JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.2542 of 2016
Dr. Muhammad Irfan Memon
Versus
COMSATS Institute of Information Technology through its Rector

Date of Hearing:	03.11.2017
Petitioner by:	Hafiz S.A. Rehman and Mr. Muhammad Anwar Mughal, Advocates.
Respondent by:	Raja Abid Hussain, Advocate.

MIANGUL HASSAN AURANGZEB, J:- In the instant writ petition, instituted by Dr. Muhammad Irfan Memon against the respondent (COMSATS Institute of Information Technology), the following relief has been prayed for:-

> *"It is, therefore most humbly prayed that an appropriate writ may very graciously be issued declaring:-*
>
> *i. That the letter dated 6.6.2016 is illegal, arbitrary, fanciful, whimsical, malafide without lawful authority and of no legal effect.*
>
> *ii. That the above letter is violative of principles of locus poenitentaie as the earlier order dated 7.9.2015 and 1.1.2016 had already taken legal effect.*
>
> *iii. That the petitioner is entitled to complete the remaining period of bond, for which he is willing and ready.*
>
> *iv. That the Respondent Institute is not entitled to demand the amount incurred on petitioner's studies.*
>
> *v. That the petitioner is entitled to be paid the amount of salary w.e.f. 1.9.2015, the date when he was assigned the teaching duties.*
>
> vi. *Any other relief which this Honble Court may deem fit and proper be also granted."*

2. The facts essential for the disposal of this petition are that on 01.09.2003, the petitioner was appointed as Junior Lecturer in the subject of Physics by the respondent. On 17.04.2004, the petitioner was employed by the respondent as a Lecturer in the Department of Physics, for a fixed term of two years. In this regard, a contract was executed between the petitioner and the respondent on 16.07.2004. Subsequently, the respondent selected the petitioner for an award of his scholarship for MS leading to PhD studies at the University of Bristol in the United Kingdom. On 19.06.2006, an agreement was executed between the petitioner and the respondent setting out the terms and conditions on which

the said scholarship was awarded to the petitioner. Clauses viii and ix of the said agreement are reproduced herein below:-

> *"viii) The Scholar shall return to Pakistan and physically report to CIIT without any loss of time immediately after completion of the duration of the scholarship program, in any case not later than sixty (60) days of the said completion of the scholarship program.*
>
> *ix) The Scholar shall resume the employment/service of CIIT on the full-time basis and, upon his/her return to Pakistan as aforesaid, he/she shall, at the discretion of CIIT, serve CIIT full-time for at least five (5) years commencing from the date of his/her joining/resumption of duties with CIIT after his/her reporting to CIIT as aforesaid – the said period is hereby acknowledged by the Scholar as reasonable and fair in the circumstances."*

3. The petitioner also furnished a guarantee agreeing to compensate the respondent in the event any of the terms and conditions of the said agreement were violated by the petitioner. On 29.09.2006, the petitioner was granted ex-Pakistan study leave (without pay) from 01.10.2006 to 30.06.2007 for proceeding for his studies at the University of Bristol. On 28.02.2011, the petitioner was granted ex-post facto approval for the extension in his ex-Pakistan leave from 01.10.2007 to 26.01.2011.

4. On 27.01.2011, the petitioner joined his duties as Assistant Professor in the Department of Physics at the respondent/institute. On 04.03.2011, the petitioner was appointed as Assistant Professor in the Department of Physics on contract basis for a fixed term of three years commencing from 27.01.2011. Subsequently, the petitioner was offered fellowship for post doctoral research by Prince Sultan Advanced Technology Research Institute ("PSATRI") at King Saud University, Riyadh, Kingdom of Saudi Arabia. The respondent agreed to grant the petitioner ex-Pakistan leave and to defer his bond under the above mentioned agreement dated 19.06.2006 till the completion of his post doctoral fellowship for one year. In this regard, an agreement was executed between the petitioner and the respondent on 05.01.2012. The permission granted by the respondent to the petitioner for his post doctoral fellowship was subject to the condition that the petitioner would serve the respondent for a period of five years, as provided in the agreement dated 19.06.2006. On 05.01.2012, the petitioner swore an affidavit deposing therein that the petitioner's post doctoral

fellowship at PSATRI was for a duration of one year from 21.01.2012 to 20.01.2013, and that he would complete his post doctoral fellowship during a period of one year and will not request for an extension. Furthermore, paragraphs 6 and 7 of the said affidavit are reproduced herein below:-

