ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-642 of 2023

Date	Order with signature of Judge(s)

Before:
Mr. Justice Muhammad Karim Khan Agha
Mr. Justice Adnan-ul-Karim Memon

Date of hearing and order: 24.1.2025

Mr. Muzamil Hussain Jalbani advocate for the petitioner
Ms. Mehwish Ali advocate with Mr. Muhammad Wasiq Mirza advocate for respondents No.1 to 3.
Mr. Ali Safdar Depar, Assistant AG

Adnan-ul-Karim Memon, J. – The petitioner Mst. Fatima Noor has filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer: -

> *A. Declare that the Impugned Order dated 05.08.2022 and decision taken by the Syndicate in Review vide their alleged meeting dated 22/10/2022 communicated to the Petitioner vide letter dated 23.11.2022 whereby the services of the Petitioner were terminated are all arbitrary, discriminatory, wrongful and in contravention of principles of natural justice, due process, discriminatory, unreasoned, and in violation of the Petitioner's constitutional rights under Articles 4, 9, 10-A, 18, and 25 of the Constitution of Pakistan, 1973 as well as Section 24-A of the General Clauses Act.*
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> *B. Suspend the operation of the Impugned Order dated 05.08.2022, decision of Syndicate in Review dated 22.11.2022, and letter of communication dated 23.11.2022 and any actions taken in furtherance and ancillary to the said Orders.*
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> *C. Set aside/cancel/quash the Impugned Order dated 05.08.2022. decision of Syndicate in Review dated 22.11.2022 and letter of communicated dated 23.11.2022,*
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> *D. Direct Respondent No.1 to reinstate the Petitioner with all back benefits to the same position that the Petitioner held.*

2. Petitioner Ms. Fatima Noor, a Medical Technologist at the Department of Biochemistry of Dow University of Health Sciences (DUHS), was removed from service vide office order dated 23.11.2022, she faced allegations of misconduct, including running unauthorized financial schemes i.e Bachat Committee (BC) within DUHS. An Inquiry Committee was formed, which found her defense unsatisfactory and recommended removal from service. The DUHS Syndicate upheld this recommendation in multiple meetings.

3. The petitioner's lawyer argues that the orders issued on August 5, 2022, and October 22, 2022, violate laws and procedures, are unfair, lack justification, and were issued by an unauthorized body. He argued that the petitioner's fundamental rights, including the right to be heard and a fair trial, have been denied. This includes the right to a fair hearing, access to evidence (charge sheet, complaint, complainant's identity), and the right to cross-examine witnesses. He emphasized that the inquiry proceedings were conducted in a slipshod manner, violating principles of natural justice and the university's statutes. The petitioner's counsel argues that the 2000 Sindh Ordinance on removal from service does not apply in this case, and the alleged misconduct does not warrant dismissal under the repealed law. The petitioner denies allegations of running a financial scheme, stating that committee members participated voluntarily and that she had already repaid all amounts despite no fault on her part was condemned unheard. The petitioner claims that the charges are baseless. The petitioner's counsel argues that acting in a personal capacity like other committee members, she did not engage in any financial schemes. As she did not collect any money, the allegations are baseless, and the show-cause notice and dismissal letter should be withdrawn. The petitioner alleges discriminatory treatment, as she was singled out for punishment while other committee members were not. This targeted action violates her constitutional rights. The petitioner's counsel argues that her actions do not constitute misconduct under university statutes and that no proper fact-finding investigation was conducted to justify her dismissal from service. The petitioner's counsel contends that the impugned orders are unlawful as they violate the inquiry rules prescribed in the Removal of Service Ordinance 2000, DUHS 2007 Statutes, and DUHS Act 2004. The Respondents failed to adhere to their statutes, resulting in substantial irregularities and violations of due process. Since the impugned orders were not passed per applicable statutes, they are invalid and should be set aside. The petitioner was denied a fair hearing, as she was not provided with the name of the complainant, the complaint itself, or the opportunity to defend herself. The inquiry process failed to comply with statutory requirements, including the appointment of an inquiry officer, the provision of a statement of allegations, and the right to be heard. The dismissal order is unjustified as no reasons were provided for the severe punishment, especially considering the alleged wrong was rectified. The dismissal constitutes double jeopardy. The dismissal letter ignores the petitioner's unblemished professional record and significant contributions to DUHS. As per counsel, no hearings were conducted after the show-cause notice was served, denying the petitioner the opportunity to clarify the allegations. The impugned orders violate Article 9 of the Constitution, which guarantees the right to live with dignity. These orders unjustly tarnish the petitioner's reputation and impair her ability to earn a livelihood. He prayed for allowing the petition.

