

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Before: Nadeem Akhtar &
Mohammad Abdur Rahman, JJ,

C.P. No.D- 4038 of 2023

Muhammad Sheraz Kalhoro

Vs.

Sindh Higher Education Commission & others

1. For orders on office objections :
2. For hearing of main case.

Petitioner : Through Mr. Javed Ahmed Qazi,
Advocate

Respondent No.1 : Through Mr. Miran Muhammad
Shah, Additional Advocate General

Respondents No.2 to 5 : Through Mr. Saad Rasheed-ur-Abbasi
a/w Muhammad Sohail Imran Legal
Officer of ZABUL,

Date of hearing : 12.01.2024

ORDER

MOHAMMAD ABDUR RAHMAN, J: This is a Petition that has been maintained by the Petitioner under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 impugning a letter dated 21 June 2023 (hereinafter referred to as the "Impugned Notice") issued by the Respondent No.3 refusing to permit the Petitioner to submit his LLM thesis, which the Respondent No. 3 contends has been submitted after a period of four years from the date of his enrollment with the Respondent No. 3 in violation of Sub Regulations (a) and (b) of Regulation 3-3.2 of the Regulations Regarding Scheme and Courses of Studies, Manner and Method of Teaching and Admission of Students for the Master Degree in Faculties of

Law (LL.M), Social Sciences and Policy Planning & Development (MA, MS, MSC, MBA) of the Shaheed Zulfiqar Ali Bhutto University of Law, Karachi 2013 (hereinafter referred to as the "2013 Regulations").

2. The Petitioner had enrolled as a student of the LL.M Program at the Shaheed Zulfiqar Ali Bhutto Law University (hereinafter referred to as the "University") in the Spring Term of the year 2017. There is no dispute as to the Petitioner actually attending the program and it seems that the only grouse as between the Petitioner and the University is that the Petitioner has submitted his thesis in December 2021 after the period prescribed in clauses (a) and (b) of Regulation 3-3.2 of the 2013 Regulations and which read as under:

" ... 3.3.2 Master Degree by Research .

a) The minimum period for completion of research work ***shall*** be 24 months and the maximum period shall be 48 months.

b) The Candidate ***shall*** submit a written thesis in the form as prescribed by the University ***after*** the completion of research work.

c) The thesis shall show evidence of original capacity of the development or application of scientific principles and methods, and acquaintance with work of others in similar fields and ability of presentation of ideas,

d) There shall be an examination after submission of thesis."

3. When the Petitioner attempted to submit his thesis he was issued the Impugned Notice by the Respondent No.3 and which reads as under:

" ... This is to inform you that since you have exhausted the maximum allowed period for the completion of your LL.M degree program i.e. 4 years. Thus on this ground, your application of grievance, submitted to Advance Studies & Research Board through Registrar office has been regrettably rejected.

Henceforth, as per the decision of ASRB your name from the roll of LL.M has been withdrawn with immediate effect. You may receive your LL.M "program Incomplete-time-barred" transcript from the

examination department for the courses you attended/completed from this university.”

4. The Petitioner being aggrieved by the Impugned Notice has now maintained this Petition inter alia seeking directions that his thesis should be considered by the University.

5. Mr. Javed Ahmed Qazi appeared on behalf of the Petitioner and contended that the Impugned Notice as submitted could not be sustained as it violated the fundamental rights of the Petitioner as guaranteed under Articles 4, 9, 10A, 14, 18, 25(1) and 38 of the Constitution of the Islamic Republic of Pakistan, 1973 and was being discriminated as against by the University.

6. Mr. Saad Rasheed-ur-Abbasi has appeared on behalf of the Respondents No. 2 to 5 and has contended that the justification of the University for not entertaining the thesis of the Petitioner is solely on account of submission of the thesis being made by the Petitioner after the time as prescribed in clause (a) of Regulation 3-3.2 of the 2013 Regulations had lapsed.

