

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-3292 of 2012

Asif Abbasi Petitioner

Versus

N.E.D University & others Respondents

Date of hearing: 15.02.2018, 26.02.2018 and 15.03.2018

Mr. Ahmed Ali Ghumro Advocate for the Petitioner

Mr. Khalid Jawed Advocate for the Respondents No. 1 &5.

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J U D G M E N T

ADNAN-UL-KARIM MEMON, J: - Through the instant Petition,
the Petitioner has prayed for the following relief(s).

- i) Declare that the major penalty of dismissal from service against the petitioner by Respondent No.3 (Syndicate) in pursuance of clause 5(1) (b) (iv) of the NED University Employees Efficiency & Discipline Statues 1990 vide order dated 11.11.2011 is without lawful authority and is illegal, unlawful, unconstitutional, mala fide, arbitrary, discriminatory and in violation of principle of natural justice, equity and fairness.*
- ii) Declare that dismissal order dated 11.11.2011 was passed under NED University Employees Efficiency & Discipline Statues 1990 which is repealed law not in*

field after the Removal from Service (Special Powers) Sindh Ordinance 2000.

- iii) Set aside the order dated 11.11.2011 passed by the Respondent No.3 (Syndicate) without lawful authority and order for the reinstatement of the petitioner in service on his substantive post of Assistant Professor in BPS-19 in the department of civil Engineering NED University of Engineering & Technology Karachi with all back benefits.***
- iv) Declare that the act of the respondent No.2 (Vice Chancellor) for keeping the review application pending for the last 9 months despite the reminder of the Petitioner dated 19th May, 2012, is based on mala fide intention of the Respondent NO.2 (Vice Chancellor) and is illegal, unlawful, mala fide, arbitrary and in violation of principle of natural justice, equity and fairness.***
- v) Declare that the so-called ex-parte inquiry conducted absent the Petitioner without complying with the order of this Hon'ble Court dated 25.11.2008 and 11.01.2010 is based on mala fide intentions of the respondents and is illegal, unlawful, unconstitutional, having no legal effect.***

2. Brief facts of the case are that the Petitioner was appointed as Lecturer in BPS-17 on 7th October, 1997 in the Respondent-N.E.D University and thereafter he was appointed by the Respondent University as Assistant Professor in BPS-18 vide order dated 30.07.2005. It is the claim of the Petitioner that he performed his duty with dedication and honestly in the Respondent University. The Petitioner has further submitted that the Respondent University due to certain allegations issued him a Charge Sheet dated 19th July, 2006 under the Provision of Clause 6 of the University Employees Efficiency & Discipline Statute, 1990. Thereafter the Respondent No.5 was appointed as an inquiry

officer and disciplinary proceedings against the Petitioner were initiated under the Removal from Service (Special Powers) Sindh Ordinance, 2000 (RSO, 2000), as well as, NED University Employees Efficiency & Discipline Statute, 1990 read with the Removal from Service (Special Powers) Sindh Ordinance, 2000 having an overriding effect on other laws in force. It is averred in the Petition that if there were allegations against the Petitioner, he should have been proceeded against in accordance with the relevant law and not otherwise and the Respondent No.5 on the basis of an incomplete inquiry, submitted his report to Respondent No.2, without even considering the points raised by the Petitioner in his final reply and the Respondent No.2 submitted the Report to the Respondent No.3 without serving Final Show Cause Notice on him, which is against the E & D Statutes, as well as, RSO 2000. However, the Respondent No.3 decided to impose major penalty of removal of the Petitioner from service in terms of clause 5(1)(b)(iii) of the NED University Employees Efficiency & Discipline Statute, 1990 as amended. The Petitioner has further averred that Final Show Cause Notice was served upon him by the Respondent No.4 vide letter dated 23rd September 2006 and the Petitioner replied to the said Show Cause Notice on 6th October 2006; but, finally he was removed from service by the Respondent University vide their office order dated 20.11.2006. The Petitioner filed a Review Petition dated 4th December, 2006 under Section 36 of the NED University of Engineering & Technology Karachi Act, 1977, which was rejected by the Respondent University vide its letter dated 16.02.2007. The Petitioner impugned the order in Constitutional

