

# IN THE HIGH COURT OF SINDH, AT KARACHI

C.P No. D-4002 of 2017

**Present:**

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

Petitioner Through M/s. Akhtar Hussain & Muhammad Masood Ghani, Advocates.

Respondents No.1 Through Barrister Shahriyar Mahar, AAG Sindh.

Respondents No.2&3 Through M/s. Shoaib Mohiuddin Ashraf & Ameer-Uddin, Advocates a/w Mr. Asif Mukhtiar, Director, Legal, University of Karachi.

Date of hearing 15.05.2018

## **J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J:** - The Petitioner has approached this Court for the following reliefs:-

**a. Declare that the office order No.B/ESTT(T)/(SMBBC)/DO-137 dated June 06, 2017 issued by the respondent No.3 is contrary to the recommendations of the advisory committee of "Shaheed Mohtarma Benazir Bhutto University Chair" and the decision of the syndicate of the University of Karachi as such is illegal, without lawful authority and the petitioner is deemed to be continued in service as Director of SMBB Chair for the tenure of four years as decided by the syndicate.**

2. Brief facts of the case in a nutshell are that in pursuance of advertisement published in 'Daily Dawn' dated 18.01.2015 inviting

application for appointment of Director of “Shaheed Mohatrama Benazir Bhutto Chair” (hereinafter referred to as “**SMBBC**”) on contract basis for a period of two years, Petitioner applied for the post of Director “SMBBC”. As per the Petitioner, Respondent-University started recruitment process, after processing the application of the Petitioner; she was short listed and was interviewed for the Post of Director. The Advisory Committee, vide minutes of the meeting dated on 22.05.2015 unanimously recommended the Petitioner for appointment as Director, SMBBC, for a period of two years at a fixed salary of Rs. 1, 50,000/- per month. However at the same time Advisory Committee felt that the tenure of two years was not sufficient for a Director to show performance, therefore the term of appointment was proposed to be extended to four years subject to rules. Petitioner has submitted that Advisory Committee recommended that the Rules of Special Chair instituted in the Respondent-University may be amended. Petitioner further claims that she having successfully qualified for the post had legitimate expectation to complete four years tenure for the post applied for. Finally Respondent-University vide office Order dated 1.6.2015 issued appointment order of the Petitioner as Director SMBBC, thereafter, the Advisory Committee in its meeting held on 20<sup>th</sup> August, 2015 decided that since two years tenure was insufficient for the post of Director, therefore, it was decided that the tenure of the first term of the Petitioner be extended to 04 years. The Competent-Authority accordingly approved the extension of the Petitioner for four years vide Resolution dated 14.2.2017. Petitioner has submitted that during her service some differences arose, due to interference in the working of the Petitioner by the Management of the Respondent-

University and the Respondent-University vide letter dated 6.06.2017 informed the Petitioner that her services are no more required, without showing any reason or issuing any show cause notice to her. In response thereto, the Petitioner submitted an application dated 07.06.2017 to the Vice Chancellor of the Respondent-University with the prayer that her tenure had been extended from two to four years by the Syndicate and it would end on 1<sup>st</sup> June, 2019, therefore, the office order dated 06.06.2017 had wrongly been issued, but of no avail. However the Respondent-University has not paid the salaries to the Petitioner for the period she has worked. Petitioner being aggrieved and dissatisfied with the impugned office letter dated 06.06.2017 has filed the present petition on 8.6.2017.

3. Parawise comments on behalf of the Respondents No. 1 to 3 were filed.

4. Mr. Akhtar Hussain, learned counsel for the Petitioner has contended that the tenure of the Petitioner for the post of Director was extended and merged into four years ending on 1<sup>st</sup> June, 2019 as per the recommendation of the Syndicate of the Respondent-University vide Resolution dated 14.2.2017, therefore, the Impugned order dated 06.06.2017 is without lawful authority; that as per Rules, the Syndicate of the Respondent-University was the appointing authority and its Resolution is binding upon the Respondent-University; that the Petitioner has a legal right to perform her duties in terms of the extension of her tenure, as decided by the Syndicate; that the order

