

HIGH COURT OF SINDH, CIRCUIT HYDERABAD

C.P No.D-1661 of 2024

[Dr.Rahim Bux Khokhar vs. Province of Sindh and others]

Present:

Justice Arbab Ali Hakro, J
Justice Riazat Ali Sahar, J

Petitioner by : Barrister Faizan Hussain Memon, Advocate

Respondent No.2 by : M/s Masood Rasool Babar Memon and
Sajjad Ali Memon, Advocates

Mr.Rafiq Ahmed Dahri, Assistant A.G Sindh

Date of hearing : **10.4.2025 and 06.5.2025**

Date of decision : **23.5.2025**

J U D G M E N T

ARBAB ALI HAKRO, J: Through this Constitutional Petition, the petitioner, formerly serving as a Lecturer (BPS-18) in the Department of Basic Sciences and Related Studies at Mehran University of Engineering and Technology, Jamshoro (MUET), has impugned the Order dated 30.05.2024 (**impugned order**”), whereby he has been removed from service. The said Order, being the subject of challenge, has been assailed by the petitioner through the instant petition.

2. The brief factual matrix outlined in the instant petition is that the petitioner was appointed Lecturer (BPS-17) at Mehran University of Engineering and Technology (MUET) on 30.09.1998. Pursuant to the recommendations of the Selection Board and subsequent approval of the Syndicate, the petitioner was awarded a PhD scholarship, vide Order dated 20.06.2007, encompassing coverage of annual tuition fees and maintenance allowance for four years. Initially enrolled at Lancaster University, the petitioner subsequently changed institutions to Essex University and later to the University of Hertfordshire, each transition being duly approved by Respondent No. 2. The Petitioner formally commenced his PhD program in Numerical Modelling on 03.04.2009, with an anticipated completion date of 03.10.2013. Despite the petitioner maintaining an unimpeachable academic standing, Respondent No. 2, in utter disregard of procedural propriety, failed to process his Higher Education

Commission (HEC) support application and arbitrarily discontinued his scholarship funding vide Letter dated 22.05.2013, in contravention of the initial scholarship order and HEC directives. The Respondent's deliberate withholding of financial assistance resulted in the petitioner's withdrawal from the University of Hertfordshire on 17.12.2013, necessitating his urgent intervention with HEC. Owing to the said intervention, Respondent No. 2 disbursed a nominal sum of GBP 3167 against the total outstanding dues of GBP 10,500. The petitioner resumed his duties at MUET on 02.03.2015 following the submission of his PhD thesis for final examination. He subsequently applied for ex-Pakistan leave to proceed to the United Kingdom for the defence of his thesis, which was granted vide Order dated 09.04.2015 from 08.04.2015 to 08.08.2015. The petitioner successfully underwent his viva examination on 30.07.2015, after which he was directed to make substantial corrections. Despite a legitimate request for additional time to comply with said corrections, Respondent No. 2, instead of extending requisite facilitation, issued a Show Cause Notice dated 23.04.2016, seeking to initiate dismissal proceedings. The petitioner, in response, submitted a comprehensive reply detailing the unavoidable delay in thesis completion, including the sudden demise of his mother on 20.09.2016, which temporarily impeded his ability to submit the revised thesis. However, Respondent No. 2 persisted in its unwarranted action, issuing a second Show Cause Notice dated 15.02.2017. The petitioner submitted his response via email dated 13.03.2017, yet was dismissed from service vide Order dated 19.10.2017, with retrospective effect from 09.04.2015, in complete disregard of due process and established legal principles. Upon attempting to rejoin service on 30.10.2017, the petitioner was denied entry vide Letter dated 15.10.2018, with Respondent No. 2 unjustifiably refusing his reinstatement. Aggrieved, the petitioner preferred an appeal before the Worthy Chief Minister of Sindh, who directed the holding of a formal inquiry. Despite explicit instructions from the competent authority, Respondent No. 2 failed to reinstate the petitioner, leaving him with no alternative but to seek redressal through judicial intervention by filing C.P. No. D-1770 of 2019. This Court, vide Order dated 24.05.2022, categorically declared that the petitioner stood reinstated in service

