

JUDGMENT

MOHSIN AKHTAR KAYANI, J.----Through this common judgment, I intend to decide both the captioned writ petitions as common question of law and facts are involved in both these writ petitions.

2. In W.P No.4190/2019, petitioner Nadia Asghar claims that she was PhD Scholar in National Defence University (NDU) and received letter dated 27.02.2019, whereby her admission in PhD was cancelled by respondent university, said order was assailed in appeal in terms of clause 'e' of Item No.6.3 of Student's Handbook, 2019, NDU as well as in terms of clause 'I', which is meant for procedure for processing Acts of indiscipline, as a result whereof the petitioner was summoned by respondent No.2/President NDU being appellate authority for personal hearing on 23.05.2019 and she presented her case, however, her appeal was also turned down vide impugned notification dated 19.08.2019. Hence, this writ petition.

3. In W.P No.4427/2019, petitioner Anser Mahmood Chughtai was also PhD scholar of NDU, received letter for cancellation of his admission on 27.02.2019, which was further assailed before appellate authority/respondent No.2 vide appeal dated 05.03.2019, however, appeal of petitioner was turned down by the appellate authority vide impugned notification dated 19.08.2019.

4. Learned counsel for the petitioners contends that respondent university passed the order without observing legal requirements and in violation of settled principles of law; that allegation of misconduct or indiscipline requires evidence to be confronted to the petitioners which was not confronted to the petitioners nor fair opportunity of hearing was given and as such entire procedure adopted by respondent university is in violation of its own handbook referred in clause 'c' procedure for processing acts of indiscipline; that different show-cause notices were not transmitted to the petitioners on the actual dates, resultantly proper explanations have not been placed by the petitioners, even matter was transmitted to the FIA Cyber Crime Wing who exonerated the petitioners mainly on the ground that no incriminating material came on record against suspects as alleged by complainant and even complainant failed to provide relevant evidence in support of her allegations; that cancellation of admissions of petitioners effect entire career of the petitioners, who have been victimized due to mala fide of the officials of respondent university including Dr. Bashir; that impugned orders are not justiciable due to want of evidence; that an offer, was made to petitioner Nadia Asghar, who has no direct dispute with the complainant to withdraw all the cases against respondent university in order to reinstate her admission but the same was not concluded as petitioner is in legal process; that respondent No.3 while awarding penalty has imposed life time ban from entering into the premises of university and cancelled admission which is alien to the entire scheme of law and internal rules of university.

5. Conversely, learned counsel for the respondent university contend that fair opportunity of hearing was granted to the petitioners who have pleaded their case before all the forums, even personal hearing was granted and as such they have failed to prove their innocence especially when the allegations are with respect to dignity of a student who was harassed by petitioner Anser Mahmood Chughtai by sending her pictures to other petitioner Nadia Asghar, who was supervising the students affairs including the petitioner who was also student of university; that both the petitioners have admitted their guilt before the authority and as such no exception could be taken in the internal affairs of the university as any order passed by this Court amounts to interference in the internal affairs of the university; that all the necessary steps have been followed before cancellation of admissions of the petitioners.

6. Arguments heard, record perused.

7. Perusal of record reveals that complaint was filed by Ms. Shahzadi Fatima, student of BS (3rd semester) at NDU against petitioner Anser Mahmood Chughtai visiting faculty member of NDU who was also PhD scholar of the university with the following allegations:-

Mr. Anser Mahmood took advantage of this situation and continued with pep talk sessions increasing overtime. Now besides presenting resolution to my situation he

started discussing and presenting his relegated family life affairs searching for pence of soul in life. His kind words of pretentiousness got me into a state of so called infatuation. He lured me into a trap of trust by seeking my inappropriate pictures which I being immature, disillusioned and under stress shared with him.

8. The complainant has also charged petitioner Nadia Asghar for abetment in the entire matter being visiting faculty member as well as she being PhD scholar with petitioner Anser Mahmood Chughtai. Show-cause notices were issued to both the petitioners by respondent university on different dates which were replied by both the petitioners and they denied their involvement, however, record reflects that both the petitioners submitted their written apology dated 27.02.2018 in the following manner:-

I, Nadia Asghar D/o Ali Asghar, that there is a conflict between Mr. Anser Mahmood mid Miss Fatima Ali. I tried to resolve the issue with good intention. Some messages sent to me by Mr. Anser which I forwarded to Miss Fatima Ali. I wish to resolve this matter successfully and confidentially as it was not appropriate to discuss or disseminate. I don't know the level of interaction and communication between both of them. I tried to solve the conflict as Mr. Anser is my PhD fellow and I am the C.R of PhD class. Now due to sensitivity of the issue, I am separating myself from this issue. I have objectionable pictures Miss Fatima and will delete (received from Mr. Anser) I promise.

I Mr. Anser Mahmood Chughtai son of Gul Ahmed Khan, solemnly declare that I have got some data (text and pics) of a girl (Fatima Ali Bs GPP-2nd Sem) which she shared with me with willingness and there was no undue influence involved in it but I will not share it with anybody and threaten her (which I didn't do ever) in any context. In case of any allegation or accusation, I am completely available to prove my innocence. Moreover, I have shared it with one of my class fellow Madam Nadia.

Why I asked her to leave the university or I'll leave, I would explain it the disciplinary committee.

