THE HIGH COURT OF SINDH, KARACHI

Before:
Justice Mohammad Karim Khan Agha
Justice Adnan-ul-Karim Memon

CP No D- 6861 of 2017
(Anwar-ul-Haq v. Federal Urdu University & another)

Petitioner	:	through Syed Zayan Haider, advocate.
Respondents No. 1		Mr. Abdul Samad Memon, advocate
Respondent No. 2		Ms. Zehra Sehar Assistant Attorney General
Date of hearing:		15-05-2025
Date of order		15-05-2025

O R D E R

Adnan-ul-Karim Memon, J., The Petitioner requests this Court to set aside his dismissal from service order dated March 8, 2017, and the letter dated August 25, 2017.

2. Employed at Federal Urdu University (FUU) in 2012, the Petitioner became Deputy Registrar at SAU, New Delhi. Despite initial leave approval, his deputation was rejected, followed by a show-cause notices dated 04.03.2015, 26.03.2015. Though he resigned from service, however the same was not accepted and he was granted two years' leave. Subsequent leave extensions were partially approved, then denied by the competent authority of FUU, culminating in his 2017 termination from service, effective from 28.12.2015 in terms of service regulation of FUU, for unauthorized absence.

3. Learned counsel for the petitioner submitted that this violated his rights, university rules, and natural justice, as the Syndicate, not the Senate that appointed him, approved the dismissal based on a committee report vide committee report dated 17.06.2015, he was not informed of. He also claims that the Acting Vice Chancellor acted beyond his authority and defied court orders from a separate eligibility case. Citing a similar case, he seeks to overturn his dismissal and acceptance of his resignation tendered in 2013. Learned counsel further submitted that the petitioner was granted leaves from time to time, however no departmental proceedings were initiated against him and his services were terminated without legal basis. He further submitted that he has obtained instructions from his client that if resignation of the petitioner earlier tendered in 2013 is accepted he will not press the further prayers.

4. The learned counsel for the respondent-university argued that this petition is not maintainable and liable to be dismissed. He further submitted that the

resignation issue of the petitioner was placed before Vice Chancellor of Respondent University who did not accept his resignation and granted him leave, however petitioner did not mend his ways, compelling the Respondent University to serve upon him show cause notice dated 04.03.2015 and subsequent final show cause notice dated 26.03.2015 thereafter a committee was constituted to enquire his case vide office order dated 29.04.2015, finally enquiry committee submitted report dated 17.06.2015 and the petitioner was directed by the Registrar to resume the duty vide letter dated 08.04.2016 with six months leave extension, which was refused by the Syndicate, however second committee was constituted to enquire leave matters of the petitioner and other employees vide letter dated 18.04.2016 and the committee recommended his dismissal from service vide letter dated 09.05.2016, finally office order dated 08.03.2017 was issued by the Registrar informing him about his dismissal from service with effect from 28.12.2015 when he was supposed to resume his duty after availing leaves. He prayed for dismissal of the instant petition. Learned AAG is of the same view.

5. We have heard the learned counsel for the parties and perused the record with their assistance.

6. Employed by Federal Urdu University in 2012, the Petitioner became Deputy Registrar at SAU, New Delhi. Initially granted leave, his deputation was denied, and he received show-cause notices. He resigned in 2013 but was subsequently granted two years' leave. Later leave extension requests were partially approved before being denied by the Syndicate of the respondent university, leading to his termination from service in 2017 (retroactive to 2015) for unauthorized absence from April 18, 2016.

7. The record reveals that petitioner failed to rejoin the respondent university despite several opportunities up to 2017, however he insisted on the plea that he had tendered his resignation in 2013 first be accepted. He submitted that the dismissal, approved by the Syndicate without his input (unlike his Senate appointment), violated his fundamental service rights and natural justice. The stance of the petitioner has not been appreciated by this Court in terms of judgment rendered by the Supreme Court in the case of *Sakhib Zar vs. K-Electric Limited* (**2024 SCMR 1722**) that even brief unauthorized absence constitutes misconduct, giving the management the right to dismiss the employees after due process. However in the present case, the petitioner was given several opportunities to resume the duties but he failed to do so rather insisted for acceptance of his resignation which was not his prerogative and in such circumstances the Vice Chancellor deemed it appropriate not to accept his resignation and allowed him leave extension finally he was warned to join but he failed which resulted in culmination of his service into dismissal in 2017 after due

process which at this stage is not called for interference under Article 199 of the Constitution, as no fundamental right of the petitioner seems to have been infringed.

8. The Supreme Court has held in the recent judgment that the distinction between the act of misconduct and the quantum of punishment provided under the law for such misconduct. Likewise, different acts of misconduct are defined in the different laws with different quantum or genres of punishments to be imposed according to the fine sense of judgment of the competent authority/management/employer, in which the Courts have no role to play in the decision making of management, which is the sole arbitrator. However in the present case, the respondent seems to have acted in good faith by allowing him extra ordinary relief of extension in leave but the petitioner failed to join the duties from the dates he was allowed to leave the country.

9. It is well settled now that unexcused absence from duty is misconduct. This Court cannot offer relief simply because the absence was brief or otherwise. Interpreting absence from duty as potentially extending to a certain period, improperly rewrites the law on the subject issue, effectively changing the threshold for misconduct. This is an incorrect interpretation.

10. The Supreme Court has held that as soon as the act of misconduct is established and the employee is found guilty after due process of law, it is the prerogative of the employer to decide the quantum of punishment, out of the various penalties provided in law. The casual or unpremeditated observation that the penalty imposed is not proportionate to the seriousness of the act of misconduct is not adequate, but the order must show that the competent authority has applied its mind and exercised the discretion in a structured and lawful manner.

11. In view of the foregoing, no Court has any jurisdiction to grant arbitrary relief without the support of any power granted by the Constitution or the law. Without a doubt, the Court in exceptional or appropriate cases or circumstances, may examine the quantum of punishment to figure out the proportionality and reasonableness and may also nullify or overturn such punishment, if found out of proportion vis-à-vis the act of misconduct and in this scenario, the punishment awarded by the competent authority may be revisited and converted into some lesser or alternative punishment if provided under the law but to exercise such jurisdiction for mitigation, the set of circumstances of every case have to be considered minutely, which is not the case in hand to exercise such discretion.

12. Considering the case in hand, the respondent-university cannot modify the act of misconduct i.e. absence from duty without authorization into any of the minor penalties, hence the impugned order passed by the respondent-university dispensing with service of the petitioner due to unauthorized absence from duty was rightly passed and is now affirmed by this Court.

13. For the reasons stated, we find no error in the impugned order of the respondent-university. This petition is meritless and accordingly dismissed along with the pending application(s).

JUDGE

HEAD OF CONST. BENCHES

SHAFI