> *"6 That after completion of my Post-doc studies, I will immediately come back and will resume my service in CIIT as per my service bond and surety already executed with CIIT which may please be deferred and will remain intact for compliance by me for a period of five years.*
>
> *7 That in case of my failure, CIIT will be at liberty to take disciplinary action under the terms and conditions of said deed of agreement, rules and regulations etc. and I will also bound to refund all expenses incurred by CIIT along with penalty and compensation as assessed for PhD duration without any objection."*

5. On 13.01.2011, the respondent granted ex-Pakistan leave to the petitioner from 16.01.2012 to 15.01.2013. Upon the expiry of the petitioner's ex-Pakistan leave period, he did not return to Pakistan. Vide notice dated 16.07.2013, the respondent called upon the petitioner to resume his duties by 31.07.2013, failing which disciplinary action was to be initiated against him. Since the petitioner did not return to Pakistan, the respondent issued show cause notice dated 19.02.2014 requiring him to join his duties at the respondent/institute immediately. On 13.03.2014, a final show cause notice was issued to the petitioner warning him that if he did not join his duties, his services would be terminated. On 27.05.2014, another final show cause notice was issued to the petitioner. On 01.06.2015, yet another show cause notice was issued to the petitioner reminding him that the respondent had spent US $ 20,760, GBP 50,964 and Rs.1,86,195/- on the petitioner's tuition fees, stipend and air fare for his PhD studies. The petitioner was warned that if he did not respond to the said notice, the respondent would seek compensation from the petitioner's guarantor. On 10.06.2015, another final show cause notice was issued by the respondent to the petitioner requiring the latter to explain within a period of fifteen days as to why a penalty should not be imposed on him. The petitioner was cautioned that if he did not submit a reply to the show cause notice, it would be

assumed that he had no defence to offer and *ex-parte* action would be taken against him.

6. Vide letter dated 01.09.2015, the petitioner informed the respondent that he would be re-joining his duties, and that the respondent should accept his re-joining with effect from 01.09.2015. Vide office memorandum dated 31.08.2015, the petitioner was assigned the course of Electronics-I for the Fall Semester of 2015. Vide letter dated 07.09.2015, the Head of Physics Department of the respondent/institute confirmed that the petitioner had joined the said Department after availing ex-Pakistan leave, and that his "joining case" was in process.

7. On 19.10.2015, a notice was issued by the respondent to the petitioner calling upon the petitioner to show cause as to why the disciplinary proceedings should not be initiated against the petitioner for failing to comply with the agreement between the petitioner and the respondent. Furthermore, the petitioner was called upon to pay back the amount spent by the respondent on the petitioner's PhD studies. On 30.10.2015, the petitioner submitted a reply to the said show cause notice. The position taken by the petitioner was that he had earlier requested the administration of the respondent to permit him to complete his ongoing research until 15.09.2015. The petitioner's head of department is said to have recommended the petitioner's case for a "favourable consideration". Vide office memorandum dated 01.01.2016, the petitioner was assigned the courses of Electronics-II and Applied Photonics for the Spring Semester of 2016. Vide letter dated 02.05.2016, the petitioner requested the Rector of the respondent/institute to resolve the issue regarding his "joining". By this time, the petitioner had been teaching at the respondent/institute for eight months after his return from Saudi Arabia. Vide impugned letter dated 06.06.2016, the respondent turned down the petitioner's request to resume his service at the respondent/institute. Furthermore, the petitioner was called upon to return the entire amount spent by the respondent/institute on the petitioner's PhD studies at the University of Bristol. The said letter

dated 06.06.2016 has been impugned by the petitioner in the instant writ petition.

8. Learned counsel for the petitioner after narrating the facts leading to the filing of the instant petition, submitted that the petitioner had been treated unfairly by the respondent/institute; that after completing his PhD studies, the petitioner returned to Pakistan and was appointed as an Assistant Professor in the Department of Physics for a fixed term of three years commencing from 27.01.2011; that the petitioner proceeded to Saudi Arabia for post-doctoral fellowship after being granted ex-Pakistan leave by the respondent up to 15.01.2013; that the petitioner could not return to Pakistan, because PSATRI had retained his passport; that the petitioner worked as a Post-doctoral research fellow at PSATRI until 31.08.2015; that the petitioner rejoined his duties at the respondent/institute on 01.09.2015; that after rejoining his duties, the petitioner was assigned the course of Electronics-I for the Fall Semester of 2015, and the courses of Electronics-II and Applied Photonics for the Spring Semester of 2016; that the petitioner's head of department had recommended the petitioner's case for formally joining the respondent/institute for a "favourable consideration"; that for a period of eight months, the petitioner had been performing his duties diligently at the respondent/institute; that at no material stage, did the respondent initiate proceedings under the Employees Efficiency and Discipline Statutes, 2006, against the petitioner; that the petitioner could not have been called upon to return the amount spent by the respondent/institute on the petitioner's PhD studies, because the petitioner after completing the said studies returned to Pakistan and was awarded contract employment by the respondent/institute; and that the petitioner had proceeded abroad in pursuit of higher education for which he could not be penalized or condemned. Learned counsel for the petitioner prayed for the writ petition to be allowed, and for the impugned order dated 06.06.2016, to be set-aside. Furthermore, learned counsel for the petitioner sought the issuance of direction to the respondent/institute to permit the

petitioner to formally join his duties and to pay him his salary for the remaining contract period.