4. Learned counsel representing the respondent-university referred to parawise comments and argued that Ms. Fatima Noor was dismissed due to

misconduct involving unauthorized financial schemes within DUHS. An inquiry found her defense unsatisfactory, leading to the Syndicate's approval of her removal in April 2022. Despite a subsequent show-cause notice, the Syndicate upheld the dismissal in June 2022. He further submitted that effect of adoption of one statute by another by a reference is same as if adopted statute had been written into adopting statute, such incorporation is meant to avoid necessity of repeating such provisions in subsequent act dealing with same matter, since the petitioner was dealt with under the removal from service in exercise of powers conferred under DUHS Efficiency & Discipline of the Employees Statutes, 2007 as such there is no illegality in such adoption in terms of law laid down by the Supreme Court in the case of *Muhammad Ashraf v. Province of West Pakkistan* **(1985 SCMR 705)**. They requested the dismissal of the petition. This assertion has been refuted by the counsel for the petitioner by relying upon the judgment of the Supreme Court in the case of *Azizullah Memon v. Province of Sindh* **(2007 SCMR 299)** and submitted that the Ordinance of Removal from Service has the overriding effect over other all other laws on the subject except in case of proceedings which were already pending before promulgation of the Ordinance. He further submitted that since the impugned action was initiated and taken to its logical conclusion under the misconception of law and under a wrong law, thus, it has vitiated the entire proceedings including the final order, which cannot be sustained under the law, therefore, the proceedings as well as final order passed by the syndicate is liable to be set aside.

5. We have heard the learned counsel for the parties and perused the record with their assistance and case law cited at the bar.

6. Whether the petitioner's collection of money by running the Bachat Committee (BC), constitutes misconduct warranting removal from service and whether the allegations leveled against the petitioner could be inquired under Article 199 of the Constitution.

7. Addressing the first proposition requires examining the term Bachat Committee (BC), Bachat means "savings" which are informal rotating savings and credit associations where a group of people contribute a fixed amount of money at regular intervals. One member receives the entire pooled amount each cycle through a draw or lottery. This process repeats until every member has received the sum once. However, if the government/public servant participates in the bachat committee for his/her financial benefit, which is a personal matter, there is no explicit rule against participating in such groups, it may not be considered misconduct, which encompasses conduct detrimental to service discipline, unbecoming of an officer, or involving financial impropriety, including abuse of position, undue advantage, or compromising obligations, disruptive behavior, inappropriate conduct, and personal gain conflicts.

8. The legality of collecting money to run BC depends on several factors including legitimate purposes (charity, community projects) are generally acceptable. Political or prohibited activities may constitute misconduct. The collection by authorized individuals is generally permissible. Unauthorized collection may be considered misconduct. Funds used for legitimate purposes are generally acceptable. Misuse of funds (personal gain, unauthorized purposes) may constitute misconduct.

9. In the present case, the petitioner a Medical Technologist at Dow International Medical College, was/is accused of deceiving people by collecting money and failing to return it. It is urged by the respondent-university that the petitioner was previously warned about unprofessional conduct and deceiving people. It is alleged that she was reported by nursing students for similar behavior while teaching to the students. The complaint was referred to the Pro-Vice-Chancellor and Registrar. In March 2021, she was directed to appear before the Standing Disciplinary Committee, and in April 2021, she submitted a written statement to the Standing Disciplinary Committee saying that she had taken money from people over two years but she did not have enough assets (cash and gold) to pay the people back. She submitted a list of students and colleagues whom she had taken money from and paid back, however, she identified three students and one colleague whom she did not pay back. The Inquiry Committee, after perusing her case, decided to send her a notice to submit a written defense explaining her conduct and directed her to appear before the committee for a personal hearing. It was further decided that she should be notified that her failure to respond would result in an ex-parte proceeding/decision. In her hearing, she said that there had been some mishaps with her in running the BC and she admitted to taking money from DUHS students and staff that she did not completely return. She informed some people in her committee took the money and flew away; she could not trace it and hence ended up in a situation where she was unable to pay back others. The inquiry committee concluded that the petitioner's conduct constituted misconduct. The inquiry committee recommended the major penalty of Removal from the Service of the petitioner which was acted upon by the competent authority vide office order dated 23.11.2022. The petitioner appealed against the decision before the DUHS Syndicate, which upheld the decision of the competent authority vide minutes of the meeting dated 25.6.2022.