Petition No. D-358/2007, which was filed on 20.11.2006 and this Court vide order dated 25.11.2008 set aside the impugned termination order with direction that the proceedings, if any, may be initiated against the Petitioner under RSO, 2000 with further direction to the Respondents to allow the Petitioner to cross-examine the witnesses and thereafter complete the inquiry within two months after his reinstatement. It is further averred that the Petitioner was not reinstated in service, he was compelled to file an application against the respondent No.2 for contempt of the Court order, which was disposed of vide this Court's order dated 11.01.2010 on the basis of the statement of the Respondent's counsel assuring reinstatement of the Petitioner. Accordingly, the Petitioner was reinstated in service by the Respondent No.4 on 18.01.2010 and the Respondent No.5 issued letters to the Petitioner, directing him to appear in the inquiry proceedings, but the Petitioner did not participate in the inquiry proceedings and thereafter the Respondent No.5 conducted ex-parte proceedings of the inquiry against the Petitioner. The Petitioner was then called for personal hearing by the Respondent No.3 on 20.09.2011, wherein he appeared in person and reiterated his earlier stance taken in his letters to the Registrar and the Inquiry Officer of the Respondent University. The Respondent No.3 awarded major penalties of dismissal of the Petitioner from service vide its resolution No. Syn-162.9(b) dated 20.09.2011 in pursuance of the Clause 5(1)(b)(iv) of the NED University Employees Efficiency & Discipline Statue, 1990. Order dated 11.11.2011, to this effect, was then delivered to the Petitioner on 03.12.2011. The Petitioner

being aggrieved by and dissatisfied with the order regarding his dismissal from service filed the instant Petition.

3. Upon notice, the Respondent-University filed para-wise comments and denied the allegations.

4. Mr. Ahmed Ali Ghumro, the learned counsel for the Petitioner has contended that throughout the disciplinary proceedings, conducted against the Petitioner, the Respondent No.2 (Vice-Chancellor) was biased with the Petitioner, who has inferred that the Petitioner vide order dated 30.03.2006, but, the fact is that the Petitioner never resigned from the service. According to him this of the Respondent No.2 was illegal, mala fide, unconstitutional, ultra vires, discriminatory, arbitrary and is in violation of the principles of natural justice, equity and fairness. He further submitted that on the basis of a one-sided unfair enquiry conducted by the Respondent University under RSO, 2000 and University Employees Efficiency and Discipline Statute, 1990 a major penalty for removal of the Petitioner from the service vide order dated 20.11.2006 under University Employees Efficiency & Discipline Statute, 1990, was imposed. He stated that the Chancellor of the Universities in Sindh/ Governor Sindh, vide order dated 14th June, 2001 had communicated to all the Vice Chancellors of the Universities that in future all the universities must take action against their employees under the Removal from Service Laws. The Petitioner assailed the order dated 20.11.2006 regarding his removal from service through Constitutional Petition No. D-358/2007, which was disposed of by setting aside

the order dated 25.11.2008 with direction that the proceedings initiated against the Petitioner would be treated under RSO, 2000, and the Petitioner would be provided an opportunity to cross examine the witnesses and produce his own witnesses, if he desires necessary and a fresh enquiry report would be completed within two months and submitted before the Syndicate. According to him, the Court's order was not complied with upon which the Petitioner filed application for contempt of the Court order's dated 25.11.2008 against the Respondent No.1. The Court observed that on the strength of the order dated 25.11.2008 the Petitioner stood reinstated and was asked to participate in the enquiry. The Counsel for the Respondents stated that a formal order would be issued to the Petitioner where after he would be obliged to participate in the enquiry. The Counsel for the Petitioner continued to argue by referring to the office order dated 18.1.2010 issued by the Respondent No.1 in pursuance of the Court's order dated 11.1.2010 stated that neither the Petitioner was reinstated as per the spirit of the Court's order dated 25.11.2008 nor enquiry was conducted and a concocted report was placed before the Syndicate in its meeting on 20.9.2011. He submitted that the Petitioner denied all the allegations before the Syndicate, however, the Syndicate vide its Resolution No. Syn. 162.9 (b) dated 20.9.2011 passed in pursuance of Clause 5 (1) (b) (iv) of NED University Employees Efficiency & Discipline Statutes 1990, dismissed the Petitioner from the service, which action; according to him is against the Court's order dated 11.1.2010 and mala fide. The Counsel further concluded that the Governor/ the Chancellor

of the Universities circulated order dated 14th June 2001 to all the Vice Chancellors of the Universities that in future all the Universities would take action against their employees under the Removal of Service (Special Powers) Sindh Ordinance, 2000 having an overriding effect upon other laws and according to him from which it is crystal clear that the order dated 11.11.2011 regarding dismissal of the Petitioner's service is mala fide and unlawful as well and against principles of natural justice. The Counsel further argued that the Respondent No.5/Enquiry Officer is also member of the Respondent No.3/Syndicate, who participated in the proceedings relating to the petitioner wherein the penalty imposed on the Petitioner was enhanced from removal of the service to that of dismissal from the service, which is also violation of the Court's Order dated 25.11.2008 and is illegal.

