

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.D-695 of 2023

[Shafqatullah Shaikh vs. Province of Sindh and others]

Present: Mr. Justice Arbab Ali Hakro
Mr. Justice Riazat Ali Sahar

Petitioner by : Mr.Ishrat Ali Lohar, Advocate

Respondents by : Mr.Kamaluddin, Advocate for
Respondents/University, along with
Barrister Unaib Kamal, Advocate

Mr.Muhammad Ismail Bhutto, Addl. A.G

Dates of Hearing : 13.3.2025

Date of Decision : 25.3.2025

ORDER

ARBAB ALI HAKRO, J:- Through this Constitutional Petition, the petitioner seeks to challenge the validity and legality of the Transfer and Posting Order dated 25.01.2023 (“impugned Transfer Order”), as well as the letter dated 24.01.2023, both issued by Respondent No.4. By virtue of these directives, the petitioner, serving as a Lecturer in the Department of Business Administration at Shaheed Benazir Bhutto University, Shaheed Benazirabad, (“SBBU”) has been transferred and posted to the Department of Business Administration at the Naushahro Feroze Campus of SBBU. The petitioner contends, *inter alia*, that the aforementioned orders have been issued in contravention of the provisions of the Shaheed Benazir Bhutto University, Shaheed Benazirabad Act, 2009 (“the Act of 2009”).

2. At the very outset, learned counsel for the petitioner has argued that the impugned Transfer Order, issued by the Director, Human Resources, SBBU SBA (Respondent No.4), was passed without lawful authority, as the power to issue such orders rests exclusively with the Syndicate. Consequently, it is contended that the Transfer Order issued by Respondent No.4 is beyond its jurisdiction. Learned counsel has further argued that no prior approval was sought from the Syndicate before initiating action against the petitioner. Additionally, it is contended that no Show Cause Notice was served, nor was any inquiry conducted before taking action against the petitioner, thus subjecting him to arbitrary punishment. It is also submitted that the petitioner has not received his monthly salary since February 2023 despite submitting several applications to the concerned authorities, which have remained unaddressed. In conclusion, learned counsel has contended that the impugned Transfer Order is illegal, unlawful, and void *ab initio* and, therefore, liable to be set aside.

3. Conversely, learned counsel representing Respondents No.2 to 4 has contended that there are no statutory rules governing the service of employees at SBBU. As such, there is no question of any violation; hence, the present petition is not maintainable. He has further argued that if the petitioner was aggrieved by the impugned Transfer Order, an alternate remedy in the form of an appeal is available under the Act of 2009. Consequently, the writ petition is not maintainable. Moreover, he has contended that the petitioner has failed to attend his assigned duties at the Naushahro Feroze Campus and has remained absent, resulting in his salary withholding.

4. Learned Additional Advocate General has endorsed the arguments put forth by learned counsel for Respondents No.2 to 4. He has additionally submitted that the petition is not maintainable as the petitioner has failed to exhaust the remedies provided under the law; therefore, the petition is liable to be dismissed.

5. We have heard the learned counsel for the respective parties and, with their assistance, have thoroughly examined the record.

6. Before examining the merits of the instant writ petition, it is deemed essential first to determine the question of its maintainability, as this forms the foundation for addressing the substantive issues raised therein. Notably, SBBU, SBA, constitutes a Public Sector University established under the Act of 2009. Moreover, the Respondents' University operates as a Body Corporate performing functions inherently connected with the affairs of the Province. By their very nature, such functions carry an element of Public Authority, which renders the University amenable to the exercise of constitutional Writ Jurisdiction.