10. At this stage, we inquired with the university's counsel if any complainant was examined by the inquiry officer regarding the alleged BC default. They cited the inquiry committee's findings, stating that the petitioner's admission of guilt made examining complainants unnecessary. We further inquired about the nature of the inquiry. They responded that a fact-finding inquiry was conducted, which

determined the petitioner's guilt. Learned counsel for the petitioner, argued that the petitioner has been awarded the major penalty based on a unilateral fact-finding inquiry as no regular inquiry or other codal formalities were followed by the inquiry officer.

11. Addressing the second proposition, in principle, the role of the Court is not to remake the decision being challenged or to inquire into the merits of that decision, but to conduct a review of the process by which the decision was reached to assess whether that decision was within the parameter of law or otherwise; and observance of rules of natural justice. Of course, fair play is the basis, and if there is perversity or arbitrariness, bias, which vitiates the conclusions reached. In such a scenario, more particularly in service matters, this Court can only see whether: (a) the inquiry is held by a competent authority; (b) the inquiry is held according to the procedure prescribed on that behalf; (c) there is a violation of the principles of natural justice in conducting the proceedings; (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case; (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations; (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion; (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence; (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding; (i) the finding of fact is based on no evidence.

12. However, we are also cognizant of the fact that this Court under Article 199 of the Constitution shall not be in a position to: (i) re-appreciate the evidence; (ii) interfere with the conclusions in the inquiry, in case the same has been conducted under the law; (iii) go into the adequacy of the evidence; (iv) go into the reliability of the evidence; (v) interfere, if there be some legal evidence on which findings can be based. (vi) correct the error of fact however grave it may appear to be (vii) go into the proportionality of punishment unless it shocks its conscience.

13. To elaborate further on the subject question, it is well-settled law that the power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion that the authority reaches is necessarily correct in the eye of the Court.

14. Coming to the main case, it is also a well-established proposition of law that when an inquiry is conducted on charges of misconduct by a public servant, the Court is concerned with determining whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether

the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power, and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules nor proof of a fact or evidence in the Stricto-Sensu, apply to disciplinary proceedings. When the authority accepts that evidence and conclusion receive support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge, however, that is subject to the procedure provided under the relevant rules and not otherwise, for the reason that the Court in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its independent findings on the evidence. This Court may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding is such as no reasonable person would have ever reached, the Court may interfere with the conclusion or the finding and mold the relief to make it appropriate to the facts of each case. In service jurisprudence, the disciplinary authority is the sole judge of facts. Where the appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. On the aforesaid proposition, we are fortified by the decision of the Supreme Court in the case of *Ghulam Murtaza Shaikh v. Chief Minister Sindh* **(2024 SCMR 1757)**.

15. To go ahead on the subject issue; and, touching the cases of master and servant, the master cannot be permitted to play hide and seek with the law of dismissals. The same processes must be grounded on the substantive reason for the order. Even the discretion to dispense with the inquiry could not be exercised arbitrarily but honestly, justly, and fairly in consonance with the spirit of the law, after the application of a judicious mind, and for substantial reasons. For this purpose, the nature of the allegations against the accused public servant has to be considered for the reason that when it is clear to the authority that the allegations could be decided about the admitted record or it forms an opinion that un rebuttable evidence on the touchstone of QANUN-E-SHAHADAT, to prove the charge against the accused/employee is available on the record, the procedure for regular inquiry, may be dispensed with, otherwise, the ends of justice demand regular inquiry to be conducted to probe the real fate of allegations and not by mere textual proof allowing the inquiry officer to call delinquent public servant in the office to sign inquiry papers, he has to take efforts to substantiate the allegations being a neutral officer and not to act as a stooge of the master for the reason that the requirement of regular inquiry could be dispensed with in exceptional circumstances. Where recording of evidence was necessary to

establish the charges, then departure from the requirement of regular inquiry under the Rules would amount to condemning a person unheard.

