

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

C.P No. D- 1351 of 2012

Present

Mr. Justice Syed Hassan Azhar Rizvi
Mr. Justice Nazar Akbar

Date of Hearing : 19.8.2015

Date of Announcement : 08.10.2015

Petitioners : Daleel Khan Jatoi and others
Through Mr. Malik Naeem Iqbal, Advocate

Respondents : Shaheed Benazirabad Bhutto University
& others
Through Mr. Kamaluddin, Advocate

Mr. Anwar H. Ansari State Counsel

O R D E R

NAZAR AKBAR, J.- The petitioners have sought the following relief:-

1. To declare that the impugned order dated 19.06.2012 for termination of petitioners issued by the Respondent Vice Chancellor is without jurisdiction, illegal, unlawful, ultravires and has been passed without lawful authority and set-aside the same.
2. To pass the orders for re-instatement of the petitioners in service against their respective posts, without further delay.
3. Permanently suspend the termination orders and restrain the respondents from filling in the posts held by the petitioners as per the advertisement dated 23.06.2012.

2. Brief facts of the case are that in January, 2012 the petitioners were appointed as Lecturers in various departments of Shaheed Benazir Bhutto University (hereinafter S.B.B.U.). It is averred in the petition that they were performing their duties smoothly, honestly, with full dedication, unblemished service record and to the satisfaction of their superiors. The petitioners believed in the ideology of enlightening and training their students with a vision to make them skilful and knowledgeable graduates and to give them awareness to serve the

society and further to motivate their students to eradicate malpractice from the university too, as the respondent university was neglecting the real issues / problems of students and teaching faculty and indulged itself in highhandedness and malpractices. Due to above awareness the teachers and students held widespread protests which were published in renowned newspapers, hence the administration of respondent university lodged FIRs' against the petitioners and others. Initially they were suspended from their posts and finally terminated from service on the ground of "unsatisfactory performance during the probationary period."

3. The respondents have filed parawise comments and raised preliminary objections on the maintainability of the petition such as (1) the services of the petitioners are not governed by any Statutory Rules of the respondent university. The petitioners have no right to invoke the constitutional jurisdiction of this Court (2) The petitioners have not availed / exhausted remedy provided under S.B.B.U Act, 2010 for redressal of their grievance. In the comments it was denied that the petitioners were performing their duties smoothly, honestly, earnestly and with full dedication. On the contrary the petitioners disturbed the smooth functioning of the university as on **8.6.2012** the petitioners participated in the strike in front of the office of Vice Chancellor and used abusive language against the Vice Chancellor and others. On **9.6.2012** when the syndicate meeting started, the petitioners along with some teachers, students as well about 40 unknown persons having deadly weapons in their hands entered into the Administration Block, shouted slogans and spoiled the peaceful atmosphere in order to stop the syndicate meeting. They also threatened the Security Staff. The petitioner No.1 Daleel Khan Jatoy even directly fired upon the Security Guard which was missed. Due to such situation and in order to maintain law and order situation in the premises of university, the authorities of the university sought help of the police and lodged FIR against them. It is also stated in the comments that the petitioners proved themselves to be a cause to destroy the smooth functioning and administration of the university and thereby played a vital role in spoiling the future of students as they instigated the students and other staff members to go for strike to achieve their ill designs and ulterior motives. In the comments it is further stated that the termination orders of the petitioners dated **19.6.2012** are in accordance with law as the same have been ordered by the competent authority in exercise of the powers vested under S.B.B.U. Act, 2010. It is further submitted that the petitioners were terminated on account of their unsatisfactory performance during their probationary period and

since the petitioners were not dismissed on the charge of misconduct as per terms of their appointment orders no regular inquiry or show-cause notice was necessary.

4. Learned counsel for the petitioners contended that the termination orders were not only without jurisdiction but the same also suffer from serious legal infirmities inasmuch as the termination orders have been issued by the Registrar of the respondent university which is in complete disregard to the provisions of University Act (Amendment) 2011. He further contended that the powers to terminate the services of an employee vests with the syndicate. He further contended that no major penalty of termination from service could be awarded without holding regular inquiry under the relevant law. Learned counsel for the petitioners in order to demonstrate that the petition is maintainable under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 has relied upon **2013 SCMR 1707** (Pakistan Defence Officers' Housing Authority v. Jawaid Ahmed) and attempted to argue that the Shaheed Benazir Bhutto University is a statutory body by virtue of University Act, 2010 and therefore the action against the petitioners was under Removal from Service (Special Powers) Ordinance 2000 (hereinafter referred to as RSO 2000). He contends that the university is a local authority and therefore in terms of **Section 2(d)** of the RSO 2000 the persons employed in the university are in the "service of corporation" and therefore the action taken by the university establishment against the employees is amenable to the constitutional jurisdiction of this court. He however, failed to demonstrate that there were any statutory service regulations available with the university to be termed as Statutory Rules of Service. Besides 2013 SCMR 1707 he has also relied on the following case law:-

1. **2012 PLC (C.S.) 1519** (Mujahid Hussain Shah v. Province of Sindh),
2. **2011 PLC (C.S.) 836** (Abida Parveen Channar v. High Court of Sindh) and
3. **PLD 2001 S.C. 980** (Pakistan State Oil Co. Ltd. v. Muhammad Tahir Khan).

