2011 Y L R 2710

[Peshawar]

Before Ejaz Afzal Khan, C.J. and Yahya Afridi, J

ZEESHAN-UR-REHMAN---Petitioner

Versus

GHULAM.ISHAQ KHAN Institute of Engineering Sciences and Technology through Rector and 6 others---Respondents

Writ Petition No.931 of 2011, decided on 1st June, 2011.

(a) Constitution of Pakistan---

----Art. 199---Constitutional petition---Educational institution---Main thrust of the petitioner's challenge to the impugned actions of the Institution, was based on the violation of the provisions of the "Student Handbook 2010-11 "---No doubt Institute was a statutory body created under Ghulam Ishaq Khan Institution of Engineering, Science and Technology Act, 1994, but the "Student Handbook 2010-11" was not a statutory instrument---Violation of "Student Handbook 2010-11", in circumstances, could not be corrected through exercise of constitutional jurisdiction of High Court under Art.199 of the Constitution would not mean that under all such cases, High Court would remain a silent spectator with folded hands to grave excesses of a statutory body, especially where there appeared blatant violations warranting the exercise of constitutional jurisdiction---Grievance of the petitioner, in the present case, was regarding principles of natural justice which stood independently and were not dependant upon the provisions of the "Student Hand Book 2010-11"-High Court, under Art. 199 of the Constitution would be available to rescue the aggrieved person, in circumstances.

Fahad v. President CECOS University 2011 CLC 1 rel.

(b) Natural justice, principles of---

----Right to hearing---Violation of principles of natural justice had been equated with the violation of the fundamental rights of a citizen under the Constitution---Principle of natural justice, however, could not be stretched to an extent, where it would lose its forcefulness and would lead to abuse thereof---Mode, manner and the stage of providing "personal hearing" would depend on circumstances of each case--- "Right to a hearing" was of prime importance---

Limits to its application, scope and its final .implication on the order so passed was acknowledged and respected---Where the "right to a hearing" had not been expressly so provided in a statute or a statutory rule or regulation, the most crucial and essential element, was to see that the party affected had not been "prejudiced" in its defence.

Aneesa Rehman v. PIAC 1998 SCMR 2222; University of Dhaka v. Zakir Ahmad PLD 1965 SC 90; Collector Sahiwal v. Muhammad Akhtar 1971 SCMR 681; Muhammad Ishaq v. Dr. Salahuddin PLD 1959 Kar. 669; Amanullah Khan v. Federal Government of Pakistan PLD 1990 SC 1092; S.Nizamuddin Qadri v. The Deputy Secretary of Government 1979 CLC 217; Sikandar Sadiq v. University of Peshawar PLD 1988 Pesh. 99; The Institute of Bankers in Pakistan and another v. Zainul Abedin 1987 MLD 549; Mehrab Khan v. Taj Mohomed and others PLD 1961 (W.P) Quetta 1; Dr. Mumtaz Hussain v. University of Sind, Hyderabad and others PLD 1966 Kar. 429; Oadri Brothers Foundry and Workshop Karachi v. Sind Employees Social Security Institute PLD 1977 Kar. 112; Pakistan Warranted Warehouse Ltd. Karachi v. Government of Pakistan and 4 others PLD 1977 Kar. 954 and Messrs General Tractors and Machinery Company Ltd., Karachi v. The State 1972 PCr.LJ 604 rel.

(c) Constitution of Pakistan---

----Art. 199---Educational institution---Constitutional jurisdiction--- Scope--Interference by a constitutional court in departmental inquiries of educational institutions, regarding sensitive .issue, should be sparingly exercised and that too in cases where the proceedings challenged were not arbitrary, capricious, outrightly absurd or against the settled norms of justice and fair play---Petitioner, in the present case had sought preservation and enforcement of the terms of his "Associate-ship" under the agreement---Seeking any relief thereto, would amount to enforcement of the terms of contractual obligation which was beyond the pale of constitutional jurisdiction, unless Government instrumentality was involved or a clear breach of any statutory provision was committed by the party---Agreement having no statutory backing the violation of any provision thereof, if any, would surely not be 'justiciable', under constitutional jurisdiction---Petitioner could seek his legal remedy, if any, before the appropriate legal forum---Proceedings challenged by the petitioner, were far from having legal infirmities which would warrant constitutional interference---Court was to be more cautious of issuing the prayed writ, when the petitioner had been provided "fair hearing" by different forums, coupled with his admission of guilt in his final letter.