dated 06.06.2017 has been issued without any notice, particularly in view of the fact that the Petitioner is discharging her duties efficiently and the impugned order is based on malafide and ulterior motives; that at the time of issuance of the advertisement of the subject post and after recommendation of the Advisory Committee, the tenure of two years was extendable for four years of which the Petitioner was given assurance and therefore, on her satisfactory performance and as per the requirement of the post, the period was accordingly extended on recommendation of the Advisory Committee and final approval of the Syndicate of the University of Karachi, which is ending on 1<sup>st</sup> June, 2019. Learned counsel for the Petitioner submitted that it appears from the office order dated 06.06.2017 that the terms of appointment of the Petitioner expired on 1<sup>st</sup> June, 2017, which is contrary to the facts on record. He also submitted that by issuance of the impugned order the entire project of the SMBBC has been put in jeopardy and in terms of the rules of special chairs, the recommendation of the Advisory Committee cannot be ignored; that the decision of the Syndicate is binding with respect to extension of the period from two years to four years under the Rules which cannot be reduced, which act of the Respondent No.3 is arbitrary and based on malafide and is illegal. The learned counsel for the Petitioner in support of his arguments has relied upon the cases of Muhammad Rafi & another Vs. Federation of Pakistan (2016 SCMR 2146), Abdul Wahab and others Vs. HBL (2013 SCMR 1383) & Pakistan Defence Officers' Housing Authority and others vs. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707).

5. Mr. Shoaib Mohiuddin Ashraf, the learned counsel for the Respondent-University has primarily raised the question of maintainability of instant petition under Article 199 of the Constitution, however, he argued that Respondent No.2 has non-statutory Rules of Service as such these cannot be enforced through a Writ Petition. He further argued that the Petitioner is not an aggrieved person as such she has no locus standi to file the instant petition against the Respondent-University; that the Respondent-University has not violated any provision of law or prescribed rule in discharging their duties; that the Petitioner has concealed certain material facts from this Court and the Petitioner has not come to this Court with clean hands; that Respondent No.2 constituted Advisory Committee to run the administrative work/functions of SMBBC; that an advertisement was published containing certain terms and conditions for the post and as per the advertisement the qualification was Ph.D degree but the Petitioner is not a Ph.D degree holder, thus she was appointed just to fill up the gap temporarily for a period of two years only; that the Advisory Committee of SMBBC in its meeting held on 22-05-2015 recommended the Petitioner as Director for a period of two years and an office order dated 1<sup>st</sup> June, 2015 was issued appointing the Petitioner as Director and in the same meeting the Advisory Committee also proposed that the tenure of the Director be extended for four years but no such final Notification in this regard had been issued yet and the Petitioner was appointed as per terms and conditions given in the advertisement and when her tenure of service was completed, the charge of the post was required to be relinquished by the Petitioner and the Dean Faculty of Social Sciences

was appointed as the new Director; that the Advisory Committee in its meeting held on 20.08.2015 the decision of the previous meeting was endorsed and a formal order of the decision of the Committee be sent to the Syndicate for approval in the upcoming meeting. He further argued that the Advisory Committee in its meeting dated 22.05.2015 and 20.08.2018 had approved two years appointment only of the Petitioner as Director of SMBBC, however the tenure of the Director was proposed without mentioning the name of the Petitioner; that the contentions of the Petitioner are based on misconception and misunderstanding; that Prof. M. Saleem Memon was appointed as In-Charge of the post to supervise the project and an office order was also issued in this regard; that the irregularities committed by the Petitioner during her service were pointed out by the Auditor in his report, therefore, the Petitioner cannot claim extension on the basis of performances and as such no violation of any rule has been committed nor the Petitioner was deprived from any fundamental right, the entire exercise was done in accordance with the rules of the University of Karachi. In the end, he prayed for dismissal of the instant petition. The learned counsel in support of his contentions has relied upon the cases of Mubashar Majeed Vs. Province of Punjab & 3 others (2017 PLC (C.S) 940), Muhammad Zaman and others Vs. Government of Pakistan (2017 SCMR 571), Hussain Muhammad Vs. Vice Chancellor, Islamia College, Peshawar (2015 CLC 500), Muhammad Naseer Khan Vs. General Manager (HR-OPS), Sui Northern Gas Pipe Lines Ltd. Lahore (2013 PLC (C.S) 698) & Zonal Manager U.B.L and another Vs. Mst. Parveen Akhtar (PLD 2007 SC 298).