5. The learned counsel has further contended that even otherwise the dismissal order issued by the Registrar is violative of the SBBU Act, 2010, as the authority for removal of petitioners was vested with the syndicate and to **Section 23(3)** of SBBU Act, 2010, the quorum of the syndicate in terms of Section 23(3) of the University Act, was incomplete at the 5th Meeting of the syndicate held on

9.06.2012 in which the syndicate has resolved to terminate the services of the petitioners on their unsatisfactory performance without any stigma on their service as per condition laid down in their appointment orders. He had referred to the number of members who attended the said meeting of syndicate and attempted to show that the quorum was not complete and therefore the resolution passed by the syndicate in the said meeting and the termination orders issued under the signatures of Registrar on **19.06.2012** were illegal. According to learned counsel only on this ground the petitioners are entitled for reinstatement in service and the action taken against the petitioners was in violation of the University Act.

6. Mr. Kamaluddin learned counsel for respondent university has contended that in the absence of Statutory Service Rules the petitioners are not entitled to invoke the jurisdiction of this court under Article 199 of the Constitution. The appointment of the petitioners was governed by the terms and conditions laid down in their identical appointment letters issued in January, 2012. On the point of jurisdiction of this court under Article 199 he has relied on the following case law

- (1) **2013 SCMR 1383** Abdul Wahab and others v. HBL and others
- (2) **2011 SCMR 944** Abdul Rashid Khan v. Registrar, Bahauddin Zakaria University, Multan and others
- (3) **1999 SCMR 2381** Ijaz Hussain Suleri v. The Registrar and another
- (4) **1992 SCMR 1093** University of the Punjab, Lahore and 2 others v. Ch. Sardar Ali

7. The counsel for the respondents has also referred to provision of **Section 42** of the University Act, which provides a remedy of appeal / review by the Syndicate in the matters of the employees of the university and insisted that the petitioners have failed to avail the remedy provided under the University Act, therefore, the petition is not maintainable, as alternate remedy was available to the petitioners. In reply to the contention of the petitioners about the quorum of the syndicate for its meeting on **09.06.2012**, he has demonstrated that the quorum was complete in accordance with the requirement of **section 22(2)** of the University Act. He has placed on record Minutes of the 3rd Meeting of the syndicate held on **21.01.2012**. In the said meeting, the number of the members of syndicate who attended the meeting and the number of members who attended the 5th meeting of syndicate held on **09.06.2012** was equal. In the 3rd meeting of the syndicate, the syndicate has resolved and approved the appointment of petitioners as Lecturers in the various departments and in the 5th meeting of the syndicate, it was resolved

that the petitioners may be removed from the service. He further contended that if the argument of learned counsel for the petitioners on the question of quorum of syndicate is to be accepted then the result of the syndicate meeting in which they were appointed as Lecturers was equally defective and therefore the appointment was illegal and void ab-initio, they cannot seek reinstatement in the service. The learned counsel for the petitioners faced with the factual state of affairs of the syndicate did not press his argument of lack of quorum of syndicate at the meeting in which their removal of petitioners from service was resolved.

8. The counsel for the university has further contended that the petitioners were appointed on **12.01.2012** and they were on probation for one year and they were removed from service within six months on **19.06.2012** on account of their unsatisfactory performance during the probationary period without any stigma and they were not dismissed from service on charges of misconduct, therefore, they were not entitled to any show cause or regular inquiry before termination of their services. The learned counsel in support of his contentions that no show cause or any reason was required to be disclosed while terminating the service of probationer has relied on the following case law.

- (1) **2003 PLC (C.S.) 285** Muhammad Iqbal Khan Niazi v. Lahore High Court, Lahore through Registrar
- (2) **2001 PLC (C.S.) 1275** (Civil Services)
- (3) **1990 SCMR 1510** Syed Tahir Hussain Shirazi v. The Governor of the Punjab and others
- (4) **1982 SCMR 770** Pakistan (Punjab Province) v. Riaz Khan
- (5) **PLD 1974 S.C. 393** Muhammad Sadiq Javaid Chaudhry v. The Government of West Pakistan

9. We have carefully examined the contention raised by the learned counsel and perused the record and the case law cited at the bar.

