

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

Present:

Mr. Justice Abdul Maalik Gaddi
Mr. Justice Khadim Hussain Tunio

1. C.P No.D- 3183 of 2018

Dr. Fateh Muhammad Burfat ----- Petitioner

Versus

Province of Sindh and others ----- Respondents

2. C.P No.D- 3206 of 2018

Prof. Dr. Muneeruddin ----- Petitioner

Versus

Province of Sindh and others ----- Respondents

3. C.P No.D- 1874 of 2019

Dr. Arfana Mallah ----- Petitioner

Versus

Federation of Pakistan and others ----- Respondents

4. CP No.D- 2380 of 2019

Dr. Fateh Muhammad Burfat ----- Petitioner

Versus

Province of Sindh and others ----- Respondents

Date of Hearings : **6.02.2020, 03.03.2020 & 10.03.2020**

Date of order : **10.03.2020**

Mr. Rafique Ahmed Kalwar Advocate for Petitioner in C.P. Nos.D-3183 of 2018, 2380 of 2019 and for Respondent No.5 in C.P. No.D-1874 of 2019.

Mr. Shabeer Hussain Memon, Advocate for Petitioner in C.P. No.D-3206 of 2018.

Mr. K.B. Lutuf Ali Laghari Advocate for Petitioner in C.P. No.D- 1874 of 2019 and intervener in C.P. No.D- 2380 of 2019.

Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh alongwith Jawad Karim AD (Legal) ACE Jamshoro on behalf of ACE Sindh.

Mr. Kamaluddin Advocate also appearing for Respondent No.5 in C.P. No.D- 1874 of 2019.

None present for respondent No.1 (Federation of Pakistan) in C.P. No.D-1874/2019.

ORDER

ABDUL MAALIK GADDI, J.- By this common order, we intend to dispose of aforementioned four constitutional petitions together as a common question of facts and law is involved in all these petitions as well as the subject matter is also interconnected.

2. Through C.P. Nos.D- 3183 of 2018 and 2380 of 2019, Petitioner Dr. Fateh Muhammad Burfat has sought following relief(s):-

C.P. No.D-3183 OF 2018.

“a) Declare that the impugned notice dated 5.11.2018 bearing No.DD/HQ-I/2018/409 issued by the Respondent No.3 and the inquiry proceedings initiated against the Petitioner are beyond jurisdiction, illegal, unlawful, unconstitutional and mala fide;

- b) Quash the inquiry proceedings and set aside the Impugned Notice for being illegal, unlawful and beyond jurisdiction of the Respondents;
- c) Grant ad-interim relief by restraining the Respondents their agents, officers, representatives or anybody acting on their behalf from lodging any FIR in respect of the Impugned Notice and further restrain from taking any coercive action against the Petitioner;
- d) Grant any other relief deemed just and appropriate in the circumstances of the case.”

C.P. No.D- 2380 of 2019.

- “a) Declare that the Impugned Notification bearing No.SO(U)/U&B/UoS/1-52/2019/1346 DATED 04.10.2019 (Annexure “U”) is *mala fide* and in violation of Section 13(3) of the University of Sindh Act, 1972, as amended through Sindh Universities and Institutes Laws (Amendment) Act, 2018, hence is illegal, unlawful and void ab initio;
- b) Declare that the Impugned Notification appointing committee members / officers Junior / lower in precedence, rank, seniority to the Petitioner to conduct an inquiry against the Petitioner is contrary to due process, fairness and equity and procedural propriety;
- c) Declare that the principle of requirement of an inquiry by committee members senior in rank than the Petitioner / Vice Chancellor be read into section 13(3) of Act *ibid*;
- d) Grant ad-interim relief by suspending the Impugned Notification bearing No.SO(U)/U&B/UOS/1-52/2019/1346 dated 04.10.2019 and / or restrain the Respondents from taking any action on the findings of the Inquiry Committee formed pursuant to Impugned Notification and restrain the Respondents their agents, officers, representatives or anybody acting on their behalf from removing the Petitioner from the post of Vice Chancellor, University of Sindh, till final disposal of the instant petition;

e) -----.”