6. Barrister Shahriyar Mahar, AAG has adopted and supported the arguments of Mr. Shoaib Mohiuddin Ashraf and has prayed for dismissal of the instant petition.

7. We have heard learned counsel for the Petitioner, learned counsel for the Respondent No.2 and 3 and have perused the entire material available on record as well as case law cited at the bar.

8. Since short point of law is involved in the present petition, as such, we intend to decide the issue on merits and would not touch the issue of maintainability of the instant petition.

9. Upon perusal of the pleadings and arguments extended thereon by both the Parties, the basic primal question requires our determination, is as follows:-

- i) ***Whether the post of Director, Shaheed Mohtarma Benazir Bhutto Chair, is for a period for two years or four years?***

10. To commence with the aforesaid proposition that as per advertisement published in 'Daily Dawn' dated 18.01.2015, the post of Director of SMBBC was on contract basis for a period of two years. As per Clause 2 of the Recruitment Rules for the post of Director SMBBC, the duration of appointment of a Chair Professor shall be for two years. However, after expiry of the period subject to eligibility, the Competent Authority can order for reappointment. The Appointment order dated 01.06.2015 of the Petitioner, which is a contractual appointment was for a period of two years. The claim of the Petitioner is that her service

tenure as Director SMBBC was for four years as decided by the Syndicate of the Respondent- University and the Petitioner's service period has been curtailed for two years without any justifiable reason. We are of the considered view that this stance of the Petitioner is misconceived on the premise that the post of Director of SMBBC was advertised on 18<sup>th</sup> January 2015, which explicitly show that the tenure of the post was fixed for two years which is extendable on satisfactory performance of the appointee only. The relevant Rules for the aforesaid post also indicate the correct position as follows:-

**"RULE FOR SPECIAL CHAIRS INSTITUTED IN THE UNIVERSITY**

1. ***The Syndicate will be the appointing authority of the Chair Professor, on the recommendation of the Advisory Committee, to be constituted for this special purpose.***
2. ***The duration of appointment of a Chair Professor shall be two years. However, he will be eligible for reappointment.***
3. ***There shall be an Advisory Committee constituted for recommending names for appointment of Chair Professor and monitoring work of the Chair.***
4. ***The life of this committee shall be of four years.***

***Its composition shall be as under:-***

1. ***Vice- Chancellor.***
2. ***Dean of the Faculty concerned***
3. ***donor's nominee***
4. ***Two experts to be appointed by the Vice-Chancellor in consultation with the Dean.***
5. ***Registrar nonvoting member.***

***The function so the Chair shall be as under:-***

1. ***To produce Research Articles, Monographs or Books on the subject, related to the special field of the Chair;***
2. ***To undertake personal Research and supervise Research students;***



3. *To arrange Special Lectures. Eminent personalities may be invited, both from within and outside the country.*
4. *Any other work specially assigned for Special Chair by the Advisory Committee.*
5. *Schedule of activity of the Chair, be submitted, well ahead of time for approval of the Advisory Committee.*
6. *Annual Reports of the Chair must be submitted to the Syndicate.*
7. *Appointment and general rules for conduct of the supporting staff of Special Chair will be covered by the University rules in force.*
8. *Accounts of income and expenditure related to the Chair shall be maintained separately; hence a separate bank Account shall be operated jointly by the Chair Professor and Director Finance.*
9. *Annual budget will be prepared at the beginning of each year for approval of the Advisory Committee. The chair professor will be entitled to incur expenditures within the provision of the budget.*