10. It is an admitted position that the petitioners were appointed on **21.01.2012** and their appointment letters, amongst others, contained the following two crucial terms and conditions Nos.5 and 7, which are reproduced below:-

5. He will remain on Probation for the period of one year from the date of his joining.

7. If his work and conduct are not found satisfactory or suitable to the competent authority, his services will be liable to termination at any time without assigning any notice / reason thereof.

and the precise language of the impugned letters of termination are as follows:-

Subject: - Termination from Service

In view of your unsatisfactory performance during the probationary period, your services are no more required and terminated with immediate effect without any stigma.

You are further directed to handover the belongings, if any and collect your dues on production of clearance from the university

This issues with the approval of the Competent Authority.

Registrar

11. Both the appointment dated 21.01.2012 and the termination dated 19.06.2012 were approved by the competent authority in the lawfully convened meetings of the syndicate of the respondent university in accordance with the relevant provision of the University Act. The contention of the learned counsel on the basis of case law reported in **2013 SCMR 1707** that the petitioners were governed by RSO 2000 on the ground that the university is a statutory body by virtue of SBBU Act, 2010 is misconceived. It is no where held in **2013 SMCR 1707** that an employee of university by virtue of the Act of the university becomes a person in a service of corporation and therefore, he is covered by **Section 2(d)** of RSO 2000. It is reproduced below:-

“(d) “person in corporation service” means every person in the employment of a corporation, corporate body, authority, statutory body or other organization or institutions set up, established, owned, managed or controlled by Government, or by or under any law for the time being in force or a **body or organization in which Government has a controlling share or interest and includes the Chairman and the Managing Director, and the holder of any other office therein;**”

The learned counsel has failed to show from the University Act, that the Government has a controlling share or interest in any manner whatsoever in the affairs of the respondent university. The reference to para 4 and para 60 of the citation by the learned counsel was an attempt to misinterpret the ratio of the

judgment. The ratio of the judgment can be appreciated from para 50 of the said citation which is reproduced below:-

50. The principles of law which can be deduced from the foregoing survey of the precedent case-law can be summarized as under:--
- (i) Violation of Service Rules or Regulations framed by the Statutory bodies under the powers derived from Statutes in absence of any adequate or efficacious remedy can be enforced through writ jurisdiction.
 - (ii) Where conditions of service of employees of a statutory body are not regulated by Rules/Regulations framed under the Statute but only Rules or Instructions issued for its internal use, any violation thereof cannot normally be enforced through writ jurisdiction and they would be governed by the principle of 'Master and Servant'.
 - (iii) In all the public employments created by the Statutory bodies and governed by the Statutory Rules/Regulations and unless those appointments are purely contractual, the principles of natural justice cannot be dispensed with in disciplinary proceedings.
 - (iv) 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.
 - (v) That the Removal from Service (Special Powers) Ordinance, 2000 has an overriding effect and after its promulgation (27th of May, 2000), all the disciplinary proceedings which had been initiated under the said Ordinance and any order passed or action taken in disregard to the said law would be amenable to writ jurisdiction of the High Court under Article 199 of the Constitution.

12. The learned counsel for the petitioners has neither placed on record nor claimed that there exist Statutory Rules for service in respondent university, thus there can be no violation of Service Rules (**para 50(i) above**) of High Court to invoke writ jurisdiction. The respondent university has not initiated proceedings against the petitioners on ground of misconduct and their services were governed by Rules or Instructions issued for its internal use. Therefore, the petitioners were governed by the principle of master and servant (**para 50(ii) above**). No disciplinary proceedings has taken place against the petitioners as they were probationers, therefore, it cannot be said or presumed that if at all for the sake of the arguments the RSO 2000 was applicable, the impugned termination letters

were not in violation of RSO 2000 in absence of any disciplinary proceedings against the petitioners (para 50(v) above).

13. In view of the above, the dictum laid down by the Honourable Supreme Court in 2013 SCMR 1707 was not relevant in the case of the petitioners. As against the aforesaid case law the counsel for the respondent university has relied on 2011 SCMR 944 (Supra) wherein the Supreme Court has held as under:-

“ Learned counsel, however, did not dispute that respondent No.5 University has no statutory rules and, thus, in view of the dictum laid down in Muhammad Mubeen-us-Salam v. Federation of Pakistan (PLD 2006 SC 602), the petitioner had no remedy before the High Court under Article 199 of the Constitution. The legal question, that in a case where any university/educational institution has no statutory rules, it will bar the remedy for its employees to invoke the jurisdiction of the High Court under Article 199 of the Constitution, has been comprehensively dealt with in the case of Ijaz Hussain Sulery v. Registrar (1999 SCMR 2381) and University of the Punjab v. Sardar Ali (1992 SCMR 1093). This position is further elaborated by another judgment of this Court in the case Muhammad Mubeen-us-Salam (supra). Thus, no exception can be taken to such concurrent findings of two forums below.”

