

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.

C. P. No. D — 1770 of 2019.

DATE	ORDER WITH SIGNATURE OF JUDGE[S]
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Present.
Mr. Justice Muhammad Shafi Siddiqui.
Mr. Justice Irshad Ali Shah.

Date of Hearing: 17.05.2022.
Date of order: 24.05.2022.

Petitioner: Rahim Bux through Mr. Zulfiqar Ali Shah associate of Syed Muhammad Soulat Rizvi Advocate for petitioner.

Respondent: Mehran University of Engineering & Technology through Mr. Abdullah Khan Leghari Advocate for respondent / University.

Mr. Ayaz Ali Rajpar A.A.G. Sindh.

MUHAMMAD SHAFI SIDDIQUI, J.- Petitioner was a lecturer of the Cadet College Pitaro in the Mathematics Department since 1993 and he was appointed on regular basis against the post of lecturer since 01.10.1998. Subject matter of this petition was a show cause notice that ended up in his dismissal from service, the petitioner preferred an appeal against the order of Syndicate before the competent authority i.e. Chancellor /worthy Chief Minister and a summary was floated in the shape of an appeal against the dismissal order dated 19.10.2017. The summary of the appeal suggested that the impugned order of dismissal of the petitioner from service and the consequential action were invalid, void, ab initio and liable to be set-aside and the appeal be allowed accordingly. The summary was placed before the competent authority i.e. worthy Chief Minister / Chancellor of the University, in accordance with serial No.2 of the Appendix of Statute of Mehran University of Engineering and Technology. Hence an order solicited in terms of the ibid Statute as amended as Sindh Universities and Institutes Laws (Amendment) Act of 2018. Para-7 and 8 of summary was considered and the worthy Chief Minister ordered for an inquiry. Since then, neither the petitioner was restored to his original status as being lecturer nor de novo inquiry was initiated.

2. Respondents in reply submitted that since the petitioner has been dismissed from service, there is no possibility or probability of a de novo inquiry. They claimed that since he was dismissed from service on account of breach of a bond as well as abscondence from duties, he cannot be restored. It is their case that Chancellor never restored petitioner.

3. We have heard the learned counsel and perused the material available on record.

4. Impliedly and without any doubt when a summary was placed before the worthy Chief Minister who is an authority concerned, he passed an order for a formal inquiry on 18.2.2019. Para-7 & 8 of the summary in the shape of an appeal against the impugned order of dismissal provides as under:-

“7. In view of above, appraisal of the case, the impugned order of dismissal from service and the consequential action seem to be invalid abinitio and liable to be set aside. The appeal may accordingly be allowed.

8. The Chief Minister Sindh being the appellate authority against the order of the Syndicate of the University in accordance with the serial No.2 of the Appendix at Annex-III attached to Statute-14 of the MUET Statutes as amended by the Sindh Universities and Institutes Laws (Amendment) Act, 2018 may approve para-7 above.”

5. In consideration of facts of the summary as forwarded, a formal inquiry was ordered to be conducted. That order of de novo inquiry could have been passed only when authority was convinced that decision of dismissal was neither lawful and nor based on legitimate findings and unless such finding of facts are unearthed through de novo inquiry, the order of dismissal would be meaningless. De novo inquiry in fact impliedly means that the order was set-aside otherwise there was no wisdom or logic behind such formal inquiry.

6. We therefore, allow this petition to the extent that his dismissal order has been set-aside by virtue of a fresh/formal order for inquiry, which in fact is a de novo inquiry and such inquiry could not have been conducted against a dismissed employee. The petitioner cannot be penalized on account of pendency of inquiry and petitioner stood restored by virtue of worthy Chancellor's order of fresh inquiry.

JUDGE

JUDGE

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