

HIGH COURT OF AZAD JAMMU AND KASHMIR

Writ Petition No. 1921/2023.

Date of institution 19.05.2023.

Date of decision 21.12.2023.

Ijaz Saleem Retired Private Secretary BS-18, Mirpur University of Science and Technology (MUST) Resident of House No. 05, Officer Colony Mirpur.

... Petitioner

VERSUS

1. Vice Chancellor Mirpur University of Science and Technology (MUST) Mirpur.
2. Registrar Mirpur University of Science and Technology (MUST) Mirpur.
3. Additional Registrar Mirpur, University of Science and Technology (MUST) Mirpur.
4. Mirpur University of Science and Technology (MUST) Mirpur, Azad Jammu and Kashmir through its Vice Chancellor.

... Respondents

WRIT PETITION

Before:- Justice Sadaqat Hussain Raja, Chief Justice

PRESENT:

Raja Gul Majeed Khan, Advocate for the petitioner.

Naeem Ahmed Mughal, Advocate on behalf of MUST.

JUDGMENT:

The supra titled writ petition has been addressed under Article 44 of the Azad Jammu & Kashmir Interim Constitution, 1974, whereby, following relief is solicited by the petitioner.

- (i) Direct the respondents, jointly and severally to release the entire pension of the petitioner including pension contribution on the part of electricity department other outstanding emoluments as admissible to him under law, without further delay.

- (ii) Directed the respondents to pay the petitioner leave encashment as admissible to him under law;
- (iii) Quash order dated 28.03.2023 issued by respondents;
- (iv) Direct the respondents to issue PPO in favour of petitioner.
- (v) Costs of litigation is also solicited.
- (vi) Direct the respondents to pay reasonable amount as compensation for victimizing the petitioner.

The facts forming the background of the instant writ petition are that the petitioner was permanent employee of Electricity Department and performed his duty as Stenographer BS-12. It is stated that the petitioner was transferred from Electricity Department to Mirpur University of Science and Technology (MUST) by the competent authority in the year 2010 on the recommendations of respective selection committee. It is further stated that the petitioner was adjusted in the year 2010 as Private Secretary in MUST and by the approval of syndicate the post firstly upgraded in BS-17 and then BS-18. It is submitted that the petitioner after attaining the age of superannuation, he has been retired from service vide order dated 20.04.2022. It is further submitted that NOC has been issued in favour of petitioner on 23.02.2023. It is alleged that vide notification dated 12.12.2022, the Electricity Department has transferred the amount as Rs. 48,09,840/- in the account of MUST but instead of releasing the pension the respondents No. 1 and 3

have levelled the allegations against the petitioners and banned the entry of petitioner in the premises of MUST. It is further alleged that the official respondents merely on the basis of personal grudge, the pension of petitioner has not been released and due to which his family faced financial hardships.

The writ petition was admitted for regular hearing vide order dated 21.09.2023. Written statement has been filed on behalf of MUST wherein it is stated that the petitioner has no locus standi to file the instant writ petition, hence, the writ petition is liable to be dismissed. It is further stated that he has an alternate remedy before the proper forum but the petitioner did not avail alternate remedy and filed this constitution writ petition which is liable to be dismissed. It is contended that petitioner was transferred and appointed as Stenographer BS-12 in MUST by the Chief Secretary vide order dated 19.08.2010, however, the only Hon'ble President of AJ&K is competent authority to transfer the service of petitioner. It is contended that the petitioner did not join the University being stenographer and was not regular employee of the University.

I have heard the learned counsel for the parties and gone through the record of the case.

The perusal of record shows that the petitioner was appointed as Stenographer BS-12 in the Electricity Department. The petitioner was transferred from Electricity

Department to MUST vide order dated 19.08.2010 and on the recommendations of concerned selection committee, the petitioner was adjusted as Private Secretary BS-16 in MUST. The post of Private Secretary has been upgraded from BS-16 to BS-17 firstly and then BS-17 to BS-18. The petitioner has attached his retirement order dated 20.04.2022, whereby the Vice Chancellor MUST retired the petitioner from his service as Private Secretary BS-18, on attaining the age of superannuation w.e.f 24.04.2022. For better appreciation, the retirement order of petitioner is as under:

**Mirpur University of Science and Technology (MST)
Mirpur-10250 (AJK), Pakistan**

Order:

The Vice Chancellor has been pleased to approve the retirement from service in favour of Mr. Ijaz Saleem, Private Secretary (BS_18) on attaining the age of superannuation w.e.f 24.04.2022 (A.N) under rules.

