

JUDGMENT SHEET
LAHORE HIGH COURT MULTAN BENCH, MULTAN.
JUDICIAL DEPARTMENT

W.P.No.18847 of 2022

JUDGMENT

Fareed-ud-Deen Ahmed
VERSUS
Chancellor University of Education, etc.

Date of hearing: 02.05.2023

Petitioner by: Raja Naveed Azam, Advocate.
Respondents by: Gohar Mustafa Qureshi, Advocate.
Ms. Samina Mehmood Rana, AAG.

MUZAMIL AKHTAR SHABIR, J. At the request of the learned counsel for the parties, this case is **admitted** for regular hearing.

2. Learned counsel for petitioner states that appeal filed by the petitioner, Fareed-ud-Din, who was working as junior Key Punch Operator (**‘K.P.O.’**) in the University of Education, Vehari Campus, Vehari (**‘University’**) or (**‘UE’**), against major penalty of removal from service imposed against him under Section 4(b)(v) of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 (**‘PEEDA’**) or (**‘Act’**) by the Vice Chancellor of the University of Education, Lahore (**‘Vice Chancellor’**) vide order dated 17.01.2022 (**‘Impugned Original Order’**), has been dismissed by respondent No.3/Syndicate of the University of Education, Lahore (**‘Syndicate’**) vide order dated 18.07.2022 (**‘Impugned Appellate Order’**) passed on the basis of recommendations dated 26.05.2022 (impugned recommendations) of the hearing officer appointed by the Syndicate by treating the appeal filed by the petitioner as misconceived and not maintainable solely for the reason that said appeal had been filed under wrong provision of law i.e. Section 33 of the University of Education, Lahore Ordinance, 2002 (**‘Ordinance’**), instead of correct provision of law i.e. Section 16 of PEEDA Act, 2006 (**‘Act’**), which observation recorded for dismissal of appeal was not sustainable in law for

the reason that such technicalities could not be allowed to defeat safe and proper Administration and dispensation of justice essential to reach ends of justice, which was the ultimate purpose of all procedures prescribed by law, therefore, impugned orders were liable to be set aside.

3. Learned counsel appearing on behalf of respondent-university while defending the impugned orders states that petitioner was proceeded against under the Act and major penalty of removal from service was also imposed against him by the Vice Chancellor of the University under the Act, whereas instead of filing appeal through proper procedure provided under Section 16 of the Act the petitioner had filed appeal under wrong provision of law i.e. under Section 33 of the Ordinance which was dismissed by the Syndicate as not maintainable and against the dismissal of said appeal, the petitioner had also approached Chancellor of University (**‘Chancellor’**) by filing appeal under Section 16 of the Act for challenging the impugned original and appellate orders, which had also been dismissed as not maintainable by the Chancellor on 27.10.2022 (**‘order of the Chancellor’**), therefore, this petition challenging the aforementioned impugned orders, wherein findings of fact recorded against the petitioner of his being found guilty of corruption in the Punjab Educational Endowment Fund PEEF/Ehsaas Scholarships cannot be challenged through the instant Constitution petition, which is also not maintainable.

4. The perusal of the record shows that the petitioner was appointed as Junior Key Punch Operator (**‘Jr. KPO’**) in BS-07 on 16.02.2015 at University of Education Vehari campus. Aqib Javed, a student of BS Chemistry, UE, Vehari Campus filed application before the Principal UE, Vehari Campus that he had received a telephonic call from PEEF Head Office regarding verification of receipt of PEEF scholarship for Rs. 72,000/- received by him, on which he had informed that he had not received any amount. The Principal, University of Education issued explanation letter on 30.09.2021 to the petitioner to whom duties for disbursement of scholarships had been assigned to explain the disbursement of PEEF Scholarship to Aqib Javaid and provide evidence within 03 working days to which he did not give any explanation. On 06.10.2021, the Principal University of Education