16. In the present case, the allegations were/are denied by the petitioner and it was/is incumbent upon the inquiry officer to hold a regular inquiry in terms of principles of natural justice and to ascertain the truth about the allegations by producing cogent material and evidence against the petitioner, whereas no legal procedure has been adopted by the inquiry officer to substantiate the charges. It is settled that when the civil / public servant in response to the Show Cause Notice, has specifically denied the charges against his/her and considering the nature of the charges, all those allegations required evidence, then it becomes incumbent upon the authority to have ordered a regular inquiry and in the above-given situation departure from a normal course does not reflect bonafide on the part of the authority. In this regard, reliance can be placed on the case of *Basharat Ali v. Director, Excise and Taxation, Lahore, and another* (**1997 PLC [CS] 817**) [Supreme Court of Pakistan]

17. The Supreme Court of Pakistan in the case of *Abdul Qayyum v. D.G. Project Management Organization JS HQ, Rawalpindi, and 2 others* (**2003 SCMR 1110**) held that the requirement of regular inquiry could be dispensed with in exceptional circumstances. Where recording of evidence was necessary to establish the charges, then departure from the requirement of regular inquiry under the Rules would amount to condemning a person unheard.

18. Applying the above principles, the impugned orders in the instant case, cannot be treated to be a simpliciter termination from service but this is removal from service of the petitioner under the repealed law. These orders were passed by way of punishment and, with stigma, without holding a regular departmental inquiry. The law provides that the punishment must always be commensurate with the gravity of the offense charged. The punishment imposed on the petitioner is disproportionately excessive and it is not within the reach of natural justice for the simple reason that the petitioner has explained her position but could not convince the respondent university and if the assertions of the petitioner were not acceptable to them they ought to have inquired the allegations through regular mode of inquiry, which they have failed to do so, thus leaving this Court with no option but to accept the version of the petitioner at this stage to remit the case to the competent authority of the respondent-university to inquire the allegations through regular mode of inquiry by allowing the petitioner to cross-examine the witnesses, if any, and produce the evidence in defense.

19. So far as the admission of guilt of the petitioner in the inquiry proceedings as portrayed by the respondent-university is concerned, it is well-settled law that unequivocal admission of guilt means that a person must clearly

and explicitly state his/her guilt, leaving no room for doubt or interpretation that they are admitting to the crime charged, essentially requiring a direct and unambiguous confession in Court to be considered a guilty plea. The petitioner's alleged guilt in collecting funds for BC is a private matter. Aggrieved parties can seek legal recourse for recovery.

20. A fact-finding inquiry report is admissible as evidence only if conducted fairly, with proper procedures, and based on credible evidence, especially when mandated by law or conducted by a competent authority. These requirements appear absent in this case. Moreover, the Court retains the right to scrutinize the report and allow cross-examination of its contents. It is by now well-settled that the right to a fair trial means the right to a proper hearing by an unbiased competent forum.

21. It is to be noted that the right of "access to justice to all" is a well-recognized inviolable right enshrined in Article 9 of the Constitution and is equally found in the doctrine of "due process of law". It includes the right to be treated according to law, the right to have a fair and proper trial, and a right to have an impartial Court or tribunal. On the aforesaid proposition, we are guided by the decision of the Supreme Court in the case of *Sh. Riaz-Ul-Haq v. Federation of Pakistan* (**PLD 2013 SC 501**). The right to a fair trial has been associated with the fundamental right of access to justice, which should be read in every statute even if not expressly provided for unless specifically excluded. While incorporating Article 10-A in the Constitution and making the right, to a fair trial a fundamental right, the legislature did not define or describe the requisites of a fair trial, which showed that perhaps the intention was to give it the same meaning as broadly universally recognized and embedded in jurisprudence in Pakistan. Reliance can be placed on the *Suo motu Case No.4 of 2010* (**PLD 2012 SC 553**).

22. Accordingly, the orders of removal from service and appellate orders of the syndicate of the respondent-university are quashed and set aside. The petitioner is directed to be reinstated in service on her original post and position forthwith. So far as, salary and wages / benefits for the interregnum that depends upon the outcome of fresh regular inquiry to be conducted by the respondent-university, within four months positively. However, if the petitioner is found guilty in the regular inquiry the competent authority shall pass a speaking order after providing a meaningful hearing to the petitioner.

JUDGE

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