

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-4507 of 2018

Nighat MunirPetitioner

Versus

Madam Humera & others Respondents

Date of hearing: 30.08.2018

Petitioner Nighat Munir present in person.

Mr. Moin Azhar Siddiqui Advocate for Respondents No. 2 to 5.

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ORDER

ADNAN-UL-KARIM MEMON, J:- Through the captioned petition

Petitioner has sought the following relief(s):-

- i) Direct the Respondent No.4 and Respondent No.5, to adjust the time loss of Petitioner in the time of synopsis approval and conversion period by counting the vested 12 months of the Petitioner in synopsis approval and 11 vested months in the conversion period.***
- ii) Direct the Respondent No.4 and Respondent No.5 to convert the M. Phil Leading to P.H.D of the Petitioner after submitting only one Chapter of Research.***
- iii) Direct the Respondent No.4 and Respondent No.5 to allow the Petitioner to take classes of P.H.D in this year 2018.***
- iv) To direct the Respondent No. 4 and Respondent No.5 to compensate for the***

financial loss of the Petitioner that accrued due to the irresponsible behavior of all of the respondents.

- v) To direct the Respondent No. 2 to return the necessary original documents to the Petitioner.***
- vi) To direct the Respondent No. 4 and Respondent No.5 eliminate the rule of not to emend the result immediately to save time, hard work and money of the students of Special Education.***

2. Brief facts of the case as per the averments of the parties are that the Petitioner is a student of M. Phil course leading to Ph.D in Special Education, University of Karachi. Petitioner has submitted that due to grave mistake/error committed by Dr. Humera Aziz (course in-charge) Petitioner's precious eleven months went in vain, with effect from the month of June 2016 to 11th May 2017. Petitioner further averred that Dr. Humera Aziz and other faculty members of the Respondent-University committed another mistake by providing lectures on the wrong subject thus wasted her eight months study period, with effect from the month of July /August 2017 till February 2018. Petitioner has submitted that the Respondent University attempted to hide their illegalities till January 2018, which has caused damage to her study on the above subject. Petitioner has claimed that aforesaid loss of time caused by the Respondent University can only be compensated if the aforesaid period is adjusted in the study of M. Phil leading to Ph.D so that the Petitioner may attend the classes of Ph.D for the Session 2018. Petitioner has submitted that the Petitioner is the only Research Student of that batch in the Department of Special

Education. Petitioner has further averred that Respondent University is not allowing her to attend the classes of Ph.D for the Session 2018 for unknown reasons, even after issuing letter dated 21.3.2018, which according to her has been issued belatedly. The Petitioner being aggrieved and dissatisfied with the aforesaid action of the Respondents has filed the instant Petition on 05.06.2018.

3. Notice was issued to the Respondents, who filed their para-wise comments and controverted the allegations leveled against them by the Petitioner.

4. Petitioner present in person states that she has cleared all the papers and fulfilled all the formalities of admission in Ph.D, except depositing requisite fees etc. for which she is ready and willing to deposit the same; that Petitioner's two years have been wasted in the aforesaid process due to the gross negligence and errors / mistakes committed by the faculty members of the Respondent-University; that the correction made by the Respondents is not recognized by the Higher Education Commission as such Petitioner cannot be held responsible; that loss of time on account of mistake of the Respondent Department can be adjusted and Petitioner may be allowed to attend classes of Ph.D started in the month of August 2018; that education is the fundamental right of a citizen and the Petitioner cannot be deprived of her right by not allowing to attend the class of Ph.D, which action on the part of the Respondent-University is illegal at this stage when the Petitioner has fulfilled all the requirements for such course; that the allegations leveled by the Respondent-

University that the Petitioner did not apply for conversion of her M. Phil program to Ph.D is erroneous rather misleading and frivolous just to deprive the Petitioner from acquiring her education in accordance with law; that the Petitioner has been condemned unheard, before taking adverse action by not allowing her to attend the classes of Ph.D for the Session 2018 by the Respondent-University. She lastly prayed for allowing the instant Petition.

5. Mr. Moin Azhar Siddiqui, learned counsel for the Respondent-University has contended that the admission of the Petitioner was approved by the Board of Advanced Study and Research University of Karachi (BAS&R) for M. Phil Program w.e.f. 25.8.2015; that Petitioner submitted an application to BAS&R on 30.08.2017 and after some time she submitted her synopsis on 13.02.2018 but she did not apply for conversion of her M. Phil Program to Ph.D and in case she applies for the conversion then such application as per rule will be considered, therefore the claim of the Petitioner is premature and her application as per Law can only be entertained after one year (statutory period) i.e. from the date of presentation of synopsis i.e. 13.02.2019; that Respondent No.1 arranged two seminars that was required to be attended and addressed by the Petitioner to the Morning Session's Student of 3rd year of Special Education in the first half of the given time period i.e. from 9.30 a.m to 10.30 a.m and from 11.00 a.m 12 p.m on 01.04.2016. Per learned counsel the seminars were part of the course containing 20 marks and the Petitioner could not reach the faculty well within time as such she is not entitled to claim

admission in Ph.D course until and unless she fulfills all the criteria including providing copy of thesis as provided under the law for which she has still time to complete the same; that the Respondent University conducted inquiry into the allegations of the Petitioner and the committee unanimously decided to award 18 marks out of 20 marks to the Petitioner, however in the result of another paper of the Petitioner, she was awarded 46 marks out of 80 marks and finally her result was compiled and announced, she became successful candidate with 64 marks out of 100 marks. Per learned counsel the grievance of the Petitioner has been redressed; that the conduct of the Petitioner is not fair throughout the period; that Petitioner is responsible for wastage of her time due to her own negligence and being non cooperative and irresponsible; that the Petitioner is not entitled for the relief from this Court. He lastly prayed for dismissal of the instant Petition.

