JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.1494 of 2021

Mst. Nazeer Bibi and another

Versus

Higher Education Commission and another

Petitioners by	:	Ms. Komal Malik Joyia, Advocate.
Respondent No.1 by	:	Mr. Binyamin Abbasi, Advocate.
Date of Hearing	:	20.05.2022.

ARBAB MUHAMMAD TAHIR, J.:- Through this writ petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioners have assailed the *vires* of the judgment and decree dated 05.11.2019 passed by the learned Additional District Judge, West-Islamabad, dismissing the petitioners' appeal against the judgment and decree dated 24.06.2019 passed by the Court of the learned Civil Judge, West-Islamabad. The learned Civil Court vide said judgment and decree dated 24.06.2019 had decreed the suit for recovery of Rs.10,33,854/- including 25% penalty instituted by the Higher Education Commission (hereinafter referred to as **"the HEC")** (respondent No.1) in the following terms:-

> *"As a sequel to my above discussion, suit of the plaintiff is decreed as prayed for i.e. recovery of amount of Rs.10,33,854/- (rupees ten lacs, thirty three thousand, eight hundred and fifty four only) with 25% increase. The plaintiff is also entitled of receiving prevailing Bank Mark-Up of the above amount since the institution of this suit i.e. 05.04.2012 till the realization of actual amount."*

2. The facts in brief forming the background of the present petition are that on 05.04.2012, HEC had filed a suit for recovery of Rs.10,33,854/- against the petitioners. It was the HEC's case that Sheraz Gul (hereinafter referred to as **"petitioner No.2"**) was granted scholarship by the HEC under Indigenous 5000 Ph.D Fellowship Program Batch-II in the field of Chemistry at Quaid-e-Azam University, Islamabad (hereinafter referred to as **"QAU"**) in the year 2004 for getting higher education i.e. M. Phil leading to Ph.D. and to this effect a formal deed of agreement was executed between petitioner No. 2 and HEC on 12.01.2005. It was further HEC's case before the learned Civil Judge that petitioner No. 2 had executed a bond to the effect that he would fulfill all the conditions of the agreement and in case of any violation, he would be bound to refund the entire amount spent on his studies/scholarship to the HEC. According to the HEC's stance, petitioner No.2 violated the terms and conditions of the said agreement by quitting QAU and proceeded to California, United State of America for his Ph.D. program without prior approval of the HEC; that since petitioner No.2 did not comply with the terms and conditions of the said agreement, he and his surety, i.e. petitioner No.1 jointly and severally have made themselves liable to pay to the HEC whatever had been paid and incurred on petitioner No. 2's studies. The petitioners, on their end, contested the suit by filing their written statement wherein they refuted the HEC's claim. Out of the divergent pleadings of the contesting parties, the learned trial Court framed the following issues:-

1. *Whether the plaintiff is entitled to get decree for recovery of Rs.10,33,854/- including 25% penalty as prayed for. OPP*
2. *Whether the plaintiff has no cause of action or locus standi to file the present suit? OPD*

3. *Whether the plaintiff has not filed the instant suit with clean hands, hence, same is liable to be dismissed? OPD*
4. *Whether the suit of plaintiff is false, frivolous and vexatious, hence, liable to be dismissed? OPD.*
5. *Relief."*

3. On the above mentioned issues, the parties to the suit adduced their respective evidence, whereafter the learned trial Court decreed the HEC's suit vide judgment and decree dated 24.06.2019. The petitioners assailed the said judgment and decree dated 24.06.2019 in an appeal, which appeal met with the same fate vide impugned judgment and decree dated 05.11.2019. The said concurrent judgments and decrees dated 24.06.2019 and 05.11.2019 are impugned by the petitioners, through the instant writ petition.

