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

W.P No.446 of 2019

Professor Dr. Hamid Mehmood
Vs.
Shaheed Zulfiqar Ali Bhutto Medical University, Islamabad & others.

Date of hearing:	13.02.2025 & 28.02.2025.
Petitioner by:	Mr. Muhammad Aftab Alam Rana, Advocate.
Respondents by:	Mr. M. Soban Hayat, Advocate for SZABMU, Islamabad.

JUDGMENT

MUHAMMAD ASIF, J.- Through this petition, the petitioner has challenged the legality of the Notification dated 27th December 2018 **("Impugned Notification"),** issued by the respondents, (Shaheed Zulfiqar Ali Bhutto Medical University, Islamabad). The said Impugned Notification culminated in the termination of the petitioner's services with effect from 20th December 2018.

2. Learned counsel for the petitioner contended that the impugned Notification was issued in contravention of the terms and conditions stipulated in the Appointment Letter and in violation of Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973 **("the Constitution").** It was further argued that the said Notification was passed by the officer of BPS-20, who lacked the competence and jurisdiction to issue such an order. The learned counsel emphasized that, pursuant to the Appointment Letter dated 22nd December 2017,

the petitioner could only be terminated during the probationary period, which was completed on 21st December 2018. However, the petitioner's services were terminated through the impugned Notification with a retrospective date, i.e., with effect from 20th December 2018. The learned counsel asserted that the Executive/Departmental Authority is devoid of the power to pass orders with retrospective effect. Furthermore, it was highlighted that the petitioner was not afforded an opportunity of personal hearing to respond to the impugned action of the respondents, which is reflective of malice, arbitrariness, and a colourful exercise of power driven by whimsical considerations. The learned counsel further submitted that the petitioner intended to leave the University in a dignified manner and had applied for the position of Vice Chancellor at various institutions, where he was shortlisted and called for interviews. However, Respondent No.1 declined to issue a No Objection Certificate (NOC), which, according to the learned counsel, demonstrates mala fides on the part of the respondents, aimed at victimizing the petitioner. Learned counsel concluded that such impugned actions of the respondents are not only repugnant to the principles of good governance but also constitute a misuse of discretionary powers. In support of the aforementioned contentions, the learned counsel relied, including but not limited to, upon the following judgments of the Apex Court **(PLD 1980 SC 310, 2007 SCMR 18, 2010 PLC (CS) 416, 2017 SCMR 683, 2019 PLC (CS) 1 (d), PLD 2007 SC 52, 2012 PLC (CS) 701, 2017 PLC CS 676, PLD 2019 BAL 1, PLD 2003 SC**

187, 2007 SCMR 682, 1986 SCMR 1561, PLD 2004 SC 271, 2005 SCMR 678, and 2008 SCMR 114.

3. Contrarily, learned counsel for the respondents submitted that the impugned Notification was issued strictly following law by the competent authority vis-à-vis the Syndicate of the University. The services of the petitioner were terminated due to unsatisfactory performance during the probationary period and questionable veracity of his qualifications. Per counsel, the petitioner had been duly intimated on two occasions to provide verified, from the Higher Education Commission (HEC), copies of his degrees to the office of the Registrar, but he failed to comply with these directives and did not submit the verification of his degrees. The learned counsel for the respondents argued that the petitioner while serving as the Registrar of Shaheed Zulfiqar Ali Bhutto Medical University (SZABMU), was custodian of official records of the University; however, it was alleged that the petitioner, acting with mala fide intent and malice, unlawfully procured his personal file from the record room, which remains untraceable till date. In this regard, the Assistant Director (Establishment) asked the petitioner, vide letter dated 10th August 2018, directing him to return the personal file within three days. Upon the expiry of the stipulated period, a follow-up letter was issued vide letter dated 13th August 2018, wherein the petitioner was informed that the Vice Chancellor had constituted a fact-finding committee to investigate the disappearance of the petitioner's confidential personal