constituted an Inquiry Committee comprising of 04 members to inquire the matter of PEEF scholarship against the application of Aqib Javed with a direction to submit report till 08.10.2021. The inquiry committee on 15.10.2021 submitted its report and declared the petitioner guilty and recommended action against him under rules and regulations. The Competent Authority appointed Dr. Muhammad Tahir, Associate Professor of Physics, UE, Vehari Campus as an inquiry Officer vide notification dated 01.11.2021 to proceed against the petitioner under Section 9(1)(a) of the PEEDA Act 2006 to conduct the inquiry. The inquiry officer found the petitioner to be guilty of charge of corruption in PEEF/Ehsaas Scholarships and submitted his recommendations on 24.12.2021 and recommended to impose the penalty to withhold increments for a period of one year under Section 4(1)(a)(ii) of the Act. The Vice Chancellor of the respondent university after further process in the matter while disagreeing with the recommendations of the Inquiry Officer, vide order dated 17.01.2022 passed in exercise of powers of Competent Authority vested in him under Section 13(4)(b) of the Act, imposed major penalty of removal from service under Section 4(b)(v) of PEEDA Act, 2006 upon the petitioner, as charges against him stood proved. The operative part of the order of Vice Chancellor is reproduced below:

“Therefore, I, Prof. Dr. Talat Naseer Pasha, S.I., Vice Chancellor, University of Education Lahore, as a competent authority, for the reasons given, disagree with the recommendations of the inquiry Officer and impose Major Penalty of Removal from Service upon Mr. Farid ud Din Ahmad, Junior KPO, University of Education, Vehari Campus Vehari in terms of Section 4(b)(v) of PEEDA ACT, 2006.”

5. On 25.01.2022 office order was issued notifying that the petitioner stands removed from service w.e.f. 17.01.2022 (i.e. the date of order passed by the Competent Authority).

6. The petitioner on 01.02.2022 filed appeal before the syndicate against the said order under Section 33 of University of Education Lahore, Ordinance, 2002 and vide order dated 28.04.2022 Prof. Dr. Muhammad Alam Saeed, Director, Division of Science & Technology/Member Syndicate was appointed by the Syndicate as the hearing officer to provide personal hearing on behalf of Syndicate. The hearing officer vide his order

dated 26.05.2022 (***Impugned Recommendations***'), while relying upon Section 16 of the PEEDA Act, 2006 recommended for dismissal of the appeal by observing as under:

"The appellant instead of filing an appeal under the provisions of PEEDA Act, 2006 has filed the instant appeal before the Syndicate under Section 33 of University of Education, Lahore Ordinance, 2002. The appeal was placed before the Syndicate in its meeting held on 24.03.2002 the Syndicate appointed the undersigned as hearing officer to accord a personal hearing to the appellant.

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It is manifestly clear from the above that order of the departmental authority in respect of any of the terms and conditions of service of a university employee can only be challenged by way of an appeal under the provisions of PEEDA Act, 2006.

It is added that the order dated 17.01.2022 was not appealable in terms of Section 33 of the University of Education, Lahore Ordinance, 2002.

For the foregoing reasons, the instant petition is misconceived and not maintainable consequently the same is hereby dismissed."

7. On the basis of the afore-referred recommendations of the hearing officer, notification bearing No.UE/Syn/DD-Mgt/2022/92 dated July 18, 2022 (***impugned Appellate Order***) was issued on behalf of Syndicate dismissing the petitioner's appeal in the following terms:

"The Syndicate in its 67th meeting held on 04.07.2022, approved the recommendation made by the Hearing Officer, hence the instant petition of Mr. Farid ud Din Ahmad s/o Mumtaz Ahmad, Ex-Junior KPO (BS-07) was misconceived and not maintainable, consequently the same is hereby dismissed."

8. The petitioner there-after filed departmental appeal against the afore-referred orders under Section 16 of PEEDA Act, 2006 addressed to the Governor of the Punjab in his capacity as Chancellor of University of Education, Lahore which was dismissed as not maintainable vide order dated 27.10.2022 (***order of Chancellor***'), in the following terms:

"Subject: DEPARTMENTAL APPEAL UNDER SECTION 16 OF PEEDA ACT, 2006 AGAINST THE ORDER DATED 25.01.2022 WHEREBY THE PENALTY OF REMOVAL FROM SERVICE WAS IMPOSED UPON THE APPELLANT WITHOUT ANY LEGAL AND LAWFUL JUSTIFICATION.