However, NOC for payment of pension and Leave Encashment shall be issued on provision of NOC from concerned departments and extra payment (if any) shall be recovered from pension shares of the Pensioner.

Deputy Registrar

The petitioner has attached certificate with the writ petition which transpires that the University has showed no objection for payment of pension and other shares in his favour. The Certificate is as under:

No. R/Admin/3267-70/2023

Dated 23.02.2023\

To Whom it may Concern

This is to certify that here is nothing outstanding against Mr. Ijaz Saleem, Private Secretary (PBS-18). Therefore, the University has no objection for payment of pension and other shares in his favour.

Deputy Registrar

A bare reading of above mentioned certificate reveals that the there is nothing outstanding against the petitioner. The petitioner has attached a notification dated 12.12.2022, whereby, the pension contribution on the part of Electricity Department amounting to Rs. 48,09,840/- has been transferred in the Account of MUST. The notification is as under:’

آزاد حکومت ریاست جموں و کشمیر۔

مظفر آباد

نوٹیفکیشن

12 دسمبر 2022

نمبر م ت / آ 2022/20180-93 جناب صدر آزاد جموں و کشمیر نے اعجاز سلیم سٹیٹو گرافر محکمہ برقیات (وقت) حال ریٹائرڈ پرائیویٹ سیکرٹری میرپور یونیورسٹی آف سائنس اینڈ ٹیکنالوجی میرپور کی محکمہ برقیات میں کی گئی سروس سے متعلق پنشن کنٹری بیوشن شیئر کی رقم مبلغ -/48,09,840 روپے (بمبلغ اڑتالیس لاکھ نو ہزار آٹھ سو چالیس روپے صرف) میرپور یونیورسٹی آف سائنس اینڈ ٹیکنالوجی کو فراہم کیے جانے کی منظوری صادر فرمائی ہے۔ اس سلسلہ میں اٹھنے والے اخراجات گرانٹ نمبر 6 پنشن مد A04116 پنشن کنٹری بیوشن کو محسوب ہوں گے۔

سیکشن آفیسر توانائی۔

The learned counsel appearing on behalf of MUST University filed an order dated 13.10.2023 whereby the Senate approved the pension share only to the extent of MUST. As stated earlier, Electricity Department has already transferred

the amount to the account of MUST, so, the MUST is duty bound to pay whole amount of pension to the petitioner. A query was made to learned counsel for the respondent that under what law the University has not paid pension to the petitioner he replied with an arrogant manner that the petitioner may take pension from the University. The behavior of learned Advocate for the respondent/MUST is not tenable, however, while taking lenient view, he is warned to be careful in future.

The University took a categorical stance that when the petitioner was promoted he was not fulfilled the required qualification. It may be stated here that the post of petitioner was upgraded as per the recommendations of respective selection committee and his promotion was made due to the act of the authority, so, he cannot be penalized for the fault if any committed by the authority. My this view finds support from case reported as 2020 SCR 834.

It is worthwhile to mention here that the Vice Chancellor approved an inquiry committee on the incident on March 15th, 2023 at 12:45 PM, consisting of Dr. Amir Saghir, Associate Professor Department of Statistics, Dr. Yasir Mehmood Assistant Professor Department of CS&IT vide order dated 16.03.2023. The inquiry committee concluded that the petitioner founded guilty of

misconduct. According to the statutes of Mirpur University of Science and Technology (MUST) Mirpur Employees Efficiency and Discipline Statutes, 2009 Section 6 the procedure for inquiry was prescribed. The relevant Section 06 is reproduced as under:

6. Inquiry Procedure to be Observed by the Authorized Officer.

- (i) The following procedure shall be observed by the authorized officer when he/she is directed to proceed against a University employee under these Statutes;
 - a. In case a University employee is accused of subversion, corruption or misconduct the authorized officer may require him/her to proceed on leave, if due, or, with the approval of the competent authority, suspend him/her.
 - b. Provided that any continuation of such leave or suspension shall require the approval of competent authority after every three month.
- (ii).....
- (iii).....

It is the claim of the petitioner that he retired from service and he is not an employee of University so the University initiated the whole proceedings with mala fide intention. In Black's Law Dictionary the definition of employee is as under:

Employee: someone who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance.

The Civil Servant in Black Law's Dictionary is defined as under:

Civil Servant: Someone employed in a department responsible for conducting the affairs of national or local Government.