4. Learned counsel for the petitioners contended that the learned appellate Court, fell in error by not appreciating the learned trial Court's findings to the effect that petitioner No.2 was well within his right to leave the Country as the said fact was never objected to; that the learned appellate Court has mis-interpreted and mis-understood the findings of the learned trial Court; that the learned trial Court also erred in law by granting the relief, which had not specifically been prayed for in the HEC's plaint; that the learned Courts below concurrently erred by not taking into consideration the question of limitation; that the suit instituted by the HEC was grossly barred by time; that the suit was filed by an un-authorized person since factum of authorization was not mentioned in the body of the plaint; that no power of attorney to institute the suit was mentioned either in the list of reliance or attached with the plaint; that on no count, the HEC's suit was to be decreed as petitioner No.2 had never violated any of the terms and conditions of the agreement or of the bond so

executed on his behalf; that there was no willful default on behalf of petitioner No.2; that the learned Courts below erroneously exercised the jurisdiction vested in them; that at the time of the execution of the agreement between petitioner No.2 and the HEC, there was no limit of maximum scholars under the supervision of one HEC's approved Supervisor; that subsequently, in the year 2006, a Circular was issued by the HEC, whereby the number of Scholars was limited only to ten scholars under the supervision of the HEC's approved Supervisor; that since petitioner No.2 was placed at Sr. No.12 of the enrolled Ph.D. students in Nano Chemistry, thus he was left without there being a Supervisor; that the agreement so executed had become impossible for petitioner No.2 to honour it, due to the reason that the HEC issued a subsequent Circular reducing the number of the scholars from maximum number to ten scholars only; that there is only one Supervisor in the field of Nano Chemistry at QAU; that the HEC never approved any other person as petitioner No.2's Supervisor; that petitioner No.2 time and again requested the HEC to let him continue with the same Supervisor, but to no avail; and that since petitioner No.2 did not complete his education on the expenditures and funds provided by the HEC, thus he was not bound to serve in Pakistan. Learned counsel for the petitioners prayed for the writ petition to be allowed and for the impugned concurrent judgments and decrees to be set aside.

5. As against the above, learned counsel for HEC after refuting the contentions of the learned counsel for the petitioners contended that petitioner No.2 had failed to honour his commitment made with the HEC as he did not return to Pakistan after possessing himself with higher education for which he was selected and sent by the HEC on

its expenses; that the concurrent judgments and decrees passed by the learned Courts below are well reasoned and do not call for interference by this Court; that petitioner No.2 violated the terms and conditions of the agreement by quitting QAU without the HEC's permission; that the QAU had informed HEC that petitioner No.2 had gone to California, U.S.A. for his Ph.D program; that the petitioners were informed through letters, reminders to refund the scholarship amounts which sums up to Rs.10,33,854/- including 25% penalty, but no possible response was received so far; that the cause of action was accrued at the time when the QAU intimated HEC that petitioner No.2 went abroad as well as at the time when he failed to refund the already spent amount; that the learned Courts below have correctly appreciated the evidence available on the record; and that impugned judgments and decrees do not suffer from any material irregularity calling for interference by this Court. Learned counsel for the HEC prayed for the writ petition to be dismissed with costs.

6. I have heard the contentions of the learned counsel for the parties and gone through the case record with their able assistance.

7. Perusal of the case record would reveal that in the year 2004, HEC invited applications for the award of scholarship in the field of Chemistry. Admittedly petitioner No.2 along with two others, namely Muhammad Arif Nadeem and Muhammad Hasib ur Rehman was selected for the award of scholarship in the field of Chemistry under the scheme titled *"Indigenous PhD 5000 Fellowship Program Batch-II"* at QAU. Petitioner No.2 got admitted in QAU on 17.02.2005 and the expected date for completion of his Ph.D degree was

16.02.2009. The expenditure of the Scholar/petitioner No.2 were to be borne by the HEC. The alleged amount so incurred on petitioner No.2 comes to Rs. Rs.10,33,854/-.

