

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

C.P.No.D-4770 of 2014

Present:

Mr. Justice Muhammad Ali Mazhar

Mr. Justice Abdul Ghani Soomro

Mounder Ali Petitioner

versus

Federation of Pakistan & others Respondents

For Petitioner:	Mr. M. M. Aqil Awan, Advocate
For Respondents No.1 to 3:	Shaikh Liaqat Hussain, St. Counsel
For Respondent No.4:	M/S. Anzar Akbar, Senior Auditor & Zahid-ul-Arfeen, Accounts Officer.
For Respondent No.5:	Mr. Usman Siddiqui, Advocate

Date of Hearing: 12.8.2016

ABDUL GHANI SOOMRO; J. This petition has been brought to challenge an action against the petitioner Mounder Ali by Pakistan Institute of Public Finance Accountants (PIPFA) through its' letter No.ED/EX/REG.AGP-412/37 dt 01.7.2014 issued by its' Executive Director whereby on the charge of seeking exemption from appearing in four subjects/papers by producing fake B.Com degree/transcripts, petitioner's Registration as Student and his final Result was cancelled.

2. The facts relevant to be mentioned here are that the petitioner was appointed as Senior Auditor (BS-11) in the year 1993, which over a period of time was upgraded to BS-16. For promotion to the next higher grade i.e Assistant Account Officer (BS-17), the petitioner was to qualify the required Examination/Training to be conducted by PIPFA. In the said Examination/Training, the candidate, after seeking registration as student was to pass certain subjects/papers besides the Computer Competency Certificate Practical Training (CCPT). For appearing in the said Examination/Training, the petitioner applied to his parent department and was nominated by the Accountant General Sindh vide Office Order dated 14.3.2007 for the 4th batch session scheduled in March, 2007. It may be clarified that the reply filed by the

respondent No.5/PIPFA reveals that the nomination of the petitioner having been received in the end of year 2008, he was registered for the session Summer, 2009. Be that as it may, he was issued Admit Card by the PIPFA where-after he appeared in the subjects/papers except those in which he sought exemption in view of PIPFA Exemption Policy and underwent the Computer Training and was issued Final Pass Certificate by PIPFA on 02.7.2013. Having thus got through the qualifying Examination/Training, he claimed to stand eligible for promotion to the post of Assistant Accounts Officer. His Annual Confidential Reports(ACRs) were also forwarded to the Office of Auditor General to consider him for promotion to the next higher rank. However, the controversy culminating into filing the present petition arose with a Show Cause Notice dated 05.4.2014 issued to the petitioner confronting him that while qualifying the required Examination he had to appear in nine subjects/papers but he had sought exemption in four of such subjects/papers i.e:

- i. Basic Accounting
- ii. Basic Cost Accounting
- iii. Business Maths, Stats & Economics
- iv. Business Communication & Behavioral Studies.

The above exemption was obtained on the basis of B.Com degree, issued by the University of Sindh, which, when sent for verification, was reported to be fake and bogus by the said University. The petitioner replied the said Notice contending that he had produced Bachelor of Arts(B.A) degree and Master of Arts(M.A) degree along with (only) marks sheet of B.Com Part-I which did not mean that he produced a fake degree. In short, he asserted that he did not produce any fake degree. This reply of the petitioner was not accepted and thus after giving him Personal Hearing, his Registration as PIPFA student and the Result was cancelled with direction to surrender the original Pass Certificate and Admit Card vide letter dated 01.7.2014. This order/action of the PIPFA has been impugned in this petition.

3. We have heard learned Advocates for both the parties, besides the Standing Counsel for the official respondents.

4. Mr.M.M Aqil, Advocate reiterating stance of the petitioner argued that the petitioner had sought the exemption as per Exemption Policy of PIPFA on the basis of relevant documents which, according to him, was not the B.Com degree but only B.Com-I Marks Sheet/Pass Certificate. He further contended that verification of the Marks Sheet/Certificate could have been done at the time of Registration of the petitioner and not after long lapse of time when he was already declared successful and was even issued the Qualification Certificate. He also contended that even otherwise, the impugned order/action was beyond the ambit of the Show Cause Notice itself and the powers contemplated in Clause 3.4 relating to the "Admission Policies & Procedure" of PIPFA, which provided that in case of misconduct or breach of any regulation,(only) the 'Registration' of a student shall be cancelled and that too after such misconduct or breach was proved on investigation and a chance of Personal Hearing with regard to it, was duly provided to him. Elaborating it, the learned Advocate argued that here instead of 'Registration', the entire 'Result' had been cancelled which was beyond the scope of Show Cause Notice and without jurisdiction adding that after having declared the result, PIPFA had indeed become *functus officio* and thus the impugned action/order was liable to be annulled. In support, he referred to the cases reported as;

- i. 2011 SCMR 1581
(E.D.Officer(E) R/Pindi & ors vs. Mst. Rizwana & ors),
- ii. PLD 1996 Supreme Court 709
(Abdul Janan vs. University of Peshawar & others),
- iii. 1990 SCMR 771
(Sargodha vs. Shahid Latif),
- iv. PLD 1970 Lahore 416
(Malik Abdul Majid vs. University of Punjab & another),
- v. 2011 PLC (C.S) 1239
(Muhammed Zafar vs. Market Committee, Ahmedpur East
- vi. NLR 1988 Civil 162
(Shahid Saleem vs. B.I & Secondary Education, etc),

- vii. NLR 1996 Civil 251
(Miss Afshan Amjid vs. 1) V.C, University of Punjab & ors
- viii. PLD 1992 Supreme Court 324
(Faiza Malik vs. Chairman, B.I&S.E, Lahore & ors),
- ix. PLD 2005 Supreme Court 443
(B.I & S.E, Quetta & others vs. Yasir Arafat & others),
- x. NLR 1988 Civil 162
(Shahid Saleem vs. B.I & SE, etc) and
- xi. NLR 1988 Civil 557
(Chairman B.I & Secondary Education Multan, etc).