5. Mr. Khalid Jawed learned counsel for the Respondent-University argued that the Petitioner has challenged his dismissal from service by the Respondent NED University under the NED University Employees Efficiency and Discipline Statute 1990, which are Non-statutory Service Rules and as such the Constitutional Petition filed under Article 199 of the Constitution is not maintainable in law as the relationship between the Petitioner and Respondent University is that of "Master and Servant"; that it is well settled that where the conditions of service of the employees of a statutory body are not regulated by Rules/Regulations framed under the Statute but only Rules or Instructions are 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.”; that no action and/or inaction on the part of the answering Respondents impugned in this Petition has been taken in disregard of any of the procedural requirements and there is no violation of principle of Natural Justice; therefore, the Constitutional jurisdiction of this Court under Article 199 of the Constitution, 1973 cannot be invoked and as such the interference by invoking writ jurisdiction of this Court cannot be asked for as prayed by the Petitioner.; that the Petitioner has claimed his alleged rights on the basis of Instructions, Rules issued by the Respondent University namely NED University Employees Efficiency & Discipline Statute 1990, which have not been treated as Statutory Rules of the nature, which would bring the case of the University within the qualification that its employees in case of any grievance could maintain action on the ground of breach of such instructions/rules of service under Article 199 of the Constitution 1973. He further argued that by virtue of non-statutory rules of the Respondent University employment of the Petitioner with the answering Respondent University was purely contractual; hence, the Petitioner was governed by the principle of “Master and Servant” and the Petitioner is not an aggrieved person to file Constitutional Petition, who had already joined the Sir Syed University of Engineering & Technology on 6th September 2008 and is continuing there in the capacity of Assistant Professor in Civil Engineering Department, hence the Petitioner is not legally entitled to file the instant Petition, who was given several

opportunities to appear before the Enquiry Committee, but he blatantly refused to appear on the premise that first he be reinstated in service then he would appear. Per learned counsel this is hardly a ground to take the plea of not appearing before the enquiry committee and he has committed misconduct. Therefore, the Petitioner is not entitled to be reinstated in service and he was dismissed from service vide impugned order dated 11.11.2011 after complying all requisite formalities and after providing ample opportunities to the Petitioner to defend his case, but to no avail, the Counsel concluded. He further stated that the Respondents have not violated any Provision of RSO 2000 as alleged. He lastly prayed for dismissal of the instant Petition.

6. We have heard the learned counsel for the parties and perused the material available on record and case law cited at the bar.

7. First of all, we address the question of maintainability of the instant Petition under Article 199 of the Constitution. Prima-facie, it appears that NED University of Engineering & Technology Karachi is a public Sector University and a statutory body in terms of Sindh Act No III of 1977. As per Section 3(3) of Sindh Act No III of 1977, Respondent-University is a Body Corporate performing functions in connection with the affairs of the Province. The functions of University have an element of Public Authority hence; the same is amenable to Writ Jurisdiction. In this view of the matter, the status of Respondent-University can ordinarily be regarded as a 'person' performing functions in connection with the

affairs of the Province within the meaning of Article 199 (1) (a) (ii) read with Article 199 (5) of the Constitution. The test laid down by the Honorable Supreme Court in Paragraph 50 of the judgment rendered in the case of Pakistan Defense Housing Authority & others vs. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707) is fully applicable to the instant Petition. The Honorable Supreme Court while discussing the status and functions of various authorities held that:-

“these are statutory bodies, performing some of the functions which are functions of the Federation State and through the exercise of public power, these bodies create public employments. These bodies are therefore "persons" within the meaning of Article 199(1) (a)(ii) read with Article 199(5) of the Constitution. If their actions or orders passed are violative of the Statute creating those bodies or of Rules/Regulations framed under the Statute, the same could be interfered with by the High Court under Article 199 of the Constitution.” (Emphasis added).