So, the petitioner was not the employee of University when the inquiry was initiated against him. Impugned order of inquiry in which the petitioner found guilty of misconduct was without jurisdiction and nullity in the eye of law. The University has attached detailed reply of petitioner which has attached as Annexure “RA/4” with the written statement, the last para of reply of petitioner as under:

اس طرح ڈپٹی رجسٹرار مذکور نے رجسٹرار کی ایماء پر جناب وائس چانسلر کے حکم کو بالائے طاق رکھتے ہوئے راقم کے 10 ماہ زیر التواء پنشن کیس کر روک کر اشتعال پیدا کرنے کی کوشش کی ہے۔ جبکہ رجسٹرار کی ایماء پر عبدالغفور ایڈیشنل رجسٹرار قبل ازیں راقم کی فائل کو غائب کر چکا ہے اور راقم کے خلاف FIR اندراج نہ ہونے نیز سیشن کورٹ، ہائی کورٹ اور سپریم کورٹ آزاد جموں و کشمیر سے ضابطہ 22-A کے تحت FIR اندراج کے لیے رٹ / اپیلز بھی خارج ہو چکی ہیں۔ اب راقم یونیورسٹی مافیا کے خلاف ہتک عزت (دعویٰ ہرجانہ) بھی دائر کرنا چاہتا ہے۔ اندریں حالات گزارش ہے کہ رجسٹرار، ایڈیشنل رجسٹرار، ڈپٹی رجسٹرار کے خلاف E&D رولز کے تحت کارروائی نیز جناب چانسلر کو بھی کارروائی کے لیے سفارش کی جائے۔

A bare reading of reproduced reply of petitioner reveals that respondents have availed alternate remedy and after failed to achieve their aim, they initiated departmental proceedings against him.

It is established from the record that the official of University with malice and mala-fide intention is not completing the retirement file of petitioner. Element of malice has been well elaborated by Hon’ble Supreme Court in “Ahmed Nawaz Tanoli’s case reported as 2016 SCR 360. Relevant paragraphs 11 and 12 of the afore-cited judgment are reproduced as under:-

۱۱۔ جہاں تک سائلان کے طرز عمل، محرکات اور نیت کا تعلق ہے اگرچہ دلوں اور نیتوں کا حال اللہ تعالیٰ کو ہی معلوم ہے تاہم دنیادی معاملات میں ان پہلوؤں کو جانچنے کے لیے ایک فرد کا طرز عمل ہی اہم بنیاد فراہم کرتا ہے۔ دلائل فریقین کے علاوہ طرز عمل کے بارہ میں عدالتی استفسار پر سردار افتخار احمد (سائل) نے بتایا کہ وہ عرصہ بارہ سال سے عدالت العالیہ کے وکیل ہیں اور 2013-14 میں بار ایسوسی ایشن کے صدر بھی رہے، سائل احمد نواز تنولی نے بھی بتایا کہ وہ عرصہ پانچ سال سے عدالت العالیہ کا وکیل ہے۔ دونوں مسؤلان 7، 8 کی عدالت میں پیش ہوتے رہے اور دونوں نے عرضی ہذا دائری سے قبل کسی بھی سطح پر یا کسی بھی ادارہ میں مسؤلان کے بارہ میں نہ تو تحفظات کا اظہار کیا اور نہ ہی کوئی شکایات کی۔ یہ امر بھی اظہر من الشمس ہے کہ مسؤلان 7، 8 مجلس عام میں حلف اٹھانے کے بعد سے اپنے فرائض سرانجام دے رہے ہیں۔ سائلان کی اپنی بیان کردہ وجوہات کو ہی اگر زیر غور لایا جائے تو ان کے بقول سارے معاملہ کی علیست ان کو بار کونسل کی قرارداد منظور ہونے پر ہوئی۔ بار کونسل کی قرارداد کی نقل پیش کردہ سائلان سے عیاں ہوتا ہے کہ یہ شریعت کورٹ میں ججز کی تقرری کے چند روز بعد منظور ہوئی جس کی اشاعت بھی کی گئی۔ اس قرارداد میں مسؤلان 7، 8 کی تقرری کا بالصراحت ذکر نہ ہے۔ جیسا کہ شریعت کورٹ کے ججز کی تقرری کے حوالے سے موجود ہے جس ترتیب سے واقعات وقوع پذیر ہوئے اس کے مطابق شریعت کورٹ ججز کی تقرری کے فوراً بعد ضلعی انجمن ہاؤز اور آزاد جموں و کشمیر کونسل نے احتجاج کیا، قرارداد منظور کی اور چند دنوں بعد ہی عرضی بھی عدالت العالیہ میں دائر کر دی گئی۔ جس کی کھلی عدالت میں سماعت ہوئی۔ عرضی منظور کرتے ہوئے شریعت کورٹ ججز کو بروئے فیصلہ مصدردہ 06.08.2015 (جو کہ مسؤل نمبر 7 نے تحریر کیا)۔ اپنے منصوبوں سے سبکدوش کر دیا گیا۔ سائلان نے رو برو عدالت یہ بھی اعتراف کیا کہ قبل ازیں نہ تو انہوں نے ایسی کوئی عرضی دائر کی اور نہ ہی شریعت کورٹ ججز والے مقدمہ، جس کے حوالہ سے بار کونسل نے احتجاج کیا اور قرارداد منظور کی، میں کوئی کردار ادا کیا۔ اس طرح سائلان کا دعویٰ ہے کہ وہ نیک نیتی سے عدلیہ کی آزادی، قانون کی عملداری اور تحفظ کے لیے آگے آئے ہیں، ان کے طرز عمل سے مطابقت نہ رکھتا ہے۔ اس سے بھی اگر صرف نظر کر لیا جائے تو اس کے باوجود بار کونسل کی قرارداد کی تاریخ کے بعد بھی چھ ماہ تک خاموش رہنا اور ماسوائے ایک مکتوب محررہ 15.10.2015 کوئی ایک بھی ثبوت ریکارڈ پر نہ لانا، حتیٰ کہ بیان حلفی میں بھی وضاحت نہ کرنا کے انہوں نے معاملہ کی علیست کے بعد کیا اقدامات اٹھائے، سائلان کے طرز عمل کا عکاس ہے۔ فیصلہ ججز شریعت کورٹ مورخہ 06.08.2015 کے صادر ہونے کے بعد عرضی دائر کرنا حالات اور قرآنین و شواہد کے تناظر میں سائلان کے کردار کو مشکوک بناتا ہے۔ خصوصی طور پر جبکہ مسؤلان نے موقف لیا کہ عرضی ہذا شریعت کورٹ ججز فیصلہ کا رد عمل ہے، حالات و واقعات کے تناظر میں مسؤلان کے اس عذر کو نظر انداز نہیں کیا جاسکتا۔