9. On the other hand, learned counsel for the respondent submitted that the respondent/institute cannot permit the petitioner to rejoin his duties, because he had breached his obligations contained in the agreement dated 19.06.2006; that although the petitioner returned to Pakistan after the completion of his PhD studies, he was permitted to proceed to Saudi Arabia for his post-doctoral scholarship only for a period of one year; that under clause-ix of the agreement dated 19.06.2006, the petitioner had to serve the respondent/institute for a period of at least five years upon his return to Pakistan after his PhD studies; that through the agreement dated 05.01.2012, the petitioner's said obligation was deferred for a period of one year; that the petitioner in his affidavit dated 05.01.2012 deposed that he will complete his post-doctoral fellowship in one year, and will not ask for any extension in time; that the petitioner also committed that he will immediately come back to Pakistan and resume his service with the respondent/institute, and that in case the petitioner did not return, he would refund the respondent/institute all the expenses incurred on his PhD studies; that the petitioner was granted ex-Pakistan leave from 16.01.2012 to 15.01.2013; that the said leave period was not extended at any material stage; that vide notices dated 16.07.2013, 19.02.2014, 13.03.2014, 27.05.2014, 01.06.2015, and 10.06.2015, the petitioner was called upon to return to Pakistan and explain as to why a penalty should not be imposed on him; that the petitioner did not respond to any of the said notices; that after the petitioner's return on 01.09.2015, the petitioner's joining had not been notified and he was not taken on the respondent/institute's strength; that the petitioner was permitted to join as a visiting faculty member, and not under his employment contract dated 04.03.2011; that there is no legal infirmity in the respondent's decision not to permit the petitioner to join his duties, and to call upon him to return the amount spent by the respondent/institute on his PhD studies; that by not returning to Pakistan after the completion of his ex-Pakistan leave period for his

post-doctoral fellowship, the petitioner has not just breached his obligations under the agreements dated 19.06.2006 and 05.01.2012, but also his affidavit dated 05.01.2012; that since the petitioner has not come to this Court with clean hands, he cannot be granted relief in the discretionary/equitable jurisdiction of this Court; that an order directing the respondent/institute to permit the petitioner to join his duties and to pay him the salary under his employment contract dated 04.03.2011 would amount to specifically enforcing the said contract. Learned counsel for the respondent prayed for the writ petition to be dismissed.

10. I have heard the contentions of the learned counsel for the contesting parties, and have perused the record with their able assistance. The facts leading to the filing of this petition have been set out in sufficient detail in paragraphs 2 to 8 above, and need not be recapitulated.

11. It is not disputed that the respondent/institute had spent US $ 20,760, GBP 50,964 and Rs.1,86,195/- on the petitioner's tuition fees, stipend and air fare for his PhD studies at University of Bristol, United Kingdom. It is also not disputed that the petitioner fulfilled his obligation under clauses viii and ix of the agreement dated 19.06.2006 by returning to Pakistan after successfully completed his PhD studies. After his return, the petitioner was to serve for at least five years at the respondent/institute. Consequently, the petitioner was appointed as Assistant Professor in the Department of Physics for a fixed term of three years commencing from 27.01.2011. In this regard, an employment contract was executed between the petitioner and the respondent. Thereafter, the petitioner was permitted to proceed to Saudi Arabia for his post doctoral fellowship for a period of one year. In this regard, agreement dated 05.01.2012 was executed between the petitioner and the respondent/institute. The petitioner agreed to serve the respondent/institute after his post doctoral fellowship for a period of five years in terms of the earlier agreement dated 19.06.2006. The bond executed by the petitioner regarding the five-year service with the respondent/institute was deferred for a period of one year. The petitioner also swore an affidavit deposing

therein that after the completion of post doctoral studies, he will immediately come back and serve the respondent/institute. In the said affidavit, it is explicitly mentioned that the duration of the petitioner's post doctoral studies was one year (i.e. from 21.01.2012 to 20.01.2013). The petitioner was granted ex-Pakistan leave by the respondent/institute from 16.01.2012 to 15.01.2013.