Kindly refer to your appeal dated 26.08.2022, on the subject.

*2. I have been directed to inform you that the Hon'ble Governor/Chancellor has been pleased to **dispose of** your appeal being not maintainable before him under Punjab Employees Efficiency, Discipline & Accountability Act, 2006. The Appellate Authority/Syndicate, in terms of Section 16 of the Act *ibid*, has already dismissed your appeal. Therefore, your appeal before the Hon'ble Governor/Chancellor is not*

maintainable, as there is no provision of 2nd appeal in the Punjab Employees Efficiency, Discipline & Accountability Act, 2006.”

9. The petitioner has challenged all the afore-mentioned orders through this Constitution petition by making the following prayer:-

“In view of above submissions, it is respectfully prayed that this petition may kindly be accepted, the impugned order passed by respondent No. 3 may kindly be declared as illegal, unlawful, colorful exercise of power, result of mala fide, violation of principle of natural justice and the same may kindly be set aside and respondent No. 3 may kindly be directed to attend the departmental appeal of the petitioner on merit and decide the fate of the same while affording an opportunity of hearing to the petitioner in the larger interest of justice.

Any other relief which this Hon'ble Court deems fit and necessary may also be awarded to the petitioner.”

10. The learned counsel for the respondent university has argued that constitutional jurisdiction cannot be exercised to set aside concurrent findings of fact recorded by the forums below. Ordinarily such legal position may be correct in most of the cases, however it is not an absolute rule of law and is subject to certain exceptions. For example, concurrent findings of fact can be set aside *inter alia* on the ground where it can be shown that the finding is on the face of it against the evidence or so patently improbable, or perverse that to accept it could amount to perpetuating a grave miscarriage of justice, or if there has been any misapplication of principles relating to appreciation of evidence, or is against some provision of law or finally, if the finding can be demonstrated to be physically impossible or not sustainable at all. For reaching the said conclusion reliance, *inter alia*, has been placed on the principles laid down by the Supreme Court of Pakistan in judgment reported as Sardar Ali Khan versus State Bank of Pakistan and others (2022 SCMR 1454).

11. Be that as it may, another aspect of the matter is that this constitution petition can be decided without deeply going into the merits of the case relating to the findings of fact recorded by the forums below as the same can be decided on the basis of legal issue about the validity of decision relating to maintainability of appeal before the Syndicate, hence, without commenting upon the allegations of corruption raised and finding of guilt recorded against the petitioner through the inquiry report relied upon in the

impugned original order of Vice Chancellor, lest it may prejudice case of either party, it is observed that the Syndicate on the recommendation of the hearing officer dismissed the appeal filed by the petitioner as misconceived and not maintainable because the same had been filed under wrong provision of law, whereas the Chancellor dismissed the petitioner's appeal as 2nd appeal was not maintainable under PEEDA by treating the appeal filed before the syndicate as 1st appeal under PEEDA. It is important to observe at this stage that this matter can be decided without disturbing the findings of non-maintainability of 2nd Appeal under the PEEDA Act recorded by the Chancellor in his order as deciding the said aspect of the matter either way i.e. in the affirmative or in the negative would not have any effect on the result of the case, hence the said aspect of the matter has not been dilated upon in detail.

12. Although, learned counsel for the respondent-university has vehemently defended the impugned orders, it is noticed that the appeal filed by the petitioner was dismissed by the Syndicate on technical grounds of having been filed under wrong provision of law i.e. under the Ordinance, whereas it has not been contested or denied that remedy of appeal was available to the petitioner before the same forum under the Act. Where remedy of appeal is available before the same forum under any other law or provision of law instead of the law cited in the title of the appeal, the same could not be dismissed for the reason that incorrect law or provision of law had been referred to in the title of the appeal and any such reasoning given for dismissal of appeal as misconceived and not maintainable would not be based on correct interpretation of law for the reason that wrong mentioned of law or a provision of law would not be an illegality but a curable defect in view of principles laid down by the Honourable Supreme Court of Pakistan in cases titled "*Olas Khan and others versus Chairman NAB through Chairman and others*" (**PLD 2018 SC 40**) and "*MARGRETE WILLIAM versus ABDUL HAMID MIAN*" (**1994 SCMR 1555**), wherein it is settled that mere mentioning of wrong provision of law could not be treated as an impediment in the way of filing or maintainability of an appeal, especially where remedy was available before the same authority or forum under some