۱۲۔ مسؤلان نے عرضی میں شامل کیے از سائلان سردار محمد خورشید خان کے متعلق موقف اختیار کیا ہے کہ وہ فیصلہ ججز شریعت کورٹ محررہ 06.08.2015 کی رو سے سبکدوش ہونے والے ایک جج سردار شہزاد احمد خان کے شریک چہر رہے۔ تائید میں بیان حلفی بھی شامل کیا جس کی تردید جوابی بیان حلفی سے نہ کی گئی ہے اس طرح مسؤلان کا بیان حلفی بلا تردید ریکارڈ پر پایا جاتا ہے اور سائلان کے اپنے دلائل کے مطابق ایسا بیان حلفی حالات و واقعات کے مطابق قابل انحصار ہے۔ عدالت ہا بر صغیر اس امر پر متفق ہیں کہ ایسے حالات میں عرضی اجراح پروانہ استفسار کو محض معمول میں ہے۔ مہابہ جاری نہیں کر دینا چاہیئے بلکہ سائلان کے طرز عمل اور نیک نیتی کو بہر طور پر مد نظر رکھنا چاہیئے۔ اس حوالہ سے یہ عام اصول بھی واضح کیا گیا ہے کہ ایسے رجحان کی بیخ کنی اور حوصلہ شکنی کرنے چاہیئے۔

The petitioner has rendered service in the MUST and after rendering service and on attaining the age of superannuation the petitioner has been retired from Service. As per the petitioner is entitled to release the pension and other shares, so he is entitled to equitable relief of writ jurisdiction.

The nutshell of the above discussion is that the writ petition is accepted and the impugned order dated 28.03.2023 is hereby set aside. The official respondents/MUST University is directed to release the entire pension of the petitioner including pension contribution on the part of Electricity Department and others outstanding emoluments as admissible to him under law. The respondents are further directed to pay leave encashment to petitioner as admissible under law and issue PPO in his favour forthwith.

Muzaffarabad.
21.12.2023

CHIEF JUSTICE

Note:- Judgment is written and duly signed. The office is directed to intimate the parties or their counsel in accordance with law.

CHIEF JUSTICE

Approved for reporting.

CHIEF JUSTICE