8. Respondent-University being a Public Sector Entity is receiving funds from the Government of Sindh pursuant to Section 47(2) of the Sindh Act No. III of 1977 and the Government is exercising powers in connection with the affairs of the University, which include appointment of Vice Chancellor of the University. Furthermore, as per The Sindh Universities and Institutes Laws (Amendment) Act, 2014, the legislature has made amendments in the laws of 20 Universities/Institute of Sindh to maintain uniformity in the Organization, Management and control of public sector Universities in the Province of Sindh. The amendment provides for that the Vice Chancellor shall be appointed by the

Chancellor of the Respondent-University on the advice of the Government, for a period of four years, which may be extended for one more term on such terms and conditions as the Government may determine. Therefore, it is clear that the Government of Sindh has role in the affairs of Respondent University.

9. In view of the Provisions referred to in the statute of the Respondent University, it is obvious that the Government of Sindh has control of the affairs of the Respondent-University. Guidance is also taken from the decision of the Hon'ble Supreme Court given in the case of Abdul Wahab and others Vs. HBL and others (2013 SCMR 1383). In this judgment, the Honorable Supreme Court has held that two factors are most relevant i.e. the extent of financial interest of the State/Federation in an Institution and the dominance in the controlling affairs thereof. The same principle is laid down in the case of Salahuddin Vs. Frontier Sugar Mills and Distillery Ltd. (PLD 1975 SC 244), and therefore this Court has jurisdiction to entertain this Petition.

10. So far as the objection of learned counsel for Respondent-University on the issue of statutory and non-statutory rules is concerned, in similar circumstances in respect of statutory or non-statutory Rules of University, the Hon'ble Supreme Court of Pakistan has taken into consideration the above referred proposition in the case of Rector National University of Science and Technology (NUST) Islamabad and others Vs. Driver Muhammad Akhter rendered in Civil Appeal No.495 of 2010 decided on 28.04.2011, held as under:-

“4. The learned counsel produced a copy of the statutes called the National University of Sciences and Technology (Enforcement of Academic, Service, and Financial Matters) Statutes, 2005, made by the Board of Governors in exercise of the powers conferred upon it by subsection (2) of Section 21 of the University of Sciences and Technology Act, 1997, in order to “regulate the creations of institutes and faculties etc and for enforcement of academic, service, appointment, discipline and financial matters”. Section 21 of the Act provides for making of statues to regulate, inter alia, service, pension and fringe benefits and other terms and conditions of services of the employees of the University. Subsection (2) provides the procedure that “Draft of the statues shall be proposed by the Executive Committee for approval by the Board which may approve them or refer them back for reconsiderations”. Subsection (3) further mandates that “no statue shall be valid until it has been approved by the Board/Chancellor.” Section 21 neither requires approval of the Government of the proposed statues or its notification. It prescribes its own procedure. The draft statutes become enforceable upon its approval by the Board of Governors. The case of Chairman, State Life Insurance Corporation v Hamayun Irfan (ibid) is clearly distinguishable as there the Regulation making power conferred by the statute on the Corporation required the previous approval of the Central Government, followed by notification of the Regulation in the official gazette. The Court was, therefore, interpreting the particular rule making power, while holding and as a matter of fact such requirements were fulfilled and that the Regulations were statutory. We have no doubt in our minds that the National University of Sciences and Technology (Enforcement of Academic, Service, and Financial Matters) statutes, 2005, are statutory in nature as they were framed in accordance with the procedure prescribed in the statute. Since this was the only ground on which leave was granted, the appeal is dismissed.” (Emphasis added).

11. For the above proposition of the law, a guidance has also been sought from the Judgment of Hon’ble Apex Court rendered in the case of Shafique Ahmed Khan and others Vs.