pursuant to the Chief Minister's directive for a de novo inquiry. Notwithstanding the categorical pronouncement of this Court, Respondent No. 2 continued to engage in acts of persistent victimization, including withholding salary and conducting an inquiry devoid of fairness and transparency. Pursuant to judicial directives, an Inquiry Committee was constituted vide Notification dated 03.05.2023. The petitioner, already present in the UK for medical treatment with due departmental approval, sought permission for virtual participation in the inquiry proceedings. Additionally, he raised legitimate reservations against certain members of the Inquiry Committee. However, Respondent No. 2, displaying sheer indifference to fundamental procedural safeguards, proceeded with a patently unlawful inquiry, culminating in a Charge Sheet dated 28.12.2023. Despite the petitioner submitting an interim reply on 15.01.2024 and formally requesting essential documents, he was denied indispensable procedural safeguards, including the right to cross-examine adverse witnesses and to adduce evidence in his defence. The Inquiry Report, recommending dismissal, was placed before the Syndicate in its 157th meeting held on 25.05.2024 in the complete absence of the petitioner, thereby rendering the proceedings fundamentally flawed. Without awaiting the next scheduled hearing, Respondent No. 2, vide Impugned Order dated 30.05.2024, imposed the major penalty of dismissal from service without issuing a final Show Cause Notice or affording an opportunity for a personal hearing in flagrant violation of settled legal principles. In pursuit of justice, the petitioner preferred a Review Application against his unlawful dismissal, which remains pending and undecided. The impugned Order, passed in utter defiance of the principles of natural justice and the provisions enshrined in the MUET Employees Efficiency and Discipline Statutes, 1978, warrants immediate judicial scrutiny and intervention of this Court.

3. Upon issuance of notice, Respondent No. 2 filed preliminary objections/Para-wise comments, categorically refuting the petitioner's claims. It is asserted that the petitioner has habitually engaged in litigation against the Respondent University, and the petition is not maintainable as he has bypassed available legal remedies, with his review application pending before the University Syndicate alongside C.P. No. 1426 of 2023,

addressing his claims regarding regularization, pay fixation, arrears, and promotion. The petitioner was granted a four-year PhD scholarship but repeatedly changed institutions, wasting initial funding. His Supervisor at Essex University reported academic non-compliance. Upon exhausting his scholarship, he sought further financial assistance, which was declined. His fourth-year study leave expired in 2011, and after delaying his extension request for 16 months, it was deferred until his return. Despite an unauthorized stay of over three years, he resumed duties without a PhD degree. After securing leave for his PhD defence, he failed to rejoin as required, responding vaguely to official queries. Consequently, administrative action was recommended, leading to a Show Cause Notice. He was granted an extension until 25.09.2016 but failed to comply, prompting Final Show Cause Notices in 2017. Despite responding in March, he did not resume duties until August, leading the Syndicate to authorize financial recoveries from him. The petitioner cited personal illness and his wife's health issues but failed to provide substantiating evidence. He called for an inquiry on multiple dates but remained absent and claimed medical appointments. He proceeded abroad without obtaining the necessary approvals. A charge sheet was issued on 28.12.2023, followed by his reply on 15.01.2024. Contrary to his claims, he was afforded ample opportunity for hearings, cross-examination, and access to supporting material. The inquiry adhered to E&D Rules and judicial directives. Proceedings were transparently recorded via video surveillance. The competent authority, the Syndicate, passed a legally sound order following due process. The petitioner's attempt to mislead this Court by alleging procedural irregularities is without merit.

4. At the outset, learned counsel representing the petitioner contends that the Inquiry Committee was constituted in clear violation of sub-clause (1) of clause 8 of the MUET Employees Efficiency and Discipline Statutes, 1978 (**E&D Statutes**), as it was not formed by the Syndicate, rendering the entire inquiry proceedings coram-non-judice and non-est. He further contends that it is a well-settled principle of law that when the foundation of an action or Order is illegal, the entire superstructure built upon it collapses and cannot be sustained. He also contends that once the law prescribes a particular procedure, the functionaries of the State are bound