8. Record of the case further shows that on 12.01.2005, a Deed of Agreement was executed between the HEC and petitioner No.2. The said agreement sets out the terms and conditions governing the fellowship award. Clause III of the said agreement provided that the Scholar shall not change the specified course of studies at any stage nor register himself for any other course or program or University/Institute at any stage without prior approval of the HEC. Clause IV of the said agreement provides that the specified deadline of the studies was not to be extended by the Scholar. Clause VI of the said agreement is a penalty clause which provides that in the event, the Scholar fails to maintain the required standard or qualify the course/degree for which he/she was awarded fellowship, the HEC reserves the right to recover the entire expenditure from the Scholar and/or the Guarantor, as the case may be. Likewise, Clause VII of the said agreement provided that on completion of the studies, the Scholar shall serve in the Country for five years preferably in an institute of higher education. Clause VIII of the said agreement provided that the Scholar shall regularly submit the six month progress reports on his/her assigned program through his/her Supervisor/focal person to the HEC and a final comprehensive report immediately on completion of the study/training/research degree. Rest of the Clauses of the said agreement are, more or less similar in nature.

9. Initially, petitioner No.2 was enrolled as a student of M.Phil leading to Ph.D program at Sr. No.12 under the supervision of Prof. Dr. Muhammad Mazhar of the QAU. At

the time of the petitioner's admission, there was no limit of maximum number of the Ph.D students/scholars that a Supervisor could enroll with himself/herself. Subsequently, on 10.03.2006, QAU issued a Circular conveying the decision taken by the Advanced Studies and Research Board (hereinafter referred to as **"the AS & RB"**) of the said University in its meeting held on 25.01.2006, whereby the Board while considering the cases for appointment and change of Supervisor for M.Phil and Ph.D students, decided in principle as follows:-

> *"the Board resolved the Departmental Chairman should ensure that no teach is allowed to have more than 10 Ph.D students".*

10. At the time of admitting petitioner No.2 to M. Phil leading to Ph.D program, the students/scholars that were already enrolled with Supervisor namely, Prof. Dr. Muhammad Mazhar were fourteen in number. With the issuance of the above said Circular, the number of the students/scholars was reduced to ten students excluding petitioner No.2, who was at Sr. No.12 of the enrolled students/scholars. As discussed earlier, Clause VIII of the said agreement provided that the Scholar shall regularly submit the six monthly progress reports on his/her assigned program through his/her **Supervisor/Focal Person** to the HEC and a final comprehensive report immediate on completion of the study/training/research degree. Since petitioner No.2 had been left without there being any Supervisor, it was not possible for petitioner No.2 to submit six monthly progress reports.

11. On 17.02.2007, Prof. Dr. Muhammad Mazhar, addressed a letter to the Ph.D Admission Committee of the

QAU requesting the latter to recommend the Ph.D admissions of the fourteen students that had already been enrolled with him. Furthermore, the said Supervisor had expressed his willingness and ability to guide even few more students. The Admission Committee of the QAU was earnestly requested by the said Supervisor to let the already enrolled students to continue their ongoing Ph.D. program in order to save their future prospects. It was further assured by the said Supervisor that there shall be no lapse regarding supervision point of view. For the purposes of reference, the said letter is reproduced herein below in its entirety:-

> ***"Quaid-i-Azam University***
> ***Department of Chemistry***
> *No.QAUC/Ph.D.Adms./07 dated 17.02.2007*
> *Subject:-* ***Consideration of admission of Ph.D. students with the undersigned.***
>
> *Mr. Arif Nadeem, Mr. Haseeb-ur-Rehman and Mr. Sheraz Gul, all HEC grant holders for Ph.D studies, were admitted to the "M.Phil leading to Ph.D" programme in the Department of Chemistry on 31.01.2005 and 17.02.2005 respectively. At that time, there was no limit of maximum number of Ph.D. students that a supervisor can enroll with himself. On admission of these students under my supervision, they were assigned the long term research projects for their Ph.D. degrees. They were also involved in establishment of a new laboratory in the field of Catalysis and Nano Materials.* ***They have carried out the challenging task very successfully and published three research papers and one international patent out of their research work. Furthermore, their research work also helped to bring two research projects worth of Rs.10.00 million or the Department.*** *According to new rules enforced on 21.01.2006, ten is the maximum number of Ph.D. students that a supervisor can enroll* ***while I have already fourteen students.*** *Out of these fourteen students two have already submitted their theses with the supervisor for final checkup before*

submission. Two more students are expected to complete their theses write up within six months period. They have already completed their research work and results are interpreted. Practically I am relieved of all the liabilities of the supervisor concerning these four students except final checking of their theses.

