

**IN THE HIGH COURT OF SINDH, AT KARACHI**

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

**C.P No.D-557 of 2017**

Salman Aziz

.....Petitioner

Versus

Federal Urdu University & others

.....

Respondents

**Date of hearing: 11.04.2018**

Mr. Waqar Ahmed, Advocate for the Petitioner.

Mr. Shakeel Ahmed Khan, Advocate for the Respondent No.1.

Mr. Shaikh Liaquat Hussain, Assistant Attorney General.

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**JUDGMENT**

**ADNAN-UL-KARIM MEMON, J:-** Through the captioned petition

petitioner has sought the following relief(s):-

***i) To direct the respondent to allow the petitioner to continue in remaining session of BL program and examination on determine basis.***

***ii) To direct the respondent to allow the Petitioner to appear/ sit in the coming examination of BL Part I & II without further impediment.***

***iii) That this Hon'ble Court may declare that the petitioner is a bonafide and eligible student of law department of respondent.***

***iv) To direct the respondent to treat the petitioner as student without discrimination with all other students.***

2. Brief facts of the case as per averments of the parties are that the Petitioner got admission in LLB Part I, Session- 2012 in the Respondent-University and paid the requisite enrollment fee, through Bank Challan, with the permission of the Incharge of the department of law of the Respondent-University vide permission letter dated 15.11.2016. The reason assigned by the Petitioner in his application dated 8.11.2016 with respect to depositing the enrollment fee after 4 years is that due to sudden death of his elder brother he could not continue his studies and due to that his enrolment form was deposited lately. The Petitioner has submitted that he visited the office of the Law Department of the Respondent-University, after depositing fee in the concerned bank, but the office of the Respondent-University refused the Petitioner to submit his examination form and raised the objection without any reason. He further asserted that he may be allowed to continue his study to acquire LLB Degree from the Respondent-University. The Petitioner being aggrieved by and dissatisfied with the above action of the Respondents filed the instant Petition on 28.01.2017.

3. Notice was issued to the Respondents, who filed their para-wise comments and controverted the allegations leveled against them by the Petitioner.

4. Mr. Waqar Ahmed, learned counsel for the Petitioner argued that the admission of the Petitioner has been cancelled by the Respondent-University during pendency of the instant Petition, without communicating the order, which action is not sustainable in law and in violation of order dated 28.2.2017 passed by this Court; that education is fundamental right of a citizen and the Petitioner cannot be deprived of this right by cancelling his admission arbitrarily at the stage when he has completed his BL-Part-III Examination with the permission of this Court; that the Petitioner was allowed to appear in the examinations and announcement of the result was subject to the Court order, which was not awaited by the Respondent-University; the Petitioner paid all the University fees with their permission, which they cannot now disown; that the Petitioner approached/contacted Controller of Enrollment of the university for issuance of his enrollment card, who directed him to obtain a covering letter (Sadaqat Nama) from Incharge Law Department then he submitted an application dated 08.11.2016 before the Incharge of the Law Department, who after verification issued the Sadaqat Nama dated 14.11.2016 and thereafter the Petitioner submitted before the Controller (Enrollment) of the Respondent-University, but despite completion of all the formalities by the Petitioner, issuance of the Enrollment Card to the Petitioner was refused; that the allegations leveled by the Respondent-University that the Petitioner got the admission in BL-1 in connivance with the staff are false and frivolous just to deprive the Petitioner from acquiring his education in accordance with law. He lastly prayed for allowing the instant Petition. In

support of his contention, he relied upon the case of Chairman Selection Committee / Principal, King Edward Medical College Lahore and 2 others Vs. Wasif Zamir Ahmed and another (1997 SCMR 15), Rana Aamer Raza Ashfaq and another Vs. Dr. Minhaj Ahmed Khan and another (2012 SCMR 6), University of Karachi and others Vs. Tariq Hussain and another (2012 SCMR 1694), Chairman Joint Admission Committee, Khyber Medical College Peshawar and others Vs. Raza Hassan and others (1999 SCMR 965), Murtaza and others Vs. Sir Syed University of Engineering and Technology and 4 others ( 2016 LLD 1199) and (2014 SCMR 396).

5. Mr. Shakil Ahmed Khan, learned counsel for the Respondent-University has contended that vide order dated 10.03.2017 of this Court, the Respondent-University was not directed to issue Admission and Enrollment Card to the Petitioner rather was simply directed to allow him to sit in BL Second year examination for the year 2016, which was held in March, 2017, the said order was duly complied with; that Respondent-University has cancelled the initial admission of the Petitioner for the Session of 2012 as he did not deposit the enrolment fee at the relevant time; that as far as Gazette Notification of BL Part-II is concerned that Seat No. 28057 of the Petitioner was inadvertently placed under Admission Cancelled heading instead of heading of withheld for enrolment verification by the Examination Department, which has no authority to cancel an admission of any student; that then the Registrar of the University appeared before this Court and this

Court vide its order dated 10.03.2017 issued directions to the Respondent-University only to the extent of BL Part-II and not to the extent of BL Part III; that the Petitioner is not entitled for the relief from this Court as he has obtained the admission on unfair-means in connivance with the staff of the Respondent-University. He lastly prayed for dismissal of the instant Petition.