3. It is the case of Petitioner Dr. Fateh Muhammad Burfat (in C.P.No.D-3183 of 2018) that initially respondent No.3 (Deputy Director-1, Anti-Corruption Establishment, Sindh) has issued a notice to him alongwith many other officials of the University bearing No.DD/HQ-1/2018/409 dated 05.11.2018 u/s 160 Cr.P.C. In the said notice it was alleged that the Petitioner was involved in illegal appointments, making and breaking of controlled committees, incurring of expenditure over and above entitlement, misallocation of funds / budget for kickbacks as well as generating commercial entities. It is stated that since the Petitioner is a not a public servant as defined under section 2 of the Prevention of Corruption Act, 1947 r/w section 21 of P.P.C, hence the Respondents have no authority and jurisdiction to issue such notice. However, the Petitioner requested the Respondent No.3 vide letter dated 08.11.2018 for providing a date for opportunity of hearing or rebuttal and defense but his request was ignored. It is further alleged that without providing the opportunity to the Petitioner with malafide and in abuse of powers and jurisdiction, as it disclosed to the Petitioner through newspapers and electronic media on 18/19.11.2018 that the Respondents have unilaterally approved and recommended the lodging of F.I.R. against the Petitioner and other officials of the University to the Chief Minister Sindh. Being aggrieved with such conduct of the Respondents, Petitioner has filed this petition.

4. Respondent No.1 has filed his comments stating therein that the Petitioner is involved in illegal acts surfaced through an inquiry conducted by the Anti-Corruption Establishment, hence on the direction of Chief Minister Sindh the action was taken by the Enquiries and Anti-Corruption Establishment; that since Petitioner is handling public finance, therefore, he

is deemed to be a public servant, thus the Respondents can take cognizance of the matter after seeking approval of the Respondents No.1 under relevant law; that the inquiry proceedings were to follow the impugned show cause notice, as such there is no violation of the provisions of the Constitution; that the petition filed by the Petitioner is liable to be dismissed.

5. Respondents No.2 and 3 have also filed their comments thereby denied the contentions raised by the Petitioner. In their said comments, Respondents No.2 and 3 have stated that if Petitioner's stance with regard to his status as public servant u/s 21 of PPC is taken as such, his very appointment becomes illegal on single account that a Public Sector University, funded by State exchequer, governed under State Rules, cannot be run by a non-public servant. That the Petitioner was issued notice as per law and rule, therefore, the petition in hand may be dismissed.

6. The case of Petitioner Dr. Fateh Muhammad Burfat in C.P. No.D-2380 of 2019 is that, while aforementioned petition (C.P. No.D- 3183 of 2018) was pending adjudication before this Court, Respondent No.2 (Universities & Boards Department) has issued show-cause notice dated 22.03.2019 bearing No.SO(U)/U&B/UOS/SHOW CAUSE/2019 against Petitioner Dr. Fateh Muhammad Burfat for his removal from the post of Vice Chancellor of University of Sindh, on the basis of the finding of inquiry report of E&ACE, whose very jurisdiction has been challenged by the Petitioner before this Court in C.P. No.D-3183/2018. The Petitioner replied said notice vide reply dated 29.03.2019. However, Petitioner being aggrieved with such notice dated 22.03.2019, challenged the same before this Court in C.P. No.D-580/2019. It is further stated that while aforementioned two petitions (C.P. Nos.D-3183/2018 and 580/2019) were pending adjudication, Respondent No.2 at the behest and orders of Respondent No.3, again

