

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon

CPNo.D-1813 of 2022

Naveed Hussain Tunio

Petitioner: In person

Respondent Nos.1 to 4: Through Mr. Fayaz Ali Metlo, advocate

Respondent No.5: Through Mr. Abdul Jalil Zubedi, AAG

Date of hearing
& Decision: 13.01.2023.

ORDER

ADNAN-UL-KARIM MEMON, J. – Through the captioned petition, the petitioner is seeking annulment of the appellate order dated 23.06.2021 passed by the respondent university whereby his appeal against the termination from service order dated 18.03.2021 was maintained. Petitioner seeks his reinstatement as security Guard (BPS-2) in the Sindh Madressatul Islam University (‘SMIU’), *inter-alia*, on the ground that no inquiry proceedings were conducted under the Sindh Madressatul Islam University Employees (Efficiency and Discipline) Statutes, without recording the evidence of the parties on oath and opportunity of cross-examination of the witnesses to the petitioner and that procedure has not been followed in its letter and spirit; besides the witnesses were not examined on the alleged charges on oath, as provided under the law, which was necessary to impose a major penalty upon the petitioner.

2. Petitioner present in person has submitted that he was initially appointed as Security Guard BPS-2, on a contract basis, in the respondent-University and his services were regularized vide office order dated 11.09.2019, however, his services were dispensed with by the respondent-university on the ground of alleged misconduct on a petty issue of moving the direction of CCTV camera installed at the entrance gate of the university near Sunni Masjid, for which he preferred a departmental appeal, which has now been decided vide order dated 23.06.2021. As per the petitioner, he was not provided a fair opportunity to clear

his position in terms of the principle of natural justice, therefore, he approached this court by filing CPNo.D-3151/2021 which was disposed of vide order dated 09.03.2022 on the premise that vires of appellate order dated 23.06.2021 issued by the Director Human Resources of the respondent University could not be called in question in the aforesaid matter, however, the petitioner has assailed the appellate order through and he reiterated his submissions as recorded in the order dated 09.03.2022 passed by this court. In support of his submissions, he relied upon the cases of the Government of Khyber Pakhtunkhwa through Secretary Agriculture, Livestock and Cooperative Department Peshawar and others v. Saeed-ul-Hassan and others, 2021 SCMR 1376, Pakistan State Oil Company Ltd. v. M. Akram Khan and others, 2004 PLC (CS) 992, Dr. Aamna Saleem Khan v. National University of Sciences and Technology (NUST), Islamabad through Rector and 4 others, 2021 PLC (CS) 212, Shahid Iqbal v. Government of Khyber Pakhtunkhwa through Chief Secretary and Secretary to Government of Khyber Pakhtunkhwa, Industries and Technical Education Department, Peshawar, 2021 PLC (CS) 711, and Zahid Ali and 7 others v. District and Sessions Judge, Nankana Sahib and another, 2012 PLC (CS) 839. An excerpt of the appellate order dated 23.06.2021 impugned by the petitioner is reproduced as under:

“SUBJECT: REPRESENTATION/APPEAL AGAINST ORDER NO. SMIU/HRM/TER- NHT/2021/134 DATED 18-03-2021

Whereas, on 7th March 2021, you left your place of duty for half an hour without informing anyone and changed position of CCTV camera installed at the entrance gate of the university near Sunny Masjid which is a serious security breach. The CCTV monitoring staff had confirmed the said act from CCTV footage and you were also called in Registrar Office where you were given opportunity to explain about the incident but failed to justify. The conduct proved from CCTV footage and other evidence, being in serious conflict with very duty of a security guard, amounts to serious misconduct.

2. Keeping in view the safety and security of the institution and in view of the facts available against your suspicious activities, your probationary service was dispensed with through the impugned order NO. SMIU/HRM/TER-NHT/2021/134 dated 18-03-2021 under the provisions of Clause 11(2) (C) of the Sindh Madressatul Islam University (Scales of Pay and Other Terms Conditions of Service) Statutes, 2014.

3. Accordingly, on account of serious security breach and your suspicious activities, the competent authority/appellate authority has been pleased to dismiss the representation/appeal.

