

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD**

**C.P. No.D-2406 of 2019.**

**Present:**

**Mr. Justice Abdul Maalik Gaddi**

**Mr. Justice Adnan-ul-Karim Memon**

Khairullah Qureshi ----- Petitioner

VERSUS

Province of Sindh & others ----- Respondents

**Date of hearing and Decision: 02.09.2020**

Mr. Ishrat Ali Lohar advocate for the petitioners.

Mr. Kamaluddin advocate for respondents No.2, 3 & 4.

Mr. Allah Bachayo Soomro, Additional Advocate General Sindh.

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** The gist of the case of Petitioner is that he was suspended from the post of Project Director (BPS19) Quaid-E-Awam University of Engineering, Science and Technology, Nawabshah (QUEST), against the allegations of misconduct vide notification dated 7.10.2019 issued by respondent-university. Being aggrieved by and dissatisfied with the said notification, petitioner has filed the instant Constitutional Petition before this Court.

2. The allegations against the petitioner in the petition are that he being Project Director of QUEST dishonestly misappropriated the funds by making advance and overpayment to the private contractor M/S Wakeel Enterprises and also failed to complete the other projects under his supervision causing huge loss to the University; he was charged with further allegations of conniving with private by submitting favorable comments in Constitution Petition No. D-4713 of 2019 filed by private contractor before this court and an inquiry was ordered to be conducted by the competent authority of respondent-university under section 6(i) of the Efficiency & Discipline Statues-2003 of Quaid-E-Awam University of Engineering, Science and Technology, Nawabshah.

3. Petitioner has averred that on account of rivalry / reasons, members of the respondent-university always tried to remove him from the post of project Director, QUEST. He has submitted all his defences before the competent

authority of respondent-university and refuted the allegations made against him. It has further been submitted that the suspension of petitioner from service amounts to his temporary removal and, therefore, all sorts of precautions should be taken before suspending him; that the temporary removal of a project Director without affording him an opportunity of hearing is violative of the principles of natural justice; that the contentions of petitioner is that the allegations leveled against him do not in any manner amount to flagrant abuse of his position and he is neither guilty of misconduct in discharging his duties nor he is guilty of disgraceful misconduct; that all the allegations are baseless; that suspension order has been passed for an oblique motive and ulterior considerations. According to the petitioner, the suspension order has penal consequences in as much as if the aforesaid order stands, the petitioner will not be allowed to take part in the projects already undertaken by him and it will shatter his image in the public at large.

4. A reply to the writ the petition has been filed on behalf of the respondent-university, in which, it has been claimed that the petitioner has been involved in the business of illegal and corrupt practices; who while bypassing the rules and regulations of respondent-university issued work orders to his favorite contractors as discussed supra. Thus, according to the respondents, there was a *prima facie* case against the petitioner to proceed against him under section 6(i) of the Efficiency & Discipline Statutes-2003 of QUEST; According to the respondents, in such matters, no pre-decision at the hearing is essential; therefore, it cannot be said that he has been taken by surprise; According to the respondents, the proceedings have commenced against the petitioner; from the date, when show cause notice was issued to him as regards charges leveled against him, the said exercise shall be completed within a reasonable time as per law; It has been contended by the respondents that as per Efficiency & Discipline Statutes-2003 of QUEST, the suspension can be ordered at the commencement of the proceedings; Thus, it has been claimed that no pre-decisional hearing is necessary for such matters and all actions are valid; that the inquiry has been conducted as per statutes, 2003 and the petitioner has deliberately avoided his appearance as well as for providing the relevant record as discussed supra; that the petitioner has been creating hindrance in production of record, therefore, the competent authority of respondent-university ordered for placing him under suspension, as there is every likelihood of fudging and tampering of the record on the part of the petitioner, therefore, he was suspended vide notification dated 7.10. 2019.

5. Mr. Ishrat Ali Lohar learned counsel for the petitioner contended that the suspension order has not been issued by the competent authority as defined under the Regulations of Respondent-university; as such the suspension order of the Petitioner is nullity in the eyes of law. He referred to various provisions of statutes of respondent-university. It is further contended by him that impugned notification dated 7.10.2019 of the suspension of the petitioner by the respondent-university is unlawful and argued that the Respondent-university has completely ignored the Rules & Regulations and issued the impugned notification which is based on malafide intention. According to him the syndicate of respondent-university is the competent authority to suspend the Petitioner and initiate enquiry proceedings against him; that the alleged inquiry has not been conducted by respondents against the petitioner yet; besides, the proceedings against the petitioner if any is void ab-initio and nullity in the eye of law. He, therefore, prayed for allowing the instant petition.