issued a new Notification bearing No.SO(U)/U&B/UoS/1-52/2019/1069 dated 30.05.2019 whereby he appointed Ms. Naheed Shah Durrani as Inquiry Officer to conduct an inquiry into the allegations of misconduct, inefficiency, corruption etc against the Petitioner and, secondly on the very next date, Respondent No.2 issued another Notification bearing No. SO(U)/U&B/UoS/1-52/2019/1075 dated 31.05.2019, whereby the services of Petitioner were placed under suspension with immediate effect until the finalization of inquiry to be conducted under Notification dated 30.05.2019; however, after issuance of these two notifications, Respondents withdraw the show-cause notice dated 22.03.2019 vide Notification dated 31.05.2019 by virtue of which petition bearing C.P. No.D-580/2019 became infructuous and same was dismissed as not pressed. It is further stated that both the aforementioned notifications of inquiry and suspension dated 30.05.2019 and 31.05.2019 were in blatant violation and contempt to the restraining order dated 20.11.2018, passed by this Court in C.P. No.D- 3183 of 2018, the same were issued in violation of section 13(3) of the University of Sindh Act, 1972, as amended through Sindh Universities and Institutes Laws (Amendment) Act, 2018 which provides that a separate and independent inquiry committee has to be formed before taking any action against the Petitioner. The suspension without forming any inquiry committee and finding of the same was totally uncalled for, unlawful, illegal and in violation to the fundamental rights of the Petitioner. It is also stated that as per comments filed by the Respondents in C.P. No.D-1668/2019 the said Notification bearing No. SO(U)/U&B/UOS/1-52/2019/1069 dated 30.05.2019 and Notification bearing No. SO(U)/U&B/UOS/1-52/2019/1075 dated 31.05.2019 were withdrawn by the Respondents and a new Notification bearing No. SO(U)/U&B/UOS/1-52/2019/1114 dated 26.06.2019 was issued against the Petitioner whereof an inquiry committee was formed to probe

the allegations of gross misconduct, inefficiency, corruption etc. Pursuant to withdrawal of said notifications the C.P. No.D- 1668/2019 was disposed off vide order dated 27.06.2019. Being aggrieved with issuance of Notification dated 26.06.2019, Petitioner filed C.P. No.D- 4682/2019 (Hyderabad No.1766/2019), wherein the Notification dated 26.06.2019 was suspended by this Court vide order dated 18.07.2019. However, in order to defeat the orders of this Court, the Respondents have issued a new Notification bearing No.SO(U)/U&B/UOS/1-52/2019/1346 dated 04.10.2019, whereby they constituted an Inquiry Committee to probe the allegations of gross misconduct, inefficiency, corruption etc against the Petitioner. Against issuance of this Notification, Petitioner has filed instant petition.

7. None of the Respondents has filed comments in this petition.

8. As regards C.P. No.D-3206/2018 is concerned, Petitioner Professor Dr. Muneeruddin, submits that he is currently performing his duties as Focal Person (Pro. Vice Chancellor) of Mohterma Benazir Bhutto Shaheed Sindh University Campus Dadu. Further, since February 2017 to October 2018, the Petitioner has also looked after the affairs of CNG and Petroleum which were being used by the vehicles of the University; however, he has no concern with accounts in which the Manager of CNG used to deposit the amount of earning from CNG and Petroleum; despite, the respondent No.4 through numerous mobile contacted the Petitioner causing him mental torture and agony. That a news clipping was published in daily "Dawn" about embezzlement of amount of Rs.738.593 through fake billings on account of maintenance and repair works, over invoicing of CNG and fuel supply to pocket amounts through a hand picked manager and other staff. It is further stated that respondent No.4 has no right or title to call the Petitioner without any cogent evidence or material. That due to said act of

respondents Petitioner apprehends illegal and unlawful harassment and intimidation from the respondents, who are acting at the behest of certain powerful forces. Hence he seeks protection and further Respondents No.2 to 4 may be directed not to cause any hindrance in his official duties / working.

9. The case and claim of the Petitioner (Prof. Dr. Muneeruddin) has been denied by Respondents No.2 and 3 in their comments by stating that there has been neither any harassment nor intimidation caused to the Petitioner. However, Petitioner was indulged in illegal operating and supervising the affairs of CNG and Petroleum Station for the reason that both the entities were / are commercial concerns and the Petitioner has filed present petition merely on the basis of surmises and conjectures; however, they prayed for dismissal of instant petition.

