

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

C.P. No. D- 971 of 2020

Before:

Mr. Justice Mehmood A. Khan

Mr. Justice Adnan-ul-Karim Memon

Ali Asghar

Petitioner

VERSUS

Vice Chancellor Quaid-e-Awan
University & others

Respondents

Dates of hearing: 16.08.2022

Date of decision: 16.08.2022

Mr. Khadim Hussain Soomro, Advocate for petitioner

Mr. Kamaluddin, Advocate for respondents 1 and 2

Mr. Rafiq Ahmed Dahri, Asstt: A.G.

ORDER

ADNAN-UL-KARIM MEMON, J.- Through the instant petition, the petitioner has assailed the vires of his transfer and posting order dated 31.8.2020 issued by the respondent-Quaid-e Awam University of Engineering Science and Technology Nawabshah (QUEST), inter-alia on the ground that the same has been issued in complete violation of the QUEST Act,1996.

2. Mr. Khadim Hussain Soomro learned counsel for the petitioner, has submitted that the respondent university has transferred the services petitioner from QUEST Nawabshah to QUEST Campus Larkana in violation of QUEST Act,1996, as the Act does not authorize the competent authority of respondent-university. He further pointed out that there was no justification provided in the transfer order to post the petitioner in QUEST Campus Larkana as the syndicate of the university had already recommended Lecturer BPS-18, at QUEST Larkana Campus on the same post, and instead, the petitioner has been transferred to QUEST Campus Larkana. He next argued that the wife of the petitioner is posted as Lecturer in Government Girls Degree College at Sanghar and the petitioner presently residing with his family at Sanghar; and, it is very hard for him to outback from Sanghar to Larkana; besides the petitioner is also looking after his parents who are residing at District Naushehro Feroz. He emphasized that the

petitioner's right has been prejudiced and he has been kept waiting without any legal justification and the respondent university has illegally issued the transfer order of the petitioner and withheld his salary, with effect from 2020.

3. Mr. Kamaluddin, learned Counsel for Respondent / University has objected to the maintainability of this Petition on the ground that there are no statutory rules of service; that Respondent-university was / is competent to transfer the services of the petitioner to Campus Larkana, in exigency of service; that in law, there is no restriction as to the authority of the Vice Chancellor to transfer any Assistant Professor of the university. He contended that the issues raised by the counsel for Petitioner involve factual controversy, which requires evidence; therefore, the Constitutional Jurisdiction of this Court cannot be invoked. He emphasized that `writ of mandamus is not available to him against the decision of Vice-chancellor/ Syndicate`. He stressed that transfer and posting matters of respondent university could not be looked into by this Court under Article 199 of the Constitution. Learned counsel further pointed out that Hon'ble Supreme Court of Pakistan has already held in its various pronouncements that inference in the internal governance and affairs of the educational institutions are not called for by this Court under Article 199 of the Constitution on the premise that university authorities possess technical expertise and experience of the educational institutions; that the petitioner was serviced with show cause notice under section 3(e), 4(a), and 4(b) of Quaid-e-Awam University of Engineering, Science & Technology, Nawabshah (Efficiency & Discipline) Statutes 2003 and was directed to join his duties to QUEST Campus Larkana, but he failed to comply with the orders of the Competent Authority and has chosen to remain absent from duty. He lastly prayed that since the administrative and policy matters of the universities are under attack, therefore, until and unless there is any violation of any fundamental right or any law, the indulgence of this Court is not required. He lastly submitted that the petitioner is not entitled to any relief as he has not availed the remedy under the university laws, and therefore, the Petition is liable to be dismissed.

4. While exercising the right of rebuttal, learned counsel for the petitioner argued that the transfer order issued by the respondent-vice chancellor has not been approved by the syndicate yet, in violation of the university laws. Learned counsel referred to the grounds agitated by him in the memo of petition and submitted that this Court can come to rescue the petitioner on the premise that as per terms of his appointment order, which specifically provide that the petitioner has to work at Quaid-e-Awam University of Engineering, Science & Technology, Nawabshah and not Campus Larkana. Learned counsel further argued that the posting order was issued totally in disregard of relevant provisions of law and the wedlock policy of the Government. The transfer order was issued with mala fide intention only to victimize the petitioner and to disturb his peace of mind and his entire family. The transfer of the petitioner from Quaid-e-Awam University of Engineering, Science & Technology, Nawabshah to QUEST Campus Larkana is neither in the public interest nor for any valid reason. Under Section 24-A of the General Clauses Act, the respondent university was bound to communicate to the