Fazal Elahi Khan for Petitioner.

Atiqur Rehman Qazi for Respondents.

Date of hearing: 1st June, 2011.

JUDGMENT

YAHYA AFRIDI, J.---Zeeshanur Rehman, seeks the constitutional jurisdiction of this Court

praying for issuance of appropriate writ to the effect that;

> "It is, therefore, humbly prayed that by acceptance this writ petition, the impugned order dated 31st March, 2011 passed by respondent No.2 (Director Admission and Examination) and all the orders passed subsequently may graciously be set aside and the petitioner may very kindly be allowed to continue his studies/research work under the graduate assistantship, moreover, the respondents may also be directed to issue/allow all the due privileges etc. to the petitioner. And/or any other remedy not specifically asked for in the circumstances of the case may also be allowed/granted."

2. The brief and essential facts leading to the present petition are that the petitioner was vide letter dated 12-1-2010 offered admission in "MS Degree Programme" offered at Ghulam Ishaq Khan Institute of Engineering Science and Technology, Swabi ("GIK"). The terms of the admission offered to the petitioner were clearly stipulated in the letter dated 12-1-2010, which provided that;

Subject: Admission in MS at GIK Institute.

Dear, Mr. Rehman.

> Admission to the MS Degree Programme in GIK Institute for the Spring semester 2010 have been finalized. I am pleased to inform you that you have been provisionally selected. Congratulations!
>
> You have also been selected for the award of assistantship initially for one semester. It will be extended for next three semesters subject to satisfactory academic performance (minimum GPA 3.00 each semester). It is pertinent to mention that as a graduate assistant you will be entitled to the following facilities admissible as per rules.
>
> ----No tuition fee shall be charged from you. However, you shall be required to pay an amount of Rs.35, 000 at the time of admission, which include an admission fee of Rs.20,000 and arefundable security fee of Rs. 15, 000.
>
> ----You shall be paid a fixed amount or stipend which shall be Rs.10,000 (ten thousand only per month).
>
> Free accommodation in hostel.
>
> You shall be required to assist the faculty in teaching and research activities to the extent of twenty hours per week and after successful completion of MS Degree you will be required to serve the GIK Institute for two years.

In order to secure your seat you are advised to submit an undertaking on stamp paper as per attached format. Kindly, bring along with the original academic documents and deposit them with graduate admission office.

My colleagues and I look forward to welcome you to the Institute at the commencement of the Spring semester on 18th January, 2010.

Best wishes.

Your sincerely,

Professor Khalid."

3. The aforementioned admission letter of GIK to the petitioner, clearly provided that the petitioner was firstly offered a place in the MS Degree Programme at GIK and secondly that he - was also granted 'Assistantship', whereby he was to assist the teaching and research activities at GIK for twenty hours per week. In return thereto, the petitioner was provided pecuniary benefits, including a fixed stipend of Rs.10,000, reduction in admission fee and free accommodation in the hostel. The terms of the Assistantship', were duly stipulated in the agreement dated 15-1-2010 entered between the petitioner and GIK ("Agreement").

4. The sad saga was triggered by a written complaint dated 20-1-2011 lodged by a female student at GIK to the Dean Student Affairs, GIK, complaining about the "unwanted harassment caused by TA (Teaching Assistant) Zeeshanur Rehman". The said written complaint was not anonymous. The gist of the complaint against the present petitioner stated therein was that;

"….He always tried to come and talked to me and get near that is highly disrespectful and intolerable. I, many times tried to avoid but he continuous effort of disturbing me compelled to let the administration know. Day by day his behavior is getting rude and rude and it cannot be pen down……"

5. The matter was taken very seriously by the GIK administration and the petitioner was served with a notice dated 25-1-2011 to appear before the disciplinary committee at 10-00 a.m. on 25-1-2011. The said notice was duly received by the petitioner on the same day. The said committee ("1st hearing"), comprised of three academic staff members of GIK, on 26-1-2011, recommended, inter alia, that petitioner's "Assistantship" be cancelled.

