claimed for; that the Respondent-University is Body

Corporate, which is controlled and regulated by the University of Karachi Act, 1972, having no statutory Rules of service; that the Petitioner was appointed as Assistant Registrar on contract basis for the period of 6 months and the Petitioner had submitted an application along with a copy of C.V, and annexed with the application copies of educational certificates, wherein he stated his qualification as B.Sc.; that the post of Assistant Registrar/Assistant Controller of Examinations is of BPS-17 and the appointment on such posts can only be regularized/ confirmed by the Selection Board and Syndicate; that the Petitioner was appointed as Assistant Registrar for a period of 6 months purely on contract basis vide office Order No. ESTT N.T.II/2011 dated 18.05.2011. In pursuance of such Office Order, the Petitioner joined his duties on 24.05.2011. Per learned counsel, after scrutiny of the Educational Documents of the Petitioner as provided by him for his contractual appointment, it was disclosed that the B.Sc Degree of the Petitioner was forged, thereafter a Show Cause Notice dated 18.08.2015 was issued and the Petitioner was asked to submit written defence within 78 days from the date of receipt of Show Cause Notice and the Petitioner made a Reply to the same on 03.09.2015 and stated therein as under:

“So far as my knowledge is concerned, thereof is no BSc pass degree in my educational documents, however, I submitted my BBA degree from New Ports Institute of communication and Economics”

He has further contended that the Petitioner was informed along with the Suspension Order that he shall be served a Charge Sheet

and Competent Authority have appointed Dr. Majeed Mumtaz, Professor in the Department of Chemistry as Inquiry Officer to probe into the allegations leveled against the Petitioner; that the Petitioner has mentioned in his Curriculum Vitae that his qualification as B.Sc from University of Karachi; that the Petitioner has earlier been served with Show Cause Notice then was issued Charge Sheet, thereafter he was issued notices to appear before the Inquiry Officer, but Petitioner hopelessly failed to appear before Inquiry Officer, thus, all procedures were adopted. Consequently the service of the Petitioner was terminated by the Competent Authority of the Respondent-University. Learned counsel for Respondent-University, in support of his contention has placed reliance upon the case of Muhammad Musa Vs. Habib Bank Limited and others (2012 SCMR 979), Iqbal Hussain Sheikh and 2 others Vs. Chairman Federal Board of Revenue and another (2013 SCMR 281), Government of Balochistan Department of Health through Secretary Vs. Dr. Zahida Kakar and 43 others (2005 SCMR 642), Chief Secretary Government of Sindh and others Vs. al-Haj Professor Syed Sibte Hassan Zaidi (2005 SCMR 646), Trustees of the Port of Karachi Vs. Saqib Samdani (2012 SCMR 64), Tehsil Municipal Officer and another Vs. Gul Fraz Khan (2013 SCMR 13), Ameer Solangi and others Vs. WAPDA and others (2016 SCMR 46), Mubashar Majeed Vs. Province of Punjab and 3 others (2017 PLC (C.S) 940), Saeed Ahmed Sethar Vs. Province of Sindh and others (2016 PLC (C.S) 589, Miss. Mehwish Asif Vs. Vice Chancellor Shaheed Benazir Bhutto University and 2 others (2016 MLD 95), Lt. col. (Retd.) Sultan Zeb Khan Vs. Board of Governors,

Fazle Haw College Mardan and 5 others (2015 PLC (C.S) 1385). He lastly prays that Petition being not maintainable is liable to be dismissed.

5. Mr. Abdul Jalil Zubedi, learned AAG, on court notice has supported the stance taken by the learned Counsel for the Respondent- University.

6. We have heard the learned counsel for the parties and perused the material available on record and case law cited at the bar.

7. Foremost, we would address the question of maintainability of instant Petition under Article 199 of the Constitution. Admittedly, the University of Karachi Services, Statutes has been framed under Section 28(1) of the University of Karachi Act, 1972 by the Competent Authority of Respondent-University. We have to see whether or not the statutes, referred to above, are statutory in nature, which requires an approval of the Government making them statutory and rather it deals with instructions for internal control or Management of Respondent-University. Perusal of Section 28 of the University of Karachi Act, 1972, reveals that these statutes are for the internal use, control and Management of Respondent-University. Besides this, there is no approval of the Government as such these statutes are non-statutory in nature. The Reference is safely placed on the case of Muhammad Zahid Maqsood Vs. University of Karachi and others (2013 MLD 09), decided by this Court. The Hon'ble Supreme Court has dilated

upon the issue of statutory and non-statutory Rules of Service in the case of Muhammad Zaman etc. Vs. Government of Pakistan (2017 SCMR 571) and held as follows:-

“the test of whether rules/regulations were statutory or otherwise was not solely whether their framing required the approval of the Government or not, rather it was the nature and efficacy of such rules/regulations. Court had to see whether the rules/regulations in question dealt with instructions for internal control or management, in which case they would be non-statutory, or they were broader than and were complementary to the parent statute in matters of crucial importance, in which event they would be statutory.”