The Ph.D. Admission Committee is therefore requested to kindly recommend Ph.D. admission of these students with the undersigned. ***If these students were not allowed to continue their Ph.D. work with the undersigned, the research progress of the Department will be very seriously affected and dream to establish new laboratory on Catalysis and Nano Materials will be jeopardized because these are the only students trained in this new area.*** *Furthermore, all efforts of the students in running their Ph.D. research projects will go waste* ***and they will be discouraged for none of their fault.*** *As a supervisor I assure the committee that there will be no laps from supervision point of view as* ***I have ability and capacity to guide even few more students and this has been proved from the work carried out so far.***

This case is submitted to the Ph.D. Admission Committee for favourable action.

--Sd--

(Dr. Muhammad Mazhar)

Meritorious Professor/ Chairman & Supervisor

Ph.D. Admission Committee

Enclosure

- *Publications made during one year's research by the students.*
- *Patents submitted for registration in the USA."*

(Underline is mine for emphasis)

12. There is nothing on record which would show that the said letter has been responded to at any material stage. At this juncture, it would not be out of context to mention that it was not only the Supervisor, who had requested for petitioner No.2's Ph.D program to be continued, but so also by petitioner No.2 together with other two scholars through emails dated

09.06.2007 and 28.06.2007. It would be advantageous to reproduce the said emails, which read thus:-

Email dated 09.06.2007.

"From: sheraz gul [mailto:sgsheri@hotmail.co]
Sent: Saturday, June 09, 2007 4:53 PM
To: chairman@hec.gov.pk
Subject: Request by HEC Scholar

The Chairman,
Higher Education Commission (HEC)
Islamabad, Pakistan.

Subject: The problems being faced for continuing research work with exiting supervisor

Respected sir,

With due respect, it is stated that we were admitted to the M.Phil. leading to Ph.D." program (HEC Indigenous Ph.D. 5000 Fellowship Program Batch-II) in the Department of Chemistry, Quaid-i-Azam University, Islamabad on 31.01.2005, under the supervision of Prof. Dr. Muhammad Mazhar. At that time, according to university rules, there was no limit of maximum number of Ph.D. students that a supervisor could enroll with himself. ***In the due course of time, HEC also allowed us to work under the supervision of Prof. Dr. M. Mazhar.*** *On our admission we were assigned the long term research projects for our Ph.D. program and were involved in the establishment of a new laboratory in the field of "Catalysis and Naomaterial". We have got published considerable number of research papers and one international patent, the detail of which is being attached.*

Now that we have done almost half of our Ph.D. research work we are being forced by the university administration to change the supervisor according to new rules enforced on 21.06.2006. Whether it is a mismanagement by the university administration or HEC, it is playing havoc with our careers. It is not possible for us to leave the existing research projects and restart research from zero. *So, it is requested that HEC should stress the university administration to allow us to continue our research work under the supervision of Prof. Dr. Muhammad Mazhar. Otherwise, we will not be able to continue our studies further.*

Looking for your quick response.
Yours

Truly
(HEC Scholar)"

Email dated 28.06.2007.

From: sheraz gul [mailto:sgsheri@hotmail.co]
Sent: Thursday, June 28, 2007 11:18 AM
To:chairman@hec.gov.pk;snaqvi@hec.gov.pk;
smraza@hec.gov.pk

Subject: Awardees Problems.
Respected sir,

With reference to our email dated 09.06.07 it is stated that our Ph.D. studies are on the verge of unfortunate end.

To us HEC now seems to be a department which leaves their awardees in the lurch. HEC and university rules are going to ruin our future.

Why HEC approved Dr. M Mazhar as our supervisor if he already possessed the maximum number of students?