6. This recommendation of 26-1-2001 was placed before another disciplinary committee on 27-1-2011 ('2nd hearing'), which comprised of five academic staff members of GIK. The said committee after considering the matter came to the conclusion, inter alia, that the petitioner's admission be terminated and he be removed from the roll of GIK and that too with immediate effect.

7. Based on the recommendations of the said disciplinary committee, the decision of GIK administration was communicated to the petitioner vide letter dated 31-1-2011, whereby his admission was 'terminated with immediate effect, he was to pay back an amount of Rs.399,516 to the GIK' and was also to immediately vacate the hostel facilities.

8. Being aggrieved thereof, the petitioner appealed the said decision. His appeal was placed before a Committee on 7-2-2011 ("3rd hearing', which noted that the petitioner had previously been warned in October of 2010 about his earlier indiscretion and indiscipline and that no fresh evidence relating to his defence which he had earlier placed before the Committee. Accordingly, his appeal was dismissed.

9. The petitioner being aggrieved of the said decision again appealed, which came up before another committee on 3-3-2011 ("4th hearing"), wherein the matter was against discussed. The extract of the minutes of the said meeting provided that;

> "Zeeshanur Rehman was again called to present/defend his complete case under oath before the committee. Zeeshanur Rehman was categorically questioned regarding the PH-102 course offered in Spring 2011 semester, in which he was not actually deputed by the instructor to personally contact the students and invite then to an evening class. Zeeshanur Rehman has no plausible answer for such questions. He admitted that in a similar incident in October, 2010 he had sent an unsolicited email to a female student for which he was given a final warning. Zeeshanur Rehman also submitted his statement on March 3rd, 2011."

10. The petitioner's case was again taken up by the said committee on 9-3-2011 ("5th hearing") to deliberate even further. The committee after considering the material placed before it, came to the conclusion that the appeal of the petitioner was not tenable and hence was recommended to be rejected. The matter was finally placed before the Rector of GIK, who also concurred with the recommendations of the said committee and finally the matter was communicated to the petitioner vide letter dated 24-3-2011.

11. There being no other administrative remedy available, the petitioner again approached the Rector of GIK vide his letter dated 28.3.2011 and apologized for his mistakes and sought his indulgence to allow him to continue his further education at GIK. The particulars of his apology, as stated in his said letter, are as follows:

> "….It is stated with great respect that I express an unconditional apology for that mistake which I have done to all the parties which either remained concerned with my matter or had been affected.
>
> Especially I express apology to my honourable Dean (FES) Dr. Jamilun Nabi, Dr. Shafat Bazaz and Dean of Affairs, I request to all of your to forgive me this time and allow me to pursue my onward studies and research, I left myself at the mercy of the institute and I promise here that I will not repeat any type of mistake again.
>
> Yours obediently,

Zeeshanur Rehman."

12. Having received no positive response, even after his apology letter, the petitioner was constrained to seek his remedy by invoking the constitutional jurisdiction of this Court through the instant petition.

13. The learned counsel for the petitioner vehemently argued that the punishment awarded by the GIK upon the petitioner was against the `principle of proportionality'; that there was no actual notice as provided under the 'Student Handbook 2010-11'; that the provisions provided for disciplinary action under the 'Student Handbook, 2010-11' were not complied with by GIK particularly the following provisions stated therein; firstly The seven days notice provided under Rule 4.2.5, secondly the Disciplinary Committee to commence hearing after the seven days notice period provided under Rule 4.2.7 and finally the imposition of the harshest punishment out of the fourteen punishments provided under Rule 4.2.9; that the petitioner hailed from a humble hardworking background and hence deserved some leniency and by punishing him with the ultimate sanction of termination of his admission was against the "principle of proportionality"; that the 'principles of natural justice' had been violated as he was not given proper opportunity of defending himself, moreso, when a complainant did not appear before the committees for him to confront her regarding the allegations made by her in the written complaint.

14. In rebuttal, the learned counsel for the GIK aggressively disputed the assertions of the learned counsel for the petitioner and contended that the issue was contractual and based on the agreement, which could not be entertained or enforced through the constitutional jurisdiction; that the petitioner was provided ample opportunity to defend himself and in fact his case was taken up at more than five occasions, before it was finally decided by the Rector of GIK.