to adhere to it strictly, and any deviation, negligence, or omission vitiates the entire process. He argues that the dismissal order passed with retrospective effect is legally untenable, as it is impermissible under settled law and binding precedents laid down by the Supreme Court of Pakistan. Learned counsel further submits that the dismissal order was passed without serving a final Show Cause Notice or affording the petitioner a personal hearing, thereby violating clause 8(6)(b) of the E&D Statutes and infringing upon the fundamental right to a fair trial guaranteed under Article 10-A of the Constitution. He contends that despite repeated requests, the Inquiry Committee failed to provide the requisite documents to the petitioner, depriving him of a meaningful opportunity to defend himself. He argues that it is a settled principle of law laid down by the Supreme Court of Pakistan that withholding material evidence constitutes a grave violation of due process. He further submits that the charge sheet served upon the petitioner was vague, unspecific, and premised upon incorrect facts, demonstrating procedural irregularities and mala fide intent. He also contends that the inquiry proceedings were conducted in his absence, as he was only summoned once out of fourteen meetings, depriving him of a reasonable opportunity to present his defence. Learned counsel argues that the petitioner submitted an interim reply to the vague charge sheet on 15.01.2024, with an express commitment to submit a final reply once the requisite documents were furnished. However, he contends that the petitioner was denied an opportunity to submit a comprehensive response, was not confronted with documentary evidence, and was deprived of his right to cross-examine witnesses. He submits that the inquiry proceedings were conducted in complete violation of sub-clauses (2) and (3) of clause 8 and well-established principles laid down by the Supreme Court of Pakistan. He further contends that the inclusion of Mr. Ghulam Muheodin Kumbhar in the Inquiry Committee was objectionable and that the petitioner raised his reservations before the Convenor during the meeting held on 26.02.2024. Yet, no corrective action was taken, violating his right to a fair trial. Learned counsel submits that the dismissal penalty was imposed without issuing a Show Cause Notice or affording the petitioner a personal hearing, which violates clause 8(6)(b) of the E&D Statutes. He contends that the impugned Order violates the principles of

fairness, natural justice, and equity, besides contravening Article 10-A of the Constitution, which mandates that civil rights be determined in accordance with the law. He submits that the Inquiry Committee failed to consider relevant material facts and based its findings on irrelevant considerations, rendering the dismissal unsustainable in the eyes of the law. He also argues that the Committee ignored that the delay in completing the Petitioner's PhD was neither deliberate nor intentional but arose due to circumstances beyond his control. Learned counsel further contends that dismissal from service cannot be made with retrospective effect, especially when the dismissed employee has continued to serve after reinstatement. He submits that the penalty imposed upon the petitioner is excessively harsh and disproportionate to the allegations against him. He argues that the competent authority should have exercised discretion judiciously, considering the petitioner's service record and health condition. He also submits that the bar on judicial remedy applies only when an alternative remedy has not been pursued; however, the review application filed on 23.06.2024 is not efficacious, and the present petition, instituted on 05.11.2024, is maintainable. He further argues that the inquiry proceedings were conducted without proper authorization from the Vice Chancellor, thereby vitiating the entire process. In support of the above contentions, the learned counsel relies upon case law reported as **2022 SCMR 624, PLD 2024 S.C 838, 2011 SCMR 1813**, and **2023 SCMR 1087**. Lastly, he prays that this Court declare the impugned dismissal order null and void, set aside the inquiry proceedings and direct Respondent No.2 to reinstate the petitioner in service with all consequential benefits.

5. Conversely, learned counsel representing Respondent No. 2 contends that Clause 8(1) of the E&D Statutes empowers both the Syndicate and the Competent Authority, not solely the Syndicate, as erroneously asserted by the petitioner. He argues that the inquiry committee was constituted in strict adherence to the Statutes, with the Vice Chancellor exercising emergency powers for its formation, subject to subsequent approval by the Syndicate. He submits that the inquiry proceeded lawfully, but the petitioner deliberately caused delays through repeated absenteeism and baseless excuses. He contends that the