Why did HEC at that time not inform us that the supervisor had only been approved for M.Phil program (as project director told), not for "M.Phil. leading to Ph.D. program"?

What is meant by supervisor approval (sic) by HEC for only M.Phil. leading to Ph.D. program"?
Did HEC not know this at that time?

Though university knew that the objective of HEC scholars was to complete their Ph.D. studies, not M.Phil. then what was the purpose of admitting students in "M.Phil leading to Ph.D program"?

Only to acquire money whatever happens to the future of the students.

Why did university apply the rule, approved in February 2006, on students admitted in 2005 in the so called "M.Phil? Leading to Ph.D. program?"

What is meant by "leading to" in "M.Phil leading to Ph.D. Program?"

University AS&RB says, ***"you can work with the professor supervised you during" "M.Phil. leading to Ph.D program" but now as co-supervisor".*** *Why university AS&RB is unable to think, "if a professor cannot supervise more than 10 students as he may not be able to give enough time for the extra students then how he can be made co-supervisor for extra students? How he gets extra time as co-supervisor?"*
AND

Now what is HEC doing in this regard? Asking us to either change the supervisor or university? Is this as simple as HEC authorities consider? *In either case it means starting from zero; we have done research in the field of catalysis and no other lab is conducting research in this field in Pakistan. It means all our research work done so far is meaningless to us as for as our Ph.D. studies are concerned!*

- *Change of university / supervisor i.e. at least six month delay,*
- *Designing a new research project, checking the feasibility of the project, establishing the base line i.e. starting from zero,*
- *18 credit hours course work,*
- *GRE (subject) international,*
- *Comprehensive examination*

Means get ready for a new period of at least 4 years as your good self-better known research facilities / supervising capabilities in Pakistan.

What is the purpose of wasting such a long duration (2 years in "M.Phil. leading to Ph.D. program) for nothing?"

So considering all the above mentioned facts we are left with only options:

- ***Either work on the existing project of "M.Phil. leading to Ph.D. program?*** *OR*
- ***Quit Ph.D. studies.***

Yours truly.

Muhammad Arif Nadeem (PIN: 042-160795-P/2-148)	*Muhammad Hasib ur Rehman PIN: 042-160434-P/2-049*	*Sheraz Gul PIN: 042-111230-P/2-671*

Chemistry, Quaid-i-Azam University, Islamabad

(Underline is mine for emphasis)

13. It is evident from the said emails and applications, that petitioner No.2 and the other two co-awardees were quite keen in completing their Ph.D program under the supervision of Prof. Dr. Muhammad Mazhar, but the HEC/QAU for the reasons best known to them, did not let the said scholars to continue with their existing Ph.D. program and as such, they

were forced to abandon their Ph.D. studies for no fault of theirs.

14. Perusal of the HEC's letters dated 12.03.2005, 01.07.2006, 25.09.2006 and 28.06.2007 postulates that the amount so alleged had been released/remitted to the QAU. Vide letter dated 01.03.2010, the HEC informed the QAU that the academic and the fund utilization reports of the three awardees (i.e. petitioner No.2 and the other two co-awardees) were awaited since 31.12.2006. Through the said letter, it was further complained that since the scholars have neither completed their Ph.D nor the funds utilization report was provided to the HEC when the said scholars were enrolled, therefore, it was requested to refund an amount of Rs.3,047,,373/- released in respect of the said scholars/awardees (which includes petitioner No.2). According to the HEC's said letter dated 01.03.2010, it was not only petitioner No.2, who as per HEC's stance, was an absconding scholar, but there were two other co-awardees namely Muhammad Arif Nadeem and Muhammad Hasib-ur-rehman as well. It is not understandable as to why the HEC has singled out petitioner No.2 only. From the conduct of the HEC, it is crystal clear that petitioner has been discriminated against inasmuch as one of the co-awardees was bailed out by the HEC and he was relieved from the liabilities. The matter does not end here. On 19.07.2017, the HEC addressed a letter to a similarly placed Scholar namely, Mr. Hasib-ur-Rehman intimating him that the scholarship awarded to him, stood cancelled with immediate effect, and that there shall be no financial liability on the HEC's part. Furthermore, the said awardee had been barred to avail any future HEC's scholarship for a period of one year.

