

HIGH COURT OF AZAD JAMMU AND KASHMIR

*Writ Petition No.1680/2016;
Date of Institution 13.05.2016;
New No.177/18, dated 13.06.2018;
Date of Decision 09.02.2022.*

Muhammad Azad Junior Lecturer
Department of Mechanical Engineering
(MUST) University, Mirpur, Azad Kashmir.

Petitioner

VERSUS

1. Vice Chancellor Mirpur University of Science and Technology (MUST) Mirpur, Azad Kashmir;
2. Registrar Mirpur University of (MUST) Mirpur, Azad Kashmir;
3. Chairman Inquiry Committee Doctor Muhammad Waqar Aslam Computer System Engineering Department (MUST) University, Mirpur;
4. S.S.P. Senior Superintendent of Police, Mirpur;
5. D.S.P. Deputy Superintendent of Police (D.S.P. City), Mirpur, Azad Kashmir;
6. S.H.O. Station House Officer City Police Station Mirpur, Azad Kashmir.

Respondents

WRIT PETITION UNDER ARTICLE 44 OF
AJ&K INTERIM CONSTITUTION 1974

Before:- Justice Sardar Muhammad Ejaz Khan. J.

PRESENT:

Mian Sultan Mehmood, Advocate for the
petitioner.

Ch. Aurangzeb Legal Advisor MUST.

JUDGMENT:

Through this writ petition filed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, the *vires* of the impugned order 25.04.2016 has been challenged for having been issued without lawful authority and further a probation has been sought against respondents No.4 to 6 pertaining to harassing or arresting the petitioner till completion of inquiry.

2. Synthesized facts, as stated by the petitioner, are that he is First Class state subject of Azad Jammu and Kashmir and is serving as Junior Lecturer Department of Mechanical Engineering MUST, Mirpur. It has been stated that suspension order of the petitioner has been issued without providing an opportunity of hearing and alleging charges vide order dated 25.04.2016 while the authority without completion of requisite procedure suspended the petitioner and sent application to police without any information whereupon the concerned police is not only harassing the petitioner but also the parents of the

petitioner. It has further been stated that the petitioner submitted a detailed reply on 09.05.2016 and all the proceedings have been initiated by respondents with *mala-fide* intention for which the petitioner is being forced by the police to resign from his assignment otherwise an F.I.R. will be chalked out against him. It has been averred that the petitioner has no alternate and efficacious remedy except to invoke the jurisdiction of this Court, hence, this writ petition.

3. On pre-admission notices, the respondents were summoned to file parawise comments vide order dated 13.05.2016, however, the same have been filed on behalf of Mirpur University of Science and Technology along-with relevant record as well as respondents No.4 to 6 on 11.01.2017 and 04.05.2017 respectively wherein the stand taken by the petitioner in writ petition was entirely refuted while it has been prayed for dismissal of writ petition.

4. The learned counsel for the petitioner, more or less, reiterated the grounds as incorporated in writ petition, which have

sufficiently been mentioned in pre-paras, hence, there is no need to narrate here in black and white.

5. The learned Legal Advisor Mirpur University of Science and Technology (MUST) opposed the arguments of the learned counsel of the petitioner and zealously argued that the petitioner was rightly suspended from his assignment because all the proceedings initiated against petitioner are in accordance with law and Calendar of University and the petitioner was charge-sheeted and he remained instrumental in the inquiry proceedings while inquiry committee submitted its final report and declared the petitioner as responsible with regard to harassing a female student. The learned counsel submitted that detailed comments along-with relevant record filed on behalf of University may be treated as written statement, if the Court may deems it proper that the writ petition has substance for further deliberation otherwise the same may be dismissed at preliminary stage.

6. Having heard the respective preliminary arguments, I have gone through the available record of the case conscientiously. It appears from record that the petitioner filed an application for seeking amendment in writ petition on certain grounds on 21.12.2019 and during the arguments the learned counsel for the petitioner did not press the application, however, for resolving the real controversy between the parties, I have minutely perused the contents of application with the chain of pleadings of the parties. I am of the considered view that at this stage, if the said application is allowed, the case will further prolong as such no fruitful purpose would be served. For the sake of arguments, it is assumed that the application for seeking amendment in writ petition is allowed even then the result will remain the same. Thus, the application, in the given circumstances is rejected and by admitting the writ petition for regular hearing, the detailed comments already filed on behalf of the respondents are treated as written statement.

7. From bare reading of record, it transpires that one of the students namely Samina Javaid submitted an application to concerned authority along-with plethora of messages for initiating proceedings against his teacher-petitioner on 22.03.2016 upon which the Vice Chancellor of MUST constituted inquiry committee vide order dated 22.04.2016 and the petitioner was suspended from his assignment vide order dated 25.04.2016 and charge-sheeted vide order dated 04.05.2016.

8. It is relevant to mention here that the inquiry committee invited reply of the petitioner in the following allegations:-

1. *The first allegation in the charge sheet was that he has breached the trust and discipline of the University and has violated the regulations for the personal conduct of the teachers;*
2. *The second allegation in the charge sheet was that he has used his authority as a teacher to fulfil his personal desires and ill wishes;*
3. *The third allegation in the chart sheet was that he had violated*

the examination rules and regulation by keeping answer sheets in his custody beyond the prescribed time limits, breaching sanctity of Answer sheets;

4. *The fourth allegation in the charge sheet was that he had been harassing female students through text messaging and calling them in isolation;*

5. *The fifth allegation in the charge sheet was that he had been involved in activities of unlike teachers and moral turpitude.*

9. The inquiry committee has given its final finding in the following manner:-

“The findings of inquiry committee against each allegation prove that Mr. Azad had been violating the regulations for the professional conduct of teachers. His acts were unlike University teachers showing that he is not emotionally stable and mature. His activities (messages) were suspicious and prima-facie he was harassing a female student. Based on all the evidence, the inquiry committee finds Mr. Muhammad Azad guilty of “serious misconduct” and “moral turpitude”.