7. We have heard both the Counsel for the Petitioner and the Counsel for the Respondents and have perused the record.

8. It is to be noted that Clause (a) of Regulation 3-3.2 of the 2013 Regulations when contrasted with Clause-(b) of Regulation 3-3.2 makes a distinction as between the “completion of research work” and the “submission of a thesis”. While, clause (a) of the Regulation 3-3.2 of the 2013 Regulations stipulates that the minimum period for completion of “research work” would be (24) twenty four months and the maximum period for completion of “research work” would be (48) forty eight (48) months, contrastingly, clause (b) of Regulation 3-3.2 of the 2013 Regulations stipulates that the “written thesis” would thereafter be submitted in the form as prescribed **after the completion of research work**.

9. It would therefore, seem that on a literal reading of clauses (a) and (b) of Regulation 3-3.2 of the 2013 Regulations. while an outer limit of four years has been specified for **completion of research work** by a person undertaking the LL.M Program, no time limit has been prescribed **after the completion of research work** for submission of a written thesis.

10. In addition, we are also not convinced that the stipulation as to the time as contained in clauses (a) of Regulation 3-3.2 of the 2013 Regulations is mandatory. The test for determining whether a provision is mandatory or directory has been settled by the Honourable Supreme Court of Pakistan in the decision reported as **Province of Punjab through Secretary Excise & Taxation Department, Lahore, etc. vs. Murree Brewery Company Ltd. (MBCL)**¹:

“ ... **a. The test for Mandatory or Directory Provisions:**

6. *The test to determine whether a provision is directory or mandatory is by ascertaining the legislative intent behind the same. **The general rule expounded by this Court is that the usage of the word ‘shall’ generally carries the connotation that a provision is mandatory in nature.***¹[*(1995) 1 SCC 133. Paragraph 5*]. *However, other factors such as the object and purpose of the statute and inclusion of penal consequences in cases of non-compliance also serve as an instructive guide in deducing the nature of the provision.*² [2017 SCMR 1427. Paragraph 6.]

7. *This Court opined in the case of The State Through Regional Director ANF v. Imam Baksh and Others*³ [2018 SCMR 2039. Paragraph 11.] that:

“To distinguish where the directions of the legislature are imperative and where they are directory, the real question is whether a thing has been ordered by the legislature to be done and what is the consequence, if it is not done. Some rules are vital and go to the root of the matter, they cannot be broken; others are only directory and a breach of them can be overlooked provided there is substantial compliance. The duty of the court is to try to unravel the real intention of the legislature. This exercise entails carefully attending to the scheme of the Act and then highlighting the provisions that actually embody the real purpose and object of the Act. A provision in a statute is mandatory if the omission to follow it renders the proceedings to which it relates illegal and void, while a provision is directory if its observance is not necessary to the validity of the proceedings. Thus, some parts of a statute may be mandatory whilst others may be directory. It can even be the case that a certain portion of a provision, obligating something to be done, is mandatory in nature whilst another

¹ 2021 SCMR 305

part of the same provision, is directory, owing to the guiding legislative intent behind it. Even parts of a single provision or rule may be mandatory or directory. "In each case one must look to the subject matter and consider the importance of the provision disregarded and the relation of that provision to the general object intended to be secured." Crawford opined that "as a general rule, [those provisions that] relate to the essence of the thing to be performed or to matters of substance, are mandatory, and those which do not relate to the essence and whose compliance is merely of convenience rather than of substance, are directory." In another context, whether a statute or rule be termed mandatory or directory would depend upon larger public interest, nicely balanced with the precious right of the common man. According to Maxwell, "Where the prescription of statute relates to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed or in other words as directory only. The neglect of them may be penal indeed, but it does not affect the validity of the act done in disregard of them." Our Court has held while determining the status of a mandatory or directory provision that "perhaps the cleverest indicator is the object and purpose of the statute and the provision in question." And to see the "legislative intent as revealed by the examination of the whole Act."

8. The Supreme Court of India has also dilated upon this issue in the case of *Lachmi Narain v Union of India*,⁴[1976] 2 SCC 953] which was upheld in the case of *New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage Pvt. Ltd.*⁵ [(2020) 5 SCC 757.], that:

"If the provision is couched in prohibitive or negative language, it can rarely be directory, the use of peremptory language in a negative form is per se indicative of the interest that the provision is to be mandatory".