NESCOM through Chairman, Islamabad and others (PLD 2016 SC 377) has held as under:-

“Fact that certain rules or regulations were framed without the approval of the Federal Government was not the sole criteria to term them as non-statutory in nature. It was indeed their nature and area of efficacy which were determinative of their status. Rules dealing with instructions for internal control or management were treated as non-statutory while those whose area of efficacy were broader and were complementary to the parent statute in the matters of crucial importance were statutory. The Rules framed under Section 7, 9 and 15 of the Act fell in the latter category as they were not only broader in their area of efficacy but were also complementary to the parent statute in matters of crucial importance. It would rather be naïve and even myopic to equate the rules of the authority dealing with matters of crucial importance having so wide a scope and area of efficacy with the instructions meant for internal arrangement and thereby depriving them of their statutory status. Although, said rules had not been framed with the intervention and approval of the Federal Government, but that would not prevent them from being statutory. Firstly because, approval of the Federal Government was not required either under Section 9 or 15 of the Act; secondly because, all those who called the shots were already part of the authority while framing the rules, and thirdly because, the scope and area of their efficacy not only stretched beyond the employees of the authority but over reached many other strategic organizations including nuclear and space related technologies systems and matters, as mentioned in section 8 and 9 of the Act. Rules enacted and approved by members of the Authority under Section 7, 9 and 15 of the Act also did not require another approval of yet any other personage.”

12. The above principle in respect of the statutory or non-statutory nature of the statute has further been strengthened by the decision of the Hon'ble Supreme Court of Pakistan in the case of Muhammad Zaman and others Vs. Government of Pakistan

through Secretary Finance Division (Regulation Wing), Islamabad and others(2017 SCMR 347) and in paragraph No.7 has held that:-

“According to the judgment delivered in Civil Appeal No.654/2010 etc. titled Shafique Ahmed Khan, etc v. NESCOM through its Chairman, Islamabad, etc. the test of whether rules/regulations are statutory or otherwise is not solely whether their framing requires the approval of the Federal Government or not, rather it is the nature and efficacy of such rules/regulations. It has to be seen whether the rules/regulations in question deal with instructions for internal control or management, or they are broader than and are complementary to the present statute in matters of crucial importance. The former are non-statutory whereas the latter are statutory.” (Emphasis added).

13. In the light of the above dicta, it is safely concluded that that the instant Petition is maintainable and can be heard and decided on merits by this Court while exercising Constitutional jurisdiction under Article 199 of the Constitution, 1973.

14. On merits, we hereby proceed to determine the controversy between the parties with respect to dismissal from service of the Petitioners by Respondent-University. The basic allegations against the Petitioner are as follows:-

“You failed to assess the examination scripts and submit the result of the following theory papers of the Annual Examinations 2005, which were delivered to you on 07.12.2005 by the Examination Department.

1. CE 104: Engineering Materials First Year (Civil Eng.) 149 Scripts

2. CE 104: Engineering Materials First Year (Urban Engg.) 37 Scripts

i). failed to assess properly the examination scripts

of the following theory papers of the Annual Examinations 2005, which were delivered to you on 17.11.2005 by the Examination Department.

1. CE 205: Mechanics of Solids-I Second Year (Civil Engg) 115 Scripts
2. CE 212: Mechanics of Solids-I Second Year (Urban Engg) 26 Scripts

ii) failed to submit the result of theory papers within specified time period i.e. latest by 03.12.2005 but also had caused damage to and torn-out the papers from five examination scripts before all the scripts were recovered from your custody by a University team headed by the Chairman, Department of Civil Engineering on 22.12.2005 from your residence.

iii).failed to submit the Award Lists of the practical examinations conducted for the following papers within specified time period:

1. CE 104: Engineering Materials First Year (Civil Engg)
2. CE 104: Engineering Materials First Year (Urban Engg)
- 3 CE 205: Engineering Materials First Year (Civil Engg)
- 4.CE 212: Engineering Materials First Year (Urban Engg)

iv) failed to perform the duty to good order of services as an Examiner as well as a Teacher and also failed to comply with the instructions contained in Statutes/Regulations regarding the duties of Teachers/Examiners.

15. We are cognizant of the fact the service of the Petitioner was terminated on 20.11.2006 by the Respondent-University and Petitioner impugned the order dated 20.11.2006 in the Constitutional Petition No. D-358/2007 and this Court vide order dated 25.11.2008 set aside the impugned termination order with direction that the proceedings, if any, may be initiated against the Petitioner under Removal from Service (Special Powers) Ordinance 2000 with further direction to the Respondents to allow the Petitioner to cross-examine the witnesses and thereafter complete the inquiry within two months after his reinstatement.