5. As against above, Mr. Usman Siddiqui learned Advocate for the respondent No.5/PIPFA contended that the petitioner had sought exemption from appearing in four of the papers/ subjects on the basis of transcript of B.Com Certificate, which was sent for its' verification to the concerned University who reported the same to be bogus. Consequently, his Registration and the Result were competently cancelled by PIPFA after due process by issuing him a Show Cause Notice and giving him opportunity of Personal Hearing as required under the relevant Rules and no exception could be taken to the impugned order/action. He thus prayed for dismissal of the petition. Learned Standing Counsel and the other official respondents also supported him.

6. We have given due consideration to the matter and have perused the material available on record and have also examined the relevant rules as also the case law cited above. From the details recorded above, it would appear that there was no dispute that the petitioner had obtained the exemption. He also did not disown presenting the B.Com transcripts and asserted that he had sought the exemption on the basis of valid documents in view of the Exemption Policy of PIPFA. The controversy thus comes down only to the genuineness or otherwise of the B.Com transcripts on the basis of which the exemption was sought in four of the subjects/papers. The first contention raised on behalf of the petitioner was that the impugned action was beyond the scope of Show Cause Notice and was in excess of the jurisdiction of PIPFA and that it was taken long after the result had been announced. The second

contention was that even the PIPFA Rules, contemplated the cancellation of the Registration, while here the entire Result of the petitioner was cancelled and that too without investigation or proper opportunity of Hearing, which were the mandatory requirements. To appreciate these contentions, the relevant Rule of PIPFA may be reproduced here which was as follows:

“3.4 CANCELLATION AND SUSPENSION OF REGISTRATION

3.4.1 A student of the Institute shall be deemed to be guilty of misconduct, and will face cancellation/suspension of registration, if he/she:

fails to comply with the rules and regulations of the Institute;

fails to supply correct information to the Institute;

fails to comply with any of the directives issued by the management of the Institute;

involves himself/herself in such activities which cause damage to the image of the institute;

uses unfair means in an examination;

is found including in under-hand dealing with any official or officials of the Institute.

3.4.2 In the event of any misconduct or breach of any regulation by a registered student, the BOG may, if it is satisfied after such investigation as it may deem necessary and after giving an opportunity of being heard, suspend or cancel the registration of the student.

3.4.3 Registration of a student shall be cancelled and all fee paid shall be forfeited if educational documents are found fake at any later stage.

3.4.4 Registration of a student, who does not pay the annual subscription within six months from the date it falls due, i.e. 1st July of every year is liable to be cancelled.”

7. The perusal of the above Rule, shows that the PIPFA was competent to cancel the Registration of a student in case of misconduct or beach of any regulation after being satisfied about it on investigation. As to cancellation of the Result, suffice to say that the process of Examination commenced with the Registration and ended with its' ultimate Result. Thus the Result being the necessary corollary of the Registration and the Examination in furtherance/continuation of it could not be

viewed in isolation. However, such cancellation had to be on satisfaction after due investigation, which was the mandatory requirement. The word ‘investigate’ has been defined in Oxford Dictionary as follows:

“a. inquire into; examine; study carefully.
b. make an official inquiry into. 2. *Intr.* Make a systematic or search.”

8. In the present case, no detailed investigation or inquiry seems to have been conducted in terms of Rule 3.4.2 which in face of divergent pleas of the parties and circumstances of the matter was necessary. Here, all that was done by PIPFA was that Show Cause Notice was issued to the petitioner and he was heard in relation to it but no formal investigation or inquiry was conducted. Thus, without dwelling much on the issue that the PIPFA was competent only to cancel the Registration and not the Result, we are of the view that non-holding of proper inquiry materially impaired the entire action and marred the whole proceedings. The ratio deducible from some of the cases cited by the learned Advocate was also to the similar effect. Indeed, concept of fair opportunity before taking any punitive action was also in consonance with the mandate of the Constitution, introduced through Article 10-A. Thus, on the overall assessment of the pros and cons of the matter, we have come to the conclusion that the respondent No.5/PIPFA ought to have conducted the investigation/inquiry in accordance with the spirit of its’ own Rules. Consequently, this petition is allowed and the impugned order/action is set aside with direction to the respondent No.5 PIPFA to conduct a detailed investigation/inquiry and afford proper opportunity of hearing to the petitioner and then pass necessary orders. It is expected that this exercise is completed within 2(two) months from the date of this judgment.

J U D G E

Karachi.
Dated: 31.08.2016.

J U D G E

Asif