14. The other case relied upon by counsel for the respondent university is **1999 SCMR 2381** (Ijaz Hussain Suleri v. The Registrar and another). In this case the Hon'ble Supreme Court observed as follows:

“The High Court was also right in holding that the employees of the Universities were neither holders of statutory posts nor their terms and conditions were governed by statutory rules, with the result that the Constitutional petition was not maintainable. Reliance was rightly placed on the case of University of the Punjab and 2 others v. Sardar Ali (1992 SCMR 1093) and Khalid Hussain v. Chancellor (Governor of Punjab) and others NLR 1995 CLC 219.

5. After hearing the learned counsel for the petitioner and perusing the material on record, we are inclined to hold that the L-C.A. was not maintainable inasmuch as the original order was susceptible of examination in revision as contemplated by section 11-A of the Universities of Punjab Act, 1973.”

15. The learned counsel for the petitioners has referred to **section 42** of the University Act, which provides a remedy against the order of dismissal impugned herein. Section 42 of the University Act is reproduced as under:-

“42. Appeal to and review by the Syndicate:-

Where an order is passed punishing any Officer (other than the Vice-Chancellor), Teacher or other employee of the University or altering or interpreting to his disadvantage the prescribed terms or conditions of his service, he shall, where the order is passed by the Vice-Chancellor or any other Officer or Teacher of the University, have the right to appeal to the Syndicate against the order, and where the order is made by the Syndicate, have the right to apply to that authority for review of that order. The appeal or application for review shall be submitted to the Vice-Chancellor and he shall lay it before the Syndicate with the views.

The petitioners have admittedly not availed the remedy available to them under the University Act, and therefore following the dictum laid down in the aforementioned citation, the petition is liable to be dismissed.

16. The other case law referred to and relied upon by the learned counsel for the petitioners is not relevant in view of the facts that the petitioners were not entitled to invoke the jurisdiction of this Court under Article 199 of the Constitution against their termination. The case reported in **2012 PLC (CS) 1519** (Mujahid Hussain Shah) is distinguishable on the simple ground that in this case the learned Division Bench of this Court has not examined the question of maintainability of constitutional petition by an employee of University in the absence of statutory rules of service. And with due deference to the learned bench, their reliance on the case of Abida Parveen Channer (**2011 PLC (C.S) 836**) was not proper as the case of termination of Abida Parveen before the Hon'ble Supreme Court was a service appeal arising from the decision of Sindh Subordinate Judicial Services Tribunal, Karachi and she had not invoked the constitutional jurisdiction of this Court. She was not removed from the service on the ground of "unsatisfactory performance during probationary periods. In the case in hand the termination orders of the petitioners reproduced in para-11 above, were on account of "unsatisfactory performance and it was without any stigma. Reliance of Petitioners' counsel on the case of Pakistan State Oil Co. Ltd., was also misconceived as in the said ruling the petitioners were employees of a statutory corporation and their services were terminated on malafide of law and fact, therefore, they were found entitled to show cause notice. In the case in hand the petitioner are not employees of statutory corporation and plain reading of their termination orders suggest that their services were terminated on the ground of unsatisfactory work and not on account of misconduct, therefore, as against the judgment reported in **PLD 2015 SC 980**, the judgments reported in **1982 SCMR 770** (Pakistan (Punjab Province) v. Riaz Ali Khan) is relevant. The relevant passage from the said judgement is reproduced as under:-

“From the pleadings of the parties it is clear that there was no latent stigma of misconduct but the sole ground of termination of service was his unsatisfactory work which was also apparent from the explanation submitted by the respondent. Therefore, the result of this appeal is concluded by a judgment of this Court reported as *Muhammad Siddiq Javaid Chaudhry v. The Government of West Pakistan* (1). It was observed in this case at Page 401 that a probationer is taken in service subject to the condition that it will attain a sure footing only if during the period that he is on probation he shows that he is a fit person to be retained in service ; and if the service of a probationer is terminated on the ground of unsatisfactory work, it will not amount to dismissal or removal from service. Such termination will be in accordance with the terms of the contract or the Rules made by the Government in that behalf. However, a distinction was drawn that if such Constitutional protection which is not the case here.”

17. The upshot of the above discussion is that the petition is not maintainable and the same is accordingly dismissed.

JUDGE

JUDGE

Hyderabad
Dated:08.10.2015