12. Had the petitioner complied with his contractual obligation of returning to Pakistan and resuming his duties with the respondent/institute upon the expiry of the period for which the petitioner was permitted to pursue his post doctoral research, the present dispute would have been averted. The petitioner's ex-Pakistan leave expired on 15.01.2013. The petitioner did not return to Pakistan in order to resume his duties at the respondent/institute until 01.09.2015 (i.e. about two years and nine months after the expiry of his ex-Pakistan leave period). The petitioner did not even bother to send a reply to the respondent's notices dated 16.07.2013, 19.02.2014, 13.03.2014, 27.05.2014, 01.06.2015, and 10.06.2015. Time and again the respondent called upon the petitioner to return to Pakistan and resume his duties at the respondent/institute. Several show cause notices were issued to the petitioner. All these notices fell on deaf ears. Finally, on 06.06.2016, the respondent/institute declined the petitioner's request to join his duties. Despite this recalcitrant attitude on the petitioner's part, he expects this Court to direct respondent/institute to let the petitioner perform his duties as a contract employee by ignoring the period for which the petitioner overstayed in Saudi Arabia, and by adding the said period to his contractual term. Since the equities are heavily tilted against the petitioner, such a relief cannot be granted to him.

13. True, the petitioner, in pursuit of higher education, decided not to return to Pakistan upon the expiry of his ex-Pakistan leave. By doing so, the petitioner not only breached his contractual obligations set out in the agreements dated 19.06.2006 and 05.01.2012 but also his undertakings/commitments in the affidavit dated 05.01.2012. The petitioner, therefore, has only himself to thank for the unsavory situation that he presently finds himself in.

14. I would tend to agree with the learned counsel for the respondent that what the petitioner is in effect asking this Court to do is to direct the respondent to specifically perform the fixed term employment contract dated 04.03.2011 executed between the petitioner and the respondent. Such a relief cannot be granted in the constitutional jurisdiction of this Court under Article 199 of the Constitution especially when no statutory rule has been violated by the respondent/institute by not reviving its contractual relationship with the petitioner.

15. Although the petitioner was permitted to teach courses in the Fall Semester of 2015 and Spring Semester of 2016 as a visiting faculty member, this would not operate as an estoppel against the respondent in not recognizing the petitioner as its contractual employee. The learned counsel for the petitioner could not controvert the fact that the petitioner was assigned the said courses as a visiting faculty member and not as an Assistant Professor on the strength of the respondent/institute.

16. Learned counsel for the petitioner, during the course of his arguments, had submitted that the petitioner had, through emails applied for an extension in the period for which he was permitted to undertake his post doctoral research. Although there is no formal application on the record, but even if there was, the mere filing of an application for an extension in the ex-Pakistan leave did not give a right to the petitioner to stay abroad beyond the period for which his ex-Pakistan leave was sanctioned.

17. The case at hand has certain similarities with the case of Dr. Muhammad Usman Vs. COMSATS (writ petition No.1316/2016), decided by this Court, vide judgment dated 31.01.2017. In the said case, the petitioner had been granted a scholarship by COMSATS for his PhD studies in Mathematics, and after he returned to Pakistan, he was appointed as an Assistant Professor in the Department of Mathematics for a period of three years. The petitioner went abroad after being granted ex-Pakistan leave for a short period, and did not return after the expiry of his ex-Pakistan leave. An extension in his ex-Pakistan leave was not granted. The petitioner, after completing his post doctoral studies returned to

Pakistan and wanted to resume his contractual responsibilities at COMSATS. The refusal on COMSATS's part to let the petitioner resume his duties caused the petitioner to invoke the constitutional jurisdiction of this Court under Article 199 of the Constitution. This Court, vide judgment dated 31.01.2017, dismissed the writ petition. In paragraph 18 of the said judgment, it was held as follows:-

> ***"18. …the petitioner's failure to resume his duties after the expiry of his sanctioned ex-Pakistan leave was a serious matter. Such conduct on the part of the petitioner certainly disentitled him to seek the issuance of a writ of mandamus, in effect directing the respondent to ignore the petitioner's absence from duty for one year and ten months, and let him work for the remaining period of his contractual employment. The respondent already extended ample concession to the petitioner by letting him stay abroad for a period way beyond the scholarship program. Though the petitioner remained abroad in pursuit of higher education, the fact remains that he had bound himself in a contract of employment with the respondent, which contract he was expected to honour."***

18. Since the learned counsel for the petitioner could not point out any illegality, irrationality or procedural impropriety in the respondent's decision not to continue the petitioner's contractual employment as Assistant Professor in the Department of Physics, this petition is dismissed with no order as to costs. Should the respondent/institute file a suit for recovery of money against the petitioner, the observations herein should not in any way prejudice the petitioner.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

Ahtesham*

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