16. upon perusal of the pleadings of the parties and arguments extended thereon, there is a primordial question involved in the present proceedings are as under: _

(i) Whether disciplinary proceedings against the petitioner could have been initiated under the Removal from Service (Special Powers) Sindh Ordinance, 2000 (RSO, 2000), or under NED University Employees Efficiency & Discipline Statute, 1990 after passing of the orders dated 25.11.2008 and 10.01.2010?

17. At the outset it appears that the enquiry has been conducted under NED University Employees Efficiency & Discipline Statute, 1990; whereas, this Court in para 01(a) of its order dated 25.11.2008 observed as under:-

- “1. ***After hearing the learned counsel for the parties the petition is disposed of by consent in the following terms:-***
- a) ***The proceedings initiated against the petition will be treated under Ordinance 2000.***
 - b) ***Since the petitioner had not provided opportunity of cross-examination to witness, namely Jawaid Aziz Khan, Inquiry Officer will recall the said witness and allow the petitioner an opportunity of cross-examination.***
 - c) ***The Enquiry Officer will further provide opportunity to the petitioner to produce his witnesses if he deems necessary to examine such request should be made in writing.***
 - d) ***After cross-examination the enquiry officer will give fresh report strictly in accordance with law after taking into consideration all material before him.***
 - e) ***After completing the Enquiry report will be placed before the Syndicate meeting in which the enquiry officer should not participated.***
 - f) ***The impugned order in view of the above is hereby set aside and the inquiry should be completed within two months.***

2. In view of the above order, this application stands disposed of accordingly.”

18. This Court on the contempt application of the Petitioner passed another order dated 11.01.2010 as under:-

“ The only grievance of the petitioner is that he was not issued reinstatement order after order dated 25.11.2008 was passed by which the respondent No.1 was allowed to complete the enquiry against him. The counsel for the respondents candidly states that such was not a deliberate act of the respondent No.1 but it happened due to oversight and in any case on the strength of the order dated 25.11.2008 the petitioner stood reinstated and he has been asked to participate in the enquiry. The counsel for the respondents states that a formal order of reinstatement will be issued to the petitioner where after he will be obliged to participate in the enquiry. The petitioner’s counsel concedes to the same.

The application in the above terms stands disposed of.”

19. From bare perusal of the orders passed by this Court referred to hereinabove, prima-facie it appears that the same have not been complied with in letter and spirit. We are quite clear that reinstatement order of the Petitioner is not as per spirit of this Court’s order as discussed supra; which is merely to invite the Petitioner to participate in the enquiry proceedings. As a result of this, the Petitioner could not participate in the enquiry proceedings and ex-parte report was placed before the Syndicate, which is against spirit of the Court’s orders and the principles of natural justice. This Court vide para 01(e) of the above order directed that the Enquiry Officer should not participate in the Syndicate meeting, while the enquiry report, whatever, it was before it for consideration; but, it appears from the submission of the learned

counsel for the Petitioner that the Enquiry Officer attended the Syndicate proceedings; however no material has been placed on record by the parties before this Court to conclude that the directives of this Court to the extent of appearance of the Enquiry Officer before the Syndicate has been violated, if it is so, which is again non-compliance with the order passed by this Court.

20. To commence with the legal proposition that the NED University of Engineering & Technology has been created under Sindh Act No. III of 1997, therefore the Removal from service (Special Powers) Sindh Ordinance 2000 is applicable in the present proceedings. Section 11 and 12 provides as under:-

“11. Ordinance to override other laws---. The provisions of this Ordinance shall have effect notwithstanding anything to the contrary contained in the Sindh Civil Servants Act, 1973 and the rules made thereunder and any other law for time being in force.

12. Proceedings under this Ordinance.--- All proceedings initiated on the commencement of this Ordinance in respect of matters and persons in service provided for in this Ordinance shall be governed by the provisions of this Ordinance and rules made thereunder., clearly depict that the removal from service (Special Powers) Sindh Ordinance 2000”

21. Perusal of the removal from service (Special Powers) Sindh Ordinance 2000, (Since repealed by Sindh Act No. XXVII of 2017 vide Sindh Gazette Notification dated 10.08.2017) clearly depicts that it has overriding effect the NED University of

Engineering & Technology Employees Efficiency and Discipline Statute 1990.