University has fully complied with legal requirements, conducting the inquiry and approving its findings in accordance with the University Act and Statutes. He argues that the petitioner failed to abide by the terms of his scholarship and undertakings, remaining in default since his departure. He argues that ample opportunity for hearings and cross-examination was afforded to the petitioner, who attended proceedings, received material evidence, and cross-examined witnesses. The process was documented via video recording. The counsel submits that the petitioner's claims of procedural unfairness are unsubstantiated and lack corroborative evidence. He further contends that the charge sheet was appropriate, and the petitioner failed to raise objections at the time of response. He submits that the Inquiry Committee retains sole discretion over the frequency of hearings, provided an incumbent is called at least once. In this case, the petitioner was summoned thrice but appeared only once, while on two occasions, he absconded abroad. He argues that the petitioner's repeated failure to attend hearings demonstrates mala fide intent, and his allegations against the inquiry process lack merit. Learned counsel submits that the petitioner neglected his PhD studies for over a decade, changing universities three times without completing his degree, thereby causing financial loss to the University. He further contends that the petitioner committed grave misconduct by violating his surety bond, absconding from duties for an extended period, and taking unauthorized ex-Pakistan leave without prior approval. He submits that the petitioner initially claimed his wife was undergoing cancer treatment abroad, preventing his return, but later asserted that he was a cancer patient, revealing material contradictions in his statements. He argues that such inconsistencies demonstrate mala fide intent and an attempt to mislead this Court with fabricated and manipulated claims. Learned counsel maintains that the petitioner has provided no credible evidence to substantiate his allegations, while the University has acted in full compliance with legal provisions. He submits that the Respondent has no personal grudge against the petitioner but has acted according to the law and institutional regulations. In view of the foregoing, he prays for the dismissal of the petition, affirming the validity of the inquiry proceedings and the petitioner's dismissal from service. In support of the above

contentions, the learned counsel relies upon case law reported as **2016 SCMR 842, 2000 SCMR 201, 1993 SCMR 29, PLD 1989 SC 360**, and an **unreported judgment dated 15.09.2021**, rendered by the Supreme Court of Pakistan. In the end, he prays for the dismissal of the petition.

6. Learned Assistant Advocate General Sindh has adopted the arguments of the learned counsel for Respondent No.2.

7. We have meticulously examined the submissions of the learned counsel for the petitioner, Respondent No.2, and the Assistant Advocate General and have scrupulously reviewed the record with their assistance and case law.

8. The Petitioner has invoked the constitutional jurisdiction of this Court, challenging the validity of the impugned dismissal order dated 30.05.2024, which was passed upon the recommendation of the Inquiry Committee and subsequently approved by the Syndicate in its 157th Special Meeting held on 25th May 2024. The petitioner contends that the Inquiry Committee was unlawfully constituted by the Vice-Chancellor rather than the Syndicate and that the entire disciplinary proceedings suffered from jurisdictional defects and procedural flaws in violation of the E&D Statutes, 1978 and Article 10-A of the Constitution of Pakistan, 1973, which guarantees the right to a fair trial.

9. Respondent No. 2, however, submits that the Vice-Chancellor, being the Competent Authority, was lawfully empowered to constitute the Inquiry Committee and that the disciplinary proceedings, findings, and subsequent approval of dismissal were conducted in strict compliance with legal and statutory requirements.

10. The primary issue before this Court is whether the instant petition is maintainable in light of the Petitioner's Review Application pending before the Syndicate under Section 36 of the Mehran University of Engineering and Technology Act, 1977 (**MUET Act, 1977**) and whether the pendency of C.P No. 1426/2023, regarding salary arrears and other financial claims, provides a justifiable basis for delaying adjudication of the Review Application. To determine the appropriate forum for adjudication of the petitioner's grievance, it is necessary to examine Paragraph 14 of the E&D Statutes, 1978, which governs the right to appeal, and Section 36 of the MUET Act, 1977, which provides for appeals and review proceedings.

11. Paragraph 14 of the E&D Statutes, 1978, states:

"A University employee upon whom a penalty is imposed shall have the right to prefer an appeal, within thirty (30) days of the receipt by him of the order imposing the penalty, to the appropriate appellate authority specified in the attached Appendix."