10. As far as C.P. No.D- 1874 of 2019 is concerned, Petitioner Dr. Arfana Mallah submits that Respondent No.5 (Dr. Fateh Muhammad Burfat) who is Vice Chancellor of University of Sindh during his tenure has committed misappropriation in University funds and transferred money from one major budgetary head to another without approval of Syndicate in 2017-18; Self-finance Scheme Funds; Cost of land money, deposited as endowment fund for faculty development scholarships and other University funds; hence she has prayed that action may be taking against Respondent No.5 or the matter may be referred to NAB Authorities for initiating an inquiry into the matter.

11. On perusal of case file it reveals that Respondents have not filed their comments in this petition to rebut the case and claim of the Petitioner or otherwise.

12. Mr. Rafique Ahmed Kalwar, learned counsel for Petitioner in C.P. Nos.D- 3183 of 2018, 2380 of 2019 and for Respondent No.5 in C.P. No.D- 1874 of 2019 argued that the petitioner is working as Vice Chancellor of University of Sindh Jamshoro. He further submits that on 07.11.2018 the petitioner has received a notice dated 05.11.2018, under Section 160 Cr.P.C. in respect of an inquiry against him and others for their alleged involvement into embezzlement of funds, defalcation of profits earned from fuel station of University, fuel pilferage un-entitled expenditures, fake billing for reimbursement in various leads, mis-procurement, illegal recruitment, misuse of authority, etc. with direction to appear on 08.11.2018 before the Deputy Director-I (HQ) ACE Sindh, Karachi, but he could not appear on the said date because of his preoccupation in pre-entry test of bachelor degree program 2019. However by letter dated 08.11.2018, the petitioner has sought time for his appearance before the concerned officer/inquiry committee but no reply has been received. According to him he came to know through the newspapers that the matter is finalized and the concerned officer has recommended the case to register F.I.R. against the petitioner and others. He further submits that as the present petitioner is not a public servant within the meaning of Section 21 ninth clause of PPC, therefore, the Anti-Corruption Establishment has no authority to initiate inquiry against him. In this regard he relied upon **PLD 2004 Karachi 109**. Learned counsel further submits that while said petition being C.P. No.D- 3183 of 2018 was pending adjudication before this Court, Respondent No.2 (Universities & Boards Department) has issued show-cause notice dated 22.03.2019 bearing No.SO(U)/U&B/UOS/SHOW CAUSE/2019 against the Petitioner for his removal from the post of Vice Chancellor of University of Sindh, on the basis of the finding of inquiry report of E&ACE, whose very jurisdiction has been challenged by the Petitioner before this Court through aforementioned

petition. The Petitioner replied said notice vide reply dated 29.03.2019 as well as challenged the same before this Court in C.P. No.D-580/2019. During pendency of aforementioned two petitions, Respondent No.2 at the behest and orders of Respondent No.3, again issued a new Notification bearing No.SO(U)/U&B/UoS/1-52/2019/1069 dated 30.05.2019 whereby he appointed Ms. Naheed Shah Durranu as Inquiry Officer to conduct an inquiry into the allegations of misconduct, inefficiency, corruption etc against the Petitioner and, secondly on the very next date, Respondent No.2 issued another Notification bearing No. SO(U)/U&B/UoS/1-52/2019/1075 dated 31.05.2019, whereby the services of Petitioner were placed under suspension with immediate effect until the finalization of inquiry to be conducted under Notification dated 30.05.2019; however, after issuance of these two notifications, Respondents withdraw the show-cause notice dated 22.03.2019 vide Notification dated 31.05.2019 by virtue of which petition bearing C.P. No.D-580/2019 became infructuous and same was dismissed as not pressed. He further submits that both the aforementioned notifications of inquiry and suspension dated 30.05.2019 and 31.05.2019 were in blatant violation and contempt to the restraining order dated 20.11.2018, passed by this Court in C.P. No.D- 3138 of 2018, and the same were issued in violation of section 13(3) of the University of Sindh Act, 1972, as amended through Sindh Universities and Institutes Laws (Amendment) Act, 2018 which provides that a separate and independent inquiry committee has to be formed before taking any action against the Petitioner, the suspension without forming any inquiry committee and its finding, it was totally uncalled, unlawful, illegal and in violation to the fundamental rights of the Petitioner. It is also stated that as per comments filed by the Respondents in C.P. No.D-1668/2019 the said Notification bearing No. SO(U)/U&B/UOS/1-52/2019/1069 dated 30.05.2019 and Notification bearing

