

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-5318 of 2023

(Dr. Muhammad Sajid Khan v Province of Sindh & others)

Date	Order with signature of Judge(s)
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Before:

Mr. Justice Muhammad Karim Khan Agha

Mr. Justice Adnan-ul-Karim Memon

Date of hearing and order:- 07.10.2025

Mr. Ali Asadullah Bullo advocate for the petitioner.

M/s Moin Azhar Siddiqui and Ali Turrabi advocate for the respondents.

Ms. Saima Imdad, AAG

ORDER

Muhammad Karim Khan Agha, J: The petitioner requests this Court to:

- i) *Declare that the petitioner is duly entitled to promotion from the post of Assistant Professor (Temporary) BS-19 to Associate Professor/Professor BPS-20/21, and Respondent No.5 may be directed to issue notification of promotion of the petitioner after adopting all due formalities.*
- ii) *Declare that the office order No. B.Estt. (T)(Urdu)/2023-1278 dated August 9, 2023, issued by the Respondent No.4 is arbitrary, illegal, unlawful, and without having jurisdiction, and has no legal effect.*
- iii) *To suspend the operation of the office order No. B.Estt. (T)(Urdu)/2023-1278 dated August 9, 2023.*
- iv) *Grant a permanent injunction restraining the Respondent Nos. 3 & 5 from taking any action based on the office order No. B.Estt. (T)(Urdu)/2023-1278 dated August 9, 2023.*

2. The Petitioner claims to be duly qualified for promotion as Associate Professor/Professor, applied for the said posts in the Department of Urdu, Karachi University, after an advertisement in February 2019. Respondent No. 4, vide letter dated 08-11-2022, declared the Petitioner ineligible for the post of Professor due to insufficient recognized publications. The Petitioner submitted a reply with an approved list of publications on 25-11-2022, but was again informed on 22-12-2022 that he was ineligible even for the post of Associate Professor. Despite subsequent representations and a request for fresh scrutiny, no response was received. Owing to these actions, the Petitioner alleges personal bias by the University management. On 17-02-2023, while submitting the Physics Department's examination results, a typographical error occurred in the marks of two students, which the Petitioner sought to correct through an application dated 19-07-2023. The Deputy Controller (Semester) responded on 25-07-2023, explaining the correction procedure. Soon thereafter, Respondent No. 7 (a student) lodged a complaint of

harassment on 07-08-2023. It is urged that, without affording the Petitioner any opportunity of hearing, Respondent No. 4 suspended him from service vide order dated 09-08-2023, though the Syndicate (Respondent No. 5) was/is the competent authority under the University Employees (E&D) Ordinance, 1962, to do so. The Petitioner submitted a reply on 12-08-2023 and a Grievance Notice on 18-09-2023, but received no response. However, the departmental inquiry was initiated by Respondent No. 6 against him, which also violated Section 4 of the Protection Against Harassment of Women at Workplace Act, 2010, as the complaint and supporting documents were not served upon the Petitioner. Notices dated 14-09-2023 and 19-09-2023 were issued without annexures, and upon appearance on 21-09-2023, the Petitioner sought time to reply. A further notice directed appearance on 05-10-2023, when the Petitioner submitted his written reply. Based on the committee's recommendations, a one-year increment penalty was imposed upon the petitioner on 01.11.2023, and the suspension order was withdrawn on 10.05.2024.

3. Learned counsel for the petitioner contended that the suspension order issued by Respondent No. 4 (Registrar, University of Karachi) is illegal, having been passed without lawful authority or jurisdiction. Learned counsel referred to Section 23(2)(v) of the University of Karachi Act, 1972, for which only the Syndicate is empowered to suspend, punish, or remove teachers of BPS-17 and above. However, the Registrar issued the suspension order without any inquiry or authorization from the Syndicate. He further argued that under Section 6 of the Employees Efficiency and Discipline Rules, 1962 (EEDA 1962), the competent authority, the Syndicate, must appoint an Inquiry Officer to conduct proceedings. In the Petitioner's case, no such Inquiry Officer was appointed, and instead, Respondent No. 3 (Vice Chancellor) assumed the role of the competent authority, imposed a major penalty under Rule 3(c), and bypassed the Syndicate. Counsel submitted that the mandatory inquiry procedure, issuance of a show-cause notice, framing of a charge, examination of evidence, and opportunity for cross-examination were not followed. He next submitted that the Petitioner was never allowed to confront the complainant (Respondent No. 7) or her witnesses. It was further argued that the proceedings are tainted with mala fide intent, as the Petitioner had earlier filed Constitution Petition No. D-3474/2017 before this Court against illegal appointments in the University, and the present action was/is initiated to victimize him. The inclusion of the Petitioner's case in the Syndicate meeting agenda of 02-11-2023 under the heading "Removal from Service" is, therefore, illegal, unjustified, and contrary to principles of natural justice. The Petitioner accordingly prayed that the Respondent No. 5 (Syndicate) be restrained from taking any disciplinary

action against him without due process and verification of the evidence he has produced, and that the petition be allowed.

4. Learned counsel for the respondent university contended that the impugned office order No. B.Estt.(T)(Urdu)/2023-1278 dated 09-08-2023 is interim in nature, not a final or punitive order, hence the petition is not maintainable under Article 199 of the Constitution. He argued that the Inquiry Committee was duly constituted under the Protection Against Harassment of Women at Workplace Act, 2010, and all proceedings have been conducted in accordance with the law. It was further submitted that the suspension is merely a temporary administrative measure and does not amount to punishment; as such, the petitioner has a remedy against the outcome of the inquiry proceedings. The petitioner, being accused of harassing a female student (Respondent No. 7), poses a potential threat to other female students as well, given the serious and far-reaching nature of the allegations. Counsel added that the petitioner has admitted exchanging WhatsApp messages and making phone calls, which constituted harassment within the meaning of the Act and as interpreted by superior courts. Moreover, the petitioner's attempt to alter examination results reflects misconduct on his part. He therefore prayed for dismissal of the petition, arguing that no illegality or procedural irregularity had been committed by the respondents.

5. Learned AAG has adopted the arguments as advanced by learned counsel for the respondent-university.

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

7. This case involves two different, though related matters. The petitioner's claim for promotion to Associate Professor/Professor was denied due to alleged insufficient publications. The subsequent suspension and harassment complaint placed the petitioner under inquiry, which was later recalled. Both issues affect each other, because disciplinary proceedings can legally suspend consideration of promotion. However, that stigma is no more in the field, even if the promotion case was/is otherwise pending, which needs to be processed under the law. In service jurisprudence, an employee has a right to be considered for promotion, not an absolute right to be promoted, subject to all just exceptions as provided under the law, this aspect of the case needs to be looked into by the respondent authority, when his case is taken up for such consideration.

8. In view of the foregoing discussion, it appears that the Petitioner's claim for promotion can now be entertained by the competent authority, as the matter relating to his suspension and the pending inquiry under the

Protection Against Harassment of Women at Workplace Act, 2010, has been concluded as informed. The suspension order, being interim in nature, does not amount to punishment under the service jurisprudence. The question of the Petitioner's eligibility for promotion may also be reconsidered by the competent authority of the respondent-university, if he is found fulfilling the prescribed criteria under the University of Karachi Act, 1972, and relevant rules.

9. This petition stands disposed of in the aforesaid terms.

Head of the Constitution Benches

JUDGE