7. In light of the aforementioned context, the status of SBBU, SBA, can reasonably and legitimately be regarded as a "person" within the meaning assigned under Article 199(1)(a)(ii) read with Article 199(5) of the Constitution of the Islamic Republic of Pakistan, 1973. The applicability of these constitutional provisions is thus evident, as the University's functions are unequivocally interlinked with matters pertaining to the Province's administrative and public affairs. The jurisprudential principles laid down by the Supreme Court of Pakistan in Paragraph 50 of its judgment in the case of *Pakistan Defence Housing Authority & others*¹ are particularly relevant and provide cogent guidance in the present case. The test enunciated in that decision, which delineates the parameters for determining the amenability of institutions to writ jurisdiction, squarely applies to the facts and circumstances of the instant petition. Furthermore, it is imperative to observe

¹ Pakistan Defence Housing Authority & others vs. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707)

that the objections raised regarding the maintainability of this petition lack substance, particularly in view of the undeniable element of Public Authority associated with the Respondent-University. The invocation of Article 199(5) of the Constitution in this context is both justified and legally tenable, thereby affirming the jurisdictional competence of this Court to entertain the matter. Consequently, the objection regarding the maintainability of the instant petition is found to be devoid of merit and stands overruled accordingly.

8. Now reverting to the merits of the case, the record reveals that a complaint against the petitioner, alleging unprofessional behaviour and the use of abusive language, was filed on 24.01.2023. On the same date, an inquiry committee convened and recommended three actions, including the petitioner's transfer. The recommendation was implemented by Respondent No.4 on the same day, and the impugned Transfer Order followed on 25.01.2023. However, no record indicates that the petitioner was issued a Show Cause Notice or provided an opportunity to present his defence before the actions were taken. The *audi alteram partem* rule (no one shall be condemned unheard) is a cornerstone of procedural fairness. It is evident from the record that the petitioner was neither issued a Show Cause Notice nor afforded an opportunity to rebut the allegations against him. The inquiry committee's proceedings and subsequent transfer decision were completed on the same day (24.01.2023), raising concerns over the adequacy and fairness of the process. Such a blatant disregard for the principles of natural justice renders the impugned Transfer Order unsustainable in law.

9. While it is true that the Act of 2009 provides an alternate remedy in the form of an appeal, the petitioner has alleged jurisdictional violations and procedural improprieties that strike at the root of the impugned order. In such circumstances, the availability of an alternate remedy does not preclude the invocation of constitutional writ jurisdiction.

10. The Petitioner's contention that he was arbitrarily punished without due process also raises issues of fundamental rights, particularly under Article 10-A of the Constitution of Pakistan, which guarantees the right to a fair trial and due process. The actions taken against the petitioner seem arbitrary and without adherence to lawful procedures, which violates these constitutional guarantees.

11. So far the issue of withholding of the petitioner's salary is the subject of separate proceedings predicated on his alleged absence from duties at the Naushahro Feroze Campus. As such, this issue is independent of the present matter, which pertains solely to the legality and propriety of the impugned Transfer Order. This Court makes no determination on the salary

stoppage proceedings, which shall continue independently in accordance with law.

12. Given the allegations against the petitioner, it is imperative to strike a balance between fairness and accountability. While the impugned Transfer Order cannot be sustained in its current form due to procedural irregularities, the matter warrants proper inquiry by the Respondent-University in accordance with law.

13. In light of the foregoing discussion, this Court is of the considered view that the impugned Transfer Order dated 25.01.2023 is void *ab initio*, having been passed without in violation of the principles of natural justice, therefore, same is hereby set aside and the complaint submitted by Prof. Dr Salman Bashir, Chairman/Dean of Faculty of Business Administration and Management against the petitioner deemed to be pending. The instant petition is disposed of with the following directions: -

- a) The Respondents are directed to conduct a proper inquiry into the allegations levelled against the petitioner, strictly in accordance with the Act of 2009 as well as Regulations and the Rules made there under and after providing the petitioner with a fair opportunity of hearing, including the issuance of a Show Cause Notice and the right to respond.
- b) The petitioner shall be restored to his original position at SBBU, SBA, until the conclusion of the inquiry.
- c) The Respondents are further directed to complete the inquiry within sixty (60) days from the date of this order and to act upon its findings in accordance with the law.
- d) Proceedings regarding the stoppage of the petitioner's salary shall continue independently and shall not be prejudiced by the outcome of the present matter.

JUDGE

JUDGE