other provision of law and one type of proceedings could be converted to another type of proceedings by correction of mis-description of title of proceedings. Besides the right of appeal although procedural in nature is not merely a matter of procedure but a substantive right which once it has accrued according to law cannot be taken away unless the exercise of such right is barred under some provision of law as settled by the principles laid down by the Honourable Supreme Court in cases titled “*Manzoor Ali and 39 others versus United Bank Limited through President*” (2005 SCMR 1785) and “*Mst. Shohrat Bano versus Ismail, Dada Adam Soomar*” (1968 SCMR 574).

13. There is another aspect of the matter that unless curtailed by law, an appeal is the continuation of original proceedings, wherein the entire case is reopen for consideration before the Appellate forum and the appellate forum while deciding the appeal has the same powers available with it as were vested in the original forum in view of the principles laid down in the judgments of the Honourable Supreme Court in judgments reported as “*Khudadad versus Syed Ghazanfar Ali Shah alias S. Inaam Hussain and others*” (2022 SCMR 933), “*Mushtaq Ul Aarifin and others versus Mumtaz Muhammad and others*” (2022 SCMR 55), “*Ch. Iftikhar Ahmed, I.-G., Islamabad and others versus The State*” (2018 SCMR 1385) and “*Multan Electric Power Company Ltd. through Chief Executive and another versus Muhammad Ashiq and others*” (PLD 2006 SC 328). Reference may also be made to case titled “*Ghulam Qadir and others versus Sh. Abdul Wadood and others*” (PLD 2016 SC 712), wherein it is provided that:-

“An appeal is not merely a matter of procedure but a substantive right. It is the continuation of a suit and during appellate proceedings the entire matter stands reopened. The jurisdiction of an appellate court can be invoked by a person who believes that the subordinate court has erred in law or in fact whilst passing the judgment/order under appeal.”

14. Moreover, it is a settled law that principal object behind all legal formalities was to safeguard paramount interest of justice and proceedings should be held in order to do substantial justice and to avoid technicalities unless the same are insurmountable in view of some impediment placed on exercise of jurisdiction by law or is necessary on grounds of public policy as

all procedures are meant for advancement of justice and to avoid injustice to the parties and mere technicalities unless offering an insurmountable hurdle should not be allowed to defeat the ends of justice. Reliance may be placed on judgments reported as “*Mst. Bundi Begum versus Munshi Khan and others*” (PLD 2004 SC 154), “*United Bank Limited versus Pakistan Industrial Credit and Investment Corporation Ltd. and another*” (PLD 2002 SC 1100), “*Jameel Ahmed versus Late Saifuddin through Legal Representatives*” (1997 SCMR 260).

15. Reliance in this regards may also be placed on the principles laid down in “*Manager, Jammu & Kashmir, State Property in Pakistan versus Khuda Yar and another*” (PLD 1975 SC 678) wherein it is provided as under:-

*“The proposition could hardly be disputed that the principal object behind all legal formalities is to safeguard the paramount interest of justice. In fact while considering the importance of legal technicalities and rules of procedure in the administration of justice, it is inevitable to recall the various evolutionary stages in the transition from justice without law of primitive society to justice in accordance with law of modern society and the conflict between equity and law in judicial history. It cannot be denied that legal precepts were devised with a view to impart certainty, consistency and uniformity to administration of justice and to secure it against arbitrariness, errors of individual judgment and mala fide. Over a period of time this development of codes and rules led to the evolution of what is called “jurisprudence of Conception” a system of logical deduction from fixed premises. In order to avoid the rigidity and hardship of ultra formalism recourse is had to principle of equitable application and interpretation of legal precepts and conferment of judicial discretion on the Courts as envisaged by Order XLI, rule 33 of the C. P. C. in regard to Constitutional power of this Court to do complete justice in all matters. These two provisions read together lead to the irreparable conclusion that mere technicalities unless offering an insurmountable hurdle should not be allowed to defeat the ends of justice. It was observed by Kaikaus, J. in *Intiaz Ahmad v. Ghulam Ali* (P L D 1963 S C 382) as follows: --*