9. The Indian Supreme Court has also laid down certain non-exhaustive precepts in the case of *May George v. Special Tehsildar and Ors.*⁶ (2010) 13 SCC 98; (2011) 9 SCC 354, Paragraph 20] that:

a) "While determining whether a provision is mandatory or directory, somewhat on similar lines as afore-noticed, the Court has to examine the context in which the provision is used and the purpose it seeks to achieve;

b) To find out the intent of the legislature, it may also be necessary to examine serious general inconveniences or injustices which may be caused to persons affected by the application of such provision;

c) Whether the provisions are enabling the State to do some things and/or whether they prescribe the methodology or formalities for doing certain things;

d) As a factor to determine legislative intent, the court may also consider, inter alia, the nature and design of the statute and the consequences which would flow from construing it, one way or the other;

e) It is also permissible to examine the impact of other provisions in the same statute and the consequences of non-compliance of such provisions;

f) Physiology of the provisions is not by itself a determinative factor. The use of the words 'shall' or 'may', respectively would ordinarily indicate imperative or directory character, but not always.

g) The test to be applied is whether non-compliance with the provision would render the entire proceedings invalid or not.

h) The Court has to give due weight age to whether the interpretation intended to be given by the Court would further the purpose of law or if this purpose could be defeated by terming it mandatory or otherwise.”

11. We have considered the various tests that have been settled by the Honourable Supreme Court of Pakistan to determine whether a provision is mandatory or directory by noting that the expression “shall” is used in both clauses (a) and (b) of Regulation 3-3.2 of the 2013 Regulations and which would be one of the factors that would indicate that the provisions of those clauses were to be treated as mandatory and not directory. However, we also note that the language used in each of those clauses was not expressed in negative terms and additionally that no consequences are prescribed in the 2013 Regulations for the failure to comply with the prescriptions of those clauses thereby leading to the impression that the clauses were in fact to be treated as directory and not as mandatory. Finally, we are therefore left to consider as to why the university would not prescribe in the 2013 Regulations, that a failure of a student to submit the thesis would be fatal to obtaining the certification sought. We have

considered this question and the only conclusion that we can reach is that the purpose and intent of prescribing a time period in clause (a) of Regulation 3-3.2 of the 2013 Regulations was to give the student an indication that there was not an indefinite time to obtain the certification and to encourage the student to submit his work within a period that could be considered as reasonable and which the university indicated as being the time frame prescribed therein. Similarly, the intention of the University in not prescribing a time frame in clause (b) of Regulation 3-3.2 of the 2013 Regulations to our mind indicates that the University did not in any manner wish to penalise a student who had spent a considerable amount of time complying with the majority of the prescriptions required to obtain the certification offered by the University simply against the threshold of failing to submit a thesis within an unmovable period of time.

12. We are therefore unable to agree with Mr. Saad Rasheed-ur-Abbasi's interpretation of the 2013 Regulations that the time limit prescribed in clause (a) of Regulation 3-3.2 of the 2013 Regulations was the time period prescribed for the submission of the Written Thesis and believe that clause (a) of Regulation 3-3.2 of the 2013 Regulations only controlled the time frame for submitting the research work required for obtaining the certification and which time limit was also directory and not mandatory. There being no time limit specified in clause (b) of the Regulation 3-3.2 of the 2013 Regulations for the submission of the Written Thesis, the Respondent No. 3 could not have prohibited the Petitioner from submitting his written thesis after expiry of four years. It is significant to note that it is not disputed by the University that the Petitioner has completed the research work within the period of four years as prescribed in clause (a) of Regulation 3-3.2 of the 2013 Regulations and the Written Thesis was submitted by him thereafter. The Impugned Notice therefore cannot be sustained.

13. For the foregoing reasons, we are of the opinion that the Impugned Notice is clearly illegal and had been issued in violation of clause (b) of Regulation 3-3.2 of the 2013 Regulations and the Respondent Nos. 2 to 5 jointly and severally had wrongly refused to accept the Written thesis of the Petitioner and which notice is set aside with directions to the Respondent Nos. 2 to 5 to receive the thesis of the Petitioner which shall be submitted by him on 15 January 2024:

- (i) which shall be finalised by the Respondent Nos. 2 to 5 forthwith in accordance with their Regulations; and

(ii) which shall not be rejected on the ground that it was submitted late

14. We had allowed this Petition by a short order dated 12 January 2024 and the above are the reasons for the same.

Karachi:

JUDGE

Dated:

JUDGE