

ORDER SHEET

THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANO

C. P No. D-741 of 2022

Before:

Justice Adnan-ul-Karim Memon
Justice Abdul Mobeen Lakho

The petitioner

Ali Jan Jatoi,
Through Mr. Zulfiqar Ali Channa,
advocate

Respondents

Province of Sindh & others

Respondents No.4,6,7 & 8

Principal IBA Public School, Larkana
Nazir Hussain Chang & others
Through Mr. Barkat Ali J. Balouch, Advocate

Date of hearing & order: 27-07-2022

.....

ORDER

Adnan-ul-Karim Memon, J. Through instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, the petitioner has prayed that the act of respondent No.4/Principal Institute of Public Administration Public School Larkana (IBAPSL) disallowing/ousting the petitioner from attending school/classes be declared as illegal.

2. At the outset we asked the learned counsel to satisfy about the maintainability of the instant petition.

3. Mr. Zulfiqar Ali Channa learned Counsel for the petitioner replied to the query and submitted that the matter relates to seeking education therefore, the same falls within the fundamental rights as envisaged in various Articles of the Constitution, therefore, this petition is maintainable and can be heard and decided on merits.

4. On merits he has submitted that the school administration has assigned no reason to take such a drastic action against the student thereby causing immense damage to the career of the student. Per learned counsel School leaving certificate issued by the school administration does show that the student intends to get an education somewhere else, which is not the case rather he has been

expelled from the school on account of a certain action on the part of the father of the student. Per learned counsel, the petitioner-mother has moved an application to the competent authority for reversal of the decision, however; nothing has been done to date. Learned counsel further added that two separate FIRs have been registered against the father of the student vide Crime No.25 of 2022 registered for offenses under section 324,506/2, 148,149 PPC and 26 of 2022, under section 506/2, 504 PPC with Police Station, Sachal, Larkana.; that this is apathy on the part of Principal, Public School Larkana. He emphasized that seeking education is a fundamental right of the student, therefore, the Principal Public School, Larkana has no authority to pass such a drastic order against the student on account of something else as allegedly done by his father for which he cannot be held responsible. In his plea, the student pleaded that the school administration cannot expel him permanently on the account of alleged misconduct on his part, which alleged action has never proved, neither the inquiry was conducted nor he was served with show cause notice thus he was condemned unheard on the alleged misconduct.

5. Mr. Barkat Ali J. Balouch learned counsel representing the respondent-IBAPSL has submitted that the student was kicked out of school for using foul play; and, his father used foul language against teachers, as per the council, raising children better instead of pointing fingers at teachers. He further submitted that if this Court decides in the favour of the student then he will go and tell the school that the court has barred the teachers from scolding him. He added that a teacher shouldn't be considered an enemy for stopping the student from doing a bad thing. He next submitted that schools were established to discipline kids; otherwise, they could have been homeschooled.

6. We have heard the learned counsel for the parties on the maintainability of the instant petition.

7. Touching the question of maintainability of the instant petition, we have been informed that Public School Larkana (PSL) is not a statutory body, but a private institute, established in the year 1985, and now has been handed over to the Management of Sukkur IBA to provide quality education and continuous human resource management support for improving the teaching-learning practices of Public School Larkana on optimum. In the present proceedings, the petitioner-mother has assailed the expulsion of the student namely Ali Jan Jatoy, from a private school as discussed supra. In principle, this Court in its jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan can annul an "order" or a "Policy" framed by the Executive, if it is violative of the

"Constitution", "law" or is "product of mala fides". The Honorable Supreme Court has held in its various pronouncements that the Court must confine itself to the question of legality and the concern should be confined to whether a decision-making authority exceeded its powers; committed an error of law; committed a breach of the rules of natural justice; reached a decision that no reasonable tribunal would have reached, or abused its powers. Therefore, it is not for the Court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with how those decisions have been taken. The extent of the duty to act fairly will vary from case to case.