“I must confess that having dealt with technicalities for more than forty years, out of which thirty years are at the Bar, I do not feel much impressed with them. I think the proper place of procedure in any system of administration of justice is to help and not to thwart the grant to the people of their rights. All technicalities have to be avoided unless it be essential to comply with them on ground of public policy. The English system of administration of justice on which our own is based may be to a certain extent technical but we are not to take from that system its defect. Any system which by giving effect to the form and not to the substance defeats substantive rights, is defective to that extent. The ideal must always be a system that gives to every person what is his.”

16. Principles laid down in case titled “*Muhammad Bashir and another versus Province of Punjab through Collector of District Gujrat and others*” (2003 SCMR 83) are also relevant for the said legal position, wherein it is provided as under:-

“Technicalities of law are always avoided and discouraged in order to do complete justice and to ensure that justice is not only done but also seen to have been done. Rules of procedure are enacted for fostering the ends of justice and preserving the rights rather than to stifle the dispensation of justice and, unless they are unsurmountable, ends of justice always outweigh the manner of practice and procedure.”

17. It is settled law that purpose behind legal and codal formalities and technicalities of procedure was nothing but only to ensure the safe administration of justice and avoid the chances of injustice/miscarriage of justice. Reliance for which is placed upon judgment reported as “*Imtiaz Ahmad Vs. Ghulam Ali and others*” (PLD 1963 SC 382), “*Munawar Ali and others Vs. Umar Daraz and others*” (2022 CLC 920) (Sindh) and “*Aamir Hameed and another Vs. Messrs Alloo and Manocher Dinshaw Charitable Trust through one of the four trustees and 14 others*” (2019 YLR 1055) (Sindh). Moreover, proper place of procedure in any system of administration of justice is to help and not to thwart the grant to the people of their rights. Reliance is placed upon “*Marriam Bibi and others versus Azhar Iqbal and others*” (PLD 2022 Lah 840) and “*Nadeem Zuberi versus Civil Aviation Authority through Director General*” (PLD 2021 Sindh 103). As a necessary corollary ideal system was one that gave to every person what was theirs’. Reliance may be placed on principles laid down in judgments reported as “*Allah Ditta versus Barkat Ali and 3 others*” (1992 SCMR 1974), “*Nadeem Zuberi versus Civil Aviation Authority through Director General*” (PLD 2021 Sindh 103) and “*Imtiaz Ahmad versus Ghulam Ali and others*” (PLD 1963 SC 382), the operative part Imtiaz Ahmad’s case is reproduced below:-

“...the proper place of procedure in any system of administration of justice is to help and not to thwart the grant to the people of their rights. All technicalities have to be avoided unless it be essential to comply with them on grounds of public policy. Any system which by giving effect to the form and not to the substance defeats substantive rights is defective to that extent. The ideal must always be a system that gives to every person what is his.”

18. It is pertinent to mention here that in the instant case as the original proceedings had arisen out of the PEEDA Act, hence, the hearing officer and the Syndicate should have taken up the appeal for hearing by treating the same to be an appeal filed under the PEEDA Act, instead of appeal under the Ordinance and should not have dismissed the same on a technical ground by declaring the same as misconceived and not maintainable for the reason of having been filed under wrong provision of law, therefore, in the interest of justice impugned order passed by the Syndicate dated 18.07.2022 which is based on recommendation of the hearing officer dated 26.05.2022 is declared to have been passed without any lawful authority and of no legal effect and is **set aside** with the result that the appeal of the petitioner shall be deemed to be pending and the same shall be placed before Syndicate in its next meeting for further proceedings by treating the same as an appeal under Section 16 of PEEDA Act 2006, which shall be decided on its own merit in accordance with law.

19. With this observation, this constitutional petition stands **disposed of**.

(MUZAMIL AKHTAR SHABIR)
JUDGE

*MuzamilMohsin**

Approved for reporting.