

**ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P.No.D-6209 of 2016**

Date

Order .with signature of Judge

Present:-**Mr. Justice Muhammad Iqbal Kalhoro**
Mr. Justice Adnan-ul-Karim Memon

HAIDER ALI PETITIONER

VERSUS

NED UNIVERSITY OF ENGINEERING & TECHNOLOGY
& OTHERS RESPONDENTS

Date of hearing:- 11.05.2017

Date of detailed order:- 19.05.2017

Mr. Zahid Hussain, Advocate for the petitioner

Mr. Khalid Javed, Advocate for the respondents No.1 & 2

Mr. Abdul Jalil Zubedi, AAG

ORDER

MUHAMMAD IQBAL KALHORO, J. Petitioner presently is in Saudi Arabia and has filed instant petition through his attorney. His case is that he was appointed as Lecturer (BPS-18) by respondent No.1 on temporary basis and was subsequently confirmed on the said post in December, 2009. In due course of time, the petitioner was offered a full funded scholarship from King Fahad University of Petroleum and Minerals (KFUPM), Kingdom of Saudi Arabia and in pursuance of which the he proceeded to Saudi Arabia after completing all formalities including giving an undertaking dated **16.01.2002** to the effect that after successful completion of the said program, he shall serve respondent-University for three years failing which he shall pay to the respondent-University the total amount given to him as leave salary. The petitioner, however, after completion of his Ph.D tendered his resignation on **23.09.2015** through e-mail to the respondent-University but in response the petitioner was reminded of his above stated undertaking vide e-mail dated **15.12.2015**. The petitioner answered the same by taking the plea that he had not received any amount of scholarship or salary during his Ph.D, nor any leave salary was paid to him, therefore, he was not required to pay any amount to the University, and again requested for acceptance of his resignation. Subsequently, the petitioner was served with a show-cause notice through e-mail dated **28.03.2016** for alleged misconduct, which petitioner replied and requested respondent-University to issue him NOC to visit Pakistan to attend his marriage ceremony, etc. But the respondent-University demanded from him to pay amount equivalent to salary of three years. It is in the back drop of such facts, the petitioner has prayed for following reliefs:-

- “1) *To declare that the demand of the Respondents to re-pay the amount equivalent to three (03) years leave salary is illegal void ab initio and without lawful authority.*
- 2) *To direct the Respondents to issue NOC in favour of the Petitioner.*
- 3) *To restrain the Respondents from making any further claim / demand against the Petitioner.*
- 4) *Grant such other relief as may be deemed necessary in the circumstances of the present Petition.*
- 5) *Grant cost of the petition.”*

2. On **09.12.2016** when this petition was taken up for the first time, this Court issued notice to the respondents subject to maintainability of the petition. When Counsel for the respondent University filed power on **11.05.2017**, he showed his readiness to argue the matter with reference to the said point and also on merits, we heard the parties and dismissed the petition in terms of our short order dated **11.05.2017**. The following are the reasons in support thereof.

3. Learned Counsel for the petitioner Mr. Zahid Hussain contended that demand of the respondent University to repay the amount equivalent to three years was without lawful authority and illegal; that respondent University's failure to issue NOC was violative of Article 14, 10-A, 15, 18, and 24 of the Constitution; that respondent-University could not claim repayment of leave salary as not a single penny was paid to the petitioner on that account by the respondent University; that undertaking to serve the University for three years after completion of Ph. D program was alternate to payment of total amount given to the petitioner as leave salary, but since no amount in this connection was given by the University, the same could not have been demanded from the petitioner.

4. On the other hand, Mr. Khalid Javed, learned counsel for the respondent University argued that petition was not maintainable against the show-cause notice as yet no adverse order was passed against the petitioner; that petitioner has only been called upon to show cause against proposed action; that against the final order, if it is against the petitioner, he would have a remedy before the proper forum, therefore, filing the petition before the proposed adverse action was not maintainable. In support of his contentions, learned counsel relied upon the case laws reported in 2012 PLC (C.S) 1366, 1998 PLC (C.S) 607 and 2015 PLC (C.S) 1503.

5. We have considered the submissions of the parties and perused the material available on record including the case laws cited at the bar. It appears that bone of contention between the parties is the undertaking given by the

petitioner to the respondent-University at the time of obtaining no objection from it for pursuing his Ph.D program in Saudi Arabia which is to the effect that after the completion of such program he would serve the University for three years, failing which, he shall pay to the University total amount given to him as leave salary. The claim of the petitioner is that he has not been given any amount in lieu of leave salary, therefore, he is not required to pay any amount to the University, and that being the position the show-cause notice issued to him is illegal *void ab initio*. We have read show cause notice (page-85 of the file), it reads that the petitioner was granted study leave (Ex-Pakistan) with pay for pursuing Ph.D at King Fahad University of Petroleum and Minerals (KFUPM), Saudi Arabia for a period of one year w.e.f. **23.01.2012** to **22.01.2013**, which was subsequently extended up to **05.09.2015**. It appears that there are counter claims made by the parties in respect of amount of leave salary. The question whether or not the petitioner has been paid any amount as leave salary is factual in nature, which cannot be determined in the Constitution Petition.

6. The petitioner has been served with show-cause notice, which is merely an expression made by the respondent-University against him that he has committed misconduct. While responding to the show-cause notice and / or in the subsequent proceedings, if any, the petitioner would be at liberty to raise all the defence available to him. Show-cause notice to the petitioner is only a first step towards the final order against which the petitioner will have remedy according to law. But, since no final order has been passed against the petitioner and we have not perceived that the said show-notice is outcome of any malice on the part of respondent-University, in our view the petition under Article 199 of the Constitution is not maintainable at this juncture. We, however, have noted that petitioner is in Saudi Arabia and is not able to travel to Pakistan for want of NOC by the respondent University. The show cause notice against him is pending since **28.03.2016** and yet no further proceedings or final order has been passed thereon. In the circumstances, let the proceedings on the said show-cause notice be finalized by the respondents in accordance with law within a period of three (03) months with effect from **11.05.2017**, the date of short order, and if during the proceedings taken pursuant to the show cause notice, the physical presence of the petitioner is necessary, he shall be issued NOC by respondent-University to appear and participate in the said proceedings.

The petition is disposed of.

JUDGE

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