6. Mr. Kamaluddin learned counsel for the respondent-university states that the enquiry proceedings have been initiated against Petitioner on the charges of corruption and in law he is required to submit his reply to the said charges. He further argued that suspension is not a penalty but an intervening arrangement till the veracity of charges against a delinquent official is ascertained. According to him, against such intervening arrangement the petition is not maintainable because in case of any adverse action as a result of the enquiry, a right of appeal is provided to the aggrieved official, and therefore in presence of such right of appeal, the petition would be incompetent. He further stressed that since the petition is related to the issue of suspension of the Petitioner, which falls within the ambit of terms and conditions of service, the same neither can be agitated in the constitutional jurisdiction, nor could be investigated by this Court in writ jurisdiction.

7. Having heard the parties in the matter, the question, which agitates the controversy at the hand, could be reduced as to whether the petitioner can be suspended from the post of project Director (BPS19) Quaid-e-Awam University of Engineering, Science and Technology, Nawabshah, pending, allegations of misconduct against him?

8. We have also gone through the impugned notification dated 7.10.2019, and an excerpt of the same is reproduced here for the sake of convenience:

## NOTIFICATION

Pending approval of the Syndicate, in exercise of powers conferred in him Under Section 28(iv), of the Quaid-e-Awam University of Engineering, Science and Technology, Nawabshah Act - 1996 (as amended from time to time up to May, 2018), the Vice Chancellor, QUEST, Nawabshah has been pleased to suspend Mr. Khairullah Qureshi, Project Director (BPS-19), QUEST, Nawabshah Under Section 6(i) of the Efficiency and Discipline Statutes-2003 of Quaid-e-Awam University of Engineering, Science and Technology, Nawabshah with immediate effect initially filed 90 days, on account of following allegations:-

- i) Advance and overpayment to the contractor M/s Wakeel Enterprises and also not completed other projects under his supervision causing huge loss to the institution.
- ii) Committing misconduct by joining hands with M/s Wakeel Enterprises and acting against the interest of university by submitting comments to the Addl: Advocate General Sindh, Karachi, in C.P. No. D-4713 / 2019 filed by M/s Wakeel Enterprises, pending in the High Court of Sindh at Karachi.

2. Consequent upon his suspension, Mr. Khairullah Qureshi is directed to handover the charge of Project Director, QUEST, Nawabshah to Mr. Tanveer Aslam Memon, Director (Works), QUEST, Nawabshah with immediate effect, who is further directed to defend C.P. No. D-4713 / 2019 M/s Wakeel Enterprises v. Sindh Public Procurement Regulatory Authority and others pending in the High Court of Sindh at Karachi

REGISTRAR  
QUEST, NAWABSHAH

9. A bare perusal of impugned notification shows that the Petitioner was suspended on the charges of corruption by respondent-university in exercise of power conferred under Efficiency & Discipline Statues-2003 of QUEST.

10. Before dilating upon the fact as to whether respondent-university is competent to suspend the Petitioner or not; in the first instance we would like to consider whether the Petitioner can challenge his suspension and subsequent initiation of inquiry proceedings against him in the constitutional petition.

11. In law, suspension is not defined as a punishment. The suspension does not finally determine the matter. Its sole purpose is that the persons, against whom severe allegations of misconduct, flagrant abuse of powers and disgraceful conduct is leveled, may be restrained from causing further damage to the finances of the institution. Here, the suspension order is

absolutely interim in character and does not attain any finality. Against the adverse result of the inquiry, if any, the Petitioner will have the remedy of appeal and in presence of such adequate remedy; this Court at this juncture will not step in to declare the suspension of the Petitioner illegal and void on the ground that Petitioner of suspension has not been passed by the competent authority. More so, the Petitioner's objection on his suspension is technical and procedural. The Petitioner is admittedly facing the allegations of corruption and in such circumstances, we would not like to exercise our discretion in his favor and thwart the whole process of inquiry against him and set-aside his suspension on any of the technical ground, which will amount to interfering in the right of the authority to enquire into allegations against the Petitioner. The Petitioner has not been able to show; in view of above facts and circumstances, as to how he is prejudiced by his suspension.

12. To conclude the matter, we are of the considered view that the Petitioner has to overcome the clog of pendency of disciplinary proceedings against him, if not finalized earlier; the disciplinary proceedings shall be finalized within a period of three months from the date of decision of this Court. However it is made clear that during suspension period, the petitioner is entitled for his salary.

13. In the light of above discussion, the instant Petition merits no consideration, the same is accordingly dismissed along-with listed application(s).

14. These are the reasons of our short order dated 02.9.2020 passed in the open Court whereby this petition was dismissed along with listed applications.

15. Let a copy of this order be communicated to the competent authority of respondents for information and compliance.

JUDGE

JUDGE