8. We, therefore, are of the considered view that issue in hand is fully covered by the Judgment passed by the Hon'ble Apex Court referred to hereinabove, which provides that the Constitutional Jurisdiction of this Court cannot be invoked against the Department having non-statutory Rules.

09. The basic allegations against the Petitioner are that at the time of his appointment, he submitted forged Degree of Bachelor of Science (pass). It is settled proposition of law that if any employee, through fraudulent and dishonest means, gains appointment in the Institution, the same will amount to commission of fraud and dishonesty and ultimately fall within the ambit of misconduct, which on being proved will render the employee to be dealt with punishment of dismissal from service. Record reflects that the allegations against the Petitioner were enquired by the Respondent-University through Enquiry Officer, who submitted Enquiry Report on 29.09.2015, and recommended that the service

of Petitioner be terminated, therefore, there is nothing left to be considered on the above proposition.

10. We have perused the Appointment Order dated 18.05.2011 of Petitioner, which is a contractual appointment for a period of six months. Record does not reflect that the service of the Petitioner was regularized by the Respondent-University. We are of the view that such appointment would be terminated on the expiry of contract period or any extended period on the choice of Employer or Appointing Authority. The case of the Petitioner is governed by the principle of Master and Servant, therefore, the Petitioner does not have any vested right to seek reinstatement in service. It is well settled law that contract employee cannot claim any vested right, even for regularization of service.

11. Reverting to the claim of the Petitioner that he has been condemned unheard by the Respondent-University on the allegations. Record reflects that though the Petitioner was temporary employee of Respondent-University, however he was issued Show Cause Notice, which was replied by the Petitioner thereafter a Charge Sheet was served upon the Petitioner, who also submitted his reply. Learned counsel for the Respondent-University has stated at the bar that Petitioner was issued notices to appear before the Inquiry Officer but he did not bother to appear before the Inquiry Officer, thereafter the Inquiry Officer submitted his Inquiry Report dated 29.09.2015 and recommended termination of service of the Petitioner.

12. We have perused Section 39 of the Karachi University Act of 1972 which provide as under:-

“Opportunity to show cause:- Except as otherwise provided no officer, Teacher or other employee of the University holding a permanent post shall be reduced in rank, or removed or compulsorily retired from service unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken”

13. In view of the above provisions of law an opportunity of Show Cause can be issued to the employee of University, who is holding a permanent post, whereas the record does not reflect that the Petitioner was permanent employee of Respondent-University, therefore in our view the Petitioner cannot claim vested right to be reinstated in service. It is well settled law that the service of temporary employee can be terminated on 14 days' notice or pay in lieu thereof. The Respondent-University has no ostensible reason to put false allegations of submission of forged Degree of B.Sc against the Petitioner at Annexure R/6 along with para-wise comments. During the course of arguments, both the parties put allegations and counter allegations against each other. It is well settled law that the disputed question of facts cannot be adjudicated upon in Constitutional jurisdiction of this Court.

14. In the present case, there is no material placed before us by which we can conclude that Impugned Order has been wrongly issued by Respondent-University.

The Petitioner has failed to establish that he has any fundamental/ vested right to remain on the temporary /contractual post. Therefore, the argument of the Petitioner that he was not heard before issuance of Impugned Order dated 02.10.2015 is not tenable in the eyes of law. Reliance is safely

placed upon the case of Contempt Proceedings against Chief Secretary and others (2013 SCMR 1752).

15. Besides the above, this Petition is not maintainable in law as University of Karachi has no statutory Rules of service, therefore Constitution jurisdiction of this Court cannot be invoked under Article 199 of the Constitution.

16. The case law cited by the learned counsel for the Petitioner is distinguished from the facts and circumstances of the case.

17. In view of the foregoing, the Constitutional Petition in hand is not maintainable, hence, is dismissed with no order as to cost.

Karachi
Dated:

JUDGE

JUDGE

Shafi P/A