4. This is issued with approval of the competent authority/appellate authority.”

3. Learned counsel for the respondent has submitted that the contract of service, under which the petitioner was appointed, specifically provided that his appointment shall be liable to termination without assigning any reason. Such a contract, in our view, does not create any vested right in the appointee to make him entitled to notice before termination of the contract of service. Since the services of the petitioner were governed by the terms of the contract that he executed at the time he entered the employment, his services could be terminated by the terms contained in the service contract. In support of his contentions, he placed reliance upon the cases of Rizwana Altaf v. Chief Justice, High Court of Sindh through Registrar, 2020 SCMR 1401, the University of Peshawar and another v. Syed Bashir Ahmed, PLD 1970 SC 402, Abdul Rashid Khan v. Registrar, Bahauddin Zakaria University Multan and others, 2011 SCMR 944, and Maj ® Syed Muhammad Tanveer Abbas and others v. Federation of Pakistan through Secretary Ministry of Interior, Islamabad and others, 2020 PLC (CS) 67.

4. We have heard the petitioner who is present in person as well as learned counsel representing the respondents and perused the record with his assistance.

5. There is no doubt that if a person is employed on a contract basis and if the terms of employment provide the manner of termination of his services, the same can be terminated in terms thereof. However, if a person is to be condemned for misconduct, in that event, even if he is a temporary employee or a person employed on a contract basis or a probationer, he is entitled to a fair opportunity to clear his position, which means that there should be a regular inquiry in terms of the Efficiency and Discipline Rules before condemning him for the alleged misconduct.

6. Thus it is clear that if the termination during the period of probation is not for misconduct, then there is no requirement for providing any reason or proceedings against terminated employees through a regular inquiry. However, in essence, there exists no right during the probationary period to claim protection under the maxim "*audi alteram partem*" for issuance of a show-cause notice before any termination can take effect as it is against the spirit and true meaning of putting an employee on probation. The aforesaid exception is well-established as the employer has a right to continue with the probationer or to

confirm him in service under the relevant statute. In the present case, the record does not reflect that the petitioner was a confirmed employee of the respondent university.

7. We are of the view that the period of probation provides equal opportunity to the employer and employee to decide whether they would like to continue with the engagement or not. This being the spirit of probation, the same cannot be termed or deemed as discriminatory, provided it is fixed for a reasonable period. It may be observed that only after successful and satisfactory completion of the probationary period according to both the stakeholders, the service of a probationer could be considered for confirmation.

8. As regards the principle of natural justice enshrined in the maxim *audi alteram partem*, suffice it to say that a probationer has no vested right to continue in service more particularly if during his/her probationary period if he/she is found guilty of security lapse and/or misconduct, therefore, his services can be terminated without a show-cause notice and the question of violation of the principles of *audi alteram partem* does not exist, except in case of malafides, however that factum has not been established through documentary evidence to the effect that there was/is malafide intention on the part of respondent university for the simple reason that the respondents installed Security Cameras on the main gate and it was the duty of the Security Guard to look into the security affairs and if he fails to abide by the security duties he could be found negligent on the part as his sole duty was to ensure full proof security of the area where he was posted, therefore, at this stage this Court is not in a position to reach the conclusion that there was no security lapse on the part of petitioner and since the respondents found the petitioner guilty of gross negligence, as such no could be done on our part to go through the intricacies of the matter so far as security issue is concerned. Because of the above, the impugned orders (original/appellate) cannot be termed as mala fide by any standard.

9. The departmental appeal filed by the petitioner has been rejected by the respondent university vide letter dated 23.6.2021, therefore, we are not inclined to issue the writ of mandamus against the respondent university, thus, we are not in a position to impose the petitioner on the cadre strength of the respondents on the analogy put forward by the petitioner, however, he is at liberty to approach

the proper forum if he finds any evidence in his hand that the action of the respondent university was based on any malafide intention to remove him from the subject post and this court cannot sort out the allegations and counter allegations. The case laws cited by the petitioner are not supporting his case so far as termination of probation is concerned.

10. This petition stands dismissed with no order as to costs.

JUDGE

JUDGE

Nadir*