No. SO(U)/U&B/UOS/1-52/2019/1075 dated 31.05.2019 were withdrawn by the Respondents and a new Notification bearing No. SO(U)/U&B/UOS/1-52/2019/1114 dated 26.06.2019 was issued against the Petitioner whereof any inquiry committee was formed to probe the allegations of gross misconduct, inefficiency, corruption etc. Pursuant to withdrawal of said notifications, C.P. No.D- 1668/2019 was disposed off vide order dated 27.06.2019. Being aggrieved with issuance of Notification dated 26.06.2019, Petitioner also filed C.P. No.D- 4682/2019 (Hyderabad No.1766/2019), wherein the Notification dated 26.06.2019 was suspended by this Court vide order dated 18.07.2019. However, in order to defeat the orders of this Court, the Respondents have issued a new Notification bearing No.SO(U)/U&B/UOS/1-52/2019/1346 dated 04.10.2019, whereby they constituted another Inquiry Committee to probe the allegations of gross misconduct, inefficiency, corruption etc against the Petitioner. Against issuance of this Notification Petitioner filed instant petition. In support of his contention, he has relied upon the cases of i) **Sheikh Shahid Rafique v. The Registrar, Lahore High Court, Lahore through Registrar** (2018 PLC (C.S) 1092, (ii) **Muhammad Khaliq-ur-Rehman v. Secretary Housing Urban Development and Public Health Engineering Department and 2 others** (2006 PLC (C.S) 1320, (iii) **Mian Muhammad Abdullah, District Manager, Government Transport Service, Lyallpur v. The Road Transport Corporation, Lahore through its Secretary and others** (PLD 1964 (W.P) Lahore 743, (iv) **Narayana Rao v. State of Andh. Pra** (AIR 1958 Andhra Pradesh 836), (v) **Ghulam Rasool and others v. Crown** (PLD 1951 F C 62), (vi) **Attique Ahmed Khan v. LESCO through Managing Director, PEPCO, WAPDA House, Lahore and 3 others** (2010 PLC (C.S) 1322, (vii) **Nisar Ahmed Kiyani v. Azad Government of the State Jammu and Kashmir and another** (1992 PLC (C.S) 1135, (viii) **Mian**

Muhammad Hayat, Superintendent Engineer v. Government of West Pakistan and another (PLD 1964 (W.P) Lahore 264, (ix) **Women Medical College, Abbotabad through Principal v. National Accountability Bureau (Khyber Pakhtunkhwa) through Director General and 2 others** (PLD 2016 Peshawar 92), (x) **All Pakistan Newspapers Society and others v. Federation of Pakistan and others** (PLD 2004 Supreme Court 600) and (xi) An unreported judgment dated 18.05.2010 passed by this court in **C.P.No.D-392/2009**.

13. Mr. Shabeer Hussain Memon, learned counsel for Petitioner in C.P. No.D- 3206 of 2018, while reiterating the same facts and grounds as stated in the said petition, has submitted Petitioner Prof. Dr. Muneeruddin has great apprehension for his illegal arrest at the hands of official Respondents, therefore, legal protection may be provided to him under the law and the official respondents may be restrained not to arrest him in any false case.

14. Mr. K.B. Lutuf Ali Laghari, learned counsel for Petitioner in C.P. No.D- 1874 of 2019 and for intervener in C.P. No.D- 2380 of 2019 submits that Respondent No.5 (Dr. Fateh Muhammad Burfat) has committed gross illegalities while appointing so many persons after taking bribe amount from them and has also misused the funds therefore, his case may be sent to NAB authorities for taking action as per law.