15. Additionally, the documents/letters annexed at pages 56 to 64, 76 to 82, 97 of the petition in hand are the correspondence between the HEC and the QAU. The record further shows that QAU was not made as a necessary party in the suit by the HEC. It is pertinent to mention that the dominant nexus of the suit was between the HEC and QAU since the amount of the expenditure allegedly spent on the petitioner had in fact been remitted to QAU and in this regard, a fund utilization report was sought from the QAU. The HEC could not be absolved from its liability to have impleaded QAU as a necessary party in the suit. Had the QAU been impleaded as a necessary party in the suit, the HEC could have been in a better position to determine the fate of its funds/expenditures incurred on petitioner No.2's scholarship since the funds were transferred to QAU. Similarly on 28.07.2007, the HEC forwarded the application of an awardee (name not mentioned) for bail out from HEC Indigenous Scholarship Program to the QAU with the request that the University authorities may like to consider the said request as admissible under the rules. Through application (which is annexed at page-78 of this petition), the petitioner along with the other two awardees, also requested the HEC for bailing them out from HEC Indigenous Scholarship Program. The said request was also coupled with the Supervisor's comments and recommendations, but the HEC turned a deaf ear on petitioner No.2's said request. For ease of reference, the said application coupled with the Supervisor's recommendations is reproduced herein below:-

> *"The Chairman,*
> *Higher Education Commission*
> *Islamabad.*
> *Subject: Request for bail out from HEC Indigenous Scholarship program*
> *Respected sir,*

With reference to out application (and emails dated 09.06.2007 & 28.06.2007), it is submitted that for the last few months we have been trying our best to continue our existing research projects in Ph.D. program. Unfortunately, the HEC and university administration have not been able to find an appropriate solution. Despite presenting our case twice in university AS&RB, we have been given to understand that we are no longer working on our existing projects. We are being forced to change our research project in Ph.D.

Now that we already have wasted lot of time (as for as our Ph.D. studies are concerned), it is requested to bail us out from HEC Indigenous Scholarship Program as we cannot afford to start research on new projects.

Copies of previous application and emails are attached for your kind consideration, please.

Hoping for kind response.

Muhammad Arif Nadeem (PIN: 042-160795-P/2-148)	*Muhammad Hasib ur Rehman PIN: 042-160434-P/2-049*	*Sheraz Gul PIN: 042-111230-P/2-671*

Chemistry, Quaid-i-Azam University, Islamabad

Recommended and forwarded with the following comments:

*Mr. Arif Nadeem, Mr. Haseeb-ur-Rehman and Mr. Sheraz Gul were admitted to the "M.Phil leading to Ph.D" program (HEC Indigenous Ph.D. 5000 Fellowship Program Batch-II) in the Department of Chemistry Quaid-i-Azam University, Islamabad on 31.01.2005 and 17.02.2005 respectively. At that time, there was no limit of maximum number of Ph.D. students that a supervisor could enroll with himself. On admission of these students under my supervision, they were assigned the long term research projects for their Ph.D. program and were involved in establishment of a new laboratory in the field of "Catalysis and Nanomaterials". **They have carried out the challenging task very successfully and published five research papers and one international patent out of their research work. Furthermore, their research work also helped to bring two research projects worth of Rs.10.00***

million for the Department. *According to new rules of the university enforced on 21.01.2006, ten is the maximum number of Ph.D. students that a supervisor can enroll* ***while I have already twelve students.*** *Out of these twelve students two are expected to complete their research work and write theses in the next six months period.*

I understand that these students were admitted in M.Phil. leading to Ph.D. program with the idea that they will complete their Ph.D. on the same topic under same supervision. At that time, there was no limit of ten Ph.D. students for a supervisor. Advanced Studies and Research Board of the university has not allowed these students to continue their Ph.D. research under my supervision. I am of the opinion that these students have no fault and retrospective application of the rule on these students is unjustified. It is therefore, recommended that all the three students be bailed out from HED Indigenous Ph.D. 5000 Fellowship Program without any financial penalty on them.