12. The Appendix to Statute No. 14 categorizes employees based on their grades as follows:

**Appendix
Appended to the Statute No.14**

Class of Employee	Appointing Authority	Authority Competent to take Disciplinary Action	Appellate Authority
1. Employee holding posts in BPS-17 and above	Syndicate	Syndicate	Chancellor
2. Employee holding posts in BPS-5 to BPS-16	Vice Chancellor	Vice Chancellor	Syndicate
3. Employees other than those in (1) and (2)	Vice Chancellor or an Officer delegated the powers of appointing authority.	Vice Chancellor, or an Officer, delegated the powers of appointing authority.	Vice Chancellor

13. Since the Petitioner is an employee in BPS-18, his appellate authority under Paragraph 14 would ordinarily be the Chancellor if a penalty had been imposed by an authority other than the Syndicate. However, the fundamental distinction here is that the dismissal order was passed upon the approval of the Syndicate itself, meaning that the appellate remedy under Paragraph 14 does not apply. Instead, Section 36 of the MUET Act, 1977, governs the review process in cases where the Order originates from the Syndicate. Section 36(1) of the MUET Act, 1977, provides:

"Where any officer (other than the Vice-Chancellor), teacher, or other employee of the University has been punished or any of the terms and conditions of his service have been varied to his disadvantage by an order passed by the Vice-Chancellor or any other Competent Authority, the appeal against such order shall lie to the Syndicate; provided that where the order has been made by the Syndicate, the aggrieved person may, instead of filing an appeal, apply to the Syndicate for review of that order."

14. This provision makes a critical distinction: if the Order is passed by a Competent Authority other than the Syndicate, the affected employee may file an appeal to the Syndicate, and if the Order is passed by the Syndicate, the affected employee cannot appeal to the Syndicate but must seek a review before it. Since the Syndicate approved the petitioner's dismissal, the petitioner has already initiated a review application before the Syndicate under Section 36.

15. Learned counsel for the petitioner contends that although the Review Application remains pending before the Syndicate, it has not been considered due to the pendency of C.P No. 1426/2023, which relates to the petitioner's salary arrears and financial claims. Counsel argues that C.P No. 1426/2023 has no nexus with the Review Application, and the failure of the Syndicate to decide the review constitutes administrative inaction, depriving the petitioner of his right to timely adjudication, which caused the petitioner to file the instant petition. The Supreme Court of Pakistan, in ¹, has held:

"Where the action of a statutory authority in a service matter is in disregard of the procedural requirements and is violative of the principles of natural justice, it can be interfered with in writ jurisdiction."

16. Applying this precedent to the present matter, the indefinite withholding of adjudication of the Petitioner's Review Application violates procedural fairness, as the pendency of a separate constitutional petition should not prevent independent disciplinary adjudication. The Syndicate must discharge its statutory duty, irrespective of the existence of C.P No. 1426/2023.

17. So far, the contention of counsel for the petitioner that regarding procedural defect with regard to the constitution of the Inquiry Committee by the Vice-Chancellor, rather than the Syndicate, which is the only competent disciplinary authority for employees holding posts in BPS-17 and above, as outlined in the Appendix to Statute No. 14, the Syndicate alone is empowered to take disciplinary action against such employees. In this regard, the petitioner retains the right to agitate procedural and

¹the case of Pakistan Defence Officers' Housing Authority and others vs. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707)

jurisdictional objections before the Syndicate, as it is the competent forum for adjudication of his review application. Since the review remains undecided, the petitioner has not exhausted his statutory remedy, making it premature to invoke constitutional jurisdiction at this stage.

18. In light of the foregoing discussion, the instant petition is **disposed of** with the following directions:

- i) The Syndicate shall expeditiously decide the pending Review Application of the Petitioner in strict adherence to the provisions of the MUET E&D Statutes, 1978, and the MUET Act, 1977.
- ii) The petitioner shall be at liberty to raise all procedural and jurisdictional defects before the Syndicate during the review proceedings.
- iii) The Syndicate shall ensure the petitioner is provided a fair opportunity to defend himself.
- iv) The petitioner is strictly directed to avoid unwarranted adjournments and ensure his presence at all scheduled hearings during the Review proceedings. Any failure to attend without justifiable cause shall be recorded accordingly and may result in adverse consequences.
- v) The Syndicate must complete the review process expeditiously, ensuring transparency and compliance with statutory mandates.

Ordered accordingly.

J U D G E

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AHSAN K. ABRO