8. Before parting with this order, we may observe that allegations and counter allegations cannot be determined in petition. Besides that primarily, there are three grounds upon which an administrative action is subject to control by judicial review; namely, illegality which means the decision maker must understand correctly the law that regulates his decision-making power and must give effect to it; irrationality which means unreasonableness; and procedural impropriety. These are only the broad grounds but it does not rule out the addition of further grounds in course of time.

9. The judicial review is intended to prevent arbitrariness or favoritism and it is exercised in the larger public interest or if it is brought to the notice of the Court that in the matter of award of a contract power has been exercised for any collateral purpose. In the absence of any clear conclusion as to the abuse of such powers of discipline, the Courts will not interfere with the rules adopted. Within reasonable limits, the power of the Head of the Institution is plenary and complete and unless such rules and regulations are found to be unauthorized or palpably unreasonable, the Courts will not annul or revise them nor will the Courts afford relief in the course of enforcement of such rules, unless those whose duty is to enforce them arbitrarily and for extraneous considerations. The wisdom of the policy manifested by the rules and regulations as pointed out by the learned counsel for the respondents is a matter within the discretion of the school authorities and beyond interference by the Courts and with which except in extraordinary cases, the Courts will not interfere.

10. As regards the right of hearing, the law is settled and stated to be that a school cannot dismiss the student except on a hearing under a lawful form of procedure, giving him the notice of the charge and an opportunity to hear the testimony against him, to question witnesses, and to rebut the evidence. While the student is at liberty to terminate his relationship with the Institution at any time.

11. The power to expel a student is an attribute of the governance of the educational institution. Again say that in principle, a school administration cannot arbitrarily dismiss a student, for the reason that a contract comes into existence because of the admission of the student and by payment of requisite fee between the student and the school, however, containing two implied conditions : (1) that no student shall be arbitrarily expelled therefrom; and (2) that the student will submit himself to reasonable rules and regulations for the breach of which, in a proper case, he may be expelled, and that he will not be guilty of such misconduct as will be subversive of the discipline of the School. Where the authorities of a school, act with discretion in expelling a student for violation of a reasonable rule or regulation, their action will not be interfered with or set aside by the Courts until and unless it is shown that the same is based on malafide intention. Besides, only where it is clear that such action concerning a student has not been an honest exercise of discretion, or has arisen from some motive extraneous to the purposes committed to that discretion, the Courts may be called upon for relief.

12. Going ahead further, the power to expel or suspend a student for violation of the lawful regulations and even in the absence of any powers vested by a statute, there is an inherent or implied power in the educational institution to promulgate the school discipline. Express statutory authority to suspend or expel a student does not alter the relative rights and duties of the school authorities and pupils. Such statutes merely give the authorities the power already inherent in them and leave them subject to limitations. Although the discretion vested in the school authorities in this respect is very broad, they will not be permitted to act arbitrarily. Every Principal or Teacher in charge of a college or school must maintain discipline and good order therein and require all pupils a proper performance of their duties.

13. To enable such a teacher or principal to discharge his duties effectively, he must necessarily have the power to enforce the discipline. Thus it follows that he must have the power to suspend or expel a pupil for any breach of discipline or for any misconduct injurious to the good administration of the school or morals of other pupils whether explicitly covered by rules or not. However, there is no doubt that when the charges are serious enough, the student must be given a fair opportunity. But that would again depend upon the circumstances in each case.

14. In our view the position of a Principal IBA Public School Larkana is that of a parent and therefore it is certainly inherent within the scope of the authority of

the parent to punish a ward and not necessarily after observing a detailed inquiry. However the petitioner is at liberty to approach the proper forum if advised to him.

15. Since the petitioner has failed to point out infringement of any legal right, violation of the constitution, or malafide on the part of the Principal IBA Public School Larkana, while imposing the impugned restriction upon the student, warranting interference by this Court in its Constitutional jurisdiction, therefore, the petition in hand, being devoid of any merits, stands dismissed along with the pending application(s).

J U D G E

J U D G E