9. Besides the above referred factual aspects it has been observed from the record with the able assistance of learned counsel for the parties that students' affairs have to be dealt under academic regulations notified by respondent university "Procedure for Processing Acts of Indiscipline" in the student's handbook of 2019 of the university, whereby acts of indiscipline are as under:-

- a. Violation of public morals, such as the use of indecent and filthy language; undesirable remarks and gestures; acts of moral turpitude disorderly behavior like abusing, quarrelling, fighting, insolence towards others use of force.
- b. Indulgence in acts which may cause insult or physical injury to the students, teachers, officers, staff of the University or any other person.
- c. Defiance of a University Authority.
- d. Spreading by word of mouth or written material religious, sectarian, ethic, regional or linguistic conflicts/hatred.
- e. Impersonation, giving false information, willful suppression of information, cheating or deceiving.
- f. Possession, carrying or use of any type of weapons/fire-arms or explosive material within the university premises.
- g. Damaging any University property, including building, equipment, vehicles etc. in any manner.
- h. Using any University property, including building, equipment vehicles etc. without

lawful authority.

- i. Sale, distribution or consumption of intoxicants on the campus.
- j. Use of student organizations for furthering the cause of a political party.
- k. Circulation by word of mouth or in written form material derogatory to Pakistan Armed Forces of Pakistan, Islam or any other religion.
- l. Allowing or abetting the entry to the premises of the University of the Expelled Students or anti-social elements.
- m. Obstructing the functioning of the University or causing disruption in teaching/research/other activities.

10. The abovementioned acts were dealt in terms of punishment or penalty for acts of indiscipline in terms of clause '4', whereby major or minor penalty could be imposed. Similarly, procedure of processing acts on indiscipline requires constitution of Departmental Disciplinary Committee (DDC), which also provides concept of appeal, as such it is not the case of any of the petitioners that they have not been provided opportunity of hearing which is apparently demonstrated by respondent university on record that petitioners were given show-cause notices which were replied and even they were heard in appeal through personal hearing. Similarly, their admissions were placed on record which reflect that respondent university had followed each and every step in accordance with their own handbook of regulations and Anser Mahmood Chughtari/petitioner is guilty of acts of indiscipline whereby he has managed certain compromising pictures of student along with text data which has been acknowledged by him in his confession dated 27.02.2018, although he has reiterated his stance to prove his innocence but the primary fact referred in his statement that "I have got some data (text and pics) of a girl (Fatima Ali- BS GPP-2nd Sem) which she shared with me with willingness and there was no undue influence involved in it", this aspect left nothing in favour of Anser Mahmood Chughtai/petitioner, who is visiting faculty member of NDU as well as PhD scholar simultaneously but has not followed the code of conduct due to which threatening atmosphere was created for a young girl Fatima Ali.

11. On the other hand, I have also considered the statement of petitioner Nadia Asghar who tried to intervene into the matter to resolve the controversy being C.R of PhD class as Anser Mahmood/petitioner was her class fellow but at the same time she has referred in her statement that "I have objectionable pictures Miss Fatima and will delete (received from Mr. Anser) I promise", this aspect also reveals that she was not directly involved in the matter rather she received data from Anser Mahmood Chughtai, whether the same was used to malign the victim in the university or otherwise is a fact which was concluded by university authority in their departmental proceedings. In this backdrop, this Court is exercising its authority of judicial review while applying the proportionality, suitability and necessity, test, whereby fair stance is required before cancellation of admission of any student. It is also expected from educational institutions to exercise parental jurisdiction with students and as such university authority has concluded the matter after adopting due procedure provided in their regulations against both the petitioners and even imposed penalty in accordance with their regulations to the extent of petitioner/Anser Mahmood Chughtai, who is harassing a young girl, student being visiting faculty Member which is the most unethical part, however, on the other hand penalty imposed upon petitioner/Nadia Asghar is considered to be harsh penalty, however, courts are reluctant to interfere into the affairs of university and the policy matters of educational institution. Reliance is placed upon 2015 SCMR 445 (Government College University, Lahore v. Syeda Fiza Abbas), 2013 SCMR 1687 (Secretary Economic Affairs division, Islamabad v. Anwarul Haq Ahmed), 2016 SCMR 134 (University of Health Science, Lahore v. Arsalan Ali), PLD 2006 SC 564 (Syed Muhammad Arif v. University of Balochistan), 2011 SCMR 1021 (Muhammad Ishfaq Ahmad Sial v. Bahauddin Zakariya University, Multan).

12. The purpose of judicial review was intended to prevent arbitrariness or favouritism and it must be exercised in larger public interest. Similarly, test was to see any infirmity in the decision making process, therefore, duty of the court to confine itself to the question of legality only. Reliance is placed upon 2014 SCMR 676 (Asaf Fasihuddin Khan v. Government of

Pakistan). Hence, no instance has been came across or surfaced on record whereby it could be assumed that fair opportunity or due process of law in terms of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 has not been adhered to in the present case. The conduct so demonstrated by the petitioner Amer Mahmood Chughtai deserves no leniency whose admission has rightly been cancelled, whereas penalty imposed upon petitioner Nadia Asghar is on higher side. However, if university authority reviews the penalty of the said petitioner on parental concept while differentiating the role of Nadia Asghar vis. a vis. Anser Mahmood Chughtai it would promote the concept of fairness, equity and justice on the part of university authorities while dealing with disciplinary matters of students of university.

13. Instant writ petitions are not maintainable and the same are hereby dismissed. Vice Chancellor, NDU is directed to reconsider the penalty of Nadia Asghar under their own scheme of regulations, if permissible.

Disclaimer: The content available on this document are just for Information. Users are advised not to depend on the information and use it for official purpose. Islamabad High Court, Islamabad is not responsible for any damages arising in contract from the use of the content of this site.