6. We have considered the submissions of the Petitioner present in person and the learned counsel for the Respondent University and have perused the material available on record.

7. We have taken cognizance of the instant matter, in the light of Articles 4, 9, 10-A and 22 (3) (b) of the Constitution of the Islamic Republic of Pakistan 1973, as the Petitioner has taken the specific plea that she has been condemned unheard, before taking adverse action by not allowing her to attend the classes of Ph.D for the session 2018 by the Respondent-University in spite of fulfilling

all formalities and has been deprived of her fundamental right of education.

8. Upon perusal of the material available on record, which prima facie, suggest that the Petitioner submitted her Research Synopsis in time, which were duly communicated to the Competent Authority of the Respondent University (available at page 15 annexure R/2 of the comments filed by the Respondent University) the Petitioner was awarded 64 marks out of 100 marks vide final report dated 31.05.2017 and thereafter Respondent University considered the case of the Petitioner and her claim was accepted and recommended her for the M. Phil course and marks sheet was directed to be issued vide letter dated 11.01.2018 approved by the Vice Chancellor of the Respondent University.

9. In the present matter moot question arises whether the Petitioner can be transferred to Ph.D cadre?

10. The code of the Respondent University provides that if at the end of the first two years the Head of the Department, on the recommendation of the Supervisor of Research recommends to the Board, then the candidate may be transferred to Ph.D cadre. However, candidates admitted for M. Phil, only will not be eligible to apply for transfer to Ph.D. We have noticed that as per circular dated 06.11.2007 issued by the Respondent-University, the student has to publish at-least one paper in one of the reputed journals and submit a copy of the paper or a letter of acceptance along with the thesis to the Board and to submit a copy of the

published Research Paper before the award of Ph.D degree. The prescribed period for Ph.D is maximum period 2 to 7 years and the period of admission shall be counted from the date of first admission.

11. Record reflects that the Respondent University issued a letter dated 21.03.2018 addressed to the Petitioner regarding admission to the Research Course, an excerpt of the same is reproduced as under:-

“Board of Advanced Studies & Research University of Karachi

***BASR/No./03882/Ar
April 27, 2018***

***Resol. No. 10 (E)01
Dated:21.03.2018***

SUBJECT: ADMISSION TO THE RESEARCH COURSE

Reference your application for confirmation of admission to M. Phil/Ph.D. in Special Education.

In continuation of letter vide BASR resol No. 01(b) dated 25.08.2015 this is to inform that your request for confirmation of admission to M. Phil/P.H.D has been approved w.e.f. 21.07.2015 as a Research Student in the department of Special Education to work on the following research topic under the supervision of Prof. Dr. Shagufta Shahzadi.

TOPIC

AN ANALYSIS OF EDUCATION OF PERSONS WITH PHYSICAL IMPARMENTS AT UNIVERSITY LEVEL ISSUES AND CHALLENGES

You are therefore, required to complete formalities of admission by depositing fee etc. within ten days of issuance of this letter under intimation to this office, failing which the approval of your admission will stand withdrawn.

b) As per BASR Resol No. 09 dated 20.04.2011 & 22.04.2011, those Research Scholars who are enrolled in M. Phil/Ph.D program with the University of Karachi will submit their M. Phil thesis or apply for conversion from M. Phil/Ph.D after one year from the date of submission topics/synopsis i.e. 13.02.2018.

***ASSISTANT REGISTRAR
B.A.S.R***

12. Perusal of the aforesaid letter, prima-facie shows that the Petitioner was admitted to M. Phil / Ph.D w.e.f. 21.07.2015 as a Research Student in the department of Special Education under the supervision of Dr. Shagufta Shahzadi and the Petitioner was required to complete the formalities of admission by depositing fee etc. At this juncture, we are unable to understand that when the

Petitioner submitted her synopsis to the Board of Advanced Studies and Research in the year 2017 as to why the Respondent University issued aforesaid letter on 21.03.2018 rather it should have been issued immediately enabling the Petitioner to complete the formalities of admission in the year 2017. Record further reflects that Respondent University rectified the aforesaid mistake by declaring the result of the Petitioner, for which she was declared successful in the papers. In the light of forgoing we are of the considered view that the Petitioner cannot be punished on account of error/ mistake committed by the Respondent-University as discussed in the preceding paragraph and finally the same was corrected but the time spent between the period for which the Petitioner cannot be saddled with such delay thus the Respondent-University is under obligation to condone the aforesaid period enabling the Petitioner to complete her study in accordance with law.

13. In view of the above, we are not convinced with the grounds furnished by the Respondent-University for not allowing the right to education to the Petitioner.

14. In view of the findings in the preceding para, we are of the considered view that the education is a fundamental right of the citizens, including the Petitioner and no one can be deprived of such right.

15. In the light of above facts and circumstances of the case, the instant Petition is hereby disposed of in the terms

whereby the Competent Authority of the Respondent-University is directed to hear the Petitioner and to take decision on the following issue or any other issue raised by the Petitioner within a period of one month from the date of receipt of the order passed by this Court:-

a) Whether petitioners M.Phil leading to Ph.D. can be converted after submission of only one chapter of Research?

16. In the meanwhile competent authority of the Respondent-University is directed to allow the Petitioner to attend the classes of Ph.D. upon fulfilling all the formalities of admission on the aforesaid subject, in accordance with law.

17. The instant Petition stands disposed of in the above terms along with the pending application(s).

JUDGE

Karachi
Dated: - 03.09.2018.

JUDGE

Shafi Muhammad /PA