15. Mr. Allah Bachayo Soomro, learned Additional Advocate General submits that instant petitions filed by Petitioners Dr. Fateh Muhammad Burfat and Prof. Dr. Muneeruddin are not maintainable in law; that Chief Minister being competent authority has constituted the Inquiry Committee to probe the allegations leveled against Dr. Fateh Muhammad Burfat and if he has any grievance against such constitution he may approach the competent forum and seeks redressal of his grievance in accordance with

law; that there are disputed questions of fact involved in these petitions, hence this Court while exercising its constitutional jurisdiction cannot entertain the same; that the petitions may be dismissed. However, as regards C.P. No.D-1874 of 2019 filed by Petitioner Dr. Arfana Malla is concerned, he extended his no objection if matter is sent to NAB authorities for action in accordance with law. He further submits that since the competent authority (Chief Minister Sindh) has already constituted an inquiry committee to probe the allegations leveled against Petitioner Dr. Fateh Muhammad Burfat and the Anti-Corruption Establishment has not taken any action against him, therefore, so far C.P. No.D-3183/2018 is concerned, it has also become infructuous.

16. Mr. Kamaluddin Advocate, who is also appearing for Respondent No.5 in C.P. No.D- 1874 of 2019, while adopting the arguments of learned counsel for the Petitioner in C.P. Nos.D- 3183 of 2018, 2380 of 2019 and for Respondent No.5 in C.P. No.D- 1874 of 2019, further submits that Petitioner Dr. Arfana has filed C.P. No.D- 1874 of 2019 against Respondent No.5 only in order to cause harassment to him. He prays that C.P. No.D-1874 of 2019 may be dismissed with costs.

17. Heard parties' counsel and perused the record.

18. On perusal of record it appears that there is no cavil to the fact that vide Notification dated 10.01.2017, Governor of Sindh has appointed Petitioner Dr. Fateh Muhammad Burfat as Vice Chancellor, University of Sindh, Jamshoro for tenure of four years. Thereafter, such powers with regard to appointment, initiate inquiry proceedings and removal were delegated to Chief Minister Sindh. The dispute arose first when a notice bearing No.DD/HQ-1/2018/409 dated 05.11.2018 u/s 160 CRPC was issued against the Petitioner on account of certain allegations raised therein, which

was challenged by Petitioner in one of present petitions (C.P. No.D-3183 of 2018) and this Court vide order dated 20.11.2018 restrained the Respondents from taking any coercive action against Petitioner and while said petition was pending Respondents issued show-cause notice dated 22.03.2019 against Petitioner Dr. Fateh Muhammad Burfat on account of certain allegations raised therein. The said show cause notice was replied by him in detail on 29.03.2019 which matter was also taken to the Court in C.P. No.D-580/2019. That while this notification was pending, two notifications dated 30.05.2019 and 31.05.2019 were also issued and earlier notification dated 22.03.2019 was withdrawn, consequently, C.P. No.D-580/2019 became infructuous and it was dismissed as not pressed. With regard to the subsequent two notifications, Petitioner filed C.P. No.D-1668/2019 before this Court wherein ad-interim order highlighting violations, while issuing show cause notices was passed. Thereafter, said notifications were too withdrawn on 26.06.2019 when third notification was issued and an Inquiry Committee was formed consisting of three members out of whom two were of BPS-19 and BPS-20 respectively, whereas the Petitioner as claimed is Vice Chancellor, University of Sindh, Jamshoro in BPS-22 and according to him, unless the Inquiry Committee, as required under the law, is constituted, no progress can be made as the two members named in said notification were not of higher or equivalent grade than him.

19. It appears from the record that after disposal of C.P. No.D- 4682 of 2019 in which the Petitioner has raised a question with regard to constitution of inquiry committee to probe the allegations leveled against him, another committee has been constituted by Government of Sindh, Universities and Boards Department Karachi vide Notification dated 04.10.2019 which shows that the inquiry committee was comprising of two members to probe the allegations of gross misconduct, inefficiency, violation of budgetary

provisions and mal-administration against the petitioner. But this Notification constituting another Inquiry Committee has also been challenged by the Petitioner in present petition (C.P. No.D-2380 of 2019). During course of arguments we have specifically asked the question from learned counsel for Petitioner to point out any illegality while constituting the aforementioned Committee which, as per record, appears to have been formed / constituted under the law and members of the said Committee are equivalent in rank to that of Petitioner i.e. BPS-22 which is highest pay scale prevailed in our country and the Petitioner is also working in same grade / pay scale, he has no plausible answer with him. Mere saying that members of the Committee are juniors to the Petitioner is not enough.