10. As far as the contention of the learned counsel for the petitioner that formation of the inquiry committee as well as suspension order has been made without adopting legal

procedure and all the proceedings have been initiated against the petitioner with mala-fide intention just to force him to resign from his assignment carries no weight particularly the proceedings initiated by the authority of University are in accordance with Chapter-1 Employees (Efficiently and Discipline) Statutes, 2009 of Mirpur University of Science and Technology Calendar holding in the field, hence, the argument to that extent is hereby repelled.

11. *Prima-facie*, the record substantiates that the gravity of misconduct is of serious nature and teacher is the spiritual father and relation between teacher should be based upon within the limits as defined by the injunction of Islam. It is not only stigma on the face of University but also it is very thought provoking where we are going and the teacher who is the spiritual father sent text messages to fulfil his immoral desires and stigmatize the chastity of his student, which act is not

ignorable. For recording the wisdom of this Court on the subject matter, there is sufficient material on the face of record but it is not appropriate to give finding on that propositions. As after inquiry the inquiry report has been submitted to the authority on 17.05.2016 and the final order appears to have not yet been passed due to pendency of this petition, hence, the authority of the petitioner cannot be bound to pass any appropriate order in light of the relevant provisions of law.

12. It is settled proposition of law that the University in view of University Calendar is wholly entitled to constitute inquiry committee or Inquiry Officer to remove anomalies and it is an administrative matter falling within the exclusive domain and policy decision of the Government or competent authority. Creating obstacle in such like matters, by this Court, in exercise of Constitutional jurisdiction is not warranted by law and for this Court it is not appropriate by means of writ to strike it down.

The Inquiry Officer has been appointed just to dig out truth on the surface so that the responsible may be identified. The inquiry committee has no powers to pass final order, except to send the recommendations collected during the inquiry to the competent authority, hence, it is prerogative of the authority of MUST to pass any appropriate order. Creating obstacle by this Court in administrative matters would be an abuse of the process of the Court and will create hindrances, hence, my this view finds support from a case titled *Azad Govt. & 04 others vs. Arshad Khan & 03 others* [2019 SCR 226] wherein it has been observed as under:-

“We are of the view that in presence of the notification dated 21.12.2012, it is difficult to proceed against the accused civil servants. Besides above, the notification sought to be quashed was issued after proper appreciation of law and the High Court has no jurisdiction to give findings on the inquiry report regarding which the authority has prerogative to take a proper decision. In this perspective of the matter, the learned High Court has shifted the proceedings pending before the

competent authority before it while pre-empting the jurisdiction of the competent authority which is illegal.”

Similar proposition has been resolved in a case titled *Syed Khalid Mehmood Bukhari Vs. G.M. (HRO) PTCL and others* [2012 PLC (C.S.) 1366] wherein it has been held that:-

“Interference in the interlocutory orders such as charge-sheet/show-cause notice and putting an end to them at its inception, unless same is shown to be without jurisdiction, would amount to stifling of disciplinary proceedings. In view of above, this is not the stage at which this Court should entertain the petitions filed by the delinquent employee challenging and for quashing the show cause notice and appropriate course for the petitioner to adopt is to file his reply to the impugned show-cause notice and invite the decision of the disciplinary authority thereon. Prior to that stage, any petition for quashing the charge sheet or show cause notice is premature.”

Reliance can also be placed on a case titled *Muhammad Rauf Patwari Vs. District Collector/DCO, Toba Tek Singh and 6 others* [2014 PLC (C.S.) 386] by which it has been observed as under:-

“After hearing the arguments which have been advanced at the limine stage and going through the documents which have been appended with this petition it is clear that no final order has been passed against the petitioner. On receipt of a complaint, respondent No.2 being the competent authority under Punjab Employees Efficiency, Discipline and Accountability Act, 2006 appointed General Assistant (Revenue), Toba Tek Singh as an Inquiry Officer and directed the petitioner to file his reply. Without waiting for the result of the inquiry, the petitioner has filed the instant petition.

In the instant case, a notice has been issued to the petitioner indicating therein an inquiry is being initiated against him wherein he has also been directed to file a reply. It is thus clear that only a reply has been sought from the petitioner and no final order has been passed.”

13. In view of circumstances of the case and legal propositions, the petitioner is neither an aggrieved party within the meaning of Article 44 of the Azad Jammu & Kashmir Interim Constitution, 1974 nor has *locus-standi* to invoke the constitutional jurisdiction of this Court by-way of writ petition. Law is well

settled on the subject that writ lies where any violation of law and rules has been made but nothing has been brought on record to which it can be assumed that the respondents have committed any violation rather the petitioner came before the Court with unclean hands and has suppressed some material facts from the Court, hence, he is not entitled to get any relief.

14. The outcome of the forgoing reasons is that the instant writ petition, having no statutory backing, stands dismissed with costs and the same shall be consigned to record. The ad-interim relief already granted to the petitioner stands vacated. Resultantly, application for extension of ad-interim relief is also rejected.

Circuit Mirpur.
09.02.2022(ZEB)

-Sd-
JUDGE

Approved for reporting

-Sd-
JUDGE