file. Meanwhile, the petitioner submitted an application to the Vice Chancellor for a No Objection Certificate (NOC) to apply for jobs outside the University. The disciplinary proceedings were underway, and the petitioner had challenged the same before Islamabad High Court, Islamabad. Therefore, the NOC was not issued, and the same was communicated to the petitioner, vide letter dated 31.08.2018. Subsequently, on 12th September 2018, a show-cause notice was issued to the petitioner regarding the missing file after a fact-finding inquiry. During the course of the inquiry, the petitioner's clerk submitted a written statement admitting that the subject file was last seen in possession of the petitioner. Furthermore, the learned counsel highlighted that the petitioner's performance as a professor at the Federal Medical and Dental College (FMDC) was deplorable and marked by gross negligence. Per counsel, the petitioner showed lack of interest in his academic duties by failing to attend most of his classes and indulging in unethical political manoeuvering within the institution. Additionally, it was alleged that the petitioner unlawfully interfered in the department's day-to-day operations, thereby disrupting its functioning. Lastly, the counsel for the University contended that the services of the petitioner were terminated during the probationary period, and as per law, by the competent authority in its 12th meeting held on 20th December 2018, and the termination was formally notified on 27th December 2018. In view of the foregoing, the learned counsel for the respondents urged that the petition being devoid of merits is liable to be dismissed.

4. I have heard the arguments advanced by the learned counsels for the parties and minutely sifted material available on record.

5. Upon a meticulous examination of the record, it is revealed that the petitioner had previously assailed the decision taken by the University Syndicate in the meeting held on 12th July 2018 before this Court. The said challenge was dismissed being meritless, vide Judgment dated 23rd November 2018, with the following observations:

> *"It is trite law that an authority, which passes an order, can withdraw/retrace the same unless rights have accrued in the other person. It is also known as the principle of 'locus poenitentiae' and under the referred doctrine as elaborated by the superior courts time and again, right accrued cannot be taken away, however, it is also by now settled that an illegal act or one without lawful authority, does not confer any right on a person hence the principle of locus poenitentiae does not come to the aid of the petitioner in the instant case. There is no cavil with the principles laid down in the case law relied upon by learned counsel for the petitioner, however, same are not applicable in the facts and circumstances of present case.*

6. It is important to note here that in pursuance of the order of this Court, the probation of the petitioner was reinstated by the Syndicate in its 11th meeting held on 23.07.2018, which was notified on 10.12.2018.

7. Proceeding to the merits of the instant petition, it is appropriate to first delve into the terms of the appointment Letter, as it assumes a

pivotal role in determining the petitioner's stance herein. The petitioner's appointment Letter, dated 22nd December 2017, is reproduced hereunder:

1. *Your appointment will be in BPS-21 (63,780-4150-121,880), plus usual allowances admissible under rules of this University.*
2. *You will be placed on probation for a period of one year.*
3. *If your work & conduct is found to be unsatisfactory during the period of probation, your services are liable to be terminated without assigning any reason and without any notice.*
4. *The appointment will be terminated at three month notice on either side or on payment of pay in lieu of notice period.*
5. *I respect all other matters; you will be governed by the appropriate rules of the university applicable to its employees from time to time.*
6. *You will be required to produce a declaration on a stamp paper to the effect that you were never dismissed or removed from service by any Government or Autonomous Organization.*

8. The impugned Notification, dated 27.12.2018, was issued by respondent No.1 (Shaheed Zulfiqar Ali Bhutto Medical University, Islamabad), in pursuance of the decision of the Syndicate, whereby the services of the petitioner had been terminated. An excerpt of the said Notification reads as under:

> *"The Syndicate in its 12th meeting, held on 20th December 2018, has approved the termination of the services of Prof. Hamid Mehmood, Professor of Biochemistry w.e.f 20th December 2018."*

9. Respondent No.1, Shaheed Zulfiqar Ali Bhutto Medical University (SZBMU), is a statutory entity established under the Shaheed Zulfiqar Ali Bhutto Medical University Act, 2013 (hereinafter referred to as **"the Act"**). The Vice-Chancellor is authorized to appoint, on the recommendation of the selection board, employees up to the pay scale equivalent to BPS-18 as enunciated

under Section 13(6)(i) of the said Act. Furthermore, under Section 25 of the said Act, the Syndicate of the University is vested with, inter alia, the authority to appoint, on the recommendations of the Selection Board, officers to pay scale equivalent to BPS-19 and above. The Syndicate is also empowered to determine the terms and conditions of such appointments, including the pay fixation and other related matters. A careful perusal of the provisions of the said Act, 2013 makes it abundantly clear that all appointments at BPS-19 and above, as well as the determination of terms and conditions of service, fall exclusively within the domain of the Syndicate of the University. In the instant case, the petitioner was employed in BPS-21; consequently, his appointment, termination, and the terms of service unequivocally fall within the purview of the Syndicate of the University, as delineated under the statutory framework of the Act.