20. Perusal of record reveals that time and again different notifications were issued to initiate inquiry against Petitioner Dr. Burfat with regard to allegations as stated above but all the time, the Petitioner has challenged them by filing number of petitions thereby assailed the legality and propriety of said Notifications issued by the Government of Sindh on different occasions; however, the said petitions were disposed of by the orders of the Court upon having been withdrawn by the Petitioner himself. Therefore, it appears that the Petitioner is avoiding to face the inquiry against him with regard to serious allegations and to delay the matter, hence it also appears that he has not come before this Court with clean hands. It is noted that at the moment, Anti-Corruption Authority is not in picture and up till now no action has been taken by the Anti-Corruption Establishment against this Petitioner and after issuance of Notification dated 04.10.2019, the matter has been seized of by Government of Sindh which is competent in this matter to take all necessary steps with regard to conduct an inquiry and take subsequent steps / actions for elimination of corruption.

21. On Court query, learned AAG submits that Petitioner Dr. Fateh Muhammad Burfat is a retired Government officer and vide Notification dated 10.01.2017, he has been appointed by Governor of Sindh as Vice Chancellor on tenure basis, therefore, he cannot be termed as public servant. Even otherwise, the competent authority / Chief Minister Sindh vide Notification dated 04.10.2019 has constituted an inquiry committee comprising of Muhammad Waseem and Ms. Naheed Shah Durrani, who both are Grade-22 officers, and the Petitioner has also appeared before the said inquiry committee and this fact is evident from his letter dated 18.12.2019 (photocopy is available as mark "S/5 in Court file of C.P. No.D-2380/2019), addressed to the members of said inquiry committee for giving him fair hearing but, according to him, in the said letter Petitioner Dr. Burfat has not raised any question with regard to his seniority, therefore, the stance taken by the Petitioner through C.P. No.D-2380/19 is an afterthought. It is pertinent to mention here that in terms of relevant law an officer can conduct inquiry against another officer having equal rank. As mentioned above, the question of seniority has not been raised by Petitioner Fateh Muhammad Burfat in his aforementioned letter and he has already submitted jurisdiction of the inquiry committee, therefore, the question raised in C.P. No.D-2380/2019 appears to be an afterthought.

22. It is essential to highlight that under Section 13 Sub-section (3) of University of Sindh Act, 1972 provides that inquiry regarding allegation of corruption against Vice Chancellor may be conducted through an enquiry committee. At this Juncture, it would be appropriate to reproduce the said section which reads as under:-

(3) The Chief Minister shall, in case of allegations of gross misconduct, inefficiency, corruption, violation of budgetary provisions, moral turpitude, maladministration and mismanagement, remove the Vice Chancellor on the basis of

substantiated findings of an enquiry committee, after giving him an opportunity of show cause against such removal.

23. Having perused the above, *prima facie* it is appeared that Chancellor while exercising the powers conferred upon him by law has constituted the enquiry committee in order to ascertain the allegation leveled against petitioner Dr. Fateh Muhammad Burfat. In this backdrop, it could not be said that enquiry committee has been constituted without jurisdiction.

24. As far as submissions made by learned counsel for the petitioner Dr. Fateh Muhammad Burfat regarding malafide on the part of respondent / government is concerned, that too has not impressed us which being a mixed question of law and fact cannot be dealt with at this stage when no concrete evidence has been brought on record so as to justify interference by this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

25. It may be mentioned here that in the instant case enquiry committee has already been constituted by the Chief Minister / Government (respondent) who admittedly has jurisdiction in the case of the Petitioner, even otherwise the petition is premature and petitioner Dr. Fateh Muhammad Burfat may, if so advised, raised all legal objections qua illegality / enquiry in question before the enquiry committee and if such objections are raised, the enquiry committee shall decide these objections as per laws.