22. We are of the considered view that the Respondent University after the date of promulgating of the removal from service (Special Powers) Ordinance 2000, all disciplinary proceedings should have been initiated under the Ordinance rather than NED University of Engineering & Technology Employees Efficiency and Discipline Statute 1990, as it was in field when the Respondent University dismissed the service of the Petitioner. We are fortified by the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of Azizullah Memon Vs. Province of Sindh others (2007 SCMR 229). Our view is further supported by the unreported judgment dated 01.04.2009 passed by this Court in C.P. No. 1690 of 2007, as under:-

“12. In our view, from the above discussed case law, it is clear that the Honourble Supreme Court of Pakistan has time and again regarded the provisions of Ordinance 2000 being general in nature and on that account held that from the date of its promulgation, it is overriding effect over other special Statutes on the subject and it has impliedly repealed the Rules in the other Statutes.

13. This being the position, we have no option but to hold that imitation of disciplinary proceedings against the petitioner on 19.06.2004 under the Statutes of 1990, after the promulgation of the Ordinance 2000, with effect from 30th August 2000, have vitiated the whole proceedings against him including the final order regarding the termination for his service. Resultantly, this petition is allowed. However, before parting with this judgment, we may observe

that since the action against the petitioner has been set aside purely on technical ground, it will be open for the respondents to initiate denovo proceedings absent the petitioner in terms of Ordinance 2000, which, if so initiated, shall be positively concluded within six months from the date of this order. The question of grant of back benefits to the petitioner or otherwise.”

23. Much emphasis has been laid by the learned counsel for the Respondent-University that Petitioner has committed misconduct within the meaning of Rule 3(e) of NED University of Engineering & Technology, Employees Efficiency and Discipline Statute 1990 and ample of opportunity of hearing was given to the petitioner to participate in the enquiry proceeding but he deliberately and intentionally failed to appear before the enquiry officer.

24. We are of the view that the Respondent-University cannot blow hot and cold in the same breath to overshadow their own non-compliance of the order dated 25.11.2008 passed by this Court with further direction to the Respondent University vide order dated 11.01.2010 to issue formal order of reinstatement to the Petitioner where after he would participate in the enquiry. From perusal of the record, it is quite clear that the Petitioner was appointed through a transparent procedure and nothing adverse about his character and/or efficiency in performance of his duty has been observed by the Competent Authority of the Respondent-University. Therefore the action of the Respondent-University under its Disciplinary Statute, 1990 rather than under the

Provision of Removal from Service Ordinance 2000 is illegal and not sustainable in law. We have noted that the Respondent-University has tried to avoid implementation of the Court orders, which has resulted in prolonged litigation.

25. Looking through the above perspective and keeping in view the factual position of the case, we hereby infer that the Petitioner ought not to have been dismissed from service by the Respondent-University under its Disciplinary Statute, 1990 and the enquiry should have been conducted under Ordinance, 2000 as discussed supra and enhancement of the punishment from removal from the service to that of dismissal from the service through ex-parte proceedings is also not justified by any canon of justice.

26. In the present case no inquiry into the allegations leveled by the Respondent-University against the Petitioner was conducted as provided under the law and the required procedure, which includes charge sheet, so as, to ensure transparency in arriving at a decision on merits appears to be lacking. Hence, the action is not sustainable under the law. The Honorable Supreme Court Judgment in the case of Saad Salam Ansari Vs. Chief Justice High Court of Sindh through Registrar reported in (2007 SCMR 1726) and Muhammad Naeem Akhtar Vs. Managing Director Water & sanitation Authority, LDA, Lahore reported in (2017 SCMR 357) also support our above view.

27. In the given circumstances of the case, we cannot determine the veracity of these claims, while exercising Constitutional Jurisdiction, leaving it for the competent forum to probe into the claim and counterclaim of the parties. Condemning the Petitioner, without providing him an opportunity to be heard in the manner as provided under the law as per direction given by this Court in the aforesaid orders and such an approach of the Respondent-University would promote miscarriage of justice.

28. In view of the above facts and circumstances of the case discussed above, the instant Constitution Petition is allowed, the impugned order dated 11.11.2011 is set aside, the Competent Authority of Respondent University is directed to reinstate the Petitioner in service forthwith to his original position, and conduct an impartial inquiry into the allegations leveled against him as per the order dated 25.11.2008, passed by this Court within a period of two months from the date of this judgment.

29. The instant Constitution Petition stands disposed of in the above terms along with the listed application(s).

Karachi
Dated:

JUDGE

JUDGE