15. The Valuable arguments of the learned counsel for the parties heard and the available record of the case thoroughly considered.

16. The main thrust of the petitioner's challenge to the impugned actions of the respondents is based on the violations of the provisions provided under the 'Student Handbook 2010-11. No doubt GIK is a statutory body created under Ghulam Ishaq Khan (GIK) Institute of Engineering, Sciences and Technology Act, 1994 (Act No.11i of 1994), but the 'Student Handbook 2010-11' is not a statutory instrument. Thus violation whereof could not be corrected through exercise of constitutional jurisdiction of this Court under Article 199 of the Constitution. However, this does not mean that under all such cases, this constitutional Court would remain a silent spectator with folded hands to grave excesses of a statutory body, especially when there appears blatant violations warranting the exercise of constitutional jurisdiction. This Court in Fahad v. President CECOS University (2011 CLC 1) has reiterated this principle in the following terms;

> "The constitutional court cannot remain mum against excess of a statutory body just because there are no statutory rules. If there is a blatant violation of Fundamental Rights of a citizen or a breach of due process of law as protected under Article 4 of the Constitution, the High Court as a Constitutional Court under Article 199 of the Constitution has always come to the rescue of the 'aggrieved' person..."

In this background, we consider the grievances of the present petitioner regarding the issue of natural justice stands independently and is not dependent upon the provisions of the "Student Hand Book 2010-2011".

It is but settled that the violation of the cardinal principle of natural justice being based on the legal maxim of 'audi alteram partem' has been equated with the violation of the fundamental rights of a citizen under the Constitution in this regard, the august Supreme Court of Pakistan in Aneesa Rehman v. PIAC (1998 SCMR 2223) has formulated the said principle in great eloquence in the following terms;

> "In this view of the matter there has been violation of the principle of natural justice. The above violation can be equated with the violation of a provision of law pressing into service constitutional jurisdiction under Article 199 of the Constitution, which the High Court failed to exercise. The fact that there are no statutory service rules in respondent No.1 Corporation and its relationship with its employee is of that master and servant will not negate the application of the above maxim audi alteram partem. The above view, which we are inclined to take is in confonance with the Islamic injunction as highlighted in the case of Pakistan and others v. Public at large (supra) wherein it has been held that before an order of retirement in respect of civil servant or an employee of a statutory corporation can be passed, he is inclined to be heard…..(Emphasis provided)."

As far as, the principle of natural justice is covered, the apex Court in University of Dhaka v. Zakir Ahmad (PLD 1965 SC 90) explained the concept and principles in following terms:--

> "From a careful review of the decisions cited before us it appears that wherever any person or body of persons is empowered to take decisions after ex post facto investigation into facts which would result in consequences affecting the person, property or other right of another person, then in the absence of any express words in the enactment giving such power excluding the application of the principles of natural justice, the Courts of law are inclined generally to imply that the power so given is coupled with the duty to act in accordance with law such principles of natural justice as may be applicable in the facts and circumstances of a given case."

The principle of natural justice, however, cannot be stretched to an extent, where it looses its forcefulness and leads to abuse thereof. The mode, manner and the stage of providing 'personal hearing' depends on the circumstances of each case. In Collector Sahiwal v. Muhammad Akhtar (1971 SCMR 681), the august Supreme Court of Pakistan, while dilating on the said aspect of the principle of audi alteram partem held that;

> "Thus in the case 'of Muhammad Ishaq v. Dr. Salahuddin (PLD 1959 Karachi 669) it was pointed out that each case will have to be determined on its own case. If the statutory provision for notice de-offer mandatory nature, then an order without any notice would be wholly void; but if there be no such provision or if the provision be merely of a directory nature, then whenever the violation of the principle of natural justice is alleged, the Court may call upon a party alleging the same to prove prejudice before it sets aside the order. Such prejudice would obviously not be there if it is found that the party has been actually given a full hearing by the appellate or re visional authority and afforded every opportunity of showing cause against the allegations made."