26. In view of above, it is observed that instant petition (C.P. No.D-2380/2019) is not maintainable.

27. As regards C.P. No.D-3183/2018 is concerned, it is stated by learned counsel for Petitioner Dr. Fateh Muhammad Burfat that the Petitioner is not public servant within the meaning of ninth clause of section 21 PPC,

therefore, Anti-Corruption Establishment has no authority to initiate inquiry against him. However, it appears from the record that after issuance of notice no progress has been made by the Anti-Corruption Authorities, as during these proceedings Inquiry Committee has been constituted to conduct inquiry with regard to malpractice at the hands of Petitioner, therefore, instant petition appears to have become infructuous.

28. As far as case of the Petitioner Professor Dr. Muneeruddin (C.P. No.D-3206 of 2018) is concerned, the same is based on newspaper clippings whereby a news was published in daily "Dawn" about embezzlement of a huge amount of Rs.738.593 through fake billings on account of maintenance and repair works, over invoicing of CNG and fuel supply to pocket amounts through a handpicked manager and other staff and Respondent No.4 is making repeated calls to Petitioner and causing harassment to him without any authority and justification for which he has no right or authority to make such calls unless cogent evidence or material is collected. However, as it appears, the aforementioned clipping is only a news and nothing else. Petitioner Prof. Dr. Muneeruddin has filed this Petitioner merely showing apprehension, surmises and conjectures. It appears that after publishing such newspaper clippings neither any F.I.R. has been registered against this Petitioner nor any notice in terms of Prevention of Corruption Act, 1947 or NAB Ordinance has been issued against him. Mere publication of some news in newspaper cannot be made basis for issuance of a writ nor this Court can stop any Government office or functionary from performing their official and legal function. During course of arguments, we have asked to learned counsel for the Petitioner to show anything on record that after publishing aforesaid newspaper clipping any notice either from the Government or from Anti-Corruption Establishment has been issued or any F.I.R. has been registered against this Petitioner

and / or any illegal or coercive action has been taken against him, he has no answer with him. Mere apprehension of causing arrest or any harassment on the basis of newspaper clipping cannot be considered to be a ground for maintaining such type of petition. Accordingly, this petition (C.P. No.D-3206 of 2018) is also not maintainable. However, Petitioner may seek his remedy before the competent forum, if so advised, in accordance with law.

29. So far as the case of Petitioner Dr. Arfana Mallah (C.P. No.D-1874 of 2019) is concerned, perusal of record reveals that disputed questions of fact have been raised in this petition. It is argued by Mr. K.B Leghari, learned counsel for petitioner Dr. Arfana that Respondent No.5 (Dr. Fateh Muhammad Burfat) has committed illegality while appointing so many persons after taking bribe amount from them and he has also misused the funds therefore, his case may be sent to NAB Authority for action as per law.

30. It is noted from the record that all the aforementioned allegations fall within the ambit of disputed questions of facts and to prove such questions of fact it is necessary to record the evidence and examination of record of University of Sindh. It is settled law that question of fact which requires recording of evidence and examination of record cannot be gone into by this Court in exercise of its constitutional jurisdiction. We have also observed that an inquiry committee has also been constituted by the competent authority viz Chief Minister Sindh to probe the allegations leveled against Respondent No.5 (Dr. Fateh Muhammad Burfat) hence, instant petition filed by petitioner Dr. Arfana is devoid of merits. However, she is at liberty to approach the competent forum in accordance with law.

31. As regards the case law cited by the learned counsel for the Petitioners in all petitions, in support of their submissions, with due respect,

the facts and circumstances of the said case are quite different from the case in hand, hence are not applicable in these petitions.

32. Above are the reasons of our short order dated 10.03.2020, whereby after hearing the learned parties' counsel at length, the captioned petitions were dismissed alongwith listed applications.

JUDGE

JUDGE

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