10. Upon a perusal of the appointment letter of the petitioner, it becomes manifest that the petitioner was traversing his probationary period at Shaheed Zulfiqar Ali Bhutto Medical University (SZABMU), and clause (iii) of the said letter unequivocally mentions the condition that his services could be brought to an end without ascription of reasons or issuance of notice, should his performance or conduct be found unsatisfactory during this period. Thus, it stands as an incontrovertible fact that the petitioner’s termination occurred while he was in the probationary phase. Probation, as defined in the Oxford Dictionary, is a process of testing or observing the character or

abilities of a person who is new to a role or job. Similarly, in (**1998, PLC (CS) 828)** titled as *Gohar Vs. M.D SNGPL*, it was held that the very purpose of the probationary period was to assess the performance of an employee during a specified period in which the services of the employee remained purely temporary.

11. Under the foregoing discussions and circumstances, it emerges with clarity that the university respondent has acted in conformity with the terms enunciated in the appointment letter, a document containing terms that were acquiesced to by the petitioner at the time of joining. The contentions of the learned counsel for the petitioner that neither the opportunity of personal hearing was afforded nor any show-cause notice was issued does not carry weight, as, by its very tenor, the appointment letter does not contemplate, let alone mandate, the issuance of such notice prior to the termination of an employee during the probationary period. Even otherwise, needless to say, the petitioner was issued a show-cause notice after the findings of the fact-finding committee constituted to investigate the matter of the petitioner's missing file, which was, being custodian of record as Registrar of the University, in possession of the petitioner.

12. In cases of Civil Servant, there exists no right during the probationary period to claim protection under the maxim *"audi alteram partem"* for issuance of a show-cause notice before any termination can take effect, as it is against the spirit and true meaning

of putting an employee on probation. The Hon'ble Supreme Court in the case of *Muhammad Iqbal Khan Niazi v. Lahore High Court through Registrar* **(2003 PLC (CS) 282)** observed as under;

> *"As regards the principle of natural justice enshrined in the maxim "Audi alteram partem" suffice it to say that it has been held in Rehan Saeed Khan and others v. Federation of Pakistan (2001 PLC (C.S) 1275) that a probationer has not vested right to continue in service, therefore, his service can be terminated without a show-cause notice and the question of violation of the principle of audi alteram partem does not arise except in case of mala fides. It is scarcely necessary to mention that the impugned order cannot be termed as mala fide by any standard."*

In the case of *M. Munir Vs. Government of Punjab* **(NLR 1998 Service 124)**, it was held that simpliciter termination during the probationary period does not require show cause notice or any other legal formality, and simpliciter termination order during the period of probation would be unexceptional-able and unquestionable. A similar view was also expressed in *Muhammad Hussain Naqshabandi v. Government of the Punjab and others (***2004 SCMR 44)**, *Muhammad Nadeem Ahmed and 18 others vs. Ms. Azhra Feroz Bakhat and 58 others (***PLD 1968 SC 37)** and *Shahzada Shahpur Tan vs. Auditor General of Pakistan and another (***PLD 1984 SC 430).**

13. As far as the contention of the learned counsel for the petitioner regarding impugned Notification, being issued contrary to law and by the incompetent authority, is concerned, it is vividly evident from the record that the said Notification was issued with the prior approval of

the Syndicate in its 12th meeting dated 20.12.2018, which is the competent authority to pass such orders and was notified on 27.12.2018. As such, this Court does not align with the stance taken by the learned counsel for the petitioner regarding the illegality of the impugned Notification as the same appears to have been duly issued, and the contents thereof, demonstrate that the competent authority, the Syndicate, had exercised its authority and determined the employment of the petitioner in the manner permissible under the terms and conditions governing the employment of the petitioner.

14. Insofar as the case laws relied upon by the learned counsel for the petitioner are concerned, there is no cavil to such proposition, but with respect, I may observe that the same are distinguishable to the facts of the present case.

15. Given what has been discussed above, the petitioner failed to pinpoint any illegality in the impugned Notification; as such, the instant petition is bereft of merits and stands dismissed.

(MUHAMMAD ASIF)
JUDGE

Announced in open Court on **24.03.2025**.

ISLAMABAD | 24.03.2025
APPROVED FOR REPORTING
BLUE SLIP ADDED

JUDGE

Shoaib