

**ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI**

C.P. No.D-2181 of 2017

Date	Order with signature of Judge
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Present

Mr. Justice Muhammad Ali Mazhar

Mr. Justice Amjad Ali Sahito

Muhammad Asif Khan.....Petitioner

Versus

Province of Sindh & others.....Respondents

Heard on 30.04.2021

Ms. Shehla Javed, Advocate along with Petitioner.

Mr. Muhammad Akbar, Advocate for Respondents No.2 to 5.

Mr. Jawad Dero, Addl. A.G. Sindh.

Mr. Zubair Hamidi, Additional Registrar, Sir Syed University of Engineering & Technology present along with Mr. Noman Ahmed, Assistant Professor.

Muhammad Ali Mazhar, J: In essence, this petition has been brought to challenge the suspension letter of the services issued to the petitioner by the respondent No.5 on 18.01.2016 but at some stage, the petitioner was dismissed from service vide dismissal order dated 27.04.2017 during pending adjudication of this writ, so the petitioner also brought on record the dismissal letter by means of an amended petition. According to the record, a complaint was moved on 06.01.2016 to the Vice Chancellor on the alleged malpractices of the petitioner during re-sit examination 2015-16. As said by the complaint, the petitioner was assigned responsibility to conduct exam in GFT-03 for which twenty five examination copies were provided to the petitioner but when he reached in the examination hall, he claimed to have provided 24

copies. An internal investigation revealed that the petitioner stolen the copy himself to use in malpractice.

2. The learned counsel for the petitioner pointed out the minutes of the investigation committee dated 17.06.2016 in which the petitioner was called upon to appear. She further argued that during inquiry neither the petitioner was allowed to produce any evidence nor he was given any opportunity to cross examine the witnesses of the respondents in order to defend. It was further averred that despite clear denial before the committee, the petitioner was found guilty and on the basis of this slipshod investigation, the petitioner was dismissed from the service without any show cause notice or providing any ample opportunity of hearing which is also in violation and contravention of natural justice and due process of law.

3. On earlier date, when the learned counsel for the petitioner raised the issue of conducting disciplinary proceedings without show cause notice, we directed the learned counsel for respondents No.2 to 5 to call the concerned officer. Today Mr. Zubair Hamidi, Additional Registrar, Sir Syed University of Engineering & Technology is present. He very fairly admitted that no show cause notice was issued under Section 24 of the Act to the petitioner before conducting inquiry and he also admits that during the course of inquiry no evidence was led from either side to prove or disprove the guilt of the petitioner. On the strength of this statement, the learned counsel for the respondents No.2 to 5 conceded that a show cause notice under Section 24 will be issued to the petitioner incorporating all allegations against him and after providing ample opportunity of submitting the reply the management will conduct proper inquiry.

4. The concluding paragraph of the minutes of investigation committee is reproduced as under:

“Conclusion

In view of the facts that the initial enquiry was conducted by the Chairman Electronic Engineering Department clearly states that Mr. Asif had admitted to having helped the student to cheat and the fact that he made misstatement in front of Investigating Committee, the committee feels that Mr. Asif is guilty as charged.

Recommendation

Committee recommends strict action against Mr. Asif up to the dismissal from services.”

5. The educational institution “Sir Syed University of Engineering & Technology” has been constituted under the Act. According to Section 24 of Sir Syed University of Engineering and Technology Act, 1995, a show cause notice was obligated to be issued to the petitioner before taking any disciplinary action. For the ease of convenience, Section 24 of the above Act is reproduced as under:

“24. Opportunity to show cause.--Except as otherwise provided, no officer, teacher or other employee of the University holding a permanent post, shall be reduced in rank, or removed or compulsorily retired from service, unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken against him.”

6. We feel no hesitation to hold that the so called investigation or inquiry was not only defective which is not curable but also against the express provision of law quoted supra and in violation of principle of natural justice and right to fair trial. Admittedly, no show cause notice was issued prior to taking a drastic action of dismissal of service. Neither any evidence was recorded nor proper opportunity was afforded to the petitioner to defend the charges. In the case of **Muslim Commercial Bank Ltd. vs. Abdul Waheed Abro and others (2015 PLC 259)**, *(the judgment authored by one of us Muhammad Ali Mazhar-J)*, it was held that the purpose for issuing show-cause notice and holding of inquiry was to ascertain whether the charges of misconduct leveled against the employee were proved or not. Where charge of misconduct was proved after an impartial and fair inquiry then employer/management had prerogative to decide

the sternness and severity of the punishment which might include dismissal from service. Management had to provide fair opportunity of defence in the inquiry to an accused employee for exercise of such power. Inquiry Officer should explore every avenue so that the inquiry might be conducted in a fair and impartial manner. Inquiry officer should avoid razing and annihilating the principles of natural justice which might ensue the miscarriage of justice. Inquiry could not be treated at par with the court proceedings nor the inquiry officer as judicial officer. Principles of natural justice could not be ignored and once a person/employee was subjected to inquiry and evidence was recorded then it was his right to cross-examine the witnesses and if such right was not made available then testimony of witness against such employee would have no dependability or admissibility to decide the guilt. Right of fair trial and due process had now become fundamental right in the Constitution. The aforesaid judgment was challenged in the apex court which was maintained and the honourable Supreme Court held as under:

2016 SCMR 108 (M.C.B. Bank limited, Karachi vs. Abdul Waheed Abro and others). Perusal of the record revealed that the worker had not been afforded reasonable opportunity of defending himself as it was quite evident that six witnesses were produced during the inquiry, but the worker was afforded the opportunity of cross-examining only one witness. Opportunity of fair trial had not been afforded to the worker by depriving him his right of cross-examining the witnesses as such it could be held that principles and procedures of due process of law and fair trial had not been followed, which were against the principles of natural justice.

7. Since the learned counsel for management has candidly conceded that fair inquiry will be conducted after issuing show cause notice to the petitioner and this proposal was also accepted by the learned counsel for the petitioner therefore this petition is disposed of in the following terms:-

- (i) The dismissal order dated 27.04.2017 is set aside and the petitioner is reinstated in service.
- (ii) Within ten days the respondents No.2 to 5 may issue show cause notice to the petitioner along with statement of allegations and within next fifteen days, the petitioner shall submit the reply. If the respondents No.2 to 5 are of

the view that the petitioner has failed to submit any plausible justification or defence, the management may decide to conduct independent and impartial inquiry in accordance with the law.

- (iii) If any inquiry is conducted, the petitioner shall be provided ample opportunity of hearing and defence including right to cross-examine all management witnesses if produced during inquiry.
- (iv) The inquiry if any should be conducted and completed within two months without any fail. The payment of back benefits shall be subject to the outcome of inquiry.
- (v) The suspension period of the petitioner shall continue for two months in which inquiry if any shall be completed by the management and inquiry report and proceedings shall be supplied to the petitioner.

Judge

Judge