petitioner the reasons for deviation from the wedlock policy of the Government of Pakistan. He prayed for allowing the instant petition. At this juncture, we would also like to observe that no doubt in normal circumstances, a Public servant cannot claim any particular post as a vested right but in this case, the petitioner is not claiming any vested right against any particular post and agitated various grounds including, the implementation of wedlock policy in his case by the respondent-university, which was introduced keeping in view the socio-economic problems and hardships faced by husbands and wives in Government Service due to posting at different stations. Even this facility was extended through Office Memorandum to such class of Government servants also, to be able to serve at the place of residence of their spouses, irrespective of whether such spouses are employed with the Government, private sector, or even unemployed.

5. We have heard all the learned Counsel for the parties and perused the record.

6. First we would like to address the objection regarding the maintainability of this Petition. The Quaid-e-Awam University of Engineering, Science and Technology (QUEST), Nawabshah is a Public Sector University, in terms of the QUEST, Act, 1996; besides, respondent-University is a Body Corporate performing functions in connection with the affairs of Province. The functions of University have an element of Public Authority hence; the same is amenable to Writ Jurisdiction. In this view of the matter, the status of Respondent-University can ordinarily be regarded as a "person" performing functions in connection with the affairs of Province within the meaning of Article 199 (1) (a) (ii) read with Article 199 (5) of the Constitution. The test laid down by the Honorable Supreme Court in Paragraph 50 of the judgment rendered in the case of *Pakistan Defense Housing Authority & others vs. Lt. Col. Syed Jawaid Ahmed* (2013 SCMR 1707) is fully applicable to the instant Petition, therefore, this Petition is maintainable under Article 199(5) of the Constitution and the objection in this regard is hereby overruled. As far as the objection of learned counsel for respondent-University on the issue of statutory and non-statutory rules is concerned, in similar circumstances in respect of statutory or non-statutory Rules of the University, the Hon'ble Supreme Court of Pakistan has taken into consideration the above-referred proposition in the case of *Rector National University of Science and Technology (NUST) Islamabad and others v. Driver Muhammad Akhter* rendered in **Civil Appeal No.495 of 2010 decided on 28.04.2011.**

7. It is also settled law that Courts ordinarily refrain from interfering in the policymaking domain of the Executive of the Public Sector Universities, until and unless the same offends the fundamental rights of the parties. More particularly, in the light of the ratio of the latest judgment of the Honorable Supreme Court in the case of *Khyber Medical University, etc. vs. Aimal Khan, etc.* **vide order dated 4.1.2022** passed in **Civil Petition No.3429 of 2021.** However, in the present case, the petitioner claims immunity in the terms of his appointment letter, which explicitly show that he was simply appointed as Assistant Professor-BS-19 (English) in the Quaid-e-Awam University of Engineering, Science and Technology, Nawabshah, and not for Campus, Larkana.

Prima-facie the recommendation of Vice Chancellor to exercise emergency powers under the Act, 1996 to transfer the petitioner from the main University to Campus is not binding upon the Syndicate. However, in the present case the transfer order of the petitioner has not been placed before the Syndicate for approval, which is apathy on the part of Vice-chancellor despite lapse of two years. On the aforesaid proposition, we are guided by the decision of the Honorable Supreme Court in the case of *Dr. Habibullah (PLD 1973 SC 144)*.

8. We have found that prima-facie there is a manifest discrepancy in the decision of Vice Chancellor requiring our attention. Even we see substance in the submission of petitioner for the reason that he was required to serve in the respondent university and not Campus in terms of appointment letter as discussed supra. As petitioner could not be posted out to other Campus under the garb of exigencies of services, as such, the transfer order of petitioner could neither be justified on the plane of policy directive of respondent-university nor the same was / is sustainable in terms of section 28 of (iv) and (xi) of the Act, 1996.

9. As a result of the above discussion, this petition is allowed in the terms that the impugned transfer order dated 31.8.2020 issued by the respondent-Quaid-e Awam University of Engineering Science and Technology Nawabshah is set aside for the reasons discussed in the preceding paragraphs; pending applications are also disposed of accordingly. In the meanwhile issue of salary of the petitioner for intervening period shall be deposited by the competent authority within two weeks.

10. These are the reasons for our short order dated 16.8.2022, whereby we have allowed the instant petition.

JUDGE

JUDGE