Earlier the august Supreme Court of Pakistan in Zakir Ahmad's case (supra), the august Court was mindful of this aspect of the application of the `principle of natural/ justice' and the same was duly noted/in the following terms:---

> "In saying this we are not unmindful of the necessity of maintaining discipline in educational institutions or other institutions or departments where the maintenance of discipline is essential for the orderly conduct of the institution or department concerned, nor are we unmindful of the fact that persons in charge particularly or educational institutions must be given the fullest authority to correct those placed in their charge in the same manner as a parent or guardian would be able to do. But even so, we find it difficult to accept the contention that they must also be freed from the necessity of acting in a manner which excludes every reasonable possibility of unfair action being taken. This can only he achieved by observing certain formalities which have been designed to assure the minimum essential principles of justice and fairness, by at least telling the person sought to be punished or condemned what are the allegations against him and by giving him a fair opportunity to correct or contradict any relevant statement to his prejudice. In the present case, it is patently clear that this was not done. The respondent was afforded no opportunity of any kind whatsoever to submit any explanation or put forward his version."

The aforementioned principle so settled even prior to Muhammad Akhtar's case (supra) has been consistently followed and in particular cases titled Amanullah Khan v. Federal Government of Pakistan (PLD 1990 SC 1092), S. Nizamuddin Qadri v. The Deputy Secretary of Government (1979 CLC 217) and Sikandar Sadiq v. University of Peshawar (PLD 1988 Peshawar 99), The Institute of Bankers in Pakistan and another v. Zainul Abedin (1987 MLD 549), Mehrab Khan v. Taj Mohomed and others (PLD 1961 (W.P) Quetta 1; Dr. Mumtaz Hussain v. University of Sind, Hyderabad and others (PLD 1966 Kar. 429); Oadri Brothers Foundry and Workshop Karachi v. Sind Employees Social Security Institute (PLD 1977 Kar. 112); Pakistan Warranted Warehouse Ltd. Karachi v. Government of Pakistan and 4 others (PLO 1977 Kar. 954); Messrs General Tractors and Machinery Company Ltd., Karachi v. The State (1972 PCr.LJ 604).

Even in other jurisdictions, "right to a hearing" has been rendered its prime importance. However, limits to its application, scope, and its final implication on the order so passed has been acknowledged and respected. In this regard, Lord Reids speech in Ridge v. Baldiwin, Lord Wiberforce in Malloch v. Aberdeen Corporation and that of Lord Dennings in Hoffman La Rocha v. Secretary of State are cases in point.

Thus keeping the 'ratio decidendi' of the judgments, referred to hereinabove, as are guiding principle, it may safely be stated that in cases where the "right to a hearing" has not been expressly so provided in a statute or a statutory rule or regulation, the most crucial and essential element is to see that the party affected has not been 'prejudiced' in his defence.

In the present case, this Court finds that the `hearings' provided to the present petitioner by the various committees and the appellate forums of GIK, truly demonstrate that if not complete but substantial compliance to the `principles of natural justice' have been duly met by the GIK authorities in proceedings against him. Furthermore, in the circumstances of the present case, it would be hard to state that the petitioner has been prejudiced in his defence.

17. What is also to be noted is that constitutional interference by a constitutional Court in departmental inquiries of educational institutions, regarding sensitive issue such as in the present case, should be sparing exercised and that too in cases where the proceedings challenged are not

arbitrary, capricious, out-rightly absurd or against the settled norms of justice and fair play.

18. In the present case, the proceedings challenged by the petitioner are far from having legal infirmities, which would warrant constitutional interference. We are to be more cautious of issuing the prayed writ, when the petitioner has been provided `fair hearing' by different forums, coupled with his admission of guilt in his final letter of 28-3-2011.

19. The present petitioner has also sought preservation and enforcement of the terms of his `Associateship" under the Agreement. Seeking any relief relating thereto, would amount to enforcement of the terms of contractual obligations. This is beyond the pale of constitutional jurisdiction unless government instrumentality is involved or a clear breach of any statutory provision is committed by the party. The Agreement having no statutory backing, the violation of any provision thereof, if any, would surely not be 'justiciable" in constitutional jurisdiction. However, the petitioner may seek his legal remedy, if any, before the appropriate legal forum.

20. Accordingly, for the reasons stated hereinabove, this Court does not find merit in the present petition and hence the same is dismissed.

H.B.T./212/P Petition dismissed.