--Sd--
Supervisor & Chairman
Department of Chemistry,
Quaid-i-Azam University,
Islamabad".

16. All these aspects of the matter were not taken into consideration either by the learned trial Court or by the learned appellate Court. At the time of the award of the said fellowship, there was no limit for a maximum number of students that a Supervisor could enroll with himself. Circular dated 10.03.2006 was issued only when petitioner No.2 had already been enrolled with Dr. Muhammad Mazhar, Supervisor. From the available record, it is manifest that it was not petitioner No.2's fault to give a go-bye to his ongoing scholarship/Ph.D studies, rather it was the University and/or the HEC which made him compelled to quit his studies. The retrospective application of the said decision of the A.R. & R.B. on petitioner No.2 are not just unreasonable, but also something beyond any understanding. Apparently, only the

HEC's Supervisors were authorized to supervise the Ph.D scholars/students. It is also strange to observe that the HEC on its own adjudged the amount of the expenditure spent on petitioner No.2. There is no mention of the actual amount spent on petitioner's No.2 scholarship in the plaint. There is also nothing on the record which would show that the funds released by the HEC were actually utilized by the QAU on petitioner No.2's scholarship.

17. The record shows that vide impugned judgment dated 24.06.2019, the learned Civil Court had decreed HEC's suit with 25% increase. The HEC was also held entitled for receiving of prevailing bank mark-up of the decreetal amount i.e. 10,33,854/- from the date of the institution of the suit i.e. 05.04.2012 till the realization of the actual amount. Now, it is quite strange to observe here that no such prayer was made by the HEC in the suit regarding bank mark-up. No issue with respect to the mark-up was framed by the learned trial Court, but nonetheless the learned trial Court exceeded its jurisdiction and granted the relief, which had in fact, not been sought for in the plaint. For the sake of brevity, the prayer clause of the civil suit is reproduced herein below:-

> *"in the above circumstances, it is, therefore, prayed to the Honourable Court that a decree for recovery of Rs.10,33,854/- including 25% penalty may kindly be passed in favour of the plaintiff and against the defendants.*
> *Any other equitable relief to which the plaintiff be entitled may also be granted."*

18. It is my view that the learned trial Court was not competent to exercise its jurisdiction under the law to grant interest i.e. 25% bank mark-up and that too which had not specifically been prayed for. In holding so, I am fortified by the law laid down by the Hon'ble Lahore High Court in the case

titled ***Pakistan Railways through Chairman, Railway Board, Railways Headquarter, Lahore and 2 others Vs. Messrs Caltex Oil (Pakistan) Ltd., Karachi and 2 others (2008 CLC 1003),*** wherein it was held as follows:-

> *"---No specific issue was framed qua the grant of interest---Validity---Appellate Court was not empowered under law to exercise the jurisdiction qua interest and award the relief not claimed."*

19. Perusal of the impugned judgment and decree dated 24.06.2019 shows that the suit had been decreed as prayed for in addition to 25% bank mark-up. The learned trial Court ought not to have decreed the suit in its entirety. At best, it could have decreed the suit only to the extent of the amount/expenditures spent on petitioner No.2 during his studies under the supervision of Prof. Dr. Muhammad Mazhar i.e. between 31.01.2005 and 21.01.2006.

20. The aforesaid discussion leads me to an irresistible conclusion that the impugned judgments and decrees passed by the learned both lower Courts suffer from material irregularity thus calling for interference by this Court. Consequently, the instant writ petition stands **allowed** and the impugned judgments and decrees passed by the learned both lower Courts are **set-aside** leaving the parties to bear their own costs. Petition succeeds. Allowed.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court on 02.09.2022.

JUDGE

ISLAMABAD | 02.09.2022
APPROVED FOR REPORTING.

//*Kamran*//