11. The minutes of the meeting dated 28.05.2015 of the Advisory Committee of SMBBC held on 22.05.2015 unambiguously show that the Petitioner was recommended for appointment as Director, SMBBC, for a period of two years only at a fixed salary, an excerpt of the same is reproduced as under:-

**MINUTES OF THE MEETING OF THE ADVISORY COMMITTEE OF SHAHEED MOHTARMA BENAZIR BHUTTO CHAIR HELD ON 22.05.2015.**

**A meeting of the Advisory committee of Shaheed Mohtarma Benazir Bhutto Chair was held on Friday, 22<sup>nd</sup> May 2015 at the office of the Vice Chancellor, University of Karachi.**

**The following members attended the meeting.**

- |    |                                      |                |
|----|--------------------------------------|----------------|
| 1. | <b>Professor Dr. Muhamamd Qaisar</b> | <b>Inchair</b> |
| 2. | <b>Mr. Mazhar-ul-Haq Siddiqui</b>    | <b>Member</b>  |
| 3. | <b>Prof. N.D. Khan</b>               | <b>Member</b>  |
| 4. | <b>Senator Taj Haider</b>            | <b>Member</b>  |

**5. Prof M. Saleem Memon**

**Secretary**

**The following two short listed candidates were interviewed for the Post of Director.**

- 1. Dr. Shuja Ahmed Mahesar.**
- 2. Ms. Sahar Gul Bhatti**

*The Advisory Committee unanimously recommended Ms. Sahar Gul Bhatti for appointment as Director, Shaheed Mohtarma Benazir Bhutto Chair, for a period for two years at fixed salary of Rs. 1, 50,000/- per month.*

*The Advisory Committee felt that tenure of two years is not sufficient for a Director to show his efficiency & research work, therefore term of appointment of Director to show his efficiency & research work, the fore for term of appointment of Director should be the extended to four years. As the tenure of Advisory committee is also for four years.*

*Therefore it was recommended that "Rules of Special Chair instituted in the University" may be amended. (Copy of the rules enclosed).*

**(Prof. M. Saleem Memon)  
Director**

12. The aforesaid minutes were approved and placed in the Syndicate, as per the record on the recommendation of the Advisory Committee, the Vice Chancellor appointed the Petitioner as Director SMBBC for a period of two years only vide office order dated 01.06.2015.

13. Record further reveals that the Syndicate vide Resolution dated 14<sup>th</sup> Feb 2017 extended the period of four years for the post of Director SMBBC. Petitioner claims that the tenure of the post 'held by her' was extended therefore she is entitled to continue on the subject post. This claim of the Petitioner has been refuted by the learned counsel

for the Respondent-University. Be that as it may, we are of the considered view that initially the post of the Petitioner was for two years terms and she agreed the terms and condition of the contractual service of the aforesaid post and she completed the same terms on 01.06.2017 and she was relieved of the charge of the chair vide letter dated 06.06.2017 as the post was not person specific, even the Syndicate approved the Minutes of the Advisory committee and opined that the Rules be amended. As per the learned counsel for the Respondent-University that till date no rules for the post of the Director have been amended as such the post still can be filled on the same terms and conditions as per the prevailing rules. We are of the view that the Petitioner cannot claim the subject post for four years terms and without amending the rules this post cannot be given for four years on contract alone.

14. Record does not reflect that the tenure of the service period of the Petitioner was extended by the Respondent-University. We are of the view that such appointment would be terminated on the expiry of the contract period or any extended period on the choice of the Employer or the Appointing Authority. The case of the Petitioner thus in our view is governed by the principle of 'Master and Servant' therefore, the Petitioner does not have any vested right to seek extension in contractual service. It is a well settled law that contract employee cannot claim any vested right, even for extension of service.

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

16. The Petitioner has thus failed to establish that she has any fundamental/ vested right to remain on the contractual post. Therefore, the argument of the Petitioner that she was not heard before issuance of the Impugned Order dated 06.06.2015, 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).

17. In the light of the above facts and circumstances of the case, the instant Petition, being devoid of any legal standing, is hereby dismissed along with the pending application.

Karachi  
Dated:- 05.2018.

JUDGE

JUDGE