6. Mr. Shaikh Liaquat Hussain, Assistant Attorney General has adopted the arguments of Mr. Shakil Ahmed Khan, learned counsel for the Respondent No.1.

7. We have considered the submissions of the learned counsel for the respective parties and have perused the material available on record and case law cited at the bar.

8. We have taken cognizance of the instant matter, in the light of Article 4, 9, 10-A and 22 (3) (b) of the Constitution of the Islamic Republic of Pakistan 1973, as the Petitioner has taken the specific plea that he has been condemned unheard, before cancellation of his admission in LLB by the Respondent-University and has been deprived of his fundamental right of education.

9. Upon perusal of the material available on the record, that the Petitioner was allowed to make payment of admission fees, enrollment fees and examination fee, meaning that his admission was regularized and he has appeared in the examination however subject to final order of this Court. The Controller Examination of

the Respondent-University on 08.2.2018 submitted that inadvertently the number of the Petitioner was mentioned in the column "Admission Cancelled" instead of column "Withheld for Verification of the Enrollment", meaning that the admission of the Petitioner was not cancelled. We have also noticed that the letter dated 10<sup>th</sup> November 2016 issued by the Incharge, Law Department of the Respondent-University, the case of the Petitioner was recommended for issuance of Enrollment Card and the Petitioner deposited requisite fee for enrollment for BL-I for the Session- 2012 vide Bank endorsement dated 4<sup>th</sup> May 2016 and the Respondent-University apparently waived the ground of late depositing the enrollment fee, for which the Petitioner cannot be saddled with any liability that he got the admission through unfair means, however late depositing of the fee for the above purpose is merely irregularity and no prejudice has been caused to the Respondent-University. If the case of the Respondent-University is seen in juxtaposition, it is beyond comprehension as to why the Respondent-University did not take a timely action so far as the eligibility of the Petitioner is concerned whether he was entitled to be granted admission, since it is an admitted position that he appeared in the BL-III Examination, after paying all the requisite fees. We specifically asked a question that what action was taken against the delinquent official, who according to the learned counsel for the Respondent-University was instrumental in grant of illegal admission to the Petitioner. The learned counsel for the Respondent-University could not state with certainty whether any action was taken against the staff members or any enquiry was

conducted against him. We have perused the Enquiry Report dated 3.1.2017, which is prima-facie an ex-parte fact finding report as the Petitioner was not allowed to participate to rebut the allegation. However the Petitioner has denied the contents of the report and has submitted in his affidavit in rejoinder that no intimation was given to the Petitioner to rebut the allegations leveled against him, therefore no sanctity can be attached to the report and cannot be used against the Petitioner. We are of the considered view that no fruitful result will be achieved by the Respondent-University by cancellation of admission of the Petitioner at this stage, when he has finally appeared in BL-III Examination and the Department has cured all the previous defects by allowing the Petitioner to sit in the respective examinations. It is well settled now that the admission of a candidate cannot be cancelled for the reason that he deposited enrollment fee late. We are, therefore, of the considered view that the Petitioner cannot be punished after more than two and a half years on the ground of alleged illegal admission.

10. As regards the next question raised before this Court that whether the Petitioner's admission can be regularized in the Respondent-University, we have sought guidance in this regard from the decision of the Hon<sup>ble</sup> Supreme Court rendered in the case of Rana Aamer Raza Ashfaq and another v. Dr. Minhaj Ahmed Khan and another (2012 SCMR 6), wherein the Hon<sup>ble</sup> Supreme Court has held at paragraph 39 that:-

***“This Court would not interfere in the judgment of the High Court on yet another***

***salutary principle of equity i.e. if in the exercise of Constitutional jurisdiction it has passed an order to remedy a manifest wrong. In Messrs Norwich Union Fire Insurance Society Limited v. Muhammad Javed Iqbal (1986 SCMR 1071), it was observed as follows:- “In this view of the matter, as laid down in Raunaq Ali v. Chief Settlement Commissioner PLD 1973 SC 236, the High Court was within its power to refuse relief in writ jurisdiction, where the impugned order before it had the effect of fostering justice and righting a wrong, even though the authority concerned had acted clearly without jurisdiction. The High Court having acted in consonance with this higher principle of justice laid down by this Court, there is no justification for taking exception to the impugned judgment. The other question of law need not, therefore, be examined.”***

11. We, therefore, are of the considered view that the issue in hand is fully covered by above para of the Judgment passed by the Hon“ble Supreme Court referred to hereinabove, which provides that the Constitutional Jurisdiction of this Court can be invoked against the Respondent-University.

12. In view of the forgoing, we are not convinced with the grounds furnished by the Respondent–University for not allowing the right to education to the petitioner.

13. In view of the findings in the preceding para, we are of the considered view that education is a fundamental right of citizens, including the Petitioner and no one can be deprived of such right.



14. In the light of above the facts and circumstances of the case, the instant Petition is hereby allowed in the terms whereby the competent authority of the Respondent-University is directed to announce the result of the Petitioner, who may complete his BL course to acquire the Degree of LLB, in accordance with law.

15. The instant Petition stands disposed of in the above terms along with the pending application(s).

JUDGE

Karachi  
Dated:- 16. 04.2018.

JUDGE